

## **Legislative Council—No 110A**

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stage, 29 April 2008

South Australia

# **Statutes Amendment (Real Property) Bill 2008**

A BILL FOR

An Act to amend the *Bills of Sale Act 1886*, the *Community Titles Act 1996*, the *Real Property Act 1886*, the *Stock Mortgages and Wool Liens Act 1924* and the *Strata Titles Act 1988*.

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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 *Statutes Amendment (Real Property) Act 2008*.

#### 2—Commencement

5 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 *Bills of Sale Act 1886*

#### 10 4—Insertion of section 11A

After section 11 insert:

##### 11A—Standard terms and conditions in bills of sale

- 15 (1) A person may deposit with the Registrar for filing in the General Registry Office a document containing terms and conditions for incorporation as standard terms and conditions in bills of sale under this section.

(2) A bill of sale may provide that standard terms and conditions, as contained in a document filed by the Registrar in the General Registry Office under subsection (1)—

(a) are incorporated in the bill of sale; or

(b) are incorporated in the bill of sale subject to exclusions or amendments specified in the bill of sale,

and, in that event, the bill of sale has effect as if those terms and conditions were (subject to any exclusions or amendments specified in the bill of sale) contained in the bill of sale.

(3) Where a bill of sale makes provision for incorporation of standard terms and conditions (either with or without exclusions or amendments), the grantee must, before execution of the bill of sale by the grantor, provide the grantor with a copy of the standard terms and conditions.

Maximum penalty: Division 9 fine.

(4) Non-compliance with subsection (3) does not affect the validity or effect of a bill of sale.

## Part 3—Amendment of *Community Titles Act 1996*

### 5—Amendment of section 3—Interpretation

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

*holder* of a statutory encumbrance means—

(a) in relation to an agreement relating to the management, preservation or conservation of land lodged under Part 5 of the *Development Act 1993*—the Minister, greenway authority or council that entered into the agreement; or

(b) in any other case—the Minister responsible for the administration of the Act under which the encumbrance was entered into or is in force;

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

*officer* of a community corporation means the presiding officer, treasurer or secretary of the community corporation;

(3) Section 3(1), definition of *schedule of lot entitlements*—delete "included in" and substitute:

annexed to

(4) Section 3(1), definition of *statutory encumbrance*—after paragraph (a) insert:

(ab) an agreement under section 39d of the repealed *City of Adelaide Development Control Act 1976* that is continued in force by virtue of the provisions of the *Acts Interpretation Act 1915*;

(5) Section 3(1), definition of *statutory encumbrance*—after paragraph (e) insert:

(ea) an access agreement entered into under the *Recreational Greenways Act 2000*;

(eb) a management agreement entered into under the *River Murray Act 2003*;

(ec) a management agreement entered into under the *Upper South East Dryland Salinity and Flood Management Act 2002*;

5 (6) Section 3(1), definition of *statutory encumbrance*, (f)—after "created by" insert:  
or under any

### **6—Amendment of section 13—Staged development and development contracts**

(1) Section 13(1)—delete "provides for the division of the community parcel" and substitute:

10 indicates that the community parcel is to be (or is likely to be) divided

(2) Section 13(2)—delete "provides for the erection of buildings or other improvements on a development lot or the common property by the developer" and substitute:

indicates that the developer is to (or is likely to) erect buildings or other improvements on a development lot or the common property

15 (3) Section 13(3)—delete "requires the division or other development of a community lot" and substitute:

indicates that a community lot is to be (or is likely to be) divided or otherwise developed

### **7—Amendment of section 14—Application**

20 (1) Section 14(4)(e)—delete paragraph (e)

(2) Section 14(4)(g)—delete paragraph (g) and substitute:

(g) if the scheme description indicates—

(i) that the community parcel is to be (or is likely to be) divided in stages; or

25 (ii) that the owner of a particular community lot is to (or is likely to) divide the lot or develop it in any other manner; or

(iii) that the developer is to (or is likely to) make improvements to, or undertake development work on, a development lot or the common property,

30 an appropriate development contract or contracts; and

(3) Section 14(4)(h)—delete "scale prescribed by regulation" and substitute:

scale determined by the Registrar-General

(4) Section 14(5)(i)—delete "include" and substitute:

have annexed to it

35 (5) Section 14—after subsection (5) insert:

(5a) The Registrar-General must not deal with the application unless satisfied that the certificate from the Development Assessment Commission required by section 51 of the *Development Act 1993* has been given, and is in force, in relation to the development.

## 8—Insertion of section 15A

After section 15 insert:

### 15A—Application may deal with statutory encumbrances

5 Despite any other statutory provision to the contrary, the Registrar-General may treat an application under this Part as if it included an application for the variation or termination of a statutory encumbrance if—

- 10 (a) the application or the plan of community division specifies that variation or termination of a statutory encumbrance is to be registered or noted; and
- (b) the application is accompanied by—
- 15 (i) a certificate signed by or on behalf of the holder of the statutory encumbrance certifying that the requirements of the Act under which the encumbrance was entered into, or is in force, as to the variation or termination of the statutory encumbrance (if any) have been complied with; and
- 20 (ii) such other documentary material in relation to the statutory encumbrance as the Registrar-General may require.

