



New South Wales

# Property Legislation Amendment (Easements) Act 1995 No 71

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New South Wales

# Property Legislation Amendment (Easements) Act 1995 No 71

Act No 71, 1995

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An Act to amend the *Conveyancing Act 1919* and the *Real Property Act 1900* with respect to easements. [Assented to 12 December 1995]

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

**1 Name of Act**

This Act is the *Property Legislation Amendment (Easements) Act 1995*.

**2 Commencement**

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

**3 Amendment of Conveyancing Act 1919 No 6**

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

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

The *Real Property Act 1900* is amended as set out in Schedule 2.

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## Schedule 1 Amendment of conveyancing Act 1919

(Section 3)

### [1] Section 87A Definitions

Omit the definition of *positive covenant*. Insert instead:

*positive covenant* means a covenant for maintenance or repair imposed under section 88BA, a public positive covenant or a forestry covenant.

### [2] Section 88 Requirements for easements and restrictions on use of land

#### Section 88 (1) (c)

Omit “easement or” wherever occurring.

### [3] Section 88 (1A)

Insert after section 88 (1):

- (1A) Land (including the site of an easement) is clearly indicated for the purposes of this section if it is shown:
- (a) in the manner prescribed by regulations made under this Act or the *Real Property Act 1900*, or
  - (b) in any other manner satisfactory to the Registrar-General in the particular case or class of cases concerned.

This subsection does not limit other ways in which land may be clearly indicated.

### [4] Section 88A Easements in gross, other easements and restrictions appurtenant to easements

#### Section 88A (2) (a)

Omit “after the commencement of the *Local Government and Conveyancing (Amendment) Act 1964*”.

Insert instead “on or after 15 June 1964 (the commencement of the *Local Government and Conveyancing (Amendment) Act 1964*)”.

**[5] Section 88A (2A)–(2C)**

Insert after section 88A (2):

(2A) In an instrument which takes effect after the commencement of Schedule 1 [5] to the *Property Legislation Amendment (Easements) Act 1995* and purports to create or assure an easement without a dominant tenement of the following kind in favour of or to the Crown or any public or local authority constituted by an Act, the following expressions have effect as if the words attributed in Schedule 4A to those expressions were inserted instead:

easement for repairs

easement for drainage of sewage

easement for drainage of water

easement for electricity purposes

easement for services

easement for water supply

right of access

(2B) The meaning given to an expression by this section and Schedule 4A may be varied (whether by way of addition, exception, qualification or omission), and is taken to have always been capable of being so varied, by the instrument in which the expression is used.

(2C) In Schedule 4A:

(a) a body includes any person for the time being authorised by the body, and

(b) a lot includes any other distinct piece or parcel of land (such as an island, a portion of a Parish or a Section).

**[6] Sections 88BA, 88BB**

Insert after section 88A:

**88BA Positive covenants for maintenance or repair**

(1) A covenant may be imposed requiring the maintenance or repair, or the maintenance and repair, of land that is the site of an easement or other land that is subject to the

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burden of the easement (or both) by any one or more of the persons from time to time having the benefit or burden of the easement.

- (2) Such a covenant may be imposed:
- (a) by registration under this Act or the *Real Property Act 1900* (as the case may require) of the instrument indicating the persons bound by or including the terms of the easement, if the terms of the covenant are included in that instrument, or
  - (b) by registration under the *Real Property Act 1900* of a memorandum of positive covenant in the form approved under that Act that includes the terms of the covenant, if the site of the easement is under the provisions of that Act, or
  - (c) by registration under Division 1 of Part 23 of a deed expressed to be made under this section and including the terms of the covenant, if the site of the easement is not under the provisions of that Act.
- (3) The instrument including the covenant must clearly indicate the land which is to be maintained or repaired, the land to which the benefit of the covenant is appurtenant and the land which is subject to the burden of the covenant.
- (4) The instrument must be executed by each person to be bound by the covenant:
- (a) who has an estate or interest registered under the *Real Property Act 1900* in land to which the benefit or burden of the covenant relates, or
  - (b) who is seised or possessed of an estate or interest in land to which the benefit or burden of the covenant relates, if the land is not under the provisions of that Act.
- (5) When recorded in the Register kept under the *Real Property Act 1900*, such a covenant is an interest within the meaning of section 42 of that Act.

