

**Legislative Council—No 121**

As received from the House of Assembly and read a first time, 14 April 2016

South Australia

**Real Property (Electronic Conveyancing)  
Amendment Bill 2016**

A BILL FOR

An Act to amend the *Real Property Act 1886*; and to make related amendments to various Acts.

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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 (Electronic Conveyancing) Amendment Act 2016*.

## 2—Commencement

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

## 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

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

### 4—Amendment of section 3—Interpretation

- (1) Section 3(1)—delete "In the construction and for the purposes of this Act, and in all instruments made or purporting to be made thereunder, the following terms shall, so far as not inconsistent with the context or subject, and except when such context or subject or the other provisions hereof require a different construction, have the respective meanings hereinafter assigned to them, that is to say" and substitute:

In this Act, unless the contrary intention appears

- (2) Section 3(1)—delete "shall mean" wherever occurring and substitute in each case:

means

- (3) Section 3(1), definition of *certificate*—delete "shall extend to and include all plans and entries thereon" and substitute:

includes all plans and entries on the certificate of title

- (4) Section 3(1)—after the definition of *certificate* insert:

*client authorisation*—see section 240A;

- (5) Section 3(1), definitions of *dealing* and *document of title*—delete the definitions and substitute:

*document* includes a document in electronic form;

*document of title* means a document evidencing or relating to the title of land not under the provisions of any of the Real Property Acts;

- (6) Section 3(1), definitions of *instrument* and *instrument of title*—delete the definitions and substitute:

*execution* includes execution by a legal practitioner or registered conveyancer under a client authorisation;

*instrument* means any document capable of registration in the Lands Titles Registration Office, or in respect of which a record is under an Act directed, required or permitted to be made in the Register Book, and includes a document that may be registered or recorded in the Register of Crown Leases under section 93;

*instrument of title* means an instrument evidencing or relating to the title to land under the provisions of any of the Real Property Acts;

- (7) Section 3(1), definition of *land*—delete "shall extend to and include" and substitute:

includes

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

*law practice* has the same meaning as in the *Legal Practitioners Act 1981*;

(9) Section 3(1), definition of *registered proprietor*—delete the definition and substitute:

*registered proprietor* means a person appearing by the Register Book to be the proprietor of an estate or interest in land registered under any of the Real Property Acts;

(10) Section 3(1)—after the definition of *servient land* insert:

*sign* a document or instrument—see subsection (3);

(11) Section 3(1), definition of *statutory assignment*—delete "creditors, executed under or in pursuance of Division 6 of *The Insolvent Act 1860* or any other Act" and substitute:

or her creditors, executed under an Act

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

*verification of authority guidelines*—see section 273B;

(13) Section 3—after subsection (2) insert:

(3) If a provision of this Act requires that an instrument or document be signed by a person, the instrument or document must be—

(a) signed by the person personally; or

(b) signed personally on behalf of the person by another person under a power of attorney.

## **5—Repeal of sections 14 and 15**

Sections 14 and 15—delete the sections

## **6—Amendment of section 21—Seal of office**

(1) Section 21—delete ", and having inscribed in the margin thereof the words" and substitute:

and the words

(2) Section 21—delete "the imprint of"

(3) Section 21—delete "or by one of his deputies or by a delegate referred to in section 18A of this Act or by the Acting Registrar-General" and substitute:

or by a Deputy Registrar-General or a delegate referred to in section 18A

(4) Section 21—delete ", or Acting Registrar-General,"

## **7—Amendment of section 39—Caveat against bringing land under Act**

Section 39—delete "with the Registrar-General" and substitute:

in the Lands Titles Registration Office

## **8—Amendment of section 44—Proceedings under caveat**

Section 44—delete "with the Registrar-General" and substitute:

in the Lands Titles Registration Office

**9—Amendment of section 45—Lapse of caveat**

(1) Section 45—delete "receipt thereof by the Registrar-General" and substitute:  
day on which the caveat is lodged

(2) Section 45—delete "his title to the estate or interest claimed by him" and substitute:  
his or her title to the estate or interest claimed

**10—Amendment of section 49—Folios in Register Book**

Section 49—after "original certificate" insert:  
of title

**11—Amendment of section 51B—Registration of title electronically etc**

Section 51B(e)—delete paragraph (e) and substitute:

- (e) a requirement that a record relating to the land be made in the Register Book or on the certificate of title for the land will be satisfied if the Registrar-General makes the record by an electronic, electromagnetic, optical or photographic process;

**12—Substitution of section 51C**

Section 51C—delete the section and substitute:

**51C—Issuing certificates of title**

(1) If title to land is registered under this Division, the Registrar-General must issue a certificate of title setting out the registered proprietor's estate or interest in the land and the encumbrances, liens or other interests (if any) to which the estate or interest is subject.

(2) The Registrar-General may cancel a certificate of title and issue a new certificate in its place—

(a) when registering an instrument dealing with or affecting the registered proprietor's estate or interest in the land; or

(b) if, in the Registrar-General's opinion, a record should be made on the title.

(3) Despite subsection (1), the Registrar-General may withhold the issue of a certificate of title if in his or her opinion proper reasons exist for doing so.

**13—Substitution of section 52**

Section 52—delete the section and substitute:

**52—Record of registration**

On registering an instrument, the Registrar-General must make a record of the date and time of registration and the record must be accepted in legal proceedings as conclusive evidence of the date and time of registration.

#### **14—Amendment of section 53—Retention of records**

(1) Section 53—after "been" insert:

registered or

(2) Section 53—after "registered" insert:

or recorded,

#### **15—Substitution of sections 54 and 55**

Sections 54 and 55—delete the sections and substitute:

##### **54—Form of instruments**

(1) Subject to this Act, the Registrar-General may not register or record an instrument that purports to transfer or otherwise deal with or affect an estate or interest in land under this Act unless the instrument complies with this Act and is in the appropriate form.

(2) However, if an instrument contains a clear error the Registrar-General may correct the error, and the instrument will then be valid and have effect as if the error had not been made.

##### **55—Non-compliant documents may be registered or recorded**

The Registrar-General may register or record a document that is not in the appropriate form, or does not comply with a requirement under this Act (including where the document is not signed or executed in a manner required under this Act), despite the fact that the document does not comply with that form or requirement, if the Registrar-General is satisfied—

(a) that the document substantially complies with the appropriate form or requirements of this Act (as the case requires); and

(b) that loss or inconvenience would result if the document were not registered or recorded.

#### **16—Substitution of section 56**

Section 56—delete the section and substitute:

##### **56—Priority of instruments**

(1) Instruments must be registered or recorded in the order in which they are presented to the Registrar-General for registration or recording.

(2) Instruments registered or recorded in respect of or affecting the same estate or interest in land are entitled (despite any express, implied or constructive notice) to priority according to the time of registration or recording.



- 5
- (3) However, if 2 or more instruments dealing with or affecting the same estate or interest in land have been presented for registration or recording at the same time, the Registrar-General may register or record those instruments in the order that will give effect to the intentions of the parties as expressed in, or apparent to the Registrar-General from, the instruments.
- (4) Subsections (1), (2) and (3) operate subject to Part 13A.
- 10 (5) The Registrar-General may, on application in the appropriate form, vary the order of priority between 2 or more registered mortgages or encumbrances.
- (6) An application under subsection (5)—
- 15 (a) must be made, with the consent of the mortgagor or encumbrancer, by every holder of a mortgage or encumbrance that is to have its order of priority varied; and
- (b) if a registered mortgage or encumbrance is, by virtue of the proposed variation of order of priority, to be postponed to a mortgage or encumbrance over which it has had priority—must be made with the consent of the holder of the mortgage or encumbrance that is to be postponed.
- 20 (7) The Registrar-General must record a variation of an order of priority under subsection (5) on the certificate of title affected by the mortgages or encumbrances.

