

**REAL PROPERTY (POSSESSORY TITLES)
AMENDMENT ACT, 1979, No. 26**

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 26, 1979.

An Act to amend the Real Property Act, 1900, to provide for the acquisition, by long-continued possession, of title to certain land under the provisions of that Act. [Assented to, 24th April, 1979.]

See also Limitation (Possessory Titles) Amendment Act, 1979; Stamp Duties (Possessory Titles) Amendment Act, 1979.

Real Property (Possessory Titles) 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 :—

Short title. **1.** This Act may be cited as the "Real Property (Possessory Titles) Amendment Act, 1979".

**Commence-
ment.** **2.** (1) Section 1 and this section shall commence upon the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence upon such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Amendment
of Act No.
25, 1900.** **3.** The Real Property Act, 1900, is amended in the manner set forth in Schedule 1.

Sec. 3.

SCHEDULE 1.

AMENDMENTS TO THE REAL PROPERTY ACT, 1900.

(1) Section 1—

After the matter relating to Part VI, insert :—

PART VIA.—POSSESSORY TITLES TO LAND UNDER THE
ACT—ss. 45B–45K.

DIVISION 1.—*Possessory applications*—ss. 45B–
45G.

Real Property (Possessory Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

DIVISION 2.—*Caveats against possessory applications—ss. 45H–45K.*

- (2) Section 3 (a), definitions of “Possessory applicant”, “Possessory application”—

After the definition of “Mortgagee”, insert :—

“Possessory applicant”—Person who makes a possessory application.

“Possessory application”—Application under section 45D.

- (3) Section 12 (1A)—

After “application”, insert “, or of intention to grant a possessory application,”.

- (4) Section 28M (4)—

Omit “and free from any estate or interest which, after the date on which the land was brought under the provisions of this Act by the issue of the qualified certificate of title, arose by prescription or under any statute of limitations”.

- (5) (a) Section 28P (2) (f)—

Omit “45”, insert instead “45C”.

- (b) Section 28P (2) (f)—

After “title”, insert “in respect of which possession commenced before the land was brought under the provisions of this Act”.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(6) (a) Section 33A (4) (e)—

Omit “and”.

(b) Section 33A (4) (f)—

Omit “, upon its issue,”.

(c) Section 33A (4) (f)—

Omit “thereof.”, insert instead “thereof; or”.

(d) Section 33A (4) (g)—

After section 33A (4) (f), insert :—

- (g) a certificate of title showing a possessory applicant as the registered proprietor of an estate or interest in any land and issued as a consequence of the grant of his possessory application shall be deemed to have been lodged by the possessory applicant.

(7) Section 40 (2A)—

After section 40 (2), insert :—

(2A) No folio of the Register shall be impeached or defeasible on the ground of want of notice or of insufficient notice of a possessory application relating to the land therein described, or on account of any error, omission or informality in the application, or in the proceedings pursuant thereto, by the Registrar-General.

(8) Section 45—

Omit the section.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(9) Part VIA—

After Part VI, insert :—

PART VIA.

POSSESSORY TITLES TO LAND UNDER THE ACT.

DIVISION 1.—*Possessory applications.*

45B. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires— ^{Interpre-}
tation.

“current plan” has the same meaning as it has in section 327AA (1) of the Local Government Act, 1919;

“ordinary certificate of title” has the same meaning as it has in Part IVA;

“whole parcel of land” means—

- (a) the whole of the land comprised in a certificate of title or a Crown grant;
- (b) the whole of the residue of land comprised in a certificate of title or a Crown grant that remains after part of the land has been—
 - (i) resumed, appropriated or purchased by a body authorised by any Act to resume or appropriate land;
 - (ii) opened as a public road; or

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SCHEDULE 1—*continued.*
AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(iii) shown in a current plan;

(c) the whole of a lot or portion in a current plan; or

(d) the whole of the residue of a lot or portion in a current plan that remains after part of the lot or portion has been—

(i) resumed, appropriated or purchased by a body authorised by any Act to resume or appropriate land; or

(ii) opened as a public road.

