



New South Wales

# Land Titles Legislation Amendment Act 2001 No 77

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New South Wales

# Land Titles Legislation Amendment Act 2001 No 77

Act No 77, 2001

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An Act to amend the *Conveyancing Act 1919* and the *Real Property Act 1900* with respect to registered leases, title to land by adverse possession and the registration of certain instruments, and by way of statute law revision. [Assented to 1 November 2001]

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

**1 Name of Act**

This Act is the *Land Titles Legislation Amendment Act 2001*.

**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 7A Current plan

Omit “section 23H” from section 7A (3) (b).  
Insert instead “Division 3B or 3C of Part 2”.

### [2] Part 2, Division 3B, heading

Omit the heading. Insert instead:

**Division 3B Subdivisions to allow leases for caravan parks  
or mobile home estate purposes**

### [3] Part 2, Division 3C

Insert after Division 3B:

**Division 3C Subdivisions to allow leases for forestry  
purposes**

#### 23J Definition

In this Division, *plan of subdivision for lease purposes* means a plan of subdivision (within the meaning of section 195) that is marked, in accordance with the regulations, to indicate that development consent to the subdivision has been granted under the *Environmental Planning and Assessment Act 1979* subject to the condition that the subdivision is a subdivision for forestry lease purposes.

#### 23K Transactions

- (1) The Registrar-General may refuse to register a transaction with respect to a lot in a plan of subdivision for lease purposes unless it comprises:
  - (a) the lease of the whole of the lot for a period that, including the period of any option to renew, does not exceed 40 years, or

(b) the transfer, conveyance, sublease, variation or mortgage of a leasehold interest so created.

(2) This section does not apply to an agreement with respect to land the subject of a proposed plan of subdivision for lease purposes, but the agreement is taken to be conditional on the registration of the proposed plan.

**[4] Section 133E**

Omit the section. Insert instead:

**133E Breach of certain obligations not to preclude option except in certain circumstances**

(1) This section applies to a lease that contains:

- (a) an option exercisable by the lessee, and
- (b) provision by which the lessee's entitlement to the option is made to depend on performance by the lessee of any specified obligation, whether such performance is required before, or after, or before and after, the giving of any notice by which the option is exercised.

(2) Despite any provision of the kind referred to in subsection (1) (b), no breach by the lessee of any relevant obligation precludes the lessee's entitlement to the option unless:

- (a) the prescribed notice has been served on the lessee in respect of the breach, and
- (b) the lessee's rights are extinguished in relation to the notice.

(3) In subsection (2):

*breach* of an obligation includes, where the obligation requires any thing to be done, any neglect or failure to do the thing concerned.

*obligation* includes any agreement, covenant, condition or stipulation by which the lessee is required to do or refrain from doing any thing.

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*prescribed notice* means a notice in writing:

- (a) specifying the lessee's breach of the relevant obligation and served on the lessee:
    - (i) within 14 days after the giving of a notice by which the option is exercised, if the breach occurred before the giving of that notice, or
    - (ii) within 14 days after the breach, if the breach occurred after the giving of that notice, and
  - (b) stating that, subject to any order of the court under section 133F, the lessor proposes to treat the breach as precluding the lessee from entitlement to the option.
- (4) For the purposes of subsection (2) (b), the lessee's rights are extinguished in relation to a prescribed notice:
- (a) if an order for relief against the effect of the breach in relation to the lessee's entitlement to the option is not sought from the court within one month after service of the prescribed notice, or
  - (b) if proceedings in which such relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting relief, or
  - (c) if such relief is granted on terms to be complied with by the lessee before compliance by the lessor with the order granting relief, and the lessee fails to comply with those terms within the time stipulated by the court for the purpose.

**[5] Section 133F Court may grant relief from breach of certain obligations**

Insert "referred to in section 133E (2)" after "notice" in section 133F (3) (c).

**[6] Section 133G Lease to continue in force until issue decided**

Omit section 133G (1). Insert instead:

- (1) Except as otherwise provided by this section or by an order of the court, a lease that would otherwise expire during any of the following periods is continued in force by this subsection until the end of the period concerned:
  - (a) a period of 14 days referred to in paragraph (a) of the definition of *prescribed notice* in section 133E (3),

- (b) a period of one month referred to in section 133E (4) (a),
- (c) the period commencing with the commencement of proceedings referred to in section 133E (4) (b) and ending at the time when:
  - (i) those proceedings are disposed of in the manner referred to in that paragraph, or
  - (ii) effect is given to orders made by the court in granting relief referred to in that paragraph, in so far as such orders affect the lessor or relate to an assurance by the lessee.

**[7] Section 184D Registration of instruments**

Insert after section 184D (7):

- (8) The Registrar-General may refuse to register in the General Register of Deeds an instrument that relates only to a change of name of any person, unless the applicant for registration satisfies the Registrar-General that good cause exists why the instrument should be so registered rather than dealt with under the *Births, Deaths and Marriages Registration Act 1995*.

**[8] Section 195 Definitions**

Omit “section 23H” from the definition of *plan of subdivision* in section 195 (1).

Insert instead “Division 3B or 3C of Part 2”.

