

FIRST PRINT

**CONVEYANCING (COVENANTS) AMENDMENT BILL  
1986**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The following Bills are cognate with this Bill:

Real Property (Covenants) Amendment Bill 1986;

Strata Titles (Covenants) Amendment Bill 1986;

Local Government (Covenants) Amendment Bill 1986.

The object of this Bill is to amend the Conveyancing Act 1919 so as—

- (a) to permit the creation of positive covenants in favour of the Crown or statutory authorities, being covenants which will impose obligations (such as a requirement to carry out development on land) on successive owners of the land; and
- (b) to provide for the enforcement of the obligations imposed by positive covenants.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Clause 4 saves restrictive covenants, which were created under section 88D or 88E of the Principal Act before the amendment of those sections by the proposed Act, from being affected by the amendments.

**SCHEDULE 1—AMENDMENTS TO PART VI OF THE CONVEYANCING ACT  
1919 RELATING TO COVENANTS AFFECTING LAND**

Schedule 1 (1) amends the heading to Division 4 of Part VI of the Principal Act so as to indicate that that Division relates to positive as well as to restrictive covenants.

Schedule 1 (2) inserts a definition of “positive covenant” into that Division. The main feature of a positive covenant is that it imposes obligations on an owner of land to do specified things as opposed to a restrictive covenant which prohibits specified activities.

Schedule 1 (3) amends section 88D of the Principal Act so as to enable the creation of positive covenants affecting land which is vested in the Crown, a public or local authority constituted by an Act or a corporation prescribed by regulations made under the Principal Act (a “prescribed authority”). Positive and restrictive covenants will be set out in an order made by the prescribed authority concerned. At present restrictive covenants created under that section are required to be set out in an order of the Governor-in-Council published in the Gazette.

Schedule 1 (4) amends section 88E of the Principal Act so as to enable the creation of positive covenants which benefit and may be enforced by a prescribed authority but which affect land which is not vested in the authority.

Schedule 1 (5) inserts into the Principal Act the following proposed sections:

- (a) Proposed section 88F states the effect of the imposition of a positive covenant on land. The covenant will run with the land in the same way as a restrictive covenant. The prescribed authority having the benefit of the covenant will have certain powers of entry and will be able to carry out obligations imposed by the covenant if the person against whom the covenant is enforceable fails to meet those obligations. In any such case, the cost of carrying out those obligations may be recovered by the authority and secured by imposing a charge over the land.
- (b) Proposed section 88G requires a prescribed authority to issue certificates setting out particulars of any amount owing or work done under a positive covenant for which a charge may be imposed on land so as to protect a purchaser of the land.
- (c) Proposed section 88H provides for injunctions to be granted by the Supreme Court for securing the observance of restrictive or positive covenants imposed on land. In particular, an injunction may be obtained requiring a person to perform the obligations imposed on the person by a positive covenant.
- (d) Proposed section 88I enables a prescribed authority, in certain circumstances, to obtain an order from the Supreme Court for the conveyance or transfer of land to the authority where a positive covenant imposed on the land has been contravened.

- (e) Proposed section 88J enables a prescribed authority to obtain an order from the Supreme Court for the delivery to it of title deeds and certain other instruments to enable it to exercise certain of its powers arising because it has the benefit of a positive covenant.

Schedule 1 (6) amends section 89 of the Principal Act so as to confer on the Supreme Court a power to modify or extinguish positive covenants which is similar to its power to modify or extinguish restrictive covenants.

#### SCHEDULE 2—AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919 RELATING TO CERTAIN CHARGES ON LAND

Schedule 2 (1) amends the heading to Part VII of the Principal Act so as to indicate that that Part relates to charges imposed on land under proposed section 88F (a “positive covenant charge”) as well as to mortgages.

Schedule 2 (2) substitutes section 90 of the Principal Act so as to state that Division 1 of Part VII of that Act applies to charges on land under the provisions of the Real Property Act 1900 only to the extent specified in that Division.

Schedule 2 (3) inserts proposed section 99A into the Principal Act which empowers the Supreme Court to make a foreclosure order for land subject to a positive covenant charge in similar circumstances to those in which it might make a foreclosure order for mortgaged land.

Schedule 2 (4) applies the provisions of section 100 of the Principal Act, which deal with the consequences of a foreclosure order made in favour of a mortgagee, to the case where a foreclosure order is made under proposed section 99A in favour of a prescribed authority.

Schedule 2 (5) amends section 101 of the Principal Act so as to declare that an order for foreclosure or sale may be made under that Act by the Supreme Court in relation to land subject to a positive covenant charge notwithstanding that part of the land may be under the provisions of the Real Property Act 1900.

Schedule 2 (6) applies the provisions of section 103 of the Principal Act, which regulate the sale of mortgaged property, to the case of an order for the sale of land subject to a positive covenant charge.

Schedule 2 (7) substitutes the heading to Division 2 of Part VII of the Principal Act so as to indicate that that Division relates to positive covenant charges.

Schedule 2 (8) substitutes section 105 of the Principal Act so as to state that Division 2 of Part VII of that Act applies to positive covenant charges imposed on land under the provisions of the Real Property Act 1900.

Schedule 2 (9) applies the provisions of section 106 of the Principal Act, which empower a mortgagee in possession of land to grant certain leases, to a person who has the benefit of any such charge and is in possession of the land.

Schedule 2 (10) applies the provisions of section 107 of the Principal Act, which enable a mortgagee in possession of land to accept surrenders of leases, to a person who has the benefit of a positive covenant charge and is in possession of the land.

Schedule 2 (11) and (12) substitute the heading to Division 3 of Part VII of the Principal Act and substitute section 108 of that Act so as to apply that Division to positive covenant charges imposed on land under the provisions of the Real Property Act 1900.

Schedule 2 (13) applies the provisions of section 109 of the Principal Act, which empower a mortgagee of land to sell the land, to insure the land, to appoint a receiver of income from the land and, in certain cases, to cut timber, to sever and sell fixtures and to sell easements and other rights in the land, to a prescribed authority having the benefit of a positive covenant charge.

Schedule 2 (14) applies the provisions of section 109A of the Principal Act, which declare that a mortgage instrument is not a bill of sale or subject to invalidity under certain other Acts because of its conferring on the mortgagee a power to sever and sell fixtures, to an instrument creating a positive covenant charge which confers that power.

Schedule 2 (15) applies the provisions of section 110 of the Principal Act, which confer on a mortgagee with a power of sale certain powers incidental to the power of sale, to a prescribed authority having the benefit of a positive covenant charge.

Schedule 2 (16) applies the provisions of section 111 of the Principal Act, which restrict the exercise of a power of sale by a mortgagee, to the exercise of a power of sale by a prescribed authority having the benefit of a positive covenant charge.

Schedule 2 (17) applies the provisions of section 112 of the Principal Act, which regulate the terms of a conveyance by a mortgagee exercising a power of sale, to a conveyance by a prescribed authority exercising a power of sale.

Schedule 2 (18) applies the provisions of section 113 of the Principal Act, which regulate the application of money received from a mortgagee's sale and the effect of a receipt given by the mortgagee, to the application of money and a receipt given as a consequence of a sale by a prescribed authority exercising a power of sale.

Schedule 2 (19) applies the provisions of section 114 of the Principal Act, which impose terms upon insurance of land effected by a mortgagee, to insurance of land subject to a positive covenant charge.

Schedule 2 (20) applies the provisions of section 115 of the Principal Act, which regulate the powers of receivers appointed under that Act by mortgagees, to receivers so appointed by prescribed authorities having the benefit of positive covenant charges.

Schedule 2 (21) applies the provisions of section 115A of the Principal Act, which empower a mortgagee to appoint a receiver of mortgaged property where the mortgagor is in default, so as to enable a prescribed authority having the benefit of a positive covenant charge to appoint a receiver while the person whose land is subject to the charge is in default.

**SCHEDULE 3—AMENDMENTS TO PART XX OF THE CONVEYANCING ACT  
1919 RELATING TO CERTAIN CHARGES ON LAND**

Schedule 3 amends section 173 of the Principal Act so as to afford to certain persons claiming an estate or interest in land subject to a positive covenant charge the same protection from the effect of an order made in a foreclosure action as is afforded to persons claiming an estate or interest in land subject to a mortgage.

**SCHEDULE 4—AMENDMENTS TO THE CONVEYANCING ACT 1919 BY WAY  
OF STATUTE LAW REVISION**

Schedule 4 (1)–(3) make minor amendments to sections 88D, 103 and 109A of the Principal Act.

Schedule 4 (4) inserts proposed section 185 (3) into the Principal Act which confirms the power of the Registrar-General to vacate the registration of instruments in the register of causes, writs and orders which have ceased to have effect.

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THE FEDERAL GOVERNMENT'S POLICY ON THE CONSERVATION OF LAND

The Federal Government's policy on the conservation of land is based on the principle that land is a finite resource and should be used in a way that ensures its availability for future generations. This policy is reflected in the National Conservation Lands Act and the National System of Public Lands Act.

THE FEDERAL GOVERNMENT'S POLICY ON THE CONSERVATION OF WATER

The Federal Government's policy on the conservation of water is based on the principle that water is a finite resource and should be used in a way that ensures its availability for future generations. This policy is reflected in the National Water Conservation Act and the National System of Public Lands Act.