(2) Nothing in this Part affects the operation of section 235B of the Crown Lands Consolidation Act, 1913, in respect of land to which that section relates that has been brought under the provisions of this Act.

Acquisition
of
possessory
title to land
under the
Act.

45C. Except to the extent that statutes of limitation are taken into consideration for the purposes of this Part, no title to any estate or interest in land adverse to or in derogation of the title of the registered proprietor shall be acquired by any length of possession by virtue of any statute of limitations relating to real estate, nor shall the title of any such registered proprietor be extinguished by the operation of any such statute.

Application
for title by
possession.

45D. (1) Where, at any time after the commencement of this Part, a person is in possession of land under the provisions of this Act and—

(a) the land is a whole parcel of land;

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

- (b) the title of the registered proprietor of an estate or interest in the land would, at or before that time, have been extinguished as against the person so in possession had the statutes of limitation in force at that time and any earlier time applied, while in force, in respect of that land; and
- (c) the land is comprised in a Crown grant or an ordinary certificate of title or is comprised in a qualified certificate of title and the possession by virtue of which the title to that estate or interest would have been extinguished as provided in paragraph (b) commenced after the land was brought under the provisions of this Act by the issue of the qualified certificate of title,

that person in possession may, subject to this section, apply to the Registrar-General to be recorded in the Register as the proprietor of that estate or interest in the land.

(2) Where, at any time after the commencement of this Part—

- (a) a person is in possession of part only of a whole parcel of land; and
- (b) any boundary that limits or defines the land in his possession is, to the extent that it is not a boundary of the whole parcel of land, an occupational boundary that represents or replaces a boundary of the whole parcel,

he may, unless the part of the whole parcel of which he is in possession lies between such an occupational boundary and the boundary of the whole parcel that it represents or replaces, apply to the Registrar-General to be recorded in the Register as the proprietor of the same estate or

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AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

interest in that whole parcel of land as could have been the subject of an application by him under subsection (1) if the land in his possession had been that whole parcel of land and subsection (1) (b) and (c) had been complied with in relation thereto.

(3) A possessory application may not be made in respect of an estate or interest in any land, or in any part of any land, of which—

- (a) Her Majesty or a Minister of the Crown;
- (b) a statutory body representing the Crown;
- (c) a corporation which is constituted by an Act and of which, in the case of a corporation aggregate, at least one of the members is appointed by the Governor or a Minister of the Crown; or
- (d) a council or county council within the meaning of the Local Government Act, 1919,

is the registered proprietor.

(4) A possessory application may not be made in respect of an estate or interest in land if—

- (a) the registered proprietor of that or any other estate or interest in the land became so registered without fraud and for valuable consideration; and
- (b) the whole of the period of adverse possession that would be claimed in the application if it were lodged would not have occurred after that proprietor became so registered,

unless the application is made on the basis that the estate or interest applied for will be subject to the estate or interest of that registered proprietor if the application is granted.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(5) A possessory application shall be in the approved form and shall be accompanied by such evidence and documents of title as the Registrar-General may require.

(6) For the purposes of subsection (2), a reference to an occupational boundary that represents or replaces a boundary of a whole parcel of land is a reference to—

- (a) a fence, wall or other structure intended to coincide with or represent that boundary of the whole parcel;
- (b) a channel, ditch, creek, river or other natural or artificial feature that is itself land and is in close proximity to that boundary of the whole parcel; or
- (c) a give and take fence with respect to that boundary of the whole parcel.

45E. (1) Subject to section 45F, the Registrar-General may grant a possessory application if he is satisfied that the application—

- (a) was authorised by section 45D (1) or (2);
- (b) was not made in breach of section 45D (3) or (4); and
- (c) complies with section 45D (5).

(2) Where the Registrar-General intends to grant a possessory application and, pursuant to section 12 (1) (h) or 12 (1A), gives notice of that intention he shall, in the notice, specify a period (being not less than 1 month after the date of the notice) before the expiration of which the application will not be granted.

