

REAL PROPERTY (AMENDMENT) ACT, 1981, No. 59

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 59, 1981.

An Act to amend the Real Property Act, 1900, with respect to the incorporation of covenants into dealings relating to land under that Act and the destruction of documents by the Registrar-General. [Assented to, 26th May, 1981.]

Real Property (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 (Amendment) Act, 1981".

Commencement.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act.

(2) Section 3, in its application to Schedule 1 (1), (2), (4), (5) and (6), and Schedule 1 (1), (2), (4), (5) and (6) shall be deemed to have commenced on 31st August, 1978.

Amendment of Act No. 25, 1900.

3. The Real Property Act, 1900, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE REAL PROPERTY ACT, 1900.

(1) (a) Section 1, matter relating to Part VIII—

Omit "SHORT FORMS OF COVENANTS", insert instead "INCORPORATED COVENANTS".

(b) Section 1, matter relating to Part VIII—

Omit "81", insert instead "80A".

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

(2) (a) Section 36 (1)—

Omit the subsection, insert instead:—

(1) In this section—

“caveat” means a caveat referred to in section 45H or 72;

“memorandum” has the same meaning as it has in section 80A (1).

(b) Section 36 (1A), (1B), (1C)—

After “dealing” wherever occurring, insert “, memorandum”.

(3) (a) Section 38 (6)—

Omit the subsection, insert instead:—

(6) Subject to the Archives Act, 1960, the Registrar-General may—

(a) destroy any document that he is not under a duty to deliver or issue to any person, whether or not it is part of the Register; or

(b) deliver to a person who, in his opinion, intends to preserve it for historical purposes any document that, by paragraph (a), he is empowered to destroy.

(b) Section 38 (7)–(10)—

After section 38 (6), insert:—

(7) The Registrar-General shall, before destroying a document under subsection (6) (a), make a transparency of that document if—

(a) where the document is part of the Register, it evidences a subsisting interest; or

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SCHEDULE 1—*continued.*

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

(b) where the document is not part of the Register, he would, but for subsection (6) (a), have a duty to preserve it.

(8) The Registrar-General shall preserve a transparency of any document referred to in subsection (7) (a) or (b) for as long as the interest evidenced by the document subsists or for as long as he would, but for subsection (6) (a), have had a duty to preserve the document, as the case may be.

(9) Where a transparency of a document is preserved under subsection (8) and that document would, if it had not been destroyed under subsection (6) (a), be part of the Register, whether for all purposes or for the purpose only of section 96B, the transparency shall be part of the Register for all purposes or for that purpose, as the case may be.

(10) In subsections (7), (8) and (9), “transparency” has the same meaning as it has in section 2 of the Evidence (Reproductions) Act, 1967.

(4) (a) Section 39 (1A) (b)—

Before “caveat”, insert “memorandum or”.

(b) Section 39 (1A)—

After “dealing” where secondly occurring, insert “, memorandum”.

(5) Part VIII, heading—

Omit “SHORT FORMS OF COVENANTS”, insert instead “INCORPORATED COVENANTS”.

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

(6) Section 80A—

After section 80, insert:—

Incorporation of provisions contained in memorandum or covenants in lease.

80A. (1) In this section, “memorandum” means a memorandum in the approved form setting forth provisions which are capable of being covenants in a dealing of a class which is specified in the memorandum.

(2) The Registrar-General—

- (a) shall file any memorandum which has been lodged with him and which he has not rejected under section 39 (1A); and
- (b) may distinctively number and file a memorandum on his own behalf.

(3) A memorandum filed under subsection (2) shall be retained by the Registrar-General and shall, for the purposes only of section 96B, be deemed to be part of the Register.

(4) Where a dealing relating to land under the provisions of this Act is of a class specified in a memorandum filed in the office of the Registrar-General and contains a provision which incorporates in the dealing (with or without amendment) any or all of the provisions set out in that memorandum, those provisions or, as the case may be, those provisions as amended shall be deemed to be set out at length in the dealing.

(5) Where a lease of land under the provisions of this Act contains a provision which incorporates in the lease (with or without amendment) covenants set out in a specified lease of the same land, being a lease registered under this Act, those covenants or, as the case may be, those covenants as amended shall be deemed to be set out at length in the firstmentioned lease.

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SCHEDULE 1—*continued.*

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

(6) Nothing in subsections (4) and (5) shall be construed as limiting the effect, if any, of a provision in a dealing which incorporates in the dealing covenants or other provisions otherwise than as referred to in those subsections.
