

Section 88B instruments

A section 88B instrument is the part of a deposited plan which upon registration:

- creates easements, profit à prendre, restrictions on use of land, and positive covenants. [cl.31 Conveyancing (General) Regulation 2003]
- releases easements and profits à prendre. [cl.32 Conveyancing (General) Regulation 2003]

Note Restrictions on use of land and positive covenants cannot be varied or released by a s.88B instrument.

The instrument must be drawn in accordance with [Approved Form 10 Section 88B Instrument](#) (PDF 28KB) and must be lodged as part of the plan. Stamp Duty is not payable.

Where a section 88B instrument, includes [height limitations](#) to define the stratum of an easement, profit à prendre, restriction on use of land or positive covenant, the accompanying deposited plan must comply with cl.13 & 62 Surveying and Spatial Information Regulation 2006.

Note: Easements cannot be created in an acquisition or resumption plan that has not been activated at time of registration. Such easement sites should be designated "Proposed".

Preparation of a s.88B instrument

A Section 88B instrument comprises three parts:

Part 1: Identifies each easement, profit à prendre, restriction on use of land or positive covenant to be created.

Note Each easement, profit à prendre, restriction on use of land or positive covenant must be separately created. An easement and/or a restriction on use of land and/or a positive covenant can not be combined into a single notification.

Part 1A: Identifies each easement or profit à prendre to be released.

Part 2: Sets out the terms and conditions of easements profit à prendre, restrictions on use of land or positive covenants referred to in Part 1 (if required). Part 2 may not be required if statutory terms are adopted.

[See sample s.88B easement plan](#) (GIF 19KB)

Creating easements by s.88B instrument

Terms and conditions required

An easement created for any purpose other the statutory easements mentioned below must show terms and conditions in Part 2 of the s.88B Instrument.

Note In some circumstances multiple easements (eg Right of carriageway and Easement for Support) may be created in a s.88B Instrument. These are not regarded as statutory easements and consequently the requisite terms should be included in Part 2 of the Instrument.

Terms and conditions not required

In order to simplify the creation of easements, the statutory form of easements may be used. Statutory easements adopt the terms and conditions specified in Schedule 4A (easements in gross) and Schedule 8 (easements having a dominant tenement) Conveyancing Act 1919.

There is no provision to nominate a person with the right to release vary or modify the easement see s.88(1)(c) Conveyancing Act 1919.

Persons whose consent to a release, variation or modification of the easement is stipulated for may be nominated see s.88(1)(d) Conveyancing Act 1919.

Following is a list of statutory easements (referred to as short form easements) set out in each of the Schedules. These statutory easements do not require terms and conditions to be repeated in Part 2 of the instrument:

Schedule 4A Easement in Gross

Right of Carriageway
 Right of Foot Way
 Easement to Drain Water
 Easement to Drain Sewage
 Easement for Repairs
 Easement for Drainage of Sewage
 Easement for Drainage of Water
 Easement for Electricity Purposes
 Easement for Services
 Easement for Water Supply
 Right of Access

Schedule 8

Right of Carriageway
 Right of Foot Way
 Easement to Drain Water
 Easement to Drain Sewage
 Easement for Repairs
 Easement for Batter
 Easement for Drainage of Sewage
 Easement for Drainage of Water
 Easement for Electricity Purposes
 Easement for Overhang
 Easement for Services
 Easement for Water Supply
 Easement to permit Encroaching Structure to remain
 Right of Access
 Easement for removal of support

Note 1 A right of way or drainage easement may adopt the statutory terms specified for a right of carriageway / footway and an easement to drain water / sewage respectively - see s. 181 Conveyancing Act 1919.

Note 2 The use of these expressions does not prevent (if so desired) the inclusion in Part 2 of variations to the terms and conditions specified in the Schedules. Such variations may be by way of addition, exception, qualification or omission.

Creating restrictions / positive covenants by s.88B instrument

Terms and conditions of restrictions on use of land / positive covenants must always be shown in Part 2 of the s.88B Instrument. Person(s) having the right or whose consent to release, vary or modify the restriction or positive covenant may be nominated see s.88(1)(c) and (d) Conveyancing Act 1919.

