



New South Wales

Conveyancing Amendment Act 1997 No 17

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Conveyancing Amendment Act 1997 No 17

Act No 17, 1997

An Act to amend the *Conveyancing Act 1919* to abolish the rule in *Bain v Fothergill*, to provide for the method of giving options for the purchase of residential property and to extend provisions for creating easements without a dominant tenement; and to make consequential amendments to certain other Acts and instruments. [Assented to 12 June 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Conveyancing Amendment Act 1997*.

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 Consequential amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

5 Consequential amendment of Conveyancing (General) Regulation 1992

The *Conveyancing (General) Regulation 1992* is amended as set out in Schedule 3.

Schedule 1 Amendment of Conveyancing Act 1919

(Section 3)

[1] Section 54B

Insert after section 54A:

54B Damages: defective title

- (1) The rule of law known as the rule in *Bain v Fothergill* is abolished in relation to contracts for the sale or other disposal of land or any interest in land made after the commencement of this section.
- (2) The Court may award damages for loss of bargain against a vendor who cannot perform such a contract because of a defect in the vendor's title.
- (3) This section has effect notwithstanding any stipulation to the contrary.
- (4) This section applies to land under the provisions of the *Real Property Act 1900*.

[2] Section 66ZG Option void in certain circumstances

Omit section 66ZG (1). Insert instead:

- (1) An option granted for the purchase of residential property is void:
 - (a) unless it is granted by way of exchange of counterparts, one of which is signed by the purchaser and the other signed by the vendor, or
 - (b) if it is exercisable within 42 days after it is granted or, if a different period is prescribed, within that period.
- (1A) Subsection (1) (a) does not render an option void if it was granted, without an exchange of counterparts, before the commencement of the amendment made to this section by the *Conveyancing Amendment Act 1997* and it was signed in duplicate by both parties.

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

Omit section 88 (4). Insert instead:

- (4) Subsection (1) does not apply to an easement without a dominant tenement acquired by or for a prescribed authority referred to in section 88A, nor to any restriction on the use of land in relation to any such easement.

[4] Section 88AC

Insert after section 88AB:

88AC Other easements and restrictions appurtenant to easements

- (1) Another easement, or the benefit of a restriction on the use of land, may be made appurtenant or annexed to an easement.
- (2) The power conferred by this section is taken always to have existed.
- (3) This section applies, and is taken always to have applied, to land under the provisions of the *Real Property Act 1900*.

[5] Section 88A Easements in gross

Omit section 88A (1). Insert instead:

- (1) In this section:
prescribed authority means:
 - (a) the Crown, or
 - (b) a public or local authority constituted by an Act, or
 - (c) a corporation prescribed by the regulations for the purposes of this section.
- (1A) An easement without a dominant tenement may be created in favour of a prescribed authority, and any such easement may be assured to a prescribed authority.

(1B) However, an easement without a dominant tenement may only be created in favour of, or assured to, a corporation prescribed by the regulations for the purposes of this section if the easement is for the purpose of, or incidental to, the supply of a utility service to the public, including (but not limited to):

- (a) the supply of gas, water or electricity, or
- (b) the supply of drainage or sewage services.

[6] Section 88A (2) (c)

Omit “the Crown or any public or local authority constituted by Act of Parliament”.

Insert instead “a prescribed authority”.

[7] Section 88A (2A)

Omit “the Crown or any public or local authority constituted by an Act”.

Insert instead “a prescribed authority”.

[8] Section 88A (2D) and (2E)

Insert after section 88A (2C):

(2D) The power conferred by this section is taken always to have existed. However, the power conferred by this section on a corporation prescribed by the regulations for the purposes of this section confers that power on and from the date the corporation is first so prescribed if the regulations so provide.

(2E) The restriction imposed by subsection (1B) on the power conferred by this section does not apply to an easement created or assured before the commencement of that subsection.

[9] Section 88A (4)–(8)

Omit the subsections.

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

Omit “section 88A (1)” from section 88B (2) (b).
Insert instead “section 88A”.

[11] Section 88B (3) (b)

Omit “the Crown or in the public or local authority, as the case may
be,”.
Insert instead “the relevant prescribed authority referred to in that
section”.

Schedule 2 Consequential amendment of other Acts

(Section 4)

2.1 Bicentennial Park Trust Act 1987 No 29

Section 12 Grant of leases, easements, licences etc

Omit section 12 (4). Insert instead:

- (4) In this section, easement includes an easement without a dominant tenement referred to in section 88A of the *Conveyancing Act 1919*.

2.2 Centennial Park and Moore Park Trust Act 1983 No 145

Section 20 Grant of leases, easements and licences

Omit section 20 (1). Insert instead:

- (1) In this section, *easement* includes an easement without a dominant tenement referred to in section 88A of the *Conveyancing Act 1919*.

2.3 Crown Lands Act 1989 No 6

Section 51 Definitions

Omit the definition of *easement*. Insert instead:

easement includes an easement without a dominant tenement referred to in section 88A of the *Conveyancing Act 1919*.

2.4 Darling Harbour Authority Act 1984 No 103

Section 15 Grant of leases, easements and licences

Omit section 15 (1). Insert instead:

- (1) In this section, *easement* includes an easement without a dominant tenement referred to in section 88A of the *Conveyancing Act 1919*.

2.5 Pipelines Act 1967 No 90

Section 62 Application of section 88A of Conveyancing Act to easements for pipelines etc

Omit the section.

2.6 Royal Botanic Gardens and Domain Trust Act 1980 No 19

Section 20 Grant of leases, easements and licences

Omit section 20 (1). Insert instead:

- (1) In this section, *easement* includes an easement without a dominant tenement referred to in section 88A of the *Conveyancing Act 1919*.

Schedule 3 Consequential amendment of Conveyancing (General) Regulation 1992

(Section 5)

Clause 40A

Insert after clause 40:

40A Easements in gross

- (1) For the purposes of section 88A of the Act, each of the following corporations is a prescribed authority:

Hunter Water Corporation Limited

Sydney Water Corporation Limited

an irrigation corporation within the meaning of the *Irrigation Corporations Act 1994*

an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*

Rail Access Corporation

- (2) For the purposes of section 88A of the Act, a permittee or licensee is a prescribed authority, but only in respect of easements for the purpose of the construction and use of pipelines, for any purpose incidental to any such purpose and for the purpose of access to pipelines or to apparatus or works. Expressions used in this subclause have the same meanings they have in the *Pipelines Act 1967*.

[Minister's second reading speech made in—
Legislative Assembly on 9 April 1997
Legislative Council on 6 May 1997]