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# CONVEYANCING (COVENANTS) AMENDMENT BILL 1986

NEW SOUTH WALES



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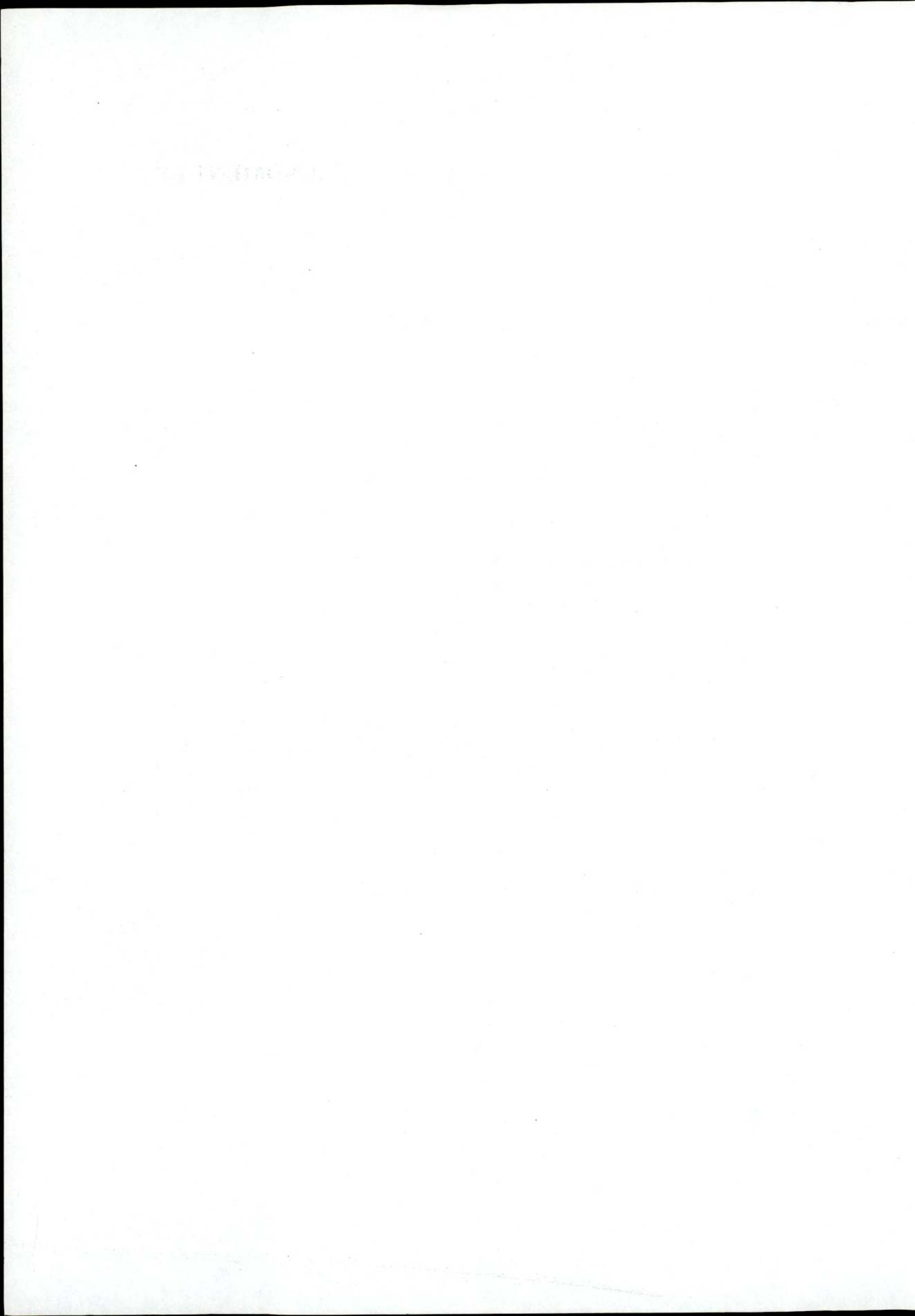
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**CONVEYANCING (COVENANTS) AMENDMENT BILL  
1986**

NEW SOUTH WALES



No.           , 1986

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**A BILL FOR**

An Act to amend the Conveyancing Act 1919 so as to enable the creation  
and enforcement of certain covenants affecting the use of land.

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See also Real Property (Covenants) Amendment Bill 1986; Strata Titles (Covenants) Amendment Bill 1986; Local Government (Covenants) Amendment Bill 1986.

*Conveyancing (Covenants) Amendment 1986*

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**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 (Covenants) Amendment Act 1986".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this  
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of Act No. 6, 1919**

15 3. The Conveyancing Act 1919 is amended in the manner set forth in Schedules 1-4.

**Saving of certain restrictive covenants**

20 4. (1) An order published under section 88D of the Conveyancing Act 1919 before the commencement of this section shall be deemed to be an order made under section 88D of that Act, as amended by this Act, by the prescribed authority in which the land to which the order relates was vested when the order was so published.

25 (2) A restriction on the use of land imposed under section 88E of the Conveyancing Act 1919 before the commencement of this section shall be deemed to have been imposed under section 88E of that Act, as amended by this Act.

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*Conveyancing (Covenants) Amendment 1986*

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SCHEDULE 1

(Sec. 3)

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND

5 (1) Part VI, Division 4, heading—

Omit the heading, insert instead:

DIVISION 4—*Easements and restrictive and positive covenants*

(2) Section 87A—

Before section 88, insert:

10 **Interpretation**

87A. In this Division—

“positive covenant”, in relation to land, includes a covenant which imposes obligations requiring—

15 (a) the carrying out of development on or with respect to the land, within the meaning of the Environmental Planning and Assessment Act 1979;

(b) the provision of services on or to the land or other land in its vicinity; or

20 (c) the maintenance, repair or insurance of any structure or work on the land,

or imposes any term or condition with respect to the performance of or failure to perform any such obligation.

(3) Section 88D (**Regulation of use of land held by prescribed authority**)—

(a) Section 88D (2)—

25 Omit the subsection, insert instead:

(2) A prescribed authority may, by an order that—

30 (a) describes the land in a manner enabling it to be identified and specifies, in the case of land under the provisions of the Real Property Act 1900, the reference to the folio of the Register kept under that Act, or the registered dealing under that Act, that evidences the title to that land;

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

- (b) specifies the particulars of the restrictions or positive covenants; and
- (c) specifies the prescribed authority in which the land is vested,
- 5 impose restrictions on the use of or impose positive covenants on any prescribed land vested in it.
- (b) Section 88D (3), (5), (7), (11), (12)—  
Omit “published under” wherever occurring, insert instead “made under”.
- 10 (c) Section 88D (3) (a), (5), (6), (7), (8), (9) (a), (13), (14) (a), (15)—  
After “restriction” wherever occurring, insert “or positive covenant”.
- (d) Section 88D (5) (a) (ii), (8), (12), (13)—  
15 Omit “specified in” wherever occurring, insert instead “which made”.
- (e) Section 88D (9)—  
Omit “on the user of the land imposed by”, insert instead “or positive covenant imposed on the land under”.
- (f) Section 88D (10)—  
20 Omit the subsection.
- (g) Section 88D (11)—  
Omit “the Governor”, insert instead “a prescribed authority”.
- (h) Section 88D (12)—  
Omit “published in the Gazette”, insert instead “made”.
- 25 (i) Section 88D (13)—  
Omit “as to the user of land imposed under subsection (2)”, insert instead “imposed on land under this section”.

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(j) Section 88D (15)—

Omit “as to the user of”, insert instead “imposed on”.

(4) Section 88E (**Regulation of use of land not held by prescribed authority**)—

5 (a) Section 88E (2)—

Omit the subsection, insert instead:

- 10 • (2) A prescribed authority may, in accordance with this section, impose restrictions on the use of or impose positive covenants on any land not vested in the authority, so that the restriction or positive covenant is enforceable by the authority whether or not the benefit of the restriction or positive covenant is annexed to other land.

(b) Section 88E (3)–(7)—

15 After “restriction” wherever occurring, insert “or positive covenant”.

(5) Sections 88F—88J—

After section 88E, insert:

**Effect of certain positive covenants**

20 88F. (1) If a positive covenant is imposed on land under section 88D or 88E, the covenant affects the land and persons from time to time having any estate or interest in the land in the same way as if it were a covenant imposing a restriction on the use of the land.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(2) The prescribed authority having the benefit of a positive covenant shall have the following powers:

- 5 (a) for the purpose of ensuring observance of the covenant, the authority may, by its servants or agents, twice in every year at a reasonable time of the day and upon giving to the person against whom the covenant is enforceable not less than 2 days' notice, enter the land and view the condition of the land and the state of construction or repair of any structure or work on the land, except to the extent that the authority and that person may otherwise agree;
- 10 (b) where the covenant requires that person to insure any structure, the authority may insure on the failure of that person to comply with the covenant;
- 15 (c) where the covenant requires the carrying out of development of any nature by that person, the authority may carry out development of that nature on the failure of that person to comply with the covenant;
- 20 (d) the authority may recover from that person, in a court of competent jurisdiction, any expense reasonably incurred by it in exercising its powers under paragraph (b) or (c).

(3) This section does not prevent the imposition on land under section 88D or 88E or otherwise of a covenant containing powers of a like nature to or a different nature from those granted by this section.

25 (4) Where a prescribed authority obtains a judgment for an amount payable to it for a failure to comply with a positive covenant imposed on land under section 88D or 88E, the authority may lodge with the Registrar-General an application for registration of a charge over the land for the amount from time to time payable in accordance with the judgment—

30

- (a) where the land is under the provisions of the Real Property Act 1900—in the form approved under that Act; or

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(b) in any other case—in the manner prescribed for registration of the charge under section 187.

5 (5) When an application is lodged under the provisions of the Real Property Act 1900 pursuant to subsection (4) (a), the Registrar-General shall, in the Register kept under that Act, make appropriate recordings with respect to the charge to which the application relates.

10 (6) A charge referred to in subsection (4) takes effect when registered under section 187 or recorded pursuant to subsection (5), as the case may be, and operates in favour of the prescribed authority which applied for registration of the charge as a charge on the land for the amount to which it relates.

15 (7) Where a charge is imposed under this section, the judgment to which the charge relates shall not be enforced by execution against the land which is subject to the charge, but nothing in this subsection affects any remedy afforded a chargee under this Act, the Real Property Act 1900 or the Strata Titles Act 1973.

20 (8) Where a charge is recorded under the Real Property Act 1900 pursuant to subsection (5), the charge is an interest within the meaning of section 42 of that Act.

**Certificate of amount due**

25 88G. (1) Any person may apply to a prescribed authority for a certificate under this section as to the amount (if any) payable to it because of a failure to comply with a positive covenant imposed on land under section 88D or 88E.

30 (2) The application for the certificate shall be made in writing and shall state the name and address of the applicant and particulars of the land in respect of which the information is required.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(3) On receipt of the application, the prescribed authority shall immediately give or post to the applicant a certificate in writing—

5 (a) stating the amount (if any) payable to the authority because of a failure to comply with a positive covenant imposed on the land and particulars of how the amount is comprised or that no such amount is payable; or

10 (b) stating particulars of the work (if any) carried out by the authority the cost or part of the cost of which may be recovered by the authority under the covenant or that no such work has been carried out.

15 (4) Production of the certificate shall for all purposes be conclusive proof in favour of a purchaser in good faith and for value of the land that, at the time at which the certificate is issued—

(a) no amount other than that stated in the certificate was due or payable to the prescribed authority in respect of the land because of any such failure; and

20 (b) no work the cost or part of the cost of which may be recovered by the authority under the covenant other than that the particulars of which are stated in the certificate has been carried out by the authority.

**Injunctions**

25 88H. (1) Where a person has engaged, is engaged or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of a covenant imposing a restriction on the use of land or a positive covenant, the Court may, on the application of the prescribed authority or other person having the benefit of the covenant, grant an injunction  
30 restraining the firstmentioned person from engaging in that conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.