**17—Amendment of section 57—Effect of registration or recording of instruments**

25 Section 57(3)—delete "who have signed the instrument"

**18—Repeal of section 58**

Section 58—delete the section

**19—Amendment of section 59—Provision for registration in case of death of person**

- 30 (1) Section 59—after "his" insert:  
or her
- (2) Section 59—delete "signing" and substitute:  
executing
- (3) Section 59—after "registration" wherever occurring insert in each case:  
35 or recording
- (4) Section 59—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- 40 (2) If a person who has completed a client authorisation dies, an instrument executed pursuant to the client authorisation after the person's death is valid despite the person's death, and may be registered or recorded in accordance with this Act.

**20—Amendment of section 64—Power of court to direct cancellation of certificate or entry**

(1) Section 64—delete ", caveat, memorial, or other entry" and substitute:  
or record

5 (2) Section 64—after "certificate" first occurring insert:  
of title

**21—Amendment of section 65—Search allowed**

Section 65—after subsection (1) insert:

10 (1a) If an instrument is lodged electronically, the Registrar-General may  
determine that only the instrument as registered is to be accessed.

**22—Amendment of section 67—Instruments not effectual until registration**

Section 67—after "instrument" first occurring insert:  
registrable under this Act

**23—Repeal of section 68**

15 Section 68—delete the section

**24—Amendment of section 69—Title of registered proprietor indefeasible**

(1) Section 69—after "original certificate" insert:  
of title

20 (2) Section 69(c)—after "certificate" insert:  
of title

(3) Section 69(c)—delete "him" and substitute:  
the registered proprietor

(4) Section 69(e)—after "certificates" insert:  
of title

25 (5) Section 69(e)—delete "date" and substitute:  
time

(6) Section 69(f)—after "certificate" wherever occurring insert:  
of title

(7) Section 69(i)—delete paragraph (i) and substitute:

30 (i) **Failure of mortgagee to comply with verification requirement**  
if—

(i) the person by or on whose behalf a mortgage was signed or  
executed as mortgagor (the *purported mortgagor*) is not the  
registered proprietor of land subject to the mortgage; and

(ii) the mortgagee failed to comply with a requirement under this Act or the *Electronic Conveyancing National Law (South Australia)*—

(A) to verify the purported mortgagor's identity or authority to enter into the mortgage; or

(B) if the mortgage was transferred to the mortgagee—to establish that the transferor complied with an obligation imposed under this Act on the transferor, as mortgagee, to verify the identity of the purported mortgagor or to verify the purported mortgagor's authority to enter into the mortgage,

the mortgagee's interest under the mortgage is not indefeasible.

## **25—Amendment of section 71—Saving of certain rights and powers**

Section 71(d)—delete "shall have made a contract for the sale of land or for any other dealing therewith" and substitute:

of land has made a contract for the sale of the land, or in relation to any other matter affecting the land

## **26—Amendment of section 73—Certificate of title**

Section 73—after "certificate" insert:

of title

## **27—Substitution of section 80B**

Section 80B—delete the section and substitute:

### **80B—Application requirements**

(1) An application under section 80A—

(a) must be in the appropriate form; and

(b) must contain a declaration signed by the applicant declaring that all the statements in it are true.

(2) The applicant must, if required to do so by the Registrar-General, provide the Registrar-General with a plan of survey of the land.

## **28—Amendment of section 80E—Notice of application**

(1) Section 80E(1)—delete "he shall cause a notice of the application in a form fixed by him" and substitute:

, the Registrar-General must cause a notice of the application in the appropriate form

(2) Section 80E(1)(a)—delete "he" and substitute:

the Registrar-General

**29—Amendment of section 80H—Cancellation of instruments**

Section 80H—after "certificate" wherever occurring insert:  
of title

**30—Amendment of section 88—Entry as to easement to be made on certificates of title**

(1) Section 88—after "certificates" insert:

of title

(2) Section 88—after "he" insert:

or she

**31—Amendment of section 90A—Application of sections 90B, 90C, 90D, 90E and 90F**

Section 90A(1)—after "certificate" insert:

of title

**32—Amendment of section 93—Execution and registration of Crown lease**

Section 93(4)—delete "lodged"

**33—Substitution of section 96**

Section 96—delete the section and substitute:

**96—Transfers**

(1) If—

(a) land is intended to be transferred; or

(b) a right-of-way or other easement is intended to be created or transferred,

the transferor and the transferee must execute a transfer in the appropriate form to be lodged for registration in the Lands Titles Registration Office.

(2) A transfer must include—

(a) a description of the land intended to be dealt with (either by reference to the certificate of title for the land or by the inclusion of a description that clearly identifies the land); and

(b) an accurate statement of the estate or interest intended to be transferred or created; and

(c) a statement indicating that—

(i) the transferee; or

- (ii) if the transferee is a child or a mentally incapacitated person (within the meaning of the *Guardianship and Administration Act 1993*)—the transferee's guardian or the administrator of his or her estate,

accepts the transfer or grant of the land, right-of-way or easement.

- (3) Acceptance under this section of a transfer on behalf of a child does not affect any right of the child, or any person on the child's behalf, to avoid or disclaim the transfer.

### **34—Repeal of section 96A**

Section 96A—delete the section

### **35—Amendment of section 97—Transferee of land subject to mortgage or encumbrance to indemnify transferor**

Section 97—delete "purporting to transfer" and substitute:  
transferring

### **36—Repeal of sections 98 to 100**

Sections 98 to 100 (inclusive)—delete the sections

### **37—Amendment of section 107—Transfer on sale under writ, warrant, decree or order**

Section 107—delete "by making an entry thereof in the Register Book, and on such entry being made" and substitute:  
, and on registration

### **38—Repeal of sections 112 to 115**

Sections 112 to 115 (inclusive)—delete the sections

### **39—Amendment of section 116—Leasing of land**

Section 116—after "registered proprietor" insert:  
and the prospective lessee

### **40—Amendment of section 119—Lease for 1 year need not be registered**

- (1) Section 119—delete "registered dealing with land shall be" and substitute:  
registered or recorded instrument is
- (2) Section 119—delete "shall be" second occurring and substitute:  
, will be

**41—Amendment of section 120—Lease may be surrendered by separate instrument**

Section 120(1)—delete "signed" and substitute:  
executed

5 **42—Substitution of section 121**

Section 121—delete the section and substitute:

**121—Registrar-General may record surrender**

10 If a lessee has given written notice to the lessor, or the agent of the lessor, of his or her intention to give up possession of land comprised in a registered lease, the Registrar-General may, on application by the lessor in the appropriate form, and on production of such evidence as the Registrar-General may require that the lessee has abandoned the occupation of the land comprised in the lease, make a record in the Register Book, and the record will then operate as a  
15 surrender of the lease.

**43—Substitution of section 128**

Section 128—delete the section and substitute:

**128—Mortgage of land**

- 20 (1) If land is to be charged or made security in favour of a person, a mortgage must be executed by the registered proprietor and the person.
- (2) A mortgage lodged for registration in the Lands Titles Registration Office must be in the appropriate form.
- 25 (3) Certification required under section 273(1) in relation to a mortgage lodged for registration in the Lands Titles Registration Office must be provided by the mortgagee.
- (4) If certification under section 273(1) is provided by a mortgagee in relation to a mortgage lodged for registration in the Lands Titles Registration Office, the mortgage will be taken, for the purposes of  
30 this section, to have been executed by the mortgagee.
- (5) The Registrar-General may register a mortgage lodged for registration in the Lands Titles Registration Office that is executed solely by the mortgagee—
- 35 (a) if the Registrar-General is satisfied that a mortgage on the same terms as the mortgage lodged for registration (the *corresponding mortgage*) has been executed by the mortgagor and the mortgagee as required under subsection (1) and retained by the mortgagee; and
- 40 (b) in a case where the mortgagee is not an ADI—if certification required under section 273(1) in relation to the mortgage has been provided—

- (i) by a legal practitioner or a registered conveyancer;  
or
- (ii) if the Registrar-General has given written approval  
for another person to provide the certification—by  
that person.

(6) If the Registrar-General registers a mortgage that is executed solely  
by the mortgagee, the corresponding mortgage—

- (a) must be retained by the mortgagee until he or she ceases to  
be mortgagee; and
- (b) if the mortgage is transferred under section 150—must be  
given to the transferee.

Maximum penalty: \$5 000.

