

FIRST PRINT

## REAL PROPERTY (CAVEATS) AMENDMENT BILL 1986

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to make fresh provision under the Real Property Act 1900 for the lodgment and removal of caveats.

Under the Principal Act protection is generally obtained by a person to whom land is transferred or who acquires an interest in land when the instrument of transfer or the instrument by which the interest is acquired is recorded in the Register kept under that Act by the Registrar-General. However, in certain circumstances a measure of protection can be obtained before the recording of such an instrument. The principal method for providing this kind of protection is through the caveat procedure, which may be used to gain limited protection for unrecorded interests in land both before and after land becomes subject to the Principal Act. At present the Principal Act provides for the lodgment of—

- (a) a caveat by a person who claims to have an interest in land that is the subject of an application to bring land under the provisions of that Act;
- (b) a caveat to prevent the registration of a delimitation plan (which is a plan lodged for the purpose of securing the removal of a limitation on title to land where the boundaries are uncertain);
- (c) a caveat lodged by a settlor who is transferring land to be held by the transferee as trustee (whether or not the settlor retains or claims an interest in the land);
- (d) a caveat lodged against the granting of title to a person who claims land by adverse possession; and
- (e) a caveat lodged to protect an unrecorded interest in land by prohibiting the recording of other unrecorded interests in that land.

There is also provision for the recording of Registrar-General's caveats in certain cases.

The Bill is designed to effect certain improvements to the caveat procedure provided for by the Principal Act.

Under the Bill—

- (a) it is made clear that a registered proprietor will have a right to lodge a caveat where, because of the loss of a title document or other sufficient reason, improper dealing with the land by another person is feared;
- (b) an interested person will have the right to lodge a caveat to prevent the registration of a plan where its registration may affect that person's interest in land;
- (c) a person who lodges a caveat will be obliged—
  - (i) to have a subsisting interest in the land in relation to which the caveat is lodged and to verify the existence of that interest by statutory declaration;
  - (ii) to state in greater detail the interest claimed in the caveat; and
  - (iii) to provide an address in New South Wales for the service of notices;
- (d) a person will not normally be able to lodge a second caveat in relation to the same land where a previous caveat lodged in respect of that land has been successfully challenged;
- (e) if a caveat appears to the Registrar-General on its face to comply with the requirements of the Principal Act with respect to caveats, the Registrar-General is not otherwise required to be concerned as to the validity of the caveat;
- (f) it is made clear that the Registrar-General will not be required to record a dealing, grant a possessory application or register or record a plan where it cannot be determined whether the recording of the dealing, the granting of the possessory application or the registration or recording of the plan will affect the estate or interest claimed by the caveator;
- (g) it is provided that, in any legal proceeding in which a question as to the validity of a caveat arises, the court is to disregard a failure by the caveator to comply strictly with the requirements of the Principal Act with respect to caveats;
- (h) it is provided that, where a caveat is lodged in the office of the Registrar-General in relation to land, the registered proprietor of the land or, as the case may be, the primary or possessory applicant in respect of the land will be able to apply to the Registrar-General for the preparation of a lapsing notice and that, on the service of such a notice, the caveat will lapse unless the caveator obtains from the Supreme Court an order extending the caveat and lodges the order or an office copy of the order within 21 days after service of the notice;
- (i) a person who lodges a caveat in the office of the Registrar-General will have a right to recover compensation for the wrongful action of a person in causing the caveat to lapse;
- (j) a person who sustains loss as a result of the wrongful refusal of a caveator to withdraw a caveat will also have a right to recover compensation for that loss;

- (k) it is provided that, unless a caveat specifically prohibits the recording of such a dealing, certain additional kinds of dealings (such as a transfer resulting from the exercise of a power of sale under a mortgage recorded prior to the lodgment of the caveat) will be capable of being recorded in the Register despite the existence of the caveat;
- (l) the Registrar-General will not be required to serve notice of the lodgment of a caveat on a registered proprietor whose consent is endorsed on the caveat;
- (m) the class of persons who may withdraw a caveat is enlarged to include certain persons in whom an estate or interest in land has vested by operation of law;
- (n) because a settlor under a trust will be able to lodge a caveat in relation to land which the settlor has transferred to a trustee, the existing right conferred on a settlor to lodge a caveat to ensure enforcement of the trust will be abolished;
- (o) the procedures with respect to caveats intended to prohibit the recording of dealings, the granting of possessory applications and the registration of delimitation plans will be integrated and made substantially uniform; and
- (p) additional methods for the service of notices on caveators will be provided.

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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 defines the Real Property Act 1900 as the Principal Act.

Clause 4 is a formal provision which gives effect to the Schedules of amendments to the Principal Act.

Clause 5 is a formal provision which gives effect to the Schedule of savings and transitional provisions.

Schedule 1 inserts in the Principal Act a new Part VIIA which will codify the law relating to caveats (other than Registrar-General's caveats) relating to land under the provisions of the Principal Act. The new Part VIIA contains the following provisions:

#### DIVISION 1—*Interpretation*

Proposed section 74A defines certain expressions for the purposes of the new Part. The provisions of the new Part will apply to all existing caveats other than caveats prohibiting the Registrar-General from bringing land under the provisions of the Principal Act. The existing provisions of the Principal Act will continue to apply to the last-mentioned caveats until they have lapsed or otherwise ceased to have effect.

### DIVISION 2—*Caveats against primary applications*

Proposed section 74B, which replaces section 24 of the Principal Act, enables a person who claims to be entitled to an interest in land that is the subject of a primary application to lodge a caveat prohibiting the Registrar-General from bringing the land under the provisions of that Act. Under the new section, a caveat will have to contain more precise particulars of the land, specify an address for service in New South Wales and be verified by statutory declaration.

Proposed section 74C, which replaces section 26 of the Principal Act, provides for a caveat lodged under proposed section 74B to lapse in specified circumstances. As under the existing law, a caveat will lapse at the end of 3 months after it is lodged unless certain steps are taken by the caveator to preserve it. However, under the new section the primary applicant will be able to serve on the caveator a notice calling on the caveator to take the prescribed steps to preserve the caveat within 21 days after service of the notice. If, on being served with such a notice, the caveator fails to take those steps within that period, the caveat will lapse.

Proposed section 74D makes provision enabling a person who has lodged a caveat under proposed section 74B to apply to the Supreme Court for an order extending the operation of the caveat in certain specified circumstances.

Proposed section 74E, which replaces section 28 of the Principal Act, enables the Registrar-General to take action where a person who has lodged a caveat under proposed section 74B has failed to bring to a conclusion within a reasonable time proceedings to establish the person's entitlement to the estate or interest claimed in the caveat.

### DIVISION 3—*Caveats against dealings, possessory applications and plans*

Proposed section 74F, which replaces sections 28Y, 45H and 72 (1) and (2) of the Principal Act, enables a person to lodge in the office of the Registrar-General a caveat prohibiting the Registrar-General from recording dealings in respect of the land affected by the caveat, from granting a possessory application (made by a person claiming title to land by adverse possession) or from registering a delimitation plan (lodged for the purpose of defining the boundaries of land in a limited folio of the Register). Under the new section a caveat will be required to contain those precise particulars of the land concerned, specify an address for service in New South Wales and be verified by statutory declaration.

Proposed section 74G, which replaces section 97 (1A) of the Principal Act, requires the Registrar-General to enter in the Register particulars of a caveat lodged under proposed section 74F.

Proposed section 74H, which replaces section 74 and parts of sections 28w and 45F of the Principal Act, prescribes the effect of lodging a caveat in the office of the Registrar-General. Under the new section, the Registrar-General is, as provided by the existing law, directed not to record in the Register any dealing, grant any possessory application or register any delimitation plan the recording, granting or registration of which is prohibited by the caveat and it is made clear that a caveat does not prevent the recording of a dealing lodged in the office of the Registrar-General before the caveat provided the dealing was in registrable form when the caveat was lodged. At present certain dealings can be recorded on a folio in the Register notwithstanding the existence of a caveat prohibiting the recording of dealings on that folio. The list of dealings the recording of which is not prohibited by a caveat is being extended to include—

- (a) the cancellation of writs in accordance with section 105D of the Principal Act;
- (b) in relation to a mortgage, lease or charge registered or lodged for registration before the lodgment of the caveat, dealings effected by the mortgagee, chargee or lessee under a right or power conferred by the mortgage, charge or lease or by or under the law;
- (c) certain vestings and dealings made or effected pursuant to orders of court and enactments;
- (d) the cancellation of a caution in certain circumstances;
- (e) changes in names of registered proprietors;
- (f) certain easements and restrictions as to user; and
- (g) dealings effected pursuant to certain sections of the Conveyancing Act 1919.

Where a caveat is lodged under proposed section 74F and the caveator subsequently lodges a dealing in the office of the Registrar-General, the Registrar-General will be able to record the dealing despite the caveat if satisfied that the dealing is intended to vest in the caveator the interest protected by the caveat.

Proposed section 74I, which replaces section 73 of the Principal Act, provides for the lapsing of a caveat. Under the new section, when a dealing or delimitation plan is lodged in the office of the Registrar-General for recording or registration, an application may be made to the Registrar-General for the preparation of a lapsing notice and, on the preparation of such a notice, it may be served on the caveator. If, within 21 days after the service of the notice, the caveator fails to obtain an order of the Supreme Court extending the operation of the caveat and to lodge the order or an office copy with the Registrar-General, the caveat will lapse.

Proposed section 74J prescribes another method whereby a caveat may lapse. Under the new section, a registered proprietor of an interest in land, or a possessory applicant claiming to be entitled to be registered as proprietor of such an interest, may, where a caveat affecting that land is in force, make an application to the Registrar-General for the preparation of a lapsing notice and, on the preparation of the notice, it may be served on the caveator. The consequences are similar to those provided for under the proposed section 74I. The procedure provided for by the new section is new. Under the existing law, the onus is placed on the registered proprietor or other person whose interest is affected by a caveat to take legal proceedings to remove the caveat. Under the new section, the position is reversed and enables the registered proprietor or other person to require the caveator to take court proceedings to extend the operation of the caveat.

Proposed section 74K enables an application to be made to the Supreme Court for the operation of a caveat lodged under proposed section 74F to be extended.

#### DIVISION 4—*Caveats generally*

Proposed section 74L provides that if in legal proceedings a question arises as to the validity of a caveat lodged under a provision of the new Part, the caveat is not to be declared invalid for want of form.

Proposed section 74M, which replaces section 72 (6) of the Principal Act, provides for the withdrawal of a caveat lodged under a provision of the new Part. The new section extends the categories of persons who may withdraw a caveat by including the National Companies and Securities Commission so as to deal with a case where a caveat has been lodged by a company which has been dissolved and the property of the company has vested in that Commission. The categories will be able to be further extended by regulation.

Proposed section 74N, which replaces section 72 (3)–(5) of the Principal Act, provides for the service of notices on the caveator for the purposes of the new Part. The main additions to the existing law are provision for personal service and provision for service of a notice by depositing it in an exchange box kept at a prescribed document exchange.

Proposed section 74O imposes restrictions on the lodgment of a further caveat in respect of land where a previous caveat affecting that land has lapsed or been withdrawn. Under the new section, a subsequent caveat will not be effective unless the Supreme Court has made an order giving leave for it to be lodged under the new Part or it is consented to by the primary applicant, the possessory applicant or the registered proprietor whose land is affected by that caveat.

Proposed section 74P, which replaces section 98 of the Principal Act, provides for the payment of compensation in certain cases. The existing law is extended by making a person liable to the payment of damages if that person wrongfully, and without reasonable cause, procures the lapsing of a caveat lodged under a provision of the new Part or, being the caveator, refuses or fails to withdraw the caveat after being requested to do so.

Proposed section 74Q makes it clear that the Registrar-General is not required to inquire into the validity of a caveat lodged under a provision of the new Part so long as the caveat apparently complies on its face with the requirements of the new Part.

Proposed section 74R makes it clear that a caveator is not precluded by any of the provisions of the new Part from applying for and obtaining an injunction to restrain the Registrar-General from bringing land under the provisions of the Principal Act, from recording a dealing protected by a caveat, from granting a possessory application or from registering a delimitation plan.

Schedule 2 makes amendments to the Principal Act consequential on the amendments effected by Schedule 1.

Schedule 2 (1) replaces section 1 of the Principal Act. The part of the section providing for the division of the Act into Parts is omitted.

Schedule 2 (2) amends section 3 of the Principal Act, which provides for the interpretation of the provisions of that Act. Under the amendment new paragraphs defining the expressions "caveator" and "office copy" are defined.

Schedule 2 (3) consequentially amends section 17 of the Principal Act, which provides for the creation of a folio for land that is the subject of a primary application.

