

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*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement

Part 2—Amendment of *Real Property Act 1886*

- 3 Amendment of section 3—Interpretation
- 4 Amendment of section 41—Applicant may withdraw his application
- 5 Substitution of section 42
 - 42 Documents of title submitted with application
- 6 Amendment of section 55—Non-compliant documents may be registered or recorded
- 7 Amendment of section 69—Title of registered proprietor indefeasible
- 8 Amendment of section 80B—Application requirements
- 9 Amendment of section 96—Transfers
- 10 Amendment of section 105—Sale under writ of fieri facias or decree, warrant or order of court
- 11 Amendment of section 143—Discharge of mortgages and encumbrances
- 12 Amendment of section 147—Cancellation of registration of mortgage by Registrar-General
- 13 Amendment of section 150—Transfer of mortgage, lease and encumbrance
- 14 Amendment of section 153—Renewal or extension of mortgage etc
- 15 Amendment of section 154A—Person who intends to lodge instrument may lodge priority notice
- 16 Amendment of section 154B—Effect of priority notices
- 17 Amendment of section 154G—Cessation of priority notice
- 18 Amendment of section 157—Revocation of power of attorney
- 19 Substitution of section 162
 - 162 Particulars of trust not to be entered in Register Book
- 20 Amendment of section 191—Caveats
- 21 Substitution of section 210
 - 210 Person claiming may apply to the Registrar-General for compensation before taking proceedings
- 22 Amendment of section 220—Powers of Registrar-General
- 23 Amendment of section 223LA—Interpretation

24	Amendment of section 223LD—Application for division
25	Amendment of section 223LDA—Application may deal with statutory encumbrances
26	Amendment of section 223LE—Deposit of plan of division in Lands Titles Registration Office
27	Amendment of section 223LF—Streets, roads etc
28	Amendment of section 223LH—Consent to plans of division
29	Amendment of section 223LJ—Amalgamation
30	Amendment of section 246—Unregistered instruments to confer claim to registration
31	Amendment of section 247—Informal documents may be registered
32	Repeal of sections 266 to 268
33	Amendment of section 276
34	Substitution of Schedule 5
	Schedule 5—A free and unrestricted right-of-way
35	Amendment of Schedule 6—Short forms of easements and their interpretation
36	Repeal of Schedule 17

Schedule 1—Related amendments

Part 1—Amendment of *Retail and Commercial Leases Act 1995*

1	Amendment of section 3—Interpretation
2	Amendment of section 20B—Minimum 5 year term

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 *sign*—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.

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))"

17—Amendment of section 154G—Cessation of priority notice

- (1) Section 154G(2)—delete "in accordance with section 154A(4)"
- (2) Section 154G(3)—delete "in accordance with section 154A(4)"

18—Amendment of section 157—Revocation of power of attorney

5 Section 157—delete "signing" and substitute:
executing

19—Substitution of section 162

Section 162—delete the section and substitute:

162—Particulars of trust not to be entered in Register Book

- 10 (1) Subject to section 161, an entry may not be made in the Register Book of the particulars of any trust.
- (2) An instrument that declares or contains trusts relating to land under the provisions of this Act may not be registered.
- 15 (3) However, an instrument that declares or contains trusts relating to land under the provisions of this Act, or a duplicate or attested copy of such an instrument, may, irrespective of whether it also relates to land that is not under the provisions of this Act, be deposited in the General Registry Office.
- 20 (4) Nothing in this section prevents the registration of an instrument in which reference is made to an instrument of a kind referred to in subsection (3), but—
 - (a) an instrument of this kind does not operate as notice of the trusts declared or contained in the instrument; and
 - 25 (b) in the absence of a caveat, the registered proprietor is, for the purpose of sale, mortgage, or contract for valuable consideration taken to be the absolute proprietor of the land freed from those trusts.

20—Amendment of section 191—Caveats

- 30 (1) Section 191(1)(ac)(iii)—delete "an address within South Australia" and substitute:
an email address and an address within Australia
- (2) Section 191(1)(e)—delete paragraph (e) and substitute:
 - (e) **Caveatee may apply to have caveat removed**
if the caveatee makes application in writing to the Registrar-General to remove the caveat—
 - 35 (i) the application must include an email address and an address in Australia to which notices or proceedings relating to the caveat may be sent; and

- (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) and substitute:
- (7) Despite section 7 of the *Electronic Conveyancing National Law*, an application or instrument under this Part may be lodged electronically by any means that has been approved by the Registrar-General and notified in the Gazette.

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

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:

(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 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:

(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

(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:

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:

5 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

10 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:

15 (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

20 (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
25 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:

30 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:

5 *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:

10 (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.

15 (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.

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

3—Repeal of Schedule 1 Part 1

Schedule 1 Part 1—delete the Part