(7) If a mortgage is transferred under section 150, the corresponding  
mortgage must be retained by the transferee until he or she ceases to  
be mortgagee.

Maximum penalty: \$5 000.

(8) This section only applies to land intended to be charged or made  
security under this Act by the registration of a mortgage.

#### **128A—Obligations of mortgagee**

(1) A person must not enter into a mortgage as mortgagee without first  
verifying the authority of the intended mortgagor to enter into the  
mortgage in accordance with the verification of authority guidelines.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A mortgagee must retain a copy of any document used for the  
purpose of fulfilling his or her obligations under subsection (1) for  
the period prescribed by the regulations.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(3) This section does not apply in relation to a mortgage that is not  
intended to be lodged for registration in the Lands Titles Registration  
Office.

#### **128B—Encumbrance of land**

(1) If land is to be charged with, or made security for, the payment of an  
annuity, rent-charge or sum of money in favour of a person, an  
encumbrance in the appropriate form must be executed by the  
registered proprietor and the person.

(2) This section only applies to land intended to be charged or made  
security under this Act by the registration of an encumbrance.

#### **44—Amendment of section 129—Contents of mortgage or encumbrance**

(1) Section 129(1)—delete "such instrument shall" and substitute:

mortgage or encumbrance to which section 128 or 128B applies must

(2) Section 129(1)—delete "shall" second and third occurring

- (3) Section 129(1)—delete ", and shall also contain or have endorsed thereon a memorandum of all leases, mortgages, and encumbrances (if any) affecting such land"

**45—Amendment of section 129A—Standard terms and conditions of mortgage or encumbrance**

- 5 (1) Section 129A(1)—delete "with the Registrar-General for filing in his office" and substitute:

for filing in the Lands Titles Registration Office

- (2) Section 129A(2)—delete "with the Registrar-General" and substitute:

in the Lands Titles Registration Office

10 **46—Amendment of section 143—Discharge of mortgages and encumbrances**

- (1) Section 143(1)—delete "a form approved by the Registrar-General" and substitute:  
the appropriate form

- (2) Section 143—delete "signed" wherever occurring and substitute in each case:  
executed

- 15 (3) Section 143(3)—delete subsection (3)

**47—Insertion of section 147**

After section 146 insert:

**147—Cancellation of registration of mortgage by Registrar-General**

- 20 (1) The Registrar-General may cancel the registration of a mortgage if—
- (a) the person by or on whose behalf the mortgage was signed or executed as mortgagor (the *purported mortgagor*) is not the registered proprietor of land subject to the mortgage; and
- (b) the mortgagee—
- 25 (i) failed to comply with a requirement under this Act or the *Electronic Conveyancing National Law (South Australia)* to verify the purported mortgagor's identity or authority to enter into the mortgage; or
- 30 (ii) if the mortgage was transferred to the mortgagee—failed to comply with a requirement under this Act to establish that the transferor complied with an obligation imposed on the transferor, as mortgagee, to verify the purported mortgagor's identity or authority to enter into the mortgage.
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- (2) The Registrar-General may cancel the registration of a mortgage that is executed solely by the mortgagee if the mortgagee is unable to produce, at the request of the Registrar-General, the corresponding mortgage required to be retained by the mortgagee under section 128.

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#### **48—Insertion of section 152A**

After section 152 insert:

##### **152A—Obligation of transferee if mortgage transferred**

- (1) A person must not execute a transfer of a mortgage, as transferee, without first taking reasonable steps to establish that the transferor complied with any obligation imposed under this Act on the transferor, as mortgagee, to verify the mortgagor's identity or authority to enter into the mortgage.

10

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) A transferee must retain a copy of any document used for the purpose of fulfilling his or her obligations under subsection (1) for the period prescribed by the regulations.

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Maximum penalty: \$10 000 or imprisonment for 2 years.

#### **49—Amendment of section 153—Renewal or extension of mortgage etc**

Section 153(2)—delete "with the Registrar-General" and substitute:

20

in the Lands Titles Registration Office

#### **50—Insertion of sections 153A and 153B**

After section 153 insert:

##### **153A—Requirements for renewal or extension of mortgage**

- (1) Certification required under section 273(1) in relation to an instrument lodged for registration in the Lands Titles Registration Office renewing or extending a mortgage must be provided by the mortgagee.

25

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

30

- (3) The Registrar-General may register an instrument lodged for registration in the Lands Titles Registration Office renewing or extending a mortgage that is executed solely by the mortgagee—

35

- (a) if the Registrar-General is satisfied that a document in the same terms as the instrument lodged for registration (the *corresponding document*) has been executed by the mortgagor and the mortgagee and retained by the mortgagee; and

40

(b) in a case where the mortgagee is not an ADI—if certification required under section 273(1) in relation to the instrument has been provided—

(i) by a legal practitioner or a registered conveyancer;  
or

(ii) if the Registrar-General has given written approval for another person to provide the certification—by that person.

(4) If the Registrar-General registers an instrument renewing or extending a mortgage that is executed solely by the mortgagee, the corresponding document—

(a) must be retained by the mortgagee until he or she ceases to be mortgagee; and

(b) if the mortgage is transferred under section 150—must be given to the transferee.

Maximum penalty: \$5 000.

(5) If the mortgage is transferred under section 150, the corresponding document must be retained by the transferee until he or she ceases to be mortgagee.

Maximum penalty: \$5 000.

### **153B—Obligations of mortgagee**

(1) A mortgagee under a registered mortgage must not execute an instrument renewing or extending the mortgage without first verifying, in accordance with the verification of authority guidelines, the mortgagor's authority to enter into the transaction for the renewal or extension of the mortgage.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A mortgagee must retain a copy of any document used for the purpose of fulfilling his or her obligations under subsection (1) for the period prescribed by the regulations.

Maximum penalty: \$10 000 or imprisonment for 2 years.

### **51—Repeal of section 154**

Section 154—delete the section

### **52—Amendment of section 154B—Effect of priority notice**

Section 154B(2)—after paragraph (v) insert:

(va) an application under this Act by a surviving joint proprietor to have the death of a joint proprietor recorded in the Register Book;

**53—Substitution of section 156**

Section 156—delete the section and substitute:

**156—Deposit of duplicate or attested copy**

- 5 (1) A duplicate or an attested copy of a power of attorney referred to in section 155 must be deposited in the Lands Titles Registration Office.
- (2) The date and time of depositing must be noted on the duplicate or attested copy.
- 10 (3) The Registrar-General must, before the depositing of a power of attorney under subsection (1), compare the original power of attorney with the duplicate or attested copy.

**54—Amendment of section 157—Revocation of power of attorney**

- (1) Section 157—delete "executing" and substitute:

signing

- 15 (2) Section 157—delete "when produced to him, and the day and hour of its production" and substitute:

including the date and time the revocation is deposited in the Lands Titles Registration Office

- (3) Section 157—delete "his" and substitute:

20 the

**55—Substitution of section 163**

Section 163—delete the section and substitute:

**163—Insertion of the words "with no survivorship" in instruments**

25 If an instrument grants or transfers an estate or interest in land to 2 or more persons as joint proprietors intended to be held by them as trustees—

- (a) a party to the instrument may use the words "with no survivorship" in the instrument; and

- 30 (b) the Registrar-General must, if the words "with no survivorship" are used in the instrument, record that fact in the Register Book and on a conspicuous place on any certificate issued to the joint proprietors.

**56—Amendment of section 164—Trustees may authorise insertion of "with no survivorship"**

- 35 (1) Section 164—delete "by writing under their hands" and substitute:

by executing the appropriate form

- (2) Section 164—delete "enter" and substitute:  
record

**57—Amendment of section 165—Effect of record**

- (1) Section 165—delete "entry" and substitute:  
5 record

- (2) Section 165—delete "entered" and substitute:  
recorded

**58—Amendment of section 168—Survivors may perform duties or transfer to new trustees**

- 10 Section 168—delete "or remaining" and substitute:  
and remaining

**59—Amendment of section 169—Disclaimers**

- (1) Section 169(1) and (2)—delete subsections (1) and (2) and substitute:

- 15 (1) If a person (the *disclaimant*) (whether a trustee or not) who is registered as proprietor of an estate or interest in land advises the Registrar-General in writing that the registration occurred without the person's consent, the Registrar-General must give written notice of that advice (the *disclaimer*) to all other persons whose names appear on the certificate of title and who, in the Registrar-General's  
20 opinion, may be affected by the disclaimer.

