



ANNO TRICESIMO QUARTO

# ELIZABETHAE II REGINAE

A.D. 1985

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No. 51 of 1985

An Act to amend the Real Property Act, 1886.

[Assented to 30 May 1985]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Real Property Act Amendment Act (No. 2), 1985". Short title.

(2) The Real Property Act, 1886, is in this Act referred to as "the principal Act".

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 88 of the principal Act is amended by striking out the passage "shall enter the memorial of the instrument granting or creating such right-of-way or easement upon the original certificates of the dominant and servient lands respectively, and also upon the duplicates of such certificates" and substituting the passage "shall make such entry on the original and duplicate certificates for the dominant and servient lands as he thinks fit". Amendment of s. 88—  
Entry as to easement to be made on original and duplicate certificates of title.

4. The following section is inserted after section 89 of the principal Act: Insertion of new section 89a.

89a. Where, in an instrument, a short form set out in the sixth schedule is used to grant or create an easement the instrument shall, unless the contrary intention appears, be deemed to incorporate the corresponding long form of that easement set out in the schedule. Incorporation of long forms of easements in instruments.

5. Section 90 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection: Amendment of s. 90—  
Deposit of plan showing rights-of-way.

(2) Subsection (1) shall not apply to a plan of subdivision deposited with the Registrar-General after the commencement of the Real Property Act Amendment Act (No. 2), 1985.

Amendment of  
s. 223/a—  
Interpretation.

6. Section 223/a of the principal Act is amended—

(a) by striking out paragraphs (c) and (d) of the definition of “allotment” in subsection (1) and substituting the following paragraphs:

(c) a separately defined piece of land that is delineated on a public map and separately identified by number or letter (not being a piece of land that is identified in a Treasury receipt, certificate or other document or instrument of title as being part only of an allotment);

(ca) two or more separately defined pieces of land that are delineated on a public map and that are identified in a Treasury receipt, certificate or other document or instrument of title as forming one allotment;

(d) a separately defined piece of land delineated on a plan of division for the purpose of enabling the separate ownership in fee simple of that land;

(b) by striking out from paragraph (e) of the definition of “allotment” in subsection (1) the passage “by number or letter” and substituting the passage “as an allotment”;

(c) by striking out from subsection (1) the definition of “the Hills Face Zone”;

(d) by inserting in subsection (1) after the definition of “part allotment” the following definition:

“service easement” means an easement in favour of—

(a) the Minister of Water Resources for sewerage or water supply purposes;

(b) a council or the Crown for drainage purposes;

or

(c) The Electricity Trust of South Australia or other authority for electricity supply purposes,

pursuant to section 223/n.;

and

(e) by inserting after subsection (1) the following subsection:

(1a) In paragraph (d) of the definition of “allotment” in subsection (1)—

“plan of division” means a plan of division (whether described as such, or as a plan of subdivision or re-subdivision)—

(a) that was, before the first day of January, 1900, deposited in the Lands Titles Registration Office or deposited or enrolled in the General Registry Office;

(b) that was, before the commencement of this Part, approved pursuant to statute and deposited, or accepted for filing, in the Lands Titles Registration Office or deposited or enrolled in the General Registry Office;

or

(c) that has been deposited by the Registrar-General in the Lands Titles Registration Office in pursuance of this Part.

7. Section 223/b of the principal Act is amended—

(a) by striking out from subsection (3) the passage “shall be registered” and substituting the passage “shall be lodged for registration”;

and

(b) by striking out paragraphs (a), (b) and (c) of subsection (4) and substituting the following paragraphs:

(a) a division of land—

(i) under this Part;

or

(ii) by strata plan under Part XIXB,

is contemplated by the parties to the contract;

(b) the contract could, if the land were divided as contemplated by the parties, be carried into effect in conformity with this section;

and

(c) the contract provides that the grant, transfer, conveyance, mortgage or encumbrance of estates or interests in land pursuant to the contract shall not have effect until the plan of division or strata plan contemplated by the parties has been deposited in the Lands Titles Registration Office by the Registrar-General.

8. Section 223/d of the principal Act is amended—

(a) by striking out paragraph (d) of subsection (3) and the word “and” immediately preceding that paragraph and substituting the following paragraphs:

(d) where it appears from the plan of division that land delineated on the plan will be subject to an easement (other than a service easement)—an instrument (executed as required by Division V) describing the land affected and setting out the terms of the easement;

and

(e) (i) a certificate of approval issued by a council or the Commission in respect of the plan under section 223/f or by the Tribunal on appeal;

Amendment of  
s. 223/b—  
Unlawful division  
of land.