**[9] Schedule 9 Savings, transitional and other provisions**

Insert after Part 4:

**Part 5 Provisions consequent on enactment of Land Titles Legislation Amendment Act 2001**

**10 Definition**

In this Part, *amending Act* means the *Land Titles Legislation Amendment Act 2001*.

**11 Protection of lessee's option**

The amendments made by the amending Act to sections 133E and 133G extend to an option:

- (a) contained in a lease entered into before the date on which those amendments took effect, and
- (b) notice of the exercise of which has not, before that date, been given.



## Schedule 2    Amendment of Real Property Act 1900

(Section 4)

### [1]    Section 45D Application for title by possession

Insert after section 45D (2):

(2A) A person who:

- (a) is in possession of part of a residue lot that could, if it had been a whole parcel of land, have been the subject of an application by the person under subsection (1), and
- (b) is (or is entitled to be) the registered proprietor of an estate in fee simple in land that adjoins that lot,

may apply to the Registrar-General to be recorded in the Register as the proprietor of an estate in fee simple in land consisting of a consolidated lot comprising the part of the residue lot in the person's possession and the adjoining land.

(2B) In subsection (2A), *residue lot* means an allotment consisting of a strip of land that the Registrar-General is satisfied:

- (a) was intended for use as a service lane, or
- (b) was created to prevent access to a road, or
- (c) was created in a manner, or for a purpose, prescribed by the regulations.

### [2]    Section 45D (5)

Insert “, and (in the case of an application under subsection (2A)) such evidence of concurrence on the part of the local council,” after “title”.

### [3]    Section 45D (5)

Insert the following note at the end of the subsection:

**Note.** With an application made under subsection (2A), it is not necessary to include a consolidated plan at first instance.

**[4] Section 45E Grant of possessory application**

Omit “section 45D (1) or (2)” from section 45E (1) (a).

Insert instead “section 45D (1), (2) or (2A)”.

**[5] Section 55A Registration of variation of lease**

Omit section 55A (5). Insert instead:

- (5) The Registrar-General may decline to register a variation of lease if:
  - (a) the application for registration of the variation is lodged after the termination date of the lease, and
  - (b) the proposed variation does not provide for extension of the term of the lease.
- (6) The Registrar-General may decline to register a variation of lease that purports to extend the term of the lease if the application for registration of the variation is lodged later than 12 months after the termination date of the lease.
- (7) In this section, *termination date*, in relation to a lease, means the date of expiry of the term of the lease, as evidenced:
  - (a) by the lease, if no other date has for that purpose been fixed by a registered variation of lease, or
  - (b) by a registered variation of lease (and if more than one, the last to be registered) that fixes such a date.

**[6] Sections 123 (2), 124 (2) and 126 (2)**

Omit “or agent” wherever occurring.

**[7] Section 129 Circumstances in which compensation payable**

Insert at the end of section 129 (2) (h):

- , or
- (i) to the extent to which the loss or damage arises from an error contained in a plan lodged in accordance with Division 3C of Part 2 of the *Conveyancing Act 1919*.

**[8] Section 131 Administrative proceedings for recovery of compensation**

Omit section 131 (4) and (5). Insert instead:

- (4) The Registrar-General may determine a claim by making an offer of settlement or by refusing the claim.
- (5) Section 135 applies to the settlement, and any offer of settlement, of a claim.

**[9] Section 131 (10)**

Omit the subsection. Insert instead:

- (10) Subsection (9) does not prevent a claim from being determined under this section in favour of the claimant after the expiry of the relevant period limited by that subsection, if the claimant has not commenced proceedings under section 132.

**[10] Section 135 Registrar-General may settle claims**

Insert “, whether in the course of litigation to enforce the claim or otherwise” after “Fund” in section 135 (1).

**[11] Section 135 (3) (a) (i)**

Insert “or will” after “would”.

**[12] Section 135 (3) (b)**

Omit “the amount”. Insert instead “any amount”.

**[13] Section 135 (4)–(6)**

Omit the subsections. Insert instead:

- (4) In settling such a claim, the Registrar-General:
  - (a) may pay such amount (which may include amounts by way of costs and interest) as the Registrar-General thinks reasonable, and
  - (b) may, instead of or in addition to payment of a settlement amount, take other action.
- (5) A settlement amount may include any costs incurred by the claimant before the settlement.

- (6) An officer or person employed in the office of the Registrar-General has no power to settle claims on the Registrar-General's behalf unless duly authorised to do so by a delegation in accordance with section 135M.

**[14] Section 135M Delegation**

Omit "Land Titles Office" from section 135M (1).  
Insert instead "office of the Registrar-General".

**[15] Schedule 3 Savings and transitional provisions**

Insert after Part 5:

## **Part 6 Land Titles Legislation Amendment Act 2001**

### **16 Definition**

In this Part, *amending Act* means the *Land Titles Legislation Amendment Act 2001*.

### **17 Possessory title to part of residue lot**

The provisions of Part 6A, as amended by the amending Act, apply in respect of possession of land before, as well as after, the date on which the amendments took effect.

### **18 Variation of leases**

The amendments made by the amending Act to section 55A apply only in respect of applications for registration of a variation that are made under that section after the date on which the amendments took effect.

[Minister's second reading speech made in—  
Legislative Assembly on 19 September 2001  
Legislative Council on 23 October 2001]

BY AUTHORITY

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