- (2) Section 169(2a)—delete "shall" and substitute:  
must

- (3) Section 169(4)—after "his" insert:  
or her

- 25 (4) Section 169(4)(a) and (b)—delete paragraphs (a) and (b) and substitute:

- (a) the Registrar-General must not take steps to give effect to the disclaimer except in accordance with an order of the Court under subsection (6); and  
(b) the Registrar-General must give the disclaimant written notice that  
30 he or she does not intend to give effect to the disclaimer except in accordance with such an order.

- (5) Section 169(5) and (6)—delete subsections (5) and (6) and substitute:

- (5) If a notice of objection is lodged on or before the day specified by the Registrar-General—

- 35 (a) the Registrar-General must not take steps to give effect to the disclaimer except in accordance with an order of the Court under subsection (6); and  
(b) the Registrar-General must give the disclaimant written notice of the objection.

(6) A disclaimant who has received a notice under subsection (4)(b) or (5)(b) may apply to the Court for an order that the Registrar-General take such action as is necessary to give effect to the disclaimer and on such an application the Court may make any order it considers just.

5

(6) Section 169(7)—delete "shall release any" and substitute:  
releases a

(7) Section 169(7)—delete "he" and substitute:  
the person

10

(8) Section 169(7)—after "his" insert:  
or her

### **60—Amendment of section 171—Transmission to be recorded in Register Book**

15

(1) Section 171—delete "in writing, under the hand of the Official Receiver or trustee" and substitute:

in the appropriate form executed by the Official Receiver or trustee

(2) Section 171—delete "shall enter in the Register Book a memorandum notifying" and substitute:

make a record in the Register Book of

20

(3) Section 171—delete "entry" and substitute:  
record

### **61—Amendment of section 173—Bankruptcy or assignment of lessee**

(1) Section 173(a)—delete paragraph (a) and substitute:

**(a) If lease not subject to mortgage or encumbrance**

25

if the lease is not mortgaged or encumbered under this Act, the Registrar-General must, on the application in writing of the lessor (being a lessor in possession of a statement, signed by the Official Receiver, or by the trustee under the bankruptcy or assignment, certifying his or her refusal to accept the lease), make a record in the Register Book of the refusal, and the record will then operate as a surrender of the lease;

30

(2) Section 173—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

35

(2) A lessor, mortgagee or encumbrancee must retain a copy of any document used for the purpose of fulfilling his or her obligations under subsection (1) for the period prescribed by the regulations.  
Maximum penalty: \$10 000 or imprisonment for 2 years.

## 62—Amendment of section 191—Caveats

(1) Section 191—after "his" wherever occurring insert:

or her

(2) Section 191—delete "forbidding the registration of any dealing with such land, either absolutely or unless such dealing shall be expressed to be subject to the claim of the caveator, or to any conditions conformable to law expressed therein"

(3) Section 191(a)—delete paragraph (a) and substitute:

(a) **Purpose of caveat**

a caveat may—

- (i) prohibit absolutely the registration or recording of any instrument dealing with the land; or
- (ii) provide that the registration or recording of an instrument dealing with the land may only occur subject to the claim of the caveator, and provided that, if any conditions are expressed in the caveat, the instrument complies with those conditions;

(ab) **Instrument subject to claim of caveator**

if a caveator lodges a caveat providing that the registration or recording of an instrument dealing with land will be subject to the claim of the caveator, any instrument dealing with that land registered or recorded after the lodgement of the caveat will be taken to be registered or recorded subject to that claim;

(ac) **Form of caveat**

a caveat must—

- (i) be in the appropriate form; and
- (ii) be executed by the caveator or his or her agent; and
- (iii) contain an address within South Australia to which notices may be sent or at which proceedings may be served; and
- (iv) contain information (if any) prescribed by the regulations for the purposes of this paragraph;

(4) Section 191(c)—delete paragraph (c) and substitute:

(c) **Not to register or record instruments contrary to caveat**

so long as a caveat remains in force, the Registrar-General must not, contrary to the requirements of the caveat, register or record an instrument affecting the land in respect of which the caveat has been lodged; except that despite the receipt of a caveat, the Registrar-General must, subject to the other provisions of this Act, proceed with and complete the registration or recording of any instrument affecting the land produced for registration or recording before the lodgement of the caveat in the Lands Titles Registration Office;

(5) Section 191(h)—after "him" insert:

or her

(6) Section 191—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

5 (2) Despite subsection (1), the Registrar-General may, after a caveat has been lodged in accordance with this section, register or record in respect of the land to which the caveat applies—

(a) another caveat or instrument that has the effect of a caveat;  
or

10 (b) another instrument of a kind prescribed by the regulations, unless the registration or recording of that instrument is specifically prohibited by the lodged caveat.

(3) To avoid doubt, a registered proprietor of land may lodge a caveat under this section in respect of land for which he or she is the  
15 registered proprietor.

(4) In this section—

*record* means make a record in the Register Book.

### 63—Insertion of sections 210A and 210B

After section 210 insert:

#### 20 210A—Value of land determined by market value

In determining the compensation payable from the Assurance Fund for any deprivation or loss under this Part, the value of the land must be determined according to the market value of the land on the day  
25 on which the claimant institutes proceedings against a person or the Registrar-General for compensation.

#### 210B—Registrar-General may use Fund money

Money in the Assurance Fund may be applied for the purpose of meeting any expenses incurred by the Registrar-General in connection with any claim for compensation from the Assurance  
30 Fund.

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

(1) Section 220—delete "he" wherever occurring and substitute in each case:

the Registrar-General

(2) Section 220—after "him" wherever occurring insert:

35 or her

(3) Section 220—delete "powers, that is to say—" and substitute:

powers:

(4) Section 220(a), (c), (e), (f) and (j)—after "his" wherever occurring insert:

or her

- (5) Section 220(a)—delete ", transmission, or other dealing is about to be registered, issued or transacted" and substitute:

is about to be registered or recorded

- (6) Section 220(a)—delete "issuing of such instrument, transmission, or dealing" and substitute:

recording of such instrument

- (7) Section 220(b)—delete paragraph (b) and substitute:

(b) **To administer oaths**

the Registrar-General may administer oaths, or, in lieu of administering an oath, may require a person who is to be examined to make a declaration of the truth of the statements to be made by the person;

- (8) Section 220(d)(v)—after "registration" insert:

or recording in the Register Book

- (9) Section 220(e)—after "registered" insert:

or recorded

- (10) Section 220(g)—delete paragraph (g) and substitute:

(g) **To enter caveats**

the Registrar-General may enter caveats prohibiting the registration or recording in the Register Book of an instrument—

- (i) on behalf of the Crown; or
- (ii) for the prevention of a fraud or an improper dealing; or
- (iii) if it appears to the Registrar-General that an error has been made by misdescription or otherwise in an instrument; or
- (iv) for the protection of any person absent from the State, or under the disability of infancy, coverture or mental incapacity; or
- (v) if the Registrar-General considers it is in the public interest to do so;

**65—Amendment of section 221—Reviews**

Section 221—after subsection (1) insert:

- (1a) If a person is dissatisfied with a decision of the Registrar-General to cancel the registration of a mortgage under section 147, the person may seek a review of the decision by the Tribunal.

**66—Amendment of section 223D—Caveats**

Section 223D(1)—delete "with the Registrar-General" and substitute:

in the Lands Titles Registration Office



**67—Amendment of section 223L—Operation of corrections**

(1) Section 223L—after "registration" insert:

or recording

(2) Section 223L—after "registered" insert:

or recorded

**68—Amendment of 223LA—Interpretation**

Section 223LA—after subsection (6) insert:

(7) An application or instrument under this Part may not be executed under a client authorisation.

