

**REAL PROPERTY AND CONVEYANCING (AMENDMENT)
ACT 1991 No. 27**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Real Property Act 1900 No. 25
4. Amendment of Conveyancing Act 1919 No. 6

SCHEDULE 1—AMENDMENT OF REAL PROPERTY ACT 1900
SCHEDULE 2—AMENDMENT OF CONVEYANCING ACT 1919

**REAL PROPERTY AND CONVEYANCING (AMENDMENT)
ACT 1991 No. 27**

NEW SOUTH WALES



Act No. 27, 1991

An Act to amend the Real Property Act 1900 with respect to proof of execution and attestation of documents and variations of registered leases; and to amend the Conveyancing Act 1919 with respect to variations of mortgages and service of notices. [Assented to 6 September 1991]

Real Property and Conveyancing (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Real Property and Conveyancing (Amendment) Act 1991.

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 Conveyancing Act 1919 No. 6

4. The Conveyancing Act 1919 is amended as set out in Schedule 2.

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

(Sec. 3)

(1) Section 36 (Registration of dealings):

(a) After section 36 (1D), insert:

(1E) If the Registrar-General has grounds for believing that a dealing or caveat has not been duly executed or attested, the Registrar-General may require the execution or attestation to be proved in such manner as the Registrar-General thinks fit.

(b) From section 36 (10), omit “that bears a certificate of registration under section 38 (4)”.

(2) Section 38 (Recording dealings on certificates of title etc.):

Omit section 38 (4).

(3) Section 55A:

After section 55, insert:

Registration of variation of lease

55A. (1) A lease that is registered under this Act may, by a variation of lease in the approved form, be varied so as

- (a) to increase or reduce the rent payable under the lease;
or

Real Property and Conveyancing (Amendment) 1991

SCHEDULE 1—AMENDMENT OF REAL PROPERTY ACT
1900—*continued*

- (b) to increase or reduce the period for which the lease is to have effect; or
 - (c) to otherwise vary, omit or add to the provisions of the lease.
- (2) The Registrar-General may make such recordings in the Register as are necessary to give effect to a variation of lease.
- (3) A variation of lease is not valid or binding against the registered proprietor of any prior estate or interest recorded in a folio of the Register in respect of the land to which the lease relates unless that proprietor has consented in writing to the variation before it is registered.
- (4) A variation of lease may not be registered if it operates to vary the land to which the lease relates.
- (5) This section applies in respect of a lease registered before or after the commencement of this section.
- (4) Sections 107 (**Dealings how attested and before whom proved**) and 108 (**Mode of proving execution**):
Omit the sections.
- (5) Section 135Q (**Service of notices**):
- (a) Omit section 135Q (2), insert instead:
 - (2) In the case of service by delivery to the facilities of a document exchange, the notice is, unless the contrary is proved, to be taken to have been given on the second business day following the day of delivery of the notice to those facilities.
 - (b) After section 135Q (3), insert:
 - (4) In this section, “business day” means any day except Saturday or Sunday or a day that is a public or bank holiday throughout the State.

Real Property and Conveyancing (Amendment) 1991

**SCHEDULE 2—AMENDMENT OF CONVEYANCING
ACT 1919**

(Sec. 4)

(1) Section 91 (**Indorsements on mortgages**):

- (a) After section 91 (1) (d), insert:
 - (d1) the provisions of a mortgage may be otherwise varied, omitted or added to; and
- (b) From section 91 (2), omit “and (e)”, insert instead “(d1) and (e)”.
- (c) After section 91 (5), insert:
 - (5A) A memorandum of variation of mortgage may not operate so as to vary the land to which the mortgage relates.
- (d) From section 91 (6), omit “and (d)”, insert instead “, (d) and (d1)”.

(2) Section 170 (**Regulations respecting notices**):

- (a) Omit section 170 (1) (b) and (c), insert instead:
 - (b) if left at or sent by post to the last known residential or business address in or out of New South Wales of the person to be served;
 - (b1) in the case of a mortgagor in possession or a lessee, if left at or sent by post to any occupied house or building comprised in the mortgage or lease;
 - (b2) in the case of a mining lease, if left at or sent by post to the office of the mine;
 - (c) if delivered to the facilities of a document exchange of which the person on whom it is to be served is a member; or
- (b) After section 170 (1), insert:
 - (1A) In the case of service by delivery to the facilities of a document exchange, the notice is, unless the contrary is proved, to be taken to have been served on the second business day following the day of delivery of the notice to those facilities.
- (c) From section 170 (2), omit “registered letter”, insert instead “post”.

