



**Property Council of Australia** ABN 13 00847 4422  
**A** Level 4, 91 King William Street, Adelaide SA 5000  
**T** +61 8 8236 0900  
**E** [info@propertycouncil.com.au](mailto:info@propertycouncil.com.au)  
**W** [propertycouncil.com.au](http://propertycouncil.com.au)  
**🐦** @propertycouncil

5 August 2024

Jenny Cottnam  
Registrar General  
Office of the Registrar General  
Department of Trade and Industry  
Level 11, 83 Pirie Street  
Adelaide, South Australia 5000

[DTI.RegistrarGeneral@sa.gov.au](mailto:DTI.RegistrarGeneral@sa.gov.au)

Dear Registrar General,

The Property Council welcomes the opportunity to provide feedback to the draft *Real Property Act 2024*.

The Property Council of Australia is the leading advocate for Australia's largest industry – property.

Our industry represents 13 per cent of Australia's GDP and employs 1.4 million Australians. Property Council member organisations are investors, owners, developers, builders, and managers of real estate across all major asset classes including commercial, office, residential, industrial, retirement communities, hotels, purpose-built student accommodation and more.

The property sector directly accounts for almost 11 per cent of South Australia's economic activity. In South Australia, the Property Council is focused on advocating for:

- A competitive tax, planning and business environment.
- Accelerating the supply and diversity of built assets.
- Increasing transparency between the private sector and all levels of Government.

With this in mind, the legislative environment is of great interest to our members.

We again thank you for consideration of this submission.

A handwritten signature in blue ink, appearing to read "R. Fowler", with a stylized flourish at the end.

**Richard Fowler**  
SA Deputy Executive Director, Property Council

## Summary

Members tasked with reviewing these proposed regulations have provided the following high level feedback:

- Extension of the 2 month period to register Extensions of Lease.
- Notices to be given by both email address and posted to a physical address.
- Extinguishment of rights of way where a street, road, thoroughfare, reserve or other similar open space vests in Council or reverts to Crown to operate retrospectively.
- We suggest that the amendments to section 20B of the *Retail and Commercial Leases Act 1995* (SA) not be made.

## Further detail

### Amendment to Section 153

We suggest that the time period under section 153(2) be extended. Often, 2 months is not enough time to negotiate the terms of an Extension and the lease extensions have to be prepared again as 'short form leases' (where the new lease annexes or refers to an original registered lease and sets out the variations to the registered lease). Alternatively, we query whether a new instrument could be lodged, notifying the Registrar-General that the parties are negotiating the terms of an extension, which preserve the original lease's registration until such extension is agreed and registered e.g. for a period of 6 months.

### Proposed amendments to Section 191 to include an email address for service of notices

We query whether, as a matter of practice, such notices will be served both by email and posted to a physical address. Given the importance of caveats, we have concerns of system/server issues if notices are only served by email.

### Proposed new Section 223LF(2a)

It is unclear whether this new subsection will apply retrospectively. We propose that it does to extinguish and tidy up historical 'implied easements'.

### Amendment to section 20B of the *Retail and Commercial Leases Act 1995* (SA) (Leases Act)

The Leases Act does not currently impose an obligation on either party to register a lease (nor an Extension of Lease where a lease is already registered). This is usually a commercial agreement between the parties.

We do not consider it necessary that the Leases Act be amended to require a variation of lease and/or an Extension of Lease to be registered should section 20B apply (noting that variations of leases cannot be registered, except by way of an Extension of Lease). The proposed subsection (2b) does not just require an Extension of Lease to be registered, but could give rise to a right to renegotiate other terms of the lease where any provision was not contemplated in the context of a 5 year term e.g. rent reviews.

Enforcing the right to a minimum 5 year term is not always straight forward. Where it is undisputed, any consequential lease provisions would likely be negotiated and agreed between the parties. Where the issue is disputed (which is likely to be most cases), a party should not be required to register an Extension of Lease to correct the term where consequential amendments may still be required to the terms and conditions of the lease.

Further, we note that it is possible for a lessor to also enforce a minimum 5 year term. If a new section is to be included to require a registered lease to be extended to give effect to section 20B:

- a. either party should have the right to require registration (not just the lessee);
- b. consideration should be given as to how the terms and conditions of the lease applies to the extended term (e.g. if the lease originally contemplated a 3 years term and only provides for 3 years of rent review); and
- c. consideration should be given in respect of lease registration costs and who bears such costs.