## 9—Amendment of section 16—Consents to application

Section 16—after subsection (2) insert:

- 25 (3) If the deposit of a plan of community division would result in the extinguishment of an easement in respect of part of the dominant land, the consent of a person who has or claims an estate or interest in the servient land is not required (unless the Registrar-General determines otherwise in a particular case) in relation to that extinguishment if rights under the easement continue in existence in respect of some other part of the dominant land.

## 10—Amendment of section 23—Vesting etc of lots etc on deposit of plan

30 (1) Section 23(6)—delete subsection (6) and substitute:

- (6) Subject to this section, where land divided by a community plan is subject to a registered easement or a registered lease—
- 35 (a) in the case of an easement—the easement; and
- (b) in the case of a lease—the lease and any encumbrance registered in relation to the lease,

will be registered on the relevant certificates of title issued under this section.

- (2) Section 23(7)—delete "(other than a statutory encumbrance or an easement)" and substitute:

(other than a statutory encumbrance, an easement or a lease or encumbrance registered in relation to a lease)

5 **11—Amendment of section 30—Scheme description**

Section 30(1)—after paragraph (i) insert:

- (ia) be endorsed with a certificate in the form prescribed by regulation from the person who prepared the scheme description certifying that the scheme description has been correctly prepared in accordance with this Act; and

10

**12—Amendment of section 31—Amendment of scheme description**

Section 31(3)—after paragraph (a) insert:

- (ab) be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the amended scheme description or an officer of the community corporation certifying that the amended scheme description has been correctly prepared in accordance with this Act; and

15

**13—Amendment of section 34—By-laws**

Section 34(2)—after paragraph (d) insert:

; and

- (e) be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the by-laws certifying that the by-laws have been correctly prepared in accordance with this Act.

20

**14—Amendment of section 39—Variation of by-laws**

Section 39—after subsection (5) insert:

- (5a) The certified copy of the by-laws must be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the by-laws or an officer of the community corporation certifying that the by-laws have been correctly prepared in accordance with this Act.

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**15—Amendment of section 47—Development contracts**

Section 47(2)—after paragraph (k) insert:

- (ka) be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the development contracts certifying that the development contracts have been correctly prepared in accordance with this Act; and

35



**16—Amendment of section 50—Variation or termination of development contract**

Section 50(7)—delete subsection (7) and substitute:

(7) The certified copy must—

- 5 (a) be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the development contract or an officer of the community corporation certifying that the development contract has been correctly prepared in accordance with this Act; and
- 10 (b) be accompanied by the fee prescribed by regulation.

**17—Amendment of section 52—Application for amendment**

(1) Section 52(1)—delete subsection (1) and substitute:

(1) An application for the amendment of a deposited community plan—

(a) may be made by—

- 15 (i) the community corporation; or
- (ii) subject to subsection (1a), the owners of all community lots that will be affected by the amendment; and

(b) must be in a form approved by the Registrar-General.

20 (1a) An application for the amendment of a deposited community plan may only be made by the owners of all community lots that will be affected by the amendment if the amendment—

- 25 (a) does not affect any common property; and
- (b) does not alter the total number of community lots in the community parcel; and
- (c) does not affect the aggregate of the lot entitlements of the community lots affected by the amendment; and
- (d) does not alter the boundaries of the community parcel; and
- 30 (e) is not contrary to the scheme description or by-laws or any development contract; and
- (f) in the case of a secondary plan—is not contrary to the scheme description or by-laws of the primary scheme; and
- (g) in the case of a tertiary plan—is not contrary to the scheme description or by-laws of the primary or secondary scheme.

35 (2) Section 52(2)—after "The applicant" insert:

or applicants

(3) Section 52(2)(a)—delete paragraph (a) and substitute:

(a) that—

- (i) in the case of an application made by a community corporation—the application is made in pursuance of a unanimous resolution of the corporation; or
- (ii) in the case of an application made by the owners of all community lots that will be affected by the amendment—that the community corporation has been notified of the application; and

(4) Section 52(2)(b)—after "owner of the lot" insert:

(other than an owner who is an applicant in accordance with subsection (1)(a)(ii))

(5) Section 52—after subsection (3) insert:

(3a) Where the amendment of a deposited community plan would result in the extinguishment of an easement in respect of part of the dominant land, the consent of a person who has, or claims, an estate or interest in the servient land is not required (unless the Registrar-General determines otherwise in a particular case) in relation to that extinguishment if rights under the easement continue in existence in respect of some other part of the dominant land.

