

1996—No. 310

## CONVEYANCING ACT 1919—REGULATION

(Relating to the release and variation of easements and the creation of short forms of easements)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Conveyancing Act 1919, has been pleased to make the Regulation set forth hereunder.

KIM YEADON  
Minister for Land and Water Conservation.

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### Commencement

1. This Regulation commences on 1 August 1996.

### Amendments

2. The Conveyancing (General) Regulation 1992 is amended:

(a) by omitting the definition of “deposited plan” from clause 3 (1) and by inserting instead the following definition:

“**deposited plan**” means a plan lodged for registration or recording in the office of the Registrar-General, other than a plan lodged for registration under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986;

(b) by omitting from the definition of “section 88B instrument” in clause 3 (1) the words “creates an easement, profit à prendre, restriction or positive covenant” and by inserting instead the words “creates or releases an easement, or creates a profit à prendre, restriction or positive covenant;”;

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- (c) by omitting the heading to Division 2 of Part 3 and by inserting instead the following heading:

**Division 2—Deposited plans affecting interests in land**

- (d) by omitting clause 24 and by inserting instead the following clause:

**Indication of site of proposed easement of variation of site of existing easement**

24. (1) A notation referring to an intention to create or release an easement, or to create a profit à prendre, restriction or positive covenant must not be entered on a deposited plan unless it is intended that it is to be created or released pursuant to section 88B of the Act.

(2) However, a deposited plan may designate the site of a proposed easement that is intended to be created (otherwise than by registration of the plan) by an instrument of grant or reservation, or the proposed varied site of an existing easement that is intended to be varied by an instrument of variation, if:

- (a) the designation of the site of the proposed easement, or of the proposed variation of existing easement, includes the word “proposed” or an abbreviation of that word; and
- (b) no other statement of the intention to create or vary the easement is entered elsewhere on the plan.

(3) The designation of the site of a proposed easement in accordance with subclause (2) does not, for the purposes of section 88B of the Act, indicate in the prescribed manner an intention to create an easement.

(4) A notation referring to the proposed varied site of an existing easement must not be entered on a deposited plan unless it is intended that the easement is to be varied pursuant to section 47 (5A) of the Real Property Act 1900.

- (e) by omitting clause 26 (3);
- (f) by inserting after clause 26 the following clause:

**Indication of release of easement**

26A. In a deposited plan which, on registration, is intended to release an easement (in respect of some or all of the land to which it formerly applied) pursuant to section 88B of the Act:

- (a) a statement of intention to release the easement must be legibly printed in dense black waterproof ink or dense black plastic ink in the panel provided on the plan form; and

- (b) sufficient information must be shown on the plan, or included in the section 88B instrument, to indicate the extent of the release.
- (g) by inserting after clause 27 (2) the following subclause:
- (2A) Part 1A of the instrument must repeat each statement, if any, of intention to release an easement in the same form (and, where more than one, in the same order) as set out in the information panel in the plan.
- (h) by inserting after clause 27 (3) the following subclause:
- (3A) Part 1A of the instrument must contain, after each statement, a schedule setting out the lot numbers of the lots burdened by each easement, if any, proposed to be released and, opposite the lot number of each lot burdened:
- (a) the number of the lots that receive the benefit of the easement; and
  - (b) the name of any road to which the easement is appurtenant; and
  - (c) the name of any body in whose favour any easement in gross was created; and
  - (d) the name of any prescribed authority or other body in whose favour the easement was created.
- (i) by omitting clause 27 (6) and by inserting instead the following subclause:
- (6) An entry is not to be made in Part 2 of the instrument in respect of a statement which is in the form of the words “right of carriageway”, “right of footway”, “easement to drain water”, “easement to drain sewage”, “easement for repairs”, “easement for batter”, “easement for drainage of sewage”, “easement for drainage of water”, “easement for electricity purposes”, “easement for overhang”, “easement for services”, “easement for water supply”, “easement to permit encroaching structure to remain” or “right of access” unless it is intended that the meaning attributed to the expression concerned in the relevant part of Schedule 4A or Schedule 8 to the Act is to be modified by the instrument.

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- (i) by omitting Form 5 from Schedule 1 and by inserting instead the following form:

**Form 5**

(Cl. 27)

INSTRUMENT SETTING OUT TERMS OF EASEMENTS  
INTENDED TO BE CREATED OR RELEASED, AND OF  
PROFITS A PRENDRE, RESTRICTIONS ON THE USE OF  
LAND AND POSITIVE COVENANTS INTENDED TO BE  
CREATED PURSUANT TO SECTION 88B OF THE  
CONVEYANCING ACT 1919.

Plan: Plan of (*heading of plan*)  
covered by Council  
Certificate No. (*add  
reference as appropriate*)

Full name and address of the owner of the land:

**Part 1**

1. Identity of easement, profit à prendre, restriction, or positive covenant to be created and firstly referred to in the plan. (*Brief description in same terms as used in relevant statement in the plan*)

**Schedule of lots etc affected**

Lots burdened.	Lots benefited, relevant roads, bodies or prescribed authorities.
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(*Set out vertically in numerical sequence of lot numbers. Title details should be added, if the land referred to is outside the plan*)

(*Continue above pattern until all easements, profits à prendre, restrictions, or positive covenants to be created and referred to in the plan have been dealt with*)

**Part 1A**

1. Identity of easement to be released and firstly referred to in the plan. (*Brief description in same terms as used in relevant statement in the plan*)

