

FIRST PRINT

**REAL PROPERTY AND CONVEYANCING (AMENDMENT)
BILL 1991**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to amend the Real Property Act 1900 with respect to proof of execution and attestation of documents and variations of registered leases; and
- (b) to amend the Conveyancing Act 1919 with respect to variations of mortgages and service of notices.

Clause 1 specifies the short title of the proposed Act.

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

Clauses 3 and 4 are formal provisions which give effect to the Schedules of amendments.

SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT 1900

Execution and attestation of dealings

Schedule 1 (1) (a) inserts proposed section 36 (1E). The proposed section provides that, if the Registrar-General has grounds for believing that a dealing or caveat has not been duly executed or attested, the Registrar-General may require the execution or attestation to be proved in such manner as the Registrar-General thinks fit.

Schedule 1 (4) repeals sections 107 and 108. Sections 107 and 108 deal with attestation and proof of execution of dealings under the Act. The issue of attestation is already dealt with by section 36 (1D) (b) which provides that the Registrar-General may refuse to accept a dealing or caveat presented for lodgment that is not attested

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by a witness who is not a party to the dealing or caveat. The issue of proof of execution and attestation is to be dealt with by the amendment to be effected by Schedule 1 (1) (a).

Certification on dealings

Schedule 1 (2) omits section 38 (4) which provides that the Registrar-General must certify on a dealing the fact and date of its registration and that the certificate is to be received in court or other proceedings as conclusive evidence that the dealing was registered on that date. The requirements of this provision have become redundant as the conclusive nature of evidence concerning the registration of a dealing is now dealt with by section 40 (1) and (1A) of the Real Property Act 1900.

Schedule 1 (1) (b) makes a consequential amendment.

Variation of registered leases

Schedule 1 (3) inserts proposed section 55A. The proposed section provides that a registered lease may be varied so as:

- (a) to increase or reduce the rent payable under the lease; or
- (b) to increase or reduce the period for which the lease is to have effect; or
- (c) to otherwise vary, omit or add to the provisions of the lease,

and that such a variation may be registered.

Such variations are not to be valid or binding against the registered proprietor of any prior registered interest in respect of the land to which the lease relates unless the proprietor has consented to the variation before it is registered.

The proposed section also provides that a variation of lease may not operate to vary the land to which the lease relates.

Service of notices

Schedule 1 (5) amends section 135Q to provide (in line with proposed amendments to section 170 of the Conveyancing Act 1919 to be effected by Schedule 2 (2) (b)) that in the case of service of a notice to the facilities of a document exchange under Part 14A notice is, unless the contrary is proved, to be regarded as having been given on the second business day following the day of delivery of the notice to those facilities.

SCHEDULE 2 - AMENDMENT OF CONVEYANCING ACT 1919

Variation of mortgages

Schedule 2 (1) (a) amends section 91 (1) to provide that the provisions of a mortgage may be varied, omitted or added to by an indorsement on the memorandum of mortgage.

Schedule 2 (1) (b) amends section 91 (2) to provide that the form of a variation of mortgage is to be as set out in Form 4A, as proposed to be inserted in Schedule 5.

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Schedule 2 (1) (c) inserts proposed section 91 (5A) to provide that a memorandum of variation of mortgage may not operate to vary the land to which the mortgage relates.

Schedule 2 (1) (d) amends section 91 (6) so that the variation of mortgage referred to in proposed section 91 (1) (d1) applies to a registered mortgage under the Real Property Act 1900.

Service of notices

Schedule 2 (2) (a) repeals section 170 (1) (b) and (c) and replaces those paragraphs with proposed section 170 (1) (b), (b1) and (b2), by way of statute law revision, and with proposed section 170 (1) (c) to provide for the service of notices at a document exchange.

Schedule 2 (2) (b) inserts proposed section 170 (1A) which provides that, in the case of service by delivery to the facilities of a document exchange, notice is, unless the contrary is proved, to be regarded as having been given on the second business day following the day of delivery to the document exchange.

Schedule 2 (2) (c) amends section 170 (2) by way of statute law revision.

Schedule 2 (2) (d) inserts a definition of "business day" for the purpose of calculating the time at which notice is to be regarded as having been given when document exchange facilities are used for service of notices.



