CONVEYANCING (REAL PROPERTY COMPUTER REGISTER) AMENDMENT ACT, 1979, No. 171

New South Wales

ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

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Act No. 171, 1979.

An Act to amend the Conveyancing Act, 1919, so as to facilitate the keeping of the Register maintained under the Real Property Act, 1900, in a computer and to permit certain resumed land to continue to be subject to that Act; to vary the provisions of the Conveyancing Act, 1919, relating to official searches; and for other purposes. [Assented to, 14th December, 1979.]

Conveyancing (Real Property Computer Register) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Conveyancing (Real Property Short title. Computer Register) Amendment Act, 1979".

2. (1) Except as provided in subsections (2) and (3), this Commence-Act shall commence on the date of assent to this Act. ment.

(2) Section 5 shall, in its application to a provision of Schedules 1-3, commence on the day on which the provision commences.

(3) Section 6 and Schedules 1 and 3 shall commence on the day appointed and notified pursuant to section 2 (2) of the Real Property (Computer Register) Amendment Act, 1979.

3. The Conveyancing Act, 1919, is referred to in this Act as Principal the Principal Act. Act.

4. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT FACILITATING USE OF A COMPUTER REGISTER.

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 3.—FURTHER MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

5. The Principal Act is amended in the manner set forth in Amendment Schedules 1-3. of Act No. 6, 1919.

Conveyancing (Real Property Computer Register) Amendment.

Transitional
provision.

6. Where an office copy of a certificate was issued in respect of the title to land under the Real Property Act, 1900, pursuant to section 197 of the Principal Act, as in force before the commencement of this section, the Registrar-General may, without keeping any copy or record thereof, destroy the certificate and any document that relates to that certificate.

Sec. 5.

SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT FACILITATING USE OF A COMPUTER REGISTER.

(1) (a) Section 64 (2) (a)—

Omit the paragraph, insert instead :—

(a) pursuant to section 17 (2) of the Real Property Act, 1900, or pursuant to section 31A (2) of that Act, created a folio or folios of the Register; or

(b) Section 64 (2) (b)—

Omit "subsection (4) of section 28M", insert instead "section 28M (4)".

(c) Section 64 (2) (b)—

Omit "on any certificate or certificates of title", insert instead "in any folio or folios of the Register".

(2) Section 88 (3) (a)—

Omit "upon", insert instead ", in such manner as he considers appropriate, in".

Conveyancing (Real Property Computer Register) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT FACILITATING USE OF A
COMPUTER REGISTER—*continued.*

(3) (a) Section 88B (3)—

Omit :—

When issuing a certificate of title under the pro-
visions of the Real Property Act, 1900, for land
benefited by any easement, or for land burdened by
any easement or restriction as to user, created by this
section the Registrar-General shall record thereon such
easement or restriction as to user.

(b) Section 88B (3A)—

After section 88B (3), insert :—

(3A) When creating a folio of the Register kept
under the Real Property Act, 1900, for land bene-
fited by any easement, or for land burdened by any
easement or restriction as to user, created by this
section, the Registrar-General shall record in that
folio, in such manner as he considers appropriate,
the easement or restriction as to user, as the case
may be.

(4) (a) Section 88D (3) (a)—

Omit the paragraph, insert instead :—

(a) where the land to which the order relates is
land under the provisions of the Real
Property Act, 1900—make such recordings
in the Register in respect of the restriction
as he considers appropriate; or

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT FACILITATING USE OF A
COMPUTER REGISTER—*continued.*

(b) Section 88D (15)—

Omit the subsection, insert instead :—

(15) Where an agreement referred to in subsection (13) relates to a restriction as to the user of land under the provisions of the Real Property Act, 1900, the Registrar-General, upon lodgment in his office of an application in the form approved under that Act, shall, in the Register kept under that Act, make such recordings with respect to the agreement as he considers appropriate.

(5) Section (8)—

Omit the subsection, insert instead :—

(8) Upon lodgment in his office of a memorandum of release or a memorandum of variation referred to in subsection (7), the Registrar-General shall, in the Register kept under the Real Property Act, 1900, make such recordings with respect to the release or variation as he considers appropriate.

(6) Section 98 (4), (4A)—

Omit section 98 (4), insert instead :—

(4) This section, subsection (2) excepted, applies to and in respect of mortgages under the Real Property Act, 1900.

(4A) Upon—

(a) application to him in the form approved under the Real Property Act, 1900;

Conveyancing (Real Property Computer Register) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT FACILITATING USE OF A
COMPUTER REGISTER—*continued.*

(b) production to him of a certificate under sub-
section (1F) that relates to a mortgage registered
under that Act; and

(c) payment of the fee prescribed under that Act,

the Registrar-General—

(d) shall, in the Register kept under that Act, make
such recordings as he considers appropriate to
give effect to the discharge of the mortgage; and

(e) may, if the relevant grant, certificate of title or
duplicate registered dealing upon which the
mortgage is recorded, or the duplicate registered
mortgage, is produced to him for the purpose,
record thereon the discharge of the mortgage.

(7) (a) Section 196 (5) (b) (i)—

Omit "in which is recorded particulars of the grant
or certificate of title of", insert instead "for".

(b) Section 196 (9) (e)—

Omit "may issue such certificates of title in pursuance
thereof", insert instead ", where land comprised in
the plan is under the provisions of the Real Property
Act, 1900, may create such folios of the Register
kept under that Act".

(c) Section 196 (15)—

Omit "registration under the Real Property Act,
1900,", insert instead "creation of a folio of the
Register kept under the Real Property Act, 1900, or
the registration, under that Act,".

