

Easements in Gross

What is an easement?

An easement is a legal right allowing an entity to traverse land they do not own for a specified purpose.

Under the common law an easement involves at least two landholdings;

- The "dominant" land, which has the benefit of the easement; and
- The adjacent "servient" land, over which the easement passes.

What is an easement in gross?

An easement that directly benefit an entity, rather than a nearby dominant landholding, is known as an easement in gross. The only land is the servient landholding.

They are commonly used by providers of public utility services to establish and maintain infrastructure on land they do not own.

The ability to hold an easement in gross does not exist under the common law.

How can I hold an easement in gross?

In South Australia, a private entity may only hold an easement in gross if it is declared pursuant to section 41A(1)(a)(iii) of the *Law of Property Act 1936*.

This declaration does not create an easement in gross. A declared body must negotiate with the owner of any servient landholding to create the easement in gross allowing them to traverse the property.

All currently declared bodies are listed in Table 5.11 of the [Plan Presentation Guidelines](#).

A general declaration exists whereby an "electricity entity" authorised under the *Electricity Act 1996* to carry on the "generation" of electricity, or the operation of a "transmission or distribution network" can hold easements in gross without needing its own specific declaration.

The above terms are defined under the *Electricity Act 1996* and *Electricity (General) Regulations 2012*. Entities relying on the general declaration should seek independent legal advice as to whether they meet the relevant definitions.

Application Process

The Office of the Registrar-General, an agency of the Department of Trade and Investment, is responsible for administering section 41A of the *Law of Property Act 1936*.

Application pursuant to section 41A(1)(a)(iii) of the *Law of Property Act 1936* should include an explanation of:

- the purpose(s) for which the applicant requires the ability to hold an easement in gross;
- why that purpose(s) cannot be achieved by other means;

- the pros and cons to the affect community and/or general public relating to that purpose(s); and
- the location and titles details of the proposed servient landholdings.

Applications and general enquiries regarding section 41A of the *Law of Property Act 1936* can be directed to DTI.RegistrarGeneral@sa.gov.au