### Schedule of lots etc affected

Lots burdened by existing easement.	Lots benefited by existing easement, relevant roads, bodies or prescribed authorities.
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*(Set out vertically in numerical sequence of lot numbers. Title details should be added, if the land referred to is outside the plan)*

*(Continue above pattern until all easements to be released and referred to in the plan have been dealt with)*

### Part 2

Terms of easement, profit à prendre, restriction, or positive covenant (“firstly”, or as the case may be) referred to in the plan:

*(Continue above pattern until all easements, profits a prendre restrictions, or positive covenants referred to in the plan have been dealt with)*

Name of person empowered to release, vary or modify restriction, or positive covenant (“firstly”, or as the case may be) referred to in the plan:

*(Not required where it is intended that the restriction may only be released, varied or modified by the owners for the time being of all lots benefited, or by order of the Supreme Court)*

(k) by omitting paragraph (16) of Schedule 4 and by inserting instead the following paragraph:

(16) The plan must contain sufficient information to define the site of:

- (i) any easement intended to be created on the registration of the plan; or
- (ii) any easement intended to be released (in respect of part only of the land to which it formerly applied) on registration of the plan; or
- (iii) any proposed easement, or proposed variation or release of an easement (in respect of part only of the land to which it formerly applied), intended to be created or effected otherwise than by registration of the plan;

and, where necessary, must indicate the relationship of any easements to the boundaries of any affected parcel.

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(1) by inserting after paragraph (9) (a) of Schedule 5 the following subparagraph:

(a1) the attested signatures of the persons who appear to the Registrar-General to be the owners, mortgagees, incumbrancees, or covenant chargees of the land which has the benefit of the easement which is intended to be varied or released; and

(m) by omitting item 18 in Schedule 7 and by inserting instead the following item:

18. On lodgment for registration or recording of a plan, other than a plan prepared solely for the purpose of placing survey information on public record ..... 490.00

In the case of land the subject of a community, neighbourhood or precinct plan under the Community Land Development Act 1989:

(a) for each additional sheet in excess of 4 ..... 53.00

(b) for the management statement accompanying the community, neighbourhood or precinct plan, including any associated plans or sketches ..... 106.00

(c) for any development contract accompanying the community, precinct or neighbourhood plan... 106.00

In addition, for each lot, allotment or portion shown or separately defined on the plan ..... 53.00

And, if the plan is accompanied by a section 88B instrument in which only 1 easement, restriction on the use of land, positive covenant or profit à prendre is to be created, irrespective of the number of lots burdened or benefited, an additional.. ..... 53.00

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And, if the plan is accompanied by a section 88B instrument in which the combined number of easements, restrictions on the use of land, positive covenants or profits à prendre to be created is 2 or more, an additional .....	106.00
And, if the plan is accompanied by a section 88B instrument in which only 1 easement is to be released, irrespective of the number of lots burdened or benefited, an additional .....	53.00
And if the plan is accompanied by a section 88B instrument in which the number of easements to be released is 2 or more, an additional .....	106.00
And, if the plan is lodged for the purpose of consolidating 2 or more folios of the Register kept under the Real Property Act 1900—for each folio of the Register to be consolidated, an additional .....	13.00
And, if a plan lodged in connection with an application to bring land under the Real Property Act 1900 includes land already under that Act and a consolidated folio of the Register kept under that Act is to be created—for each folio to be consolidated, an additional .....	13.00

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**EXPLANATORY NOTE**

Certain provisions of the Conveyancing Act 1919 and the Real Property Act 1900 dealing with easements will be amended by provisions of the Property Legislation Amendment (Easements) Act 1995 ("the amending Act") to be commenced at the same time as this regulation. The object of this regulation is to amend the Conveyancing (General) Regulation 1992 as a consequence of the effect of those amendments.

**Variation of a site of a registered easement**

The amending Act provides a simple procedure for the variation, by registration of memorandum of variation, of an easement registered under the Real Property Act 1900. The proposed regulation amends the Conveyancing (General) Regulation 1992 so as to require notations on a deposited plan indicating the site of a variation of easement. (See clause 2 (d))

**Release of easements on registration of plan**

The amending Act provides for the release of easements on registration or recording of a plan under the Conveyancing Act 1919. The proposed regulation amends the Conveyancing (General) Regulation 1992 so as to provide for the indication of an intention to release an easement to be noted on a deposited plan. (See clause 2 (f))

Provision is also made for the form of an instrument under section 88B of that Act to set out the terms of the easement intended to be released. (See clause 2 (b), (g) and (h). Clause 2 (j) makes the relevant changes to the prescribed form.)

The proposed regulation also prescribes fees in relation to deposited plans lodged for the purpose of releasing an easement and for other purposes. (See clause 2 (m))

**Use of short forms of words to create easements that do not benefit other land**

The amending Act adds to the short forms of words that, when used to create easements in gross or easements for the benefit of other land, are taken to have expanded meanings set out in Schedule 4A or Schedule 8 to the Conveyancing Act 1919. The proposed regulation amends the Conveyancing (General) Regulation 1992 so as to make it clear that certain forms of words must not be used in a section 88B instrument unless it is intended that those words have their relevant expanded meaning used for the purposes of those easements. (See clause 2 (i))

**Cross-easements for party walls**

The amending Act made provision for cross-easements for the support of party walls to be created simply by registration or recording of a plan that shows a lot boundary within a length of the wall and refers to the wall as a “party wall”. The proposed regulation makes a consequential amendment to the Conveyancing (General) Regulation 1992. (See clause 2 (a))

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This regulation is made under the Conveyancing Act 1919, in particular section 202 (the general regulation making power relating to registration and fees).