

CONCURRENCE COPY

CONVEYANCING (AMENDMENT) BILL, 1984

EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:—

- Constitution (Enrolment of Acts) Amendment Bill, 1984;
- Crimes (Registration of Instruments) Amendment Bill, 1984;
- Bills of Sale (Amendment) Bill, 1984.

The objects of this Bill are—

- (a) to repeal the Registration of Deeds Act, 1897 (Schedule 3);
- (b) to re-enact, in a more modern form, the central provisions of that Act as a part of the registration provisions of the Conveyancing Act, 1919 (Schedule 1);
- (c) to make amendments to the Conveyancing Act, 1919, by way of statute law revision (Schedule 2); and
- (d) to enact other provisions of a minor, consequential or ancillary nature.

Schedule 1 proposes to insert a new Division into Part XXIII of the Conveyancing Act, 1919, dealing with the General Register of Deeds. That Division contains the following provisions:—

Clause 184A defines a “registration copy” for the purposes of the Division.

Clause 184B limits the operation of the Division in relation to instruments registered or registrable in the Torrens Register.

Clause 184C sets up the General Register of Deeds.

Clause 184D provides that any instrument may be registered in the General Register of Deeds.

Clause 184E specifies the method of registration.

Clause 184F spells out various requirements relating to the registration of copies of instruments that are to be registered.

Clause 184G provides that instruments affecting land take their priority according to registration instead of execution.

Clause 184H provides that mistakes in registration do not, in certain circumstances, render the registration ineffectual.

Clause 184I enables errors and omissions in the General Register of Deeds to be corrected by the Registrar-General.

Clause 184J re-enacts in a modified form the provisions of section 6 (II) of the Registration of Deeds Act, 1897, relating to the effect of registration of previously unregistered Crown grants issued before 1863.

Schedule 2 effects amendments to the Conveyancing Act, 1919, by way of statute law revision.

Schedule 3 lists the Registration of Deeds Act, 1897, and its various amendments as the enactments proposed to be repealed.

Schedule 4 contains savings, transitional and other provisions.

CONVEYANCING (AMENDMENT) BILL, 1984

No. , 1984.

A BILL FOR

An Act to amend the Conveyancing Act, 1919, in relation to the registration of certain instruments and for other purposes, and to repeal the Registration of Deeds Act, 1897.

[MR GORDON—23 *February*, 1984.]

See also Constitution (Enrolment of Acts) Amendment Bill, 1984; Crimes (Registration of Instruments) Amendment Bill, 1984; Bills of Sale (Amendment) Bill, 1984.

Conveyancing (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 "Conveyancing (Amendment) Act, 1984".

Commencement.

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

(2) Section 5, in its application to a provision of Schedules 1 and 2, shall commence on the day on which that provision commences.

(3) Section 6 and Schedules 1 and 3 shall commence on such day as may be appointed by the Governor in respect thereof and as may be **15** notified by proclamation published in the Gazette.

(4) Schedule 2 (14) shall commence on the date of assent to this Act or the date of commencement of section 163A of the Principal Act, whichever is the later.

Principal Act.

20 3. The Conveyancing Act, 1919, is referred to in this Act as the Principal Act.

Conveyancing (Amendment).

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS.

5 SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—REPEALS.

SCHEDULE 4.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 6, 1919.

10 5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Repeals.

6. The Acts specified in Schedule 3 are repealed to the extent specified in that Schedule.

15 Savings, transitional and other provisions.

7. Schedule 4 has effect.

Conveyancing (Amendment).

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS.

5 (1) Section 2—

Omit the matter relating to Division 1 of Part XXIII, insert instead:—

DIVISION 1.—*General Register of Deeds*—ss. 184A–184J.

10 DIVISION 2.—*Register of Causes, Writs, and Orders Affecting Land*—ss. 185–194.

(2) Section 38 (5) (b)—

Omit “section 8, subsection (2), of the Registration of Deeds Act, 1897”, insert instead “section 184F (4)”.

(3) (a) Section 88D (3) (b)—

15 Omit “the Registration of Deeds Act, 1897”, insert instead “Division 1 of Part XXIII”.

(b) Section 88D (4)—

Omit “the Registration of Deeds Act, 1897”, insert instead “Division 1 of Part XXIII”.

20 (c) Section 88D (4)—

Omit “that Act”, insert instead “that Division”.

(d) Section 88D (14) (b)—

Omit “the Registration of Deeds Act, 1897”, insert instead “Division 1 of Part XXIII”.

25 (4) Section 88E (4), (7)—

Omit “the Registration of Deeds Act, 1897” wherever occurring, insert instead “Division 1 of Part XXIII”.

