

**REAL PROPERTY (BOUNDARY DETERMINATIONS)
AMENDMENT BILL 1989**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Real Property Act 1900 by inserting new provisions that will enable the Registrar-General to make a binding determination as to the position of a boundary of land where there is doubt as to the position of the boundary. The main features of the proposed new provisions are as follows:

- * an application for such a determination can only be made by or on behalf of an owner of the land, the purchaser under a contract for sale of the land (if the owner consents or the whole of the purchase price has been paid) or a public or local authority or Government Department head;
- * applications must be made in an approved form and accompanied by supporting information and the prescribed fee;
- * an application must be refused unless the Registrar-General is satisfied there is doubt as to the position of the boundary;
- * notice of an application must be given to the owners of land adjoining the boundary (and may be given to other persons) and is to invite submissions on the application;
- * the Registrar-General is required to consult with a registered surveyor when determining the position of a boundary and may require the applicant for a determination to pay the cost of any survey required for the purposes of the determination;
- * the Registrar-General can determine the position of other boundaries if the consideration of an application reveals that there is doubt as to their position but must consult with the Surveyor-General before doing so;
- * the Registrar-General's determination of the position of a boundary is to be made on the basis of all the evidence available to the Registrar-General but, if the evidence is inconclusive, is to be made on the basis of what is just and reasonable in the circumstances;

Real Property (Boundary Determinations) Amendment 1989

- * notice of the determination of a boundary position is to be given to any applicant for the determination, to the owners of land adjoining the boundary and to the Surveyor-General, and may be given to other persons;
- * an owner (or purchaser who applied for the determination) who is dissatisfied with the determination can request that the matter be referred to the Land and Environment Court;
- * the position of a boundary determined under the new provision is to be shown on the appropriate plans and the boundary is then, for all purposes, to be taken to be in the position shown;
- * if the owners of all land adjoining an affected boundary agree, the Registrar-General can dispense with certain requirements of the new provisions that would otherwise delay the finalisation of an application;
- * the Registrar-General can delegate functions under the new provisions to an officer of the Land Titles Office;
- * the new provisions will generally apply to all boundaries but will not apply in certain circumstances that involve old system land, a primary application or limited folio land.

The Bill also amends the Encroachment of Buildings Act 1922 to:

- * transfer jurisdiction under that Act from the Supreme Court to the Land and Environment Court; and
- * to require applications for determinations under that Act as to the position of a boundary to be made to the Registrar-General under the proposed new provisions referred to above or (if such an application cannot be made to the Registrar-General or is refused) to the Land and Environment Court (at present, all applications are made to the Supreme Court).

Consequential amendments are also made to the Land and Environment Court Act 1979.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clauses 3 - 5 are formal provisions that give effect to Schedules 1 - 3.

Schedules 1 - 3 contain the amendments to the Real Property Act 1900, the Encroachment of Buildings Act 1922 and the Land and Environment Court Act 1979 described above.