Schedule 2 (4) repeals Division 3 of Part IV of the Principal Act which will be superseded by provisions of the new Part VIIA.

Schedule 2 (5) replaces section 28w of the Principal Act, which imposes restrictions on the registration of a delimitation plan. The substitution is consequential on amendments effected by Schedule 1.

Schedule 2 (6) repeals Division 3 of Part IVB of the Principal Act, which will be superseded by provisions of the new Part VIIA.

Schedule 2 (7) consequentially amends section 36 of the Principal Act, which includes a definition of the expression "caveat" for the purposes of that section.

Schedule 2 (8) replaces section 45F of the Principal Act, which imposes restrictions on granting possessory applications. The amendment is consequential on the amendments effected by Schedule 1.

Schedule 2 (9) and (10) repeal Division 2 of Part VIA and Division 5 of Part VII of the Principal Act, which will be superseded by provisions of the new Part VIIA.

Schedule 2 (11)–(14) respectively amend sections 91, 96E, 97 and 105A of the Principal Act in consequence of amendments effected by Schedule 1.

Schedule 3 provides for savings and transitional matters. A caveat lodged in respect of a primary application before the commencement of the proposed Act will be disposed of under the provisions of the existing law. Notices served under the existing sections 73 and 73A of the Principal Act before that commencement will also have effect as if those sections had not been repealed and legal proceedings begun under section 97 or 98 of the Principal Act, and not disposed of, before that commencement will be determined as if that section had not been repealed.

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# REAL PROPERTY (CAVEATS) AMENDMENT BILL 1986

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 25, 1900
5. Savings and transitional provisions

SCHEDULE 1—INSERTION OF PART VIIA INTO THE PRINCIPAL ACT

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

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# REAL PROPERTY (CAVEATS) AMENDMENT BILL 1986

NEW SOUTH WALES



No. , 1986

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## A BILL FOR

An Act to amend the Real Property Act 1900 for the purpose of making fresh provision with respect to the lodgment and removal of caveats under that Act and for related purposes.

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*Real Property (Caveats) 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 "Real Property (Caveats) 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.

**Principal Act**

15 3. The Real Property Act 1900 is referred to in this Act as the Principal Act.

**Amendment of Act No. 25, 1900**

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

**20 Savings and transitional provisions**

5. Schedule 3 has effect.

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**SCHEDULE 1**

(Sec. 4)

**INSERTION OF PART VIIA INTO THE PRINCIPAL ACT**

25 (1) Part VIIA—

After Part VII, insert:

PART VIIA

CAVEATS

DIVISION 1—*Interpretation*

5           **Interpretation**

74A. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“dealing” includes a plan (other than a delimitation plan);

10           “delimitation plan” has the meaning ascribed to that expression by section 28s (1);

“registrable form”—

(a) in relation to a dealing other than a plan, means that the dealing is in registrable form for the purposes of section 36; and

15           (b) in relation to a plan, means that the plan is in a form in which it is immediately capable of being registered or recorded under the enactment providing for its registration or recording.

(2) In this Part—

20           (a) a reference to a legal or equitable estate in land includes a reference to a subsisting interest in land within the meaning of section 28A; and

25           (b) a reference to recording a dealing in the Register shall, where the dealing is a plan, be construed as a reference to registering or recording the plan under the enactment providing for its registration or recording.

30           (3) In this Part, a reference to a caveat lodged under section 74F includes a reference to a caveat which was lodged under section 28Y, 45H or 72 before the commencement of this Part but which has not ceased to be in force before that commencement.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*DIVISION 2—*Caveats against primary applications***Lodgment of caveats against primary applications**

5 74B. (1) A person who claims a legal or equitable estate or interest in land that is the subject of a primary application, or in any part of any such land, may, at any time before a folio of the Register is created for that land or part under section 17 (2), lodge with the Registrar-General a caveat prohibiting the bringing of that land or part under the provisions of this Act.

(2) A caveat lodged under subsection (1) must—

- 10 (a) be in the approved form;
- (b) specify—
- 15 (i) the name of the caveator;
- (ii) where the caveator is not a body corporate—the residential address of the caveator;
- (iii) where the caveator is a body corporate—the address of the registered office of the body corporate;
- 20 (iv) the prescribed particulars of the estate or interest to which the caveator claims to be entitled;
- (v) where the caveat relates only to part of the land that is the subject of the primary application—such description of that part as will enable it to be identified; and
- 25 (vi) an address in New South Wales at which notices may be served on the caveator;
- (c) be verified by statutory declaration; and
- (d) be signed by the caveator or by a solicitor or other agent of the caveator.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(3) On the lodgment of a caveat under subsection (1), the Registrar-General shall give notice in writing of the lodgment of the caveat to the primary applicant in relation to whose application the caveat has been lodged.

5           **Caveats lodged under section 74B to lapse under certain circumstances**

74C. (1) A caveat lodged under section 74B which has not ceased to have effect lapses on the expiry of 3 months after the date on which it was so lodged, unless, before the end of that period, the caveator—

(a) has—

15           (i) obtained from the Supreme Court an order extending the operation of the caveat for such further period as may be specified in the order or until the further order of that Court; and

(ii) lodged with the Registrar-General the order or an office copy of the order; or

20           (b) has taken proceedings in a court of competent jurisdiction to establish title to the estate or interest specified in the caveat and has—

25           (i) where those proceedings have been determined in favour of the caveator—lodged with the Registrar-General the order or judgment setting out the determination of the court or an office copy of that order or judgment; or

(ii) where those proceedings have not yet been determined—lodged with the Registrar-General a notice, verified by statutory declaration, to that effect.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (2) Where a notice referred to in subsection (1) (b) (ii) has been lodged with the Registrar-General and the proceedings to which the notice relates are finally determined otherwise than in favour of the caveator, the caveat to which the notice relates lapses when the order or judgment setting out the determination of the court, or an office copy of that order or judgment, is lodged with the Registrar-General.

10 (3) Where a caveat lodged under section 74B remains in force, the primary applicant concerned may make an application in writing to the Registrar-General calling on the Registrar-General to prepare for service on the caveator a notice to the effect that, unless, within the period of 21 days after service of the notice, the caveator takes the action referred to in subsection (1) (a) or (b), the caveat will lapse.

15 (4) On receipt of an application made under subsection (3), the Registrar-General shall, if satisfied that the caveat would not otherwise cease to have effect before it would lapse under subsection (5) if a notice were to be served as referred to in that subsection, prepare for service on the caveator a notice in the form sought by the primary applicant.

20 (5) Where a notice prepared under subsection (4) has been served on the caveator, the caveat lapses on the expiry of 21 days after the date on which the notice was so served unless, before the end of that period of 21 days, the caveator has taken the action specified in subsection (1) (a) or (b) with respect to the land or, as the case may be, the estate or interest to which the caveat relates.

**Caveator to have right to apply for an order extending the operation of the caveat**

30 74D. (1) Where a caveat lodged under section 74B remains in force, the caveator may, whether or not a notice has been served on the caveator as referred to in section 74C (5), make, in the manner prescribed by rules of Court, an application to the Supreme Court for an order extending the operation of the caveat.

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*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (2) Subject to subsection (3), on the hearing of an application made under subsection (1), the Supreme Court may, if satisfied that the caveator's claim has or may have substance, make an order extending the operation of the caveat concerned for such period as is specified in the order or until the further order of that Court, but if that Court is not so satisfied, it shall dismiss the application.

10 (3) Unless the Supreme Court has made an order dispensing with service, it may not hear an application made under subsection (1) unless it is satisfied that the primary applicant concerned has been served with a copy of the application before the hearing.

(4) An order under subsection (2) may be made *ex parte* or otherwise.

15 (5) When making an order under subsection (2), the Supreme Court may make such ancillary orders as it thinks fit.

**Powers of Registrar-General where caveator fails to prosecute proceedings to establish title to estate or interest claimed in caveat**

20 74E. (1) Where a caveator has lodged with the Registrar-General a notice in accordance with section 74C (1) (b) (ii) to the effect that the caveator has taken proceedings as referred to in section 74C (1) (b), but those proceedings have not, within such period as appears to the Registrar-General to be reasonable in the circumstances, been continued to a stage that has resulted in a judgment or an order by the court in which the proceedings are pending, the Registrar-General may—

(a) serve on the caveator; or

(b) if service is for any reason not practicable—cause to be exhibited on the land affected by the caveat,

30 a notice to the effect that, after the expiry of 1 month after the day on which the notice was so served or first exhibited, the caveat will lapse unless, before the end of that period—

(c) an order of the Supreme Court extending the operation of the caveat;

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(d) an injunction granted by that Court restraining the Registrar-General from proceeding to bring under the provisions of this Act the land to which the caveat relates;  
or

5 (e) an office copy of such an order or injunction,

is lodged with the Registrar-General.

(2) Where—

(a) the Registrar-General has served or caused to be exhibited a notice under subsection (1); and

10 (b) no order or injunction as referred to in that subsection, or office copy of such an order or injunction, is lodged with the Registrar-General before the expiry of 1 month after the day on which the notice was served or first exhibited,

the caveat lapses at the end of that period.

15 DIVISION 3—*Caveats against dealings, possessory applications and plans*

**Lodgment of caveats against dealings, possessory applications and plans**

20 74F. (1) Any person who, by virtue of any unregistered dealing or by devolution of law or otherwise, claims to be entitled to a legal or equitable estate or interest in land under the provisions of this Act may lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the estate or interest to which the person claims to be entitled.

25 (2) Any registered proprietor of an estate or interest who, because of the loss of a relevant certificate of title or some other instrument relating to the estate or interest or for some other reason, fears an improper dealing with the estate or interest by  
30 another person may lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the estate or interest.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (3) Any person who claims to be entitled to a legal or equitable estate or interest in land that is or may become the subject of a possessory application may, at any time before such an application is granted, lodge with the Registrar-General a caveat prohibiting the Registrar-General from granting such an application.

10 (4) Any person who claims to be entitled to a legal or equitable estate or interest in land that is the subject of a delimitation plan lodged in the office of the Registrar-General may, at any time before the plan is registered, lodge with the Registrar-General a caveat prohibiting the registration of the delimitation plan.

(5) A caveat lodged under this section must—

15 (a) be in the approved form;

(b) specify—

(i) the name of the caveator;

(ii) where the caveator is not a body corporate—the residential address of the caveator;

20 (iii) where the caveator is a body corporate—the address of the registered office of the body corporate;

(iv) unless the Registrar-General dispenses with those particulars—the name and address of the registered proprietor concerned;

25 (v) the prescribed particulars of the legal or equitable estate or interest to which the caveator claims to be entitled;

30 (vi) the current reference allocated by the Registrar-General to the folio of the Register, or, as the case may be, the lease, mortgage or charge, to which the caveat relates;

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- (vii) where the caveat relates only to part of the land described in a folio of the Register or a current lease—a description of that part in the form or manner prescribed; and
- 5           (viii) an address in New South Wales at which notices may be served on the caveator;
- (c) be verified by statutory declaration; and
- (d) be signed by the caveator or by a solicitor or other agent of the caveator.
- 10           (6) On the lodgment of a caveat under subsection (1), the Registrar-General shall give notice in writing of the lodgment of the caveat to the registered proprietor of the estate or interest affected by the caveat, unless the consent of that person is endorsed on the caveat.
- 15           (7) In subsection (6), a reference to the registered proprietor in relation to an estate or interest referred to in that subsection includes a reference to a person who claims to be entitled to such an estate or interest under a dealing lodged in the office of the Registrar-General for recording in the Register.
- 20           (8) On the lodgment of a caveat under subsection (3), the Registrar-General shall, if a possessory application referred to in that subsection has been lodged in the office of the Registrar-General, give notice in writing of the lodgment of the caveat to the possessory applicant concerned.
- 25           (9) On the lodgment of a caveat under subsection (4), the Registrar-General shall give notice in writing of the lodgment of the caveat to the registered proprietor of the estate or interest affected by the caveat.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued***Registrar-General to enter particulars of caveat lodged under section 74F in Register**

5           74G. For the purpose only of acknowledging the receipt of a caveat lodged under section 74F, the Registrar-General shall, if satisfied that the caveat complies with the requirements made in respect of it by and under this Act, record in the Register such particulars of the caveat as the Registrar-General considers appropriate.