Conveyancing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS—*continued.*

(5) (a) Section 106 (8A)—

5 Omit “the Registration of Deeds Act, 1897”, insert instead “Division 1 of Part XXIII”.

(b) Section 106 (10) (b)—

Omit “the Registration of Deeds Act, 1897”, insert instead “Division 1 of Part XXIII”.

10 (6) Part XXIII, Division 1—

After the heading “REGISTRATION.” in Part XXIII, insert:—

DIVISION 1.—*General Register of Deeds.*

Interpretation.

15 184A. A reference in this Division to a registration copy of an instrument is a reference to—

(a) a copy thereof delivered to the office of the Registrar-General;
or

(b) a copy thereof prepared by the Registrar-General,
as referred to in section 184E (1) (a).

20 **Application of Division to certain instruments.**

184B. (1) Without affecting anything in the Real Property Act, 1900, and subject to subsection (2), instruments which are registered or required to be registered under the provisions of the Real Property Act, 1900, may be registered under this Division.

25 (2) Section 184G does not apply to instruments referred to in subsection (1).

Conveyancing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS—*continued.***General Register of Deeds.**

5 184C. (1) The Registrar-General shall cause a General Register of Deeds to be maintained for the purposes of this Division.

(2) The General Register of Deeds shall be comprised of—

10 (a) the General Register of Deeds kept pursuant to the Registration of Deeds Act, 1897;

(b) registration copies of instruments registered under this Division;

(c) instruments of a prescribed class; and

15 (d) records required by the regulations to be kept as part of the General Register of Deeds.

(3) The General Register of Deeds may be maintained in or upon any medium or combination of mediums capable of having information recorded in or upon it or them.

20 (4) The Registrar-General may, from time to time, vary the manner or form in which the whole or any part of the General Register of Deeds is maintained.

Registration of instruments.

184D. (1) The Registrar-General may receive and register any instrument whatever, whether affecting or relating to land or not.

25 (2) Except as provided by this Division, registration of an instrument under this Division has effect for the purposes of record only.

Conveyancing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS—*continued.***Method of registration.**

- 5 184E. (1) An instrument is registered under this Division in the
General Register of Deeds—
- (a) by—
- (i) the original instrument and a copy of the **original**
 instrument being delivered to the office of the
10 Registrar-General; or
- (ii) the original instrument being delivered to the office of
 the Registrar-General and a copy of it being prepared
 by the Registrar-General; and
- 15 (b) by a distinctive reference being allocated by the Registrar-
General to the original instrument.
- (2) The Registrar-General shall endorse on the **original**
instrument and the registration copy such particulars and matter as
may be prescribed.
- 20 (3) The Registrar-General may endorse on the **original**
instrument and the registration copy such particulars as the Registrar-
General thinks fit.
- (4) The Registrar-General may refuse to register **an**
instrument in the General Register of Deeds if—
- 25 (a) the original instrument or registration copy does not **comply**
with any relevant provision of this Division or with **any**
relevant requirement prescribed by the regulations; or
- (b) any other relevant requirements prescribed by the **regulations**
in relation to the registration of instruments under **this**
Division are not complied with.
- 30 (5) Instruments are registered under this Division in the
order in which the distinctive references referred to in subsection (1)
are allocated to the instruments.

Conveyancing (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS—*continued.*

5 (6) Notwithstanding subsection (5), instruments registered under the Registration of Deeds Act, 1897, shall be taken to have been registered in the order determined by reference to the time endorsed on the copy pursuant to that Act.

10 (7) Subject to any Act or other law, the registration copy of a registered instrument shall be retained in the office of the Registrar-General.

15 (8) Except in so far as the context or subject-matter otherwise indicates or requires, a reference (however expressed) in this or any other Act, in any instrument made under this or any other Act or in any other instrument of any kind, to registration in, or an instrument registered in, the General Register of Deeds shall be read and construed as, or as including, a reference to registration under, or an instrument registered under, this Division.

Provisions relating to copies delivered for registration.

20 184F. (1) This section applies to a registration copy delivered to the office of the Registrar-General (as referred to in section 184E (1) (a) (i)) for registration under this Division.

(2) The registration copy does not comply with this Division if—

25 (a) there is not written on, annexed to or appended to the copy a statutory declaration, in or to the effect of the prescribed form, certifying that the copy is a true copy of the original instrument; or

(b) the copy contains any interlineation or other alteration, unless the interlineation or other alteration is noted on the copy in such manner as may be prescribed.

30 (3) The original instrument to which the registration copy relates shall be produced to the person before whom the statutory declaration is made.

Conveyancing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS—*continued.*

5 (4) If the original instrument appears to have been executed by any party unable to write and is not a deed, a statutory declaration shall not be made pursuant to this section, unless—

- (a) the execution by that party is attested by a person, other than the party by whom the instrument was prepared; and
- 10 (b) the person attesting the execution certifies in the attestation that the person so attesting is a prescribed witness.