- (6) Such a covenant may be released or varied:
  - (a) by registration under the *Real Property Act 1900* of a dealing in the form approved under that Act providing for the transfer and release of the covenant or for variation of the covenant, if the site is under the provisions of that Act, or
  - (b) by registration under Division 1 of Part 23 of a deed of release or a deed of variation, if the site is not under the provisions of that Act.
- (7) The instrument releasing or varying the covenant must be executed by:
  - (a) each person for the time being entitled to enforce the covenant or otherwise having the benefit of the covenant, and
  - (b) each person against whom the covenant may be enforced for the time being, in the case of a variation.

**88BB Creation of cross-easements for party walls by plans**

- (1) A plan lodged for registration or recording under Division 3 of Part 23 after the commencement of this section is, for the purposes of section 88B (2) (c), taken to be intended to create cross-easements if:
  - (a) a boundary of a lot is shown in the plan as passing longitudinally through the whole or any part of a wall, and
  - (b) the wall is described in the plan as a “party wall”.
- (2) The benefit of such an easement is appurtenant to each lot shown in the plan as consisting of or including a portion of the wall.
- (3) Each lot shown in the plan as consisting of or including another portion of the wall is subject to the burden of the easement.

- (4) The easement entitles each person for the time being having the benefit of the easement to the continued existence of each portion of the wall:
  - (a) that is necessary for the support of so much of the building as is contained within the lot to which the easement is appurtenant, and
  - (b) that consists of or is included within another lot which is subject to the burden of the easement.

**[7] Section 88B Creation and release of easements, profits a prendre and restrictions on use of land by plans**

**Section 88B (2) (c1)**

Insert after section 88B (2) (c):

- (c1) what easements, if any, appurtenant to or burdening land comprised in the plan are intended to be released, and

**[8] Section 88B (3) (c) (ii)**

Insert “or recording” and “or recorded”, respectively, after “registration” and “registered”.

**[9] Section 88B (3) (c) (iii)**

Omit “the land” where firstly occurring.  
Insert instead “a parcel of land”.

**[10] Section 88B (3) (c) (iii)**

Omit “the land” where secondly occurring.  
Insert instead “a separate parcel of land”.

**[11] Section 88B (3AA)**

Insert after section 88B (3):

- (3AA) On registration or recording under Division 3 of Part 23 of a plan on which a release of an easement is indicated in accordance with subsection (2) (c1), the easement is released.



**[12] Section 88F Effect of certain positive covenants**

**Section 88F (1)**

Omit “under section 88D, 88E or 88EA”.

**[13] Section 88K**

Insert after section 88J:

**88K Power of Court to create easements**

- (1) The Court may make an order imposing an easement over land if the easement is reasonably necessary for the effective use or development of other land that will have the benefit of the easement.
- (2) Such an order may be made only if the Court is satisfied that:
  - (a) use of the land in accordance with the easement will not be inconsistent with the public interest, and
  - (b) the owner of the land to be burdened by the easement and each other person having an estate or interest in that land that is evidenced by an instrument registered in the General Register of Deeds or the Register kept under the *Real Property Act 1900* can be adequately compensated for any loss or other disadvantage that will arise from imposition of the easement, and
  - (c) all reasonable attempts have been made by the applicant for the order to obtain the easement or an easement having the same effect but have been unsuccessful.
- (3) The Court is to specify in the order the nature and terms of the easement and such of the particulars referred to in section 88 (1) (a)–(d) as are appropriate and is to identify its site by reference to a plan that is, or is capable of being, registered or recorded under Division 3 of Part 23. The terms may limit the times at which the easement applies.