**69—Amendment of section 223LD—Application for division**

Section 223LD(2)—delete subsection (2) and substitute:

(2) An application under this section must be—

(a) in the appropriate form; and

(b) signed by the applicant; and

(c) accompanied by the prescribed fee.

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

Section 223LJ(2)(a)—delete paragraph (a) and substitute:

(a) must be in the appropriate form; and

(ab) must be signed by the applicant; and

**71—Amendment of section 228—Declarations**

Section 228—after "Justice of the Peace," insert:

registered conveyancer,

**72—Substitution of section 229**

Section 229—delete the section and substitute:

**229—Offences**

If a person—

(a) forges or procures to be forged or assists in forging, or fraudulently affixes or procures to be affixed or assists in affixing, the seal of the Registrar-General, or an impression or part of an impression of the seal, to an instrument or other document; or

(b) forges or procures to be forged or assists in forging the name, signature or handwriting of—

(i) the Registrar-General; or

(ii) an officer in any case where the officer is by this Act expressly or impliedly authorised to affix his or her signature; or

(c) fraudulently stamps or causes to be stamped an instrument or other document with the seal of the Registrar-General or with a seal purporting to be the seal of the Registrar-General; or

(d) forges or procures to be forged or assists in forging the name, signature or handwriting of a person to an instrument or other document that is under this Act expressly or impliedly authorised to be signed, certified or executed by the person; or

(e) uses, with an intention to defraud a person—

(i) a document on which an impression or part of the impression of a seal of the Registrar-General has been forged or fraudulently affixed knowing that the seal is forged or fraudulently affixed; or

(ii) a document the signature to which has been forged knowing that the signature has been forged,

the person is guilty of an offence.

Maximum penalty: \$50 000 or imprisonment for 10 years.

### **73—Amendment of section 230—Perjury**

(1) Section 230—delete "instrument, dealing" and substitute:

document or instrument, or

(2) Section 230, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$50 000 or imprisonment for 10 years.

### **74—Amendment of section 232—Certifying incorrect documents**

Section 232(1)—delete subsection (1) and substitute:

(1) If a person falsely provides a certification under section 273(1), the person is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

(1a) In proceedings for an offence against subsection (1), it is a defence to prove that—

(a) the defendant was not negligent; and

(b) the act or omission constituting the offence was attributable to an honest mistake on the defendant's part.

(1b) If—

(a) a person falsely provides a certification under section 273(1); and

(b) the person knows that the certification is false,

the person is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

**75—Amendment of section 232A—Offences relating to verification of identity requirements**

- 5       (1) Section 232A(1), penalty provision—delete the penalty provision and substitute:  
          Maximum penalty: \$5 000 or imprisonment for 1 year.
- (2) Section 232A(2), penalty provision—delete the penalty provision and substitute:  
          Maximum penalty: \$10 000 or imprisonment for 2 years.
- (3) Section 232A(3), penalty provision—delete the penalty provision and substitute:  
10       Maximum penalty: \$5 000 or imprisonment for 1 year.
- (4) Section 232A(4), penalty provision—delete the penalty provision and substitute:  
          Maximum penalty: \$10 000 or imprisonment for 2 years.
- (5) Section 232A(5), penalty provision—delete the penalty provision and substitute:  
          Maximum penalty: \$10 000 or imprisonment for 2 years.
- 15       (6) Section 232A(6), penalty provision—delete the penalty provision and substitute:  
          Maximum penalty: \$10 000 or imprisonment for 2 years.
- (7) Section 232A—after subsection (6) insert:  
              (7) A certification provided under section 273(1) is not a statement for  
              the purposes of this section.

20       **76—Insertion of section 232B**

After section 232A insert:

**232B—Offences relating to verification of authority**

- 25       (1) If a person falsely states that the authority of another person to enter  
          into a transaction, or to execute an instrument or document in  
          connection with a transaction, has been verified in accordance with  
          the verification of authority guidelines or the participation rules, the  
          person is guilty of an offence.  
          Maximum penalty: \$5 000 or imprisonment for 1 year.
- (2) If—
- 30           (a) a person falsely states that the authority of another person to  
              enter into a transaction, or to execute an instrument or  
              document in connection with a transaction, has been verified  
              in accordance with the verification of authority guidelines or  
              the participation rules; and
- 35           (b) the person knows the statement is false,  
              the person is guilty of an offence.  
              Maximum penalty: \$10 000 or imprisonment for 2 years.

- 5 (3) If a person makes a false or misleading statement in connection with verifying the authority of the person, or another person, to enter into a transaction, or to execute an instrument or document in connection with a transaction, for the purposes of the verification of authority guidelines or the participation rules, the person is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

- (4) If—

10 (a) a person makes a false or misleading statement in connection with verifying the authority of the person, or another person, to enter into a transaction, or to execute an instrument or document in connection with a transaction, for the purposes of the verification of authority guidelines or the participation rules; and

15 (b) the person knows the statement is false or misleading, the person is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- 20 (5) A person who, in connection with verifying the authority of the person, or another person, to enter into a transaction, or to execute an instrument or document in connection with a transaction, for the purposes of the verification of authority guidelines or the participation rules, produces a document or record that he or she knows, or ought to know, is false or misleading in a material particular, is guilty of an offence.

25 Maximum penalty: \$10 000 or imprisonment for 2 years.

- 30 (6) A person who is required under the verification of authority guidelines or the participation rules to retain a document or record produced in connection with the verification of another person's authority to enter into a transaction, or to execute an instrument or document in connection with a transaction, must retain and safely and securely store the document or record, or a clearly legible copy of the document or record, for the period during which retention of the document or record is required under the requirements or rules as in force when the document or record was produced.

35 Maximum penalty: \$10 000 or imprisonment for 2 years.

- (7) A certification provided under section 273(1) is not a statement for the purposes of this section.

### **77—Amendment of section 233—Other offences**

(1) Section 233—delete ", the Acting Registrar-General," wherever occurring

40 (2) Section 233(d)—after subparagraph (iv) insert:

or

(v) a client authorisation;

(3) Section 233—after paragraph (d) insert:

(da) fraudulently uses, assists in fraudulently using or is privy to the fraudulent using of a digital signature within the meaning of the *Electronic Conveyancing National Law (South Australia)*;

5 (4) Section 233(f)—delete "or dealing"

(5) Section 233—delete "indictable"

(6) Section 233, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$50 000 or imprisonment for 10 years.

## 78—Insertion of Part 20A

10 After Part 20 insert:

### Part 20A—Client authorisation

#### 240A—Client authorisation

For the purposes of this Act, a *client authorisation* is a document—

15 (a) that is a client authorisation for the purposes of the *Electronic Conveyancing National Law (South Australia)*; or

(b) —

(i) that is in the appropriate form; and

20 (ii) by which the client of a law practice, legal practitioner or registered conveyancer authorises the practice, practitioner or conveyancer to execute 1 or more instruments, or do 1 or more other things, on behalf of the client in connection with a specified transaction or for a specified period of time.

#### 25 240B—Effect of client authorisation

(1) A properly completed client authorisation has effect according to its terms.

30 (2) If a client authorisation is properly completed, the requirements of any other law of this State relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.

(3) This section does not apply in relation to a client authorisation under the *Electronic Conveyancing National Law (South Australia)*.

**Note—**

35 Section 11 of the *Electronic Conveyancing National Law (South Australia)* deals with the effect of client authorisations under the Law.

### 240C—Termination of client authorisation

- (1) A client authorisation terminates if a party to the authorisation advises the other party by notice in writing that the authorisation is terminated.
- (2) Termination of a client authorisation has effect on receipt of the termination notice, or on the date and time or happening of an event specified in the termination notice, whichever occurs first.

### 240D—Instruments to be executed by natural persons

If a law practice, or a registered conveyancer that is a body corporate, is authorised under a client authorisation to execute instruments on behalf of a person, the instruments must be executed by—

- (a) in the case of a law practice—
- (i) a person who is a legal practitioner associate of the law practice for the purposes of the *Legal Practitioners Act 1981*; or
- (ii) a registered conveyancer who is an employee of the law practice; or
- (b) in the case of a registered conveyancer that is a body corporate—a registered conveyancer who is a director or employee of the conveyancer.

