

Easement FAQs for Dealings

Creating Easements

How do I create a new easement?

There are a number of different ways to create a new easement, the main options being:

1. Transfer Granting Easement 01TG form
2. Transfer Granting Easement over own land 01TO form
3. Transfer Including Easement 01TE form
4. Deposited Plan and Section 88B Instrument

You can view the requirements and information to assist with preparation of each of these forms and instruments on our [Registrar General's Guidelines](#).

Do I need a plan to accompany my Transfer Granting Easement form to show the site of the easement I wish to create?

Where the easement site is intended to affect only part of the servient tenement, a plan to define the site is required. A description of the site in words is not acceptable. The plan can be:

- annexed to the Transfer Granting Easement form,
- filed as an annexure to a registered dealing, or
- registered as a deposited plan.

Where the easement site is to affect the whole of the subject land, a plan will not be required. The easement description must clearly state that the easement affects the whole of the servient tenement.

What do I need to include in the description of my easement?

The description of the easement must:

- state the type of easement, and
- state how the easement site is described/designated in the plan showing the site, and
- make reference to the plan showing the site, and
- refer to any annexure setting out the terms and conditions related to the easement (if applicable)

e.g. Easement to Drain Water 1 wide designated (A) in the plan annexed and marked 'A' on the terms and conditions set out in Annexure 'B'

Are terms required for my easement?

If you are creating an easement where the terms are not defined by statute, terms must be annexed to the dealing. If you are intending to use the terms defined by statute, it is permissible to omit them from the dealing. To view the terms defined by statute:

| | |
|----------------------------------|-----------------------------------|
| Easement benefitting land | Schedule 8 Conveyancing Act 1919 |
| Easement in gross | Schedule 4A Conveyancing Act 1919 |

The terms for these easements may be varied by way of addition, exception or qualification as set out in the dealing creating the easement. Any changes to these terms or additional terms must be referred to in the easement description.

Who needs to sign the plan attached to the dealing?

Schedule 3 of the Lodgment Rules requires the plan to be signed by all parties who have signed the dealing. This does not include a mortgagee, lessee or chargee.

Can I create more than one easement on a form?

Yes. An extra fee will be payable per additional easement being created.

I have multiple dominant tenements which are all owned by different parties, can this be lodged on the one form?

Yes. This is only possible for a Dealing with Exception. A separate form would be preferable but if it is to be lodged on one form, an extra fee will be payable per title held in separate ownership. It must be made clear which owner owns which title on the Transfer Granting Easement.

e.g. Bob Smith as regards 1/12345 and Jane Smith as regards 5/53421

I have multiple servient tenements and multiple dominant tenements, how do I clearly set out which dominant relates to which servient?

Where it is intended to create an easement that affects more than one servient and dominant tenement, a table should be annexed to the dealing clearly setting out which lots are to be specifically burdened and benefitted by the easement e.g.

| Servient Tenement | Dominant Tenement |
|-------------------|---------------------------------|
| 1/123456 | 2/123456, 3/123456 and 4/123456 |
| 2/123456 | 3/123456 and 4/123456 |
| 3/123456 | 4/123456 |

How do I complete the ‘Dominant Tenement’ panel of the form for an easement in gross?

Add the name of the prescribed authority/corporation or the words ‘easement in gross’.

The prescribed authority owns the servient tenement and the authority wants to be listed as the dominant tenement in gross. Can I lodge a Transfer Granting Easement over own land?

No. This must be lodged using a Transfer Granting Easement O1TG form.

I ordered a copy of a cross-easement and received a Transfer form. Is this an error?

This is not an error. Please see Section 181B *Conveyancing Act 1919*.

Section 181B *Conveyancing Act 1919* provides for the automatic creation of cross-easements for support of buildings in respect of party walls where an assurance (disposition or transfer) of land (executed on or after 1 January 1931 and before 1 August 1996) results in the lots on either side of the party wall being held:

- in different ownership or
- in different tenancy or shares or
- in a different fiduciary capacity

NOTE: This does not apply to party walls shown in deposited plans registered after 1 August 1996.

A title benefits from a Book and Number easement but the easement isn't recorded on title. How do we have it added?

One of the following dealings must be lodged and you must determine which is relevant for your scenario:

- [Record a Subsisting Interest on a Qualified Title](#) 17QS form where the title is qualified and the easement should have been brought forward on conversion or
- Request 11R form together with an Old System Search confirming that the land does benefit from the easement

You may wish to use the services of an information broker who specialises in this type of searching.

Cancelling Easements

What are the differences between the Transfer Releasing Easement 01TR form and the Cancellation or Extinguishment of Easement 20ECE form?

| Transfer Releasing Easement | Cancellation of Easement* |
|---|--|
| <ul style="list-style-type: none"> • Agreement/deed between the burdened and benefitted parties to release • Stamp duty required • Executed by the servient and dominant tenements | <ul style="list-style-type: none"> • Dominant tenement deciding to release benefit • No stamp duty required • Executed by the dominant tenement only |

* Note: This does not apply to an extinguishment of easement. These are reliant on a Supreme Court Order which must be annexed to the dealing.

Do I need consent from any interest holders to register a Transfer Releasing Easement 01TR form or a Cancellation or Extinguishment of Easement 20ECE form?

The consent of any lessee, mortgagee or chargee of the dominant tenement must be annexed to the dealing where the lease, mortgage or charge was registered after the easement was created.

Varying Easements

Can I lodge a Variation of Easement to add a dominant tenement?

No. You will need to create a new easement benefitting the new dominant tenement. You can refer to the easement site shown in the already registered plan or dealing (provided the plan still complies with current guidelines) in a new Transfer Granting Easement form.

Further Information

Registrar Generals Guidelines

https://rg-guidelines.nswlrs.com.au/land_dealings/dealing_requirements/easements

https://rg-guidelines.nswlrs.com.au/deposited_plans/plans_annexed_dealings

https://rg-guidelines.nswlrs.com.au/deposited_plans/compiled_plans/compiled_easement

Lodgment Rules

<https://www.registrargeneral.nsw.gov.au/publications/lodgment-rules>

Conveyancing Act 1919

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1919-006>