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ELIZABETHAE II REGINAE

A.D. 1990

No. 9 of 1990

An Act to amend the Real Property Act, 1886, and to make consequential amendments to the Lands for Public Purposes Acquisition Act, 1914, the Local Government Act, 1934, the Real Property (Registration of Titles) Act, 1945 and the Renmark Irrigation Trust Act, 1936.

[Assented to 12 April 1990]

The Parliament of South Australia enacts as follows:

Short title

- 1. (1) This Act may be cited as the *Real Property Act Amendment Act, 1990*.
- (2) The *Real Property Act, 1886*, is referred to in this Act as “the principal Act”.

Commencement

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

Interpretation

- 3. Section 3 of the principal Act is amended by striking out the definition of “appropriate form” and substituting the following definition:

“appropriate form” means a form approved by the Registrar-General.

Seal of office to be received in evidence

- 4. Section 21 of the principal Act is amended by striking out “signed or” twice occurring.

Provisions as to surrender of documents, etc.

- 5. Section 29 of the principal Act is amended by striking out “within the City of Adelaide”.

Substitution of heading to Part V

- 6. The heading to Part V is repealed and the following headings are substituted:

PART V

REGISTRATION OF TITLE

DIVISION I—REGISTRATION OF TITLE IN THE REGISTER BOOK

Substitution of s. 47

7. Section 47 of the principal Act is repealed and the following section is substituted:

Registration of title in the Register Book

47. This Division applies to, and in relation to, the registration of title to land in the Register Book.

Repeal of s. 50

8. Section 50 of the principal Act is repealed.

Requirements of memorial

9. Section 51 of the principal Act is amended by striking out “, the day and hour of the production of the instrument for registration,”.

Insertion of s. 51a

10. The following section is inserted after section 51 of the principal Act:

Evidentiary

51a. (1) Subject to this Act, an original certificate of title must be accepted in legal proceedings as conclusive evidence of title to land and to any other estate or interest in land that it records and as evidence (which may be rebutted) of any other information that it records.

(2) A document that purports to have been certified by the Registrar-General to be a correct copy of an original certificate of title may be accepted in legal proceedings as if it were the original certificate of title.

Insertion of Division II of Part V

11. The following division is inserted into Part V after section 51a of the principal Act:

DIVISION II—REGISTRATION OF TITLE BY OTHER METHODS

Registration of title electronically, etc.

51b. Where the Registrar-General is required by this or any other Act or any other law to register title to land or record any other information relating to land, the Registrar-General may register the title or record the information by an electronic, electromagnetic, optical or photographic process and, in that case, the provisions of this Act (excluding Division I) and any other relevant Act will be construed so as to apply to, and in relation to, the registration of title or recording of information by that process and in particular—

(a) the term “Register Book” will be taken to include the records maintained by the Registrar-General pursuant to this section relating to the land;

(b) the term “certificate” or “certificate of title” will be taken to mean—

(i) the records maintained by the Registrar-General pursuant to this section relating to the land;

(ii) the certificate of title issued under the seal of the Registrar-General in respect of the land;

or

(iii) both of those meanings,

as the context requires;

- (c) the term “original certificate” or “original certificate of title” will be taken to mean the records maintained by the Registrar-General pursuant to this section relating to the land;
- (d) the term “duplicate certificate” or “duplicate certificate of title” will be taken to mean the certificate of title issued under the seal of the Registrar-General in respect of the land;
- (e) a requirement that a record relating to the land be made—
 - (i) by entry or endorsement of a memorial or memorandum in the Register Book or on the certificate or other instrument of title for the land;

or

- (ii) by any other entry or endorsement or by notation in the Register Book or on the certificate or other instrument of title for the land,

will be satisfied if the Registrar-General makes the record by an electronic, electromagnetic, optical or photographic process;

(f) a requirement that—

- (i) a memorial or memorandum be entered or endorsed on the duplicate certificate of title;

or

- (ii) any other entry or endorsement or notation be made on the duplicate certificate of title,

will be taken to be a requirement that the Registrar-General must, if in the Registrar-General’s opinion it is necessary or desirable, cancel the certificate of title currently issued in respect of the land and issue a new certificate of title including an appropriate endorsement.

Issue of certificate of title

51c. (1) Where title to land is registered under this Division, the Registrar-General must issue a certificate of title to the proprietor of the land setting out the 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 the certificate of title currently issued under subsection (1) and issue a new certificate in its place—

- (a) when registering any dealing with the registered proprietor’s estate or interest in the land or when registering any other dealing that affects the registered proprietor’s estate or interest in the land;

or

- (b) if, in the Registrar-General’s opinion, any entry, endorsement or notation, should be made on the title.

