



New South Wales

Real Property and Conveyancing Legislation Amendment Bill 2009

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to reaffirm the principle of indefeasibility of title as contained in section 42 of the *Real Property Act 1900*,
- (b) to facilitate the removal of abandoned easements,
- (c) to introduce additional identification requirements to the *Real Property Act 1900* in relation to mortgagees and witnesses,
- (d) to limit the amounts recoverable from the Torrens Assurance Fund and the circumstances in which compensation will be available and make other miscellaneous amendments in respect of compensation, the Torrens Assurance Fund, the obligations placed on claimants and subrogation rights,
- (e) to amend the *Conveyancing Act 1919* to provide a further exception to the requirement that certain transactions refer to lots shown on a current plan to enable the conversion of Crown land to Torrens title as part of a Crown Title conversion project,

- (f) to require a mortgagee or chargee, in exercising a power of sale in respect of mortgaged or charged land, to take reasonable care to ensure that the land is sold for not less than its market value,
- (g) to make provision in relation to other miscellaneous matters.

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 the date of assent with the exception of specified provisions that commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Real Property Act 1900 No 25

Amendments relating to indefeasibility of title

Schedule 1 [2] reaffirms the principle of indefeasibility of title by providing that section 42 (Estate of registered proprietor paramount) prevails over any inconsistent provision of any other Act or law unless the inconsistent provision expressly provides that it is to have effect despite anything contained in section 42. (**Schedule 3** contains consequential amendments to ensure that certain provisions (including provisions that create charges on land and other interests) have effect despite section 42 of the *Real Property Act 1900*).

Amendments relating to compensation and the Torrens Assurance Fund

Schedule 1 [8] provides that proceedings for compensation for loss or damage arising in specified circumstances and suffered as a result of the operation of the *Real Property Act 1900* are to be commenced in the Supreme Court (rather than any court of competent jurisdiction). **Schedule 1 [9]** makes it clear that such proceedings may only be taken against the person whose acts or omissions have given rise to the loss or damage claimed in the proceedings or the Registrar-General as nominal defendant. **Schedule 1 [10]** provides that such proceedings based on the abandonment of an easement do not lie against the Registrar-General where the person alleging loss from that abandonment (or any previous registered proprietor of the land benefited by that easement) was aware that the Registrar-General intended to cancel a recording in the Register relating to the easement and had omitted to lodge a caveat forbidding the grant of the application or had allowed such a caveat to lapse.

Schedule 1 [12] provides that compensation is not payable from the Torrens Assurance Fund in respect of loss or damage that is a consequence of any fraudulent, wilful or negligent act or omission by any information broker. **Schedule 1 [15]** inserts a definition of *information broker* (being a person who has entered into an agreement with the Registrar-General to make information in the Register available).

Schedule 1 [14] provides that compensation is not payable from the Torrens Assurance Fund:

- (a) where the loss or damage arises from the person's failure, as mortgagee or transferee of a mortgage, to comply with proposed section 56C or from the cancellation of a recording with respect to a mortgage in accordance with proposed section 56C (6), or
- (b) where the loss or damage arises from the recording of a Registrar-General's caveat or the removal of such a caveat by the Registrar-General, or
- (c) where the loss or damage arises from the execution of an instrument by an attorney (under a power of attorney) acting contrary to, or outside of, the authority conferred on him or her by the power of attorney, or
- (d) where the loss or damage is the result of an easement not being recorded in the Register (except where the easement is not recorded in the Register due to an error of the Registrar-General), or
- (e) where the loss or damage arises from the improper exercise of a power of sale, or
- (f) where the loss or damage arises from the operation of section 129 of the *Corporations Act 2001* of the Commonwealth.

In relation to paragraph (d), **Schedule 1 [15]** makes it clear that an error of the Registrar-General does not extend to a failure to make searches or inquiries as to the existence of any easement in relation to the creation of a qualified folio of the Register.

Schedule 1 [15] also makes it clear that compensation payable from the Torrens Assurance Fund does not extend to compensation for personal injury.

Schedule 1 [16] introduces a limit on the amount of compensation payable from the Torrens Assurance Fund. Proposed section 129A provides that the total compensation payable as a result of a person being deprived of land, or any estate or interest in land, is limited to the market value of the land plus any legal, valuation or other professional costs. Proposed section 129B further limits the amount of compensation (in particular, the interest and costs components of a claim) recoverable in respect of a mortgage obtained by fraud.

Schedule 1 [17] makes it clear that the Registrar-General may require information verified by statutory declaration from the claimant in assessing a claim for compensation.

Schedule 1 [18] provides that the information that the Registrar-General may require to enable the assessment of the validity of a claim, the assessment of compensable loss and to make an informed offer of compensation, includes details of any potential claims that the claimant may have against other parties to which the Registrar-General may be subrogated and details of any proceedings relating to the circumstances which gave rise to the claim.

Schedule 1 [19] provides that the Registrar-General may refuse a claim for compensation on the ground that a claimant has failed to comply with a request to

provide information or take specified action if the request was made by notice in writing and at least 2 months have elapsed since the notice was given to the claimant.

Schedule 1 [24] provides that, unless the court otherwise orders, specified costs and interest penalties will be imposed on a claimant if court proceedings are commenced by the claimant following such refusal.

