

South Australia

# **Real Property (Miscellaneous) Amendment Bill 2024**

A BILL FOR

An Act to amend the *Real Property Act 1886* and to make related amendments to the *Retail and Commercial Leases Act 1995* and the *Residential Tenancies (Miscellaneous) Amendment Act 2023*.

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### Part 2—Amendment of *Residential Tenancies (Miscellaneous) Amendment Act 2023*

3	Repeal of Schedule 1 Part 1
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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Real Property (Miscellaneous) Amendment Act 2024*.

#### 5 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

### Part 2—Amendment of *Real Property Act 1886*

#### 3—Amendment of section 3—Interpretation

- |    |  |
|----|--|
|    | (1) Section 3(1), definition of <i>sign</i> —delete the definition |
| 10 | (2) Section 3(3)—delete subsection (3)                             |

#### 4—Amendment of section 41—Applicant may withdraw his application

- |  |                                      |
|--|--------------------------------------|
|  | (1) Section 41, heading—delete "his" |
|--|--------------------------------------|

(2) Section 41—delete "his" and substitute:  
their

(3) Section 41—delete "him" and substitute:  
them

5 (4) Section 41—delete "signed" and substitute:  
executed

### 5—Substitution of section 42

Section 42—delete the section and substitute:

#### 42—Documents of title submitted with application

10 (1) Subject to subsection (2), if the Registrar-General issues a certificate  
bringing land under the provisions of this Act, every document of  
title surrendered by the applicant in support of the application must  
be retained by the Registrar-General and endorsed with a  
15 memorandum stating that the land has been brought under the  
provisions of this Act.

(2) If a document of title surrendered to the Registrar-General in support  
of an application relates to or includes property, whether real or  
personal, other than the land included in the certificate, the  
Registrar-General must, after the document has been endorsed under  
20 subsection (1), return the document to the applicant.

(3) A document of title retained by the Registrar-General under this  
section may not be produced to any person unless—

(a) the document is produced in accordance with—  
25 (i) the written authority of the applicant or another  
person claiming through or under the applicant; or  
(ii) an order of the Court; or

(b) the Registrar-General has authorised production of the  
document; or

30 (c) the document has been held by the Registrar-General for  
more than 80 years.

### 6—Amendment of section 55—Non-compliant documents may be registered or recorded

Section 55—delete "signed or"

### 7—Amendment of section 69—Title of registered proprietor indefeasible

35 Section 69(i)(i)—delete "signed or"

### 8—Amendment of section 80B—Application requirements

Section 80B(1)(b)—delete "signed" and substitute:

executed

**9—Amendment of section 96—Transfers**

- (1) Section 96(2)(c)—delete paragraph (c)
- (2) Section 96(3)—delete "Acceptance" and substitute:

Execution

**5 10—Amendment of section 105—Sale under writ of fieri facias or decree, warrant or order of court**

Section 105—delete "signed" and substitute:

executed

**11—Amendment of section 143—Discharge of mortgages and encumbrances**

10 Section 143—after subsection (2) insert:

- (3) If certification under section 273(1) is provided by a mortgagee in relation to an instrument discharging a mortgage (whether wholly or partially), the instrument will be taken, for the purposes of this section, to have been executed by the mortgagee.

**15 12—Amendment of section 147—Cancellation of registration of mortgage by Registrar-General**

Section 147(1)(a)—delete "signed or"

**13—Amendment of section 150—Transfer of mortgage, lease and encumbrance**

20 Section 150—after its present contents (now to be designated as subsection (1)) insert:

- (2) If certification under section 273(1) is provided by a mortgagee in relation to a transfer lodged for registration in the Lands Titles Registration Office, the transfer will be taken, for the purposes of this section, to have been executed by the mortgagee.

**25 14—Amendment of section 153—Renewal or extension of mortgage etc**

Section 153—after subsection (2) insert:

- (3) If an instrument renewing or extending a lease is not lodged in the Lands Titles Registration Office as required under subsection (2), any notation of the lease on the certificate of title for the land may be removed by the Registrar-General.

**30 15—Amendment of section 154A—Person who intends to lodge instrument may lodge priority notice**

Section 154A(4)—delete subsection (4)

**16—Amendment of section 154B—Effect of priority notices**

35 Section 154B(2)(a)— delete "(provided the instruments identified in the notice are lodged in accordance with section 154A(4))"



- (ii) the Registrar-General must then give 21 days' notice in writing to the caveator requiring that the caveat be withdrawn;

## 21—Substitution of section 210

Section 210—delete the section and substitute:

### 210—Person claiming may apply to the Registrar-General for compensation before taking proceedings

- (1) A person who sustains loss or damage and is entitled to institute proceedings to recover compensation against the Registrar-General as nominal defendant, may, before commencing such proceedings, make application in writing to the Registrar-General for compensation.
- (2) An application under subsection (1) must be supported by an affidavit or statutory declaration.
- (3) If the Registrar-General admits the claim, or part of the claim, and certifies accordingly, the Treasurer may, subject to the regulations, pay the amount out of the Assurance Fund.
- (4) Regulations made for the purposes of subsection (3) may provide that a payment under this section exceeding an amount or amounts specified in the regulations may not be made unless the payment has been approved by a specified person or persons.