Amendment of  
s. 223/d—  
Application for  
division.

and

- (ii) a certificate of approval issued by the Commission in respect of the plan under section 223/g or by the Tribunal on appeal;;

and

- (b) by striking out from subsection (5) the passage “subsection (3) (d)” and substituting the passage “subsection (3) (e)”.

Amendment of  
s. 223e—  
Deposit of plan  
of division in  
Lands Titles  
Registration  
Office.

**9. Section 223/e of the principal Act is amended—**

- (a) by striking out from subsection (1) the passage “and register”;
- (b) by striking out from subsections (2) and (4) the passage “and registration”;
- (c) by striking out from paragraph (a) of subsection (2) the passage “for the purposes indicated on the plan”;
- (d) by inserting after subsection (2) the following subsection:

(2a) Every road, street, thoroughfare, reserve or other similar open space that vests in a council or other authority or reverts to the Crown under this section shall be held—

- (a) for the purposes indicated on the plan;

and

- (b) free of all estates and interests except—

- (i) pre-existing easements indicated on the plan of division;

and

- (ii) easements created under Division V.;

and

- (e) by striking out from paragraph (a) of subsection (4) the passage “and registered”.

Amendment of  
s. 223f—  
Certificate of the  
council.

**10. Section 223/f of the principal Act is amended—**

- (a) by inserting in subsection (6) after the passage “twelve months of the date of issue” the passage “or such longer period as may be fixed under subsection (7)”;

and

- (b) by inserting after subsection (6) the following subsection:

(7) The period within which a certificate must be lodged with the Registrar-General under subsection (6) may be extended—

- (a) where the certificate of approval was issued by a council—by the council;

- (b) where the certificate of approval was issued by the Commission—by the Commission.

Amendment of  
s. 223g—  
Certificate of the  
Commission.

**11. Section 223/g of the principal Act is amended—**

(a) by inserting in subsection (6) after the passage “twelve months of the date of issue” the passage “or such longer period as may be fixed under subsection (7)”;

and

(b) by inserting after subsection (6) the following subsection:

(7) The period within which a certificate must be lodged with the Registrar-General under subsection (6) may be extended by the Commission.

12. Section 223/h of the principal Act is amended by inserting in subsection (1) after the passage “the council or the Commission shall” the passage “(within the prescribed time)”.

Amendment of  
s. 223/h—  
List of  
requirements to  
be furnished by  
council or  
Commission.

13. Section 223/i of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

Amendment of  
s. 223/i—  
Open space  
requirements

(1) Where a plan of division delineates more than 20 allotments into which land is to be divided, and one or more of the allotments is less than one hectare in area—

(a) the council in whose area the land is situated;

or

(b) if the land is not situated within the area of a council—the Commission,

may require—

(c) that up to 12.5 per centum in area of the land delineated on the plan be vested in the council or the Crown (as the case requires) to be held as open space;

(d) that the applicant make the prescribed contribution in respect of open space;

or

(e) that land be vested in the council or the Crown under paragraph (c) and that the applicant make a contribution in respect of open space determined in accordance with subsection (5).

(2) Where a plan of division provides for the creation of 20 allotments or less, and one or more of the allotments is less than one hectare in area—

(a) the Commission may require the applicant to pay to the Commission the prescribed contribution in respect of open space;

or

(b) the Commission may enter into an agreement with the applicant under which—

(i) land delineated on the plan will be vested in the council in whose area the land is

situated or, where the land is not situated within the area of a council, in the Crown, to be held as open space;

and

(ii) the applicant will make a contribution (payable to the credit of the Fund) in respect of open space.

(2a) Where land referred to in subsection (2) is in the area of a council, the council must be a party to an agreement referred to in subsection (2) (b).;

and

(b) by striking out subsections (5) and (6) and substituting the following subsections:

(5) The contribution in respect of open space that may be required under subsection (1) (e) shall be determined in accordance with the following formula:

$$P = PC \left[ \frac{(12.5 - OS)}{12.5} \times NA \right]$$

where—

- P = the contribution payable.  
 PC = the prescribed contribution in respect of open space.  
 OS = the area of land (expressed as a percentage of the land delineated on the plan of division) to be vested in the council or the Crown as open space.  
 NA = the number of new allotments delineated on the plan of division that do not exceed one hectare in area.