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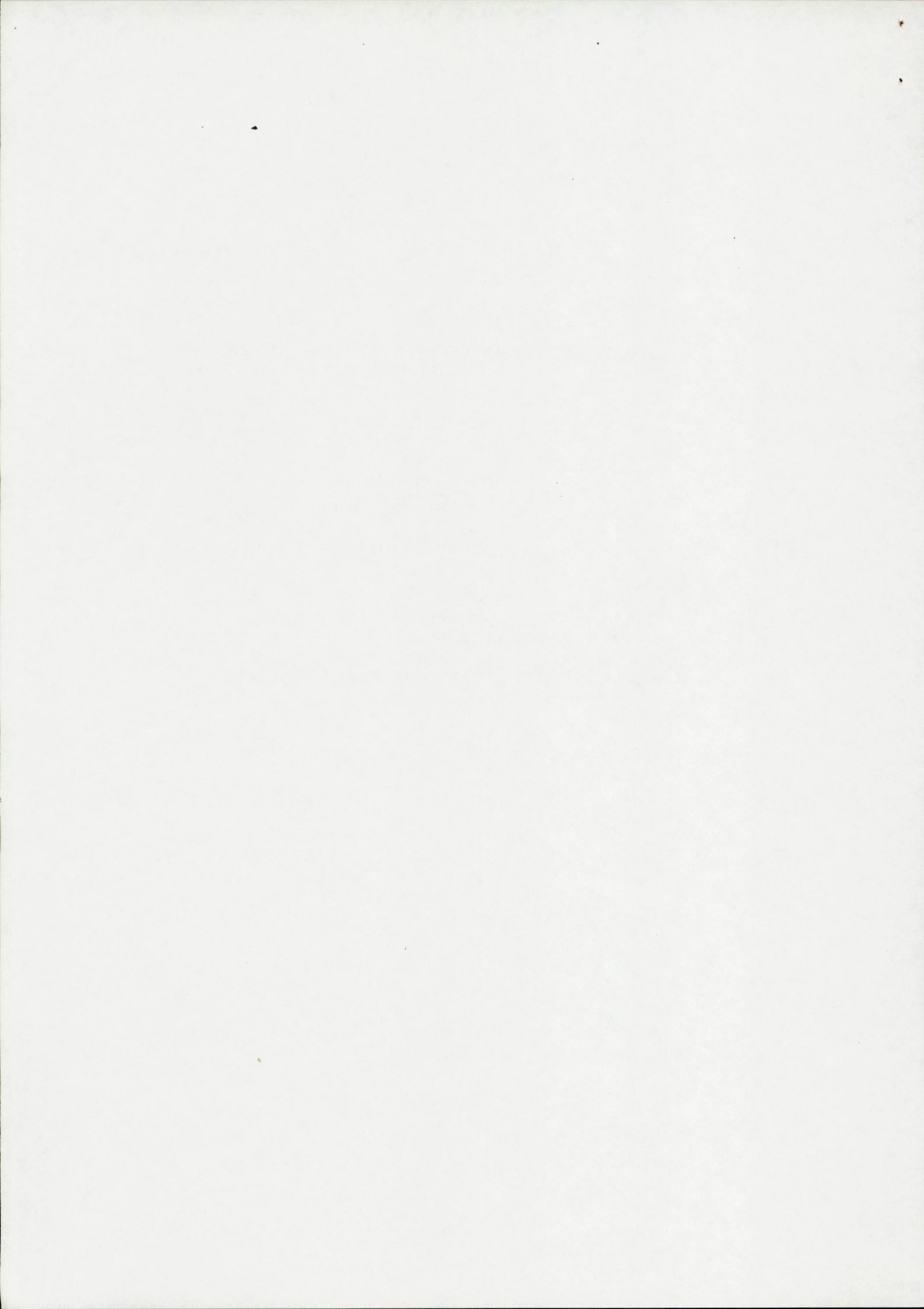
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TABLE OF PROVISIONS

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SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT 1900
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**REAL PROPERTY AND CONVEYANCING (AMENDMENT)
BILL 1991**

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Real Property Act 1900 with respect to proof of execution and attestation of documents and variations of registered leases; and to amend the Conveyancing Act 1919 with respect to variations of mortgages and service of notices.

