

REAL PROPERTY (COMPENSATION) AMENDMENT BILL 1992

LEGISLATIVE COUNCIL

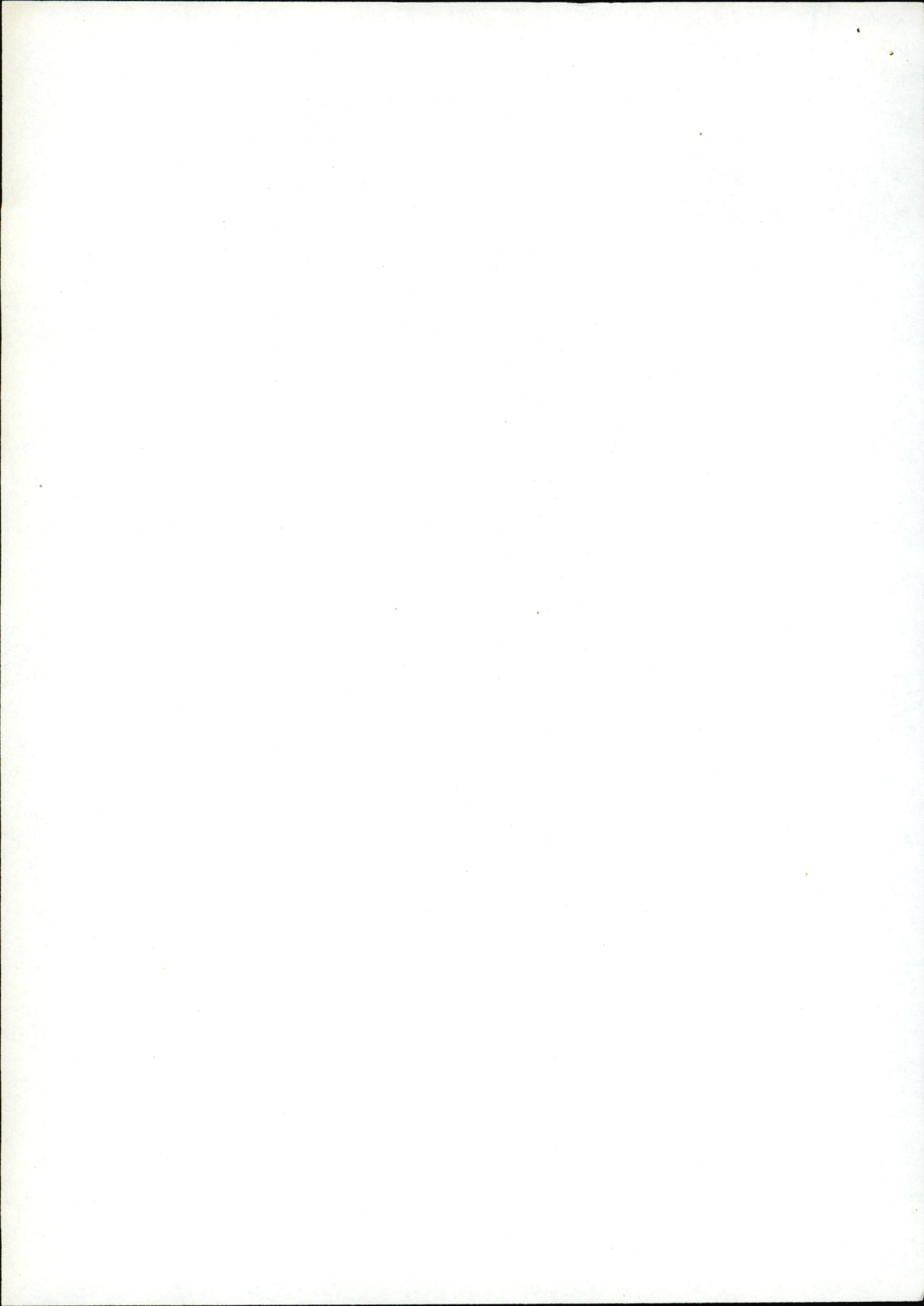
SECOND READING

THE HON. R.J. WEBSTER, M.L.C.,

MINISTER FOR PLANNING AND MINISTER FOR HOUSING

I move:

That this Bill be now read a second time.



