

**CONVEYANCING (PLAN REGISTRATION)  
AMENDMENT ACT 1986 No. 150**

NEW SOUTH WALES



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**CONVEYANCING (PLAN REGISTRATION)  
AMENDMENT ACT 1986 No. 150**

NEW SOUTH WALES



**Act No. 150, 1986**

An Act to amend the Conveyancing Act 1919 in relation to the registration or recording of plans. [Assented to, 17 December 1986]

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See also: Strata Titles (Plan Registration) Amendment Act 1986; Real Property (Plan Registration) Amendment Act 1986; Local Government (Plan Registration) Amendment Act 1986.

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**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 "Conveyancing (Plan Registration) Amendment Act 1986".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

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

**Amendment of Act No. 6, 1919**

3. The Conveyancing Act 1919 is amended in the manner set forth in Schedules 1 and 2.

**Savings**

4. (1) A plan registered or recorded in the office of the Registrar-General under section 196 of the Conveyancing Act 1919 before the commencement of this Act shall be deemed to have been registered or recorded in that office under Division 3 of Part XXIII of that Act, as amended by this Act.

(2) A reference in any Act or other instrument enacted, made or entered into before the commencement of this Act to section 196 of the Conveyancing Act 1919 shall be read and construed as a reference to Division 3 of Part XXIII of that Act, as amended by this Act.

(3) Anything done before the commencement of this Act for the purposes of any provision of section 196 of the Conveyancing Act 1919 shall be deemed to have been done for the purposes of the corresponding provision of Division 3 of Part XXIII of that Act, as amended by this Act.

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## SCHEDULE 1

(Sec. 3)

SUBSTITUTION OF DIVISION 3 OF PART XXIII OF THE  
CONVEYANCING ACT 1919

Part XXIII, Division 3—

Omit the Division, insert instead after section 194:

DIVISION 3—*Plans***Interpretation**

195. In this Division—

- (a) a reference to the signature of a person includes, where the person is a corporation, a reference to the seal of the corporation; and
- (b) a reference to a division of land includes a reference to any subdivision.

**Lodgment of plans with Registrar-General**

195A. (1) Where a plan of a consolidated lot, a public road or a division of land is required by law to be registered, that plan shall, unless the contrary intention appears, be lodged in the office of the Registrar-General for registration under this Division.

(2) Any person who effects or intends to make a lawful division of land, a plan of which is not required by law to be registered, may lodge in the office of the Registrar-General a plan of the division of the land for registration under this Division.

(3) The Registrar-General may accept lodgment of a plan, other than a plan referred to in subsection (1) or (2), whether or not it complies with section 195C.

**Refusal to accept lodgment**

195B. The Registrar-General may refuse to accept lodgment of—

- (a) a plan of land under the provisions of the Real Property Act 1900 that, in the Registrar-General's opinion, illustrates without material change a lot in a plan registered or recorded in the office of the Registrar-General that constitutes a current plan under section 327AA of the Local Government Act 1919;

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SCHEDULE 1—*continued*

SUBSTITUTION OF DIVISION 3 OF PART XXIII OF THE  
CONVEYANCING ACT 1919—*continued*

- (b) a plan of land not under the provisions of the Real Property Act 1900, unless it is a plan of a division of land or is lodged for the purposes of a primary application under that Act; or
- (c) a plan which does not comply with a requirement made with respect to the plan by or under this or any other Act.

**Form and certification of plans**

195C. A plan lodged under this Division shall—

- (a) be prepared in the prescribed manner;
- (b) contain all prescribed particulars;
- (c) be certified, in the form prescribed under the Surveyors Act 1929, by a surveyor registered under that Act, unless the Registrar-General dispenses with the certificate; and
- (d) contain a statement showing—
  - (i) which roads (if any) shown on the plan are intended to be dedicated to the public; and
  - (ii) whether any public reserve or drainage reserve shown on the plan is intended to be created by registration of the plan.

