

Serial 249
Law of Property (Consequential Amendments) Bill 2000
Mr Burke

**A BILL
for
AN ACT**

to amend various Acts consequential on the enactment of the
Law of Property Act 2000 and for other purposes



NORTHERN TERRITORY OF AUSTRALIA
LAW OF PROPERTY (CONSEQUENTIAL AMENDMENTS) ACT 2000

No. of 2000

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2000

AN ACT

to amend various Acts consequential on the enactment of
the *Law of Property Act 2000* and for other purposes

[Assented to 2000]

[Second reading 2000]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Law of Property (Consequential Amendments) Act 2000*.

2. Commencement

This Act comes into operation on the day on which, but immediately after, the *Law of Property Act 2000* commences.

3. Amendments of *Law of Property Act 2000*

(1) Section 79 of the *Law of Property Act 2000* is amended by omitting "of a mining tenement under the *Mining Act*" from the definition of "instrument of mortgage" and substituting "or charge of property under the *Mining Act*, *Petroleum Act* or *Petroleum (Submerged Lands) Act*".

(2) Section 93 of the *Law of Property Act 2000* is amended –

(a) by omitting from subsection (2) "received"; and

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- (b) by inserting in subsection (2)(d) "registered" before "mortgage" (first occurring).

(3) Section 221 of the *Law of Property Act 2000* is amended –

- (a) by omitting "The" and substituting "(1) The"; and
(b) by adding at the end the following:

"(2) The repeal of the *Real Property (Insurance Money Application) Act* does not affect the operation of that Act in respect of a contract entered into before the commencement of this Act."

(4) Schedule 4 to the *Law of Property Act 2000* is amended –

- (a) by inserting after "*Distress for Rent Act, 1737*" the following:
"14 Geo 3.c78 *Fires Prevention (Metropolis) Act, 1774*";
(b) by inserting after "An Act to amend the Law relating to Sales of Reversions" the following:

"No. 182 of 1880 The Settled Estates Act 1880"; and

- (c) by inserting after "The Partition Act, 1881" the following:

"No. 459 of 1889 The Settled Estates Act Amendment Act".

4. Amendment of *Law Reform (Miscellaneous Provisions) Act*

Part IX of the *Law Reform (Miscellaneous Provisions) Act* is repealed.

5. Amendments of *Local Government Act*

Section 94 of the *Local Government Act* is amended –

- (a) by omitting from subsection (1) "then sell it in accordance with the *Real Property Act*." and substituting the following:

"then –

- (a) if the charge is registered before to the commencement of the *Law of Property Act* – sell the land in accordance with the *Real Property Act* as if that Act had not been repealed; or
(b) if the charge is registered after the commencement of the *Law of Property Act* – exercise, subject to subsection (4), its power of sale under the overriding statutory charge."; and
(b) by omitting subsection (4) and substituting the following:

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"(4) In exercising its power of sale to sell land under an overriding statutory charge the council –

- (a) has the powers and obligations of a mortgagee specified in sections 86, 87, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101 and 102 of the *Law of Property Act*; and
- (b) those provisions apply with the necessary changes and the council must comply with them to the extent necessary as if the council were a mortgagee within the meaning of the *Law of Property Act* and the ratepayer in respect of which the council is exercising its power to sell land were a mortgagor within the meaning of that Act who has defaulted in the payment of principal money or interest secured by a mortgage.

"(5) When complying with section 89 of the *Law of Property Act*, the council must include in the notice served on the ratepayer a statement that –

- (a) if the ratepayer pays all money that is a charge on the land and all the costs relating to the registration of the overriding statutory charge or to the sale to the council at least 7 working days before the date fixed for the sale; or
- (b) if the ratepayer enters into an arrangement satisfactory to the council for the payment of the money or costs referred to in paragraph (a) within the time referred to in that paragraph,

the council will not sell the land."

6. Amendment of *Mining Act*

Section 173 of the *Mining Act* is amended by inserting after subsection (2) the following:

"(2A) On the commencement of the *Law of Property Act 2000* –

- (a) that Act applies to estates, interests and any other rights in or in respect of land granted, created or taking effect under this Act, but if there is an inconsistency between the provisions of that Act and a specific provision of this Act, this Act prevails; and
- (b) Part 7 of that Act applies to or in respect of an interest granted, created or taking effect under this Act, subject that a reference to the Registrar-General is to be construed as a reference to the Minister."

7. Amendment of *Petroleum Act*

The *Petroleum Act* is amended by inserting after section 91 the following:

"91A. Application of *Law of Property Act*

"On the commencement of the *Law of Property Act 2000* –

- (a) that Act applies to estates, interests and any other rights in or in respect of land, granted, created or taking effect under this Act, but if there is an inconsistency between the provisions of that Act and a specific provision of this Act, this Act prevails;
- (b) Part 7 of that Act applies to or in respect of an interest granted, created or taking effect under this Act, subject that a reference to the Registrar-General is to be construed as a reference to the Registrar under Part IV of this Act; and
- (c) in registering the creation or transfer of an interest under this Act, the Registrar is to record co-owners (if any) of the interest as tenants in common unless satisfied that the intention was for the interest to be held as joint tenants."