(6) Section 52(4)(e)—delete paragraph (e)

(7) Section 52(4)(f)(ii)—delete "scale prescribed by regulation" and substitute:

scale determined by the Registrar-General

(8) Section 52—after subsection (5) insert:

(5a) If the amendment affects the delineation of lots or common property or creates new lots, the Registrar-General must not deal with the application unless satisfied that the certificate from the Development Assessment Commission required by section 51 of the *Development Act 1993* has been given, and is in force, in relation to the amendment.

### **18—Amendment of section 53—Status of application for amendment of plan**

Section 53(1)—delete "by a community corporation" and substitute:

under section 52

### **19—Insertion of section 53A**

After section 53 insert:

#### **53A—Application may deal with statutory encumbrances**

Despite any other statutory provision to the contrary, the Registrar-General may treat an application for the amendment of a deposited community plan as if it included an application for the variation or termination of a statutory encumbrance if—

- (a) the application specifies that variation or termination of a statutory encumbrance is to be registered or noted; and
- (b) the application is accompanied by—

- 5
- (i) a certificate signed by or on behalf of the holder of the statutory encumbrance certifying that the requirements of the Act under which the encumbrance was entered into, or is in force, as to the variation or termination of the statutory encumbrance (if any) have been complied with; and
  - (ii) such other documentary material in relation to the statutory encumbrance as the Registrar-General may require.

10 **20—Amendment of section 55—Vesting etc of interests on amendment of plan**

Section 55(1)—delete "by a community corporation" and substitute:  
under section 52

**21—Amendment of section 58—Amendment of plan pursuant to development contract**

- 15
- (1) Section 58(3)(d)—delete paragraph (d)
  - (2) Section 58(3)(e)—delete "scale prescribed by regulation" and substitute:  
scale determined by the Registrar-General
  - (3) Section 58(4)(e)—delete "include" and substitute:  
have annexed to it
  - (4) Section 58—after subsection (4) insert:
    - (4a) The Registrar-General must not deal with the application unless satisfied that the certificate from the Development Assessment Commission required by section 51 of the *Development Act 1993* has been given, and is in force, in relation to the proposed development of the land.
    - (4b) The certificate from the Development Assessment Commission under section 51 of the *Development Act 1993* expires at the expiration of 1 year after the application was lodged with the Registrar-General unless the Registrar-General extends the life of the certificate.
- 20
- 25
- 30

**22—Amendment of section 60—Amalgamation of plans**

- (1) Section 60(3)(f)—delete "scale prescribed by regulation" and substitute:  
scale determined by the Registrar-General
  - (2) Section 60(3)(g)—delete "included in" and substitute:  
annexed to
- 35

**23—Amendment of section 65—Application to the Registrar-General**

Section 65(c)—delete "and the duplicate instruments (if any) for the registered encumbrances (if any) over the lots"

## **24—Amendment of section 67—Application to the Court**

Section 67(2)(e)—delete paragraph (e) and substitute:

- (e) the duplicate certificates of title for the lots and common property (except any duplicate certificates exempted from production by the Court); and

## **25—Amendment of section 69—Cancellation**

- (1) Section 69(3)(b)—delete "included in" and substitute:

annexed to

- (2) Section 69(4)—delete "included in" and substitute:

annexed to

## **26—Amendment of section 100—Administrator of community corporation's affairs**

Section 100(1)—after "District Court" insert:

or the Magistrates Court

## **27—Amendment of section 126—Keeping of records**

Section 126(4)—after "this section" insert:

(including copies of receipts under subsection (2)(b))

## **28—Amendment of section 142—Resolution of disputes etc**

Section 142(2)—delete subsection (2) and substitute:

- (2) Subject to this section, an application must be made to the Magistrates Court.

## **29—Insertion of section 145A**

After section 145 insert:

### **145A—Registrar-General may rely on certificates**

If a person has, in accordance with this or any other Act, certified as to any matter or thing, the Registrar-General may, for the purpose of discharging functions under this Act, rely on the certificate as establishing the matter or thing so certified.

## **30—Amendment of section 149—Relief where unanimous or special resolution required**

- (1) Section 149(1)—after "District Court" insert:

or the Magistrates Court

- (2) Section 149(1)—delete "Court" second occurring and substitute:

court

- (3) Section 149(2) and (3)—delete "Court" wherever occurring and substitute:

court

**31—Insertion of section 149A**

After section 149 insert:

**149A—Applications to Magistrates Court**

5 If an application is made to the Magistrates Court under any provision of this Act, the *Magistrates Court Act 1991* applies, with such modifications as may be necessary for the purpose or as may be prescribed, in relation to the application as if the proceedings were a minor civil action within the meaning of that Act.

