

**REAL PROPERTY (BOUNDARY DETERMINATIONS)  
AMENDMENT ACT 1989 No. 171**

NEW SOUTH WALES



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**REAL PROPERTY (BOUNDARY DETERMINATIONS)  
AMENDMENT ACT 1989 No. 171**

NEW SOUTH WALES



**Act No. 171, 1989**

An Act to amend the Real Property Act 1900 to make provision for the determination of boundaries between adjoining lands; to amend the Encroachment of Buildings Act 1922 and the Land and Environment Court Act 1979 in connection with boundary determinations; and for other purposes. [Assented to 14 December 1989]

*Real Property (Boundary Determinations) Amendment 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Real Property (Boundary Determinations) Amendment Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Real Property Act 1900 No. 25**

3. The Real Property Act 1900 is amended as set out in Schedule 1.

**Amendment of Encroachment of Buildings Act 1922 No. 23**

4. The Encroachment of Buildings Act 1922 is amended as set out in Schedule 2.

**Amendment of Land and Environment Court Act 1979 No. 204**

5. The Land and Environment Court Act 1979 is amended as set out in Schedule 3.

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**SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT 1900**

(Sec. 3)

(1) Section 121 (**Registrar-General may be required to justify certain actions**):

After section 121 (7), insert:

(8) This section does not apply to the determination of the position of a boundary under Part 14A.

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(2) Part 14A:

After Part 14, insert:

**PART 14A - BOUNDARY DETERMINATIONS**

**Definition of "owner"**

135A. In this Part:

"owner", in relation to land, means any person entitled to an estate of freehold in possession in the land:

- (a) whether in fee simple or for life or otherwise; and
- (b) whether at law or in equity; and
- (c) whether absolutely or by way of mortgage.

**Application may be made for boundary determination**

135B. (1) Application may be made to the Registrar-General for the determination under this Part of the position of the common boundary of adjoining lands.

(2) Such an application can be made only by or on behalf of

- (a) an owner of land on either side of the boundary, or
- (b) the purchaser under a contract for sale of land on one side of the boundary but only if the owner of the land consents to the application or the whole of the purchase price has been paid to the owner or the owner's agent; or
- (c) a public or local authority or the Head of a Government Department.

**Boundaries to which Part does not apply**

135C. (1) This Part does not authorise the determination of the position of a boundary between adjoining parcels of land where:

- (a) each parcel is land under common law title; or
- (b) each parcel is land comprised in a limited folio; or
- (c) one parcel is land under common law title and the other is land comprised in a limited folio; or

SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT  
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- (d) one or both of the parcels is the subject of a primary application; or
  - (e) one or both of the parcels is land comprised in a limited folio in respect of which a delimitation plan has been lodged under Part 4B and not withdrawn.
- (2) In this section:  
"land under common law title" has the same meaning as in Part 4A.

**Requirements for application**

135D. (1) An application for a boundary determination under this Part:

- (a) is to be made in a form approved by the Registrar-General; and
- (b) is to be accompanied by such information and documents in support of the application as the Registrar-General may require (either generally or in the particular case); and
- (c) is to be accompanied by the prescribed application fee.

(2) The Registrar-General must refuse to make the determination unless satisfied, on investigation, that there is doubt as to the position of the boundary concerned.

(3) The Registrar-General is to give notice to an applicant if the Registrar-General refuses to make the determination and is to give reasons for that refusal.

**Notice of application to be given to certain persons**

135E. (1) Before determining the position of a boundary pursuant to an application, the Registrar-General is to give notice of the application:

- (a) to the owner of each parcel of land adjoining the boundary concerned (other than land owned by the applicant); and

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(b) to such other persons as the Registrar-General considers appropriate.

(2) The notice is to contain such details of the application as the Registrar-General considers appropriate and is to invite the person to make a written submission concerning the application within a specified period (not less than 21 days).

(3) In determining the position of the boundary, the Registrar-General is to take into consideration any submissions made in accordance with the requirements of such a notice.

**Procedure in determining boundaries**

135F. (1) In determining the position of a boundary under this Part, the Registrar-General must consult with a surveyor registered under the Surveyors Act 1929.

