

[Act 2000 No 28]



New South Wales

Real Property Amendment (Compensation) Bill 2000

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* so as:

- (a) to enable persons who are deprived of land, or who otherwise suffer loss, as a consequence of the operation of that Act to make claims for compensation against the Torrens Assurance Fund directly rather than, as is presently the case, generally restricting the payment of compensation from that Fund to circumstances in which other legal remedies have been exhausted, and
- (b) to require persons who attest certain transactions for the purposes of that Act to certify that they have witnessed the execution of those transactions.

The Bill also makes a consequential amendment to the *Professional Standards Act 1994*.

The provisions relating to the payment of compensation are currently contained in Part 14 of the *Real Property Act 1900*, together with provisions relating to the civil rights and remedies that are available to persons who are deprived of land, or who otherwise suffer loss, as a consequence of the operation of that Act. The opportunity has been taken to repeal and re-enact the whole of Part 14 and, in the process, to divide its subject-matter into two Parts (Part 13 dealing with civil rights and remedies and Part 14 dealing with claims for compensation) and to re-state that subject-matter in a clearer style.

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.

Clause 4 makes a consequential amendment to the *Professional Standards Act 1994*.

Civil rights and remedies and claims for compensation against the Torrens Assurance Fund

Schedule 1 [12] repeals Part 14 and replaces it with new Parts 13 and 14 (there being no Part 13 at present). The new Parts are arranged as follows:

Part 13 Civil rights and remedies

Division 1 Proceedings for the possession or recovery of land

Proposed section 118 re-enacts existing section 124. The proposed section provides that proceedings for the possession or recovery of land do not lie against the registered proprietor of land except in certain specified circumstances. This section is one of the pillars that supports the principle of indefeasibility of title to land to which the Act applies.

Proposed section 119 re-enacts existing section 125. The proposed section deals with the situation where a person who has become the registered proprietor of land, and has made improvements to the land, becomes the subject of a claim by some other person who is the registered proprietor of some or all of the same land

because of two folios having been created in respect of the same land where the claimant is the registered proprietor under the earlier folio. Essentially, the claimant does not recover the land unless the claimant contributes to the cost of the improvements that have been made.

Division 2 Proceedings for compensation

Proposed section 120 re-enacts existing section 126. The proposed section provides that a person who suffers loss or damage as a result of the operation of the Act in respect of any land is, in certain circumstances, entitled to recover damages for the loss or damage, either against the person responsible for the loss or damage or against the Registrar-General. Claims against the Registrar-General have to be made in accordance with proposed Part 14.

Division 3 Review of Registrar-General's actions

Proposed section 121 re-enacts existing section 121 (1). The proposed section requires the Registrar-General to provide reasons for certain of his or her decisions if requested to do so by persons who are dissatisfied with those decisions.

Proposed section 122 re-enacts existing section 121 (2)–(8). The proposed section provides that a person who is dissatisfied with certain of the Registrar-General's decisions may apply to the Supreme Court for a review of the decision, and that the Supreme Court may uphold or vary the decision.

Proposed section 123 re-enacts existing section 122. The proposed section provides that a person who applies for certain action to be taken by the Registrar-General in relation to land may state a case for the opinion of the Supreme Court on any objection that is made by the Registrar-General to the title to the land.

Proposed section 124 re-enacts existing section 123. The proposed section provides that the Registrar-General may state a case for the opinion of the Supreme Court in relation to certain questions arising under the Act.

Proposed section 125 re-enacts existing section 123A. The proposed section enables the Supreme Court to make orders as to costs in relation to proceedings under proposed Division 3, and provides for payment from the Torrens Assurance Fund of the costs payable by the Registrar-General.

Division 4 General

Proposed section 126 empowers the Registrar-General to intervene in any civil proceedings that may result in compensation becoming payable from the Torrens Assurance Fund. If the Registrar-General intervenes, he or she becomes a party to the proceedings.

Proposed section 127 re-enacts existing section 130. The proposed section bars certain claims concerning certain actions by the Registrar-General where the claimant has been notified of the proposed action and has failed to lodge a caveat to prevent that action being taken.