**32—Insertion of section 151A**

10 After section 151 insert:

**151A—Liability of community corporation in respect of certification by officer**

- 15
- (1) Where a provision of this Act authorises or requires an officer of a community corporation to certify as to any matter or thing, the officer incurs no civil or criminal liability in respect of an act or omission in good faith in the exercise of that function.
  - (2) A liability that would, but for subsection (1), attach to an officer of a community corporation attaches instead to the corporation.

**Part 4—Amendment of *Real Property Act 1886***

20 **33—Amendment of section 3—Interpretation**

Section 3(1)—before the definition of *appropriate form* insert:

*allotment* includes—

- 25
- (a) a community lot, a development lot and common property created by division under the *Community Titles Act 1996*; and
  - (b) a unit and common property created by division under the *Strata Titles Act 1988*;

**34—Amendment of section 19—Solicitor not to engage in private practice**

Section 19—delete ", or licensed land broker" and substitute:

or registered conveyancer

30 **35—Amendment of section 56—Priority of instruments**

- (1) Section 56(1)—after "witness, and" insert:  
, subject to subsection (1a),

(2) Section 56—after subsection (1) insert:

(1a) Where 2 or more instruments dealing with or affecting the same estate or interest in land have been produced for registration at the same time, the Registrar-General may register 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.

(3) Section 56(4)(a)—delete paragraph (a)

**36—Amendment of section 58—Where 2 or more instruments presented at same time**

Section 58—delete "or other instrument evidencing title to such estate or interest"

**37—Insertion of section 78A**

After section 78 insert:

**78A—Issue of new certificate on alteration etc**

Where—

- (a) this Act or another Act or any other law requires the Registrar-General to enter or endorse a memorial or memorandum or make any other entry, endorsement or notation on a certificate; or
- (b) in the opinion of the Registrar-General he or she should enter or endorse a memorial or memorandum or make any other entry, endorsement or notation on a certificate or correct an error in or make any other alteration to a certificate,

the Registrar-General may issue a new certificate that includes the memorial, memorandum, entry, endorsement, notation, correction or other alteration in place of the existing certificate.

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

Section 80H(1)(b)—delete "and instrument"

**39—Substitution of section 90A**

Section 90A—delete the section and substitute:

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

- (1) Sections 90B, 90C, 90D and 90E apply to, and in relation to, an easement whether the dominant and servient land are under the provisions of this Act and the easement has been entered on a certificate under this Part or not and whether the easement is created by instrument or by operation of a provision of this Act or some other Act or by operation of some other law.
- (2) Section 90F only applies to, and in relation to, an easement if the dominant and servient land are under the provisions of this Act.

**40—Amendment of section 90B—Variation and extinguishment of easements**

(1) Section 90B(2)(a)—delete "land registered under this Act" and substitute:

land under the provisions of this Act

(2) Section 90B(2)(b)—delete "land not registered under this Act" and substitute:

land that is not under the provisions of this Act

**41—Insertion of section 90F**

After section 90E insert:

**90F—Easement subject to existing mortgage etc**

If, when an easement is created over servient land, the dominant land, or any part of it, is subject to a mortgage or an encumbrance, the easement is also subject to the mortgage or encumbrance if—

- (a) the instrument granting the easement provides that it is subject to the mortgage or encumbrance; and
- (b) the mortgagee or encumbrancee has endorsed his or her consent to that on the instrument.

**42—Insertion of section 96AA**

After section 96 insert:

**96AA—Creation of easements by reservation**

An easement may be created on the transfer under this Act of an estate of freehold or the granting of an estate of leasehold under this Act by reservation of the easement to the transferor or lessor in the instrument of transfer or the lease.

**43—Substitution of section 115A**

Section 115A—delete the section and substitute:

**115A—Issue of certificate where land is vested by operation of law**

Despite anything in this Act or any other Act or law, if the Registrar-General is satisfied that an estate or interest in land has become vested in a person by operation of an Act, the Registrar-General may (whether or not an appropriate application has been made by that person)—

- (a) in the case of land under the provisions of this Act—without the execution or production of any instrument or document whatsoever, register the person as the proprietor of that estate or interest in the land and enter on the certificate of title a memorial of the vesting of the estate or interest; or

- 5
- (b) in the case of land not under the provisions of this Act—without the execution or production of any instrument or document whatsoever, bring the land under the provisions of this Act, register the person as the proprietor of that estate or interest in the land and issue a certificate of title on which has been entered a memorial of the vesting of the estate or interest.

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

10 Section 120(2)—delete subsection (2) and substitute:

- 15
- (2) On registering an instrument under subsection (1), the Registrar-General must enter a memorial of the surrender in the Register Book and may, if in the Registrar-General's opinion it is necessary or desirable to do so, endorse the surrender on the duplicate certificate.