**Effect of caveat lodged under section 74F**

10           74H. (1) Subject to this section, while a caveat lodged under section 74F remains in force—

(a) the Registrar-General shall not, except with the written consent of the caveator—

- 15                   (i) record in the Register any dealing;  
                      (ii) grant any possessory application; or  
                      (iii) register any delimitation plan,

20                   if it appears to the Registrar-General that the recording of the dealing, the granting of the possessory application or the registration of the delimitation plan is prohibited by the caveat; and

(b) the caveat does not have the effect of prohibiting—

- (i) the recording in the Register of a dealing;  
                      (ii) the granting of a possessory application; or  
                      (iii) the registration of a delimitation plan,

25                   except to the extent that the recording of such a dealing, the granting of such an application or, as the case may be, the registration of such a plan would affect the estate or interest claimed in the caveat.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (2) Where a caveat lodged under section 74F purports to protect a subsisting interest within the meaning of section 28A in land described in a qualified folio of the Register, the Registrar-General shall not cancel the caution recorded in that folio.

(3) While a caveat lodged under section 74F prohibits the recording in the Register of a dealing relating to land described in a limited folio of the Register, the Registrar-General shall not register a delimitation plan which relates to that land.

10 (4) Where, at the time when a caveat is lodged under section 74F to protect a particular legal or equitable estate or interest in land, a dealing which relates to the same land has been lodged for recording in the Register and is in registrable form, the caveat does not prohibit the recording in the Register of that dealing.

15 (5) Except in so far as it otherwise specifies, a caveat lodged under section 74F to protect a particular legal or equitable estate or interest in land does not prohibit the Registrar-General from recording in the Register with respect to the same land—

20 (a) an application made under section 93 by an executor, administrator or trustee in respect of the estate or interest of a deceased registered proprietor;

25 (b) an application under section 12 of the Trustee Act 1925 or an order of a court or dealing which, in the opinion of the Registrar-General, effects or evidences a replacement of existing trustees or the appointment of new or additional trustees;

(c) an application under section 101;

(d) a recording under section 46C;

(e) a resumption application within the meaning of Part VA;

30 (f) a writ or the cancellation of the recording of a writ in accordance with section 105D;

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- 5 (g) in relation to a mortgage, charge or covenant charge recorded or lodged in registrable form before the lodgment of the caveat—a dealing effected by the mortgagee or chargee in the exercise of a power of sale or other power or a right conferred by the mortgage, charge or covenant charge or by or under law;
- 10 (h) in relation to a lease recorded or lodged in registrable form before the lodgment of the caveat—a dealing effected by the lessee pursuant to a right conferred by the lease or by or under law;
- (i) a dealing effected by a lessee, mortgagee or chargee under a lease, mortgage or charge to the recording of which lease, mortgage or charge the caveator has consented, being a dealing relating to the lease, mortgage or charge;
- 15 (j) a vesting or dealing effected in accordance with—
- (i) an order of a court; or
- (ii) a provision of an enactment of this State or the Commonwealth,
- 20 being an order or enactment which, expressly or by implication, requires or permits a recording to be made in the Register, notwithstanding that the caveat has not ceased to have effect;
- (k) except where the caveator claims to be entitled to a subsisting interest within the meaning of section 28A—the cancellation of a caution;
- 25 (l) a change in, or a correction to, the name of a proprietor;
- (m) easements or restrictions as to user created by section 88B (3) of the Conveyancing Act 1919; or
- 30 (n) an order, memorandum or other instrument pursuant to section 88D, 88E, 89 or 98 of the Conveyancing Act 1919.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (6) Where particular land is affected by a caveat lodged under section 74F and a dealing relating to that land is subsequently lodged for recording in the Register, the Registrar-General may record the dealing notwithstanding the existence of the caveat if satisfied that the estate or interest to which the caveator claims to be entitled would, on the dealing being recorded, vest in the caveator.

10 (7) Whenever a dealing is recorded pursuant to subsection (6), the Registrar-General must record in the Register that the caveat concerned has lapsed.

**Lapse of caveat where dealing, etc., subsequently lodged for recording**

74I. (1) Whenever—

15 (a) a dealing or delimitation plan is lodged with the Registrar-General for recording or registration; and

(b) the recording of the dealing or, as the case may be, the registration of the plan is prohibited by a caveat that has been lodged under section 74E,

20 the Registrar-General shall, on an application being made in the approved form by the registered proprietor or by any person who is or claims to be entitled to an estate or interest in the land to which the dealing or plan relates, prepare for service on the caveator a notice to the effect that the dealing or plan has been lodged for recording or registration and that, unless, before the expiry of 21 days after the date of service of the notice, the caveator takes the action referred to in subsection (3), the caveat will lapse and the dealing or plan will be recorded or registered.

25



*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (2) Whenever a possessory application has been made to the Registrar-General and a caveat prohibiting the granting of such an application has, either before or after the making of the possessory application, been lodged under section 74F, the Registrar-General shall, on an application being made in the approved form by the possessory applicant, prepare for service on the caveator a notice to the effect that the possessory application has been made and that, unless, before the expiry of 21 days after the date on which the notice is served, the caveator takes the action referred to in subsection (3), the caveat will lapse and the possessory application may be granted.

15 (3) Where a notice prepared under subsection (1) or (2) has been served on a caveator, the caveat, to the extent that it would, but for this subsection, prohibit the recording of the dealing or the registration of the delimitation plan, or the granting of the possessory application, to which the notice relates, lapses at the end of 21 days after the date on which the notice was so served unless, before the expiry of that period, the caveator has—

20 (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court; and

(b) lodged with the Registrar-General the order or an office copy of the order.

25 **Lapse of caveat on application of proprietor of estate or interest**

30 74J. (1) Where a caveat lodged under section 74F (subsection (2) excepted) remains in force, the Registrar-General shall, on an application being made in the approved form by the registered proprietor of the estate or interest affected by the caveat, prepare for service on the caveator a notice to the effect that, unless the caveator takes the action referred to in subsection (2) before the expiry of 21 days after the date of service of the notice, the caveat will lapse.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(2) Where a notice prepared under subsection (1) has been served on the caveator, the caveat lapses at the end of 21 days after the date on which the notice was so served unless, before the end of that period, the caveator has—

5 (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as may be specified in the order or until the further order of that Court; and

10 (b) lodged with the Registrar-General the order or an office copy of the order.

**Power of Supreme Court to extend operation of a caveat lodged under section 74F**

15 74K. (1) Where a caveator is served with a notice prepared under section 74I (1) or (2) or 74J (1), the caveator may prepare, in the manner prescribed by rules of Court, an application to the Supreme Court for an order extending the operation of the caveat.

20 (2) Subject to subsection (3), on the hearing of an application made under subsection (1), the Supreme Court may, if satisfied that the caveator's claim has or may have substance, make an order extending the operation of the caveat concerned for such period as is specified in the order or until the further order of that Court, but, if that Court is not so satisfied, it shall dismiss the application.

25 (3) Unless the Supreme Court has made an order dispensing with service, it may not hear an application made under subsection (1) unless it is satisfied that all interested parties disclosed by the notice which gave rise to the application have been served with copies of the application before the hearing.

30 (4) An order under subsection (2) may be made *ex parte* or otherwise.

(5) When making an order under subsection (2), the Supreme Court may make such ancillary orders as it thinks fit.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*DIVISION 4—*Caveats generally***Strict compliance with formalities with respect to caveats not necessary**

5           74L. If in any legal proceedings a question arises as to the validity of a caveat lodged under a provision of this Part, the court shall disregard any failure of the caveator to comply strictly with the requirements of this Part, and of any regulations made for the purposes of this Part, with respect to the form of the caveat.

**10           Withdrawal of caveats**

74M. (1) A caveat lodged under a provision of this Part may be withdrawn—

- (a) by the caveator;
- (b) by the authorised agent of the caveator;
- 15           (c) where the caveator is a natural person who has died—by the legal personal representative or trustee of the caveator's estate;
- 20           (d) where 2 or more caveators claim to be entitled as joint tenants to the estate or interest protected by the caveat and one or more (but not all) of them has died—by the surviving caveator or caveators;
- 25           (e) where, after a company has been dissolved, the estate or interest claimed by the caveator has become vested in the National Companies and Securities Commission by force of section 461 of the Companies (New South Wales) Code—by the National Companies and Securities Commission;

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- 5 (f) where the estate or interest claimed by the caveator has become vested in a trustee, The Official Receiver in Bankruptcy or any other person under or by virtue of a provision of any Act or any Act of the Commonwealth relating to bankruptcy—by the trustee, The Official Receiver in Bankruptcy or that other person, as the case may be;
- 10 (g) where the management and care of the estate or interest claimed by the caveator is, pursuant to the Mental Health Act 1958, entrusted to a specified person—by that person; or
- (h) in any other prescribed case—by the person, or a person belonging to the class of persons, prescribed in relation to that case.
- 15 (2) Where—
- (a) a caveat lodged under section 74F prohibits the granting of a possessory application, or the registration of a delimitation plan; and
- 20 (b) the caveator has consented to the granting of the possessory application or, as the case may be, the registration of the delimitation plan,

the caveat shall be deemed to have been withdrawn.

**Service of notices on the caveator for the purposes of this Part**

25 74N. (1) Where under this Part provision is made for the service on the caveator of a notice relating to a caveat lodged under a provision of this Part, or to any proceedings in respect of such a caveat, the notice is duly served if it is served in one of the following ways:

- (a) the notice is served on the caveator personally;
- 30 (b) the notice is left at or sent by certified mail to—
- (i) the address specified in the caveat under section 74B (2) (b) or 74F (5) (b); or

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- 5 (ii) where an address has been notified to the Registrar-General in respect of the caveat under subsection (3)—that address or, if more than one address has been notified in respect of the caveat under that subsection, the last of the addresses so notified;
- (c) if the caveat was signed on behalf of the caveator by an agent other than a solicitor—the notice is left at or sent by certified mail to the business or residential address of that agent;
- 10 (d) if the caveat was signed on behalf of the caveator by a solicitor—the notice is left at or sent by certified mail to the office of the solicitor or, if the solicitor maintains a box at a document exchange established in New South Wales by a prescribed person, deposited in that box or left at
- 15 another such exchange for transmission to the first-mentioned exchange for depositing in that box;
- (e) the notice is served in such other manner, whether by advertisement or otherwise, as the Registrar-General directs in writing.
- 20 (2) Where a notice is deposited in a box referred to in subsection (1) (d), or left at a document exchange so referred to for transmission to another such exchange for depositing in such a box, service of the notice shall be deemed to be effected 2 days after the day on which the notice is so deposited or left.
- 25 (3) Where a person entitled to withdraw a caveat lodged under a provision of this Part notifies the Registrar-General, by lodging a notice in the approved form, that the name of the caveator or the address for service of notice on the caveator has been
- 30 changed from the name or address specified in the caveat, the Registrar-General shall record in the Register the name or address so notified and thereupon the name or address so recorded shall be the name or address for the service of notices on the caveator.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued***Restrictions on lodgment of further caveats where earlier caveat lapses or is withdrawn**

5           74o. Where a caveat which has been lodged under a provision of this Part in respect of any particular land subsequently lapses or is withdrawn under another provision of this Part, any further caveat lodged with the Registrar-General by the same caveator in respect of that land has no effect unless—

10           (a) the Supreme Court has made an order giving leave for the lodgment of the further caveat and that order or an office copy of that order accompanies the further caveat when it is lodged with the Registrar-General; or

15           (b) the further caveat is endorsed with the consent of the primary applicant, the possessory applicant or, as the case may be, the registered proprietor of the land affected by the further caveat.

**Compensation payable in certain cases**

20           74p. (1) Any person who, wrongfully and without reasonable cause—

          (a) lodges a caveat with the Registrar-General under a provision of this Part;

          (b) procures the lapsing of such a caveat; or

          (c) being the caveator, refuses or fails to withdraw such a caveat after being requested to do so,

25           is liable to pay to any person who sustains pecuniary loss that is attributable to an act, refusal or failure referred to in paragraph (a), (b) or (c) compensation with respect to that loss.

30           (2) Compensation referred to in subsection (1) is recoverable in proceedings taken in a court of competent jurisdiction by the person who claims to have sustained the pecuniary loss.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(3) A person who is a caveator is not entitled to bring proceedings under subsection (1) (b) if that person, having had an opportunity to do so, has failed to take all reasonable steps to prevent the caveat from lapsing.

5           **Registrar-General not obliged to ensure that caveator is entitled to the subsisting estate or interest claimed in a caveat**

74Q. Except to the extent of ensuring that a caveat lodged under a provision of this Part apparently complies on its face with the requirements of this Part and with the requirements of any regulations made for the purposes of this Part, the Registrar-General is not required to be satisfied that the caveator is in fact entitled to the estate or interest claimed in the caveat or otherwise as to the validity of the caveat.

