

## REAL PROPERTY (AMENDMENT) BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

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

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

- (a) to extend the time for registering certain interests that affected Crown land before it was converted to Torrens Title or that affected land before a qualified folio of the Register was created for it; and
- (b) to allow a greater variety of arrangements to be made by the Registrar-General for the provision of information and search certificates and the payment of fees under that Act; and
- (c) to repeal a redundant provision of that Act.

The Bill also contains transitional provisions as a consequence of the proposed amendments.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

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

**Clause 4** makes it clear that each of the extensions of time for the registration of instruments to be effected by the proposed Act will apply to folios of the Real Property Act Register created before that time is extended.

### SCHEDULE 1—AMENDMENTS

#### Extension of times for registration of certain interests

Schedule 1 (1) amends the current requirement that transfers, mortgages, charges or covenant charges affecting Crown land before it was brought under the Principal Act pursuant to section 13A or 13B of that Act must be presented for recording within 6 months of creation of a folio for the land. The 6 months period is extended to 5 years.

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*Real Property (Amendment) 1989*

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Schedule 1 (2) amends the current requirement that registered deeds affecting land before it was brought under the Principal Act by the creation of a qualified folio of the Register must be presented for recording within 6 months of creation of the folio. The 6 months period is extended until the qualification lapses or is cancelled.

**Increased flexibility relating to provision of information and payment of fees**

Schedule 1 (3), (4) and (5) contain minor amendments aimed at enabling the Registrar-General to modernise the practices of the Land Titles Office. The new practices are intended to facilitate access to land data held at that office and to enable fees for the provision of data and search certificates to be paid on a periodic basis, if appropriate, or in accordance with other arrangements approved by the Registrar-General.

**Repeal of redundant provision**

Schedule 1 (6) repeals section 120 of the Principal Act. That section required the Registrar-General—

- (a) to keep and render accounts, and to pay money to the Treasurer, in accordance with regulations under that Act; and
- (b) to follow certain procedures in accounting for money paid to the credit of absent mortgagees; and
- (c) to pay fines and fees to the Consolidated Fund.

These provisions are redundant because—

- There are no such regulations in force. Accounting requirements are now imposed under the Public Finance and Audit Act 1983. In particular, a working account has been established under that Act for Land Titles Office fees.
- It is not the practice of the Registrar-General to receive money paid to the credit of absent mortgagees. There are other more appropriate ways (such as the schemes provided by section 98 of the Conveyancing Act 1919 and by the Unclaimed Money Act 1982) to deal with any such money.
- The Fines and Penalties Act 1901 deals comprehensively with the payment of fines.

**Amendment of power to make regulations**

Schedule 1 (7) amends section 144 of the Principal Act so as to make it clear that regulations may be made to enable the refund or waiver of fees and other charges otherwise than in prescribed circumstances. The intention is again to allow up-dating of practices in the Land Titles Office.

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# REAL PROPERTY (AMENDMENT) BILL 1989

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Real Property Act 1900 No. 25
4. Transitional

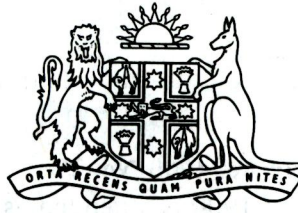
SCHEDULE 1—AMENDMENTS

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# REAL PROPERTY (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

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## A BILL FOR

An Act to amend the Real Property Act 1900 so as to extend the time for registering certain interests and to facilitate the administration of that Act; and for other purposes.

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*Real Property (Amendment) 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Real Property (Amendment) Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Real Property Act 1900 No. 25**

3. The Real Property Act 1900 is amended as set out in Schedule 1.

**Transitional**

4. (1) Section 13M (1) (c) of the Real Property Act 1900, as amended by this Act, applies to folios of the Register created within the last 5 years before the commencement of Schedule 1 (1) as well as to subsequently created folios.

- (2) Section 28H (2) (c) of the Real Property Act 1900, as amended by this Act, applies to qualified folios of the Register created at any time before the commencement of Schedule 1 (2) as well as to subsequently created qualified folios.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

- (1) Section 13M (**Registration of instruments executed before creation of folio**)—  
From section 13M (1) (c), omit “6 months”, insert instead “5 years”.
- (2) Section 28H (**Recording on qualified folio of registered deeds executed before creation**)—  
Omit section 28H (2) (c), insert instead:  
(c) is so presented before the caution recorded under section 28J in the folio has lapsed or been cancelled.
- (3) Section 96B (**Access to the Register**)—  
Omit section 96B (2) and (3), insert instead:  
(2) Without affecting any duty imposed by or under this Act, information in the Register may also be made available in accordance with such conditions as the Registrar-General, with the approval of the Minister, determines.  
(3) The conditions may—  
(a) require the payment, whether on a periodic or any other basis, of fees and other charges; and