**45—Amendment of section 121—Registrar-General may enter surrender**

Section 121—delete ", and also endorse on the lease a memorandum recording the fact of such entry having been so made in the Register Book"

20 **46—Amendment of section 126—Registrar-General to note particulars of re-entry in Register Book**

Section 126—delete ", and the Registrar-General shall cancel such lease if delivered up to him for that purpose"

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

- 25 (1) Section 129A(1)—delete "mortgages" and substitute:

mortgages or encumbrances

- (2) Section 129A(2)—delete "mortgage" wherever occurring and substitute in each case:

mortgage or encumbrance

- (3) Section 129A(3)—delete subsection (3) and substitute:

- 30 (3) Where a mortgage or encumbrance makes provision for incorporation of standard terms and conditions (either with or without exclusions or amendments), the mortgagee or encumbrancee must, before execution of the mortgage or encumbrance by the mortgagor or encumbrancer, provide him or her with a copy of the standard terms and conditions.

- 35 (4) Section 129A(4)—delete "mortgage" and substitute:

mortgage or encumbrance



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

Section 143(3)—delete subsection (3) and substitute:

- (3) Production of the duplicate mortgage or encumbrance is not required on registration of the discharge of the mortgage or encumbrance unless the Registrar-General requires production of the duplicate.

**49—Insertion of section 144**

After section 143 insert:

**144—Partial discharge of mortgage or encumbrance on grant of easement**

Where—

- (a) an easement is granted over land that is subject to a mortgage or an encumbrance; and  
(b) the mortgagee or encumbrancee has endorsed his or her consent to the easement on the instrument granting the easement,

the mortgage or encumbrance is partially discharged so that it is subject to the easement.

**50—Amendment of section 145—Entry of satisfaction of annuity**

- (1) Section 145—delete ", and on the encumbrance,"  
(2) Section 145—delete ", or other instrument of title of the encumbered land, and also on the duplicate encumbrance, when respectively produced to him" and substitute:  
of the encumbered land when produced to him or her

**51—Amendment of section 148A—Entry in Register Book where rights of mortgagee barred by Statute**

- (1) Section 148A(1)—delete "and on the mortgage"  
(2) Section 148A(1)—delete "or other instrument of title and on the duplicate mortgage if produced to him for any purpose"  
(3) Section 148A(3)—delete "or instrument" wherever occurring

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

- (1) Section 163—delete "Upon the transfer of any" and substitute:

Where an instrument grants or transfers an

- (2) Section 163—delete "the transferor or transferees to insert in the transfer the words "no survivorship"" and substitute:

a party to the instrument to insert in it the words "with no survivorship"

- (3) Section 163—delete "transfer" third occurring and substitute:  
instrument

**53—Amendment of section 164—Trustees may authorise insertion of those words**

- (1) Section 164—delete "no survivorship" and substitute:  
with no survivorship
- 5 (2) Section 164—delete ", or other instrument of title,"
- (3) Section 164—delete ", or filed in his office, and also upon the duplicate of such instrument"

**54—Amendment of section 169—Disclaimers**

Section 169(3)—delete "or other instrument of title" first occurring

10 **55—Amendment of section 176—Application to be made in such case**

- (1) Section 176—delete ", or other instrument of title,"
- (2) Section 176—delete "an office copy" and substitute:  
a copy

15 **56—Amendment of section 179—Where 2 or more executors or administrators, all must concur**

Section 179—delete "real estate" and substitute:  
land

**57—Amendment of section 184—Order of Court vesting land**

Section 184—delete "an office copy" and substitute:  
a copy

**58—Repeal of section 200**

Section 200—delete the section

**59—Amendment of section 220—Powers of Registrar-General**

- (1) Section 220(c)—delete ", or other instrument of title"
- 25 (2) Section 220(c)—after "to be entered or made thereon, or" insert:  
the production of a duplicate certificate or other instrument of title is required
- (3) Section 220(k)—delete paragraph (k)

**60—Amendment of section 223LA—Interpretation**

- (1) Section 223LA(1)—after the definition of *electricity entity* insert:  
*holder* of a statutory encumbrance means—

- (a) in relation to an agreement relating to the management, preservation or conservation of land lodged under Part 5 of the *Development Act 1993*—the Minister, greenway authority or council that entered into the agreement; or

(b) in any other case—the Minister responsible for the administration of the Act under which the encumbrance was entered into or is in force;

(2) Section 223LA(1)—after the definition of *service easement* insert:

*statutory encumbrance* means—

- 5 (a) an Aboriginal heritage agreement entered into under the *Aboriginal Heritage Act 1988*;
- (b) an agreement under section 39d of the repealed *City of Adelaide Development Control Act 1976* that is continued in force by virtue of the provisions of the *Acts Interpretation Act 1915*;
- 10 (c) an agreement relating to the management, preservation or conservation of land lodged under Part 5 of the *Development Act 1993*;
- (d) any agreement or proclamation registered or noted on the title to land immediately before the commencement of the *Development Act 1993* that is continued in force by virtue of the provisions of the *Statutes Repeal and Amendment (Development) Act 1993*;
- 15 (e) a heritage agreement entered into under the *Heritage Places Act 1993*;
- (f) a heritage agreement entered into under the *Native Vegetation Act 1991*;
- 20 (g) an access agreement entered into under the *Recreational Greenways Act 2000*;
- (h) a management agreement entered into under the *River Murray Act 2003*;
- 25 (i) a management agreement entered into under the *Upper South East Dryland Salinity and Flood Management Act 2002*;
- (j) any other encumbrance created by or under any statute and prescribed by the regulations for the purposes of this definition;