**Right to obtain injunction not affected**

15           74R. In relation to a caveat lodged under a provision of this Part, nothing in this Part shall be construed as preventing or restricting the caveator from applying for and obtaining from the Supreme Court an injunction for the purpose of—

- 20           (a) where the caveat relates to land that is the subject of a primary application—restraining the Registrar-General from bringing the land under the provisions of this Act;
- (b) where the caveat relates to the recording of dealings—restraining the Registrar-General from recording a dealing the recording of which is prohibited by the caveat;
- 25           (c) where the caveat relates to a possessory application—restraining the granting of the possessory application; or
- (d) where the caveat relates to a delimitation plan—restraining the Registrar-General from registering the delimitation plan.
-

## SCHEDULE 2

(Sec. 4)

## MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

## (1) Section 1—

5 Omit the section, insert instead:

**Short title**

1. This Act may be cited as the “Real Property Act 1900”.

(2) Section 3 (**Interpretation**)—

Section 3 (1) (e), (f)—

10 After section 3 (1) (d), insert:

(e) A reference to a caveator includes a reference to any person who claims through or under the caveator and also includes a reference to any person other than the caveator who, by virtue of section 74M (1), is authorised to withdraw the caveat which was lodged by the caveator.

15

(f) A reference to an office copy of an order, judgment or injunction made, given or granted by a court is a reference to a copy of that order, judgment or injunction certified as such an office copy by the proper officer of the court.

20 (3) Section 17 (**Creation of folio for land that is the subject of a primary application**)—

Section 17 (3) (b)—

Omit the paragraph, insert instead:

25 (b) there is in force under section 74B a caveat prohibiting the bringing of the land, or any part of the land, under the provisions of this Act.

(4) Part IV, Division 3 (**Caveats against primary applications**)—

Omit the Division.



*Real Property (Caveats) Amendment 1986*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

## (5) Section 28w—

Omit the section, insert instead:

**Restrictions on registration of delimitation plan**

5           28w. Without prejudice to section 74H in so far as it relates to a delimitation plan, the Registrar-General shall not register a delimitation plan if a notice referred to in section 28v (2) has been given and the period specified in that notice has not expired.

(6) Part IVB, Division 3 (**Caveats against delimitation plans**)—

10           Omit the Division.

(7) Section 36 (**Registration of dealings**)—

Section 36 (1), definition of “caveat”—

Omit “28Y, 45H or 72”, insert instead “74F”.

## (8) Section 45F—

15           Omit the section, insert instead:

**Restrictions on grant of possessory applications**

20           45F. Without prejudice to section 74H in so far as it relates to a possessory application, the Registrar-General shall not grant a possessory application if a notice referred to in section 45E (2) has been given and the period specified in that notice has not expired.

(9) Part VIA, Division 2 (**Caveats against possessory applications**)—

Omit the Division.

(10) Part VII, Division 5 (**Caveats against dealings**)—

25           Omit the Division.

*Real Property (Caveats) Amendment 1986*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*(11) Section 91 (**Disclaimer of lease under Commonwealth Act**)—

## (a) Section 91 (3)—

Omit “affecting the lease”, insert instead “which would have the effect of prohibiting the recording of the surrender of the lease”.

## 5 (b) Section 91 (6)—

Omit “affecting the lease”, insert instead “which would have the effect of prohibiting the recording of the foreclosure of the mortgage”.

## (c) Section 91 (8)—

10 Omit the subsection.

(12) Section 96E (**Searches to disclose recordings on mortgages, etc.**)—

## Section 96E (d)—

Omit “pursuant to section 72 (3)”.

15 (13) Section 97 (**Notice of caveat**), section 98 (**Compensation for lodging a caveat without reasonable cause**)—

Omit the sections.

(14) Section 105A (**Effect of recording of writ**)—

## Section 105A (1) (j)—

20 Omit “section 74 (3) (a), (b), (c), (d), (e), (f) or (g)”, insert instead “a provision of section 74H (5) (a)–(n)”.

*Real Property (Caveats) Amendment 1986*

## SCHEDULE 3

(Sec. 5)

## SAVINGS AND TRANSITIONAL PROVISIONS

5 **Caveats lodged against primary applications to bring land under the provisions of the Principal Act**

1. Where a caveat lodged under section 24 of the Principal Act has not ceased to have effect before the commencement of this Act, the provisions of Division 3 of Part IV, and section 97, of the Principal Act, so far as relevant, shall, notwithstanding their repeal by this Act, continue to have effect in respect of that caveat as if this Act had not  
10 been enacted.

**Effect of notices served under sections 73 and 73A of the Principal Act**

2. Where a notice has been served as provided by section 73 or 73A of the Principal Act before the commencement of this Act and the caveat to which the notice related has not lapsed or has not been deemed to have lapsed before that commencement, that  
15 section shall continue to have effect in relation to that caveat as if this Act had not been enacted.

**Pending proceedings under sections 97 and 98 of the Principal Act**

3. Where any legal proceeding which has been instituted under section 97 or 98 of the Principal Act before the commencement of this Act has not been finally determined  
20 before that commencement, the proceeding shall be heard and determined under that section as if this Act had not been enacted.

**Regulations**

4. (1) The regulations under the Principal Act may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

25 (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the day on which this Schedule commences or on a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

30 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its  
35 publication in the Gazette.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

BY AUTHORITY

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



# REAL PROPERTY (CAVEATS) AMENDMENT BILL 1986

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 25, 1900
5. Savings and transitional provisions

SCHEDULE 1—INSERTION OF PART VIIA INTO THE PRINCIPAL ACT

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

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*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and having this day passed, is ready for presentation to the LEGISLATIVE COUNCIL, for its concurrence.*

*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, , 1986*

NEW SOUTH WALES



**Act No. , 1986**

An Act to amend the Real Property Act 1900 for the purpose of making fresh provision with respect to the lodgment and removal of caveats under that Act and for related purposes.

*Real Property (Caveats) Amendment 1986*

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

**5 Short title**

1. This Act may be cited as the "Real Property (Caveats) 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.

**Principal Act**

15 3. The Real Property Act 1900 is referred to in this Act as the Principal Act.

**Amendment of Act No. 25, 1900**

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

**20 Savings and transitional provisions**

5. Schedule 3 has effect.

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**SCHEDULE 1**

(Sec. 4)

**INSERTION OF PART VIIA INTO THE PRINCIPAL ACT**

25 (1) Part VIIA—



*Real Property (Caveats) Amendment 1986*

After Part VII, insert:

## PART VIIA

## CAVEATS

DIVISION 1—*Interpretation*5       **Interpretation**

74A. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“dealing” includes a plan (other than a delimitation plan);

10       “delimitation plan” has the meaning ascribed to that expression by section 28s (1);

“registrable form”—

(a) in relation to a dealing other than a plan, means that the dealing is in registrable form for the purposes of section 36; and

15       (b) in relation to a plan, means that the plan is in a form in which it is immediately capable of being registered or recorded under the enactment providing for its registration or recording.

(2) In this Part—

20       (a) a reference to a legal or equitable estate in land includes a reference to a subsisting interest in land within the meaning of section 28A; and

25       (b) a reference to recording a dealing in the Register shall, where the dealing is a plan, be construed as a reference to registering or recording the plan under the enactment providing for its registration or recording.

30       (3) In this Part, a reference to a caveat lodged under section 74F includes a reference to a caveat which was lodged under section 28Y, 45H or 72 before the commencement of this Part but which has not ceased to be in force before that commencement.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*DIVISION 2—*Caveats against primary applications***Lodgment of caveats against primary applications**

5 74B. (1) A person who claims a legal or equitable estate or interest in land that is the subject of a primary application, or in any part of any such land, may, at any time before a folio of the Register is created for that land or part under section 17 (2), lodge with the Registrar-General a caveat prohibiting the bringing of that land or part under the provisions of this Act.

(2) A caveat lodged under subsection (1) must—

10 (a) be in the approved form;

(b) specify—

(i) the name of the caveator;

(ii) where the caveator is not a body corporate—the residential address of the caveator;

15 (iii) where the caveator is a body corporate—the address of the registered office of the body corporate;

(iv) the prescribed particulars of the estate or interest to which the caveator claims to be entitled;

20 (v) where the caveat relates only to part of the land that is the subject of the primary application—such description of that part as will enable it to be identified; and

25 (vi) an address in New South Wales at which notices may be served on the caveator;

(c) be verified by statutory declaration; and

(d) be signed by the caveator or by a solicitor or other agent of the caveator.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(3) On the lodgment of a caveat under subsection (1), the Registrar-General shall give notice in writing of the lodgment of the caveat to the primary applicant in relation to whose application the caveat has been lodged.

5           **Caveats lodged under section 74B to lapse under certain circumstances**

10           74C. (1) A caveat lodged under section 74B which has not ceased to have effect lapses on the expiry of 3 months after the date on which it was so lodged, unless, before the end of that period, the caveator—

(a) has—

15           (i) obtained from the Supreme Court an order extending the operation of the caveat for such further period as may be specified in the order or until the further order of that Court; and

(ii) lodged with the Registrar-General the order or an office copy of the order; or

20           (b) has taken proceedings in a court of competent jurisdiction to establish title to the estate or interest specified in the caveat and has—

25           (i) where those proceedings have been determined in favour of the caveator—lodged with the Registrar-General the order or judgment setting out the determination of the court or an office copy of that order or judgment; or

(ii) where those proceedings have not yet been determined—lodged with the Registrar-General a notice, verified by statutory declaration, to that effect.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (2) Where a notice referred to in subsection (1) (b) (ii) has been lodged with the Registrar-General and the proceedings to which the notice relates are finally determined otherwise than in favour of the caveator, the caveat to which the notice relates lapses when the order or judgment setting out the determination of the court, or an office copy of that order or judgment, is lodged with the Registrar-General.

10 (3) Where a caveat lodged under section 74B remains in force, the primary applicant concerned may make an application in writing to the Registrar-General calling on the Registrar-General to prepare for service on the caveator a notice to the effect that, unless, within the period of 21 days after service of the notice, the caveator takes the action referred to in subsection (1) (a) or (b), the caveat will lapse.

15 (4) On receipt of an application made under subsection (3), the Registrar-General shall, if satisfied that the caveat would not otherwise cease to have effect before it would lapse under subsection (5) if a notice were to be served as referred to in that subsection, prepare for service on the caveator a notice in the form sought by the primary applicant.

20 (5) Where a notice prepared under subsection (4) has been served on the caveator, the caveat lapses on the expiry of 21 days after the date on which the notice was so served unless, before the end of that period of 21 days, the caveator has taken the action specified in subsection (1) (a) or (b) with respect to the land or, as the case may be, the estate or interest to which the caveat relates.

**Caveator to have right to apply for an order extending the operation of the caveat**

30 74D. (1) Where a caveat lodged under section 74B remains in force, the caveator may, whether or not a notice has been served on the caveator as referred to in section 74C (5), make, in the manner prescribed by rules of Court, an application to the Supreme Court for an order extending the operation of the  
35 caveat.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (2) Subject to subsection (3), on the hearing of an application made under subsection (1), the Supreme Court may, if satisfied that the caveator's claim has or may have substance, make an order extending the operation of the caveat concerned for such period as is specified in the order or until the further order of that Court, but if that Court is not so satisfied, it shall dismiss the application.

10 (3) Unless the Supreme Court has made an order dispensing with service, it may not hear an application made under subsection (1) unless it is satisfied that the primary applicant concerned has been served with a copy of the application before the hearing.

(4) An order under subsection (2) may be made *ex parte* or otherwise.

15 (5) When making an order under subsection (2), the Supreme Court may make such ancillary orders as it thinks fit.

**Powers of Registrar-General where caveator fails to prosecute proceedings to establish title to estate or interest claimed in caveat**

20 74E. (1) Where a caveator has lodged with the Registrar-General a notice in accordance with section 74C (1) (b) (ii) to the effect that the caveator has taken proceedings as referred to in section 74C (1) (b), but those proceedings have not, within such period as appears to the Registrar-General to be reasonable in the circumstances, been continued to a stage that has resulted in a judgment or an order by the court in which the proceedings are pending, the Registrar-General may—

- 25 (a) serve on the caveator; or
- (b) if service is for any reason not practicable—cause to be exhibited on the land affected by the caveat,
- 30 a notice to the effect that, after the expiry of 1 month after the day on which the notice was so served or first exhibited, the caveat will lapse unless, before the end of that period—

(c) an order of the Supreme Court extending the operation of the caveat;

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(d) an injunction granted by that Court restraining the Registrar-General from proceeding to bring under the provisions of this Act the land to which the caveat relates;  
or

5 (e) an office copy of such an order or injunction,

is lodged with the Registrar-General.

(2) Where—

(a) the Registrar-General has served or caused to be exhibited a notice under subsection (1); and

10 (b) no order or injunction as referred to in that subsection, or office copy of such an order or injunction, is lodged with the Registrar-General before the expiry of 1 month after the day on which the notice was served or first exhibited,

the caveat lapses at the end of that period.