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- (4) The Court is to provide in the order for payment by the applicant to specified persons of such compensation as the Court considers appropriate, unless the Court determines that compensation is not payable because of the special circumstances of the case.
- (5) The costs of the proceedings are payable by the applicant, subject to any order of the Court to the contrary.
- (6) Such an easement may be:
- (a) released by the owner of the land having the benefit of it, or
  - (b) modified by a deed made between the owner of the land having the benefit of it and the persons for the time being having the burden of it or (in the case of land under the provisions of the *Real Property Act 1900*) by a dealing in the form approved under that Act giving effect to the modification.
- (7) An easement imposed under this section, a release of such an easement or any modification of such an easement by a deed or dealing takes effect:
- (a) if the land burdened is under the *Real Property Act 1900*, when the Registrar-General registers a dealing in the form approved under that Act setting out particulars of the easement, or of the release or modification, by making such recordings in the Register kept under that Act as the Registrar-General considers appropriate, or
  - (b) in any other case, when a minute of the order imposing the easement or the deed of release or modification is registered in the General Register of Deeds.
- (8) An easement imposed under this section has effect (for the purposes of this Act and the *Real Property Act 1900*) as if it was contained in a deed.
- (9) Nothing in this section prevents such an easement from being extinguished or modified under section 89 by the court.

**[14] Section 181A Construction of expressions used to create easements**

**Section 181A (1)**

Insert “executed or made after 1 January 1931 (the commencement of the *Conveyancing (Amendment) Act 1930*) and” after “instrument”.

**[15] Section 181A (1A)**

Insert “executed or made after 15 June 1964 (the commencement of the *Local Government and Conveyancing (Amendment) Act 1964*) and” after “instrument”.

**[16] Section 181A (2)–(3A)**

Omit section 181A (2) and (3). Insert instead:

- (2) In an instrument which takes effect after the commencement of Schedule 1 [16] to the *Property Legislation Amendment (Easements) Act 1995* and purports to create an easement of the following kind, the following expressions have effect as if the words attributed in Schedule 8 to those expressions were inserted instead:

easement for repairs

easement for batter

easement for drainage of sewage

easement for drainage of water

easement for electricity purposes

easement for overhang

easement for services

easement for water supply

easement to permit encroaching structure to remain  
right of access

- (3) The meaning given to an expression by this section and Schedule 8 may be varied (whether by way of addition, exception, qualification or omission), and is taken to have always been capable of being varied, by the instrument in which the expression is used.

(3A) In Schedule 8:

- (a) a lot includes any other distinct piece or parcel of land (such as an island, a portion of a Parish or a Section), and
- (b) an owner of a lot benefited includes:
  - any person entitled to possession of the whole of the lot benefited or any person authorised by such a person, and
  - any person entitled to possession of any part of that lot which is capable of benefiting from the easement or any person authorised by such a person.

**[17] Section 181B Construction of expression “party wall” in assurances of land**

**Section 181B (2)**

Insert “and before the commencement of section 88BB” after “1930”.

**[18] Section 184 Committee for framing short forms**

Omit the section.

**[19] Section 195D Signatures and consents**

**Section 195D (1) (d)**

Insert “, or to release an easement” after “covenant”.

**[20] Schedule 4A Easements in gross**

**Parts 5–11**

Insert at the end of Schedule 4A:

**Part 5 Easement for repairs**

1. The body having the benefit of this easement may:
  - (a) at the expiration of at least one week’s notice served on the owner or occupier of a lot burdened, use the lot for the purpose of carrying out

necessary work on any structure used by that body which cannot otherwise reasonably be carried out, and

- (b) do anything reasonably necessary for that purpose, including:
- entering the lot burdened, and
  - taking anything on to the lot burdened.

2. In exercising those powers, the body having the benefit of this easement must:

- (a) ensure all work on the lot benefited is done properly and carried out as quickly as is practicable, and
- (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
- (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
- (d) restore the lot burdened as nearly as is practicable to its former condition, and
- (e) make good any collateral damage.

## **Part 6 Easement for drainage of sewage**

1. The body having the benefit of this easement may:

- (a) drain sewage, sullage and other fluid wastes in pipes through each lot burdened, but only within the site of this easement, and
- (b) do anything reasonably necessary for that purpose, including:
- entering the lot burdened, and
  - taking anything on to the lot burdened, and
  - using any existing line of pipes, and
  - carrying out works, such as constructing, placing, repairing or maintaining pipes and equipment.

