

[Act 2001 No 77]



New South Wales

Land Titles Legislation Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to clarify the law relating to variations of registered leases and the exercise of options to renew leases, and
- (b) to permit recognition of adverse possession of part only of a parcel of Torrens title land in certain circumstances, and
- (c) to make further provision with respect to the registration of documents that effect a change of name, and
- (d) to facilitate the registration of leases for forestry purposes.

The Bill makes other, minor amendments to the *Real Property Act 1900* mainly by way of statute law revision.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Conveyancing Act 1919* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Real Property Act 1900* set out in Schedule 2.

Schedule 1 Amendment of Conveyancing Act 1919

Subdivisions to allow leases for forestry purposes

As a consequence of section 23F of the *Conveyancing Act 1919*, a dealing with part of a lot shown in a current plan is in general unregistrable unless the land the subject of the dealing is itself shown in a current plan. A number of exceptions to this principle are currently enacted, and a further exception is to be made in the case of leases for forestry purposes. **Schedule 1 [3]** inserts a new Division 3C into Part 2 of the Act, to enable plans of subdivision that are not current plans to be lodged for forestry lease purposes. The object is to facilitate registration of the lease by allowing the land to be divided without creating a permanent subdivision and without the need for a survey to be done to the standard usually required for registration. **Schedule 1 [1], [2] and [8]** make consequential amendments.

Protection of lessee's option

A lease that provides for its renewal, or for purchase of the land demised, at the option of the lessee may make provision for avoidance of the option if the lessee breaches certain specified conditions. Section 133E of the *Conveyancing Act 1919* affords the lessee the right to have a court decide whether a particular breach does or does not operate to preclude the option, but only (as the section now stands) in relation to a breach occurring before service by the lessee of a notice of exercise of the option. The lease may require that such a notice be served a considerable time before expiry of the term of the lease. **Schedule 1 [4]** repeals and replaces the section in order to extend the jurisdiction of the court to adjudicate with respect to breaches occurring after, as well as those occurring before, service of that notice. **Schedule 1 [5] and [6]** make consequential amendments to sections 133F and 133G.

A related transitional provision in **Schedule 1 [9]** gives effect to these amendments in relation to leases already in force, but only if notice of exercise of the option has not been given.

Registration of documents changing persons' names

At present a document evidencing a change of a person's name may be registered in the General Register of Deeds under section 184D of the *Conveyancing Act 1919*. A document of this nature may also be registered under the *Births, Deaths and Marriages Registration Act 1995*. For administrative convenience, and as a measure against the possibility of fraud, **Schedule 1 [7]** amends the section so as to allow registration under the former Act to be refused, unless sufficient cause is shown for such registration in the circumstances of a particular case.

Schedule 2 Amendment of Real Property Act 1900

Possessory title to parts of laneways

Section 45D of the *Real Property Act 1900* permits the Registrar-General to recognise ownership by adverse possession of Torrens title land. Such recognition, however, is in general only possible if the adverse possessor has occupied the whole of the land parcel.

In many older urban subdivisions, the subdivider made provision for access to the rear of properties. These access ways, or service lanes, once served a purpose but in modern times many have fallen into disrepair. Some adjoining property owners have occupied a part of the service lane that is adjacent to their properties, and in the case of Old System title, have obtained title to the occupied part by virtue of their occupation of it. **Schedule 2 [1]** and **[2]** amend section 45D to permit similar recognition of a possessory title where the laneway is Torrens title. Concurrence of the local council will be required for recognition of the title. The amendment extends to permit recognition of title to occupied "revenge" or "spite" strips as well. These are narrow (usually one foot wide) strips of land that were included in a subdivision, typically to prevent access to a public road to which the developer had not contributed. **Schedule 2 [3]** and **[4]** make consequential amendments.

Variation of leases

Section 55A of the *Real Property Act 1900* permits registration of a variation of the term, rent or any other provision of a registered lease. Because it is possible (by virtue of a holdover clause in the lease) for a lease to continue in force beyond the date indicated in it as being the expiry date, the view has been taken that parties to a lease have a right to have variations registered after that date. There is, however, a need to regularise the extent to which registration of such variations should be permitted, in order to avoid congestion of the Register by records relating to leases that are defunct. Accordingly, **Schedule 2 [5]** amends the section so as to provide that:

- (a) registration of a variation of lease (other than a variation extending the term) may be refused if application for registration of the variation is lodged after the expiry of the term of the lease, and
- (b) registration of a variation of lease that extends the term of the lease may be refused if application for registration of the variation is lodged more than a year after the expiry of the term.

A related transitional provision in **Schedule 2 [15]** provides for the application of the amendments to applications for registration that are made after the amendments take effect.

Minor amendments

Schedule 2 [6] amends sections 123, 124 and 126 of the Act to provide that a person who is not a legal practitioner and who desires to appear in court on behalf of the Registrar-General may do so only with the leave of the court.

Schedule 2 [7] amends section 129 of the Act to provide that the Torrens Assurance Fund is not liable to compensate a person suffering loss or damage arising from a plan lodged under Division 3C of Part 2 of the *Conveyancing Act 1919*. The amendment is consequential on the amendment contained in Schedule 1 [3].

Schedule 2 [8] and **[10]–[13]** amend sections 131 and 135 of the Act to promote consistency of language in the two sections and to make it clear that the restrictions imposed by section 135 of the Act on the manner in which claims against the Torrens Assurance Fund are settled apply to claims settled in or out of court.

Schedule 2 [9] amends section 131 of the Act to remove an ambiguity as to the time within which proceedings may be brought in accordance with section 132 of the Act.

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Schedule 2 [14] amends section 135M of the Act to update a reference to an administrative office.