15 DIVISION 3—*Caveats against dealings, possessory applications and plans*

**Lodgment of caveats against dealings, possessory applications and plans**

20 74F. (1) Any person who, by virtue of any unregistered dealing or by devolution of law or otherwise, claims to be entitled to a legal or equitable estate or interest in land under the provisions of this Act may lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the estate or interest to which the person claims to be entitled.

25 (2) Any registered proprietor of an estate or interest who, because of the loss of a relevant certificate of title or some other instrument relating to the estate or interest or for some other reason, fears an improper dealing with the estate or interest by another person may lodge with the Registrar-General a caveat  
30 prohibiting the recording of any dealing affecting the estate or interest.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (3) Any person who claims to be entitled to a legal or equitable estate or interest in land that is or may become the subject of a possessory application may, at any time before such an application is granted, lodge with the Registrar-General a caveat prohibiting the Registrar-General from granting such an application.

10 (4) Any person who claims to be entitled to a legal or equitable estate or interest in land that is the subject of a delimitation plan lodged in the office of the Registrar-General may, at any time before the plan is registered, lodge with the Registrar-General a caveat prohibiting the registration of the delimitation plan.

(5) A caveat lodged under this section must—

- 15 (a) be in the approved form;
- (b) specify—
- 20 (i) the name of the caveator;
- (ii) where the caveator is not a body corporate—the residential address of the caveator;
- (iii) where the caveator is a body corporate—the address of the registered office of the body corporate;
- (iv) unless the Registrar-General dispenses with those particulars—the name and address of the registered proprietor concerned;
- 25 (v) the prescribed particulars of the legal or equitable estate or interest to which the caveator claims to be entitled;
- 30 (vi) the current reference allocated by the Registrar-General to the folio of the Register, or, as the case may be, the lease, mortgage or charge, to which the caveat relates;

*Real Property (Caveats) Amendment 1986*

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SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- (vii) where the caveat relates only to part of the land described in a folio of the Register or a current lease—a description of that part in the form or manner prescribed; and
- 5           (viii) an address in New South Wales at which notices may be served on the caveator;
- (c) be verified by statutory declaration; and
- (d) be signed by the caveator or by a solicitor or other agent of the caveator.
- 10           (6) On the lodgment of a caveat under subsection (1), the Registrar-General shall give notice in writing of the lodgment of the caveat to the registered proprietor of the estate or interest affected by the caveat, unless the consent of that person is endorsed on the caveat.
- 15           (7) In subsection (6), a reference to the registered proprietor in relation to an estate or interest referred to in that subsection includes a reference to a person who claims to be entitled to such an estate or interest under a dealing lodged in the office of the Registrar-General for recording in the Register.
- 20           (8) On the lodgment of a caveat under subsection (3), the Registrar-General shall, if a possessory application referred to in that subsection has been lodged in the office of the Registrar-General, give notice in writing of the lodgment of the caveat to the possessory applicant concerned.
- 25           (9) On the lodgment of a caveat under subsection (4), the Registrar-General shall give notice in writing of the lodgment of the caveat to the registered proprietor of the estate or interest affected by the caveat.



SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued***Registrar-General to enter particulars of caveat lodged under section 74F in Register**

5           74G. For the purpose only of acknowledging the receipt of a caveat lodged under section 74F, the Registrar-General shall, if satisfied that the caveat complies with the requirements made in respect of it by and under this Act, record in the Register such particulars of the caveat as the Registrar-General considers appropriate.

**Effect of caveat lodged under section 74F**

10           74H. (1) Subject to this section, while a caveat lodged under section 74F remains in force—

(a) the Registrar-General shall not, except with the written consent of the caveator—

- 15                   (i) record in the Register any dealing;
- (ii) grant any possessory application; or
- (iii) register any delimitation plan,

20                   if it appears to the Registrar-General that the recording of the dealing, the granting of the possessory application or the registration of the delimitation plan is prohibited by the caveat; and

(b) the caveat does not have the effect of prohibiting—

- 25                   (i) the recording in the Register of a dealing;
- (ii) the granting of a possessory application; or
- (iii) the registration of a delimitation plan,

                     except to the extent that the recording of such a dealing, the granting of such an application or, as the case may be, the registration of such a plan would affect the estate or interest claimed in the caveat.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- 5 (2) Where a caveat lodged under section 74F purports to protect a subsisting interest within the meaning of section 28A in land described in a qualified folio of the Register, the Registrar-General shall not cancel the caution recorded in that folio.
- (3) While a caveat lodged under section 74F prohibits the recording in the Register of a dealing relating to land described in a limited folio of the Register, the Registrar-General shall not register a delimitation plan which relates to that land.
- 10 (4) Where, at the time when a caveat is lodged under section 74F to protect a particular legal or equitable estate or interest in land, a dealing which relates to the same land has been lodged for recording in the Register and is in registrable form, the caveat does not prohibit the recording in the Register of that dealing.
- 15 (5) Except in so far as it otherwise specifies, a caveat lodged under section 74F to protect a particular legal or equitable estate or interest in land does not prohibit the Registrar-General from recording in the Register with respect to the same land—
- 20 (a) an application made under section 93 by an executor, administrator or trustee in respect of the estate or interest of a deceased registered proprietor;
- 25 (b) an application under section 12 of the Trustee Act 1925 or an order of a court or dealing which, in the opinion of the Registrar-General, effects or evidences a replacement of existing trustees or the appointment of new or additional trustees;
- (c) an application under section 101;
- (d) a recording under section 46C;
- (e) a resumption application within the meaning of Part VA;
- 30 (f) a writ or the cancellation of the recording of a writ in accordance with section 105D;

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- 5 (g) in relation to a mortgage, charge or covenant charge recorded or lodged in registrable form before the lodgment of the caveat—a dealing effected by the mortgagee or chargee in the exercise of a power of sale or other power or a right conferred by the mortgage, charge or covenant charge or by or under law;
- 10 (h) in relation to a lease recorded or lodged in registrable form before the lodgment of the caveat—a dealing effected by the lessee pursuant to a right conferred by the lease or by or under law;
- (i) a dealing effected by a lessee, mortgagee or chargee under a lease, mortgage or charge to the recording of which lease, mortgage or charge the caveator has consented, being a dealing relating to the lease, mortgage or charge;
- 15 (j) a vesting or dealing effected in accordance with—
- (i) an order of a court; or
- (ii) a provision of an enactment of this State or the Commonwealth,
- 20 being an order or enactment which, expressly or by implication, requires or permits a recording to be made in the Register, notwithstanding that the caveat has not ceased to have effect;
- 25 (k) except where the caveator claims to be entitled to a subsisting interest within the meaning of section 28A—the cancellation of a caution;
- (l) a change in, or a correction to, the name of a proprietor;
- (m) easements or restrictions as to user created by section 88B (3) of the Conveyancing Act 1919; or
- 30 (n) an order, memorandum or other instrument pursuant to section 88D, 88E, 89 or 98 of the Conveyancing Act 1919.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(6) Where particular land is affected by a caveat lodged under section 74F and a dealing relating to that land is subsequently lodged for recording in the Register, the Registrar-General may record the dealing notwithstanding the existence of the caveat if satisfied that the estate or interest to which the caveator claims to be entitled would, on the dealing being recorded, vest in the caveator.

(7) Whenever a dealing is recorded pursuant to subsection (6), the Registrar-General must record in the Register that the caveat concerned has lapsed.

**Lapse of caveat where dealing, etc., subsequently lodged for recording**

74I. (1) Whenever—

- (a) a dealing or delimitation plan is lodged with the Registrar-General for recording or registration; and
- (b) the recording of the dealing or, as the case may be, the registration of the plan is prohibited by a caveat that has been lodged under section 74F,

the Registrar-General shall, on an application being made in the approved form by the registered proprietor or by any person who is or claims to be entitled to an estate or interest in the land to which the dealing or plan relates, prepare for service on the caveator a notice to the effect that the dealing or plan has been lodged for recording or registration and that, unless, before the expiry of 21 days after the date of service of the notice, the caveator takes the action referred to in subsection (3), the caveat will lapse and the dealing or plan will be recorded or registered.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

5 (2) Whenever a possessory application has been made to the Registrar-General and a caveat prohibiting the granting of such an application has, either before or after the making of the possessory application, been lodged under section 74F, the Registrar-General shall, on an application being made in the approved form by the possessory applicant, prepare for service on the caveator a notice to the effect that the possessory application has been made and that, unless, before the expiry of 10 21 days after the date on which the notice is served, the caveator takes the action referred to in subsection (3), the caveat will lapse and the possessory application may be granted.

15 (3) Where a notice prepared under subsection (1) or (2) has been served on a caveator, the caveat, to the extent that it would, but for this subsection, prohibit the recording of the dealing or the registration of the delimitation plan, or the granting of the possessory application, to which the notice relates, lapses at the end of 21 days after the date on which the notice was so served unless, before the expiry of that period, the caveator has—

20 (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court; and

(b) lodged with the Registrar-General the order or an office copy of the order.

25 **Lapse of caveat on application of proprietor of estate or interest**

30 74J. (1) Where a caveat lodged under section 74F (subsection (2) excepted) remains in force, the Registrar-General shall, on an application being made in the approved form by the registered proprietor of the estate or interest affected by the caveat, prepare for service on the caveator a notice to the effect that, unless the caveator takes the action referred to in subsection (2) before the expiry of 21 days after the date of service of the notice, the caveat will lapse.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(2) Where a notice prepared under subsection (1) has been served on the caveator, the caveat lapses at the end of 21 days after the date on which the notice was so served unless, before the end of that period, the caveator has—

5 (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as may be specified in the order or until the further order of that Court; and

10 (b) lodged with the Registrar-General the order or an office copy of the order.

**Power of Supreme Court to extend operation of a caveat lodged under section 74F**

15 74k. (1) Where a caveator is served with a notice prepared under section 74i (1) or (2) or 74j (1), the caveator may prepare, in the manner prescribed by rules of Court, an application to the Supreme Court for an order extending the operation of the caveat.

20 (2) Subject to subsection (3), on the hearing of an application made under subsection (1), the Supreme Court may, if satisfied that the caveator's claim has or may have substance, make an order extending the operation of the caveat concerned for such period as is specified in the order or until the further order of that Court, but, if that Court is not so satisfied, it shall dismiss the application.

25 (3) Unless the Supreme Court has made an order dispensing with service, it may not hear an application made under subsection (1) unless it is satisfied that all interested parties disclosed by the notice which gave rise to the application have been served with copies of the application before the hearing.

30 (4) An order under subsection (2) may be made *ex parte* or otherwise.

(5) When making an order under subsection (2), the Supreme Court may make such ancillary orders as it thinks fit.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*DIVISION 4—*Caveats generally***Strict compliance with formalities with respect to caveats not necessary**

5           74L. If in any legal proceedings a question arises as to the validity of a caveat lodged under a provision of this Part, the court shall disregard any failure of the caveator to comply strictly with the requirements of this Part, and of any regulations made for the purposes of this Part, with respect to the form of the caveat.

10           **Withdrawal of caveats**

74M. (1) A caveat lodged under a provision of this Part may be withdrawn—

- (a) by the caveator;
- (b) by the authorised agent of the caveator;
- 15           (c) where the caveator is a natural person who has died—by the legal personal representative or trustee of the caveator's estate;
- 20           (d) where 2 or more caveators claim to be entitled as joint tenants to the estate or interest protected by the caveat and one or more (but not all) of them has died—by the surviving caveator or caveators;
- 25           (e) where, after a company has been dissolved, the estate or interest claimed by the caveator has become vested in the National Companies and Securities Commission by force of section 461 of the Companies (New South Wales) Code—by the National Companies and Securities Commission;

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- 5 (f) where the estate or interest claimed by the caveator has become vested in a trustee, The Official Receiver in Bankruptcy or any other person under or by virtue of a provision of any Act or any Act of the Commonwealth relating to bankruptcy—by the trustee, The Official Receiver in Bankruptcy or that other person, as the case may be;
- 10 (g) where the management and care of the estate or interest claimed by the caveator is, pursuant to the Mental Health Act 1958, entrusted to a specified person—by that person; or
- (h) in any other prescribed case—by the person, or a person belonging to the class of persons, prescribed in relation to that case.
- 15 (2) Where—
- (a) a caveat lodged under section 74F prohibits the granting of a possessory application, or the registration of a delimitation plan; and
- 20 (b) the caveator has consented to the granting of the possessory application or, as the case may be, the registration of the delimitation plan,

the caveat shall be deemed to have been withdrawn.

