

REAL PROPERTY (AMENDMENT) BILL, 1981

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Real Property Act, 1900, so as—

- (a) to provide for the filing in the office of the Registrar-General of memoranda which contain covenants intended to be incorporated into dealings (Schedule 1 (6));
 - (b) to specify that—
 - (i) where a dealing incorporates covenants set out in a memorandum filed in the office of the Registrar-General; or
 - (ii) where a lease incorporates covenants set out in a registered lease, those covenants are deemed to be set out at length in the dealing or lease (Schedule 1 (6));
 - (c) to allow the Registrar-General to destroy all documents instead of only documents that do not evidence a subsisting interest (Schedule 1 (3));
 - (d) to require the Registrar-General to retain a microfilm or other form of reproduction of a document he destroys if it evidences a subsisting interest or if he would otherwise be under a duty to preserve it (Schedule 1 (3)); and
 - (e) to make other provisions of a minor or ancillary nature.
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REAL PROPERTY (AMENDMENT) BILL, 1981

EXPLANATORY NOTE

(The Explanatory Note annexed to this Bill as introduced into Parliament)

The object of this Bill is to amend the Real Property Act, 1900, so as—

(a) to provide for the filing in the office of the Registrar-General of documents which contain covenants intended to be incorporated into leases (Schedule 1 (8));

(b) to specify that—
(i) where a lease is a lease of land, a covenant set out in a memorandum filed in the office of the Registrar-General, or

(ii) where a lease is a lease of land, a covenant set out in a registered lease, shall be deemed to be set out in a lease in the absence of any other evidence (Schedule 1 (9));

(c) to allow the Registrar-General to destroy all documents instead of only those documents that do not contain a subsisting interest (Schedule 1 (10));

(d) to require the Registrar-General to retain a duplicate of any other form of registration of a document the destruction of which would otherwise be under a duty to preserve it (Schedule 1 (11) and Schedule 1 (12)); and

(e) to insert a new provision of a minor or technical nature.

REAL PROPERTY (AMENDMENT) BILL, 1981

No. , 1981.

A BILL FOR

An Act to amend the Real Property Act, 1900, with respect to the incorporation of covenants into dealings relating to land under that Act and the destruction of documents by the Registrar-General.

[MR GORDON—18 March, 1981.]

Real Property (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Real Property (Amendment) Act, 1981".

Commencement.

2. (1) Except as provided in subsection (2), this Act shall commence on
10 the date of assent to this Act.

(2) Section 3, in its application to Schedule 1 (1), (2), (4), (5) and (6), and Schedule 1 (1), (2), (4), (5) and (6) shall be deemed to have commenced on 31st August, 1978.

Amendment of Act No. 25, 1900.

15 3. The Real Property Act, 1900, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE REAL PROPERTY ACT, 1900.

20 (1) (a) Section 1, matter relating to Part VIII—

Omit "SHORT FORMS OF COVENANTS", insert instead "INCORPORATED COVENANTS".

(b) Section 1, matter relating to Part VIII—

Omit "81", insert instead "80A".

Real Property (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(2) (a) Section 36 (1)—

Omit the subsection, insert instead:—

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(1) In this section—

“caveat” means a caveat referred to in section 45H or 72;

“memorandum” has the same meaning as it has in section 80A (1).

(b) Section 36 (1A), (1B), (1C)—

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After “dealing” wherever occurring, insert “, memorandum”.

(3) (a) Section 38 (6)—

Omit the subsection, insert instead:—

(6) Subject to the Archives Act, 1960, the Registrar-General may—

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(a) destroy any document that he is not under a duty to deliver or issue to any person, whether or not it is part of the Register; or

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(b) deliver to a person who, in his opinion, intends to preserve it for historical purposes any document that, by paragraph (a), he is empowered to destroy.

(b) Section 38 (7)–(10)—

After section 38 (6), insert:—

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(7) The Registrar-General shall, before destroying a document under subsection (6) (a), make a transparency of that document if—

(a) where the document is part of the Register, it evidences a subsisting interest; or

Real Property (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

5 (b) where the document is not part of the Register, he would, but for subsection (6) (a), have a duty to preserve it.

10 (8) The Registrar-General shall preserve a transparency of any document referred to in subsection (7) (a) or (b) for as long as the interest evidenced by the document subsists or for as long as he would, but for subsection (6) (a), have had a duty to preserve the document, as the case may be.

15 (9) Where a transparency of a document is preserved under subsection (8) and that document would, if it had not been destroyed under subsection (6) (a), be part of the Register, whether for all purposes or for the purpose only of section 96B, the transparency shall be part of the Register for all purposes or for that purpose, as the case may be.

(10) In subsections (7), (8) and (9), “transparency” has the same meaning as it has in section 2 of the Evidence (Reproductions) Act, 1967.

20 (4) (a) Section 39 (1A) (b)—

Before “caveat”, insert “memorandum or”.

(b) Section 39 (1A)—

After “dealing” where secondly occurring, insert
“, memorandum”.

25 (5) VIII, heading—

Omit “SHORT FORMS OF COVENANTS”, insert instead “INCORPORATED COVENANTS”.

Real Property (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(6) Section 80A—

After section 80, insert:—

5 **Incorporation of provisions contained in memorandum or covenants in lease.**

80A. (1) In this section, “memorandum” means a memorandum in the approved form setting forth provisions which are capable of being covenants in a dealing of a class which is specified in the memorandum.

(2) The Registrar-General—

- (a) shall file any memorandum which has been lodged with him and which he has not rejected under section 39 (1A); and
- 15 (b) may distinctively number and file a memorandum on his own behalf.