(3) Section 223LA(3)—after "allotments" insert:

30 (including part allotments)

(4) Section 223LA(4)—after "allotments" first occurring insert:

(including part allotments)

(5) Section 223LA(4)—after "allotments" second occurring insert:

or part allotments

35 (6) Section 223LA(4)—after "allotment" insert:

or part allotment

## **61—Amendment of section 223LB—Unlawful division of land**

(1) Section 223LB(1)—after paragraph (b) insert:

; or

- 5 (c) an allotment or allotments and a series of 2 or more part allotments each of which is contiguous with the part allotment or part allotments next to it and at least 1 of which is also contiguous with 1 or more of those allotments and the allotment or allotments and part allotments are comprised within the same certificate.

(2) Section 223LB(2)(a)(ii)—delete subparagraph (ii) and substitute:

- (ii) an allotment or allotments and a part allotment that is contiguous with that allotment or with 1 or more of those allotments; or

- 10 (iii) an allotment or allotments and a series of 2 or more part allotments each of which is contiguous with the part allotment or part allotments next to it and at least 1 of which is also contiguous with 1 or more of those allotments; and

(3) Section 223LB(2)(b)—after subparagraph (ii) insert:

; or

- 15 (iii) constitutes an allotment or allotments and a series of 2 or more part allotments each of which is contiguous with the part allotment or part allotments next to it and at least 1 of which is also contiguous with 1 or more of those allotments.

## 62—Amendment of section 223LD—Application for Division

20 (1) Section 223LD(3)(c)—delete paragraph (c)

(2) Section 223LD(5)—delete "or (c)"

(3) Section 223LD—after subsection (5) insert:

- 25 (5a) The Registrar-General must not deal with an application (other than an application of a kind prescribed by regulation) for the division of land unless satisfied that the certificate from the Development Assessment Commission required by section 51 of the *Development Act 1993* has been given, and is in force, in relation to the proposed division.

(4) Section 223LD(6)—delete "(3)(c)" and substitute "(5a)"

## 30 63—Insertion of section 223LDA

After section 223LD insert:

### 223LDA—Application may deal with statutory encumbrances

35 Despite any other statutory provision to the contrary, the Registrar-General may treat an application under this Part as if it included an application for the variation or termination of a statutory encumbrance if—

- (a) the application or the plan of division specifies that variation or termination of a statutory encumbrance is to be registered or noted; and

- 40 (b) the application is accompanied by—

- 5
- (i) a certificate signed by or on behalf of the holder of the statutory encumbrance certifying that the requirements of the Act under which the encumbrance was entered into, or is in force, as to the variation or termination of the statutory encumbrance (if any) have been complied with; and
  - (ii) such other documentary material in relation to the statutory encumbrance as the Registrar-General may require.

10 **64—Amendment of section 223LE—Deposit of plan of division in Lands Titles Registration Office**

Section 223LE(3)(a)—delete "the proprietor of an estate or interest" and substitute:  
the registered proprietor of an estate in fee simple

15 **65—Amendment of section 223LH—Consent to plans of division**

(1) Section 223LH(1)—delete subsection (1) and substitute:

(1) An application for division must be endorsed with—

- 20
- (a) where it appears from the Register Book that deposit of the plan of division in the Lands Titles Registration Office will affect the estate or interest of a person in the land to be divided or in any other land—a certificate signed by that person certifying that they have consented to the deposit of the plan; and
  - (b) where it appears from the Register Book that a person, apart from the registered proprietor or a person referred to in paragraph (a) has, or claims, an estate or interest in the land to be divided—a certificate signed by that person certifying that they have consented to the deposit of the plan; and
  - (c) where the land to be divided is subject to a statutory encumbrance—a certificate signed by or on behalf of the holder of the statutory encumbrance certifying that the holder of the statutory encumbrance has consented to the deposit of the plan.

25

(2) Section 223LH—after subsection (2) insert:

30

(2a) Where the deposit of a plan of division would result in the extinguishment of an easement in respect of part of the dominant land, the consent of a person who has, or claims, an estate or interest in the servient land is not required in relation to that extinguishment if rights under the easement continue in existence in respect of some other part of the dominant land.