**Service of notices on the caveator for the purposes of this Part**

- 25 74N. (1) Where under this Part provision is made for the service on the caveator of a notice relating to a caveat lodged under a provision of this Part, or to any proceedings in respect of such a caveat, the notice is duly served if it is served in one of the following ways:
- 30 (a) the notice is served on the caveator personally;
- (b) the notice is left at or sent by certified mail to—
- (i) the address specified in the caveat under section 74B (2) (b) or 74F (5) (b); or



*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- 5 (ii) where an address has been notified to the Registrar-General in respect of the caveat under subsection (3)—that address or, if more than one address has been notified in respect of the caveat under that subsection, the last of the addresses so notified;
- (c) if the caveat was signed on behalf of the caveator by an agent other than a solicitor—the notice is left at or sent by certified mail to the business or residential address of that agent;
- 10 (d) if the caveat was signed on behalf of the caveator by a solicitor—the notice is left at or sent by certified mail to the office of the solicitor or, if the solicitor maintains a box at a document exchange established in New South Wales by a prescribed person, deposited in that box or left at
- 15 another such exchange for transmission to the first-mentioned exchange for depositing in that box;
- (e) the notice is served in such other manner, whether by advertisement or otherwise, as the Registrar-General directs in writing.
- 20 (2) Where a notice is deposited in a box referred to in subsection (1) (d), or left at a document exchange so referred to for transmission to another such exchange for depositing in such a box, service of the notice shall be deemed to be effected 2 days after the day on which the notice is so deposited or left.
- 25 (3) Where a person entitled to withdraw a caveat lodged under a provision of this Part notifies the Registrar-General, by lodging a notice in the approved form, that the name of the caveator or the address for service of notice on the caveator has been changed from the name or address specified in the caveat, the
- 30 Registrar-General shall record in the Register the name or address so notified and thereupon the name or address so recorded shall be the name or address for the service of notices on the caveator.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued***Restrictions on lodgment of further caveats where earlier caveat lapses or is withdrawn**

5 74o. Where a caveat which has been lodged under a provision of this Part in respect of any particular estate or interest in land subsequently lapses or, after service of a notice prepared under section 74c (4), 74i (1) or (2) or 74j (1), is withdrawn under another provision of this Part, any further caveat lodged with the Registrar-General by the same caveator in respect of that estate or interest and purporting to be based on the same facts as the first-mentioned caveat has no effect unless—

- 10
- 15 (a) the Supreme Court has made an order giving leave for the lodgment of the further caveat and that order or an office copy of that order accompanies the further caveat when it is lodged with the Registrar-General; or
- (b) the further caveat is endorsed with the consent of the primary applicant or possessory applicant for or, as the case may be, the registered proprietor of the estate or interest affected by the further caveat.

**Compensation payable in certain cases**

20 74p. (1) Any person who, wrongfully and without reasonable cause—

- 25 (a) lodges a caveat with the Registrar-General under a provision of this Part;
- (b) procures the lapsing of such a caveat; or
- (c) being the caveator, refuses or fails to withdraw such a caveat after being requested to do so,

30 is liable to pay to any person who sustains pecuniary loss that is attributable to an act, refusal or failure referred to in paragraph (a), (b) or (c) compensation with respect to that loss.

(2) Compensation referred to in subsection (1) is recoverable in proceedings taken in a court of competent jurisdiction by the person who claims to have sustained the pecuniary loss.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(3) A person who is a caveator is not entitled to bring proceedings under subsection (1) (b) if that person, having had an opportunity to do so, has failed to take all reasonable steps to prevent the caveat from lapsing.

5           **Registrar-General not obliged to ensure that caveator is entitled to the subsisting estate or interest claimed in a caveat**

10           74Q. Except to the extent of ensuring that a caveat lodged under a provision of this Part apparently complies on its face with the requirements of this Part and with the requirements of any regulations made for the purposes of this Part, the Registrar-General is not required to be satisfied that the caveator is in fact entitled to the estate or interest claimed in the caveat or otherwise as to the validity of the caveat.

**Right to obtain injunction not affected**

15           74R. In relation to a caveat lodged under a provision of this Part, nothing in this Part shall be construed as preventing or restricting the caveator from applying for and obtaining from the Supreme Court an injunction for the purpose of—

- 20           (a) where the caveat relates to land that is the subject of a primary application—restraining the Registrar-General from bringing the land under the provisions of this Act;
- (b) where the caveat relates to the recording of dealings—restraining the Registrar-General from recording a dealing the recording of which is prohibited by the caveat;
- 25           (c) where the caveat relates to a possessory application—restraining the granting of the possessory application; or
- (d) where the caveat relates to a delimitation plan—restraining the Registrar-General from registering the delimitation plan.
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## SCHEDULE 2

(Sec. 4)

## MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

## (1) Section 1—

5 Omit the section, insert instead:

**Short title**

1. This Act may be cited as the “Real Property Act 1900”.

(2) Section 3 (**Interpretation**)—

Section 3 (1) (e), (f)—

10 After section 3 (1) (d), insert:

(e) A reference to a caveator includes a reference to any person who claims through or under the caveator and also includes a reference to any person other than the caveator who, by virtue of section 74M (1), is authorised to withdraw the caveat which was lodged by the caveator.

15

(f) A reference to an office copy of an order, judgment or injunction made, given or granted by a court is a reference to a copy of that order, judgment or injunction certified as such an office copy by the proper officer of the court.

20 (3) Section 17 (**Creation of folio for land that is the subject of a primary application**)—

Section 17 (3) (b)—

Omit the paragraph, insert instead:

25 (b) there is in force under section 74B a caveat prohibiting the bringing of the land, or any part of the land, under the provisions of this Act.

(4) Part IV, Division 3 (**Caveats against primary applications**)—

Omit the Division.

*Real Property (Caveats) Amendment 1986*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

## (5) Section 28w—

Omit the section, insert instead:

**Restrictions on registration of delimitation plan**

5 28w. Without prejudice to section 74H in so far as it relates to a delimitation plan, the Registrar-General shall not register a delimitation plan if a notice referred to in section 28v (2) has been given and the period specified in that notice has not expired.

(6) Part IVB, Division 3 (**Caveats against delimitation plans**)—

10 Omit the Division.

(7) Section 36 (**Registration of dealings**)—

Section 36 (1), definition of “caveat”—

Omit “28Y, 45H or 72”, insert instead “74F”.

## (8) Section 45F—

15 Omit the section, insert instead:

**Restrictions on grant of possessory applications**

20 45F. Without prejudice to section 74H in so far as it relates to a possessory application, the Registrar-General shall not grant a possessory application if a notice referred to in section 45E (2) has been given and the period specified in that notice has not expired.

(9) Part VIA, Division 2 (**Caveats against possessory applications**)—

Omit the Division.

(10) Part VII, Division 5 (**Caveats against dealings**)—

25 Omit the Division.

*Real Property (Caveats) Amendment 1986*

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SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(11) Section 91 (**Disclaimer of lease under Commonwealth Act**)—

(a) Section 91 (3)—

Omit “affecting the lease”, insert instead “which would have the effect of prohibiting the recording of the surrender of the lease”.

5 (b) Section 91 (6)—

Omit “affecting the lease”, insert instead “which would have the effect of prohibiting the recording of the foreclosure of the mortgage”.

(c) Section 91 (8)—

10 Omit the subsection.

(12) Section 96E (**Searches to disclose recordings on mortgages, etc.**)—

Section 96E (d)—

Omit “pursuant to section 72 (3)”.

15 (13) Section 97 (**Notice of caveat**), section 98 (**Compensation for lodging a caveat without reasonable cause**)—

Omit the sections.

(14) Section 105A (**Effect of recording of writ**)—

Section 105A (1) (j)—

20 Omit “section 74 (3) (a), (b), (c), (d), (e), (f) or (g)”, insert instead “a provision of section 74H (5) (a)–(n)”.

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*Real Property (Caveats) Amendment 1986*

## SCHEDULE 3

(Sec. 5)

## SAVINGS AND TRANSITIONAL PROVISIONS

**5 Caveats lodged against primary applications to bring land under the provisions of the Principal Act**

1. Where a caveat lodged under section 24 of the Principal Act has not ceased to have effect before the commencement of this Act, the provisions of Division 3 of Part IV, and section 97, of the Principal Act, so far as relevant, shall, notwithstanding their repeal by this Act, continue to have effect in respect of that caveat as if this Act had not  
10 been enacted.

**Effect of notices served under sections 73 and 73A of the Principal Act**

2. Where a notice has been served as provided by section 73 or 73A of the Principal Act before the commencement of this Act and the caveat to which the notice related has not lapsed or has not been deemed to have lapsed before that commencement, that  
15 section shall continue to have effect in relation to that caveat as if this Act had not been enacted.

**Pending proceedings under sections 97 and 98 of the Principal Act**

3. Where any legal proceeding which has been instituted under section 97 or 98 of the Principal Act before the commencement of this Act has not been finally determined  
20 before that commencement, the proceeding shall be heard and determined under that section as if this Act had not been enacted.

**Regulations**

4. (1) The regulations under the Principal Act may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

25 (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the day on which this Schedule commences or on a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

30 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or

35 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

*Real Property (Caveats) Amendment 1986*

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SCHEDULE 3—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

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**REAL PROPERTY (CAVEATS) AMENDMENT ACT 1986**  
**No. 167**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 25, 1900
5. Savings and transitional provisions

SCHEDULE 1—INSERTION OF PART VIIA INTO THE PRINCIPAL ACT

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

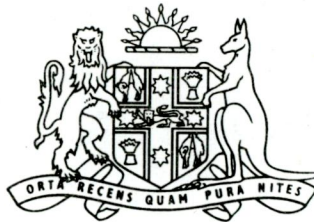
SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

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**REAL PROPERTY (CAVEATS) AMENDMENT ACT 1986 No. 167**

NEW SOUTH WALES



**Act No. 167, 1986**

— An Act to amend the Real Property Act 1900 for the purpose of making fresh provision with respect to the lodgment and removal of caveats under that Act and for related purposes. [Assented to 17 December 1986]

*Real Property (Caveats) 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 "Real Property (Caveats) 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.

**Principal Act**

3. The Real Property Act 1900 is referred to in this Act as the Principal Act.

**Amendment of Act No. 25, 1900**

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

**Savings and transitional provisions**

5. Schedule 3 has effect.

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## SCHEDULE 1

(Sec. 4)

## INSERTION OF PART VIIA INTO THE PRINCIPAL ACT

## (1) Part VIIA—

After Part VII, insert:

## PART VIIA

## CAVEATS

DIVISION 1—*Interpretation***Interpretation**

74A. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“dealing” includes a plan (other than a delimitation plan);

“delimitation plan” has the meaning ascribed to that expression by section 28s (1);

“registrable form”—

(a) in relation to a dealing other than a plan, means that the dealing is in registrable form for the purposes of section 36; and

(b) in relation to a plan, means that the plan is in a form in which it is immediately capable of being registered or recorded under the enactment providing for its registration or recording.

## (2) In this Part—

(a) a reference to a legal or equitable estate in land includes a reference to a subsisting interest in land within the meaning of section 28A; and

(b) a reference to recording a dealing in the Register shall, where the dealing is a plan, be construed as a reference to registering or recording the plan under the enactment providing for its registration or recording.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(3) In this Part, a reference to a caveat lodged under section 74F includes a reference to a caveat which was lodged under section 28Y, 45H or 72 before the commencement of this Part but which has not ceased to be in force before that commencement.

DIVISION 2—*Caveats against primary applications***Lodgment of caveats against primary applications**

74B. (1) A person who claims a legal or equitable estate or interest in land that is the subject of a primary application, or in any part of any such land, may, at any time before a folio of the Register is created for that land or part under section 17 (2), lodge with the Registrar-General a caveat prohibiting the bringing of that land or part under the provisions of this Act.

(2) A caveat lodged under subsection (1) must—

- (a) be in the approved form;
- (b) specify—
  - (i) the name of the caveator;
  - (ii) where the caveator is not a body corporate—the residential address of the caveator;
  - (iii) where the caveator is a body corporate—the address of the registered office of the body corporate;
  - (iv) the prescribed particulars of the estate or interest to which the caveator claims to be entitled;
  - (v) where the caveat relates only to part of the land that is the subject of the primary application—such description of that part as will enable it to be identified; and
  - (vi) an address in New South Wales at which notices may be served on the caveator;
- (c) be verified by statutory declaration; and

*Real Property (Caveats) Amendment 1986*

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SCHEDULE 1—*continued*

INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(d) be signed by the caveator or by a solicitor or other agent of the caveator.

(3) On the lodgment of a caveat under subsection (1), the Registrar-General shall give notice in writing of the lodgment of the caveat to the primary applicant in relation to whose application the caveat has been lodged.