*Conveyancing (Covenants) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

5 (2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that the person is required to do by or under a positive covenant, the Court may, on the application of the prescribed authority having the benefit of the covenant, grant an injunction requiring the person to do that act or thing.

10 (3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

15 (5) The power of the Court to grant an injunction under subsection (1) or (3) may be exercised—

20 (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

25 (b) if it appears to the Court that, in the event that the injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there would be an imminent danger of substantial damage to any person if the firstmentioned person were to engage in conduct of that kind.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(6) Where an application is made to the Court for the grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised—

- 5           (a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- 10           (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned
- 15           person refuses or fails to do that act or thing.

(7) In any case in which an application is made to the Court for an injunction under this section, the Court may, if in its opinion it is desirable to do so, award damages to the applicant instead of or as well as granting an injunction.

- 20           (8) A person who has been refused an order under section 114A of the Strata Titles Act 1973 may not apply for an injunction under this section to the same effect as the order sought.

**Transfer of land to prescribed authority**

- 25           88i. (1) Where a person has contravened, whether by act or omission, a positive covenant imposed on land under section 88D or 88E, the prescribed authority entitled to enforce the covenant may apply to the Court for an order that the land be conveyed or transferred to the authority.

- 30           (2) Notice of the application shall be served on the person by the prescribed authority, and otherwise the application shall be made, in accordance with rules of Court.

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(3) An order may be made under this section only where the Court is satisfied—

- 5 (a) that, because of the contravention by the person or for any other reason, the continued holding of the land by the person is reasonably likely to endanger the health or safety of the public;
- (b) that there is no reasonable likelihood of the person complying with the obligations imposed by the covenant;
- 10 (c) that the person has previously committed frequent contraventions of restrictive or positive covenants imposed on the land; or
- (d) that the person has persistently and unreasonably delayed complying with the obligations of any positive covenant imposed on the land,

15 or that the order should be made because of any other special circumstances, whether of a like or different nature.

(4) If the Court makes the order requested, the Court may impose such conditions on the conveyance or transfer of the land as the Court thinks fit.

20 (5) Where land is conveyed or transferred to a prescribed authority in accordance with an order made under this section, the consideration payable by the authority shall be the value of the land reduced by the amount of any outstanding liability of the person to the authority arising out of contravention of the positive covenant.

25

(6) In calculating the value of land for the purposes of subsection (5), any increase in the value of the land attributable to—

- 30 (a) the carrying out of development in contravention of the positive covenant; or

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(b) the development which is likely to be carried out on the land in accordance with the covenant,

shall be disregarded.

**Production of title documents where sale, lease or foreclosure**

5 88j. (1) A prescribed authority having the benefit of a positive covenant, being an authority—

(a) which is authorised (whether or not by this Act or the Real Property Act 1900) to sell or lease land subject to the covenant; or

10 (b) which has obtained an order for foreclosure relating to that land,

may apply to the Court for an order requiring the delivery, at or within such time as may be fixed by the Court, to the authority by the person whose land is subject to the covenant or by any other person of any deed, certificate of title or other instrument relating to the title to the land which may be reasonably required by the authority.

15

(2) An application shall be made in accordance with rules of Court.

20 (3) Where an order has been made under this section and any instrument required by the Registrar-General for the purposes of the Real Property Act 1900 has not been delivered to the prescribed authority in accordance with the order, the Registrar-General may dispense with production of the instrument or, if appropriate, take action under section 111 (3) of that Act.

25

(6) Section 89 (**Power of Court to modify or extinguish easements and certain covenants**)—

(a) Section 89 (1)—

After “a restriction”, insert “or an obligation”.

30 (b) Section 89 (1)–(4), (9)—

Omit “court” wherever occurring, insert instead “Court”.

*Conveyancing (Covenants) Amendment 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(c) Section 89 (1), (2), (3)—

Omit “or restriction” wherever occurring, insert instead “, restriction or obligation”.

(d) Section 89 (1) (a), (c), (5)—

5 After “the restriction” wherever occurring, insert “or obligation”.

(e) Section 89 (1) (b)—

Omit “or” where lastly occurring.

(f) Section 89 (1) (b1)—

After section 89 (1) (b), insert:

10 (b1) in the case of an obligation—

15 (i) that the prescribed authority entitled to the benefit of the obligation has agreed to the obligation’s being modified or wholly or partially extinguished or by its acts or omissions may reasonably be considered to have waived the benefit of the obligation wholly or in part; or

20 (ii) that the obligation has become unreasonably expensive or unreasonably onerous to perform when compared with the benefit of its performance to the authority; or

(g) Section 89 (2)—

After “any restriction”, insert “or obligation”.

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## SCHEDULE 2

(Sec. 3)

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND

## 5 (1) Part VII, heading—

Omit the heading, insert instead:

## PART VII

## MORTGAGES AND CERTAIN CHARGES

## (2) Section 90—

10 Omit the section, insert instead:

**Application of Division 1 to land subject to Real Property Act 1900**

90. The provisions of this Division apply to and in respect of mortgages of and charges on land under the Real Property Act 1900 only to the extent specified in those provisions.

## 15 (3) Section 99A—

After section 99, insert:

**Foreclosure order for certain charged land**

99A. (1) Where—

- 20 (a) default has been made for 6 months in the payment of the principal and interest secured by a charge;
- (b) the land charged has been offered for sale at a public auction by a licensed auctioneer after notice has been given in accordance with section 111;
- 25 (c) the amount of the highest bid at that sale was not sufficient to satisfy the money secured by the charge, together with the expenses of the sale; and
- (d) notice in writing of the intention to make the application has been served on the person whose land is subject to the charge in the manner prescribed by section 170,

30 the chargee or the solicitor, attorney or agent of the chargee may make application to the Court for an order for foreclosure.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(2) The application shall be made in accordance with rules of Court.

(3) The notice of intention to make the application may be given personally or by post to the Public Trustee where, at the time the notice is so given—

(a) the chargee knows the person whose land is subject to the charge is dead; and

(b) there is no personal representative of the deceased in New South Wales,

and any such notice shall be accompanied by a statement containing such particulars as may be prescribed.

(4) A notice given in accordance with subsection (3) shall be deemed to have been served on the person whose land is subject to the charge unless probate of the will or letters of administration of the estate of the person is or are granted to some person other than the Public Trustee within one month after the notice has been so given.

(5) Where an application has been made in accordance with this section and such further notice of its intention to make the order as the Court considers appropriate has been given, the Court may make an order for foreclosure in favour of the applicant, unless in the interval a sufficient amount has been realised by the sale of the land to satisfy the principal and interest due and all expenses occasioned by the sale and proceedings for foreclosure.

(6) An order for foreclosure made under this section shall have the effect of vesting in the chargee all the estate and interest in that land of the person whose land was subject to the charge.

(7) Except as provided by section 101, this section applies only to charges imposed under section 88F on land which is not under the provisions of the Real Property Act 1900.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (4) Section 100 (**Foreclosure extinguishes right of action for debt, and equity of redemption**)—
- (a) Section 100 (1)—  
After “mortgagee”, insert “or chargee”.
- 5 (b) Section 100 (1)—  
After “debt” wherever occurring, insert “or amount secured by the charge”.
- (c) Section 100 (1)—  
After “money”, insert “or amount secured by the charge”.
- 10 (d) Section 100 (2)—  
Before “land”, insert “or charges on”.
- (e) Section 100 (3)—  
Omit the subsection, insert instead:
- (3) This section applies only to—
- 15 (a) foreclosures obtained after the commencement of this Act;  
and  
(b) charges imposed under section 88F.
- (5) Section 101 (**Foreclosure, sale or redemption of land partly under the Real Property Act 1900**)—
- 20 (a) Section 101 (1)—  
Omit the subsection, insert instead:
- (1) Where mortgage money or an amount secured by a charge is secured partly by a mortgage or charge registered under the Real Property Act 1900 and partly by other securities—
- 25 (a) an order for foreclosure or sale, in respect of land the subject of the mortgage or charge; or



*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (b) an order for redemption, in respect of land the subject of the mortgage,
- may, notwithstanding anything contained in that Act, be made by the Court as if the land was not under the provisions of that Act.
- 5
- (b) Section 101 (3)—
- After section 101 (2), insert:
- (3) This section applies only to charges imposed under section 88F.
- 10 (6) Section 103 (**Sale of mortgaged or charged property in proceedings for foreclosure, etc.**)—
- (a) Section 103 (2)—
- After “money” where firstly occurring, insert “or an amount secured by a charge”.
- 15 (b) Section 103 (2)—
- After “mortgagee” wherever occurring, insert “or person whose land is subject to the charge”.
- (c) Section 103 (2)—
- After “money” where secondly and thirdly occurring, insert “or amount so secured”.
- 20 (d) Section 103 (2)—
- After “mortgaged”, insert “or charged”.
- (e) Section 103 (3)—
- After “redemption”, insert “or by a person whose land is subject to a charge”.
- 25

*Conveyancing (Covenants) Amendment 1986*

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SCHEDULE 2—*continued*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(f) Section 103 (7)—

After section 103 (6), insert:

5 (7) Except as provided by section 101, this section applies only to charges imposed under section 88F on land which is not under the provisions of the Real Property Act 1900.

(7) Part VII, Division 2, heading—

Omit the heading, insert instead:

DIVISION 2—*Leasing powers under mortgages and certain charges*

10 (8) Section 105—

Omit the section, insert instead:

**Application of Division 2**

15 105. (1) The provisions of this Division apply to and in respect of mortgages of and charges on land under the Real Property Act 1900.

(2) In this Division, “charge” means a charge imposed under section 88F.

(9) Section 106 (**Leasing powers where mortgages or certain charges**)—

(a) Section 106 (2)—

20 After “land”, insert “or person having the benefit of a charge on land”.

(b) Section 106 (2)—

After “mortgagor”, insert “or person whose land is subject to the charge”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

## (c) Section 106 (9)—

Omit the subsection, insert instead:

(9) Within one month after having made a lease under this section—

5 (a) a mortgagor shall deliver to the mortgagee (or, if there is more than one, to the mortgagee first in priority) and, where another person has the benefit of a charge on the land, to the other person; or

10 (b) a person whose land is subject to a charge shall deliver to the person having the benefit of the charge and, where the land is mortgaged to another person, to the mortgagee (or, if there is more than one, to the mortgagee first in priority),

15 a duplicate or a counterpart of the lease duly executed by the lessee, but the lessee shall not be concerned to see that this provision is complied with.