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT FACILITATING USE OF A
COMPUTER REGISTER—*continued.*

(8) Section 196A (4A)—

Omit the subsection, insert instead :—

(4A) Upon receipt of a notice of rescission of a resumption of land under the provisions of the Real Property Act, 1900, the Registrar-General shall—

    (a) make, in the Register kept under that Act, such recordings; and

    (b) create such folios of that Register,

as he considers appropriate.

(9) (a) Section 197 (1)—

Omit "subsection (2)", insert instead "the regulations made under this Act".

(b) Section 197 (1)—

Omit "the Real Property Act, 1900, or the Conveyancing Act, 1919", insert instead "or this Act".

(c) Section 197 (1)—

After "land", insert "(other than land subject to the provisions of the Real Property Act, 1900)".

(d) Section 197 (1) —

After "shall", insert ", if the records kept by him enable him to comply with the requisition".

(e) Section 197 (2)—

Omit the subsection.

(f) Section 197 (5)—

Omit "a misdemeanour", insert instead "an offence and liable to a penalty not exceeding $1,000".

Conveyancing (Real Property Computer Register) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT FACILITATING USE OF A
COMPUTER REGISTER—*continued.*

(g) Section 197 (8)—

> After section 197 (7), insert :—
>
> (8) A prosecution for an offence under subsection
> (5) may be heard and determined by a stipendiary
> magistrate sitting alone in petty sessions.

SCHEDULE 2.   Sec. 5.

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

> Omit the matter relating to Division 3 of Part XXIII, insert
> instead :—
>
> DIVISION 3.—*Plans.—ss.* 196, 196AA.

(2) Section 88A (3)—

> Omit ", as amended by subsequent Acts".

(3) Section 88B (1)—

> Omit ", as amended by subsequent Acts".

(4) (a) Section 88D (3) (b)—

> Omit "Registry", insert instead "Register".

Conveyancing (Real Property Computer Register) Amendment.

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(b) Section 88D (6)—

Omit the subsection, insert instead :—

(6) Where a restriction is recorded pursuant to subsection (3) (a), the restriction is an interest within the meaning of section 42 of the Real Property Act, 1900.

(5) (a) Section 88E (3)—

Omit "it is recorded in the Register kept under that Act", insert instead "the Registrar-General has made, in the Register kept under that Act, such recordings with respect to the restriction as he considers **appropriate**".

(b) Section 88E (6)—

Omit the subsection, insert instead :—

(6) Where a restriction referred to in subsection (2) is recorded in the Register kept under the Real Property Act, 1900, the restriction is an interest within the meaning of section 42 of that Act.

(6) Part XXIII, Division 3, heading—

Omit "*of subdivisions*".

(7) Section 196AA—

After section 196, insert :—

**Presump-
tions
relating to
execution of
certain
plans.**

196AA. (1) Where a plan lodged pursuant to section 196 purports to have been signed or otherwise executed under a power of attorney or under any other power or

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SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

authority, whether statutory or not, the Registrar-General may assume that the plan was so signed or otherwise executed and that there was sufficient power or authority for its being signed or otherwise executed.

(2) Where—

(a) a seal purporting to be the seal of a corporation, whether sole or aggregate, has been affixed to a plan lodged pursuant to section 196; and

(b) the affixing of the seal purports to have been attested by a person or persons holding office in the corporation or by a person or persons authorised to attest the affixing of the seal,

the Registrar-General may assume—

(c) that the seal and attestation are genuine and were lawfully affixed or subscribed, as the case may be, to or on the plan; and

(d) that the person or persons purporting to have attested the affixing of the seal had sufficient authority to attest the affixing of the seal in the capacity in which he or they purported so to do.

(8) Section 197 (3) (a)—

Omit ", to him or to some person on his behalf".

Conveyancing (Real Property Computer Register) Amendment.

SCHEDULE 3.

FURTHER MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 80 (3)—

Omit "memorandum of".

(2) (a) Section 81 (1)—

Omit "memorandum of".

(b) Section 81 (3)—

Omit "memoranda of mortgage made", insert instead "mortgages made under the Real Property Act, 1900,".

(3) Section 82 (2)—

Omit "memorandum of".

(4) Section 84 (2)—

Omit "memorandum of".

(5) Section 35 (2)—

Omit "memorandum of".

(6) (a) Section 86 (1)—

Omit "memorandum of".

(b) Section 86 (3)—

Omit "memoranda of lease made", insert instead "leases made under the Real Property Act, 1900,".

Conveyancing (Real Property Computer Register) Amendment.

SCHEDULE 3—*continued.*

FURTHER MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL
ACT—*continued.*

(7) Section 87 (2)—

Omit "memorandum of".

(8) Section 105—

Omit "encumbrance", insert instead "charge".

(9) Section 106 (17)—

Omit "incumbrance", insert instead "charge".

(10) Section 108—

Omit "incumbrances", insert instead "charges".

(11) Section 109 (5)—

Omit "incumbrances", insert instead "charges".

(12) Section 109A (2)—

Omit "incumbrances", insert instead "charges".

(13) Section 110 (4)—

Omit "incumbrances", insert instead "charges".

(14) (a) Section 111 (1)—

Omit "memorandum of mortgage or incumbrance",
insert instead "mortgage or charge".

Conveyancing (Real Property Computer Register) Amendment.

SCHEDULE 3—*continued.*

FURTHER MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL
ACT—*continued.*

(b) Section 111 (1)—

Omit "incumbrancee", insert instead "chargee".

(c) Section 111 (2)—

Omit "memorandum of mortgage or incumbrance",
insert instead "mortgage or charge".

(15) Section 112 (9)—

Omit "incumbrances", insert instead "charges".

(16) Section 113 (3)—

Omit "incumbrances", insert instead "charges".

(17) Section 115A (4)—

Omit "incumbrances", insert instead "charges".

(18) Section 196A (4B)—

Omit the subsection.