## 22—Amendment of section 220—Powers of Registrar-General

Section 220(1)—delete "section 32 of the *Libraries Act 1982*" and substitute:

Part 7 of the *State Records Act 1997*

## 23—Amendment of section 223LA—Interpretation

- (1) Section 223LA(1), definition of *public map*—delete "the *Crown Lands Act 1929*" and substitute:

section 70 of the *Crown Land Management Act 2009*

- (2) Section 223LA(1), definition of *statutory encumbrance*—after paragraph (d) insert:

(da) an environment performance agreement registered under section 60 of the *Environment Protection Act 1993*;

- (3) Section 223LA(7)—delete subsection (7)

## 24—Amendment of section 223LD—Application for division

- (1) Section 223LD(1)—delete "by the registered proprietor of the land." and substitute:

by—

- (a) the registered proprietor of the land; or
- (b) in the case of an application made pursuant to an order of a court—by the registrar of the court or a person directed by the court to make the application.

- (2) Section 223LD(2)(b)—delete "signed" and substitute:  
executed

**25—Amendment of section 223LDA—Application may deal with statutory encumbrances**

- 5 Section 223LDA(b)(i)—delete "signed by or on behalf of" and substitute:  
executed by

**26—Amendment of section 223LE—Deposit of plan of division in Lands Titles Registration Office**

Section 223LE(4)—delete subsection (4) and substitute:

- 10 (4) If a plan of division or the application for division states that an  
estate or interest in land shown on the plan of division is varied, or is  
discharged or otherwise extinguished whether wholly or in respect of  
part only of that land, deposit of the plan in the Lands Titles  
15 Registration Office operates to vary the estate or interest, or to  
discharge or otherwise extinguish the estate or interest wholly or in  
respect of that part of the land.

**27—Amendment of section 223LF—Streets, roads etc**

Section 223LF—after subsection (2) insert:

- 20 (2a) Any right-of-way over land to which subsection (1) applies is  
extinguished when the land vests or reverts under this section.

**28—Amendment of section 223LH—Consent to plans of division**

- (1) Section 223LH(1)(a) and (b)—delete "signed" wherever occurring and substitute in  
each case:  
executed
- 25 (2) Section 223LH(1)(c)—delete "signed by or on behalf of" and substitute:  
executed by
- (3) Section 223LH(2)—delete "signed" and substitute:  
executed
- (4) Section 223LH(4)—delete "sign" and substitute:  
30 execute
- (5) Section 223LH(6)—delete "he or she thinks" and substitute:  
they think

**29—Amendment of section 223LJ—Amalgamation**

Section 223LJ(2)(ab)—delete "signed" and substitute:  
35 executed

**30—Amendment of section 246—Unregistered instruments to confer claim to registration**

Section 246—delete "signed or"

**31—Amendment of section 247—Informal documents may be registered**

Section 247—delete "signed or"

**32—Repeal of sections 266 to 268**

Sections 266 to 268 (inclusive)—delete the sections

**33—Amendment of section 276**

Section 276—after paragraph (a) insert:

- (ab) be served by sending it electronically to the person in a manner designated, or agreed to, by the person.

**34—Substitution of Schedule 5**

Schedule 5—delete the Schedule and substitute:

**Schedule 5—A free and unrestricted right-of-way**

(section 89)

A full and free right and liberty to and for the proprietor or proprietors for the time being taking or deriving title under or through this instrument, so long as they remain such proprietors, and to and for their tenants, servants, agents, workers and visitors, to pass and repass for all purposes, and either with or without vehicles or animals.

**35—Amendment of Schedule 6—Short forms of easements and their interpretation**

- (1) Schedule 6—delete "for him, his agents, servants and workmen" wherever occurring and substitute in each case:

personally or by servants or agents

- (2) Schedule 6—delete "his or her" wherever occurring and substitute in each case:

their

**36—Repeal of Schedule 17**

Schedule 17—delete the Schedule

**Schedule 1—Related amendments****Part 1—Amendment of *Retail and Commercial Leases Act 1995*****1—Amendment of section 3—Interpretation**

Section 3(1)—after the definition of *Registrar* insert:

*registration*, in relation to a retail shop lease, means registration under the *Real Property Act 1886*;



**2—Amendment of section 20B—Minimum 5 year term**

Section 20B—after subsection (2) insert:

- 5 (2a) The Registrar-General under the *Real Property Act 1886* is not bound to inquire into or to recognise any increase or alleged increase in the term of a retail shop lease by operation of a provision of this Act.
- 10 (2b) The lessor under a registered retail shop lease the term of which is extended by operation of a provision of this Act must, at the request of the lessee enter into such variation of the lease as may be necessary to give effect to the extension of term if the lease is already registered under the *Real Property Act 1886*, and to obtain all necessary consents, for the purposes of the registration under that Act of the variation of lease.

15 **Part 2—Amendment of *Residential Tenancies (Miscellaneous) Amendment Act 2023***

**3—Repeal of Schedule 1 Part 1**

Schedule 1 Part 1—delete the Part