## (d) Section 106 (11)—

Omit the subsection, insert instead:

20 (11) This section applies in relation to a mortgagor and mortgagee or the parties to a charge only if and in so far as a contrary intention is not expressed in the instrument creating the mortgage or the covenant in respect of which the charge arose, or otherwise in writing, and shall have effect subject to the terms and conditions of that instrument, or any such writing.

## (e) Section 106 (12)—

25 Omit “mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both,”, insert instead “instrument creating the mortgage or the covenant in respect of which the charge arose from reserving to or conferring on either or both of the parties to the mortgage or charge”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

## (f) Section 106 (12)—

Omit “the mortgage deed” where secondly occurring, insert instead “that instrument”.

## (g) Section 106 (16), (16A)—

5 Omit section 106 (16), insert instead:

10 (16) The power of leasing conferred by this section shall, after a receiver of the income of the mortgaged or charged land has been appointed under this Act by the mortgagee or person having the benefit of the charge and the instrument by which the appointment was made has been registered, be exercisable while that appointment is in force by that mortgagee or person instead of by the mortgagor or person whose land is subject to the charge in relation to any land affected by the receivership in the same manner as it would be if the mortgagee or person having the benefit was in possession of the land and the mortgagee or person may, by deed, delegate that power to the receiver.

15 (16A) Where a trust corporation has been appointed receiver pursuant to section 115 (6A), a delegation under subsection (16) by that trust corporation in its capacity as mortgagee or person having the benefit of a charge shall be sufficiently evidenced by a statement in the lease of the decision of that trust corporation to exercise the power conferred by subsection (16).

## (h) Section 106 (17)—

20 Omit “; section 53 subsection (4)”, insert instead “and section 53 (4)”.

(10) Section 107 (**Acceptance of certain surrenders of leases**)—

## (a) Section 107 (2)—

After “mortgagee of”, insert “or person having the benefit of a charge on”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

## (b) Section 107 (2)—

After “mortgagor”, insert “or person whose land is subject to the charge”.

## (c) Section 107 (4)—

5 After “mortgagor”, insert “or person whose land is subject to a charge”.

## (d) Section 107 (7)—

Omit “Subsections (11), (14), and (15) of section 106”, insert instead “Section 106 (11), (14) and (15)”.

## 10 (e) Section 107 (8)—

Omit “mortgage deed” wherever occurring, insert instead “instrument creating the mortgage or the covenant in respect of which the charge arose”.

## (f) Section 107 (8)—

15 After “both,”, insert “or any one or more of the parties to the instrument creating the charge,”.

## (g) Section 107 (11), (11A)—

Omit section 107 (11), insert instead:

20 (11) The power of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged or charged land has been appointed under this Act by the mortgagee or person having the benefit of the charge and the instrument by which the appointment was made has been registered, be exercisable while that appointment is in force by that mortgagee  
25 or person instead of by the mortgagor or person whose land is subject to the charge in relation to any land affected by the receivership in the same manner as it would be if the mortgagee or person having the benefit was in possession of the land and the mortgagee or person may, by deed, delegate that power to  
30 the receiver.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(11A) Where a trust corporation has been appointed receiver pursuant to section 115 (6A), a delegation under subsection (11) by that trust corporation in its capacity as mortgagee or person having the benefit of a charge shall be sufficiently evidenced by a statement in the instrument of surrender of the decision of that trust corporation to exercise the power conferred by subsection (11).

(11) Part VII, Division 3, heading—

Omit the heading, insert instead:

DIVISION 3—*Powers of mortgagees and persons having the benefit of certain charges*

(12) Section 108—

Omit the section, insert instead:

**Application of Division 3**

108. (1) The provisions of this Division apply to and in respect of mortgages of and charges on land under the Real Property Act 1900.

(2) In this Division, “charge” means a charge imposed under section 88F.

(13) Section 109 (**Powers of mortgagees and certain charges**)—

(a) Section 109 (1)—

Omit “, where the mortgage is made by deed,”, insert instead “and a chargee”.

(b) Section 109 (1)—

Omit “mortgage deed” where firstly occurring, insert instead “instrument creating the mortgage or the covenant under which the charge arose”.

(c) Section 109 (1)—

After “mortgaged” wherever occurring, insert “or charged”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (d) Section 109 (1) (a)—  
Omit “he (the mortgagee)”, insert instead “the mortgagee or chargee”.
- (e) Section 109 (1) (b), (2), (3)—  
5 Omit “mortgage deed” wherever occurring, insert instead “instrument”.
- (f) Section 109 (1) (b)—  
Omit “mortgage money” where firstly occurring, insert instead “money secured by the mortgage or charge”.
- 10 (g) Section 109 (1) (b)—  
Omit “the mortgage money” where secondly occurring, insert instead “that money”.
- (h) Section 109 (1) (d)—  
After “mortgagee”, insert “or chargee”.
- 15 (i) Section 109 (2)—  
Omit “mortgage,”, insert instead “instrument creating the mortgage or the covenant under which the charge arose,”.
- (14) Section 109A (**Saving on severance of fixtures**)—
- (a) Section 109A (1)—  
20 Omit “A mortgage of land”, insert instead “An instrument creating a mortgage or a charge”.
- (b) Section 109A (1)—  
After “mortgagee”, insert “or chargee”.
- (c) Section 109A (1)—  
25 After “mortgaged”, insert “or charged”.
- (d) Section 109A (1) (b)—  
Omit “such mortgage”, insert instead “the instrument”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (15) Section 110 (**Powers incidental to power of sale**)—
- (a) Section 110 (1)—  
After “mortgagee” where firstly occurring, insert “or chargee”.
- (b) Section 110 (1)—  
5 After “mortgaged” wherever occurring, insert “or charged”.
- (c) Section 110 (1) (b) (i)—  
Omit “in mortgage”, insert instead “subject to the mortgage or charge”.
- (d) Section 110 (1) (c)—  
10 Omit “he (the mortgagee)”, insert instead “the mortgagee or chargee”.
- (e) Section 110 (3)—  
After “applies”, insert “in relation to a mortgage”.
- (16) Section 111 (**Regulation of exercise of power of sale**)—
- 15 (a) Section 111 (2)—  
After “mortgagee”, insert “or chargee”.
- (b) Section 111 (2)—  
After “mortgage” where secondly occurring, insert “or chargee”.
- (c) Section 111 (2) (a)—  
20 Before “default”, insert “in the case of a mortgage,”.
- (d) Section 111 (2) (a1)—  
After section 111 (2) (a), insert:  
(a1) in the case of a charge, default has been made in—
- 25 (i) the payment, in accordance with the terms of the judgment to which the charge relates, of the principal, interest or other money the payment of which is secured by the charge; or



*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (ii) the payment, in accordance with the terms of that judgment, of any part of that principal, interest or other money;
- (e) Section 111 (2) (b) (ii)—  
5 Before “the default”, insert “in the case of a mortgage”.
- (f) Section 111 (2) (b), (3) (b), (d)—  
After “mortgagor” wherever occurring, insert “or person whose land is subject to the charge”.
- (g) Section 111 (3) (b) (i)—  
10 Before “to observe”, insert “in the case of a mortgage”.
- (h) Section 111 (3) (d)—  
After “mortgage” where firstly occurring, insert “or judgment”.
- (i) Section 111 (3) (d)—  
After “mortgage” where secondly occurring, insert “or charge”.
- 15 (17) Section 112 (**Protection of purchaser and disposal of proceeds of sale**)—
- (a) Section 112 (1), (4), (7)—  
After “mortgagee” wherever occurring, insert “or chargee”.
- (b) Section 112 (1), (8)—  
After “mortgage” wherever occurring, insert “or charge”.
- 20 (c) Section 112 (4)—  
Omit “mortgage” where firstly occurring.
- (d) Section 112 (4)—  
After “mortgage” where secondly occurring, insert “or charge”.
- (e) Section 112 (4), (8)—  
25 After “mortgaged” wherever occurring, insert “or charged”.

*Conveyancing (Covenants) Amendment 1986*

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SCHEDULE 2—*continued*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (f) Section 112 (5)—  
After “money”, insert “or the money secured by the charge”.
- (g) Section 112 (7)—  
5 Omit “mortgage deed”, insert instead “instrument creating the mortgage or the covenant under which the charge arose”.
- (18) Section 113 (**Receipts and discharges**)—
- (a) Section 113—  
After “mortgagee” wherever occurring, insert “or chargee”.
- (b) Section 113 (1)—  
10 After “mortgage” where secondly occurring, insert “or charge”.
- (c) Section 113 (2)—  
After “mortgage” where firstly occurring, insert “or charge”.
- (19) Section 114 (**Amount and application of insurance money**)—
- (a) Section 114—  
15 After “mortgagee” wherever occurring, insert “or chargee”.
- (b) Section 114 (1), (2) (a), (3), (4)—  
Omit “mortgage deed” wherever occurring, insert instead  
“instrument creating the mortgage or the covenant under which  
the charge arose”.
- (c) Section 114 (1)—  
20 After “mortgaged”, insert “or charged”.
- (d) Section 114 (1)—  
After “mortgage” where lastly occurring, insert “or charge”.
- (e) Section 114 (2) (b), (c)—  
25 After “mortgagor” wherever occurring, insert “or person whose  
land is subject to the charge”.

*Conveyancing (Covenants) Amendment 1986*

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SCHEDULE 2—*continued*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (f) Section 114 (2) (b), (c)—  
Omit “the mortgage deed” wherever occurring, insert instead  
“that instrument”.
- (g) Section 114 (4)—  
5 After “mortgage” where lastly occurring, insert “or charge”.
- (20) Section 115 (**Powers, remuneration and duties of receiver**)—
- (a) Section 115 (2)—  
Omit the subsection, insert instead:  
10 (2) The receiver shall be deemed to be the agent of the  
mortgagor or person whose land is subject to the charge, and the  
mortgagor or person shall be solely responsible for the receiver’s  
acts or defaults, unless the instrument creating the mortgage or  
the covenant under which the charge arose otherwise provides.
- (b) Section 115 (3)—  
15 After “mortgagor” where firstly occurring, insert “or person  
whose land is subject to the charge”.
- (c) Section 115 (3), (6A), (7), (8) (c), (e)—  
After “mortgagee” wherever occurring, insert “or chargee”.
- (d) Section 115 (3)—  
20 After “mortgagor” where secondly occurring, insert “or person”.
- (e) Section 115 (5)—  
After “mortgagee”, insert “or chargee, as the case may require”.
- (f) Section 115 (6A)—  
25 Omit “mortgage deed” where firstly occurring, insert instead  
“instrument creating the mortgage or the covenant under which  
the charge arose”.
- (g) Section 115 (6A), (8)—  
After “mortgaged” wherever occurring, insert “or charged”.