Real Property (Possessory Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(3) A possessory application shall be granted by recording the applicant in the Register as the proprietor of an estate or interest in the whole parcel of land the subject of the application, being the estate or interest applied for or such lesser estate or interest as the Registrar-General considers appropriate, free from all estates and interests recorded in the Register that would have been extinguished as referred to in section 45D (1) (b) other than—

- (a) interests referred to in subsection (4); and
- (b) interests to which the application has been made subject pursuant to section 45D (4) or 45F (2).

(4) Where, immediately before the grant of a possessory application—

- (a) any easement was appurtenant to, or covenant benefited, the land the subject of the application or any part thereof or the land the subject of the application was burdened by an easement or covenant; or
- (b) the land the subject of the application or any part thereof, or the registered proprietor of that land, was subject to any condition or other provision (not being an easement or covenant),

the easement, covenant, condition or other provision continues to have the same force and effect in relation to the estate or interest acquired by the possessory applicant as it would have had if he had acquired that estate or interest by a transfer.

(5) Without affecting the generality of subsection (4), the grant of a possessory application has, for the purposes of sections 51 and 52, the same effect as the registration of a transfer to the applicant.

Real Property (Possessory Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(6) The Registrar-General may make such recordings in the Register, and take such other action, as he considers necessary or proper as a consequence of the grant of a possessory application.

(7) In this section “covenant” means a restriction, arising under covenant or otherwise, as to the user of land.

45F. (1) The Registrar-General shall not grant a possessory application—

Restrictions on grant of possessory application.

- (a) if a notice referred to in section 45E (2) has been given and the period specified therein has not expired; or
- (b) except where the application is granted as provided by subsection (2)—if there is in force a caveat lodged under section 45H (1) forbidding the grant of the application.

(2) Where—

- (a) a possessory application is lodged with the Registrar-General within 3 years after the commencement of this Part;
- (b) a caveat forbidding the grant of the application is lodged under section 45H (1); and
- (c) the Registrar-General is satisfied that the caveator is the registered proprietor of any estate or interest in the land the subject of the application or in any part of that land,

the Registrar-General shall not grant the application unless, with the consent of the possessory applicant, he grants the application subject to the estate or interest referred to in paragraph (c).

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(3) Where—

- (a) a possessory application is lodged with the Registrar-General within 3 years after the commencement of this Part; and
- (b) a caveat forbidding the grant of the application is lodged under section 45H (1) under which the caveator claims to be entitled beneficially to any estate or interest in the land the subject of the application or in any part of that land,

the Registrar-General shall not grant the application if the caveator, after being given by the Registrar-General the prescribed notice has, within the prescribed period, become registered as the proprietor of the estate or interest claimed in the caveat unless the application is granted as provided by subsection (2).

(4) In this section—

“prescribed notice” means a notice requiring a caveator to become registered as the proprietor of the estate or interest claimed in his caveat;

“prescribed period” means such period, being not less than 3 months, as the Registrar-General may allow for a caveator to whom a prescribed notice has been given to become registered as the proprietor of the estate or interest claimed in his caveat.

Withdrawal
of
possessory
application.

45G. (1) A possessory applicant may withdraw his possessory application before it is granted and, where the application is so withdrawn, the Registrar-General, when requested in writing so to do, shall return to the possessory applicant, or to the person appearing to the Registrar-General to be entitled, all documents lodged in support of the application.

Real Property (Possessory Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(2) If it appears to the Registrar-General—

- (a) that a possessory applicant has not complied with the requirements of this Act relating to possessory applications;
- (b) that the evidence adduced by a possessory applicant in support of his application is deficient in any material particular; or
- (c) that a possessory applicant has not proceeded with his application within a reasonable time, having regard to the circumstances of the case,

he may reject the application.

(3) Where, by section 45F (2) or (3), the Registrar-General is precluded from granting a possessory application, he shall reject the application.

DIVISION 2.—*Caveats against possessory applications.*

45H. (1) A person claiming an estate or interest in land the subject of a possessory application may, at any time before the application is granted, lodge with the Registrar-General a caveat in the approved form forbidding the grant of the application. Interested person may lodge caveat.

(2) A caveat lodged under subsection (1) shall state the name and address of the caveator, shall contain a sufficient description to identify the land and the estate or interest therein claimed by the caveator and shall be signed by the caveator or by his solicitor, known agent or attorney.