2. In exercising those powers, the body having the benefit of this easement must:
  - (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

#### **Part 7 Easement for drainage of water**

1. The body having the benefit of this easement may:
  - (a) drain water from any natural source through each lot burdened, but only within the site of this easement, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - using any existing line of pipes, and
    - carrying out work, such as constructing, placing, repairing or maintaining pipes, channels, ditches and equipment.
2. In exercising those powers, the body having the benefit of this easement must:
  - (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

## **Part 8 Easement for electricity purposes**

1. The body having the benefit of this easement may:
  - (a) transmit electricity through each lot burdened, but only within the site of this easement, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - carrying out work, such as constructing, placing, repairing or maintaining poles, wires, conduits and equipment.
2. In exercising those powers, the body having the benefit of this easement must:
  - (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

## **Part 9 Easement for services**

1. The body having the benefit of this easement may:
  - (a) provide domestic services supplied by that body through each lot burdened, but only within the site of this easement, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and

- carrying out work, such as constructing, placing, repairing or maintaining pipes, poles, wires, cables, conduits, structures and equipment.
2. In exercising those powers, the body having the benefit of this easement must:
    - (a) ensure all work is done properly, and
    - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
    - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
    - (d) restore the lot burdened as nearly as is practicable to its former condition, and
    - (e) make good any collateral damage.
  3. For the purposes of this easement, *domestic services* includes supply of water, gas, electricity, telephone and television and discharge of sewage, sullage and other fluid wastes.

## **Part 10 Easement for water supply**

1. The body having the benefit of this easement may:
  - (a) run water in pipes through each lot burdened, but only within the site of this easement, and
  - (b) do anything reasonably necessary for that purpose including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - carrying out work, such as constructing, placing, repairing or maintaining pipes and equipment.
2. In exercising those powers, the body having the benefit of this easement must:



- (a) ensure all work is done properly, and
- (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
- (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
- (d) restore the lot burdened as nearly as is practicable to its former condition, and
- (e) make good any collateral damage.

#### **Part 11 Right of access**

1. The body having the benefit of this easement may:
  - (a) by any reasonable means pass across each lot burdened, but only within the site of this easement, for the purpose of exercising or performing any of its powers, authorities, duties or functions, and
  - (b) do anything reasonably necessary for passing across each such lot, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - carrying out work within the site of this easement, such as constructing, placing, repairing or maintaining trafficable surfaces, driveways or structures.
2. In exercising those powers, the body having the benefit of this easement must:
  - (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

**[21] Schedule 8, heading**

Omit the heading. Insert instead:

**Schedule 8 Construction of certain expressions**

**[22] Schedule 8, Parts 5–14**

Insert at the end of Schedule 8:

**Part 5 Easement for repairs**

1. The owner of the lot benefited may:
  - (a) at the expiration of at least one week's notice served on the owner or occupier of a lot burdened, use the lot burdened for the purpose of carrying out necessary work on, or on any structure on, the lot benefited which cannot otherwise reasonably be carried out, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened.
2. In exercising those powers, the owner of the lot benefited must:
  - (a) ensure all work on the lot benefited is done properly and carried out as quickly as is practicable, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

## **Part 6 Easement for batter**

1. The owner of the lot benefited may:
  - (a) construct and maintain on the lot burdened, but only within the site of this easement, whatever batter or embankment is reasonably necessary to support the surface or subsurface of the lot benefited or any part of it, or any structure or works on the lot benefited, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - carrying out work.
2. The owner of the lot burdened must not:
  - (a) interfere with the batter or embankment or the support it offers, or
  - (b) use the site of this easement, or any other part of the lot burdened, or any other land, in a way which may detract from the stability of or the support provided by the batter or embankment.
3. If the owner of the lot burdened does or allows anything to be done which damages the batter or embankment or impairs its effectiveness, the owner of the lot benefited may serve not less than 14 days' notice on the owner of the lot burdened requiring the damage to be repaired or the impairment removed.

If the owner of the lot burdened does not comply with the notice, the owner of the lot benefited may enter and repair the damage or remove the impairment and may recover any reasonable costs from the owner of the lot burdened.
4. In exercising those powers (whether or not after serving such a notice), the owner of the lot benefited must:
  - (a) ensure all work is done properly, and

- (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
- (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
- (d) restore the lot burdened as nearly as is practicable to its former condition, and
- (e) make good any collateral damage.