### 240E—Client authorisation may be given by Crown or statutory corporation

The Crown (including an instrumentality of the Crown) or a statutory corporation may provide for a representative to execute instruments on its behalf by completing a client authorisation (irrespective of whether it has the capacity to delegate its powers).

### 240F—Legal practitioner and registered conveyancer must obtain authorisation

- (1) If a legal practitioner or registered conveyancer executes an instrument for the purposes of this Act or the *Electronic Conveyancing National Law (South Australia)* on behalf of a party to the instrument—
- (a) other than in accordance with a properly completed client authorisation; or
- (b) in accordance with a properly completed client authorisation but without first—
- (i) verifying the identity of the party in accordance with the verification of identity requirements; and

- (ii) verifying the authority of the party, in accordance with the verification of authority guidelines, to be a party to the instruments authorised by or under the client authorisation,

5 the practitioner or conveyancer is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply to a legal practitioner or registered conveyancer—

- 10 (a) who executes a caveat as agent of a caveator otherwise than under a client authorisation; or
- (b) who executes a priority notice on behalf of a person otherwise than under a client authorisation; or
- (c) in other prescribed circumstances.

- 15 (3) In proceedings for an offence against subsection (1)(a) or (b), it is a defence to prove that—

- (a) the defendant was not negligent; and
- (b) the act or omission constituting the offence was attributable to an honest mistake on the defendant's part.

#### **240G—Retention of client authorisation**

20 A client authorisation must be retained by the law practice, legal practitioner or registered conveyancer for the period prescribed by the regulations.

Maximum penalty: \$10 000 or imprisonment for 2 years.

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

- 25 (1) Section 246—after "signed" insert:

or executed

- (2) Section 246—after "him" insert:

or her

- 30 (3) Section 246—delete "he may deem" and substitute:

the Registrar-General considers

#### **80—Amendment of section 247—Informal documents may be registered**

Section 247—after "signed" insert:

or executed

### 81—Amendment of section 255—Confused boundaries

Section 255(6)—delete subsection (6) and substitute:

- 5 (6) An amendment made to a certificate of title under this section will be taken to have been made prior to the registration or recording of any instrument registered or recorded on the certificate.

### 82—Amendment of section 267—Witnessing of instruments

Section 267(1)—delete subsection (1) and substitute:

- 10 (1) If a provision of this Act requires the signing of an instrument by or on behalf of a party to the instrument, the signing of the instrument must be witnessed by a person who either knows the person signing the instrument personally or is satisfied as to his or her identity.

### 83—Amendment of section 268—Improper witnessing

- (1) Section 268—delete "witness" first occurring and substitute:

person

- 15 (2) Section 268(a)—delete "executing" and substitute:

signing

- (3) Section 268, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000 or imprisonment for 1 year.

### 84—Amendment of section 270—Execution of instrument by corporation

20 Section 270—delete "by affixing thereto its common seal, and such execution shall be equivalent to signature" and substitute:

in any manner permitted by law

### 85—Amendment of section 273—Authority to register

- (1) Section 273(1)—delete subsection (1) and substitute:

- 25 (1) Subject to subsection (2), the Registrar-General must not register or record an instrument purporting to deal with or affect land (including an instrument lodged electronically under the *Electronic Conveyancing National Law (South Australia)*) unless a prescribed person has, on behalf of each person required to execute the instrument under this Act, provided certification in the appropriate form—

- 30 (a) in relation to compliance with relevant legislation; and  
35 (b) that the requirements of this Act in relation to verification of identity, verification of authority and execution of documents have been complied with in respect of the instrument; and  
(c) that any document relevant to certification of the instrument that is required to be retained under this Act has been so retained; and



(d) that there has been compliance with any other requirements prescribed by regulation for the purposes of this section.

(2) Section 273(2)—delete subsection (2) and substitute:

(2) The Registrar-General may, in his or her discretion, exempt a prescribed person, or classes of instrument prescribed by regulation, from any or all of the certification requirements under subsection (1).

(3) Section 273—after subsection (3) insert:

(4) In this section—

*prescribed person* means—

- (a) a legal practitioner; or
- (b) a registered conveyancer; or
- (c) if the applicant is not represented by a legal practitioner or registered conveyancer—the applicant; or
- (d) if a party to an instrument is not represented by a legal practitioner or registered conveyancer—that party; or
- (e) if a provision of this Act requires or permits some other person to provide certification under subsection (1)—that person.

#### **86—Insertion of section 273AA**

After section 273 insert:

##### **273AA—Proof of authority of unrepresented parties to enter into transaction**

(1) If a party to an instrument is not represented by a legal practitioner or registered conveyancer, the Registrar-General must not register or record the instrument in the Register Book or the Register of Crown Leases unless the party has satisfied the Registrar-General that he or she is authorised to enter into the transaction to which the instrument relates.

(2) A party to an instrument who is not represented by a legal practitioner or registered conveyancer referred to in subsection (1) must retain a copy of any document used for the purpose of fulfilling his or her obligations under subsection (1) for the period prescribed by the regulations.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(3) In this section—

*party to an instrument* has the same meaning as in section 273A.

#### **87—Amendment of section 273A—Verification of identity requirements**

(1) Section 273A(1)—delete subsection (1) and substitute:

(1) The identity of—

- (a) a party to an instrument; or

- (b) a person executing a document for the purposes of this Act (other than a legal practitioner or registered conveyancer acting under a client authorisation),

must be verified in accordance with any prescribed requirements (the *verification of identity requirements*).

- (2) Section 273A(4)(b)—delete ", specified in the requirements, not exceeding 10 years" and substitute:

specified in the requirements

- (3) Section 273A—after subsection (5) insert:

(5a) In civil proceedings (other than review proceedings under this Act) where it is alleged that a person failed to comply with a requirement under the verification of identity requirements, that person bears the onus of proving his or her compliance with the requirement.

- (4) Section 273A(6)—delete subsection (6) and substitute:

(6) In this section—

*party to an instrument* includes a person executing an instrument on behalf of another (whether pursuant to a power of attorney or otherwise) but does not include a legal practitioner or registered conveyancer acting under a client authorisation.

## 88—Insertion of section 273B

After section 273A insert:

### 273B—Verification of authority guidelines

- (1) The Registrar-General may issue guidelines (the *verification of authority guidelines*) to be observed by a party to a transaction, or the legal practitioner or registered conveyancer representing a party to a transaction, where the party, practitioner or conveyancer is required under this Act to verify his or her authority, or the authority of a party to the transaction, to enter into the transaction or to execute an instrument or document in connection with the transaction.
- (2) The Registrar-General may from time to time cancel, vary or replace the verification of authority guidelines.
- (3) The Registrar-General must ensure that current and superseded versions of the verification of authority guidelines are publicly available on a website maintained by the Registrar-General and in any other manner the Registrar-General considers appropriate.
- (4) A reference in this Act to the verification of authority guidelines, in relation to an instrument or other document, is a reference to the verification of authority guidelines in force under this section at the time the authority of a party to enter into a transaction is verified (or purportedly verified).

## 89—Insertion of section 276A

After section 276 insert:

### 276A—Evidence of instruments lodged electronically

- 5
- (1) A document certified by the Registrar-General that reproduces the contents of an instrument lodged electronically under this Act or the *Electronic Conveyancing National Law (South Australia)* (whether in its registered or recorded form or in some other form) must be accepted in legal proceedings as evidence of that instrument.
- 10
- (2) A document referred to in subsection (1) that purports to have been certified by the Registrar-General must be taken in legal proceedings, in the absence of proof to the contrary, to have been so certified.