Schedule 1 [21] makes it clear that court proceedings for the recovery of compensation from the Torrens Assurance Fund may only be commenced if administrative proceedings have been commenced and determined or by leave of the court or with the consent of the Registrar-General. If court proceedings are commenced following the determination of administrative proceedings, the court proceedings must be commenced within 3 months of the date of the determination (rather than the current time period of 12 months). **Schedule 1 [22]** makes a consequential amendment.

Schedule 1 [24] requires a claimant to co-operate fully with the Registrar-General where court proceedings are commenced by the claimant with the leave of the court or the consent of the Registrar-General under section 132 (2). If a claimant fails to comply with this requirement, specified costs and interest penalties will be imposed on the claimant unless the court orders otherwise.

Section 133 currently provides that a professional indemnity insurer cannot be subrogated to any other person in respect of that other person's right to claim compensation from the Torrens Assurance Fund in relation to compensable loss.

Schedule 1 [25] extends this provision to apply in respect of all insurers. **Schedule 1 [11]** inserts a definition of *insurer*.

Schedule 1 [26] removes the current restrictions on the Registrar-General's entitlement to be subrogated to the claimant in respect of the claimant's rights and remedies in relation to a compensable loss if administrative proceedings or court proceedings are commenced in relation to that loss.

Schedule 1 [28] provides for the repayment of certain amounts to the Torrens Assurance Fund where a person has received compensation from the Fund in relation to a compensable loss and then receives a further payment on account of that compensable loss from another source.

Amendments relating to identity requirements

Schedule 1 [4] inserts proposed section 56C into the *Real Property Act 1900*. Proposed section 56C requires mortgagees to take reasonable steps to confirm the identity of the mortgagor before presenting a mortgage for lodgment.

The mortgagee must keep a written record of the steps taken to comply with this requirement and a copy of any associated documents. The Registrar-General may require the mortgagee to answer questions and produce documents in determining whether or not the mortgagee has complied with this section.

If the mortgagee fails to comply with the requirement to confirm the identity of the mortgagor and the execution of the mortgage involved fraud against the registered proprietor of the mortgaged land, the Registrar-General may cancel any recording in the Register with respect to the mortgage. This power to cancel a recording extends

to circumstances where the requirement to take reasonable steps to confirm the identity of the mortgagor may have been complied with but the mortgagee had actual or constructive notice that the mortgagor was not the same person as the person who was, or was about to become, the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates.

The proposed section also applies to the transferee of a mortgage in the same way that it applies to a mortgagee.

Schedule 1 [6] and [7] amend the provision that requires a certificate of correctness to be provided with an application, dealing or caveat so that the witness to the execution of such a document must be at least 18 years of age and must have known the person to whose execution of the document the witness is attesting for more than 12 months (or, alternatively, have taken reasonable steps to ensure the identity of that person). At present, the provision only requires the witness to be personally acquainted with, or satisfied as to the identity of, the person executing the document. Schedule 1 [6] and [7] also provide that the witness must not be a party to the application, dealing or caveat.

Miscellaneous amendments

Schedule 1 [1] makes provision for the Registrar-General to provide information and guidance with respect to certain matters (to be known as the Registrar-General's Directions).

Schedule 1 [3] provides for the Registrar-General to serve a notice of intention to cancel a recording relating to an easement on any person the Registrar-General considers appropriate in circumstances where the instrument creating the easement does not allow the identification of the land benefited by the easement. Currently, such a notice is required to be served on a person having a registered estate or interest in land benefited by the easement in all circumstances. This amendment will allow the cancellation of easements created before the enactment of the *Conveyancing Act 1919* that do not properly identify the land benefited by the easement. Schedule 1 [3] also provides for service of such a notice by advertisement if the Registrar-General considers it appropriate and the easement is unlikely to be of real benefit to the land benefited by the easement.

Schedule 1 [5] makes provision with respect to the execution of instruments in accordance with sections 127–129 of the *Corporations Act 2001* of the Commonwealth.

Schedule 1 [29] empowers the Registrar-General, in relation to the settlement of a claim in accordance with section 135, to rectify the Register (including by registering a person as the proprietor of land) where a person has been deprived of land, or an estate or interest in land, as a result of fraud and the current registered proprietor acquired the estate or interest in land through fraud.

Schedule 1 [13], [20], [23] and [27] make statute law revision amendments.

Schedule 1 [30] enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [31] inserts provisions of a savings and transitional nature.

Schedule 2 Amendment of Conveyancing Act 1919 No 6

Section 23F of the *Conveyancing Act 1919* allows the Registrar-General to refuse to register the conveyance or transfer of part of an existing lot (and certain other transactions relating to existing lots) unless the land to which the transaction relates is shown on a current plan and the boundaries of each part into which the land is divided as a result of the transaction follow the boundaries of an existing lot. Section 23G sets out a number of exceptions to section 23F. **Schedule 2 [1]** makes provision for a further exception in relation to a transaction, initiated by the Crown, that redefines a boundary of Crown land that was brought under the provisions of the *Real Property Act 1900* on the application of the Registrar-General under section 13D of that Act. This amendment will enable the conversion of Crown land to Torrens title as part of a Crown Title conversion project.