35

40 **66—Repeal of Part 19AB Division 4A**

Part 19AB Division 4A—delete Division 4A

**67—Amendment of section 232—Penalty for certifying incorrect documents**

- (1) Section 232—delete "application or instrument" first occurring and substitute:  
application, instrument or other document that is required to be certified
- (2) Section 232—delete "application or instrument" second occurring and substitute:  
application, instrument or document

**69—Amendment of section 274—Solicitors and conveyancers to be generally entitled to recover fees for work done under this Act**

Section 274—delete "licensed land broker" wherever occurring and substitute in each case:  
registered conveyancer

**70—Amendment of section 277—Regulations**

Section 277(1)(b)—delete "licensed land brokers" and substitute:  
registered conveyancers

**71—Substitution of heading to Schedule 5**

Heading to Schedule 5—delete the heading and substitute:

**Schedule 5—A free and unrestricted right-of-way  
(section 89)**

**72—Amendment of Schedule 6—Short forms of easements and their interpretation (section 89A)**

- (1) Schedule 6—after the entry relating to "an easement for the transmission of television signals by underground cable" insert:
- |  |  |
|--|--|
| an easement for the transmission of<br>telecommunication signals by underground<br>cable | the right personally or by servants or<br>agents at any time—  |
|  | (a) to lay under the surface of the<br>land (described for that purpose<br>in this instrument) ducts, pipes<br>and cables; and |
|  | (b) to inspect, alter, maintain, repair<br>and replace those ducts, pipes<br>and cables; and                                   |
|  | (c) to use the cables for the purposes<br>of receiving and transmitting<br>telecommunication signals; and                      |
|  | (d) to break the surface of, dig, open<br>up and use the land for any of<br>those purposes; and                                |
|  | (e) to enter the land at any time (if<br>necessary with vehicles and<br>equipment) for any of those<br>purposes.               |

an easement for the transmission of telecommunication signals by overhead cable

the right personally or by servants or agents at any time—

- (a) to suspend cables across the land (described for that purpose in this instrument) and construct supports for those cables; and
- (b) to inspect, alter, maintain, repair and replace those cables and supports; and
- (c) to use the cables for the purposes of receiving and transmitting telecommunication signals; and
- (d) to break the surface of, dig, open up and use the land for any of those purposes; and
- (e) to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

(2) Schedule 6—after the entry relating to "an easement for eaves and gutters" insert:

an easement for support

the right personally or by servants or agents at any time—

- (a) to erect an embankment, wall or other structure on the land (described for that purpose in this instrument) to support, or for the support of, the dominant land and any building or other structure erected on it; and
- (b) to inspect, alter, maintain, repair and replace that embankment, wall or other structure; and
- (c) to break the surface of, dig, open up and use the land for any of those purposes; and
- (d) to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

an easement to park a vehicle

the right personally and for his or her invitees, licensees, servants, agents or tenants to use the land (described for that purpose in this instrument) at any time for the purpose of parking a vehicle and to enter the land, with a vehicle, at any time for that purpose.

a right of way on foot

the right personally and for his or her invitees, licensees, servants, agents or tenants to use the land (described for that purpose in this instrument) at any time to pass and repass on foot.

## Part 5—Amendment of *Stock Mortgages and Wool Liens Act 1924*

### 73—Insertion of section 18A

After section 18 insert:

#### 18A—Standard terms and conditions in stock mortgages and agreements for wool liens

Section 11A of the *Bills of Sale Act 1886* applies in relation to stock mortgages and agreements conferring a preferable lien on wool as if—

- (a) a reference to a bill of sale were a reference to a stock mortgage or an agreement conferring a preferable lien on wool; and
- (b) the reference in subsection (3) of that section to the grantee of a bill of sale were a reference to the mortgagee under a stock mortgage or the lienee under an agreement conferring a preferable lien on wool; and
- (c) a reference in that subsection to the grantor of a bill of sale were a reference to the mortgagor under a stock mortgage or the lienor under an agreement conferring a preferable lien on wool.

## Part 6—Amendment of *Strata Titles Act 1988*

### 74—Amendment of section 3—Interpretation

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

*holder* of a statutory encumbrance means—

- (a) in relation to an agreement relating to the management, preservation or conservation of land lodged under Part 5 of the *Development Act 1993*—the Minister, gateway authority or council that entered into the agreement; or
- (b) in any other case—the Minister responsible for the administration of the Act under which the encumbrance was entered into or is in force;

- (2) Section 3(1), definition of *statutory encumbrance*—before paragraph (a) insert:

- (aaa) an Aboriginal heritage agreement entered into under the *Aboriginal Heritage Act 1988*;



(aa) an agreement under section 39d of the repealed *City of Adelaide Development Control Act 1976* that is continued in force by virtue of the provisions of the *Acts Interpretation Act 1915*;

5 (3) Section 3(1), definition of *statutory encumbrance*, (db)—delete paragraph (db) and substitute:

(db) an access agreement entered into under the *Recreational Greenways Act 2000*;

(4) Section 3(1), definition of *statutory encumbrance*, (e)—delete paragraph (e) and substitute:

10 (e) a management agreement entered into under the *River Murray Act 2003*;

(ea) a management agreement entered into under the *Upper South East Dryland Salinity and Flood Management Act 2002*;

(5) Section 3(1), definition of *statutory encumbrance*, (f)—after "created by" insert:

15 or under any

### **75—Amendment of section 5—Nature of strata plan and requirements with which it must conform**

Section 5(3)(c)—delete "include" and substitute:

have annexed to it

### **76—Repeal of Part 2 Division 2**

Part 2 Division 2—delete the Division

### **77—Amendment of section 12—Application for amendment**

(1) Section 12(2)—after paragraph (b) insert:

25 (c) if units or common property affected by the proposed amendment are subject to a statutory encumbrance—that the holder of the statutory encumbrance consents to the amendment.

(2) Section 12—after subsection (2) insert:

30 (2a) Where the amendment of a deposited strata plan would result in the extinguishment of an easement in respect of part of the dominant land, the consent of a person who has, or claims, an estate or interest in the servient land is not required in relation to that extinguishment if rights under the easement continue in existence in respect of some other part of the dominant land.

(3) Section 12(3)(b)—delete paragraph (b)

35 (4) Section 12—after subsection (3a) insert:

40 (3b) If the amendment affects the delineation of units or common property, the Registrar-General must not deal with the application unless satisfied that the certificate from the Development Assessment Commission required by section 51 of the *Development Act 1993* has been given, and is in force, in relation to the amendment.

(3c) The certificate from the Development Assessment Commission under section 51 of the *Development Act 1993* expires at the expiration of 1 year after the application for amendment was lodged with the Registrar-General unless the Registrar-General extends the life of the certificate.

(5) Section 12(5)(a)—after "easement" insert:

or statutory encumbrance

(6) Section 12(5a)(a)—after "easement" insert:

or statutory encumbrance

## **78—Insertion of section 12A**

After section 12 insert:

### **12A—Application may deal with statutory encumbrances**

Despite any other statutory provision to the contrary, the Registrar-General may treat an application for amendment of a deposited strata plan under this Division as if it included an application for the variation or termination of a statutory encumbrance if—

- (a) the application specifies that variation or termination of a statutory encumbrance is to be registered or noted; and
- (b) the application is accompanied by—
  - (i) a certificate signed by or on behalf of the holder of the statutory encumbrance certifying that the requirements of the Act under which the encumbrance was entered into, or is in force, as to the variation or termination of the statutory encumbrance (if any) have been complied with; and
  - (ii) such other documentary material in relation to the statutory encumbrance as the Registrar-General may require.

## **79—Amendment of section 16—Amalgamation of adjacent sites**

Section 16(2)(d)(ia)—delete "included in" and substitute:

annexed to

## **80—Amendment of section 17—Cancellation**

(1) Section 17(3)(a)—delete "and any duplicate instrument for any registered interest in a unit or the common property"

(2) Section 17(5)(b)—delete paragraph (b) and substitute:

- (b) the duplicate certificates of title for the units and common property (except any such duplicate certificates exempted from production by the Court).

**81—Amendment of section 17A—Procedure where the whereabouts of certain persons is unknown**

Section 17A(1)(a)—delete "2 or"

**82—Amendment of section 36G—Keeping of records**

5 Section 36G(4)—after "this section" insert:

(including copies of receipts under subsection (2)(b))

**83—Amendment of section 37—Administrator of strata corporation's affairs**

(1) Section 37—before subsection (1) insert:

(a1) In this section—

10 *relevant court* means the Court or the Magistrates Court.

(2) Section 37(1)—delete "The Court" and substitute:

A relevant court

(3) Section 37(3)—delete "Court" and substitute:

relevant court

15 (4) Section 37(4)—delete "Court" and substitute:

relevant court

**84—Amendment of section 41A—Resolution of disputes etc**

Section 41A(2)—delete subsection (2) and substitute:

20 (2) Subject to this section, an application must be made to the Magistrates Court.

**85—Amendment of section 46—Relief where unanimous resolution required**

(1) Section 46—before subsection (1) insert:

(a1) In this section—

*relevant court* means the Court or the Magistrates Court.

25 (2) Section 46(1)—delete "the Court" first occurring and substitute:

a relevant court

(3) Section 46(1)—delete "the Court" second occurring and substitute:

the court

(4) Section 46(2) and (3)—delete "Court" wherever occurring and substitute:

30 court

**86—Insertion of section 48A**

After section 48 insert:

**48A—Applications to Magistrates Court**

5

If an application is made to the Magistrates Court under any provision of this Act, the *Magistrates Court Act 1991* applies, with such modifications as may be necessary for the purpose or as may be prescribed, in relation to the application as if the proceedings were a minor civil action within the meaning of that Act.

**87—Amendment of Schedule 2—Transitional provisions**

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Schedule 2, clause 5—delete clause 5