



**REAL PROPERTY (VARIATION AND
EXTINGUISHMENT OF EASEMENTS) AMENDMENT
ACT 1994**

No. 54 of 1994

SUMMARY OF PROVISIONS

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ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 54 of 1994

An Act to amend the Real Property Act 1886.

[Assented to 15 September 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Real Property (Variation and Extinguishment of Easements) Amendment Act 1994*.

(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.

Amendment of s. 90b—Variation and extinguishment of easements

3. Section 90b of the principal Act is amended—

(a) by striking out subsection (3) and substituting the following subsections:

(3) The Registrar-General may dispense with the consent of the proprietor of the dominant or servient land required by subsection (2) if the Registrar-General is satisfied that—

(a) notice complying with subsection (3e) has been given to the proprietor;

(b) 28 days has passed since the notice was given;

and

(c) the proprietor's estate or interest in the dominant or servient land will not be detrimentally affected by the proposed variation or extinguishment of the easement.

(3a) The Registrar-General may dispense with the consent of a person required by subsection (2) (other than the proprietor of the dominant or servient land) if he or she is satisfied that the person's estate or interest in the dominant or servient land will not be detrimentally affected by the proposed variation or extinguishment of the easement.

(3b) Without limiting the generality of subsections (3) or (3a), where—

(a) the original purpose of a right-of-way was to provide access to the dominant land to which it is appurtenant;

and

(b) the right-of-way can no longer be exercised by the proprietor of that land for that purpose because the land has subsequently been separated from the right-of-way by the creation of intervening allotments,

the Registrar-General may extinguish the right-of-way without the consent of a person required by subsection (2) if he or she is satisfied that there is no reason to believe or suspect that the proprietor of that land, or a successor in title of the proprietor, has any reasonable prospect of using the right-of-way for access to that land in the future.

(3c) Without limiting the generality of subsections (3) or (3a), where dominant land is separated from a right-of-way appurtenant to the land by intervening land and the Registrar-General is satisfied that the continued existence of the right-of-way would not enhance the use or enjoyment of the dominant land, he or she may extinguish the right-of-way without the consent of a person required by subsection (2).

(3d) Before taking action under subsection (3b) or (3c) the Registrar-General must be satisfied that—

(a) notice complying with subsection (3e) has been given to the proprietor of the dominant land;

and

(b) 28 days has passed since the notice was given.

(3e) The notice referred to in subsections (3) and (3d) must—

(a) be approved by the Registrar-General;

(b) include details of the proposed variation or extinguishment of the easement;

and

(c) invite the person to whom it is given to make representations to the Registrar-General in relation to the proposal within 28 days.;

(b) by striking out subsection (5).

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

BASIL S. HETZEL, Governor's Deputy