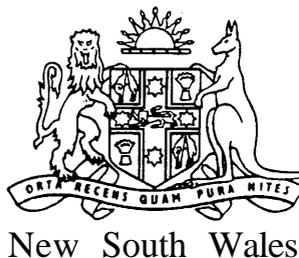


[Act 1996 No 87]



Real Property Amendment Bill 1996

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Real Property Act 1900* (“the Act”) so as:

- (a) to expand the powers of the Registrar-General with respect to the giving of notice of certain actions or proposed actions under the Act, and
 - (b) to make provision for:
 - the recording in the Register kept under the Act of approved determinations of native title and any other matters relating to native title rights and interests that the Registrar-General considers appropriate, and
 - the consequences of recording, or omitting to record, information as to native title rights and interests in the Register so far as the payment of compensation from the Torrens Assurance Fund is concerned, and
-

- (c) to revise and simplify the provisions of the Act dealing with the lapsing and cancellation of cautions recorded on qualified folios of the Register, and
- (d) to expand the category of dealings that the Registrar-General may record despite the presence of a caveat on the title, unless the caveat specifically prohibits the recording of the type of dealing concerned, and
- (e) to tighten the restrictions on the lodgment of a further caveat by the same caveator in respect of the same estate or interest and purporting to be based on the same facts as an earlier caveat, and
- (f) to provide that compensation is payable for pecuniary loss suffered if a caveat is lodged without reasonable cause, without the additional requirement (as at present) that the caveat be lodged “wrongfully”, and
- (g) to make further provision as to the manner in which approved forms used under the Act may be authenticated, and
- (h) to make other changes by way of statute law revision and to include savings and transitional provisions.

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 *Real Property Act 1900* set out in Schedule 1.

Schedule 1 Amendments

Giving of notice

Schedule 1 [2] revises a provision that deals with the powers of the Registrar-General concerning the circumstances and manner in which notice of the intended exercise or performance of functions and other actions under the Act may be given. In addition to the current ways in which the Registrar-General may give notice, it is now proposed that the Registrar-General may direct another person, such as, for example, an applicant for the conversion of a common law title to Torrens title, to give notice of the proposed action to persons who may be affected by it in a manner and form approved by the Registrar-General. **Schedule 1 [1]** and **[3]** make consequential amendments.

Schedule 1 [4] extends the power of the Registrar-General to give notice of any proposed action by the Registrar-General that alters the Register (and not merely, as at present, of the lodgment of a dealing for registration) to any person who the Registrar-General considers should be notified of it. **Schedule 1 [5]–[8]** make consequential amendments.

Recording of native title in Register

Schedule 1 [9] empowers the Registrar-General to record approved determinations of native title and other matters relating to native title rights and interests that the Registrar-General considers appropriate in the Register.

Schedule 1 [23] provides that no claim for compensation may be made on the Torrens Assurance Fund for loss, damage or deprivation because of the recording of, or failure to record, an approved determination of native title or other matter relating to native title rights and interests in the Register. This bar on claims does not extend however to an error made by the Registrar-General in recording matter in the Register (such as, for example, the recording of matter concerning native title on the wrong folio or the incorrect recording of matter on the correct folio).

Lapsing and cancellation of cautions recorded on qualified folios

Schedule 1 [10] replaces section 28M of the Act, which deals with the lapsing and cancellation of cautions recorded on qualified folios of the Register, to make its effect clearer. (See proposed sections 28M–28MH.)

The existing operation of section 28M is maintained except in one respect. This relates to applications for the cancellation of cautions that contain a notation to the effect that, in the opinion of the Registrar-General, the title of the registered proprietor of the land comprised in the qualified folio depends on the operation of a statute of limitations (that is, arises under a possessory title). Currently, an application for cancellation of such a caution may be made only after 12 years have elapsed since the qualified folio was created. It is now proposed that the registered proprietor of land comprised in such a folio may apply for cancellation of the caution 12 years after the adverse occupation of the land on which the title is based commenced. This is in keeping with the terms of the *Limitation Act 1969*. (See proposed section 28ME.) **Schedule 1 [26]** inserts a transitional provision to enable cautions in such cases to be cancelled after 12 years adverse occupation whether the qualified folio concerned was created before or after the commencement of the provision.

Caveats

Schedule 1 [13] specifies the means by which the Registrar-General may satisfy the current requirement for the giving of notice of the lodgment of a caveat to the registered proprietor of the estate or interest affected by the caveat unless the consent of the registered proprietor is endorsed on the caveat.

Schedule 1 [15] and **[16]** expand the current list of dealings that may be recorded in the Register despite the presence of a caveat on the title, unless the caveat specifically prohibits the type of dealing concerned. **Schedule 1 [14]** makes a consequential amendment.

Schedule 1 [17] omits references to service of certain notices on a caveator by certified mail (to accord with a change in mailing services offered by Australia Post) and inserts instead references to service by post.

Schedule 1 [18] revises a provision dealing with restrictions on lodgment of further caveats if an earlier caveat, by the same caveator in respect of the same estate or interest and purporting to be based on the same facts, lapses or is withdrawn. The operation of the current provision is clarified. It is also expanded to provide that a further caveat of the kind to which the provision applies is of no effect if it is lodged after an application is made to the Registrar-General for the preparation of a notice to lapse the earlier caveat, unless the Supreme Court makes an order giving leave for the further caveat to be lodged.

Schedule 1 [19] revises a provision dealing with the payment of compensation for pecuniary loss suffered by a person because of the lodgment or lapsing of, or refusal or failure to withdraw, a caveat. Currently, the entitlement to compensation arises only if the offending action, refusal or failure is done or omitted both wrongfully and without reasonable cause. The requirement for the proof of wrongfulness is now omitted. This omission has the effect of reinstating the law that applied before 1986 when certain amendments to the Act relating to caveats were enacted. **Schedule 1 [26]** inserts a transitional provision to the effect that the relevant provision, as amended by the proposed Act, does not apply to caveats lodged before the commencement of the amended provision.

Approved forms

Schedule 1 [20]–[22] revise a provision that deals with the supply or sale, and use, of forms for the purposes of the Act. A stipulation that approved forms must be sealed with the Registrar-General's seal is replaced with a requirement that approved forms may either be authenticated in that manner or in any other manner that the Registrar-General approves.

Amendments by way of law revision and savings and transitional provisions

Schedule 1 [11] and [12] contain amendments, by way of law revision, to headings to more correctly and clearly express the content of the sections concerned.

Schedule 1 [24] revises a provision, by way of law revision, to include reference to proceedings under the Act in the Land and Environment Court.

Schedule 1 [25] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.