(3) The provisions of section 72 (4) and (6) apply to a caveat lodged under subsection (1).

Real Property (Possessory Titles) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*Lapse of
caveats.

45I. (1) Where a caveat forbidding the grant of a possessory application is lodged under section 45H (1) within 3 years after the commencement of this Part, the caveat lapses—

- (a) where the Registrar-General is precluded by section 45F (2) or (3) from granting the application—at the expiration of that period of 3 years unless previously withdrawn;
- (b) where the application is granted by the Registrar-General pursuant to section 45F (2)—upon the grant of the application; or
- (c) where the caveator has been given the prescribed notice referred to in section 45F (3) and, within the prescribed period so referred to, has not become registered as the proprietor of the estate or interest claimed in the caveat—at the expiration of the prescribed period so referred to.

(2) Where a caveat forbidding the grant of a possessory application is lodged under section 45H (1) more than 3 years after the commencement of this Part, the caveat lapses 3 months after it is lodged unless the caveator has, within that time—

- (a) taken proceedings in any court of competent jurisdiction in which an issue is whether section 45D (1) (b) has been complied with in relation to the estate or interest claimed in the caveat and given written notice of the proceedings to the Registrar-General; or
- (b) obtained from the Supreme Court an order or injunction restraining the Registrar-General from granting the application, either absolutely or until

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

the further order of the Court, and served the order or injunction on or given written notice thereof to the Registrar-General,

and those proceedings have not been determined (otherwise than in favour of the caveator) or, as the case may be, that order or injunction is still in force.

45J. (1) Where a caveat against a possessory application has been lodged by a caveator claiming the land the subject of the application or a portion thereof or an interest therein adversely to the applicant, the applicant may state a case for the opinion and direction of the Supreme Court upon the matter, and the caveator may apply for an injunction until the further order of the Court, and the Court may direct the caveator to lodge with the Court, on or before a certain day, a case on his own behalf, together with such other particulars (if any) as the Court thinks fit to order. ^{Stated case.}

(2) The Court shall determine any facts in contest and may add to or alter the stated case in accordance with any such determination.

(3) The Court shall decide the stated case or, if the stated case has been added to or altered in accordance with subsection (2), the stated case as added to or altered, and the decision of the Court finally upon the matter shall be conclusive on the parties and on the Registrar-General.

45K. Where proceedings referred to in section 45I with respect to a possessory application have not, within such time as to the Registrar-General appears reasonable in the circumstances, been continued to such a stage as to have resulted in a decision, judgment or order by the court in ^{Where caveator fails to prosecute proceedings.}

Real Property (Possessory Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

which the proceedings are pending, the Registrar-General, on giving one month's notice to the caveator or to the solicitor whose name appears on the caveat of his intention to proceed, or if neither of those courses is practicable, then on posting or exhibiting on the land to which the caveat relates for a period of 30 days notice of his intention to proceed, may proceed with, and may grant, the application unless in the meantime an order or injunction restraining the Registrar-General from further proceeding with the application has been served on him.

(10) Section 122 (1)—

After "Act", insert ", or to a possessory application,".

(11) Section 123—

Omit "or Part IVB", insert instead ", Part IVB or Part VIA".

(12) Section 127—

After "registration", insert "otherwise than under section 45E".

(13) Section 130 (4)—

After section 130 (3), insert :—

(4) No action based on a claim of deprivation of land through the grant of a possessory application shall be brought against the Registrar-General where the person alleging the deprivation, or the person through or under whom he claims title, had notice by personal service or otherwise or was aware that the application had been made, and had omitted to lodge a caveat forbidding the grant of the application or had allowed such a caveat to lapse.

Real Property (Possessory Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE REAL PROPERTY ACT, 1900—*continued.*

(14) (a) Section 136 (1)—

Omit “he may”, insert instead “ or where a possessory applicant has pursuant to a possessory application made by him become registered as the proprietor of an estate or interest in land comprised in a certificate of title or grant, the Registrar-General may”.

(b) Section 136 (1)—

After “retained” where secondly occurring, insert “, or by whom any certificate of title or grant showing any such recording is held”.
