

**CONVEYANCING (FORESTRY RIGHTS) AMENDMENT
ACT 1987 No. 242**

NEW SOUTH WALES



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CONVEYANCING (FORESTRY RIGHTS) AMENDMENT ACT 1987
No. 242

NEW SOUTH WALES



Act No. 242, 1987

An Act to amend the Conveyancing Act 1919 in relation to profits à prendre and forestry rights. [Assented to 16 December 1987]

See also Real Property (Forestry Rights) Amendment Act 1987; Forestry (Forestry Rights) Amendment Act 1987.

*Conveyancing (Forestry Rights) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Conveyancing (Forestry Rights) Amendment Act 1987.

Commencement

2. This Act shall commence on a day to be appointed by proclamation.

Amendment of Act No. 6, 1919

3. The Conveyancing Act 1919 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 45 (**Grant of easements etc. by way of use**)—
Section 45 (1)—
After “easement,” wherever occurring, insert “profit à prendre.”
- (2) Section 45A (**Reservation of easements etc. in conveyances of land**)—
Section 45A (1)—
After “easement,” wherever occurring, insert “profit à prendre.”
- (3) Section 67 (**General words in conveyances of land or buildings**)—
Section 67 (1), (2)—
After “easements,” wherever occurring, insert “profits à prendre.”
- (4) Section 87A (**Definitions**)—
(a) Section 87A, definition of “positive covenant”—
Before “positive”, insert “public”.
(b) Section 87A—
Insert, in appropriate alphabetical order, the following definitions:
“forestry covenant”, in relation to land, means a covenant that is incidental to a forestry right and includes any such covenant that imposes obligations requiring—
(a) the construction and maintenance of access roads within the land;
(b) the erection and maintenance of fencing on the land; or
(c) the provision and maintenance of water supplies within the land,
or imposes any term or condition with respect to the performance of or failure to perform any such obligation;

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SCHEDULE 1—AMENDMENTS—*continued*

“forestry right” means an interest in land pursuant to which a person having the benefit of the interest is entitled—

- (a) to enter the land;
- (b) to establish, maintain and harvest a crop of trees on the land; and
- (c) to construct and use such buildings, works and facilities as may be necessary or convenient to enable the person to establish, maintain and harvest the crop;

“positive covenant” means a forestry covenant or a public positive covenant;

(5) Sections 88AA, 88AB—

After section 88, insert:

Limitation of enforceability of profits à prendre

88AA. (1) Except to the extent to which this Division otherwise provides, a profit à prendre expressed to be created by an instrument coming into operation after the commencement of the Conveyancing (Forestry Rights) Amendment Act 1987 shall not be enforceable against a person interested in land claimed to be subject to the profit à prendre (other than a person who is a party to the instrument) unless the instrument indicates—

- (a) the land which is subject to the burden of the profit à prendre; and
- (b) in the case of a profit à prendre that is expressed to benefit land—the land to which the benefit of the profit à prendre is appurtenant.

(2) This section shall not prevent the enforcement, by a person entitled to a reversion, remainder or other estate or interest in any land, of any agreement against a person entitled to the estate or interest on which the reversion, remainder or other estate or interest is expectant.

Forestry rights to be deemed to be profits à prendre

88AB. A forestry right shall, for all purposes, be deemed to be a profit à prendre.

(6) Section 88B (**Creation of easements, profits à prendre and restrictions as to user by plans**)—

- (a) Section 88B (2) (c)—

After “easements”, insert “or profits à prendre”.

- (b) Section 88B (3)—

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After “easement” where firstly, fourthly and sixthly occurring, insert “, profit à prendre”.

(c) Section 88B (3)—

After “easement” where fifthly occurring, insert “or profit à prendre”.

(7) Section 88D (**Regulation of use of land held by a prescribed authority**)—

Before “positive” wherever occurring, insert “public”.

(8) Section 88E (**Regulation of use of land not held by a prescribed authority**)—

Before “positive” wherever occurring, insert “public”.