Schedule 2 [2] provides that an easement may be treated as abandoned (for the purposes of allowing the Court to modify or extinguish the easement under section 89 on the application of any person interested in the relevant land) if the Court is satisfied that the easement has not been used for at least 20 years before the application under section 89 is made. **Schedule 2 [3]** makes it clear that an order under section 89 is binding on persons who are benefited or burdened by the easement, profit à prendre, restriction or obligation.

Schedule 2 [4] requires a mortgagee or chargee of land to take reasonable care in exercising a power of sale in respect of mortgaged or charged land. In particular, the mortgagee or chargee must ensure that the land is sold for not less than its market value (or the best price that may reasonably be obtained if the land does not have an ascertainable market value).

Schedule 2 [5] enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.

First print



New South Wales

Real Property and Conveyancing Legislation Amendment Bill 2009

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New South Wales

Real Property and Conveyancing Legislation Amendment Bill 2009

No. , 2009

A Bill for

An Act to amend the *Real Property Act 1900* and other legislation to make further provision with respect to indefeasibility of title, compensation, identification requirements and duties of mortgagees; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Real Property and Conveyancing Legislation Amendment Act 2009</i> .	3 4
2 Commencement	5
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	6 7
(2) The following provisions commence on a day or days to be appointed by proclamation:	8 9
(a) Schedule 1 [4], [6] and [7],	10
(b) Schedule 2 [4].	11

Schedule 1	Amendment of Real Property Act 1900	1
	No 25	2
[1] Section 12D		3
	Insert after section 12C:	4
12D Registrar-General's Directions		5
(1)	For the purposes of this Act, the Registrar-General may provide information and guidance with respect to the following (to be known as the Registrar-General's Directions):	6
(a)	the completion of approved forms,	7
(b)	the preparation and lodgment of documents and plans for registration or recording,	8
(c)	any other matters that the Registrar-General considers appropriate.	9
(2)	The Registrar-General's Directions are to be published on the internet or made available through any other means determined by the Registrar-General.	10
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[2] Section 42 Estate of registered proprietor paramount		14
	Insert after section 42 (2):	15
(3)	This section prevails over any inconsistent provision of any other Act or law unless the inconsistent provision expressly provides that it is to have effect despite anything contained in this section.	16
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[3] Section 49 Cancellation of recordings of easements after abandonment, consolidation of tenements or release		19
	Omit section 49 (4). Insert instead:	20
(4)	Before cancelling any such recording, the Registrar-General must:	21
(a)	serve a notice of intention to cancel the recording, personally or by post, on:	22
(i)	where the instrument creating the easement does not allow the identification of the land benefited by the easement—any person that the Registrar-General considers should receive such a notice taking into consideration the nature and location of the easement, the circumstances surrounding the creation of the easement and the physical characteristics of any relevant land, or	23
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(ii)	in any other case—all persons having a registered estate or interest in land benefited by the easement, and	1 2 3
(b)	consider any submission made by those persons (but only if the submission is made by the date specified in the notice, being a date later than one month from the date on which the notice is served).	4 5 6 7
(4A)	However, the Registrar-General may give notice of the intention to cancel a recording to some or all of the persons referred to in subsection (4) (a) by advertisement in a newspaper rather than by personal or postal service if the Registrar-General is of the opinion that:	8 9 10 11 12
(a)	it is appropriate in the circumstances to give notice by advertisement in a newspaper, and	13 14
(b)	the relevant easement is unlikely to be of real benefit to the land benefited by the easement because the land benefited is no longer connected to the land burdened by the easement in a way that allows access to the site of the easement.	15 16 17 18 19
[4] Section 56C		20
Insert after section 56B:		21
56C Confirmation of identity of mortgagor		22
(1) Mortgagee must confirm identity of mortgagor		23
	Before presenting a mortgage for lodgment under this Act, the mortgagee must take reasonable steps to ensure that the person who executed the mortgage, or on whose behalf the mortgage was executed, as mortgagor is the same person who is, or is to become, the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates.	24 25 26 27 28 29
(2)	Without limiting the generality of subsection (1), the mortgagee is to be considered as having taken reasonable steps to ensure the identity of the mortgagor under subsection (1) if the mortgagee has taken the steps prescribed by the regulations.	30 31 32 33
(3) Record-keeping requirements		34
	A mortgagee must keep the following for a period of 7 years from the date of registration of the mortgage under this Act (or for such other period as may be prescribed by the regulations):	35 36 37
(a)	a written record of the steps taken by the mortgagee to comply with subsection (1),	38 39