8. Amendment of *Petroleum (Submerged Lands) Act*

The *Petroleum (Submerged Lands) Act* is amended by inserting after section 75 the following:

"75A. Application of *Law of Property Act*

"On the commencement of the *Law of Property Act 2000* –

- (a) that Act applies to estates, interests and any other rights in or in respect of land, granted, created or taking effect under this Act, but if there is an inconsistency between the provisions of that Act and a specific provision of this Act, this Act prevails;
- (b) Part 7 of that Act applies to or in respect of an interest granted, created or taking effect under this Act, subject that a reference to the Registrar-General is to be construed as a reference to the Minister; and
- (c) in registering the creation or transfer of an interest under this Act, the Minister is to record co-owners (if any) of the interest as tenants in common unless satisfied that the intention was for the interest to be held as joint tenants."

9. Amendments of *Planning Act*

(1) Section 3 of the *Planning Act* is amended –

- (a) by inserting in subsection (1) after the definition of "council area" the following:

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" 'covenant' has the same meaning as in Division 4 of Part 9 of the *Law of Property Act*;

'covenant in gross' has the same meaning as in Division 4 of Part 9 of the *Law of Property Act*"; and

- (b) by inserting in subsection (1) after the definition of "Division member" the following:

" 'easement' has the same meaning as in Division 2 of Part 9 of the *Law of Property Act*;

'easement in gross' has the same meaning as in Division 2 of Part 9 of the *Law of Property Act*";.

(2) Section 64 of the *Planning Act* is amended –

- (a) by inserting after "easement" in subsection (4) "or covenant";
- (b) by inserting after "easement" (wherever occurring) in subsection (5) "or covenant";
- (c) by omitting from subsection (5)(a) "not be appurtenant to a dominant tenement" and insert "be an easement in gross or a covenant in gross";
- (d) by omitting from subsection (5) "the Schedule" and substituting "Schedule 3 to the *Law of Property Act*"; and
- (e) by inserting after "easement" (twice occurring) in subsection (6) "or covenant".

(3) The Schedule to the *Planning Act* is repealed.

10. Amendment of *Supreme Court Act*

Section 70 of the *Supreme Court Act* is repealed.

11. Amendments of *Trustee Act*

(1) Section 18 of the *Trustee Act* is amended by omitting subsection (1).

(2) The *Trustee Act* is amended by inserting after section 18 the following:

"18A. Power to insure building or other property

"(1) A trustee may insure a building or other insurable property against loss or damage, by fire or otherwise, and against any risk or liability that it would be prudent for a person to insure against if acting for himself or herself.

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"(2) The amount that a property is insured for must not exceed the full value of the property but that value is not limited to the sale value and may include the replacement cost at the material time as well as indemnity against loss of rent and other collateral risks.

"(3) A trustee may pay the premiums for the insurance out of any income from the property insured or out of the income of any other property subject to the same trusts, without obtaining the consent of any person, despite that there may be a person entitled wholly or partly to that income."

(3) Section 49 of the *Trustee Act* is amended by omitting from subsection (3) "power which a trustee may have under 'The Settled Estates Act, 1880,' or otherwise" and substituting "other power of a trustee".

(4) Section 50AA of the *Trustee Act* is amended by omitting from subsection (3) "section 7 of the *Perpetuities Act*" and substituting "section 187 of the *Law of Property Act*".

(5) Section 50A of the *Trustee Act* is amended by adding after subsection (2) the following:

"(3) The Court may make an order referred to subsection (1) in relation to property despite that the property is the subject of a life interest in the whole of the property or any estate or interest in the property.

"(4) An application to the Court for an order relating to property referred to in subsection (3) is to be made with the consent of all persons having a beneficial interest in the property, and all trustees having an estate or interest on behalf of an unborn child.

"(5) Despite subsection (4) the Court may dispense with the requirement for consent of a person if that person has been served with a notice that the application will be made, and the person has made no response.

"(6) A person who has been served with a notice that the application will be made may appear in Court to consent or dissent to the making of the order sought.

"(7) The Court may make an order in relation to the property despite dissent by some interested parties.

"(8) In deciding whether to make an order despite the dissent of some parties the Court must have regard to the number and interests of the parties.

"(9) If the property to which the order relates is land, the order is to be produced to the Registrar-General who must give effect to the order by registering any transfer, lease or other document effected pursuant to the order on the land register under the *Land Title Act*."

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(6) Section 68 of the *Trustee Act* is amended by omitting from subsection (1) "appointed by the Court or by the settlement, or under provisions contained in the settlement" and substituting "occurring before or after the repeal of that Act by *the Law of Property Act*".

(7) The *Trustee Act* is amended by adding after section 68 the following:

"69. Settled estates

"(1) For the purposes of this section –

- (a) 'settled land to which The Settled Estates Act 1880 applied' means all hereditaments of any tenure, and all estates or interests in any such hereditaments that are the subject of a settlement; and
- (b) 'settlement' means an Act of Parliament, deed, agreement, will or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure or any estates or interests in any such hereditaments stand limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively.

"(2) If there is settled land to which The Settled Estates Act 1880 applied in the Territory, on the commencement of this section –

- (a) if the land is settled on trust – the provisions of this Act apply to the trustee or trustees;
- (b) if the land is not held on trust – the tenant for life is to be taken to be a trustee and the provisions of this Act apply accordingly;
- (c) a future interest in the land takes effect as an equitable, not a legal, interest; and
- (d) a person who holds an equitable interest in the land, whether by virtue of paragraph (c) or otherwise, is to be taken to be a beneficiary for the purposes of this Act."