**Caveats lodged under section 74B to lapse under certain circumstances**

74C. (1) A caveat lodged under section 74B which has not ceased to have effect lapses on the expiry of 3 months after the date on which it was so lodged, unless, before the end of that period, the caveator—

(a) has—

(i) obtained from the Supreme Court an order extending the operation of the caveat for such further period as may be specified in the order or until the further order of that Court; and

(ii) lodged with the Registrar-General the order or an office copy of the order; or

(b) has taken proceedings in a court of competent jurisdiction to establish title to the estate or interest specified in the caveat and has—

(i) where those proceedings have been determined in favour of the caveator—lodged with the Registrar-General the order or judgment setting out the determination of the court or an office copy of that order or judgment; or

(ii) where those proceedings have not yet been determined—lodged with the Registrar-General a notice, verified by statutory declaration, to that effect.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(2) Where a notice referred to in subsection (1) (b) (ii) has been lodged with the Registrar-General and the proceedings to which the notice relates are finally determined otherwise than in favour of the caveator, the caveat to which the notice relates lapses when the order or judgment setting out the determination of the court, or an office copy of that order or judgment, is lodged with the Registrar-General.

(3) Where a caveat lodged under section 74B remains in force, the primary applicant concerned may make an application in writing to the Registrar-General calling on the Registrar-General to prepare for service on the caveator a notice to the effect that, unless, within the period of 21 days after service of the notice, the caveator takes the action referred to in subsection (1) (a) or (b), the caveat will lapse.

(4) On receipt of an application made under subsection (3), the Registrar-General shall, if satisfied that the caveat would not otherwise cease to have effect before it would lapse under subsection (5) if a notice were to be served as referred to in that subsection, prepare for service on the caveator a notice in the form sought by the primary applicant.

(5) Where a notice prepared under subsection (4) has been served on the caveator, the caveat lapses on the expiry of 21 days after the date on which the notice was so served unless, before the end of that period of 21 days, the caveator has taken the action specified in subsection (1) (a) or (b) with respect to the land or, as the case may be, the estate or interest to which the caveat relates.

**Caveator to have right to apply for an order extending the operation of the caveat**

74D. (1) Where a caveat lodged under section 74B remains in force, the caveator may, whether or not a notice has been served on the caveator as referred to in section 74C (5), make, in the manner prescribed by rules of Court, an application to the Supreme Court for an order extending the operation of the caveat.



SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(2) Subject to subsection (3), on the hearing of an application made under subsection (1), the Supreme Court may, if satisfied that the caveator's claim has or may have substance, make an order extending the operation of the caveat concerned for such period as is specified in the order or until the further order of that Court, but if that Court is not so satisfied, it shall dismiss the application.

(3) Unless the Supreme Court has made an order dispensing with service, it may not hear an application made under subsection (1) unless it is satisfied that the primary applicant concerned has been served with a copy of the application before the hearing.

(4) An order under subsection (2) may be made *ex parte* or otherwise.

(5) When making an order under subsection (2), the Supreme Court may make such ancillary orders as it thinks fit.

**Powers of Registrar-General where caveator fails to prosecute proceedings to establish title to estate or interest claimed in caveat**

74E. (1) Where a caveator has lodged with the Registrar-General a notice in accordance with section 74C (1) (b) (ii) to the effect that the caveator has taken proceedings as referred to in section 74C (1) (b), but those proceedings have not, within such period as appears to the Registrar-General to be reasonable in the circumstances, been continued to a stage that has resulted in a judgment or an order by the court in which the proceedings are pending, the Registrar-General may—

- (a) serve on the caveator; or
- (b) if service is for any reason not practicable—cause to be exhibited on the land affected by the caveat,

a notice to the effect that, after the expiry of 1 month after the day on which the notice was so served or first exhibited, the caveat will lapse unless, before the end of that period—

- (c) an order of the Supreme Court extending the operation of the caveat;

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(d) an injunction granted by that Court restraining the Registrar-General from proceeding to bring under the provisions of this Act the land to which the caveat relates; or

(e) an office copy of such an order or injunction,

is lodged with the Registrar-General.

(2) Where—

(a) the Registrar-General has served or caused to be exhibited a notice under subsection (1); and

(b) no order or injunction as referred to in that subsection, or office copy of such an order or injunction, is lodged with the Registrar-General before the expiry of 1 month after the day on which the notice was served or first exhibited,

the caveat lapses at the end of that period.

DIVISION 3—*Caveats against dealings, possessory applications and plans*

**Lodgment of caveats against dealings, possessory applications and plans**

74F. (1) Any person who, by virtue of any unregistered dealing or by devolution of law or otherwise, claims to be entitled to a legal or equitable estate or interest in land under the provisions of this Act may lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the estate or interest to which the person claims to be entitled.

(2) Any registered proprietor of an estate or interest who, because of the loss of a relevant certificate of title or some other instrument relating to the estate or interest or for some other reason, fears an improper dealing with the estate or interest by another person may lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the estate or interest.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(3) Any person who claims to be entitled to a legal or equitable estate or interest in land that is or may become the subject of a possessory application may, at any time before such an application is granted, lodge with the Registrar-General a caveat prohibiting the Registrar-General from granting such an application.

(4) Any person who claims to be entitled to a legal or equitable estate or interest in land that is the subject of a delimitation plan lodged in the office of the Registrar-General may, at any time before the plan is registered, lodge with the Registrar-General a caveat prohibiting the registration of the delimitation plan.

(5) A caveat lodged under this section must—

(a) be in the approved form;

(b) specify—

(i) the name of the caveator;

(ii) where the caveator is not a body corporate—the residential address of the caveator;

(iii) where the caveator is a body corporate—the address of the registered office of the body corporate;

(iv) unless the Registrar-General dispenses with those particulars—the name and address of the registered proprietor concerned;

(v) the prescribed particulars of the legal or equitable estate or interest to which the caveator claims to be entitled;

(vi) the current reference allocated by the Registrar-General to the folio of the Register, or, as the case may be, the lease, mortgage or charge, to which the caveat relates;

*Real Property (Caveats) Amendment 1986*

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SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- (vii) where the caveat relates only to part of the land described in a folio of the Register or a current lease—a description of that part in the form or manner prescribed; and
  - (viii) an address in New South Wales at which notices may be served on the caveator;
- (c) be verified by statutory declaration; and
- (d) be signed by the caveator or by a solicitor or other agent of the caveator.
- (6) On the lodgment of a caveat under subsection (1), the Registrar-General shall give notice in writing of the lodgment of the caveat to the registered proprietor of the estate or interest affected by the caveat, unless the consent of that person is endorsed on the caveat.
- (7) In subsection (6), a reference to the registered proprietor in relation to an estate or interest referred to in that subsection includes a reference to a person who claims to be entitled to such an estate or interest under a dealing lodged in the office of the Registrar-General for recording in the Register.
- (8) On the lodgment of a caveat under subsection (3), the Registrar-General shall, if a possessory application referred to in that subsection has been lodged in the office of the Registrar-General, give notice in writing of the lodgment of the caveat to the possessory applicant concerned.
- (9) On the lodgment of a caveat under subsection (4), the Registrar-General shall give notice in writing of the lodgment of the caveat to the registered proprietor of the estate or interest affected by the caveat.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued***Registrar-General to enter particulars of caveat lodged under section 74F in Register**

74G. For the purpose only of acknowledging the receipt of a caveat lodged under section 74F, the Registrar-General shall, if satisfied that the caveat complies with the requirements made in respect of it by and under this Act, record in the Register such particulars of the caveat as the Registrar-General considers appropriate.

**Effect of caveat lodged under section 74F**

74H. (1) Subject to this section, while a caveat lodged under section 74F remains in force—

- (a) the Registrar-General shall not, except with the written consent of the caveator—
  - (i) record in the Register any dealing;
  - (ii) grant any possessory application; or
  - (iii) register any delimitation plan,

if it appears to the Registrar-General that the recording of the dealing, the granting of the possessory application or the registration of the delimitation plan is prohibited by the caveat; and

- (b) the caveat does not have the effect of prohibiting—
  - (i) the recording in the Register of a dealing;
  - (ii) the granting of a possessory application; or
  - (iii) the registration of a delimitation plan,

except to the extent that the recording of such a dealing, the granting of such an application or, as the case may be, the registration of such a plan would affect the estate or interest claimed in the caveat.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(2) Where a caveat lodged under section 74F purports to protect a subsisting interest within the meaning of section 28A in land described in a qualified folio of the Register, the Registrar-General shall not cancel the caution recorded in that folio.

(3) While a caveat lodged under section 74F prohibits the recording in the Register of a dealing relating to land described in a limited folio of the Register, the Registrar-General shall not register a delimitation plan which relates to that land.

(4) Where, at the time when a caveat is lodged under section 74F to protect a particular legal or equitable estate or interest in land, a dealing which relates to the same land has been lodged for recording in the Register and is in registrable form, the caveat does not prohibit the recording in the Register of that dealing.

(5) Except in so far as it otherwise specifies, a caveat lodged under section 74F to protect a particular legal or equitable estate or interest in land does not prohibit the Registrar-General from recording in the Register with respect to the same land—

- (a) an application made under section 93 by an executor, administrator or trustee in respect of the estate or interest of a deceased registered proprietor;
- (b) an application under section 12 of the Trustee Act 1925 or an order of a court or dealing which, in the opinion of the Registrar-General, effects or evidences a replacement of existing trustees or the appointment of new or additional trustees;
- (c) an application under section 101;
- (d) a recording under section 46C;
- (e) a resumption application within the meaning of Part VA;
- (f) a writ or the cancellation of the recording of a writ in accordance with section 105D;

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- (g) in relation to a mortgage, charge or covenant charge recorded or lodged in registrable form before the lodgment of the caveat—a dealing effected by the mortgagee or chargee in the exercise of a power of sale or other power or a right conferred by the mortgage, charge or covenant charge or by or under law;
- (h) in relation to a lease recorded or lodged in registrable form before the lodgment of the caveat—a dealing effected by the lessee pursuant to a right conferred by the lease or by or under law;
- (i) a dealing effected by a lessee, mortgagee or chargee under a lease, mortgage or charge to the recording of which lease, mortgage or charge the caveator has consented, being a dealing relating to the lease, mortgage or charge;
- (j) a vesting or dealing effected in accordance with—
  - (i) an order of a court; or
  - (ii) a provision of an enactment of this State or the Commonwealth,  
  
being an order or enactment which, expressly or by implication, requires or permits a recording to be made in the Register, notwithstanding that the caveat has not ceased to have effect;
- (k) except where the caveator claims to be entitled to a subsisting interest within the meaning of section 28A—the cancellation of a caution;
- (l) a change in, or a correction to, the name of a proprietor;
- (m) easements or restrictions as to user created by section 88B (3) of the Conveyancing Act 1919; or
- (n) an order, memorandum or other instrument pursuant to section 88D, 88E, 89 or 98 of the Conveyancing Act 1919.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(6) Where particular land is affected by a caveat lodged under section 74F and a dealing relating to that land is subsequently lodged for recording in the Register, the Registrar-General may record the dealing notwithstanding the existence of the caveat if satisfied that the estate or interest to which the caveator claims to be entitled would, on the dealing being recorded, vest in the caveator.

(7) Whenever a dealing is recorded pursuant to subsection (6), the Registrar-General must record in the Register that the caveat concerned has lapsed.

**Lapse of caveat where dealing, etc., subsequently lodged for recording**

74i. (1) Whenever—

- (a) a dealing or delimitation plan is lodged with the Registrar-General for recording or registration; and
- (b) the recording of the dealing or, as the case may be, the registration of the plan is prohibited by a caveat that has been lodged under section 74F,

the Registrar-General shall, on an application being made in the approved form by the registered proprietor or by any person who is or claims to be entitled to an estate or interest in the land to which the dealing or plan relates, prepare for service on the caveator a notice to the effect that the dealing or plan has been lodged for recording or registration and that, unless, before the expiry of 21 days after the date of service of the notice, the caveator takes the action referred to in subsection (3), the caveat will lapse and the dealing or plan will be recorded or registered.



SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(2) Whenever a possessory application has been made to the Registrar-General and a caveat prohibiting the granting of such an application has, either before or after the making of the possessory application, been lodged under section 74F, the Registrar-General shall, on an application being made in the approved form by the possessory applicant, prepare for service on the caveator a notice to the effect that the possessory application has been made and that, unless, before the expiry of 21 days after the date on which the notice is served, the caveator takes the action referred to in subsection (3), the caveat will lapse and the possessory application may be granted.

(3) Where a notice prepared under subsection (1) or (2) has been served on a caveator, the caveat, to the extent that it would, but for this subsection, prohibit the recording of the dealing or the registration of the delimitation plan, or the granting of the possessory application, to which the notice relates, lapses at the end of 21 days after the date on which the notice was so served unless, before the expiry of that period, the caveator has—

- (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court; and
- (b) lodged with the Registrar-General the order or an office copy of the order.