(b)	a copy of any document obtained by the mortgagee to comply with subsection (1).	1 2
(4)	Mortgagee to answer questions and produce documents	3
	The Registrar-General, in determining whether or not this section has been complied with, may at any time require the mortgagee:	4 5
(a)	to answer questions in relation to the steps taken by the mortgagee to comply with subsection (1), and	6 7
(b)	to produce for inspection any records kept under subsection (3).	8 9
(5)	If a person fails to comply with a requirement made under subsection (4), the Registrar-General may:	10 11
(a)	in relation to a registered mortgage—make a recording in the Register, with respect to the relevant land, to that effect, and	12 13 14
(b)	in relation to a mortgage that has not been registered—refuse to register, or reject, the mortgage in accordance with section 39 (1A) or refuse to make any recording or entry in the Register or take any other action in respect of the mortgage.	15 16 17 18 19
(6)	Cancellation of recordings in the Register	20
	The Registrar-General may cancel, in such manner as the Registrar-General considers appropriate, any recording in the Register with respect to a mortgage if the Registrar-General is of the opinion:	21 22 23 24
(a)	that the execution of the mortgage involved fraud against the registered proprietor of the mortgaged land, and	25 26
(b)	that the mortgagee:	27
(i)	has failed to comply with subsection (1), or	28
(ii)	had actual or constructive notice that the mortgagor was not the same person as the person who was, or was about to become, the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates.	29 30 31 32 33
(7)	Before cancelling a recording of a mortgage in the Register under subsection (6), the Registrar-General must give notice of the proposed cancellation to the mortgagee and may also give notice to any other person that the Registrar-General considers should be notified of the cancellation. Section 12A (2) and (3) apply to and with respect to a notice given under this section.	34 35 36 37 38 39

(8) Application to transferee of a mortgage 1

This section applies to the transferee of a mortgage in the same way that it applies to a mortgagee (that is, requiring the transferee of a mortgage to take reasonable steps to ensure that the person who executed the mortgage as mortgagor is the same person who is, or is about to become, the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates). Accordingly, a reference in this section to:

- (a) the presentation of a mortgage includes a reference to the presentation of a transfer of mortgage, and 9
- (b) the mortgagee includes a reference to the transferee of the mortgage, and 10
- (c) the date of the registration of the mortgage includes a reference to the date of registration of the transfer of mortgage. 11

[5] Section 106 16

Omit the section. Insert instead: 17

106 Execution of instruments by corporations 18

For the purposes of this Act, the provisions of sections 127–129 of the *Corporations Act 2001* of the Commonwealth are taken to apply to the execution of instruments as if:

- (a) those provisions formed part of this Act, and 22
- (b) any reference in those provisions to a company were a reference to a corporation that is not a company within the meaning of the *Corporations Act 2001* of the Commonwealth. 23

Note. Sections 127–129 of the *Corporations Act 2001* of the Commonwealth apply to companies under that Act as a matter of federal law. 24

[6] Section 117 Certificate of correctness 30

Omit section 117 (1) (b). Insert instead: 31

- (b) a certificate (signed by each witness to the execution of the application, dealing or caveat) to the effect that: 32
 - (i) the witness is an eligible witness, and 33
 - (ii) the application, dealing or caveat was executed by the person to whose execution of the application, dealing or caveat the witness is attesting in the presence of the witness. 34