(6) For the purposes of this section, where a plan of division divides a number of existing allotments into an equal or lesser number of allotments, the allotments into which the land is divided shall not be regarded as being new allotments, and where a plan divides a number of existing allotments into a greater number of allotments, the number by which the greater number of allotments exceeds the existing number of allotments shall be deemed to be the number of new allotments created by the plan and, for the purpose of determining the area of the new allotments, the smallest allotment delineated on the plan shall be regarded as the first of the new allotments, the next to smallest shall be regarded as the second, and so on.

(7) Payment by the applicant under subsection (1) shall be made—

- (a) to the council in whose area the land is situated;  
 (b) if the land is not situated in the area of a council—  
 to the Commission.

(8) Moneys received under this section—

(a) in the case of moneys received by a council—shall be paid into a trust fund and shall be applied by the council for the purpose of acquiring or developing land as open space;

(b) in the case of moneys received by the Commission—shall be paid into the Fund.

(9) In this section—

“allotment” does not include a road, street, thoroughfare, reserve or other similar open space delineated on a plan of division.

14. Section 223/k of the principal Act is repealed and the following section is substituted:

Repeal of s. 223/k and substitution of new section.

223/k. (1) A person who has applied for a certificate of approval under this Division and is aggrieved by—

Appeal to Planning Appeal Tribunal.

(a) the failure of a council or the Commission to furnish a statement of requirements within the prescribed time;

(b) a requirement included in a statement of requirements;

(c) the time allowed for satisfaction of a requirement;

or

(d) the refusal of the council or the Commission to issue the certificate,

may within two months of—

(e) the expiration of the prescribed time;

(f) the receipt by the applicant of the statement of requirements;

or

(g) the receipt by the applicant of notice of refusal to issue a certificate,

or such longer period as may be allowed by the Tribunal, appeal to the Tribunal.

(2) On an appeal under this section, the Tribunal may exercise one or more of the following powers—

(a) order the council or the Commission to furnish a statement of requirements within a time fixed by the Tribunal or may itself determine the requirements to be satisfied and the time within which they must be satisfied;

(b) confirm, vary or revoke the requirements furnished by the council or the Commission or substitute requirements of its own;

(c) vary the time fixed by the council or the Commission within which the requirements must be satisfied;

(d) confirm the decision of the council or the Commission refusing to issue a certificate of approval or may reverse the decision and itself issue the certificate applied for.

Amendment of  
s. 223/l—  
Amalgamation.

**15.** Section 223/l of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) On—

- (a) amalgamation of allotments into a single allotment under this section;
- (b) amalgamation or merger of allotments into a single allotment under any other Act,

the allotments out of which the single allotment was formed cease to be allotments for the purposes of this Act.

Amendment of  
s. 223/n—  
Service  
easements.

**16.** Section 223/n of the principal Act is amended—

- (a) by striking out from subsection (3) the passage “an easement not exceeding four metres in width in favour of The Electricity Trust of South Australia for electricity supply purposes, the land shall be subject to an easement in favour of The Electricity Trust of South Australia, entitling The Electricity Trust of South Australia” and substituting the passage “an easement for electricity supply purposes which does not exceed four metres in width and is in favour of The Electricity Trust of South Australia or other authority, the land shall be subject to an easement in favour of The Electricity Trust of South Australia or other authority, entitling the Trust or authority”;

and

- (b) by inserting in paragraph (c) after the passage “The Electricity Trust of South Australia” the passage “or other authority”.

Repeal of s. 223/o  
and substitution  
of new section.

**17.** Section 223/o of the principal Act is repealed and the following section is substituted:

Creation of  
private  
easements.

**223/o.** (1) Where it appears from a plan of division lodged with an application for division of land under this Part that land delineated on the plan is intended to be subject to an easement (other than a service easement), the applicant shall lodge with the Registrar-General an instrument in the prescribed form—

- (a) describing the land to which the easement will be appurtenant;
  - (b) describing the land that will be subject to the easement;
- and
- (c) setting out the terms of the easement.

(2) The instrument referred to in subsection (1) must be executed by the registered proprietor of the land to which the easement will be appurtenant and by the registered proprietor of the land that will be subject to the easement.