(3) A memorandum filed under subsection (2) shall be retained by the Registrar-General and shall, for the purposes only of section 96B, be deemed to be part of the Register.

20 (4) Where a dealing relating to land under the provisions of this Act is of a class specified in a memorandum filed in the office of the Registrar-General and contains a provision which incorporates in the dealing (with or without amendment) any or all of the provisions set out in that memorandum, those provisions or, as the case may be, those provisions as amended shall be deemed to be set out at length in the dealing.

25 (5) Where a lease of land under the provisions of this Act contains a provision which incorporates in the lease (with or without amendment) covenants set out in a specified lease of the same land, being a lease registered under this Act, those covenants or, as the case may be, those covenants as amended shall be deemed to be set out at length in the firstmentioned lease.

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Real Property (Amendment).

SCHEDULE 1—continued.

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—continued.

5 (6) Nothing in subsections (4) and (5) shall be construed as limiting the effect, if any, of a provision in a dealing which incorporates in the dealing covenants or other provisions otherwise than as referred to in those subsections.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981

(40c)

REAL PROPERTY (AMENDMENT) ACT, 1981, No. 59

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 59, 1981.

An Act to amend the Real Property Act, 1900, with respect to the incorporation of covenants into dealings relating to land under that Act and the destruction of documents by the Registrar-General. [Assented to, 26th May, 1981.]

Real Property (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Real Property (Amendment) Act, 1981".

Commencement.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act.

(2) Section 3, in its application to Schedule 1 (1), (2), (4), (5) and (6), and Schedule 1 (1), (2), (4), (5) and (6) shall be deemed to have commenced on 31st August, 1978.

Amendment of Act No. 25, 1900.

3. The Real Property Act, 1900, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE REAL PROPERTY ACT, 1900.

(1) (a) Section 1, matter relating to Part VIII—

Omit "SHORT FORMS OF COVENANTS", insert instead "INCORPORATED COVENANTS".

(b) Section 1, matter relating to Part VIII—

Omit "81", insert instead "80A".

Real Property (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(2) (a) Section 36 (1)—

Omit the subsection, insert instead:—

(1) In this section—

“caveat” means a caveat referred to in section 45H or 72;
“memorandum” has the same meaning as it has in section 80A (1).

(b) Section 36 (1A), (1B), (1C)—

After “dealing” wherever occurring, insert “, memorandum”.

(3) (a) Section 38 (6)—

Omit the subsection, insert instead:—

(6) Subject to the Archives Act, 1960, the Registrar-General may—

(a) destroy any document that he is not under a duty to deliver or issue to any person, whether or not it is part of the Register; or

(b) deliver to a person who, in his opinion, intends to preserve it for historical purposes any document that, by paragraph (a), he is empowered to destroy.

(b) Section 38 (7)–(10)—

After section 38 (6), insert:—

(7) The Registrar-General shall, before destroying a document under subsection (6) (a), make a transparency of that document if—

(a) where the document is part of the Register, it evidences a subsisting interest; or

Real Property (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(b) where the document is not part of the Register, he would, but for subsection (6) (a), have a duty to preserve it.

(8) The Registrar-General shall preserve a transparency of any document referred to in subsection (7) (a) or (b) for as long as the interest evidenced by the document subsists or for as long as he would, but for subsection (6) (a), have had a duty to preserve the document, as the case may be.

(9) Where a transparency of a document is preserved under subsection (8) and that document would, if it had not been destroyed under subsection (6) (a), be part of the Register, whether for all purposes or for the purpose only of section 96B, the transparency shall be part of the Register for all purposes or for that purpose, as the case may be.

(10) In subsections (7), (8) and (9), “transparency” has the same meaning as it has in section 2 of the Evidence (Reproductions) Act, 1967.

(4) (a) Section 39 (1A) (b)—

Before “caveat”, insert “memorandum or”.

(b) Section 39 (1A)—

After “dealing” where secondly occurring, insert “, memorandum”.

(5) Part VIII, heading—

Omit “SHORT FORMS OF COVENANTS”, insert instead “INCORPORATED COVENANTS”.

Real Property (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(6) Section 80A—

After section 80, insert:—

Incorporation of provisions contained in memorandum or covenants in lease.

80A. (1) In this section, “memorandum” means a memorandum in the approved form setting forth provisions which are capable of being covenants in a dealing of a class which is specified in the memorandum.

(2) The Registrar-General—

- (a) shall file any memorandum which has been lodged with him and which he has not rejected under section 39 (1A); and
- (b) may distinctively number and file a memorandum on his own behalf.

(3) A memorandum filed under subsection (2) shall be retained by the Registrar-General and shall, for the purposes only of section 96B, be deemed to be part of the Register.

(4) Where a dealing relating to land under the provisions of this Act is of a class specified in a memorandum filed in the office of the Registrar-General and contains a provision which incorporates in the dealing (with or without amendment) any or all of the provisions set out in that memorandum, those provisions or, as the case may be, those provisions as amended shall be deemed to be set out at length in the dealing.

(5) Where a lease of land under the provisions of this Act contains a provision which incorporates in the lease (with or without amendment) covenants set out in a specified lease of the same land, being a lease registered under this Act, those covenants or, as the case may be, those covenants as amended shall be deemed to be set out at length in the firstmentioned lease.

Real Property (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(6) Nothing in subsections (4) and (5) shall be construed as limiting the effect, if any, of a provision in a dealing which incorporates in the dealing covenants or other provisions otherwise than as referred to in those subsections.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 26th May, 1981.*