(3) Notwithstanding 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.

Evidentiary

51d. (1) Subject to this Act, a statement (that has been certified by the Registrar-General) of—

(a) title to land or to any estate or interest in land recorded by the Registrar-General under this Division must be accepted in legal proceedings as conclusive evidence of title to land or to any estate or interest in land;

and

(b) any other information recorded by the Registrar-General under this Division must be accepted in legal proceedings as evidence (which may be rebutted) of that information.

(2) A statement 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.

Insertion of divisional heading

12. The following heading is inserted before section 52 of the principal Act:

DIVISION III—GENERAL.

Substitution of s. 52

13. Section 52 of the principal Act is repealed and the following section is substituted:

Endorsement of record of registration

52. Upon registering an instrument the Registrar-General must endorse the date of registration on the instrument and the endorsement must be accepted in legal proceedings as conclusive evidence of the date of registration.

Substitution of s. 53

14. Section 53 of the principal Act is repealed and the following section is substituted:

Retention of records

53. Once information has been recorded by the Registrar-General under this Act the Registrar-General must retain it in the form in which it was originally registered or in some other form.

Form of instruments

15. Section 54 of the principal Act is amended by striking out paragraphs (a) and (b) from subsection (1) and substituting “the instrument complies with this Act and is in a form approved by the Registrar-General”.

Repeal of s. 54a

16. Section 54a of the principal Act is repealed.

Insertion of s. 56a

17. The following section is inserted after section 56 of the principal Act:

Registration

56a. A certificate of title will be taken to be registered upon the Registrar-General allotting a volume and folio number in respect of the certificate of title.

Substitution of s. 66

18. Section 66 of the principal Act is repealed and the following section is substituted:

Conflict between original and duplicate certificate

66. If there is a difference between an original certificate and the duplicate certificate, the original prevails.

Joint tenants and tenants in common

19. Section 74 of the principal Act is amended—

(a) by striking out “, describing them as tenants in common”;

and

(b) by inserting after “his undivided share” “and in each case the certificate must state the shares in which they hold the land”.

Substituted certificate, etc.

20. Section 79 of the principal Act is amended by striking out subsection (3).

Substitution of s. 80

21. Section 80 of the principal Act is repealed and the following section is substituted:

Issue of certificates of title

80. Certificates of title must be issued under the seal of the Registrar-General.

Description of easement

22. Section 82 of the principal Act is amended by striking out the proviso.

Substitution of ss. 93 and 94

23. Sections 93 and 94 of the principal Act are repealed and the following sections are substituted:

Execution and Registration of Crown Lease

93. (1) The parties to a Crown Lease must execute two copies of the lease one of which must be lodged with the Registrar-General for inclusion or recording in the Register of Crown Leases and the other of which must be delivered to the lessee.

(2) The Register of Crown Leases may take the form of the individual copies of the leases bound into a book or kept separately or of records made by an electronic, electromagnetic, optical or photographic process or both of those forms.

(3) A Crown Lease will be taken to be registered upon the Registrar-General allotting a volume and folio number in respect of the lease.

Forfeiture, etc., of Crown Lease

94. The forfeiture or determination of a Crown Lease will not take effect until the forfeiture or determination has been entered in the Register of Crown Leases by the Registrar-General.

Transfer by registered proprietor to spouse, etc.

24. Section 111 of the principal Act is amended by striking out “, by any of the forms of transfer provided by this Act, modified as may be necessary,”.

Dealings before issue of grant

25. Section 112 of the principal Act is amended by striking out “and sign and stamp with his seal”.

Substitution of s. 143

26. Section 143 of the principal Act is repealed and the following section is substituted:

Discharge of mortgages and encumbrances

143. (1) A mortgage or encumbrance may be wholly or partially discharged by instrument in a form approved by the Registrar-General and signed by the mortgagee or encumbrancee.

(2) Where two or more mortgagees or encumbrancees are entitled jointly, the discharge may be signed by one on behalf of all of them.

(3) The discharge of a mortgage or encumbrance must not be registered without production of the duplicate mortgage or encumbrance.

Deposit of duplicate or attested copy

27. Section 156 of the principal Act is amended by striking out “and shall, whenever registering any dealing under such power of attorney, enter on the original certificate of the land dealt with a note of the deposit of such duplicate or copy”.

Effect of entry

28. Section 165 of the principal Act is amended by striking out “and signed”.

Substitution of s. 177

29. Section 177 of the principal Act is repealed and the following section is substituted:

Particulars of application to be recorded

177. The Registrar-General must record details relating to the application in the Register Book and on the duplicate certificate of title for the land.