Real Property and Conveyancing (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Real Property and Conveyancing (Amendment) Act 1991.

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 Conveyancing Act 1919 No. 6

4. The Conveyancing Act 1919 is amended as set out in Schedule 2.

SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT 1900

(Sec. 3)

(1) Section 36 (**Registration of dealings**):

(a) After section 36 (1D), insert:

(1E) If the Registrar-General has grounds for believing that a dealing or caveat has not been duly executed or attested, the Registrar-General may require the execution or attestation to be proved in such manner as the Registrar-General thinks fit.

(b) From section 36 (10), omit "that bears a certificate of registration under section 38 (4)".

(2) Section 38 (**Recording dealings on certificates of title etc.**):

Omit section 38 (4).

(3) Section 55A:

After section 55, insert:

SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT
1900 - *continued*

Registration of variation of lease

55A. (1) A lease that is registered under this Act may, by a variation of lease in the approved form, be varied so as:

- (a) to increase or reduce the rent payable under the lease; or
- (b) to increase or reduce the period for which the lease is to have effect; or
- (c) to otherwise vary, omit or add to the provisions of the lease.

(2) The Registrar-General may make such recordings in the Register as are necessary to give effect to a variation of lease.

(3) A variation of lease is not valid or binding against the registered proprietor of any prior estate or interest recorded in a folio of the Register in respect of the land to which the lease relates unless that proprietor has consented in writing to the variation before it is registered.

(4) A variation of lease may not be registered if it operates to vary the land to which the lease relates.

(5) This section applies in respect of a lease registered before or after the commencement of this section.

- (4) Sections 107 (**Dealings how attested and before whom proved**) and 108 (**Mode of proving execution**):

Omit the sections.

- (5) Section 135Q (**Service of notices**):

- (a) In section 135Q (2), after "notice is", insert ", unless the contrary is proved,".
- (b) From section 135Q (2), omit "the document exchange", insert instead "those facilities".
- (c) After section 135Q (3), insert:

(4) In this section, "**business day**" means any day except Saturday or Sunday or a day that is a public or bank holiday throughout the State.

SCHEDULE 2 - AMENDMENT OF CONVEYANCING ACT 1919

(Sec. 4)

- (1) Section 91 (**Indorsements on mortgages**):
- (a) After section 91 (1) (d), insert:
 - (d1) the provisions of a mortgage may be otherwise varied, omitted or added to; and
 - (b) From section 91 (2), omit "and (e)", insert instead "(d1) and (e)".
 - (c) After section 91 (5), insert:
 - (5A) A memorandum of variation of mortgage may not operate so as to vary the land to which the mortgage relates.
 - (d) From section 91 (6), omit "and (d)", insert instead ", (d) and (d1)".
- (2) Section 170 (**Regulations respecting notices**):
- (a) Omit section 170 (1) (b) and (c), insert instead:
 - (b) if left at or sent by post to the last known residential or business address in or out of New South Wales of the person to be served;
 - (b1) in the case of a mortgagor in possession or a lessee, if left at or sent by post to any occupied house or building comprised in the mortgage or lease;
 - (b2) in the case of a mining lease, if left at or sent by post to the office of the mine;
 - (c) if delivered to the facilities of a document exchange of which the person on whom it is to be served is a member; or
 - (b) After section 170 (1), insert:
 - (1A) In the case of service by delivery to the facilities of a document exchange, notice is, unless the contrary is proved, to be regarded as having been given on the second business day following the day of delivery of the notice to those facilities.

SCHEDULE 2 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

(c) From section 170 (2), omit "registered letter", insert instead "post".

(d) After section 170 (4), insert:

(5) In this section, "**business day**" means any day except Saturday or Sunday or a day that is a public or bank holiday throughout the State.

(3) Schedule 5:

After item (4), insert:

(4A.) MEMORANDUM OF VARIATION OF
MORTGAGE

The provisions of the within- [*or above-*] written [*or annexed*] mortgage are varied, omitted or added to in the following manner:

Dated this day of 19 .

Witness to signature
of A.B.:

E.F.,

A.B., Mortgagor.

[*Place of abode and description.*]

Witness to signature
of C.D.:

G.H.,

C.D., Mortgagee.

[*Place of abode and description.*]