### **Part 7 Easement for drainage of sewage**

1. The owner of the lot benefited may:
  - (a) drain sewage, sullage and other fluid wastes in pipes through each lot burdened, but only within the site of this easement, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - using any existing line of pipes, and
    - carrying out works, such as constructing, placing, repairing or maintaining pipes and equipment.
2. In exercising those powers, the owner of the lot benefited must:
  - (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

## **Part 8 Easement for drainage of water**

1. The owner of the lot benefited may:
  - (a) drain water from any natural source through each lot burdened, but only within the site of this easement, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - using any existing line of pipes, and
    - carrying out work, such as constructing, placing, repairing or maintaining pipes, channels, ditches and equipment.
2. In exercising those powers, the owner of the lot benefited must:
  - (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

## **Part 9 Easement for electricity purposes**

1. The owner of the lot benefited may:
  - (a) transmit electricity through each lot burdened, but only within the site of this easement, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and

- taking anything on to the lot burdened, and
  - carrying out work, such as constructing, placing, repairing or maintaining poles, wires, conduits and equipment.
2. In exercising those powers, the owner of the lot benefited must:
- (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

## **Part 10 Easement for overhang**

1. The owner of the lot benefited:
- (a) may insist that the parts of the structure (the *overhanging structure*) on the lot benefited which, when this easement was created, overhung the lot burdened remain, but only to the extent they are within the site of this easement, and
  - (b) must keep the overhanging structure in good repair and safe condition, and
  - (c) may do anything reasonably necessary for those purposes, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - carrying out work.
2. In exercising those powers, the owner of the lot benefited must:
- (a) ensure all work is done properly, and

- (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) restore the lot burdened as nearly as is practicable to its former condition, and
  - (d) make good any collateral damage.
3. The owner of the lot burdened may insist that this easement be extinguished when the structure on the lot benefited is removed.
4. The owner of the lot burdened must not do or allow anything to be done to damage or interfere with the overhanging structure.

### **Part 11 Easement for services**

1. The owner of the lot benefited may:
- (a) use each lot burdened, but only within the site of this easement, to provide domestic services to or from each lot burdened, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - carrying out work, such as constructing, placing, repairing or maintaining pipes, poles, wires, cables, conduits, structures and equipment.
2. In exercising those powers, the owner of the lot benefited must:
- (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and

- (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.
3. For the purposes of this easement, *domestic services* includes supply of water, gas, electricity, telephone and television and discharge of sewage, sullage and other fluid wastes.

## **Part 12 Easement for water supply**

1. The owner of the lot benefited may:
- (a) run water in pipes through each lot burdened, but only within the site of this easement, and
  - (b) do anything reasonably necessary for that purpose including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - carrying out work, such as constructing, placing, repairing or maintaining pipes and equipment.
2. In exercising those powers, the owner of the lot benefited must:
- (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.



**Part 13 Easement to permit encroaching structure to remain**

1. The owner of the lot benefited:
  - (a) may insist that the parts of the structure (*the encroaching structure*) on the lot benefited which, when this easement was created, encroached on the lot burdened remain, but only to the extent they are within the site of this easement, and
  - (b) must keep the encroaching structure in good repair and safe condition, and
  - (c) may do anything reasonably necessary for those purposes, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - carrying out work.
2. In exercising those powers, the owner of the lot benefited must:
  - (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) restore the lot burdened as nearly as is practicable to its former condition, and
  - (d) make good any collateral damage.
3. The owner of the lot burdened may insist that this easement be extinguished when the structure on the lot benefited is removed.
4. The owner of the lot burdened must not do or allow anything to be done to damage or interfere with the encroaching structure.

