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Update Summary

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UPDATE 101

JULY 2024

WOODMAN AND NETTLE

**THE TORRENS SYSTEM IN
NEW SOUTH WALES**

P Butt & F Ticehurst

Currently updated by
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UPDATE COMMENTARY

Jennifer Stuckey-Clarke has drafted new case summaries.

Appeals from boundary determinations by the Registrar-General

In *Boensch v Transport for NSW* [2024] NSWCA 119, the applicant Mr Boensch sought leave to appeal from a refusal by the Registrar-General to make a boundary determination under s 135D(2) in circumstances where a relevant determination had already been made and no appeal was entered within 28 days as required by s 135J(3). See [RPA.135J.10] and New Content Locator: Update 101.

Assessment of compensation in respect of easement under s 88k CA in deciding whether leave to appeal required

In *Atkinson v Jeffery* [2024] NSWCA 96, the applicant for leave, to whom the trial judge awarded \$825 for a s 88K easement imposed, sought unsuccessfully to establish that leave to appeal was not required under s 101 SCA. See [CA.88K.132] and New Content Locator: Update 101.

Adverse Possession

Squatter on Crown land for 15 years a trespasser with no claim to adverse possession

In *Planning Ministerial Corporation v Clint Jarvie* [2024] NSWSC 593, the defendant had squatted on the land for 15 years and the plaintiff sought to eject him as a trespasser. Summary judgment was granted after the Court considered in his absence whether he might have acquired title by adverse possession. See [RPA.45D.118] and New Content Locator: Update 101.

Deceased's adverse possession for 50 years established

In *Rogers v Registrar General of NSW* [2024] NSWSC 590, the deceased had occupied the registered proprietor's house for 50 years after his death and when the deceased died, the issue arose as to whether the house formed part of his estate by adverse possession. See [RPA.45D.118] and New Content Locator: Update 101.

Caveats

Caveat to be extended must be accompanied by initiating process claiming final relief

In *Orsini v Habambo* [2024] NSWSC 289, a solicitor sought to enforce a costs agreement charging the client's property as security for fees by way of caveat. The interest claimed was an interest by way of security for fees, that is a registrable interest under s 56 RPA which applies to land charged with security for an obligation of the owner. See [RPA.56.800], [RPA.74K.50], [RPA.74K.110], [RPA.74J.40] and New Content Locator: Update 101.

Costs agreement embodied in unregistered mortgage a caveatable interest

In *Boensch v Bingham* [2024] NSWCA 116, a solicitor sought to enforce an unregistered mortgage as security for legal fees and his caveat was upheld by the trial judge in circumstances where the quantum of costs was as yet undetermined. See [RPA.74L.20], [RPA.56.800] and New Content Locator: Update 101.

Formal requirements for valid caveat

In *Geneville Constructions Pty Ltd v Odisho-Benjamin* [2024] NSWSC 290, a builder relied upon Clause 31 of the Housing industry Association's NSW Residential Building Contract for New Dwellings (edition 7). See [RPA.74L.20] and New Content Locator: Update 101.