**Signatures and consents**

195D. (1) The Registrar-General shall not register or record a plan lodged under this Division (other than a plan referred to in paragraph (c) or (g) of the definition of “plan of subdivision” in section 327AA (1) of the Local Government Act 1919) which, if it were registered or recorded in the office of the Registrar-General, would become a current plan under section 327AA of that Act, or which bears a statement of intention—

- (a) to dedicate specified land as a public road, as referred to in section 336 (1) of that Act;
- (b) to create a public reserve, as referred to in section 340D of that Act;

SCHEDULE 1—*continued*SUBSTITUTION OF DIVISION 3 OF PART XXIII OF THE  
CONVEYANCING ACT 1919—*continued*

- (c) to create a drainage reserve, as referred to in section 340E of that Act; or
- (d) to create an easement, a restriction on the use of land or a positive covenant, as referred to in section 88B (2),

unless the plan is signed—

- (e) where the plan relates to land under the provisions of the Real Property Act 1900—
  - (i) by the registered proprietor of the land; and
  - (ii) by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in the folio of the Register kept under that Act relating to the land; or
- (f) where the plan relates to land which is not under the provisions of that Act, by the persons who appear to the Registrar-General, on consideration of the last registered deed relating to the land and of such further evidence as may be tendered to the Registrar-General, to be—
  - (i) the owner of the land; and
  - (ii) a mortgagee, incumbrancee or covenant chargee of the land.

(2) Without limiting the effect of subsection (1), the Registrar-General may refuse to register or record a plan referred to in that subsection unless consents in writing to the registration or recording of the plan signed by (or by an agent authorised by) such of the following persons as the Registrar-General may determine:

- (a) where the plan relates to land under the provisions of the Real Property Act 1900—
  - (i) the lessee under any lease, or the judgment creditor under any writ, recorded in the folio of the Register kept under that Act relating to the land;

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SCHEDULE 1—*continued*

SUBSTITUTION OF DIVISION 3 OF PART XXIII OF THE  
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(ii) the caveator under a caveat affecting any estate or interest in that land; or

(b) where the plan relates to land which is not under the provisions of that Act, the persons who appear to the Registrar-General, on consideration of the last registered deed relating to the land and of such further evidence as may be tendered to the Registrar-General, to be—

(i) the lessee under any lease, or the judgment creditor under any writ, relating to that land; or

(ii) a person having or claiming any other estate or interest in that land,

are lodged in the office of the Registrar-General.

(3) In relation to any particular plan lodged for registration or recording as referred to in subsection (1), the Registrar-General may, without giving notice to any person, dispense with the requirement for a person mentioned in that subsection to sign the plan.

(4) Nothing in this section affects or prejudices the enforcement by any person of any remedy which the person may have because of the registration or recording of a plan which has not been signed (or the registration or recording of which has not been consented to) by every person having an estate or interest in the land to which the plan relates.

(5) Where a remedy referred to in subsection (4) is an action in damages and—

(a) the person against whom the remedy may be available ceases to be liable for the payment of damages; or

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SCHEDULE 1—*continued*

SUBSTITUTION OF DIVISION 3 OF PART XXIII OF THE  
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- (b) the person liable to pay damages has died, is bankrupt or insolvent or cannot be found within the jurisdiction,

damages with costs may be recovered from the Closer Settlement and Public Reserves Fund or the Consolidated Fund by action against such person as the Governor may appoint as nominal defendant.

**Recording of plans which are not to be registered**

195E. (1) On lodgment of a type of plan which the Registrar-General is not by law required to register, the Registrar-General may record the plan and may do so in such manner as the Registrar-General thinks appropriate.

(2) The Registrar-General may refuse to record and may reject a plan lodged pursuant to section 195A (3) or the lodgment of which might have been refused under section 195B even though the Registrar-General accepted lodgment of the plan.

**Certain plans to be in registrable form**

195F. (1) The Registrar-General shall not register and may reject a plan lodged under this Division for registration if the Registrar-General is not satisfied that the plan is in registrable form.

(2) For the purposes of subsection (1), a plan is not in registrable form if—

- (a) the plan does not comply with a requirement made with respect to the plan by or under this or any other Act; or
- (b) any boundary shown on the plan that existed before the plan was prepared is not correctly defined on the plan.