**Lapse of caveat on application of proprietor of estate or interest**

74J. (1) Where a caveat lodged under section 74F (subsection (2) excepted) remains in force, the Registrar-General shall, on an application being made in the approved form by the registered proprietor of the estate or interest affected by the caveat, prepare for service on the caveator a notice to the effect that, unless the caveator takes the action referred to in subsection (2) before the expiry of 21 days after the date of service of the notice, the caveat will lapse.

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(2) Where a notice prepared under subsection (1) has been served on the caveator, the caveat lapses at the end of 21 days after the date on which the notice was so served unless, before the end of that period, the caveator has—

- (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as may be specified in the order or until the further order of that Court; and
- (b) lodged with the Registrar-General the order or an office copy of the order.

**Power of Supreme Court to extend operation of a caveat lodged under section 74F**

74K. (1) Where a caveator is served with a notice prepared under section 74I (1) or (2) or 74J (1), the caveator may prepare, in the manner prescribed by rules of Court, an application to the Supreme Court for an order extending the operation of the caveat.

(2) Subject to subsection (3), on the hearing of an application made under subsection (1), the Supreme Court may, if satisfied that the caveator's claim has or may have substance, make an order extending the operation of the caveat concerned for such period as is specified in the order or until the further order of that Court, but, if that Court is not so satisfied, it shall dismiss the application.

(3) Unless the Supreme Court has made an order dispensing with service, it may not hear an application made under subsection (1) unless it is satisfied that all interested parties disclosed by the notice which gave rise to the application have been served with copies of the application before the hearing.

(4) An order under subsection (2) may be made *ex parte* or otherwise.

(5) When making an order under subsection (2), the Supreme Court may make such ancillary orders as it thinks fit.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*DIVISION 4—*Caveats generally***Strict compliance with formalities with respect to caveats not necessary**

74L. If in any legal proceedings a question arises as to the validity of a caveat lodged under a provision of this Part, the court shall disregard any failure of the caveator to comply strictly with the requirements of this Part, and of any regulations made for the purposes of this Part, with respect to the form of the caveat.

**Withdrawal of caveats**

74M. (1) A caveat lodged under a provision of this Part may be withdrawn—

- (a) by the caveator;
- (b) by the authorised agent of the caveator;
- (c) where the caveator is a natural person who has died—by the legal personal representative or trustee of the caveator's estate;
- (d) where 2 or more caveators claim to be entitled as joint tenants to the estate or interest protected by the caveat and one or more (but not all) of them has died—by the surviving caveator or caveators;
- (e) where, after a company has been dissolved, the estate or interest claimed by the caveator has become vested in the National Companies and Securities Commission by force of section 461 of the Companies (New South Wales) Code—by the National Companies and Securities Commission;

*Real Property (Caveats) Amendment 1986*SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- (f) where the estate or interest claimed by the caveator has become vested in a trustee, The Official Receiver in Bankruptcy or any other person under or by virtue of a provision of any Act or any Act of the Commonwealth relating to bankruptcy—by the trustee, The Official Receiver in Bankruptcy or that other person, as the case may be;
- (g) where the management and care of the estate or interest claimed by the caveator is, pursuant to the Mental Health Act 1958, entrusted to a specified person—by that person; or
- (h) in any other prescribed case—by the person, or a person belonging to the class of persons, prescribed in relation to that case.

## (2) Where—

- (a) a caveat lodged under section 74F prohibits the granting of a possessory application, or the registration of a delimitation plan; and
- (b) the caveator has consented to the granting of the possessory application or, as the case may be, the registration of the delimitation plan,

the caveat shall be deemed to have been withdrawn.

**Service of notices on the caveator for the purposes of this Part**

74N. (1) Where under this Part provision is made for the service on the caveator of a notice relating to a caveat lodged under a provision of this Part, or to any proceedings in respect of such a caveat, the notice is duly served if it is served in one of the following ways:

- (a) the notice is served on the caveator personally;
- (b) the notice is left at or sent by certified mail to—
  - (i) the address specified in the caveat under section 74B (2) (b) or 74F (5) (b); or

*Real Property (Caveats) Amendment 1986*

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SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

- (ii) where an address has been notified to the Registrar-General in respect of the caveat under subsection (3)—that address or, if more than one address has been notified in respect of the caveat under that subsection, the last of the addresses so notified;
  - (c) if the caveat was signed on behalf of the caveator by an agent other than a solicitor—the notice is left at or sent by certified mail to the business or residential address of that agent;
  - (d) if the caveat was signed on behalf of the caveator by a solicitor—the notice is left at or sent by certified mail to the office of the solicitor or, if the solicitor maintains a box at a document exchange established in New South Wales by a prescribed person, deposited in that box or left at another such exchange for transmission to the first-mentioned exchange for depositing in that box;
  - (e) the notice is served in such other manner, whether by advertisement or otherwise, as the Registrar-General directs in writing.
- (2) Where a notice is deposited in a box referred to in subsection (1) (d), or left at a document exchange so referred to for transmission to another such exchange for depositing in such a box, service of the notice shall be deemed to be effected 2 days after the day on which the notice is so deposited or left.
- (3) Where a person entitled to withdraw a caveat lodged under a provision of this Part notifies the Registrar-General, by lodging a notice in the approved form, that the name of the caveator or the address for service of notice on the caveator has been changed from the name or address specified in the caveat, the Registrar-General shall record in the Register the name or address so notified and thereupon the name or address so recorded shall be the name or address for the service of notices on the caveator.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued***Restrictions on lodgment of further caveats where earlier caveat lapses or is withdrawn**

74O. Where a caveat which has been lodged under a provision of this Part in respect of any particular estate or interest in land subsequently lapses or, after service of a notice prepared under section 74C (4), 74I (1) or (2) or 74J (1), is withdrawn under another provision of this Part, any further caveat lodged with the Registrar-General by the same caveator in respect of that estate or interest and purporting to be based on the same facts as the first-mentioned caveat has no effect unless—

- (a) the Supreme Court has made an order giving leave for the lodgment of the further caveat and that order or an office copy of that order accompanies the further caveat when it is lodged with the Registrar-General; or
- (b) the further caveat is endorsed with the consent of the primary applicant or possessory applicant for or, as the case may be, the registered proprietor of the estate or interest affected by the further caveat.

**Compensation payable in certain cases**

74P. (1) Any person who, wrongfully and without reasonable cause—

- (a) lodges a caveat with the Registrar-General under a provision of this Part;
- (b) procures the lapsing of such a caveat; or
- (c) being the caveator, refuses or fails to withdraw such a caveat after being requested to do so,

is liable to pay to any person who sustains pecuniary loss that is attributable to an act, refusal or failure referred to in paragraph (a), (b) or (c) compensation with respect to that loss.

(2) Compensation referred to in subsection (1) is recoverable in proceedings taken in a court of competent jurisdiction by the person who claims to have sustained the pecuniary loss.

SCHEDULE 1—*continued*INSERTION OF PART VIIA INTO THE PRINCIPAL ACT—*continued*

(3) A person who is a caveator is not entitled to bring proceedings under subsection (1) (b) if that person, having had an opportunity to do so, has failed to take all reasonable steps to prevent the caveat from lapsing.

**Registrar-General not obliged to ensure that caveator is entitled to the subsisting estate or interest claimed in a caveat**

74Q. Except to the extent of ensuring that a caveat lodged under a provision of this Part apparently complies on its face with the requirements of this Part and with the requirements of any regulations made for the purposes of this Part, the Registrar-General is not required to be satisfied that the caveator is in fact entitled to the estate or interest claimed in the caveat or otherwise as to the validity of the caveat.

**Right to obtain injunction not affected**

74R. In relation to a caveat lodged under a provision of this Part, nothing in this Part shall be construed as preventing or restricting the caveator from applying for and obtaining from the Supreme Court an injunction for the purpose of—

- (a) where the caveat relates to land that is the subject of a primary application—restraining the Registrar-General from bringing the land under the provisions of this Act;
  - (b) where the caveat relates to the recording of dealings—restraining the Registrar-General from recording a dealing the recording of which is prohibited by the caveat;
  - (c) where the caveat relates to a possessory application—restraining the granting of the possessory application; or
  - (d) where the caveat relates to a delimitation plan—restraining the Registrar-General from registering the delimitation plan.
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## SCHEDULE 2

(Sec. 4)

## MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

## (1) Section 1—

Omit the section, insert instead:

**Short title**

1. This Act may be cited as the “Real Property Act 1900”.

(2) Section 3 (**Interpretation**)—

Section 3 (1) (e), (f)—

After section 3 (1) (d), insert:

(e) A reference to a caveator includes a reference to any person who claims through or under the caveator and also includes a reference to any person other than the caveator who, by virtue of section 74M (1), is authorised to withdraw the caveat which was lodged by the caveator.

(f) A reference to an office copy of an order, judgment or injunction made, given or granted by a court is a reference to a copy of that order, judgment or injunction certified as such an office copy by the proper officer of the court.

(3) Section 17 (**Creation of folio for land that is the subject of a primary application**)—

Section 17 (3) (b)—

Omit the paragraph, insert instead:

- (b) there is in force under section 74B a caveat prohibiting the bringing of the land, or any part of the land, under the provisions of this Act.

(4) Part IV, Division 3 (**Caveats against primary applications**)—

Omit the Division.



*Real Property (Caveats) Amendment 1986*

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SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

## (5) Section 28w—

Omit the section, insert instead:

**Restrictions on registration of delimitation plan**

28w. Without prejudice to section 74H in so far as it relates to a delimitation plan, the Registrar-General shall not register a delimitation plan if a notice referred to in section 28v (2) has been given and the period specified in that notice has not expired.

(6) Part IVB, Division 3 (**Caveats against delimitation plans**)—

Omit the Division.

(7) Section 36 (**Registration of dealings**)—

Section 36 (1), definition of “caveat”—

Omit “28Y, 45H or 72”, insert instead “74F”.

## (8) Section 45F—

Omit the section, insert instead:

**Restrictions on grant of possessory applications**

45F. Without prejudice to section 74H in so far as it relates to a possessory application, the Registrar-General shall not grant a possessory application if a notice referred to in section 45E (2) has been given and the period specified in that notice has not expired.

(9) Part VIA, Division 2 (**Caveats against possessory applications**)—

Omit the Division.

(10) Part VII, Division 5 (**Caveats against dealings**)—

Omit the Division.

*Real Property (Caveats) Amendment 1986*

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SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(11) Section 91 (**Disclaimer of lease under Commonwealth Act**)—

(a) Section 91 (3)—

Omit “affecting the lease”, insert instead “which would have the effect of prohibiting the recording of the surrender of the lease”.

(b) Section 91 (6)—

Omit “affecting the lease”, insert instead “which would have the effect of prohibiting the recording of the foreclosure of the mortgage”.

(c) Section 91 (8)—

Omit the subsection.

(12) Section 96E (**Searches to disclose recordings on mortgages, etc.**)—

Section 96E (d)—

Omit “pursuant to section 72 (3)”.

(13) Section 97 (**Notice of caveat**), section 98 (**Compensation for lodging a caveat without reasonable cause**)—

Omit the sections.

(14) Section 105A (**Effect of recording of writ**)—

Section 105A (1) (j)—

Omit “section 74 (3) (a), (b), (c), (d), (e), (f) or (g)”, insert instead “a provision of section 74H (5) (a)–(n)”.

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*Real Property (Caveats) Amendment 1986*

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## SCHEDULE 3

(Sec. 5)

## SAVINGS AND TRANSITIONAL PROVISIONS

**Caveats lodged against primary applications to bring land under the provisions of the Principal Act**

1. Where a caveat lodged under section 24 of the Principal Act has not ceased to have effect before the commencement of this Act, the provisions of Division 3 of Part IV, and section 97, of the Principal Act, so far as relevant, shall, notwithstanding their repeal by this Act, continue to have effect in respect of that caveat as if this Act had not been enacted.

**Effect of notices served under sections 73 and 73A of the Principal Act**

2. Where a notice has been served as provided by section 73 or 73A of the Principal Act before the commencement of this Act and the caveat to which the notice related has not lapsed or has not been deemed to have lapsed before that commencement, that section shall continue to have effect in relation to that caveat as if this Act had not been enacted.

**Pending proceedings under sections 97 and 98 of the Principal Act**

3. Where any legal proceeding which has been instituted under section 97 or 98 of the Principal Act before the commencement of this Act has not been finally determined before that commencement, the proceeding shall be heard and determined under that section as if this Act had not been enacted.

**Regulations**

4. (1) The regulations under the Principal Act may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the day on which this Schedule commences or on a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

*Real Property (Caveats) Amendment 1986*

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SCHEDULE 3—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.