The purpose of the Real Property (Compensation) Amendment Bill is to amend the Real Property Act to clarify the State's liability to pay compensation to persons deprived of Torrens title land.

The Torrens system is a system of title by registration administered by the Registrar General. Its object is to provide certainty of title to land and save persons dealing with the recorded owner from undertaking often expensive and time consuming investigations in order to be satisfied as to its validity.

The essential feature of the Torrens title system is a State Guarantee which, with certain exceptions, may be relied upon by anyone who deals with the recorded owner of the land. This State Guarantee is backed by the compensation provisions of the Real Property Act.

The operation of the State Guarantee can, however, result in persons, through no fault of their own, being deprived of their land. This may occur for example, as a consequence of fraud, by the registration of another person as owner, or by an error, omission or misdescription in the Torrens register.

A person who is wrongly deprived of land or who otherwise suffers a loss as a result of the system, may claim compensation from the Consolidated Fund. The action is taken against the Registrar General as nominal defendant and, in the case of fraud, is available only where the fraudulent person is unavailable to be sued or is bankrupt.

2/... For example, land may

For example, land may be lost through fraud where a certificate of title is misappropriated and the wrongdoer forges the owner's signature on a transfer of the land in the title to an innocent third party. When the transfer is registered the person, whose title was misappropriated, is deprived of his or her land. Invariably, in these circumstances the wrongdoer either absconds or disposes of the proceeds of the sale, leaving the Consolidated Fund open to a claim by the deprived owner.

While the government is concerned to ensure that innocent parties who suffer a loss are adequately compensated, it was never intended that such compensation should be paid out of public monies if a more appropriate source of compensation is available.

This Bill therefore provides that where a person has been paid compensation for a loss caused by a member of a professional indemnity fund, for example the Solicitors' Fidelity Fund or the Real Estate Services Council Compensation Fund, the indemnity fund cannot then claim the amount it has paid from the Registrar General.

As a corollary to this, the Bill also provides that if the Registrar General pays a claim to a person who has suffered a loss through the actions of a member of a professional indemnity fund, the Registrar General is entitled to take action to recover the money paid from the wrongdoer or the indemnity fund.

I would point out that this Bill has been initiated partly because of a number of actions in the Supreme Court that are yet to be finally adjudicated upon. In the most recent case the Solicitors' Fidelity Fund has paid compensation to persons who have suffered financial loss through the fraud of a solicitor. Subsequently the Law Society commenced litigation against the Registrar General claiming reimbursement from consolidated revenue of the amount paid.

The Bill presently before the House will not affect the course of that litigation.

Clearly, as professional indemnity funds are established for the specific purpose of reimbursing persons who suffer a loss by reason of the default of their members, any loss of this nature should be made good by the funds and not through the compensation provisions of the Real Property Act, which were provided to pay compensation where no other avenue is available.

This principle, that professions as a group and their insurers should be responsible for correcting the misdeeds of their members, should apply generally and is embodied in this Bill.

In conclusion, I would add that the New South Wales Law Reform Commission is conducting a review of the compensation provisions of the Torrens system generally and is expected to publish its final report later this year. The Commission has advised that its final report, when published, will express support for the proposals in this Bill and that the Commission has no objection to the Bill preceding the publication of the Commission's final report.

I commend the Bill to the House.

FIRST PRINT

**REAL PROPERTY (COMPENSATION) AMENDMENT
BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

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

Under Part 14 of the Real Property Act 1900, a person sustaining loss in a way that relates to the operation of the Act has a right to recover compensation for that loss in an action against the Registrar-General.

In some cases the person may have a right to recover compensation from other sources in respect of the same event—for example, the Solicitor's Fidelity Fund, if the loss was occasioned by the default of a solicitor. The object of this Bill is to make it clear that in such cases the administrators of the relevant fidelity fund or other insurance fund, and not the Registrar-General, will be liable to pay the compensation.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is taken to have commenced on 19 March 1992, the day on which the Minister for Conservation and Land Management made a public announcement of his intention to introduce legislation of this kind.