*Conveyancing (Covenants) Amendment 1986*

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SCHEDULE 2—*continued*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(h) Section 115 (6A)—

Omit “the mortgage deed” where secondly occurring, insert instead “that instrument”.

(i) Section 115 (6B)—

5 Omit the proviso to section 115 (6A), insert instead:

(6B) Where a trust corporation is appointed receiver under subsection (6A), it shall not be deemed to be the agent of the mortgagor or person whose land is subject to the charge.

(j) Section 115 (7)—

10 Omit “comprised in the mortgage”, insert instead “subject to the mortgage or charge”.

(k) Section 115 (8) (b), (d), (e)—

After “mortgage” wherever occurring, insert “or charge”.

(l) Section 115 (8) (c)—

15 Omit “mortgage deed”, insert instead “instrument creating the mortgage or the covenant under which the charge arose”.

(m) Section 115 (9), (10)—

Omit the provisos to section 115 (8), insert instead:

20 (9) Where a trust corporation has been appointed receiver under subsection (6A), a decision of the corporation—

(a) to effect the insurance referred to in subsection (7); or

25 (b) to apply money received by it as receiver in payment of the costs of executing necessary or proper repairs or in or towards discharge of the money due under the mortgage or charge,

shall, for all purposes, be deemed to be a direction given under subsection (7) in writing to that corporation.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

5 (10) A direction given by a mortgagee or chargee to apply money received by a receiver in or towards satisfaction of the money due under a mortgage or charge (or a decision of a trust corporation so to apply money received by it as receiver) shall not be carried into effect unless the mortgagee, chargee or trust corporation is entitled, when the money is so applied, to exercise any power of sale contained or implied in the mortgage or charge.

(21) Section 115A (**Appointment of receivers**)—

10 (a) Section 115A (1)—

After “mortgage” where firstly and fourthly occurring, insert “or charge”.

(b) Section 115A (1) (a)—

Before “the observance”, insert “in the case of a mortgage,”.

15 (c) Section 115A (1) (b)—

Omit “mortgage,”, insert instead “mortgage or judgment to which the charge relates,”.

(d) Section 115A (1) (c)—

After “mortgage”, insert “or that judgment”.

20 (e) Section 115A (2)—

Omit “mortgage or” where firstly occurring.

(f) Section 115A (2) (a)—

After “section,”, insert “or a chargee”.

(g) Section 115A (2) (a)—

25 After “mortgaged”, insert “or charged”.

(h) Section 115A (2) (a)—

After “the mortgage”, insert “or the judgment to which the charge relates”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

## (i) Section 115A (2) (c)—

Omit the paragraph, insert instead:

(c) a person purporting to have been appointed as a receiver in respect of mortgaged or charged property, whether or not by the instrument creating the mortgage or the covenant under which the charge arose, shall not be entitled to exercise, as a receiver, any powers in respect of the mortgaged or charged property unless—

(i) default has been made in respect of the mortgage or charge; and

(ii) that appointment was made by an instrument in writing which has been registered.

## (j) Section 115A (3)—

After “mortgage”, insert “or charge”.

## (k) Section 115A (3)—

After “mortgagee”, insert “or chargee”.

## SCHEDULE 3

(Sec. 3)

AMENDMENTS TO PART XX OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LANDSection 173 (**Orders of court conclusive**)—

## (1) Section 173 (1) (c)—

After “mortgagee”, insert “or chargee”.

## (2) Section 173 (1) (c)—

After “mortgage” wherever occurring, insert “or charge”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 3—*continued*AMENDMENTS TO PART XX OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

## (3) Section 173 (1A)—

After section 173 (1), insert:

(1A) In subsection (1), “charge” means a charge imposed on land under section 88F.

5

## SCHEDULE 4

(Sec. 3)

AMENDMENTS TO THE CONVEYANCING ACT 1919 BY WAY OF STATUTE  
LAW REVISION

## (1) (a) Section 88D (4)—

10 Omit “paragraph (b) of subsection (3)”, insert instead “subsection (3) (b)”.

## (b) Section 88D (5) (b)—

Omit “paragraph (a) of subsection (3)”, insert instead “subsection (3) (a)”.

## (c) Section 88D (7)—

15 Omit “subparagraph (ii) of paragraph (a) of subsection (5)”, insert instead “subsection (5) (a) (ii)”.

## (2) Section 103 (5)—

Omit the subsection.

## (3) Section 109A (1) (b)—

Omit “as amended by subsequent Acts”.

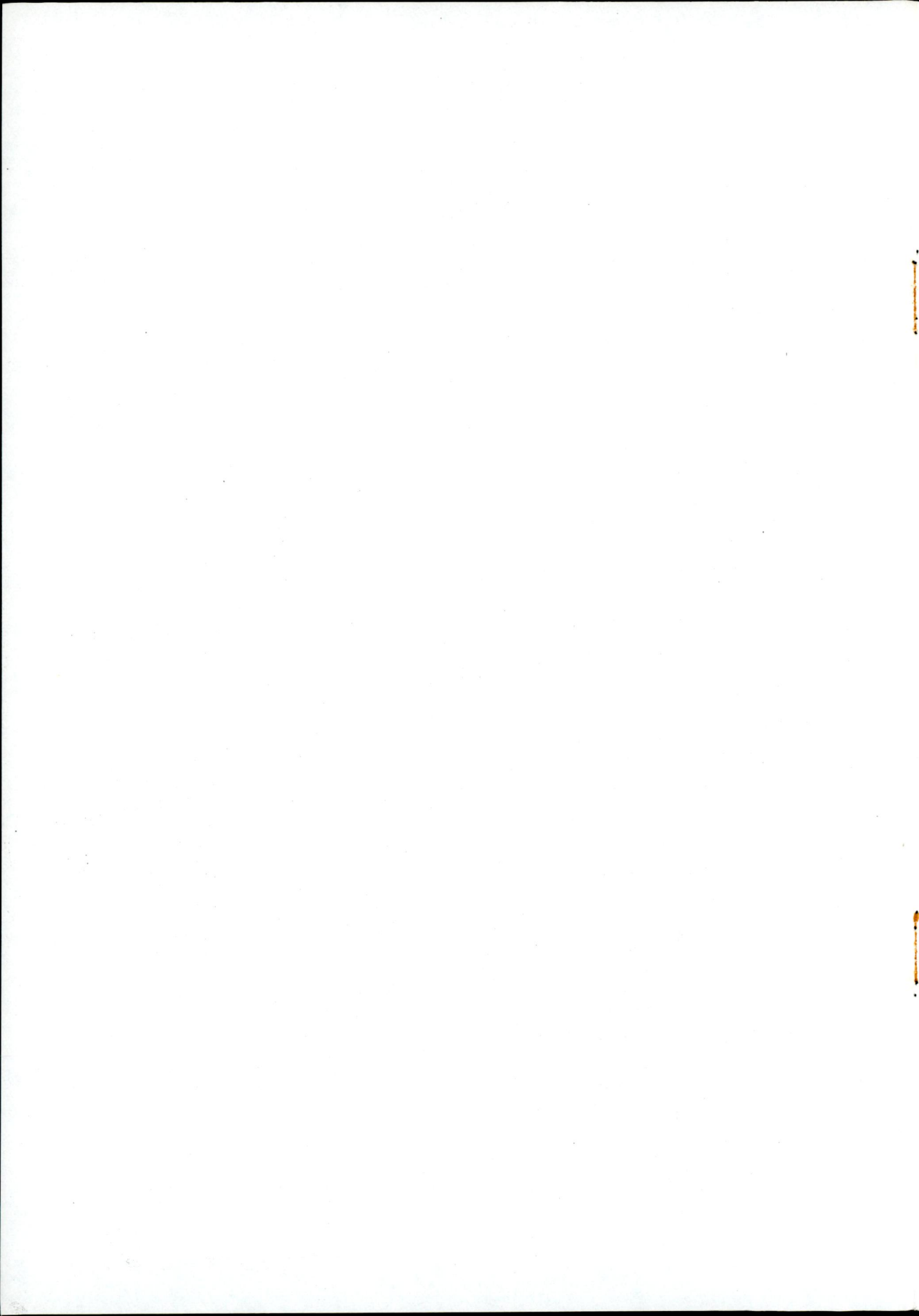
## 20 (4) Section 185 (3)—

After section 185 (2), insert:

25 (3) The Registrar-General shall have, and shall be deemed always to have had, the power to vacate (upon application made in the approved form and upon such evidence as appears to the Registrar-General to be sufficient or without the production of any such evidence) the registration of any writ, order, lis pendens, charge, award, determination or notification registered in the register of causes, writs and orders affecting land which has expired or otherwise ceased to have effect.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986





**CONVEYANCING (COVENANTS) AMENDMENT ACT 1986**  
**No. 70**

NEW SOUTH WALES



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**SCHEDULE 4—AMENDMENTS TO THE CONVEYANCING ACT 1919 BY WAY  
OF STATUTE LAW REVISION**

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**CONVEYANCING (COVENANTS) AMENDMENT ACT 1986 No. 70**

**NEW SOUTH WALES**



**Act No. 70, 1986**

An Act to amend the Conveyancing Act 1919 so as to enable the creation and enforcement of certain covenants affecting the use of land.  
[Assented to, 21 May 1986]

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See also Real Property (Covenants) Amendment Act 1986; Strata Titles (Covenants) Amendment Act 1986; Local Government (Covenants) Amendment Act 1986.

*Conveyancing (Covenants) Amendment 1986*

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**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 "Conveyancing (Covenants) Amendment Act 1986".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of Act No. 6, 1919**

3. The Conveyancing Act 1919 is amended in the manner set forth in Schedules 1-4.

**Saving of certain restrictive covenants**

4. (1) An order published under section 88D of the Conveyancing Act 1919 before the commencement of this section shall be deemed to be an order made under section 88D of that Act, as amended by this Act, by the prescribed authority in which the land to which the order relates was vested when the order was so published.

(2) A restriction on the use of land imposed under section 88E of the Conveyancing Act 1919 before the commencement of this section shall be deemed to have been imposed under section 88E of that Act, as amended by this Act.

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## SCHEDULE 1

(Sec. 3)

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND

## (1) Part VI, Division 4, heading—

Omit the heading, insert instead:

DIVISION 4—*Easements and restrictive and positive covenants*

## (2) Section 87A—

Before section 88, insert:

**Interpretation**

87A. In this Division—

“positive covenant”, in relation to land, includes a covenant which imposes obligations requiring—

- (a) the carrying out of development on or with respect to the land, within the meaning of the Environmental Planning and Assessment Act 1979;
- (b) the provision of services on or to the land or other land in its vicinity; or
- (c) the maintenance, repair or insurance of any structure or work on the land,

or imposes any term or condition with respect to the performance of or failure to perform any such obligation.