## **Part 14 Right of access**

1. The owner of the lot benefited may:
  - (a) by any reasonable means pass across each lot burdened, but only within the site of this easement, to get to or from the lot benefited, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - carrying out work within the site of this easement, such as constructing, placing, repairing or maintaining trafficable surfaces, driveways or structures.
2. In exercising those powers, the owner of the lot benefited must:
  - (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

## **Schedule 2 Amendment of Real Property Act 1900**

(Section 4)

### **[1] Section 42 Estate of registered proprietor paramount**

#### **Section 42 (1) (a1)**

Insert after section 42 (1) (a):

- (a1) in the case of the omission or misdescription of an easement subsisting immediately before the land was brought under the provisions of this Act or validly created at or after that time under this or any other Act or a Commonwealth Act,

### **[2] Section 42 (1) (b)**

Omit "easement or"

### **[3] Section 47 Creation of easements etc**

#### **Section 47 (1)**

Omit subsection (1). Insert instead:

- (1) When an easement or profit à prendre that burdens land under the provisions of this Act is created, the Registrar-General is to record particulars of the dealing creating the easement or profit à prendre:
  - (a) in the folio of the Register for the land burdened, and
  - (b) in the folio of the Register for the land benefited, if the easement or profit à prendre benefits land under the provisions of this Act.

**[4] Section 47 (5A)**

Insert after section 47 (5):

(5A) The terms or site of a registered easement may be varied by a registered dealing in the approved form, or by such a dealing and a plan illustrating the varied site registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919*. The dealing and any such plan are to be executed by each person having a registered estate or interest in the land burdened or in any land benefited by the easement.

**[5] Section 47 (7)**

Omit “both of the land burdened and of the land benefited”.  
Insert instead “of separate parcels of land respectively burdened and benefited”.

**[6] Sections 48, 49**

Insert after section 47:

**48 Creation of cross-easements for party walls by plans on application**

- (1) A plan registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919* before the commencement of this section creates cross-easements if
- (a) a boundary of a lot is, in a manner satisfactory to the Registrar-General, shown in the plan as passing longitudinally through the whole or any part of a wall, and
  - (b) the wall is described in the plan as a “party wall”, and
  - (c) the Registrar-General has recorded in the Register an application to create cross-easements for support of the wall made in the approved form by each person having a registered estate or interest in land that will be benefited or burdened by the cross-easements.

- (2) The benefit of such an easement is appurtenant to each lot shown in the plan as consisting of or including a portion of the wall.
- (3) Each lot shown in the plan as consisting of or including another portion of the wall is subject to the burden of the easement.
- (4) The easement entitles each person for the time being having the benefit of the easement to the continued existence of each portion of the wall:
  - (a) that is necessary for the support of so much of the building as is contained within the lot to which the easement is appurtenant, and
  - (b) that consists of or is included within another lot which is subject to the burden of the easement.

**49 Cancellation of recordings of easements after abandonment, consolidation of tenements or release**

- (1) The Registrar-General may cancel a recording relating to an easement in the Register if the easement has been abandoned.
- (2) An easement may be treated as abandoned if the Registrar-General is satisfied it has not been used for at least 20 years, whether that period commenced before, on or after, the date of assent to the *Property Legislation Amendment (Easements) Act 1995*.
- (3) However, an easement is not capable of being abandoned:
  - (a) if the easement does not benefit land, or
  - (b) to the extent (if any) that the easement benefits land owned by the Crown, or by a public or local authority constituted by an Act, or
  - (c) if the easement is of a class of easements prescribed by the regulations as being incapable of being abandoned.

- (4) Before cancelling any such recording, the Registrar-General must consider any submission made, by a person having a registered estate or interest in land benefited by the easement, within the period fixed by the Registrar-General in a notice of intention to cancel the recording served personally or by post on the person. The period must be not less than one month from the date of the notice.
- (5) The Registrar-General may cancel a recording in the Register relating to an easement:
  - (a) if satisfied that the recording relates to land for which the easement has no practical application because separate parcels of land that were respectively burdened and benefited by the easement have been consolidated into a single parcel, or
  - (b) if the easement has been released under section 88B of the *Conveyancing Act 1919*.
- (6) An application for cancellation of any such recording must be made in the approved form or in a form prescribed by regulations made under the *Conveyancing Act 1919*.

[Minister's second reading speech made in —  
Legislative Assembly on 10 October 1995  
Legislative Council on 4 December 1995]