Substitution of s. 184

30. Section 184 of the principal Act is repealed and the following section is substituted:

Order of Court vesting land

184. Where the registered proprietor of land holds the land on trust and the Court, by order, vests the land in another person, the Registrar-General must, on being served with an office copy of the order, enter details relating to the order in the Register Book and on the duplicate certificate of title for the land and upon such entry the land will vest in the new proprietor.

Repeal of s. 189

31. Section 189 of the principal Act is repealed.

Powers of Registrar-General

32. Section 220 of the principal Act is amended—

- (a) by striking out from paragraph (a) of subsection (4) “correct errors in” and substituting “correct errors, or update information recorded, in”;
- (b) by striking out from subsection (4) “Provided that, in the correction of any such error, he shall not erase or render illegible the original words, and shall affix the date on which such correction was made or entry supplied, and his initials”;
- (c) by striking out from subsection (4) “when such difference does not exceed the following limits, that is to say, a limit of 5 centimetres for any one boundary line irrespective of its length where the length does not exceed 40 metres but where it exceeds 40 metres a limit equivalent to one in five hundred computed upon the total length of such boundary line”;

and

- (d) by inserting the following subsection after subsection (10):

(11) The Registrar-General may destroy duplicate certificates of title that have been cancelled.

Application for division

33. Section 223/d of the principal Act is amended by striking out “the prescribed form and” from subsection (2) and substituting “a form approved by the Registrar-General and be”.

Amalgamation

34. Section 223/II of the principal Act is amended by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

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

Creation of private easements

35. Section 223/lo of the principal Act is amended by striking out from subsections (1) and (5) “the prescribed form” and substituting, in each case, “a form approved by the Registrar-General”.

Felonies under this Act

36. Section 229 of the principal Act is amended by striking out paragraph (III) and substituting the following paragraph:

(III) fraudulently stamps or causes to be stamped any document with the seal of the Registrar-General or with a seal purporting to be the seal of the Registrar-General;

Other Offences

37. Section 233 of the principal Act is amended—

(a) by striking out “If any person is guilty of any of the following offences, that is to say” and substituting “A person who”;

(b) by striking out paragraph (IV) and substituting the following paragraph:

(IV) without lawful authority and knowing that no such authority exists intentionally alters or causes to be altered—

(a) an original certificate of title filed in the Register Book or the duplicate of such a certificate;

(b) records made by the Registrar-General by an electronic, electromagnetic, optical or photographic process under Division II of Part V or a certificate of title issued under that Division;

(c) any instrument comprising part of the Register Book;

or

(d) any instrument or form issued by the Registrar-General;

and

(c) by striking out “such person shall be guilty of a misdemeanour, and shall incur a penalty not exceeding one thousand dollars, or may, at the discretion of the Court before which the case may be tried, be imprisoned with or without hard labour for any period not exceeding three years.” and substituting “is guilty of an indictable offence.

Penalty: \$40 000 or imprisonment for 10 years.”.

Diagrams of land in certificates of title

38. Section 242 of the principal Act is amended by striking out “shall have a diagram drawn in the margin of such certificate” and substituting “must include a diagram (or have a diagram attached to it)”.

Alteration of plans

39. Section 254 of the principal Act is amended by striking out “and alter the plan in the margin thereof” and substituting “and alter any diagram included in, or attached to, the certificate”.

Repeal of s. 257

40. Section 257 of the principal Act is repealed.

Amendment of the second schedule

41. The second schedule to the principal Act is amended by striking out “*within the City of Adelaide*”.

Consequential amendments to various Acts

42. The Acts specified in the schedule are amended as indicated in that schedule.

SCHEDULE

Provision Amended	How Amended
<i>Lands for Public Purposes Acquisition Act, 1914</i>	
Section 11 (3)	Strike out “, and shall sign such entry”.
Section 11 (4)	Strike out “, and shall sign such endorsement”.
<i>Local Government Act, 1934</i>	
Section 305 (3)	Strike out “, the date and hour of its production.”.
Section 472 (2)	Strike out this subsection and substitute the following subsection: (2) A certificate of title referred to in subsection (1) must be in a form approved by the Registrar-General and must be delivered to the Registrar-General.
Fourteenth schedule	Strike out form number 5.
<i>Real Property (Registration of Titles) Act, 1945</i>	
Section 9 (2)	Strike out this subsection.
Section 9 (3)	Strike out this subsection.
<i>Renmark Irrigation Trust Act, 1936</i>	
Section 114 (7)	Strike out “bound up in the Register Book”.

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

D. B. DUNSTAN, Governor