(3) Section 88D (**Regulation of use of land held by prescribed authority**)—

## (a) Section 88D (2)—

Omit the subsection, insert instead:

(2) A prescribed authority may, by an order that—

- (a) describes the land in a manner enabling it to be identified and specifies, in the case of land under the provisions of the Real Property Act 1900, the reference to the folio of the Register kept under that Act, or the registered dealing under that Act, that evidences the title to that land;

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

- (b) specifies the particulars of the restrictions or positive covenants; and
- (c) specifies the prescribed authority in which the land is vested,  
impose restrictions on the use of or impose positive covenants on any prescribed land vested in it.
- (b) Section 88D (3), (5), (7), (11), (12)—  
Omit “published under” wherever occurring, insert instead “made under”.
- (c) Section 88D (3) (a), (5), (6), (7), (8), (9) (a), (13), (14) (a), (15)—  
After “restriction” wherever occurring, insert “or positive covenant”.
- (d) Section 88D (5) (a) (ii), (8), (12), (13)—  
Omit “specified in” wherever occurring, insert instead “which made”.
- (e) Section 88D (9)—  
Omit “on the user of the land imposed by”, insert instead “or positive covenant imposed on the land under”.
- (f) Section 88D (10)—  
Omit the subsection.
- (g) Section 88D (11)—  
Omit “the Governor”, insert instead “a prescribed authority”.
- (h) Section 88D (12)—  
Omit “published in the Gazette”, insert instead “made”.
- (i) Section 88D (13)—  
Omit “as to the user of land imposed under subsection (2)”, insert instead “imposed on land under this section”.

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(j) Section 88D (15)—

Omit “as to the user of”, insert instead “imposed on”.

(4) Section 88E (**Regulation of use of land not held by prescribed authority**)—

(a) Section 88E (2)—

Omit the subsection, insert instead:

(2) A prescribed authority may, in accordance with this section, impose restrictions on the use of or impose positive covenants on any land not vested in the authority, so that the restriction or positive covenant is enforceable by the authority whether or not the benefit of the restriction or positive covenant is annexed to other land.

(b) Section 88E (3)–(7)—

After “restriction” wherever occurring, insert “or positive covenant”.

(5) Sections 88F—88J—

After section 88E, insert:

**Effect of certain positive covenants**

88F. (1) If a positive covenant is imposed on land under section 88D or 88E, the covenant affects the land and persons from time to time having any estate or interest in the land in the same way as if it were a covenant imposing a restriction on the use of the land.

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(2) The prescribed authority having the benefit of a positive covenant shall have the following powers:

- (a) for the purpose of ensuring observance of the covenant, the authority may, by its servants or agents, twice in every year at a reasonable time of the day and upon giving to the person against whom the covenant is enforceable not less than 2 days' notice, enter the land and view the condition of the land and the state of construction or repair of any structure or work on the land, except to the extent that the authority and that person may otherwise agree;
- (b) where the covenant requires that person to insure any structure, the authority may insure on the failure of that person to comply with the covenant;
- (c) where the covenant requires the carrying out of development of any nature by that person, the authority may carry out development of that nature on the failure of that person to comply with the covenant;
- (d) the authority may recover from that person, in a court of competent jurisdiction, any expense reasonably incurred by it in exercising its powers under paragraph (b) or (c).

(3) This section does not prevent the imposition on land under section 88D or 88E or otherwise of a covenant containing powers of a like nature to or a different nature from those granted by this section.

(4) Where a prescribed authority obtains a judgment for an amount payable to it for a failure to comply with a positive covenant imposed on land under section 88D or 88E, the authority may lodge with the Registrar-General an application for registration of a charge over the land for the amount from time to time payable in accordance with the judgment—

- (a) where the land is under the provisions of the Real Property Act 1900—in the form approved under that Act; or



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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(b) in any other case—in the manner prescribed for registration of the charge under section 187.

(5) When an application is lodged under the provisions of the Real Property Act 1900 pursuant to subsection (4) (a), the Registrar-General shall, in the Register kept under that Act, make appropriate recordings with respect to the charge to which the application relates.

(6) A charge referred to in subsection (4) takes effect when registered under section 187 or recorded pursuant to subsection (5), as the case may be, and operates in favour of the prescribed authority which applied for registration of the charge as a charge on the land for the amount to which it relates.

(7) Where a charge is imposed under this section, the judgment to which the charge relates shall not be enforced by execution against the land which is subject to the charge, but nothing in this subsection affects any remedy afforded a chargee under this Act, the Real Property Act 1900 or the Strata Titles Act 1973.

(8) Where a charge is recorded under the Real Property Act 1900 pursuant to subsection (5), the charge is an interest within the meaning of section 42 of that Act.

**Certificate of amount due**

88G. (1) Any person may apply to a prescribed authority for a certificate under this section as to the amount (if any) payable to it because of a failure to comply with a positive covenant imposed on land under section 88D or 88E.

(2) The application for the certificate shall be made in writing and shall state the name and address of the applicant and particulars of the land in respect of which the information is required.

SCHEDULE 1—*continued*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(3) On receipt of the application, the prescribed authority shall immediately give or post to the applicant a certificate in writing—

- (a) stating the amount (if any) payable to the authority because of a failure to comply with a positive covenant imposed on the land and particulars of how the amount is comprised or that no such amount is payable; or
- (b) stating particulars of the work (if any) carried out by the authority the cost or part of the cost of which may be recovered by the authority under the covenant or that no such work has been carried out.

(4) Production of the certificate shall for all purposes be conclusive proof in favour of a purchaser in good faith and for value of the land that, at the time at which the certificate is issued—

- (a) no amount other than that stated in the certificate was due or payable to the prescribed authority in respect of the land because of any such failure; and
- (b) no work the cost or part of the cost of which may be recovered by the authority under the covenant other than that the particulars of which are stated in the certificate has been carried out by the authority.

**Injunctions**

88H. (1) Where a person has engaged, is engaged or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of a covenant imposing a restriction on the use of land or a positive covenant, the Court may, on the application of the prescribed authority or other person having the benefit of the covenant, grant an injunction restraining the firstmentioned person from engaging in that conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that the person is required to do by or under a positive covenant, the Court may, on the application of the prescribed authority having the benefit of the covenant, grant an injunction requiring the person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) The power of the Court to grant an injunction under subsection (1) or (3) may be exercised—

- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the Court that, in the event that the injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there would be an imminent danger of substantial damage to any person if the firstmentioned person were to engage in conduct of that kind.

SCHEDULE 1—*continued*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(6) Where an application is made to the Court for the grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised—

- (a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person refuses or fails to do that act or thing.

(7) In any case in which an application is made to the Court for an injunction under this section, the Court may, if in its opinion it is desirable to do so, award damages to the applicant instead of or as well as granting an injunction.

(8) A person who has been refused an order under section 114A of the Strata Titles Act 1973 may not apply for an injunction under this section to the same effect as the order sought.

**Transfer of land to prescribed authority**

88I. (1) Where a person has contravened, whether by act or omission, a positive covenant imposed on land under section 88D or 88E, the prescribed authority entitled to enforce the covenant may apply to the Court for an order that the land be conveyed or transferred to the authority.

(2) Notice of the application shall be served on the person by the prescribed authority, and otherwise the application shall be made, in accordance with rules of Court.

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

(3) An order may be made under this section only where the Court is satisfied—

- (a) that, because of the contravention by the person or for any other reason, the continued holding of the land by the person is reasonably likely to endanger the health or safety of the public;
- (b) that there is no reasonable likelihood of the person complying with the obligations imposed by the covenant;
- (c) that the person has previously committed frequent contraventions of restrictive or positive covenants imposed on the land; or
- (d) that the person has persistently and unreasonably delayed complying with the obligations of any positive covenant imposed on the land,

or that the order should be made because of any other special circumstances, whether of a like or different nature.

(4) If the Court makes the order requested, the Court may impose such conditions on the conveyance or transfer of the land as the Court thinks fit.

(5) Where land is conveyed or transferred to a prescribed authority in accordance with an order made under this section, the consideration payable by the authority shall be the value of the land reduced by the amount of any outstanding liability of the person to the authority arising out of contravention of the positive covenant.

(6) In calculating the value of land for the purposes of subsection (5), any increase in the value of the land attributable to—

- (a) the carrying out of development in contravention of the positive covenant; or

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SCHEDULE 1—*continued*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

- (b) the development which is likely to be carried out on the land in accordance with the covenant,

shall be disregarded.

**Production of title documents where sale, lease or foreclosure**

88J. (1) A prescribed authority having the benefit of a positive covenant, being an authority—

- (a) which is authorised (whether or not by this Act or the Real Property Act 1900) to sell or lease land subject to the covenant; or
- (b) which has obtained an order for foreclosure relating to that land,

may apply to the Court for an order requiring the delivery, at or within such time as may be fixed by the Court, to the authority by the person whose land is subject to the covenant or by any other person of any deed, certificate of title or other instrument relating to the title to the land which may be reasonably required by the authority.

(2) An application shall be made in accordance with rules of Court.

(3) Where an order has been made under this section and any instrument required by the Registrar-General for the purposes of the Real Property Act 1900 has not been delivered to the prescribed authority in accordance with the order, the Registrar-General may dispense with production of the instrument or, if appropriate, take action under section 111 (3) of that Act.

(6) **Section 89 (Power of Court to modify or extinguish easements and certain covenants)—**

- (a) Section 89 (1)—

After “a restriction”, insert “or an obligation”.

- (b) Section 89 (1)–(4), (9)—

Omit “court” wherever occurring, insert instead “Court”.

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SCHEDULE 1—*continued*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT 1919  
RELATING TO COVENANTS AFFECTING LAND—*continued*

## (c) Section 89 (1), (2), (3)—

Omit “or restriction” wherever occurring, insert instead “, restriction or obligation”.

## (d) Section 89 (1) (a), (c), (5)—

After “the restriction” wherever occurring, insert “or obligation”.

## (e) Section 89 (1) (b)—

Omit “or” where lastly occurring.

## (f) Section 89 (1) (b1)—

After section 89 (1) (b), insert:

## (b1) in the case of an obligation—

(i) that the prescribed authority entitled to the benefit of the obligation has agreed to the obligation’s being modified or wholly or partially extinguished or by its acts or omissions may reasonably be considered to have waived the benefit of the obligation wholly or in part; or

(ii) that the obligation has become unreasonably expensive or unreasonably onerous to perform when compared with the benefit of its performance to the authority; or

## (g) Section 89 (2)—

After “any restriction”, insert “or obligation”.