(2) If the Registrar-General decides that a survey or other investigation should be carried out to assist the Registrar-General in determining the position of the boundary, the Registrar-General:

- (a) may require any applicant for the determination to pay the reasonable costs of any such survey or investigation (and for that purpose may require payment in advance); and
- (b) may refuse to proceed with the determination until the required payment is made.

**Determination of other boundaries**

135G. (1) If as a result of considering an application under this Part in respect of a boundary of land, the Registrar-General becomes aware that there is doubt as to the position of another boundary of that or other land, the Registrar-General may determine the position of that other boundary.

SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT  
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(2) Before making a determination under this section, the Registrar-General:

- (a) is to give notice of the proposed determination to the owner of each parcel of land adjoining that other boundary inviting the person to make a written submission on the matter within a specified period (not less than 21 days); and
- (b) is to take into consideration any submissions made in accordance with the requirements of such a notice.

(3) The Registrar-General must not make a determination under this section without prior consultation with the Surveyor-General.

**Basis of determination**

135H. The Registrar-General is to determine the position of a boundary on the basis of all the evidence available to the Registrar-General but, if that evidence is inconclusive, may determine it on the basis of what appears to the Registrar-General to be just and reasonable in the circumstances.

**Notice of determination of boundary**

135I. The Registrar-General is to give notice of a determination of the position of a boundary under this Part:

- (a) to any applicant for the determination; and
- (b) to the owner of each parcel of land adjoining the boundary; and
- (c) to the Surveyor-General; and
- (d) to such other persons as the Registrar-General considers appropriate.

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SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT  
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**Referral to Land and Environment Court**

135J. (1) A person who is dissatisfied with a determination under this Part of the position of a boundary of land may, by notice given to the Registrar-General, request the Registrar-General to refer the matter to the Land and Environment Court for determination by the Court of the position of the boundary.

(2) Only the following persons can request such a referral:

- (a) an owner of land adjoining the boundary;
- (b) a person who applied for the determination as purchaser under a contract for sale of land adjoining the boundary.

(3) The Registrar-General is to comply with such a request but only if:

- (a) it is made within 28 days after notice of the Registrar-General's determination is given to the person concerned; and
- (b) the person pays to the Registrar-General the prescribed referral fee.

(4) The Registrar-General is not to take action under section 135K (Noting of boundary on plans etc.):

- (a) until the expiration of the period during which a request can be made for referral of the determination concerned to the Land and Environment Court; and
- (b) (if such a request is made during that period) until the matter has been determined by the Land and Environment Court.

(5) The Registrar-General is entitled to appear and be heard either personally or by his or her duly appointed agent at the hearing of a reference under this section to the Land and Environment Court and at the hearing of any appeal under the Land and Environment Court Act 1979 in respect of any such reference.



SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT  
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**Noting of boundary on plans etc.**

135K. (1) When the position of a boundary is determined under this Part, the Registrar-General:

- (a) is to make such notations and entries on any plan or other document registered or recorded in the office of the Registrar-General as may be necessary to show the position of the boundary determined; and
- (b) may cause to be registered in the office of the Registrar-General a plan showing the position of the boundary determined.

(2) The Registrar-General may also amend any plan or other document to correct any error in it or supply any omission from it in respect of the position of the boundary.

(3) The Registrar-General may also take action under this section in respect of the determination by a competent court of the position of a boundary as if it were a determination under this Part.

**Effect of boundary determination**

135L. (1) A determination of the position of a boundary under this Part takes effect when the position of the boundary is shown as referred to in section 135K (1).

(2) Once the determination takes effect, the boundary is for all purposes to be taken to be in the position so shown despite any discrepancy with any plan of survey or other plan or any other record.

**Delegation**

135M. (1) The Registrar-General may delegate to any officer or other person employed in the Land Titles Office any of the Registrar-General's powers, authorities, duties or functions under this Part.

(2) A delegate may sub-delegate to any such officer or person any power, authority, duty or function delegated by

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the Registrar-General if the delegate is authorised in writing to do so by the Registrar-General.

**Application of provisions where land has more than one owner**

135N. If land has more than one owner, a notice given to or by one or more of those owners for the purposes of this Part is to be taken to have been given to or by all the owners of the land.