[7] Section 117 (4) and (5)	1
Insert after section 117 (3):	2
(4) In this section, <i>eligible witness</i> , in relation to the execution of an application, dealing or caveat, means a person who:	3
(a) is at least 18 years of age, and	4
(b) is not a party to the application, dealing or caveat, and	5
(c) has known the person to whose execution of the application, dealing or caveat the witness is attesting for more than 12 months or has taken reasonable steps to ensure the identity of that person.	6
(5) Without limiting the generality of subsection (4) (c), a witness is to be considered as having taken reasonable steps to ensure the identity of the person to whose execution of the application, dealing or caveat the witness is attesting if the person has taken the steps prescribed by the regulations.	7
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[8] Section 120 Proceedings for compensation	16
Omit “may take proceedings in any court of competent jurisdiction for the recovery of damages” from section 120 (1).	17
Insert instead “may commence proceedings in the Supreme Court for the recovery of damages”.	18
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[9] Section 120 (2)	21
Insert “only” after “taken”.	22
[10] Section 127 Barring of actions where claimant on notice	23
Insert after section 127 (3):	24
(4) Proceedings based on the abandonment of an easement do not lie against the Registrar-General where the person alleging loss from that abandonment, or any previous registered proprietor of the land benefited by that easement:	25
(a) had notice (by personal service or otherwise) or was otherwise aware that the Registrar-General intended to cancel a recording relating to the easement in the Register, and	26
(b) had omitted to lodge a caveat forbidding the grant of the application or had allowed such a caveat to lapse.	27
(5) Proceedings based on the correction of the Register in accordance with this Act by the Registrar-General do not lie against the	28
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Registrar-General where the person alleging loss from that correction:	1
(a) had notice (by personal service or otherwise) or was otherwise aware that the Registrar-General intended to correct the Register, and	2
(b) had failed to serve on the Registrar-General or give the Registrar-General written notice of an order made by the Supreme Court restraining the action.	3
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[11] Section 128 Definitions	9
Insert in alphabetical order in section 128 (1):	10
<i>insurer</i> means a professional indemnity insurer and any other person who carries on an insurance business within the meaning of the <i>Insurance Act 1973</i> of the Commonwealth.	11
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[12] Section 129 Circumstances in which compensation payable	14
Omit “licensed conveyancer or real estate agent” from section 129 (2) (b) (i).	15
Insert instead “licensed conveyancer, real estate agent or information broker”.	16
[13] Section 129 (2) (e)–(i)	17
Omit “to the extent to which” wherever occurring. Insert instead “where”.	18
[14] Section 129 (2) (j)–(o)	19
Insert at the end of section 129 (2) (i):	20
, or	21
(j) where the loss or damage arises from the person’s failure, as mortgagee or transferee of a mortgage, to comply with section 56C or from the cancellation of a recording with respect to a mortgage in accordance with section 56C (6), or	22
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(k) where the loss or damage arises from the recording of a Registrar-General’s caveat in the Register under section 12 (1) (e) or (f) or the removal of such a caveat by the Registrar-General, or	27
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(l) where the loss or damage arises from the execution of an instrument by an attorney (under a power of attorney) acting contrary to, or outside of, the authority conferred on him or her by the power of attorney, or	31
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(m) where the loss or damage is the result of an easement not being recorded in the Register (except where the easement	35
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	is not recorded in the Register due to an error of the Registrar-General), or	1
	(n) where the loss or damage arises from the improper exercise of a power of sale, or	2
	(o) where the loss or damage arises from the operation of section 129 of the <i>Corporations Act 2001</i> of the Commonwealth.	3
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[15]	Section 129 (4)–(6)	8
	Insert after section 129 (3):	9
	(4) For the purposes of subsection (2) (m), an error of the Registrar-General does not extend to the Registrar-General’s failure, in relation to the creation of a qualified folio of the Register under Part 4A, to make searches or inquiries as to the existence of any easement.	10
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	(5) The entitlement to compensation under subsection (1) does not confer any entitlement to compensation for personal injury.	15
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	(6) In this section, <i>information broker</i> means a person who has entered into an agreement with the Registrar-General to make information in the Register available in accordance with the conditions determined by the Registrar-General under section 96B (2).	17
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[16]	Sections 129A and 129B	22
	Insert after section 129:	23
	129A Limits on amount recoverable generally	24
	The total compensation that is payable under this Part, in relation to loss or damage suffered by a person as a result of the person being deprived of land or any estate or interest in land, is limited to the market value of the land at the date on which compensation is awarded to that person plus any legal, valuation or other professional costs reasonably incurred by the person in making the claim.	25
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	129B Limits on amount recoverable in respect of mortgage obtained by fraud	32
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	(1) This section applies only in circumstances where:	34
	(a) a claim for compensation is made as a result of the registration of a mortgage and the execution of the mortgage involved, in the opinion of the	35
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	Registrar-General, fraud against a registered proprietor of the mortgaged land, and	1 2
(b)	a person would be entitled to compensation under this Part for deprivation of the mortgaged land as a consequence of fraud if the position of that person is not otherwise rectified, and	3 4 5 6
(c)	as a result of the registration of the mortgage, the mortgagee is entitled to exercise a power of sale in respect of the land mortgaged.	7 8 9
(2)	Section 129A does not apply in the circumstances in which this section applies.	10 11
(3)	The total compensation that is payable to a mortgagee is limited to the market value of the land at the date on which compensation is awarded to the mortgagee less the amount secured by any other mortgage affecting the same land (including a mortgage that is registered as a result of fraud) that has, or would have had, more priority.	12 13 14 15 16 17
(4)	Subsections (5) and (6):	18
(a)	apply to limit the interest and costs components of a claim, and	19 20
(b)	apply despite anything to the contrary in the mortgage (including any associated document).	21 22
(5)	The rate of interest to be applied in calculating the interest component of a claim on any particular day must not exceed:	23 24
(a)	if the interest rate specified in the mortgage is no greater than the official cash rate applicable on that day plus 2%—the interest rate specified in the mortgage, or	25 26 27
(b)	if the interest rate specified in the mortgage is greater than the official cash rate applicable on that day plus 2%—the official cash rate plus 2%.	28 29 30
(6)	The costs component (being the costs incurred by the mortgagee in relation to the mortgage) of a claim is limited to the reasonable costs incurred by the mortgagee in directly protecting the mortgagee’s interest in respect of the land mortgaged.	31 32 33 34
(7)	In this section, <i>official cash rate</i> means the official cash rate specified by the Reserve Bank of Australia.	35 36
[17]	Section 131 Administrative proceedings for recovery of compensation	37
	Insert “(including information verified by statutory declaration)” after “information” in section 131 (7) (a).	38 39

[18] Section 131 (7A)	1
Insert after section 131 (7):	2
(7A) Without limiting subsection (6), the following information is	3
information that is required to enable the Registrar-General to	4
assess the validity of a claim, assess compensable loss and make	5
an informed offer of compensation:	6
(a) details of any potential claims that the claimant may have	7
against other parties to which the Registrar-General may	8
be subrogated,	9
(b) details of any proceedings relating to the circumstances	10
which gave rise to the claim (including the outcome of any	11
such proceedings and whether any party to the proceedings	12
has subrogated another person).	13
[19] Section 131 (8A)	14
Insert after section 131 (8):	15
(8A) Without limiting the power of the Registrar-General to refuse a	16
claim in accordance with subsection (4), the Registrar-General	17
may refuse a claim on the ground that a claimant has failed to	18
comply with a request made under subsection (7) if:	19
(a) the request was made by notice in writing, and	20
(b) at least 2 months have elapsed since the notice was given	21
to the claimant.	22
[20] Section 131 (9)	23
Omit the subsection. Insert instead:	24
(9) For the purposes of section 132, a claim is taken to have been	25
refused if it is not determined within 12 months after the claim	26
was made. However, if at the end of that period the claimant has	27
failed to provide information in fulfilment of the duty imposed by	28
subsection (6), the claim is only taken to have been refused if it	29
is not determined within 2 months after that information is	30
provided.	31
[21] Section 132 Court proceedings for the recovery of compensation	32
Omit section 132 (2). Insert instead:	33
(2) Any such court proceedings may only be commenced:	34
(a) if administrative proceedings have been commenced and	35
determined in relation to the compensable loss, or	36