## 90—Substitution of section 277

Section 277—delete the section and substitute:

### 277—Regulations

- 15
- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or convenient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- 20
- (a) provide that a document or record required to be produced or retained by a person under this Act must be retained by the person for a particular period; and
- (b) provide for and prescribe fees and charges payable for or in respect of the following:
- 25
- (i) the doing of an act or thing under this Act or the *Electronic Conveyancing National Law (South Australia)*;
- (ii) doing an act or thing in respect of the Register Book or the Register of Crown Leases required under any
- 30
- other Act;
- (iii) searching—
- (A) the Register Book or the Register of Crown Leases (whether electronically or in any other manner); or
- 35
- (B) a document deposited or registered in the Lands Titles Registration Office,
- for information recorded under this or any other Act;
- 40
- (iv) obtaining copies of material searched for under subparagraph (iii);

(v) charges recoverable by solicitors and registered conveyancers for transacting business under the provisions of this Act;

(vi) the provision of lodgement support services by the Registrar-General.

5  
  
10 (3) Fees or charges prescribed under subsection (2) for registering a transfer of land may be based on the consideration for the transfer, the value of the land transferred or any other basis whether or not the fee or charge exceeds the administrative cost of registering the transfer.

15 (4) A regulation prescribing fees or charges for registering a transfer of land may also provide that the Registrar-General may recover an amount (including interest) as a debt if the assessed value of the transferred land is increased as a result of a reassessment by the Commissioner under the *Taxation Administration Act 1996*.

(5) Regulations under this Act—

(a) may be of general application or limited application; and

(b) may make different provision according to the matters or circumstances to which they are expressed to apply; and

20 (c) may exempt, or empower the Registrar-General to exempt, persons or classes of persons, or instruments or classes of instruments, from the application of this Act or provisions of this Act, absolutely or subject to conditions.

25 (6) The Governor may, by regulation, make provisions of a saving or transitional nature consequent on the amendment of this Act by another Act.

(7) A provision of a regulation made under subsection (6) may, if the regulation so provides, take effect from the commencement of the amendment or from a later day.

30 (8) To the extent to which a provision takes effect under subsection (7) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

35 (b) imposing liabilities on the person.

(9) Without limiting the operation of subsections (6), (7) or (8), the regulations may, for transitional purposes—

40 (a) provide that this Act or specified provisions of this Act will not apply in relation to a particular person or thing, or a class of person or thing, until a specified day; or

(b) modify the application of this Act or provisions of this Act in relation to a particular person or thing, or a class of person or thing, until a specified day.

## Schedule 1—Related amendments

### Part 1—Amendment of *Legal Services Commission Act 1977*

#### 1—Amendment of section 18A—Legal assistance costs may be secured by charge on land

5           Section 18A(5)—delete "attested by a witness and"

### Part 2—Amendment of *Registration of Deeds Act 1935*

#### 2—Amendment of section 6—Registrar-General of Deeds

          Section 6(1)—delete subsection (1) and substitute:

- 10           (1)   The Registrar-General under the *Real Property Act 1886* is the Registrar-General of Deeds.
- (1a) A deputy of the Registrar-General under the *Real Property Act 1886* is a Deputy Registrar-General of Deeds (a *deputy registrar*).

### Part 3—Amendment of *Stamp Duties Act 1923*

#### 3—Amendment of section 2—Interpretation

- 15           (1)   Section 2(1)—after the definition of *stamp* insert:
- stamp duty identification number* means a stamp duty identification number as determined by the Commissioner;
- (2)   Section 2—after subsection (11) insert:
- 20           (12) If an instrument under the *Real Property Act 1886* is executed by a legal practitioner or a registered conveyancer on behalf of a person under a client authorisation (within the meaning of that Act), the instrument will be taken for the purposes of this Act to have been executed by the person who provided the authorisation.
- 25           (13) If a dutiable instrument to be registered or recorded under the *Real Property Act 1886* is in electronic form, a requirement under this Act for such an instrument to be duly stamped will be taken to be satisfied if a stamp duty identification number appears on the instrument.

### Part 4—Amendment of *Worker's Liens Act 1893*

#### 30   4—Amendment of section 10—Lien to be registered

          Section 10(3)—delete "in the prescribed form and accompanied by the prescribed fee, which notice shall be signed by such person and attested" and substitute:

          executed by the person in a form approved by the Registrar-General, containing the prescribed information and accompanied by the prescribed fee

## 5—Amendment of section 12—Notice to be deemed caveat

Section 12—delete "forbidding the registration of any dealing with the estate or interest sought to be affected by the lien, unless such dealing shall be expressed to be subject to the claim of the person lodging the notice" and substitute:

5 for the purposes of section 191 of that Act

## Schedule 2—Related amendments—duplicate certificates of title

The Acts specified in this Schedule are amended in the manner indicated in the Schedule.

Provision amended	How amended
<i>Real Property Act 1886</i>	
Section 48	Delete the section
Section 49	Delete "original"
Section 51A	Delete "an original certificate" wherever occurring and substitute in each case: a certificate
Section 51A(2)	Delete "the original certificate" and substitute: the certificate
Section 51B(b)	Delete paragraph (b) and substitute: (b) the term <i>certificate</i> or <i>certificate of title</i> will be taken to mean the records maintained by the Registrar-General under this section relating to the land;
Section 51B(c) and (d)	Delete paragraphs (c) and (d)
Section 51B(f)	Delete paragraph (f)
Sections 60 to 63 (inclusive)	Delete the sections
Section 64	Delete "notwithstanding that the relevant duplicate certificate has not been produced to him,"
Section 66	Delete the section
Section 69	Delete "original"
Section 73	Delete the section
Section 74	Delete "such persons may receive one certificate for the entirety, or each may receive a separate certificate for his undivided share and in each case"
Section 75	Delete "his" wherever occurring and substitute: the
Section 75	Delete "may receive"
Section 78	Delete "and the delivering up of such instruments of title,"
Section 78	Delete "duplicates delivered up, and the originals" and substitute: certificates
Sections 79 and 80	Delete the sections

<b>Provision amended</b>	<b>How amended</b>
Section 84	Delete "original certificate of such land, and also upon the duplicate certificate" and substitute: <p style="text-align: center;">certificate of such land</p>
Section 85	Delete "original"
Section 88	Delete "original and duplicate"
Section 93(1)	Delete subsection (1) and substitute: <p style="text-align: center;">(1) The parties to a Crown lease must execute a lease which must be lodged in the Lands Titles Registration Office for inclusion or recording in the Register of Crown Leases.</p>
Section 103	Delete "to him"
Section 103	Delete "shall (without requiring the production of the duplicate certificate)" and substitute: <p style="text-align: center;">must</p>
Section 103	Delete "original"
Section 105	Delete "his" and substitute: <p style="text-align: center;">the party's</p>
Section 105	Delete "original"
Section 107	Delete "original"
Section 108	Delete the section
Section 120(2)	Delete "and may, if in the Registrar-General's opinion it is necessary or desirable to do so, endorse the surrender on the duplicate certificate"
Section 145	Delete "; and the Registrar-General shall make a similar entry on the duplicate certificate of the encumbered land when produced to him or her for that purpose"
Section 148A(1)	Delete ", and shall make a similar entry on the duplicate certificate"
Section 148A(3)	Delete subsection (3)
Section 149	Delete the section
Section 164	Delete "upon the original" and substitute: <p style="text-align: center;">on the</p>

<b>Provision amended</b>	<b>How amended</b>
Section 169(3)	Delete subsection (3) and substitute:  (3) If no notice of objection is lodged and the Registrar-General is satisfied that the disclaimant was registered without the disclaimant's consent, the Registrar-General must give effect to the disclaimer by making such entries, alterations and corrections in the Register Book as are necessary for that purpose, and by cancelling any certificate which it is necessary to cancel.
Section 176	Delete "the duplicate certificate and"
Section 177	Delete "and on the duplicate certificate of title for the land"
Section 184	Delete "the duplicate certificate of title for the land and upon such entry" and substitute:  such entry being made
Section 220(c)	Delete paragraph (c)
Section 220(m)	Delete paragraph (m)
Section 223G	Delete the section and substitute:  <b>223G—Amendment of title</b>  Every amendment made under this Part may be made by the Registrar-General making the required alterations on the certificate of title.
Section 223H	Delete the section and substitute:  <b>223H—Notice of amendment of title</b>  On amending a certificate under this Part, the Registrar-General must give notice in writing of the amendment to the registered proprietor of, and to all persons appearing in the Register Book to have an interest in, the land included in that certificate, and the Registrar-General may, in his or her discretion, issue a new certificate with an amended description.
Section 223LJ(2)(c)	Delete paragraph (c)
Section 233(d)(i)	Delete paragraph (i) and substitute:  (i) a certificate of title filed in the Register Book; or
Section 248	Delete ", and the duplicate certificate, or other instrument of title shall be delivered up and the like memorials or other entries made thereon"