Part 14 The Torrens Assurance Fund

Division 1 Preliminary

Proposed section 128 defines various words and expressions for the purposes of the proposed Part.

Division 2 Compensation generally

Proposed section 129 specifies the circumstances in which compensation is payable from the Torrens Assurance Fund, and the limitations on the payment of compensation.

Proposed section 130 enables the Minister to direct ex gratia payments of compensation, on the recommendation of the Registrar-General, in respect of matters for which compensation is not otherwise payable.

Division 3 Administrative proceedings

Proposed section 131 provides that a person who has suffered compensable loss may lodge a claim for compensation with the Registrar-General within 6 years after the act or omission giving rise to the loss or, if the loss arose on a later date, within 6 years after that later date. The maximum compensation payable is \$100,000 (or such other amount as may be prescribed by the regulations under the Act). The claimant will be required to co-operate in the claim proceedings. A claim will be taken to have been refused if it has not been determined within 12 months after it was made unless the claimant is in default of the duty to co-operate in the claim proceedings, in which case that time is extended.

Division 4 Court proceedings

Proposed section 132 provides that court proceedings for the payment of compensation from the Torrens Assurance Fund are to be taken against the Registrar-General. Such proceedings cannot be commenced before an administrative claim has been made and determined, and cannot be made more than 12 months after the administrative claim has been determined, except by leave of the court or with the consent of the Registrar-General. In any such proceedings, the Registrar-General is not bound by any prejudicial act or omission by any party to the proceedings.

Division 5 Miscellaneous

Proposed section 133 provides that a professional indemnity insurer cannot be subrogated to any other person in respect of that person's right to claim compensation from the Torrens Assurance Fund, and further provides that on the commencement of administrative or court proceedings by a claimant against the Torrens Assurance Fund, the Registrar-General is subrogated to the claimant's rights against any other person.

Proposed section 134 re-enacts existing section 133A. The proposed section establishes the Torrens Assurance Fund, and specifies how it is to be operated.

Proposed section 135 re-enacts existing section 129. The proposed section confers power on the Registrar-General to settle any claim for payment of compensation from the Torrens Assurance Fund.

Certification of transactions

Schedule 1 [11] substitutes section 117 (1). The proposed subsection provides that the Registrar-General may reject, or refuse to accept or take any action in relation to, any primary application, dealing or caveat unless it bears certain certificates. One certificate (signed by or on behalf of each person by whom the transaction is executed) must state that the transaction is correct for the purposes of the Act. The other certificate (signed by each witness to the execution of the transaction) must state that the witness is satisfied as to the identity of the person to whose execution of the transaction the witness is attesting and that the execution of the transaction by that person occurred in the presence of the witness.

Miscellaneous matters

Schedule 1 [1] amends the definition of *Licensed conveyancer* in section 3 (1) so as to update a reference to the Act under which conveyancers are licensed.

Schedule 1 [2] inserts a definition of *Fraud* into section 3 (1) so as to make it clear that the expression extends to frauds involving fictitious persons.

Schedule 1 [3], [4], [5], [7] and [10] make consequential amendments to sections 3, 28O, 28ZC, 93 and 105A.

Schedule 1 [6] inserts proposed section 45, which re-enacts existing section 135 (currently located in Part 14, which is to be repealed by proposed Schedule 1 [12]). The proposed section protects bona fide purchasers and mortgagees in relation to fraudulent and other transactions. This section is another of the pillars that supports the principle of indefeasibility of title to land to which the Act applies.

Schedule 1 [8] repeals section 96I (1), which is to become part of proposed section 129, and **Schedule 1 [9]** makes a consequential amendment to section 96I (2).

Schedule 1 [13] inserts proposed section 146, which re-enacts existing section 134 (currently located in Part 14, which is to be repealed by proposed Schedule 1 [12]). The proposed section excludes the Registrar-General, and any person acting under the direction of the Registrar-General, from any personal liability for acts and omissions done or omitted by them in the administration or execution of the Act.

Schedule 1 [14] amends clause 1 of Schedule 3 so as to enable regulations under the Act to make provision of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [15] adds a new Part 5 at the end of Schedule 3. The new Part (proposed clauses 10–15) contains specific savings and transitional provisions consequent on the enactment of the proposed Act.