Clause 3 inserts proposed section 128, the effect of which is to bar the recovery of compensation from the Registrar-General by a professional indemnity fund or other insurer in respect of a loss on which a claim has been made. Furthermore, the Registrar-General, having paid a claim, is subrogated to the rights of the plaintiff against any person responsible for any part of the loss which gave rise to the action and against any insurer. (This means that any rights of the plaintiff to sue any third party in respect of the relevant loss become rights exercisable to the same extent by the Registrar-General.) The proposed section contains a saving of the rights of any person who began an action under Part 14 before the commencement of the proposed Act.

FIRST PRINT

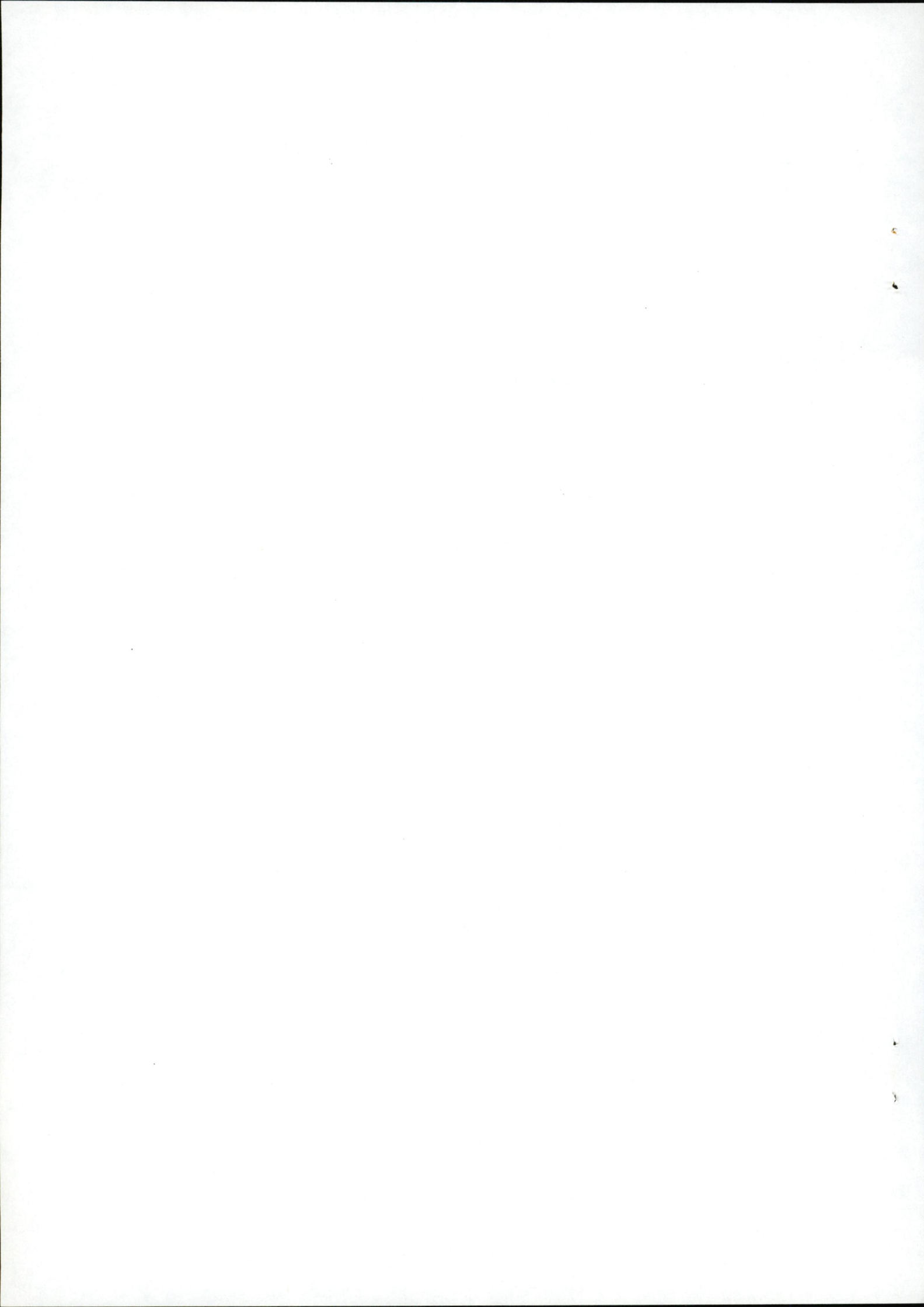
**REAL PROPERTY (COMPENSATION) AMENDMENT
BILL 1992**

NEW SOUTH WALES



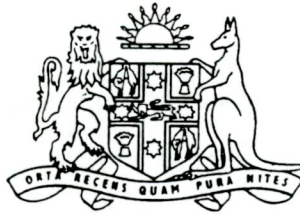
TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Real Property Act 1900 No. 25
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**REAL PROPERTY (COMPENSATION) AMENDMENT
BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Real Property Act 1900 so as to bar certain actions for damages against the Registrar-General by professional indemnity insurers and to provide for subrogation of the Registrar-General to the rights of claimants against such insurers and other persons.

Real Property (Compensation) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Real Property (Compensation) Amendment Act 1992.

5 **Commencement**

2. This Act is taken to have commenced on 19 March 1992.

Amendment of Real Property Act 1900 No. 25

3. The Real Property Act 1900 is amended by inserting after section 127 the following section:

10 **Professional indemnity funds or other insurance**

15 128. (1) A professional indemnity insurer cannot be subrogated to the rights or remedies of any person against the Registrar-General under section 126 or 127. This subsection has effect despite any provision of the Legal Profession Act 1987 or any other Act, law or agreement.

(2) On the payment of damages in accordance with a judgment for the plaintiff in any action brought under section 126 or 127, the Registrar-General is subrogated to the rights and remedies of the plaintiff, in respect of the same loss, against:

- 20 (a) any person who was wholly or partly responsible for the loss; and
(b) any professional indemnity insurer.

25 (3) This section does not apply to an action under section 126 or 127 of this Act commenced before 19 March 1992, but does apply to any such action commenced after that date (and so applies irrespective of when the cause of action accrued).

30 (4) In this section, "**professional indemnity insurer**" means an insurer, scheme or fund (whether or not established by or under any Act or law) by or from which claims are payable, being claims made by persons sustaining loss or damage owing to the negligence, fraud or wilful default of a person carrying on business in a particular profession, trade or calling.