(9) Section 88EA—

After section 88E, insert:

Regulation of use of land subject to a forestry right

88EA. (1) A restriction on the use of land, or a forestry covenant, may be imposed on land the subject of a forestry right by an instrument (whether the same instrument as that by which the forestry right is created or by another instrument) that—

(a) describes the land in a manner enabling it to be identified;
and

(b) specifies the particulars of the restriction or covenant.

(2) In the case of land under the provisions of the Real Property Act 1900, a restriction or forestry covenant referred to in subsection (1) takes effect when the Registrar-General has made, in the Register kept under that Act, such recordings with respect to the restriction or covenant as the Registrar-General considers appropriate.

(3) A restriction or forestry covenant referred to in subsection (1) may be imposed in relation to land that is not under the provisions of the Real Property Act 1900 by a deed that—

(a) is expressed to be made pursuant to this section; and

(b) is executed—

(i) by the person to whom the benefit of the restriction or covenant enures;

(ii) by the owner of the land; and

(iii) by each other person who is seised or possessed of any estate or interest in the land and who is to be bound by the restriction or covenant,

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and such a restriction or covenant takes effect when the deed by which it is imposed is registered under Division 1 of Part XXIII.

(4) Where a restriction or forestry covenant referred to in subsection (1) takes effect, the person to whom the benefit of the restriction or covenant enures may enforce it against any person who is, or who claims under, a signatory to the instrument that imposed the restriction or covenant as if that person had entered into a binding agreement with the person to whom the benefit of the restriction or covenant enures to observe the restriction or covenant.

(5) Where a restriction or forestry covenant referred to in subsection (1) is recorded in the Register kept under the Real Property Act 1900, the restriction or covenant is an interest within the meaning of section 42 of that Act.

(6) A restriction or forestry covenant imposed pursuant to this section may be released or varied—

- (a) where the land affected by the restriction or covenant is under the provisions of the Real Property Act 1900—by a memorandum of release or a memorandum of variation, as the case may require, in the form approved under that Act and recorded in the Register kept under that Act; or
- (b) where the land so affected is not under the provisions of that Act—by a deed of release or a deed of variation, as the case may require, registered under Division 1 of Part XXIII,

executed by the person entitled to enforce the restriction or covenant and (in the case of a variation of a restriction or covenant) bearing the written consent of each person against whom, at the time the memorandum is recorded or the deed registered, the restriction or covenant is enforceable.

(7) Upon lodgment in the office of the Registrar-General of a memorandum of release or a memorandum of variation referred to in subsection (6), 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 the Registrar-General considers appropriate.

(8) Notwithstanding any other provision of this section, a restriction or forestry covenant has effect while the forestry right to which it is incidental subsists, and not otherwise.

(10) Section 88F (**Effect of certain positive covenants**)—

- (a) Section 88F (1)—

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SCHEDULE 1—AMENDMENTS—*continued*

- Omit “or 88E”, insert instead “, 88E or 88EA”.
- (b) Section 88F (2)–(8)—
Before “positive” wherever occurring, insert “public”.
- (11) Section 88G (**Certificate of amount due**)—
Before “positive” wherever occurring, insert “public”.
- (12) Section 88I (**Transfer of land to prescribed authority**)—
Before “positive” wherever occurring, insert “public”.
- (13) Section 88J (**Production of title documents where sale, lease or foreclosure**)—
Before “positive” wherever occurring, insert “public”.
- (14) Section 109 (**Powers of mortgagees and certain chargees**)—
Section 109 (1) (f)—
After “easement,”, insert “profit à prendre,”.
- (15) Section 110 (**Powers incidental to power of sale**)—
Section 110 (1) (b), (c)—
After “easements,” wherever occurring, insert “profits à prendre,”.
- (16) Section 195D (**Signatures and consents**)—
Section 195D (1) (d)—
After “easement,”, insert “a profit à prendre,”.