

ENCROACHMENT OF BUILDINGS ACT.

Act No. 23, 1922.

**George V,
No. 23.** An Act to make provision for the adjustment of boundaries where buildings encroach on adjoining land: to facilitate the determination of boundaries; and for purposes connected therewith. [Assented to, 24th November, 1922.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** This Act may be cited as the "Encroachment of Buildings Act, 1922."

Definitions. **2.** In this Act, unless the context or subject-matter otherwise indicates or requires—

"Adjacent owner" means the owner of land over which an encroachment extends.

"Boundary" means the boundary line between contiguous parcels of land.

"Building" means a substantial building of a permanent character and includes a wall.

"Court" means the Supreme Court in its equitable jurisdiction or such other court outside the county of Cumberland as is proclaimed by the Governor.

"Encroaching owner" means the owner of land contiguous to the boundary beyond which an encroachment extends.

"Encroachment"

- “Encroachment” means encroachment by a building, and includes encroachment by overhang of any part as well as encroachment by intrusion of any part in or upon the soil. George V,
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- “Owner” means any person entitled to an estate of freehold in possession—
- (a) whether in fee simple or for life or otherwise;
 - (b) whether at law or in equity;
 - (c) whether absolutely or by way of mortgage;
- and includes a mortgagee under a registered mortgage of a freehold estate in possession in land under the Real Property Act, 1900.
- “Subject land” means that part of the land over which an encroachment extends.

Encroachments.

- 3.** (1) Either an adjacent owner or an encroaching owner may apply to the court for relief under this Act in respect of any encroachment. Encroachments.
- (2) On the application the court may make such orders as it may deem just with respect to—
- (a) the payment of compensation to the adjacent owner;
 - (b) the conveyance transfer or lease of the subject land to the encroaching owner, or the grant to him of any estate or interest therein or any easement right or privilege in relation thereto;
 - (c) the removal of the encroachment.
- (3) The court may grant or refuse the relief or any part thereof as it deems proper in the circumstances of the case, and in the exercise of this discretion may consider amongst other matters—
- (a) the fact that the application is made by the adjacent owner or by the encroaching owner, as the case may be;
 - (b) the situation and value of the subject land, and the nature and extent of the encroachment;
 - (c) the character of the encroaching building, and the purposes for which it may be used;
 - (d) the loss and damage which has been or will be incurred by the adjacent owner;
 - (e)

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(e) the loss and damage which would be incurred by the encroaching owner if he were required to remove the encroachment ;

(f) the circumstances in which the encroachment was made.

(4) The court may refer any question involved to a licensed surveyor or a valuer.

(5) This section applies to encroachments made either before or after the commencement of this Act.

Compensation.

4. (1) The minimum compensation to be paid to the adjacent owner in respect of any conveyance, transfer, lease, or grant to the encroaching owner shall, if the encroaching owner satisfies the court that the encroachment was not intentional and did not arise from negligence, be the unimproved capital value of the subject land, and in any other case three times such unimproved capital value.

(2) In determining whether the compensation shall exceed the minimum, and if so by what amount, the court shall have regard to—

(a) the value, whether improved or unimproved, of the subject land to the adjacent owner ;

(b) the loss and damage which has been or will be incurred by the adjacent owner through the encroachment and through the orders proposed to be made in favour of the encroaching owner ;

(c) the circumstances in which the encroachment was made.

Charge on land.

5. (1) The order for payment of compensation shall except so far as the court may therein otherwise direct, upon registration operate as a charge upon the land of the encroaching owner in priority to any charge created by him or by his predecessor in title.

(2) In this section the land of the encroaching owner means the parcel of land contiguous to the boundary beyond which the encroachment extends, or such part thereof as the court may specify in the order.

Encroaching owner—compensation and conveyance.

6. Wherever the court sees fit, and in particular where the encroaching owner is not an owner beneficially entitled to the fee simple free from encumbrances, the court may determine—

(a) by whom and in what proportions the compensation is to be paid in the first instance, and is to be borne ultimately ;

(b)

- (b) to whom, for whose benefit and upon what limitations the conveyance transfer or lease of the subject land or grant in respect thereof is to be made. **George V, No. 23.**

7. Wherever the court sees fit, and in particular where the adjacent owner is not an owner beneficially entitled to the fee simple free from encumbrances, the court may determine— Adjacent owner—compensation and conveyance.

- (a) to whom, for whose benefit and in what proportions the compensation is to be paid or applied; and
 (b) by whom the conveyance transfer or lease of the subject land or grant in respect thereof is to be made.

8. Wherever the court may make or has made an order under this Act with respect to the subject land, the court may make such vesting order as it may deem proper in lieu thereof or in addition thereto, or in default of compliance therewith. Vesting order.

Boundaries.

9. (1) Where any question arises whether an existing building encroaches or a proposed building will encroach beyond the boundary, either of the owners of the contiguous parcels of land may apply to the court for the determination under this Act of the true boundary. Boundaries.

(2) On the application the court may make such orders as it may deem proper for determining, marking, and recording the true boundary.

(3) The court may refer any question involved to a licensed surveyor.

(4) This section applies to buildings erected either before or after the commencement of this Act.

General.

10. (1) In any suit or proceeding before the court, however originated, the court may, if it sees fit, exercise any of the powers conferred by this Act, and may stay the suit or proceeding on such terms as it may deem proper. Suit, action, or other proceeding.

(2) Where any action or proceeding is taken or is about to be taken at law by any person, and the court

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(3) In any action at law a judge of the Supreme Court may, if he is of opinion that the matter could more conveniently be dealt with by an application under this Act, stay the action or proceeding on such terms as he may deem proper.

Application
by summons. **11.** Until otherwise prescribed by rules of court, any application under this Act may be made by summons.

Persons
interested. **12.** In any application under this Act the court may require—

(a) that notice of the application shall be given to any person interested;

(b) that any person interested shall be made a party to the application.

Registration. **13.** (1) Where any land affected by any application or order under this Act is not under the provisions of the Real Property Act, 1900, the application or order may be registered in the register of causes, writs, and orders affecting land.

(2) Where any land affected by any application or order under this Act is under the provisions of the Real Property Act, 1900, a caveat may be lodged under that Act in respect of the application, and the order may be registered under that Act as prescribed by regulation under the Conveyancing Act, 1919.

Costs. **14.** In any application under this Act the court may make such order as to payment of costs charges and expenses as it may deem just in the circumstances and may take into consideration any offer of settlement made by either party.

Rules and
practice. **15.** (1) The judges of the Supreme Court or any three of them may make rules of court for the practice and procedure in applications under this Act.

(2) The practice and procedure of the court shall, except so far as they are inconsistent with this Act or any rules of court, apply to applications under this Act.