(3) On deposit of the plan of division the easement shall vest in the registered proprietor of the dominant tenement notwithstanding that he may also be the registered proprietor of the servient tenement.

(4) An easement created under this section shall not be varied or extinguished except as provided by subsection (5).



(5) The Registrar-General may, on application in the prescribed form by the registered proprietors of the dominant and servient tenements, made with the consent of the appropriate planning authority, vary or extinguish an easement created under this section and make such consequential entries in the Register Book as he thinks fit.

(6) In subsection (5)—

“appropriate planning authority” means the council in whose area the land is situated or where the land is not situated in the area of a council, means the Commission.

18. Section 223md of the principal Act is amended by striking out from paragraph (a) of subsection (3a) the passage “authorized development plan” and substituting the word “provision”.

Amendment of s. 223md—  
Certificate in relation to strata plan.

19. Section 223me of the principal Act is amended by inserting after subsection (3) the following subsection:

Amendment of s. 223me—  
Appeal against refusal of application.

(4) An appeal referred to in subsection (2) may be instituted within two months of the day on which the applicant is notified of the decision under subsection (1) or such longer period as the Tribunal may allow.

20. Section 241 of the principal Act is repealed and the following section is substituted:

Repeal of s. 241 and substitution of new section.

241. (1) Where, in the opinion of the Registrar-General, a plan or map is necessary or desirable for the purpose of registering or recording any dealing with land, he may require the person who has lodged documents in connection with the dealing to lodge an appropriate plan or map.

Plans and maps.

(2) A plan or map lodged with the Registrar-General must comply with his requirements as to—

(a) the dimensions of the plan or map;

(b) the scale to which it is drawn;

and

(c) the information that it includes.

(3) The Registrar-General may reject a plan or map that—

(a) does not comply with his requirements under this section;

or

(b) is inaccurate or deficient in any respect.

21. Section 242 of the principal Act is amended by inserting after the word “deposited” the passage “, or accepted for filing”.

Amendment of s. 242—  
Every certificate of title shall have a diagram showing measurements.

22. The following schedule is inserted after the fifth schedule of the principal Act.

Insertion of new schedule 6.

## THE SIXTH SCHEDULE

Short form.

Long form

an easement for water supply purposes.

the right for him, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining pipes and of using and maintaining those pipes for water supply purposes and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

an easement for sewerage purposes.

the right for him, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining pipes and of using and maintaining those pipes for sewerage purposes and to enter the land (if necessary with vehicles and equipment) for any of those purposes.

an easement for drainage purposes.

the right for him, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining drains or drainage pipes and of using and maintaining those drains and pipes for drainage purposes and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

an easement for gas supply purposes.

the right for him, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining pipes and of using and maintaining those pipes for the purpose of supplying gas, and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

an easement for the transmission of electricity by overhead cable.

the right for him, his agents, servants and workmen at any time—

- (a) to suspend cables across the land (described for that purpose in this instrument) and construct supports for those cables;
  - (b) to inspect, alter, maintain, repair and replace those cables and supports;
  - (c) to use the cables for the purpose of transmitting electricity;
  - (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.

an easement for the transmission of electricity by underground cable.

the right for him, his agents, servants and workmen at any time—

- (a) to lay under the surface of the land (described for that purpose in this instrument) ducts, pipes and cables;
  - (b) to inspect, alter, maintain, repair and replace those ducts, pipes and cables;
  - (c) to use the cables for the purpose of transmitting electricity;
  - (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.

an easement for the transmission of television signals by underground cable.

the right for him, his agents, servants and workmen at any time—

- (a) to lay under the surface of the land (described for that purpose in this instrument) ducts, pipes and cables;
  - (b) to inspect, alter, maintain, repair and replace those ducts, pipes and cables;
  - (c) to use the cables for the purpose of transmitting television signals;
  - (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.

party wall rights.

the right to use the party wall (described for that purpose in this instrument) for the support of the walls, floors, ceilings, roofs or other parts of any building built or placed on the dominant land.

an easement for eaves and gutters.

the right for him, his agents, servants and workmen at any time to construct, inspect, alter, maintain, repair, replace and use eaves, gutters and downpipes over the land (described for that purpose in this instrument) and to enter the land (described for that purpose in this instrument) at any time for those purposes.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor