REAL PROPERTY (OYSTER LEASES) AMENDMENT ACT 1990 No. 41

NEW SOUTH WALES

TABLE OF PROVISIONS

REAL PROPERTY (OYSTER LEASES) AMENDMENT ACT 1990 No. 41

NEW SOUTH WALES

Act No. 41, 1990

An Act to amend the Real Property Act 1900 to enable lands comprised in oyster leases to be brought under the provisions of that Act and for other purposes. [Assented to 22 June 1990]

See also Fisheries and Oyster Farms (Oyster Leases) Amendment Act 1990.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Real Property (Oyster Leases) Amendment Act 1990.

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.

Amendment of Real Property Act 1900 by way of statute law revision

4. The Real Property Act 1900 is further amended as set out in Schedule 2.

SCHEDULE 1 - AMENDMENTS CONCERNING OYSTER LEASES

(Sec. 3)

(1) Section 13F (**Mortgages - application of sec. 39A**):

Section 13F (a):

After "Commissioner", insert ", the Department of Agriculture and Fisheries".

(2) Section 28F:

After section 28EA, insert:

Qualified folio for holders of oyster leases

28F. A folio created, pursuant to section 13D (3), in the name of a lessee of land under Part 5 of the Fisheries and Oyster Farms Act 1935 may, if the Registrar-General considers it appropriate, be created as a qualified folio.

SCHEDULE 1 - AMENDMENTS CONCERNING OYSTER LEASES - *continued*

(3) Schedule 2:

After the matter relating to the Prickly-pear Act 1924, insert:

Fisheries and Oyster Farms Act 1935

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION

(Sec. 3)

(1) Section 13F:

Omit the section, insert instead:

Treatment of instruments not in approved form

13F. (1) In this section, "**prescribed instrument**" means a mortgage, charge or covenant charge:

(a) that affects land not subject to the provisions of this Act; and

(b) that has been registered in the General Register of Deeds kept pursuant to Division 1 of Part 23 of the Conveyancing Act 1919 or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act; and

(c) the existence of which is disclosed in the records of land tenures or holdings kept by the Department of Lands, the Western Lands Commissioner, the Department of Agriculture and Fisheries or the Water Administration Ministerial Corporation; and

(d) that, in the opinion of the Registrar-General, could have been registered under the provisions of this Act as a mortgage, charge or covenant charge if, at the time of its execution, the land it affects had been subject to the provisions of this Act and the instrument had been drawn in a form approved by the Registrar-General.

(2) When land to which this Part applies and which is affected by a prescribed instrument is brought under the provisions of this Act by the creation of a folio of the

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

Register for the estate or interest of a person other than the mortgagee, chargee or covenant chargee entitled under the instrument:

(a) the Registrar-General may record the instrument in the Register in such manner as the Registrar-General considers appropriate; and

(b) the mortgagee, chargee or covenant chargee, as the case may be, named in the recording is to be taken to be registered under the provisions of this Act as proprietor of a mortgage, charge or covenant charge registered under this Act in respect of the land; and

(c) a person who, by the operation of paragraph (b), is to be taken to be a registered proprietor of a mortgage, charge or covenant charge is entitled to exercise the same rights, powers and remedies as if the mortgage, charge or covenant charge had been drawn in the approved form and registered in the manner provided by this Act.

(3) Nothing in this section requires the Registrar-General, when bringing land under the provisions of this Act, to create a folio of the Register for the estate or interest of a mortgagor, charger or covenant charger.

(2) Section 13K (**Conversions, purchases, extensions of term, subdivisions etc.**):

Omit section 13K (6).

(3) Section 13KA:

After section 13K, insert:

Treatment of instruments affecting land dealt with under section 13K

13KA. (1) In this section, "**prescribed instrument**" means a mortgage, charge or covenant charge:

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

(a) that affects land in respect of which a new folio of the Register is created pursuant to section 13K; and

(b) that has been registered in the General Register of Deeds kept pursuant to Division 1 of Part 23 of the Conveyancing Act 1919 or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act; and

(c) the existence of which is disclosed in the records of land tenures or holdings kept by the Department of Lands, the Western Lands Commissioner, the Department of Agriculture and Fisheries or the Water Administration Ministerial Corporation; and

(d) that, in the opinion of the Registrar-General, could have been registered under the provisions of this Act as a mortgage, charge or covenant charge if the instrument had been drawn in a form approved by the Registrar-General.

(2) When a new folio of the Register is created pursuant to section 13K for land that is affected by a prescribed instrument and the folio is created for the estate or interest of a person other than the mortgagee, chargee or covenant chargee entitled under the instrument:

(a) the Registrar-General may record the instrument in the Register in such manner as the Registrar-General considers appropriate; and

(b) the mortgagee, chargee or covenant chargee, as the case may be, named in the recording is to be taken to be registered under the provisions of this Act as proprietor of a mortgage, charge or covenant charge registered under this Act in respect of the land; and

(c) a person who, by the operation of paragraph (b), is to be taken to be a registered proprietor of a mortgage, charge or covenant charge is entitled to exercise the same rights, powers and remedies as if the mortgage, charge or covenant charge had been

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

drawn in the approved form and registered in the manner provided by this Act.

(3) Nothing in this section requires the Registrar-General to create a folio of the Register for the estate or interest of a mortgagor, charger or covenant charger.

(4) Section 13M (**Registration of instruments executed before creation of folio**):

Section 13M (2):

Omit "Section 39A as deemed to be amended by section 13F shall apply", insert instead "Section 13F applies".

(5) Section 39A (**Treatment of certain instruments not in approved form**):

Omit section 39A (3)-(8), insert instead:

(3) This section does not apply to an instrument to which section 13F, 13KA or 13M applies.

(4) Nothing in this section requires the Registrar-General, when bringing land under the provisions of this Act, to create a folio of the Register for the estate or interest of a mortgagor, charger or covenant charger.

(6) Sections 39B-39D:

After section 39A, insert:

Registration of mortgagor or charger as proprietor

39B. (1) Where land affected by a prescribed instrument (within the meaning of section 13F, 13KA or 39A), or by an instrument to which section 13M applies has been brought under the provisions of this Act by the creation of a folio of the Register for the estate or interest of the mortgagee or chargee entitled under the instrument, the Registrar-General may, on application, amend the Register by registering the applicant as the proprietor of that estate or interest, if:

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

(a) the applicant is the mortgagor or charger under the instrument or another person claiming title under the mortgagor or charger; and

(b) the mortgagee or chargee consents to the amendment.

(2) An application under this section must be made in the approved form.

Dealings etc. to be in approved form

39C. (1) This section applies to an instrument:

(a) which has been registered:

(i) before the commencement of this section, pursuant to section 39A (2) (or section 13F, 13K or 13M); or

(ii) after the commencement of this section, pursuant to section 13F, 13KA, 13M or 39A; or

(b) where a person other than the mortgagee or chargee under the instrument becomes registered as the proprietor of an estate or interest in land affected by the instrument by virtue of an amendment of the Register:

(i) before the commencement of this section, pursuant to section 39A (6A) (or section 13F, 13K or 13M); or

(ii) after the commencement of this section, pursuant to section 39B.

(2) All dealings, whether by way of transfer, discharge or otherwise, with the mortgage, charge or covenant charge created by an instrument to which this section applies must be in accordance with the forms approved for corresponding dealings with land under the provisions of this Act and must be recorded in accordance with this Act. The Registrar-General may dispense with the requirements of this subsection in a particular case or class of cases.

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

(3) When a power of sale becomes exercisable in respect of the instrument, the power may be exercised, and the estate or interest sold may be transferred, only in accordance with this Act.

(4) If the instrument is one that creates a mortgage or covenant charge, anything done with respect to foreclosure because of a default in payment of an amount secured by the mortgage or charge, in so far as the thing done relates to land under the provisions of this Act, must be done in accordance with those provisions and not otherwise. This subsection has effect subject to section 101 of the Conveyancing Act 1919.

Register of Deeds to be noted

39D. (1) When the Registrar-General makes a recording under section 13F, 13KA, 13M or 39A in respect of an instrument, the Registrar-General must cause a notation to be entered in the index to the General Register of Deeds kept pursuant to Division 1 of Part 23 of the Conveyancing Act 1919 or, where the interest concerned is a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act.

(2) The appropriate form of notation, and the manner of making it, are to be determined by the Registar-General.

[*Minister's second reading speech made in -*
Legislative Assembly on 28 March 1990
Legislative Council on 23 May 1990]

BY AUTHORITY
R. MILLIGAN, ACTING GOVERNMENT PRINTER - 1990

FIRST PRINT

REAL PROPERTY (OYSTER LEASES) AMENDMENT BILL 1990

NEW SOUTH WALES

EXPLANATORY NOTE

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

The Fisheries and Oyster Farms (Oyster Leases) Amendment Bill 1990 is cognate with this Bill.

The object of this Bill is to provide for the registration, under the Real Property Act 1900, of oyster leases.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments concerning oyster leases.

Clause 4 is a formal provision that gives effect to the Schedule of amendments by way of statute law revision.

SCHEDULE 1 - AMENDMENTS CONCERNING OYSTER LEASES

Land comprised in oyster leases

Schedule 1 (3) amends Schedule 2 to the Principal Act to include a reference to Crown lands dealt with under Part 5 of the Fisheries and Oyster Farms Act 1935 (that is, land for the most part comprised in oyster leases). The effect is to apply section 13 of the Principal Act to those lands, so that they may be brought under the provisions of the Principal Act.

Consequential amendments

Schedule 1 (1) amends section 13F of the Principal Act in order to allow the Registrar-General to record an interest in an oyster lease when the land comprised in the lease has been brought under the provisions of the Principal Act.

Schedule 1 (2) inserts a new section 28F into the Principal Act in order to allow the Registrar-General, when creating a folio of the Register in the name of the holder of an oyster lease, to create the folio as a qualified folio so as to preserve interests of which the Registrar-General was without notice at the time the folio was created.

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION

The opportunity has been taken to repeal and re-enact the provisions contained in sections 13F, 13K, 13M and 39A of the Principal Act in order to make those provisions more explicit.

REAL PROPERTY (OYSTER LEASES) AMENDMENT BILL 1990

NEW SOUTH WALES

No. , 1990

A BILL FOR

An Act to amend the Real Property Act 1900 to enable lands comprised in oyster leases to be brought under the provisions of that Act and for other purposes.

See also Fisheries and Oyster Farms (Oyster Leases) Amendment Bill 1990.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Real Property (Oyster Leases) Amendment Act 1990.

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.

Amendment of Real Property Act 1900 by way of statute law revision

4. The Real Property Act 1900 is further amended as set out in Schedule 2.

SCHEDULE 1 - AMENDMENTS CONCERNING OYSTER LEASES

(Sec. 3)

(1) Section 13F (**Mortgages - application of sec. 39A**):

Section 13F (a):

After "Commissioner", insert ", the Department of Agriculture and Fisheries".

(2) Section 28F:

After section 28EA, insert:

Qualified folio for holders of oyster leases

28F. A folio created, pursuant to section 13D (3), in the name of a lessee of land under Part 5 of the Fisheries and Oyster Farms Act 1935 may, if the Registrar-General considers it appropriate, be created as a qualified folio.

SCHEDULE 1 - AMENDMENTS CONCERNING OYSTER LEASES - *continued*

(3) Schedule 2:

After the matter relating to the Prickly-pear Act 1924, insert:

Fisheries and Oyster Farms Act 1935

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION

(Sec. 3)

(1) Section 13F:

Omit the section, insert instead:

Treatment of instruments not in approved form

13F. (1) In this section, "**prescribed instrument**" means a mortgage, charge or covenant charge:

(a) that affects land not subject to the provisions of this Act; and

(b) that has been registered in the General Register of Deeds kept pursuant to Division 1 of Part 23 of the Conveyancing Act 1919 or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act; and

(c) the existence of which is disclosed in the records of land tenures or holdings kept by the Department of Lands, the Western Lands Commissioner, the Department of Agriculture and Fisheries or the Water Administration Ministerial Corporation; and

(d) that, in the opinion of the Registrar-General, could have been registered under the provisions of this Act as a mortgage, charge or covenant charge if, at the time of its execution, the land it affects had been subject to the provisions of this Act and the instrument had been drawn in a form approved by the Registrar-General.

(2) When land to which this Part applies and which is affected by a prescribed instrument is brought under the provisions of this Act by the creation of a folio of the

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

Register for the estate or interest of a person other than the mortgagee, chargee or covenant chargee entitled under the instrument:

(a) the Registrar-General may record the instrument in the Register in such manner as the Registrar-General considers appropriate; and

(b) the mortgagee, chargee or covenant chargee, as the case may be, named in the recording is to be taken to be registered under the provisions of this Act as proprietor of a mortgage, charge or covenant charge registered under this Act in respect of the land; and

(c) a person who, by the operation of paragraph (b), is to be taken to be a registered proprietor of a mortgage, charge or covenant charge is entitled to exercise the same rights, powers and remedies as if the mortgage, charge or covenant charge had been drawn in the approved form and registered in the manner provided by this Act.

(3) Nothing in this section requires the Registrar-General, when bringing land under the provisions of this Act, to create a folio of the Register for the estate or interest of a mortgagor, charger or covenant charger.

(2) Section 13K (**Conversions, purchases, extensions of term, subdivisions etc.**):

Omit section 13K (6).

(3) Section 13KA:

After section 13K, insert:

Treatment of instruments affecting land dealt with under section 13K

13KA. (1) In this section, "**prescribed instrument**" means a mortgage, charge or covenant charge:

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

(a) that affects land in respect of which a new folio of the Register is created pursuant to section 13K; and

(b) that has been registered in the General Register of Deeds kept pursuant to Division 1 of Part 23 of the Conveyancing Act 1919 or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act; and

(c) the existence of which is disclosed in the records of land tenures or holdings kept by the Department of Lands, the Western Lands Commissioner, the Department of Agriculture and Fisheries or the Water Administration Ministerial Corporation; and

(d) that, in the opinion of the Registrar-General, could have been registered under the provisions of this Act as a mortgage, charge or covenant charge if the instrument had been drawn in a form approved by the Registrar-General.

(2) When a new folio of the Register is created pursuant to section 13K for land that is affected by a prescribed instrument and the folio is created for the estate or interest of a person other than the mortgagee, chargee or covenant chargee entitled under the instrument:

(a) the Registrar-General may record the instrument in the Register in such manner as the Registrar-General considers appropriate; and

(b) the mortgagee, chargee or covenant chargee, as the case may be, named in the recording is to be taken to be registered under the provisions of this Act as proprietor of a mortgage, charge or covenant charge registered under this Act in respect of the land; and

(c) a person who, by the operation of paragraph (b), is to be taken to be a registered proprietor of a mortgage, charge or covenant charge is entitled to exercise the same rights, powers and remedies as if the mortgage, charge or covenant charge had been

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

drawn in the approved form and registered in the manner provided by this Act.

(3) Nothing in this section requires the Registrar-General to create a folio of the Register for the estate or interest of a mortgagor, charger or covenant charger.

(4) Section 13M (**Registration of instruments executed before creation of folio**):

Section 13M (2):

Omit "Section 39A as deemed to be amended by section 13F shall apply", insert instead "Section 13F applies".

(5) Section 39A (**Treatment of certain instruments not in approved form**):

Omit section 39A (3)-(8), insert instead:

(3) This section does not apply to an instrument to which section 13F, 13KA or 13M applies.

(4) Nothing in this section requires the Registrar-General, when bringing land under the provisions of this Act, to create a folio of the Register for the estate or interest of a mortgagor, charger or covenant charger.

(6) Sections 39B-39D:

After section 39A, insert:

Registration of mortgagor or charger as proprietor

39B. (1) Where land affected by a prescribed instrument (within the meaning of section 13F, 13KA or 39A), or by an instrument to which section 13M applies has been brought under the provisions of this Act by the creation of a folio of the Register for the estate or interest of the mortgagee or chargee entitled under the instrument, the Registrar-General may, on application, amend the Register by registering the applicant as the proprietor of that estate or interest, if:

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

(a) the applicant is the mortgagor or charger under the instrument or another person claiming title under the mortgagor or charger; and

(b) the mortgagee or chargee consents to the amendment.

(2) An application under this section must be made in the approved form.

Dealings etc. to be in approved form

39C. (1) This section applies to an instrument:

(a) which has been registered:

(i) before the commencement of this section, pursuant to section 39A (2) (or section 13F, 13K or 13M); or

(ii) after the commencement of this section, pursuant to section 13F, 13KA, 13M or 39A; or

(b) where a person other than the mortgagee or chargee under the instrument becomes registered as the proprietor of an estate or interest in land affected by the instrument by virtue of an amendment of the Register:

(i) before the commencement of this section, pursuant to section 39A (6A) (or section 13F, 13K or 13M); or

(ii) after the commencement of this section, pursuant to section 39B.

(2) All dealings, whether by way of transfer, discharge or otherwise, with the mortgage, charge or covenant charge created by an instrument to which this section applies must be in accordance with the forms approved for corresponding dealings with land under the provisions of this Act and must be recorded in accordance with this Act. The Registrar-General may dispense with the requirements of this subsection in a particular case or class of cases.

SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW REVISION - *continued*

(3) When a power of sale becomes exercisable in respect of the instrument, the power may be exercised, and the estate or interest sold may be transferred, only in accordance with this Act.

(4) If the instrument is one that creates a mortgage or covenant charge, anything done with respect to foreclosure because of a default in payment of an amount secured by the mortgage or charge, in so far as the thing done relates to land under the provisions of this Act, must be done in accordance with those provisions and not otherwise. This subsection has effect subject to section 101 of the Conveyancing Act 1919.

Register of Deeds to be noted

39D. (1) When the Registrar-General makes a recording under section 13F, 13KA, 13M or 39A in respect of an instrument, the Registrar-General must cause a notation to be entered in the index to the General Register of Deeds kept pursuant to Division 1 of Part 23 of the Conveyancing Act 1919 or, where the interest concerned is a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act.

(2) The appropriate form of notation, and the manner of making it, are to be determined by the Registar-General.

FIRST PRINT

REAL PROPERTY (OYSTER LEASES) AMENDMENT BILL 1990

NEW SOUTH WALES

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