Releasing easements by s.88B instrument

Section 88B Conveyancing Act 1919 provides for the release of easements by the registration of a plan. The identity of the easements to be released must be set out in:

- Part 1A of the instrument, and
- the statement of intention panel of the plan.

Signatures and consents

Persons whose consent to a release, variation or modification of the easement is stipulated for may be nominated see s.88(1)(d) Conveyancing Act 1919.

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Signatures and consents



New South Wales Consolidated Regulations

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CONVEYANCING (GENERAL) REGULATION 2008 - SCHEDULE 9

SCHEDULE 9 – Requirements for section 88B instruments

(Clause 38)

1 Text

The text of a section 88B instrument must be clearly printed or written:

- (a) across the width of each sheet of paper used, and
- (b) unless the Registrar-General otherwise permits, on one side only of each sheet.

2 Margins

(1) The sheets used must have clear margins:

- (a) on the first sheet-of not less than 10 mm (on the left-hand side), 10 mm (on the right-hand side), 25 mm (at the top) and 10 mm (at the bottom), and
- (b) on each subsequent sheet-of not less than 10 mm (on the sides and top and bottom).

(2) No printing, writing or other notation (other than directions or notations authorised by the Registrar-General) must appear in, or extend into, the margin.

3 Paper

The paper used must be:

- (a) archival paper of a quality approved by the Registrar-General, that is:
 - (i) white and free from discolouration and blemishes, and
 - (ii) of a paper density of not less than 80 grams per square metre (80 gsm), and
 - (iii) 297 mm in length by 210 mm in width (standard A4), or
- (b) such other paper as may be approved by the Registrar-General.

4 Size of lettering

All text must be at least 10 point (1.8 mm) in size and be clear and legible and dense black or dense

dark blue in colour. The lines must not overlap. A carbon copy, or a copy in which the typewritten characters blur or spread, or are liable to mark or damage an adjacent sheet, will not be accepted.

5 Legibility

Handwriting and any imprint of a seal must be clear and legible and in dense black ink or dense dark blue ink.

6 Alterations

Alterations may only be made by striking through the matter intended to be altered or by interlineation and not by rubbing, scraping or cutting the surface of the paper or by using correction fluid. An alteration must be verified by the parties to the instrument.

7 Verification of alterations

Signatures or initials verifying alterations must be placed in the margin as near as practicable to the alteration.

8 Signatures

The final sheet must bear:

(a) the attested original signatures of the persons who appear to the Registrar-General to be the owners, mortgagees, or covenant chargees of the land over which the easement, or in respect of which the restriction, covenant or profit à prendre, is intended to be created, and

(b) in the case of the creation of a restriction on use or a positive covenant pursuant to section 88D or 88E of the Act-the attested original signature of the prescribed authority in whose favour the restriction or positive covenant is to be created, and

(c) if the instrument is intended to impose an obligation, however described, on a prescribed authority or the owner of land outside of the plan to maintain or repair, or to contribute to the maintenance or repair of, the site of an easement-the attested original signature of the prescribed authority or owner, and

(d) the attested original signatures of the persons who appear to the Registrar-General to be the owners, mortgagees or covenant chargees of the land that has the benefit of the easement or profit à prendre that is intended to be released or partially released, and

(e) the attested original signature of any person whose consent is required to a release or partial release of the easement or profit à prendre, and

(f) the capacity in which each signatory has signed.

9 Numbering of sheets

If the instrument comprises more than one sheet:

(a) each sheet other than the first sheet and the final sheet must repeat the heading on the first sheet and the plan identification appearing in Part 1 of the instrument, and

(b) each sheet other than the final sheet must be signed by an attesting witness to the final sheet, and

(c) each sheet must be numbered sequentially in the top right hand corner of each sheet as "Sheetofsheets".

10 References to signatures

In this Schedule, a reference to a "signature" includes a reference to the affixing of a seal or any other method by which a corporation or prescribed authority executes an instrument.