	(b) by leave of the court or with the consent of the Registrar-General.	1 2
	(2A) Court proceedings commenced in accordance with subsection (2) (a) must be commenced within 3 months of the date on which the administrative proceedings have been determined in relation to the compensable loss.	3 4 5 6
[22]	Section 132 (3)	7
	Omit “12 months referred to in subsection (2) (b)”.	8
	Insert instead “3 months referred to in subsection (2A)”.	9
[23]	Section 132 (5)	10
	Insert “(less any interest awarded in relation to the period after the date of the offer)” after “by the court”.	11 12
[24]	Section 132 (6)–(8)	13
	Insert after section 132 (5):	14
	(6) If court proceedings are commenced following the refusal of a claim in accordance with section 131 (8A):	15 16
	(a) the claimant’s costs in the court proceedings are not payable by the Registrar-General, and	17 18
	(b) the Registrar-General’s costs are payable by the claimant, and	19 20
	(c) the claimant is not entitled to any interest in respect of the amount of compensation claimed from the date of the notice referred to in section 131 (8A),	21 22 23
	unless the court orders otherwise.	24
	(7) If court proceedings are commenced with the leave of the court or the consent of the Registrar-General under subsection (2), the claimant must co-operate fully with the Registrar-General for the purpose of ensuring that the Registrar-General has sufficient information to be able:	25 26 27 28 29
	(a) to assess the validity of the claim, and	30
	(b) to assess the claimant’s compensable loss, and	31
	(c) to make an informed offer of compensation.	32
	(8) If a claimant fails to comply with subsection (7):	33
	(a) the claimant’s costs in the court proceedings are not payable by the Registrar-General, and	34 35

	(b) the Registrar-General's costs are payable by the claimant, and	1 2
	(c) where the Registrar-General has requested information in accordance with subsection (7) in writing—the claimant is not entitled to any interest on the claim from the date of that notice,	3 4 5 6
	unless the court orders otherwise.	7
[25]	Section 133 Subrogation of rights to claim compensation	8
	Omit "A professional indemnity insurer" from section 133 (1).	9
	Insert instead "An insurer".	10
[26]	Section 133 (2)	11
	Omit the subsection. Insert instead:	12
	(2) If administrative proceedings or court proceedings are commenced in relation to a claimant's compensable loss, the Registrar-General is subrogated to the claimant in respect of the claimant's rights and remedies against any person in relation to that loss.	13 14 15 16 17
[27]	Section 133 (5)	18
	Omit " <i>Legal Profession Act 1987</i> ".	19
	Insert instead " <i>Legal Profession Act 2004</i> ".	20
[28]	Section 133A	21
	Insert after section 133:	22
133A	Repayment of certain amounts	23
	(1) If a claimant:	24
	(a) receives a payment from the Torrens Assurance Fund in respect of the claim, and	25 26
	(b) receives or recovers from another source or sources a payment on account of the compensable loss, and	27 28
	(c) there is a surplus after deducting the amount of the compensable loss from the total amount received or recovered by the claimant from both or all sources,	29 30 31
	the amount of the surplus is a debt payable by the claimant to the Torrens Assurance Fund.	32 33

(2)	However, the amount payable by the claimant cannot exceed the amount the claimant received from the Torrens Assurance Fund in respect of the claim.	1 2 3
[29] Section 138A		4
	Insert after section 138:	5
138A	Registrar-General may take steps to rectify Register in case of fraud	6 7
(1)	The Registrar-General may, in relation to the settlement of a claim in accordance with section 135, take any of the steps set out in subsection (2) that are required to rectify the Register (including by registering a person as proprietor of land) if the Registrar-General is satisfied that:	8 9 10 11 12
	(a) the person has been deprived of land, or an estate or interest in land, as a result of fraud, and	13 14
	(b) the current registered proprietor acquired the estate or interest in land through fraud.	15 16
(2)	The Registrar-General may do one or more of the following:	17
	(a) cancel or amend a folio of the Register,	18
	(b) cancel, amend or make a recording in a folio of the Register,	19 20
	(c) create a new folio of the Register,	21
	(d) create a new edition of a computer folio,	22
	(e) issue a new certificate of title.	23
(3)	The Registrar-General may, if he or she considers it appropriate to do so, require the current registered proprietor to deliver up the certificate of title for the purpose of it being cancelled, by notice in writing to the current registered proprietor.	24 25 26 27
(4)	If the current registered proprietor fails to respond to such a notice within a reasonable time or cannot be found for the giving of such a notice, the Registrar-General may, if the Registrar-General considers it appropriate, dispense with the production of the certificate of title or take action under the authority conferred upon the Registrar-General by section 111 (3).	28 29 30 31 32 33 34