(5) An attestation under subsection (4) shall contain a certificate that the contents of the instrument were previously explained to the party who was unable to write, and that the nature and effect of the instrument were at the time of the attestation, to the best of the belief of the person attesting the execution of the instrument, understood by that party.

15

Instruments affecting land to take effect according to priority of registration.

20 184G. (1) All instruments (wills excepted) affecting, or intended to affect, any lands in New South Wales which are executed or made bona fide, and for valuable consideration, and are duly registered under the provisions of this Division, the Registration of Deeds Act, 1897, or any Act repealed by the Registration of Deeds Act, 1897, shall have and take priority not according to their respective dates

25 but according to the priority of the registration thereof only.

(2) No instrument registered under the provisions of this Division or the Registration of Deeds Act, 1897, shall lose any priority to which it would be entitled by virtue of registration thereunder by reason only of bad faith in the conveying party, if the party

30 beneficially taking under the instrument acted bona fide, and there was valuable consideration given therefor.

Conveyancing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS—*continued.***Mistakes in registration.**

5 184H. No registration of any instrument under this Division, or intended to be in pursuance of this Division, shall be defeated or made ineffectual by reason of any omission, misdescription or error in any case where the identity of the instrument in evidence with the one
10 alleged to have been registered is established, and the substantial requirements of this Act have been complied with.

Correction of Register.

15 184I. (1) The Registrar-General may, subject to this section and upon such evidence as appears to the Registrar-General to be sufficient, correct errors and omissions in the General Register of Deeds.

 (2) This section does not authorise an alteration to be made to a registration copy of an original instrument except to bring the copy into conformity with the original instrument.

20 (3) This section does not authorise an alteration to be made to an original instrument.

 (4) Where it appears to the Registrar-General that an alteration has been made to an original instrument after its registration under this Division, this section does not authorise an alteration to be made to the registration copy of the original instrument to bring
25 the copy into conformity with the original instrument in that respect.

Provisions respecting certain Crown grants.

 184J. Registration under this Division of a grant by the Crown of lands or other hereditaments in New South Wales alienated before 1st January, 1863, which has not been already enrolled in the

Conveyancing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS—*continued.*

5 Supreme Court or recorded in the office of the Registrar-General shall have the same effect as if the grant had been recorded under section 6 (II) of the Registration of Deeds Act, 1897, and that Act had not been repealed.

(7) Part XXIII, Division 1 (to be renumbered as Division 2)—

10 Omit the heading to Division 1 (as originally enacted), insert instead:—

DIVISION 2.—*Register of Causes, Writs, and Orders Affecting Land.*

(8) Part XXIII, heading to Division 2 (as originally enacted)—

Omit "DIVISION 2.—*Bankruptcy proceedings.*".

15 (9) Section 197 (1)—

Omit "the Registration of Deeds Act, 1897, or".

(10) Section 199—

Omit the section, insert instead:—

Registers to be public records.

20 199. Any register kept in pursuance of this Act shall be a public record and information therein shall be made available at the prescribed times, in the prescribed manner and upon payment of the prescribed fee, if any.

Conveyancing (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE GENERAL REGISTER OF DEEDS—*continued.*

(11) (a) Section 202 (1) (a)—

5 Omit the paragraph, insert instead:—

(a) prescribing the manner and form of registering instruments under this Act or any other Act (except the Real Property Act, 1900), and the requirements with which documents lodged or delivered for registration thereunder are to comply;

10

(b) Section 202 (1) (c)—

Omit “, the Registration of Deeds Act, 1897.”.

SCHEDULE 2.

(Sec. 5.)

15 AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

(1) (a) Section 1—

Omit “twenty:”, insert instead “twenty”.

(b) Section 1—

Omit the proviso.

20 (2) (a) Section 2—

From the matter relating to Division 3 of Part III, omit “51”, insert instead “50”.

(b) Section 2—

25 From the matter relating to Division 3A of **Part XXIII**, omit “*resumptions*”, insert instead “*Resumptions*”.

(3) Section 19A (3)—

Omit “as amended by subsequent Acts”.

Conveyancing (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION—*continued.*

- (4) Section 26 (2)—
5 Omit “tenour”, insert instead “tenor”.
- (5) Section 37A (3)—
Omit “aliened”, insert instead “alienated”.
- (6) Section 51—
Omit the section.
- 10 (7) Section 58—
Omit “section 53, paragraph (2), subparagraph (e)”, insert instead “section 53 (2) (e)”.
- (8) Section 64 (2)—
Omit “1960”, insert instead “1960”.
- 15 (9) Heading before section 133B—
Omit the heading.
- (10) Heading after section 142—
Omit the heading.
- (11) Heading before section 144—
20 Omit the heading.
- (12) Section 151 (1)—
Omit “subsections”.
- (13) Section 151D (1) (d) (ii)—
Omit “-1938”.