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SCHEDULE 1—*continued*

SUBSTITUTION OF DIVISION 3 OF PART XXIII OF THE  
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**Registration of plans**

195G. (1) Where the Registrar-General is satisfied that a plan lodged under section 195A (1) or (2) is in registrable form, the Registrar-General shall register the plan by affixing the Registrar-General's seal to the plan and, 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 as the Registrar-General considers appropriate.

(2) The Registrar-General may refuse to register and may reject a plan lodged under this Division and relating to land under the provisions of the Real Property Act 1900—

- (a) if any relevant grant or certificate of title has not been lodged for the purpose of enabling the plan to be registered; or
- (b) where the grant or certificate of title is already in the custody of the Registrar-General, if—
  - (i) written notice has been given to such persons as the Registrar-General thinks fit of the Registrar-General's intention to use the grant or certificate of title for the purpose of registering the plan; and
  - (ii) any of those persons, within the time limited in the notice for the purpose, notifies the Registrar-General in writing of the person's refusal to permit the grant or certificate of title to be so used.

**Amendment of plans**

195H. (1) The Registrar-General may, on the application of any person with an interest in any land to which a plan registered or recorded under this Division relates, or without any such application, and on such evidence and after such notices (if any) as appear to the Registrar-General to be necessary, amend the plan for the purpose of correcting any error in or supplying any omission from the plan.

SCHEDULE 1—*continued*SUBSTITUTION OF DIVISION 3 OF PART XXIII OF THE  
CONVEYANCING ACT 1919—*continued*

## (2) An amendment to a plan—

- (a) shall not render original words or symbols illegible;
- (b) shall bear the date of the amendment on the plan; and
- (c) shall be initialled by the Registrar-General or a person authorised by the Registrar-General.

(3) Except as provided by subsection (4), an amendment shall take effect as if the error corrected or omission supplied had not been made.

(4) An amendment made under the authority of this section does not affect the construction of any instrument made or entered into before the amendment so as to prejudice any person claiming under that instrument.

**Conveyance of land in plans**

195i. A conveyance of land comprised in a plan registered or recorded under this Division may be effected by reference to the plan.

**Effect of contravention of Division or of rejection of plans**

195j. (1) A contravention of any of the provisions of this Division does not invalidate any instrument intended to affect or evidence the title to any land.

(2) Where a plan lodged under this Division is rejected, the Registrar-General may retain all of the fees paid in respect of the plan or such proportion of those fees as the Registrar-General determines.

**Presumptions relating to execution, etc., of certain plans**

196. (1) The Registrar-General is entitled to assume that a person who lodges a plan under this Division has authority from all persons having an interest in the land comprised in the plan—

- (a) to lodge the plan with the Registrar-General;

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SCHEDULE 1—*continued*

SUBSTITUTION OF DIVISION 3 OF PART XXIII OF THE  
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- (b) to uplift the plan for amendment or to withdraw it from registration or recording and, in either case, to give a receipt for the plan; and
- (c) to attend to all other matters which may arise in connection with the registration or recording of the plan.

(2) Where a plan lodged or consent given under this Division purports to have been signed under a power of attorney or under any other power or authority, whether statutory or not, the Registrar-General may assume that the plan was so signed and that there was sufficient power or authority for its being signed.

(3) Where—

- (a) a seal purporting to be the seal of a corporation, whether sole or aggregate, has been affixed to a plan lodged or a consent given under this Division; 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 to, or subscribed on, the plan or consent; 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 the person or persons purported to do so.

(4) If a plan is registered or recorded under this Division by the Registrar-General, the plan shall be deemed to have been sufficiently signed for the purposes of this Division.

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SCHEDULE 2

(Sec. 3)

CONSEQUENTIAL AMENDMENTS TO THE CONVEYANCING ACT 1919

Section 88B (Creation of easements, restrictions on use of land and positive covenants by plans)—

Section 88B (2), (3)—

Omit "section 196" wherever occurring, insert instead "Division 3 of Part XXIII".

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