



Circular

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Partial Commencement of the Property Legislation Amendment Act 2005

The *Property Legislation Amendment Act 2005 No 68* introduces a number of practical and important reforms to the *Real Property Act 1900*, *Conveyancing Act 1919*, *Strata Schemes (Freehold Development) Act 1973*, *Strata Schemes (Leasehold Development) Act 1986* and *Local Government Act, 1993*. The Act will partially commence on 1 January 2006 when the following provisions will apply.

Cancellation of cautions recorded on qualified folios of the Register

Additional requirements will apply for an application for cancellation of a caution under section 28 MC (3) of the *Real Property Act*. New sections 28MC (3) (a1) and 28MC (3) (c) are inserted requiring the Registrar General to have regard to a survey report and an identification survey relating to the land prepared by a registered surveyor and to be satisfied that the boundaries of the land are adequately defined without further survey definition. The new sections are aimed at disclosing whether there are encroachments by or upon the property.

The registered surveyor must state that the identification survey has been prepared "for the removal of a caution". Additionally, the survey must comply with Clause 9 of the Surveying Regulation 2001.

Creating an ordinary folio under section 28EA of the *Real Property Act*

The Registrar General must be satisfied that the land boundaries are adequately defined without further survey definition before creating an ordinary folio of the Register under section 28EA of the *Real Property Act* instead of a qualified folio.

Notification of permits, licences and permissive occupancies affecting Crown Land on the Torrens Register

A new section 36A is inserted into the *Real Property Act* authorising the Registrar General to make a note in the relevant folio of the Torrens register drawing attention to any associated Crown permits, licences and permissive occupancies. In addition, the Registrar General may also remove or alter such a note.

Creation of an easement, profit a prendre or restriction on the use of land over land owned by the same registered proprietor by way of a dealing as an alternative to section 88B of the *Conveyancing Act*

Previously, in order to create easements, profits a prendre or restrictions on the use of land where the land benefited and burdened were in the same ownership, the only option was section 88B of the *Conveyancing Act 1919*. This involves the preparation of a full plan of survey to be lodged as a deposited plan, together with a section 88B instrument setting out the details of the easements, profits a prendre or restrictions on the use of land.

Now it will be possible to create easements, profits a prendre or restrictions on the use of land in such circumstances without having to lodge a full plan of survey. A new section 46A in the *Real Property Act* gives the Registrar General discretion in suitable cases to allow a land owner to create an easement, profit a prendre or restriction on the use of land by a Transfer, accompanied by a compiled plan that is prepared in accordance with the Real Property Regulation 2003.

It is envisaged that this new facility will be allowed only in straightforward cases where the site of the easement, profit a prendre or restriction on the use of land can be adequately identified without the need for a full plan of survey eg where the site of the easement covers a whole parcel, or a right of carriageway of uniform width runs parallel to an existing straight line boundary. The new procedure will not be appropriate in more complex circumstances eg where the site of a right of carriageway is a winding track. In such a case the Registrar General will insist on a full plan of survey under section 88B.

Dealing with Common Law Leases

Section 55B is added to the *Real Property Act*, introducing a simple way of dealing with common law leases recorded on a Torrens Folio of the Register.

Presently, any transaction affecting a common law lease must be dealt with by way of an old system deed in the General Register of Deeds as well as a Torrens dealing. The new provisions allow the Registrar General, on being provided with satisfactory evidence of devolution of a leasehold title, to require only a Torrens dealing.

The evidence required by the Registrar General to satisfy the requirements of section 55B is an old system search of the leasehold title which is to be annexed to a statutory declaration by the person who undertook the old system search.

The statutory declarant must state:

- their qualification;
- that he or she has inspected all deeds since the leasehold title was created to the present time;
- the instruments inspected to show the leasehold title has not expired; and
- any instrument to which the leasehold estate is subject.

Amendment to the *Local Government Act 1993*

Section 49 of the *Local Government Act* is amended to allow for the dedication and vesting in a council of land as a public reserve and a drainage reserve on registration of a transfer or conveyance of the land to the council.

Currently, the only way a parcel of land can be dedicated as a public reserve and drainage reserve is by way of registration of a plan that identifies the land as public reserve or drainage reserve. The new scheme allows for the registration of a transfer or conveyance of a whole parcel of land to a council for the purposes of public reserve or drainage reserve without the need for a plan of survey.

The Registrar General has approved a new form called Transfer to a Council under section 49 of the Local Government Act 1993 (Form 01TK). The Transfer must indicate whether the land being transferred is for a public reserve or drainage reserve. On registration a notification will be entered in the second schedule showing the land as either a public reserve or drainage reserve.

Amendments to Strata Schemes Legislation

Section 25 of the *Strata Schemes (Freehold Development) Act* and section 29 of the *Strata Schemes (Leasehold Development) Act* now make it clear that a lease of common property in a freehold or leasehold strata scheme can be varied.

In addition, section 28W of the *Strata Schemes (Freehold Development) Act* and section 57F of the *Strata Schemes (Leasehold Development) Act* have been amended to ensure that proprietors in a strata scheme cannot avoid their obligations under a strata management statement by passing an inconsistent by-law.

The new Act also makes a number of minor amendments by way of Statute Law Revision. The balance of the Act will be proclaimed in mid 2006.

The *Property Legislation Amendment Act 2005* may be viewed at www.legislation.nsw.gov.au under 'Acts in Force'.

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