

Serial 142
Real Property Amendment Act 1999
Mr Burke

**A BILL
for
AN ACT**

to amend the *Real Property Act*

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NORTHERN TERRITORY OF AUSTRALIA
REAL PROPERTY AMENDMENT ACT 1999

No. of 1999

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NORTHERN TERRITORY OF AUSTRALIA

No. of 1999

AN ACT

to amend the *Real Property Act*

[Assented to 1999]
[Second reading 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Real Property Amendment Act 1999*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Real Property Act* is in this Act referred to as the Principal Act.

4. Subdivisions of land

Section 101 of the Principal Act is amended—

(a) by omitting subsection (1)(a)(iv) and substituting the following:

"(iv) the consent to the subdivision of those registered proprietors of an interest in any part of the land whose interest will be affected by the subdivision."; and

(b) by inserting after subsection (1) the following:

"(1A) A consent under subsection (1)(a)(iv) must –

- (a) be noted on the plan of survey; or
- (b) be in writing."

5. New Part

The Principal Act is amended by inserting after Part VIII the following:

**"PART VIII – MODIFICATION AND EXTINGUISHMENT OF
EASEMENTS AND RESTRICTIVE COVENANTS**

"90A. Definition

"In this Part, 'restrictive covenant' means a negative obligation in respect of the use, ownership or maintenance of particular land made for the benefit of other land.

"90B. Modification or Extinguishment of easements and restrictive covenants

"(1) Where land is subject to the burden of an easement or a restrictive covenant, the Court may, on application by a person who has an interest in the land, make an order modifying or wholly or partially extinguishing the easement or restrictive covenant.

"(2) The Court may not make an order under subsection (1) unless it is satisfied that –

- (a) because there has been a change in the user of the land having the benefit of the easement or restrictive covenant, in the character of the area in the vicinity of the land or in any other circumstance that the Court considers material, the easement or restrictive covenant is obsolete;
- (b) the continued existence of the easement or restrictive covenant would impede the reasonable user of the land or that the easement or restrictive covenant, in impeding that user, is –
 - (i) no longer necessary or advantageous to the person or persons entitled to the benefit of the easement or restrictive covenant; or
 - (ii) contrary to the public interest,

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and each person who suffers loss or disadvantage from the modification or extinguishment of the easement or restrictive covenant can be adequately compensated in money for his or her loss or disadvantage;

- (c) each adult who is entitled to the use or benefit of the easement or restrictive covenant and who has capacity to do so –
 - (i) has agreed to the modification or extinguishment of the easement or restrictive covenant; or
 - (ii) by his or her acts or omissions may reasonably be considered to have abandoned the easement or to have waived the benefit of the restrictive covenant in whole or in part; or
- (d) the proposed modification or extinguishment will not substantially injure the persons entitled to the use or benefit of the easement or restrictive covenant.

"(3) In determining whether to make the order, the Court must take into account the operation of the *Planning Act* and in particular the control plan, within the meaning of that Act, applying to the land.

"(4) The power of the Court to make an order modifying an easement or restrictive covenant includes power to amend the instrument creating the easement or restrictive covenant to include new terms as to the use, ownership or maintenance of the servient land or land subject to the restrictive covenant.

"(5) In making an order under subsection (1), the Court may also make an order directing the applicant to pay a person entitled to the use or benefit of the easement or restrictive covenant the amount that appears to the Court to be just to award consideration for –

- (a) any loss or disadvantage suffered as a consequence of the modification or extinguishment; or
- (b) any reduction in any compensation received for the land affected by the easement or restrictive covenant when it was created that is attributable to its imposition.

"90C. Notice of application

"Where an application is made to modify or extinguish an easement or restrictive covenant, the Court may, if it thinks just, direct that the applicant must give notice of the application in the manner and to the consent authority, within the meaning of the *Planning Act*, or any other person it specifies in the direction.

"90D. Effect of order

"An order made under section 90B is binding on all persons, whether or not adults or otherwise having capacity, who are or become entitled to the use or benefit of the easement, or are or become interested in enforcing the restrictive covenant, and whether or not they were parties to the proceedings under that section or were served with notice under section 90C.

"90E. Powers of Court

"(1) In proceedings under this Part, the Court may do any one or more of the following:

- (a) direct that a survey is to be made of land and a plan of survey is to be prepared in respect of the land;
- (b) order a person to execute an instrument, in registrable or other form, that is necessary to give effect to an order made under this Part;
- (c) order a person to produce to another person specified in the order any certificate as to title or other document relating to land;
- (d) make an order declaring whether or not land is or would in specified circumstances be affected by an easement or restrictive covenant;
- (e) give directions for the conduct of proceedings;
- (f) make orders in respect of the costs of any of the matters referred to in this section and of the proceedings generally.

"(2) Where a Court makes an order under subsection (1)(d), the order may include a declaration as to any of the following:

- (a) the nature and extent of the easement or restrictive covenant;
- (b) whether or not the easement or restrictive covenant is enforceable;
- (c) if the easement or restrictive covenant is enforceable - who may enforce it and against whom."