SCHEDULE 1—AMENDMENTS—*continued*

- (b) restrict access to information in the Register or any part of the Register.
- (4) Sections 96C (**Official search of manual folio**), 96D (**Official search of computer folio**), 96F (**Final search of computer folio**), 96G (**Search of historical record**)—
- 5 Omit paragraphs (b) and (c) from each of those sections, insert instead:
- and
- (b) the requisition complies with the regulations,
- 10 (5) Section 96J—
- After section 96I, insert:
- Search fees**
- 15 **96J.** The Registrar-General is not required to issue a certificate under this Part, or to have any search carried out for the purpose of issuing any such certificate, unless—
- (a) the fee prescribed in respect of the requisition for the certificate or search has been paid; or
- (b) the Registrar-General is satisfied that the fee will be paid in accordance with arrangements approved by the
- 20 Registrar-General.
- (6) Part 13 (**Fees—s. 120 (Registrar-General to pay moneys into Treasury and to render accounts)**)—
- Omit the Part.
- (7) Section 144 (**Regulations**)—
- 25 Omit section 144 (1) (b) and (c), insert instead:
- (b) the refund or waiver of any such fees, charges or expenses; and





# REAL PROPERTY (AMENDMENT) ACT 1989 No. 15

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Real Property Act 1900 No. 25
4. Transitional

## SCHEDULE 1—AMENDMENTS

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**REAL PROPERTY (AMENDMENT) ACT 1989 No. 15**

NEW SOUTH WALES



**Act No. 15, 1989**

An Act to amend the Real Property Act 1900 so as to extend the time for registering certain interests and to facilitate the administration of that Act; and for other purposes. [Assented to 18 April 1989]

*Real Property (Amendment) 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Real Property (Amendment) Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Real Property Act 1900 No. 25**

3. The Real Property Act 1900 is amended as set out in Schedule 1.

**Transitional**

4. (1) Section 13M (1) (c) of the Real Property Act 1900, as amended by this Act, applies to folios of the Register created within the last 5 years before the commencement of Schedule 1 (1) as well as to subsequently created folios.

(2) Section 28H (2) (c) of the Real Property Act 1900, as amended by this Act, applies to qualified folios of the Register created at any time before the commencement of Schedule 1 (2) as well as to subsequently created qualified folios.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

- (1) Section 13M (**Registration of instruments executed before creation of folio**)—

From section 13M (1) (c), omit “6 months”, insert instead “5 years”.

- (2) Section 28H (**Recording on qualified folio of registered deeds executed before creation**)—

Omit section 28H (2) (c), insert instead:

- (c) is so presented before the caution recorded under section 28J in the folio has lapsed or been cancelled.

- (3) Section 96B (**Access to the Register**)—

Omit section 96B (2) and (3), insert instead:

(2) Without affecting any duty imposed by or under this Act, information in the Register may also be made available in accordance with such conditions as the Registrar-General, with the approval of the Minister, determines.

*Real Property (Amendment) 1989*SCHEDULE 1—AMENDMENTS—*continued*

(3) The conditions may—

- (a) require the payment, whether on a periodic or any other basis, of fees and other charges; and
- (b) restrict access to information in the Register or any part of the Register.

(4) Sections 96C (**Official search of manual folio**), 96D (**Official search of computer folio**), 96F (**Final search of computer folio**), 96G (**Search of historical record**)—

Omit paragraphs (b) and (c) from each of those sections, insert instead:

and

- (b) the requisition complies with the regulations,

(5) Section 96J—

After section 96I, insert:

**Search fees**

**96J.** The Registrar-General is not required to issue a certificate under this Part, or to have any search carried out for the purpose of issuing any such certificate, unless—

- (a) the fee prescribed in respect of the requisition for the certificate or search has been paid; or
- (b) the Registrar-General is satisfied that the fee will be paid in accordance with arrangements approved by the Registrar-General.

(6) Part 13 (**Fees—s. 120 (Registrar-General to pay moneys into Treasury and to render accounts)**)—

Omit the Part.

*Real Property (Amendment) 1989*

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SCHEDULE 1—AMENDMENTS—*continued*

(7) Section 144 (**Regulations**)—

Omit section 144 (1) (b) and (c), insert instead:

- (b) the refund or waiver of any such fees, charges or expenses;  
and

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[*Minister's second reading speech made in—  
Legislative Assembly on 22 February 1989  
Legislative Council on 11 April 1989*]