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## SCHEDULE 2

(Sec. 3)

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND

## (1) Part VII, heading—

Omit the heading, insert instead:

PART VII  
MORTGAGES AND CERTAIN CHARGES

## (2) Section 90—

Omit the section, insert instead:

**Application of Division 1 to land subject to Real Property Act 1900**

90. The provisions of this Division apply to and in respect of mortgages of and charges on land under the Real Property Act 1900 only to the extent specified in those provisions.

## (3) Section 99A—

After section 99, insert:

**Foreclosure order for certain charged land**

99A. (1) Where—

- (a) default has been made for 6 months in the payment of the principal and interest secured by a charge;
- (b) the land charged has been offered for sale at a public auction by a licensed auctioneer after notice has been given in accordance with section 111;
- (c) the amount of the highest bid at that sale was not sufficient to satisfy the money secured by the charge, together with the expenses of the sale; and
- (d) notice in writing of the intention to make the application has been served on the person whose land is subject to the charge in the manner prescribed by section 170,

the chargee or the solicitor, attorney or agent of the chargee may make application to the Court for an order for foreclosure.



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SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(2) The application shall be made in accordance with rules of Court.

(3) The notice of intention to make the application may be given personally or by post to the Public Trustee where, at the time the notice is so given—

- (a) the chargee knows the person whose land is subject to the charge is dead; and
- (b) there is no personal representative of the deceased in New South Wales,

and any such notice shall be accompanied by a statement containing such particulars as may be prescribed.

(4) A notice given in accordance with subsection (3) shall be deemed to have been served on the person whose land is subject to the charge unless probate of the will or letters of administration of the estate of the person is or are granted to some person other than the Public Trustee within one month after the notice has been so given.

(5) Where an application has been made in accordance with this section and such further notice of its intention to make the order as the Court considers appropriate has been given, the Court may make an order for foreclosure in favour of the applicant, unless in the interval a sufficient amount has been realised by the sale of the land to satisfy the principal and interest due and all expenses occasioned by the sale and proceedings for foreclosure.

(6) An order for foreclosure made under this section shall have the effect of vesting in the chargee all the estate and interest in that land of the person whose land was subject to the charge.

(7) Except as provided by section 101, this section applies only to charges imposed under section 88F on land which is not under the provisions of the Real Property Act 1900.

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SCHEDULE 2—*continued*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (4) Section 100 (**Foreclosure extinguishes right of action for debt, and equity of redemption**)—
- (a) Section 100 (1)—  
After “mortgagee”, insert “or chargee”.
- (b) Section 100 (1)—  
After “debt” wherever occurring, insert “or amount secured by the charge”.
- (c) Section 100 (1)—  
After “money”, insert “or amount secured by the charge”.
- (d) Section 100 (2)—  
Before “land”, insert “or charges on”.
- (e) Section 100 (3)—  
Omit the subsection, insert instead:
- (3) This section applies only to—
- (a) foreclosures obtained after the commencement of this Act;  
and
- (b) charges imposed under section 88F.
- (5) Section 101 (**Foreclosure, sale or redemption of land partly under the Real Property Act 1900**)—
- (a) Section 101 (1)—  
Omit the subsection, insert instead:
- (1) Where mortgage money or an amount secured by a charge is secured partly by a mortgage or charge registered under the Real Property Act 1900 and partly by other securities—
- (a) an order for foreclosure or sale, in respect of land the subject of the mortgage or charge; or

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RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (b) an order for redemption, in respect of land the subject of the mortgage,

may, notwithstanding anything contained in that Act, be made by the Court as if the land was not under the provisions of that Act.

- (b) Section 101 (3)—

After section 101 (2), insert:

(3) This section applies only to charges imposed under section 88F.

- (6) Section 103 (**Sale of mortgaged or charged property in proceedings for foreclosure, etc.**)—

- (a) Section 103 (2)—

After “money” where firstly occurring, insert “or an amount secured by a charge”.

- (b) Section 103 (2)—

After “mortgagee” wherever occurring, insert “or person whose land is subject to the charge”.

- (c) Section 103 (2)—

After “money” where secondly and thirdly occurring, insert “or amount so secured”.

- (d) Section 103 (2)—

After “mortgaged”, insert “or charged”.

- (e) Section 103 (3)—

After “redemption”, insert “or by a person whose land is subject to a charge”.

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SCHEDULE 2—*continued*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(f) Section 103 (7)—

After section 103 (6), insert:

(7) Except as provided by section 101, this section applies only to charges imposed under section 88F on land which is not under the provisions of the Real Property Act 1900.

(7) Part VII, Division 2, heading—

Omit the heading, insert instead:

DIVISION 2—*Leasing powers under mortgages and certain charges*

(8) Section 105—

Omit the section, insert instead:

**Application of Division 2**

105. (1) The provisions of this Division apply to and in respect of mortgages of and charges on land under the Real Property Act 1900.

(2) In this Division, “charge” means a charge imposed under section 88F.

(9) Section 106 (**Leasing powers where mortgages or certain charges**)—

(a) Section 106 (2)—

After “land”, insert “or person having the benefit of a charge on land”.

(b) Section 106 (2)—

After “mortgagor”, insert “or person whose land is subject to the charge”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

## (c) Section 106 (9)—

Omit the subsection, insert instead:

(9) Within one month after having made a lease under this section—

(a) a mortgagor shall deliver to the mortgagee (or, if there is more than one, to the mortgagee first in priority) and, where another person has the benefit of a charge on the land, to the other person; or

(b) a person whose land is subject to a charge shall deliver to the person having the benefit of the charge and, where the land is mortgaged to another person, to the mortgagee (or, if there is more than one, to the mortgagee first in priority),

a duplicate or a counterpart of the lease duly executed by the lessee, but the lessee shall not be concerned to see that this provision is complied with.

## (d) Section 106 (11)—

Omit the subsection, insert instead:

(11) This section applies in relation to a mortgagor and mortgagee or the parties to a charge only if and in so far as a contrary intention is not expressed in the instrument creating the mortgage or the covenant in respect of which the charge arose, or otherwise in writing, and shall have effect subject to the terms and conditions of that instrument, or any such writing.

## (e) Section 106 (12)—

Omit “mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both,” insert instead “instrument creating the mortgage or the covenant in respect of which the charge arose from reserving to or conferring on either or both of the parties to the mortgage or charge”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

## (f) Section 106 (12)—

Omit “the mortgage deed” where secondly occurring, insert instead “that instrument”.

## (g) Section 106 (16), (16A)—

Omit section 106 (16), insert instead:

(16) The power of leasing conferred by this section shall, after a receiver of the income of the mortgaged or charged land has been appointed under this Act by the mortgagee or person having the benefit of the charge and the instrument by which the appointment was made has been registered, be exercisable while that appointment is in force by that mortgagee or person instead of by the mortgagor or person whose land is subject to the charge in relation to any land affected by the receivership in the same manner as it would be if the mortgagee or person having the benefit was in possession of the land and the mortgagee or person may, by deed, delegate that power to the receiver.

(16A) Where a trust corporation has been appointed receiver pursuant to section 115 (6A), a delegation under subsection (16) by that trust corporation in its capacity as mortgagee or person having the benefit of a charge shall be sufficiently evidenced by a statement in the lease of the decision of that trust corporation to exercise the power conferred by subsection (16).

## (h) Section 106 (17)—

Omit “; section 53 subsection (4)”, insert instead “and section 53 (4)”.

(10) Section 107 (**Acceptance of certain surrenders of leases**)—

## (a) Section 107 (2)—

After “mortgagee of”, insert “or person having the benefit of a charge on”.

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SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

## (b) Section 107 (2)—

After “mortgagor”, insert “or person whose land is subject to the charge”.

## (c) Section 107 (4)—

After “mortgagor”, insert “or person whose land is subject to a charge”.

## (d) Section 107 (7)—

Omit “Subsections (11), (14), and (15) of section 106”, insert instead “Section 106 (11), (14) and (15)”.

## (e) Section 107 (8)—

Omit “mortgage deed” wherever occurring, insert instead “instrument creating the mortgage or the covenant in respect of which the charge arose”.

## (f) Section 107 (8)—

After “both,”, insert “or any one or more of the parties to the instrument creating the charge,”.

## (g) Section 107 (11), (11A)—

Omit section 107 (11), insert instead:

(11) The power of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged or charged land has been appointed under this Act by the mortgagee or person having the benefit of the charge and the instrument by which the appointment was made has been registered, be exercisable while that appointment is in force by that mortgagee or person instead of by the mortgagor or person whose land is subject to the charge in relation to any land affected by the receivership in the same manner as it would be if the mortgagee or person having the benefit was in possession of the land and the mortgagee or person may, by deed, delegate that power to the receiver.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(11A) Where a trust corporation has been appointed receiver pursuant to section 115 (6A), a delegation under subsection (11) by that trust corporation in its capacity as mortgagee or person having the benefit of a charge shall be sufficiently evidenced by a statement in the instrument of surrender of the decision of that trust corporation to exercise the power conferred by subsection (11).

## (11) Part VII, Division 3, heading—

Omit the heading, insert instead:

DIVISION 3—*Powers of mortgagees and persons having the benefit of certain charges*

## (12) Section 108—

Omit the section, insert instead:

**Application of Division 3**

108. (1) The provisions of this Division apply to and in respect of mortgages of and charges on land under the Real Property Act 1900.

(2) In this Division, “charge” means a charge imposed under section 88F.

(13) Section 109 (**Powers of mortgagees and certain chargees**)—

## (a) Section 109 (1)—

Omit “, where the mortgage is made by deed,”, insert instead “and a chargee”.

## (b) Section 109 (1)—

Omit “mortgage deed” where firstly occurring, insert instead “instrument creating the mortgage or the covenant under which the charge arose”.

## (c) Section 109 (1)—

After “mortgaged” wherever occurring, insert “or charged”.



SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (d) Section 109 (1) (a)—  
Omit “he (the mortgagee)”, insert instead “the mortgagee or chargee”.
  - (e) Section 109 (1) (b), (2), (3)—  
Omit “mortgage deed” wherever occurring, insert instead “instrument”.
  - (f) Section 109 (1) (b)—  
Omit “mortgage money” where firstly occurring, insert instead “money secured by the mortgage or charge”.
  - (g) Section 109 (1) (b)—  
Omit “the mortgage money” where secondly occurring, insert instead “that money”.
  - (h) Section 109 (1) (d)—  
After “mortgagee”, insert “or chargee”.
  - (i) Section 109 (2)—  
Omit “mortgage,”, insert instead “instrument creating the mortgage or the covenant under which the charge arose,”.
- (14) Section 109A (**Saving on severance of fixtures**)—
- (a) Section 109A (1)—  
Omit “A mortgage of land”, insert instead “An instrument creating a mortgage or a charge”.
  - (b) Section 109A (1)—  
After “mortgagee”, insert “or chargee”.
  - (c) Section 109A (1)—  
After “mortgaged”, insert “or charged”.
  - (d) Section 109A (1) (b)—  
Omit “such mortgage”, insert instead “the instrument”.