Conveyancing (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION—*continued.*

(14) Section 163A (1), (2)—

5 Omit the subsections, insert instead:—

(1) Where, in the manner provided by subsection (2), a document (being a legible document) is certified to be a true and complete copy of the contents of an instrument creating a power of attorney, the document is evidence—

10 (a) as against the principal under the power of attorney—of the execution and contents of the instrument; and

(b) as against any other person—of the contents of the instrument.

(2) A document is certified in the manner provided by this subsection—

15 (a) if there is endorsed on the document a written certificate, to the effect that the document is a true and complete copy of the contents of the instrument of which it purports to be a copy, by—

(i) the principal under the power of attorney created by the instrument; or

(ii) a person of a prescribed class; and

20 (b) if each page of the document bears the signature of the person who gives the certificate referred to in paragraph (a).

(15) Heading before section 164—

Omit “*Notice.*”.

(16) Section 184 (4)—

Omit “section 86, subsection (2),”, insert instead “section 86 (2)”.

25 (17) (a) Section 196 (1)—

Omit “, as amended”.

(b) Section 196 (5) (e)—

30 Omit “Closer Settlement Fund or the Consolidated Revenue Fund”, insert instead “Closer Settlement and Public Reserves Fund or the Consolidated Fund”.

(18) Heading to Division 3A of Part XXIII—

Omit “*resumptions*”, insert instead “*Resumptions*”.

(19) Section 202 (4)—

Omit the subsection, insert instead:—

35 (4) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Part as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

*Conveyancing (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION—*continued.*

- (20) Section 205—
5 Omit “, as amended by subsequent Acts”.
- (21) Schedule IV—
Omit “Health Commission of New South Wales”, insert instead “Secretary of the Department of Health”.
- (22) Schedule VI—
10 Omit “-1932”.

SCHEDULE 3.

(Sec. 6.)

REPEALS.

Column 1.		Column 2.	
Year and number of Act.	Short title of Act.	Extent of repeal.	
15	1897, No. 22 ..	Registration of Deeds Act, 1897 ..	The whole Act.
	1919, No. 6 ..	Conveyancing Act, 1919 ..	Section 203 (1).
20	1920, No. 23 ..	Conveyancing (Amendment) Act, 1920.	So much of section 2 as amends section 203 (1) of Act No. 6, 1919.
	1937, No. 35 ..	Statute Law Revision Act, 1937 ..	So much of the Second Schedule as amends Act No. 22, 1897.
25	1942, No. 1 ..	Conveyancing (Amendment) Act, 1942.	Section 4 (1).
	1967, No. 21 ..	Registration of Deeds (Amendment) Act, 1967.	The whole Act.
	1973, No. 67 ..	Registrar-General Act, 1973 ..	So much of the Schedule as amends Act No. 22, 1897.
30	1976, No. 84 ..	Conveyancing (Amendment) Act, 1976.	The matter in section 3 relating to Schedule 7. Section 5. Schedule 7.

Conveyancing (Amendment).

SCHEDULE 4.

(Sec. 7.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

- 5 1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (3).

References to repealed Act.

- 10 2. On and from the appointed day, except in so far as the context or subject-matter otherwise indicates or requires, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind (enacted, made or executed before the appointed day)—

- (a) to the Registration of Deeds Act, 1897, shall be read and construed as a reference to Division 1 of Part XXIII of the Principal Act, as amended by this Act; and
- 15 (b) to "that Act", when referring to the Registration of Deeds Act, 1897, shall be read and construed as a reference to that Division.

Registration, etc., under repealed Act deemed to be under new provisions.

- 20 3. (1) Any act, matter or thing done or omitted to be done under or for the purposes of the Registration of Deeds Act, 1897, before the appointed day, shall, so far as relevant, be deemed to have been done or omitted to be done under or for the purposes of Division 1 of Part XXIII of the Principal Act, as amended by this Act.

- (2) Without limiting subclause (1), any instrument registered under the Registration of Deeds Act, 1897, or recorded under section 6 (II) of that Act, shall be deemed to be registered under Division 1 of Part XXIII of the Principal Act, as amended by this Act.
- 25

- (3) Nothing in subclause (2) affects the operation of any provision of Division 1 of Part XXIII of the Principal Act, as amended by this Act, in relation to specific references in that Division to an instrument or instruments registered under the Registration of Deeds Act, 1897.

Conveyancing (Amendment).

SCHEDULE 4—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Acknowledgments by Deputy Registrar of Deeds.

- 5 4. The repeal by this Act of section 51 of the Principal Act does not affect the validity of any acknowledgment taken before a Deputy Registrar of Deeds at any time before the date of assent to this Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984

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