[30] Schedule 3 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
<i>Real Property and Conveyancing Legislation Amendment Act 2009</i>	3
	4
[31] Schedule 3, Part 8	5
Insert at the end of the Schedule:	6
Part 8 Real Property and Conveyancing Legislation Amendment Act 2009	7
	8
20 Definition	9
In this Part, <i>amending Act</i> means the <i>Real Property and Conveyancing Legislation Amendment Act 2009</i> .	10
	11
21 Confirmation of identity of mortgagor	12
Section 56C, as inserted by the amending Act, does not apply in respect of any mortgages accepted for lodgment before the insertion of that section.	13
	14
	15
22 Limits on compensation payable from Torrens Assurance Fund	16
Sections 129A and 129B, as inserted by the amending Act, do not apply in respect of claims lodged before the insertion of those sections but extend to claims lodged after such insertion regardless of whether the loss or damage occurred before or after such insertion.	17
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23 Time limits for commencement of proceedings for the recovery of compensation	22
	23
Section 132 (2), (2A) and (3), as substituted, inserted and amended, respectively, by the amending Act, do not apply in relation to a matter if administrative proceedings were determined in that matter before the substitution, insertion or amendment.	24
	25
	26
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	28

Schedule 2	Amendment of Conveyancing Act 1919	1
	No 6	2
[1]	Section 23G Exceptions to section 23F	3
	Insert after section 23G (b):	4
	(b1) a transaction, initiated by the Crown, that redefines a boundary of Crown land that was brought under the provisions of the <i>Real Property Act 1900</i> on the application of the Registrar-General under section 13D of that Act,	5 6 7 8 9
[2]	Section 89 Power of Court to modify or extinguish easements, profits à prendre and certain covenants	10 11
	Insert after section 89 (1):	12
	(1A) For the purposes of subsection (1) (b), an easement may be treated as abandoned if the Court is satisfied that the easement has not been used for at least 20 years before the application under subsection (1) is made.	13 14 15 16
[3]	Section 89 (5)	17
	Omit the subsection. Insert instead:	18
	(5) An order under this section that is registered in accordance with this section is binding on persons (whether or not of full age or capacity and whether or not such persons are parties to the proceedings or have been served with notice) who:	19 20 21 22
	(a) are, or become, entitled to the easement or profit à prendre or interested in enforcing the restriction or obligation, and	23 24
	(b) have, or obtain, an estate or interest in the land burdened by the easement, profit à prendre, restriction or obligation.	25 26
[4]	Section 111A	27
	Insert after section 111:	28
	111A Duties of mortgagees and chargees in respect of sale price of land	29
	(1) A mortgagee or chargee, in exercising a power of sale in respect of mortgaged or charged land, must take reasonable care to ensure that the land is sold for:	30 31 32
	(a) if the land has an ascertainable market value when it is sold—not less than its market value, or	33 34
	(b) in any other case—the best price that may reasonably be obtained in the circumstances.	35 36

(2)	Subsection (1) applies to an agent appointed by a mortgagee or chargee to sell the mortgaged or charged land in the same way as it applies to a mortgagee or chargee exercising a power of sale in respect of mortgaged or charged land.	1 2 3 4
(3)	Nothing in section 112 (7) or 115 (2) of this Act, or in section 58 (1) of the <i>Real Property Act 1900</i> , affects the duty imposed by this section.	5 6 7
(4)	The title of the purchaser cannot be challenged on the ground that the mortgagee or chargee has committed a breach of any duty imposed by this section, but a person who suffers loss or damage as a result of the breach of the duty has a remedy in damages against the mortgagee or chargee exercising the power of sale or selling the land.	8 9 10 11 12 13
(5)	This section has effect despite any stipulation to the contrary.	14
(6)	Nothing in this section affects the operation of any rule of law relating to the duty of the mortgagee or chargee to account to the mortgagor or chargor.	15 16 17
(7)	This section applies to mortgages and charges whether made before or after the commencement of this section but only in relation to a sale arising as a consequence of a default occurring after the commencement of this section.	18 19 20 21
(8)	This section extends to mortgages and charges under the <i>Real Property Act 1900</i> .	22 23
[5]	Schedule 9 Savings, transitional and other provisions	24
	Insert at the end of clause 1 (1):	25
	<i>Real Property and Conveyancing Legislation Amendment Act 2009</i>	26 27

Schedule 3	Amendment of other Acts	1
3.1	Catchment Management Authorities Act 2003 No 104	2
	Schedule 4 Catchment contributions	3
	Insert at the end of clause 10:	4
	(2) The provisions of this clause have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	5 6
3.2	Coal Acquisition Act 1981 No 109	7
	Section 5 Vesting of coal in the Crown	8
	Insert after section 5 (3):	9
	(4) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	10 11
3.3	Commons Management Act 1989 No 13	12
	Section 14 Trust to have a fee simple estate in the common for which it is established	13 14
	Insert after section 14 (2):	15
	(3) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	16 17
3.4	Contaminated Land Management Act 1997 No 140	18
	Section 40 Charge on land subject to cost notice	19
	Insert after section 40 (6):	20
	(7) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	21 22
3.5	Crown Lands Act 1989 No 6	23
	Section 100 Estate of trust	24
	Insert after section 100 (3):	25
	(4) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	26 27