**Owners may agree to dispense with certain requirements**

135O. If the owners of all parcels of land adjoining a boundary that is the subject of an application under this Part consent in writing to this section applying, the Registrar-General:

- (a) need not comply with the requirements of section 135E (Notice of application to be given to certain persons) in respect of the application; and
- (b) may take action under section 135K (Noting of boundary on plans etc.) in respect of a determination of the boundary concerned without having regard to section 135J (4) (action delayed to allow referral to Court).

**Failure to notify does not affect validity of determination**

135P. A failure by the Registrar-General to give notice to a person as required by this Part does not affect the validity of any boundary determination with which the requirement to give notice is concerned.

**Service of notices**

135Q. (1) A notice required or permitted by this Part to be given to a person may be given:

- (a) to the Registrar-General - by leaving it at, or by sending it by pre-paid post to, any office of the Registrar-General; or

**SCHEDULE 1 - AMENDMENT OF REAL PROPERTY ACT  
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- (b) to any other natural person - by delivering it to the person personally or by leaving it at, or by sending it by pre-paid post to, the address of the place of residence or business of the person last known to the Registrar-General; or
- (c) to a body corporate - by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate; or
- (d) to any person (including the Registrar-General) - by delivering it to the facilities of a document exchange of which the person is a member.

(2) In the case of service by delivery to a document exchange, the notice is to be taken to have been given on the second business day following the day of delivery to the document exchange.

(3) Nothing in this section:

- (a) affects the operation of any other law of the State that authorises the service of a document in any other way, and
- (b) affects the power of a court to authorise service of a document in any other way.

**SCHEDULE 2 - AMENDMENT OF ENCROACHMENT OF  
BUILDINGS ACT 1922**

(Sec. 4)

- (1) **The whole Act:**  
Omit "court" wherever occurring, insert instead "Court".
- (2) **Section 2 (Definitions):**  
Omit the definition of "Court", insert instead:  
"Court" means the Land and Environment Court.
- (3) **Section 9 (Boundaries):**
  - (a) Omit section 9 (1), insert instead:
    - (1) If any question arises as to whether an existing building encroaches or a proposed building will encroach beyond the boundary, either of the owners of the

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SCHEDULE 2 - AMENDMENT OF ENCROACHMENT OF BUILDINGS ACT 1922 - *continued*

contiguous parcels of land may apply for a determination of the position of the boundary:

- (a) to the Registrar-General under Part 14A (Boundary determinations) of the Real Property Act 1900 (but only if the application could be made under that Part apart from this section); or
  - (b) if the application cannot be made under that Part or the Registrar-General refuses to make that determination - to the Court.
- (b) From section 9 (2), omit "On the application", insert instead "On an application to the Court".

(4) Section 10:

Omit the section, insert instead:

**Proceedings in the Supreme Court**

10. In any proceedings before the Supreme Court, the Supreme Court may:

- (a) if it sees fit, exercise any of the powers conferred on the Land and Environment Court by this Act and may stay the proceedings on such terms as it thinks proper; or
- (b) if of the opinion that the matter could more conveniently be dealt with by an application under this Act, stay the proceedings on such terms as it thinks proper.

(5) Section 15 (**Rules and practice**):

Omit section 15 (1), insert instead:

(1) Rules of Court may be made for the practice and procedure of the Court in applications under this Act.

(6) Section 16 and Schedule 1:

After section 15, insert:

**SCHEDULE 2 - AMENDMENT OF ENCROACHMENT OF BUILDINGS ACT 1922 - *continued***

**Savings and transitional provisions**

16. Schedule 1 has effect.

**SCHEDULE 1 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 16)

**Proceedings pending in Supreme Court**

1. Proceedings under this Act pending in the Supreme Court immediately before the commencement of Schedule 2 (2) to the Real Property (Boundary Determinations) Amendment Act 1989 are to be dealt with as if that Act had not been enacted.

**SCHEDULE 3 - AMENDMENT OF LAND AND ENVIRONMENT COURT ACT 1979**

(Sec. 5)

Section 19 (Class 3 - land tenure, valuation, rating and compensation matters):

After section 19 (b), insert:

- (c) objections to determinations of boundaries referred to the Court under Part 14A (Boundary determinations) of the Real Property Act 1900;
- (c1) proceedings under the Encroachment of Buildings Act 1922;

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[*Minister's second reading speech made in -  
Legislative Assembly on 15 November 1989  
Legislative Council on 23 November 1989*]