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (15) Section 110 (**Powers incidental to power of sale**)—
- (a) Section 110 (1)—  
After “mortgagee” where firstly occurring, insert “or chargee”.
  - (b) Section 110 (1)—  
After “mortgaged” wherever occurring, insert “or charged”.
  - (c) Section 110 (1) (b) (i)—  
Omit “in mortgage”, insert instead “subject to the mortgage or charge”.
  - (d) Section 110 (1) (c)—  
Omit “he (the mortgagee)”, insert instead “the mortgagee or chargee”.
  - (e) Section 110 (3)—  
After “applies”, insert “in relation to a mortgage”.
- (16) Section 111 (**Regulation of exercise of power of sale**)—
- (a) Section 111 (2)—  
After “mortgagee”, insert “or chargee”.
  - (b) Section 111 (2)—  
After “mortgage” where secondly occurring, insert “or charge”.
  - (c) Section 111 (2) (a)—  
Before “default”, insert “in the case of a mortgage”.
  - (d) Section 111 (2) (a1)—  
After section 111 (2) (a), insert:
    - (a1) in the case of a charge, default has been made in—
      - (i) the payment, in accordance with the terms of the judgment to which the charge relates, of the principal, interest or other money the payment of which is secured by the charge; or

*Conveyancing (Covenants) Amendment 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (ii) the payment, in accordance with the terms of that judgment, of any part of that principal, interest or other money;
- (e) Section 111 (2) (b) (ii)—  
Before “the default”, insert “in the case of a mortgage,”.
- (f) Section 111 (2) (b), (3) (b), (d)—  
After “mortgagor” wherever occurring, insert “or person whose land is subject to the charge”.
- (g) Section 111 (3) (b) (i)—  
Before “to observe”, insert “in the case of a mortgage,”.
- (h) Section 111 (3) (d)—  
After “mortgage” where firstly occurring, insert “or judgment”.
- (i) Section 111 (3) (d)—  
After “mortgage” where secondly occurring, insert “or charge”.
- (17) Section 112 (**Protection of purchaser and disposal of proceeds of sale**)—
  - (a) Section 112 (1), (4), (7)—  
After “mortgagee” wherever occurring, insert “or chargee”.
  - (b) Section 112 (1), (8)—  
After “mortgage” wherever occurring, insert “or charge”.
  - (c) Section 112 (4)—  
Omit “mortgage” where firstly occurring.
  - (d) Section 112 (4)—  
After “mortgage” where secondly occurring, insert “or charge”.
  - (e) Section 112 (4), (8)—  
After “mortgage” wherever occurring, insert “or charged”.

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RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (f) Section 112 (5)—  
After “money”, insert “or the money secured by the charge”.
- (g) Section 112 (7)—  
Omit “mortgage deed”, insert instead “instrument creating the mortgage or the covenant under which the charge arose”.
- (18) Section 113 (**Receipts and discharges**)—
- (a) Section 113—  
After “mortgagee” wherever occurring, insert “or chargee”.
- (b) Section 113 (1)—  
After “mortgage” where secondly occurring, insert “or charge”.
- (c) Section 113 (2)—  
After “mortgage” where firstly occurring, insert “or charge”.
- (19) Section 114 (**Amount and application of insurance money**)—
- (a) Section 114—  
After “mortgagee” wherever occurring, insert “or chargee”.
- (b) Section 114 (1), (2) (a), (3), (4)—  
Omit “mortgage deed” wherever occurring, insert instead “instrument creating the mortgage or the covenant under which the charge arose”.
- (c) Section 114 (1)—  
After “mortgaged”, insert “or charged”.
- (d) Section 114 (1)—  
After “mortgage” where lastly occurring, insert “or charge”.
- (e) Section 114 (2) (b), (c)—  
After “mortgagor” wherever occurring, insert “or person whose land is subject to the charge”.

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SCHEDULE 2—*continued*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

- (f) Section 114 (2) (b), (c)—  
Omit “the mortgage deed” wherever occurring, insert instead “that instrument”.
- (g) Section 114 (4)—  
After “mortgage” where lastly occurring, insert “or charge”.
- (20) Section 115 (**Powers, remuneration and duties of receiver**)—
- (a) Section 115 (2)—  
Omit the subsection, insert instead:  
(2) The receiver shall be deemed to be the agent of the mortgagor or person whose land is subject to the charge, and the mortgagor or person shall be solely responsible for the receiver’s acts or defaults, unless the instrument creating the mortgage or the covenant under which the charge arose otherwise provides.
- (b) Section 115 (3)—  
After “mortgagor” where firstly occurring, insert “or person whose land is subject to the charge”.
- (c) Section 115 (3), (6A), (7), (8) (c), (e)—  
After “mortgagee” wherever occurring, insert “or chargee”.
- (d) Section 115 (3)—  
After “mortgagor” where secondly occurring, insert “or person”.
- (e) Section 115 (5)—  
After “mortgagee”, insert “or chargee, as the case may require,”.
- (f) Section 115 (6A)—  
Omit “mortgage deed” where firstly occurring, insert instead “instrument creating the mortgage or the covenant under which the charge arose”.
- (g) Section 115 (6A), (8)—  
After “mortgaged” wherever occurring, insert “or charged”.

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SCHEDULE 2—*continued*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(h) Section 115 (6A)—

Omit “the mortgage deed” where secondly occurring, insert instead “that instrument”.

(i) Section 115 (6B)—

Omit the proviso to section 115 (6A), insert instead:

(6B) Where a trust corporation is appointed receiver under subsection (6A), it shall not be deemed to be the agent of the mortgagor or person whose land is subject to the charge.

(j) Section 115 (7)—

Omit “comprised in the mortgage”, insert instead “subject to the mortgage or charge”.

(k) Section 115 (8) (b), (d), (e)—

After “mortgage” wherever occurring, insert “or charge”.

(l) Section 115 (8) (c)—

Omit “mortgage deed”, insert instead “instrument creating the mortgage or the covenant under which the charge arose”.

(m) Section 115 (9), (10)—

Omit the provisos to section 115 (8), insert instead:

(9) Where a trust corporation has been appointed receiver under subsection (6A), a decision of the corporation—

- (a) to effect the insurance referred to in subsection (7); or
- (b) to apply money received by it as receiver in payment of the costs of executing necessary or proper repairs or in or towards discharge of the money due under the mortgage or charge,

shall, for all purposes, be deemed to be a direction given under subsection (7) in writing to that corporation.

SCHEDULE 2—*continued*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
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(10) A direction given by a mortgagee or chargee to apply money received by a receiver in or towards satisfaction of the money due under a mortgage or charge (or a decision of a trust corporation so to apply money received by it as receiver) shall not be carried into effect unless the mortgagee, chargee or trust corporation is entitled, when the money is so applied, to exercise any power of sale contained or implied in the mortgage or charge.

(21) Section 115A (**Appointment of receivers**)—

## (a) Section 115A (1)—

After “mortgage” where firstly and fourthly occurring, insert “or charge”.

## (b) Section 115A (1) (a)—

Before “the observance”, insert “in the case of a mortgage,”.

## (c) Section 115A (1) (b)—

Omit “mortgage,”, insert instead “mortgage or judgment to which the charge relates,”.

## (d) Section 115A (1) (c)—

After “mortgage”, insert “or that judgment”.

## (e) Section 115A (2)—

Omit “mortgage or” where firstly occurring.

## (f) Section 115A (2) (a)—

After “section,”, insert “or a chargee”.

## (g) Section 115A (2) (a)—

After “mortgaged”, insert “or charged”.

## (h) Section 115A (2) (a)—

After “the mortgage”, insert “or the judgment to which the charge relates”.

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SCHEDULE 2—*continued*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(i) Section 115A (2) (c)—

Omit the paragraph, insert instead:

(c) a person purporting to have been appointed as a receiver in respect of mortgaged or charged property, whether or not by the instrument creating the mortgage or the covenant under which the charge arose, shall not be entitled to exercise, as a receiver, any powers in respect of the mortgaged or charged property unless—

(i) default has been made in respect of the mortgage or charge; and

(ii) that appointment was made by an instrument in writing which has been registered.

(j) Section 115A (3)—

After “mortgage”, insert “or charge”.

(k) Section 115A (3)—

After “mortgagee”, insert “or chargee”.

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SCHEDULE 3

(Sec. 3)

AMENDMENTS TO PART XX OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND

Section 173 (**Orders of court conclusive**)—

(1) Section 173 (1) (c)—

After “mortgagee”, insert “or chargee”.

(2) Section 173 (1) (c)—

After “mortgage” wherever occurring, insert “or charge”.



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SCHEDULE 3—*continued*

AMENDMENTS TO PART XX OF THE CONVEYANCING ACT 1919  
RELATING TO CERTAIN CHARGES ON LAND—*continued*

(3) Section 173 (1A)—

After section 173 (1), insert:

(1A) In subsection (1), “charge” means a charge imposed on land under section 88F.

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SCHEDULE 4

(Sec. 3)

AMENDMENTS TO THE CONVEYANCING ACT 1919 BY WAY OF STATUTE  
LAW REVISION

(1) (a) Section 88D (4)—

Omit “paragraph (b) of subsection (3)”, insert instead “subsection (3) (b)”.

(b) Section 88D (5) (b)—

Omit “paragraph (a) of subsection (3)”, insert instead “subsection (3) (a)”.

(c) Section 88D (7)—

Omit “subparagraph (ii) of paragraph (a) of subsection (5)”, insert instead “subsection (5) (a) (ii)”.

(2) Section 103 (5)—

Omit the subsection.

(3) Section 109A (1) (b)—

Omit “as amended by subsequent Acts.”.

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SCHEDULE 4—*continued*

AMENDMENTS TO THE CONVEYANCING ACT 1919 BY WAY OF STATUTE  
LAW REVISION—*continued*

(4) Section 185 (3)—

After section 185 (2), insert:

(3) The Registrar-General shall have, and shall be deemed always to have had, the power to vacate (upon application made in the approved form and upon such evidence as appears to the Registrar-General to be sufficient or without the production of any such evidence) the registration of any writ, order, *lis pendens*, charge, award, determination or notification registered in the register of causes, writs and orders affecting land which has expired or otherwise ceased to have effect.

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BY AUTHORITY

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