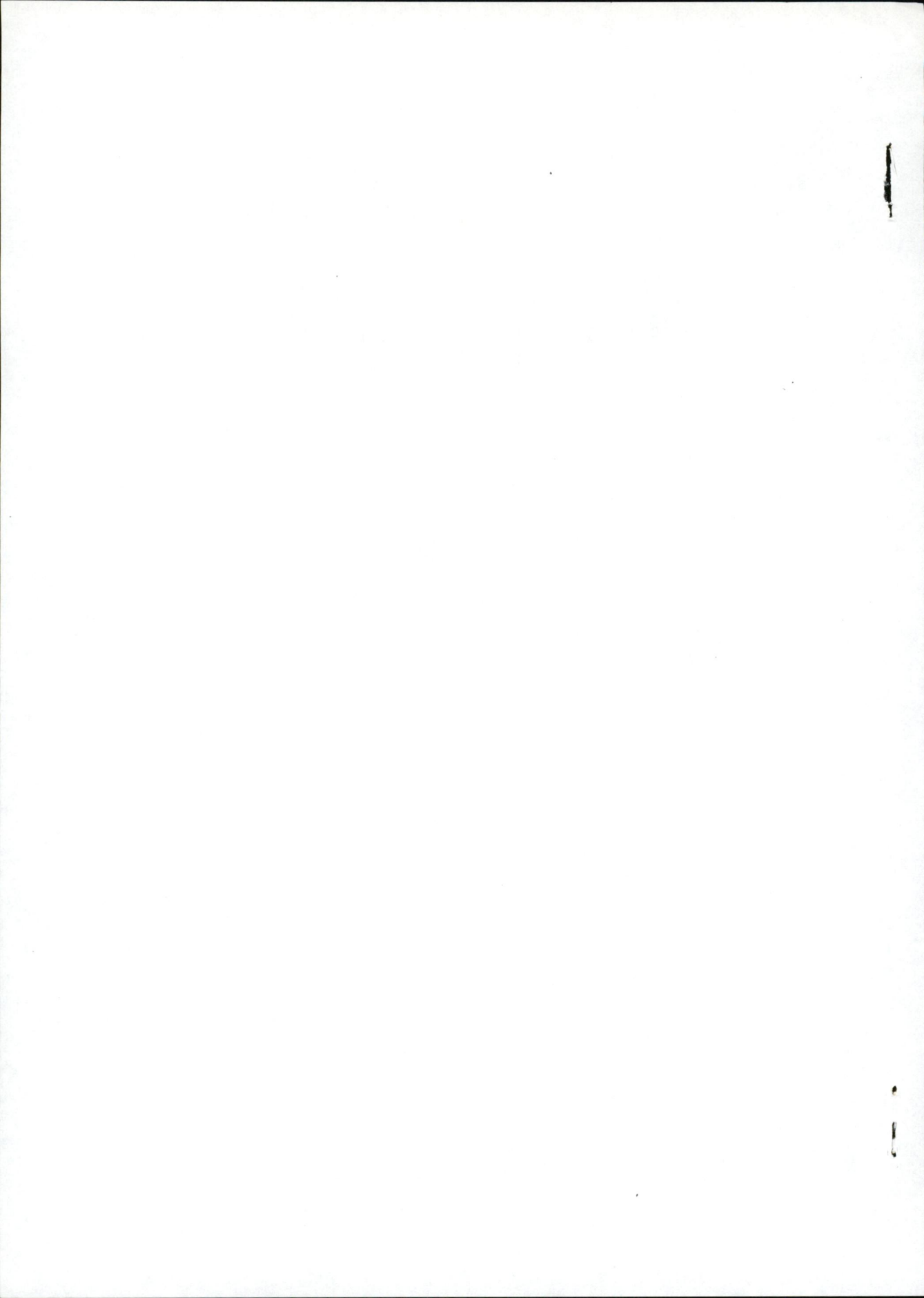
**REAL PROPERTY (COMPENSATION) AMENDMENT
ACT 1992 No. 52**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Real Property Act 1900 No. 25
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**REAL PROPERTY (COMPENSATION) AMENDMENT
ACT 1992 No. 52**

NEW SOUTH WALES



Act No. 52, 1992

An Act to amend the Real Property Act 1900 so as to bar certain actions for damages against the Registrar-General by professional indemnity insurers and to provide for subrogation of the Registrar-General to the rights of claimants against such insurers and other persons. [Assented to 22 September 1992]

Real Property (Compensation) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Real Property (Compensation) Amendment Act 1992.

Commencement

2. This Act is taken to have commenced on 19 March 1992.

Amendment of Real Property Act 1900 No. 25

3. The Real Property Act 1900 is amended by inserting after section 127 the following section:

Professional indemnity funds or other insurance

128. (1) A professional indemnity insurer cannot be subrogated to the rights or remedies of any person against the Registrar-General under section 126 or 127. This subsection has effect despite any provision of the Legal Profession Act 1987 or any other Act, law or agreement.

(2) On the payment of damages in accordance with a judgment for the plaintiff in any action brought under section 126 or 127, the Registrar-General is subrogated to the rights and remedies of the plaintiff, in respect of the same loss, against:

(a) any person who was wholly or partly responsible for the loss;
and

(b) any professional indemnity insurer.

(3) This section does not apply to an action under section 126 or 127 of this Act commenced before 19 March 1992, but does apply to any such action commenced after that date (and so applies irrespective of when the cause of action accrued).

Real Property (Compensation) Amendment 1992

(4) In this section, “**professional indemnity insurer**” means an insurer, scheme or fund (whether or not established by or under any Act or law) by or from which claims are payable, being claims made by persons sustaining loss or damage owing to the negligence, fraud or wilful default of a person carrying on business in a particular profession, trade or calling.

*[Minister's second reading speech made in—
Legislative Assembly on 30 June 1992
Legislative Council on 16 September 1992]*