3.6 Electricity Supply Act 1995 No 94	1
[1] Section 51 Ownership of electricity works	2
Insert after section 51 (2):	3
(3) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	4 5
[2] Section 53 Protection of certain electricity works	6
Insert after section 53 (4):	7
(5) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	8 9
3.7 Environmental Planning and Assessment Act 1979 No 203	10
Section 28 Suspension of laws etc by environmental planning instruments	11 12
Insert after section 28 (5):	13
(6) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	14 15
3.8 Farm Water Supplies Act 1946 No 22	16
Section 12 Repayment of advance secured by deed of charge	17
Insert after section 12 (4):	18
(5) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	19 20
3.9 Gas Supply Act 1996 No 38	21
Section 52 Ownership of gas works	22
Insert after section 52 (2):	23
(3) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	24 25
3.10 Hunter Water Act 1991 No 53	26
[1] Section 19 Ownership of works	27
Insert after section 19 (3):	28
(4) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	29 30

[2] Section 25 Interference with works	1
Insert after section 25 (6):	2
(7) The provisions of this section have effect despite anything	3
contained in section 42 of the <i>Real Property Act 1900</i> .	4
[3] Section 46 Rates on land within declared drainage areas charge on land	5
Insert after section 46 (5):	6
(6) The provisions of this section have effect despite anything	7
contained in section 42 of the <i>Real Property Act 1900</i> .	8
3.11 Land Tax Management Act 1956 No 26	9
Section 47 Land tax to be first charge on land	10
Omit section 47 (3). Insert instead:	11
(3) The provisions of this section have effect despite anything	12
contained in:	13
(a) section 34 or any other provision of this Act, or	14
(b) section 42 of the <i>Real Property Act 1900</i> .	15
3.12 Local Government Act 1993 No 30	16
[1] Section 59A Ownership of water supply, sewerage and stormwater drainage works	17
Insert after section 59A (2):	18
(3) The provisions of this section have effect despite anything	19
contained in section 42 of the <i>Real Property Act 1900</i> .	20
[2] Section 550 Charge of rates and charges on land	21
Insert after section 550 (4):	22
(5) The provisions of this section have effect despite anything	23
contained in section 42 of the <i>Real Property Act 1900</i> .	24
3.13 Noxious Weeds Act 1993 No 11	25
Section 60 Expenses to be charged on land	26
Insert after section 60 (4):	27
(5) The provisions of this section have effect despite anything	28
contained in section 42 of the <i>Real Property Act 1900</i> .	29
	30

3.14 Rural Lands Protection Act 1998 No 143	1
Section 201 Recovery of rates, charges, fees and other unpaid amounts	2
Insert after section 201 (3):	3
(4) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	4 5
3.15 Soil Conservation Act 1938 No 10	6
[1] Section 22 Preservation of proclaimed works	7
Insert after section 22 (6):	8
(7) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	9 10
[2] Section 22K Repayment of advance secured by deed of charge	11
Insert after section 22K (5):	12
(6) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	13 14
3.16 State Water Corporation Act 2004 No 40	15
Section 21 Ownership of works	16
Insert after section 21 (3):	17
(4) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	18 19
3.17 Sydney Water Act 1994 No 88	20
[1] Section 37 Ownership of works	21
Insert after section 37 (3):	22
(4) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	23 24
[2] Section 44 Protection of works	25
Insert after section 44 (6):	26
(7) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	27 28

[3] Section 64 Availability charges	1
Insert after section 64 (5):	2
(6) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	3 4
[4] Section 65 Stormwater drainage area charges	5
Insert after section 65 (5):	6
(6) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	7 8
3.18 Sydney Water Catchment Management Act 1998 No 171	9
Section 54 Ownership of works	10
Insert after section 54 (3):	11
(4) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	12 13
3.19 Transport Administration Act 1988 No 109	14
Schedule 6B Special provisions for underground rail facilities	15
Insert after clause 7:	16
8 Application of section 42 of Real Property Act 1900	17
The provisions of this Schedule have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	18 19
3.20 Water Act 1912 No 44	20
Section 119 Charge on land	21
Insert after section 119 (2):	22
(3) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	23 24
3.21 Water Industry Competition Act 2006 No 104	25
Section 64 Ownership of water industry infrastructure	26
Insert after section 64 (2):	27
(3) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	28 29

3.22 Water Management Act 2000 No 92	1
[1] Section 173 Charge on land	2
Insert after section 173 (3):	3
(4) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	4 5
[2] Section 232 Rates	6
Insert after section 232 (7):	7
(8) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	8 9
[3] Section 355 Certain rates and charges to be a charge on land	10
Insert after section 355 (2):	11
(3) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	12 13
3.23 Wild Dog Destruction Act 1921 No 17	14
Section 12 Rate to be imposed	15
Insert after section 12 (4):	16
(5) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	17 18