<b>Provision amended</b>	<b>How amended</b>
Section 254	After "him" insert:  or her
Section 254	Delete "in his office"
Section 254	Delete ", and require the registered proprietor, or any mortgagee or encumbrancee, who may hold the same, to deliver up the duplicate certificate for the purpose of being cancelled or corrected as the case may require"
Section 255(4)(b)	Delete "original certificate of title, or may issue a new certificate of title, without the production of any duplicate or" and substitute:  certificate of title, or may issue a new certificate of title, without the production of any
Section 255(4)(c)	Delete paragraph (c)
Section 255(5)	Delete subsection (5)
<b><i>Associations Incorporation Act 1985</i></b>	
Section 20(4)(b)	Delete "duplicate instruments of title and other"
Section 22(7)(b)	Delete "duplicate instruments of title and other"
Section 42(4)(b)	Delete "duplicate instruments of title and other"
<b><i>Community Housing Providers (National Law) (South Australia) Act 2013</i></b>	
Section 23(13)	Delete "and, notwithstanding the <i>Real Property Act 1886</i> , production of the duplicate certificate of title will not be required (but, if the duplicate certificate of title is not produced, the Registrar-General will cancel the existing certificate of title and issue a new certificate in the name of the transferee)"
Schedule 3, clause 17(1)(b)	Delete "duplicate instruments of title and other"
<b><i>Community Titles Act 1996</i></b>	
Section 14(4)(c)	Delete paragraph (c)
Section 52(4)(b)	Delete paragraph (b)
Section 58(3)(c)	Delete paragraph (c)
Section 58(7)	Delete "and for that purpose may require the community corporation to produce the duplicate certificate of title for the existing common property"
Section 60(3)(b)	Delete paragraph (b)
Section 65(c)	Delete paragraph (c)
Section 67(2)(e)	Delete paragraph (e)
Section 69(5)(b)	Delete "original"
Section 80(1)(d)	Delete paragraph (d)

## Real Property (Electronic Conveyancing) Amendment Bill 2016

### Schedule 2—Related amendments—duplicate certificates of title

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<b>Provision amended</b>	<b>How amended</b>
Section 154(1)	Delete ", and, notwithstanding the <i>Real Property Act 1886</i> , the Registrar-General may, if he or she thinks fit, dispense with the requirement that a duplicate certificate of title be produced for the purpose of any dealing to which the person's consent is taken to have been given if the duplicate certificate of title would normally be produced by that person"
Schedule, clause 2(4)(b)	Delete "original"
Schedule, clause 3(4)(b)	Delete "original"
<b><i>Criminal Law (Sentencing) Act 1988</i></b>	
Section 70K(16)	Delete subsection (16)
<b><i>Crown Rates and Taxes Recovery Act 1945</i></b>	
Section 13(6)	Delete subsection (6)
<b><i>Emergency Services Funding Act 1998</i></b>	
Section 20(14)	Delete subsection (14)
<b><i>Forest Property Act 2000</i></b>	
Section 11(2)(c)(i)	Delete ", duplicate certificate of title"
<b><i>Free Presbyterian Church (Vesting of Property) Act 2001</i></b>	
Section 8(3)(b)	Delete "duplicate certificate or other"
<b><i>Ground Water (Qualco-Sunlands) Control Act 2000</i></b>	
Section 59(14)	Delete subsection (14)
<b><i>Health Services Charitable Gifts Act 2011</i></b>	
Section 27(1)	Delete "and on production of duplicate certificates of title (if any) relating to the land,"
<b><i>Highways Act 1926</i></b>	
Section 27AC(3)	Delete ", and also upon the original of such certificate, and also upon the duplicate certificate of title when brought to him for that purpose or when the same is lodged in the Lands Titles Registration Office for the purpose of any dealing with the land comprised therein"
Section 27AC(4)	Delete subsection (4)
Section 27AD(b)	Delete ", duplicate certificates of title"
Section 27AE(1)	Delete ", duplicate certificates of title"
<b><i>Housing Improvement Act 1940</i></b>	
Section 41(3)	Delete ", and also upon the duplicate certificate of title when brought to him for that purpose or when the same is lodged in the Lands Titles Registration Office for the purpose of any dealing with the land comprised therein"
Section 41(4)	Delete subsection (4)
<b><i>Irrigation Act 2009</i></b>	
Section 5(5)(b)	Delete "duplicate instruments of title and other"
Section 13(9)(b)	Delete "duplicate instruments of title and other"

<b>Provision amended</b>	<b>How amended</b>
Section 52(14)	Delete subsection (14)
<b><i>Lands for Public Purposes Acquisition Act 1914</i></b>	
Section 11(1)	Delete ", duplicate certificate of title,"
Section 11(4)	Delete "or duplicate certificate of title"
<b><i>Local Government Act 1999</i></b>	
Section 184(16)	Delete subsection (16)
Section 185(5)	Delete subsection (5)
Section 243(2)(b)(i)	Delete subparagraph (i)
Schedule 1B, clause 9(7)	Delete subclause (7)
<b><i>Native Vegetation Act 1991</i></b>	
Section 33I(14)	Delete subsection (14)
<b><i>Natural Gas Authority Act 1967</i></b>	
Section 14(1)(b)	Delete "(and on any duplicate of the certificate or lease produced to the Registrar-General)"
<b><i>Natural Resources Management Act 2004</i></b>	
Section 113(16)	Delete subsection (16)
<b><i>Renmark Irrigation Trust Act 2009</i></b>	
Section 54(14)	Delete subsection (14)
<b><i>Roads (Opening and Closing) Act 1991</i></b>	
Section 3(1), definition of <i>document of title</i>	Delete "or a duplicate or copy of such a certificate, lease or agreement"
Section 30(2)(b)	Delete "(including any document of title)"
<b><i>South Australian Water Corporation Act 1994</i></b>	
Section 18D(17)	Delete subsection (17)
<b><i>St. John (Discharge of Trusts) Act 1997</i></b>	
Section 4(2)(b)(ii)	Delete "duplicate certificate of title or"
<b><i>Strata Titles Act 1988</i></b>	
Section 12(3)(a)	Delete paragraph (a)
Section 12(3)(e)	Delete "original"
Section 12(6)	Delete "original"
Section 16(2)(d)(ii)	Delete subparagraph (ii)
Section 17(3)(a)	Delete paragraph (a)
Section 17(5)	Delete subsection (5) and substitute: <p style="margin-left: 40px;">(5) If the ERD Court makes an order for the cancellation of a strata plan, the strata corporation must lodge with the Registrar-General a copy of the order together with an application to note the order.</p>

**Provision amended**

**How amended**

Section 17(7a)

Delete "original"

Section 17A(1)

Delete ", and, notwithstanding the *Real Property Act 1886*, the Registrar-General may, if he or she thinks fit, dispense with the requirement that a duplicate certificate of title be produced for the purpose of any dealing to which the person's consent is taken to have been given if the duplicate certificate of title would normally be produced by that person"

Section 38(3)(a)

Delete paragraph (a)

***Trustee Act 1936***

Section 89(2)

Delete "the duplicate certificate or other" and substitute:  
an

***Water Resources Act 1997***

Section 130(14)

Delete subsection (14)

***Whyalla Steel Works Act 1958***

Section 7B(1)(a)

Delete "certificates of title" and substitute:  
documents

## **Schedule 3—Transitional provisions**

### **1—Registrar-General and Deputy Registrar-General of Deeds**

Sections 5(1) and 6 of the *Registration of Deeds Act 1935* as in force immediately before the commencement of Schedule 1 Part 2 of this Act continue to apply to a person appointed to be the Registrar-General of Deeds or a Deputy Registrar-General of Deeds before the commencement of that Part.

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