

WESTERN AUSTRALIA

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# **TRANSFER OF LAND AMENDMENT ACT 1996**

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**No. 81 of 1996**

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**AN ACT to amend the *Transfer of Land Act 1893* and to  
amend various other Acts for related purposes.**

*[Assented to 14 November 1996.]*

The Parliament of Western Australia enacts as follows:

## **Short title**

**1.** This Act may be cited as the *Transfer of Land Amendment Act 1996*.

### **Commencement**

2. (1) Subject to subsections (2), (3), (4) and (5), this Act comes into operation on the day on which it receives the Royal Assent.

(2) Sections 28, 30, 37, 42, 73, 74, 75, 76, 77, 81, 98, 134, 140 and 141 come into operation on such day as is, or days as are respectively, fixed by proclamation.

(3) Section 6 (1), to the extent that it refers to subsections (4) and (5) (c) of section 10 of the principal Act as if those subsections had been inserted by this Act, comes into operation on the day on which section 28 comes into operation.

(4) Schedule 1, to the extent that it would amend sections 20 (2), 20A, 27A (1) and 28 (3) of the *Town Planning and Development Act 1928*, comes into operation on the day on which section 98 comes into operation.

(5) If this Act receives the Royal Assent before 1 July 1996 then Schedule 1, to the extent that it would amend the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960*, comes into operation on 1 July 1996.

### **Principal Act**

3. In this Act the *Transfer of Land Act 1893*\* is referred to as the principal Act.

[\* *Reprinted as at 7 July 1975.*  
*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp. 218-9.*]

**Section 1 repealed and a section substituted**

4. Section 1 of the principal Act is repealed and the following section is substituted —

“

**Citation**

1. This Act may be cited as the *Transfer of Land Act 1893*.

”.

**Section 4 amended**

5. (1) Section 4 (1) of the principal Act is amended —

(a) by deleting the definition of “Addition”;

(b) by inserting after the definition of “Annuity” the following definition —

“

**“Approved form”** means a form approved by the Registrar of Titles.

”;

(c) by inserting after the definition of “Crown Lease” the following definition —

“

**“Department”** means the department of the Public Service principally assisting the Minister in the administration of this Act.

”;

(d) in the definition of “Endorsed”, by inserting after “written” the following —

“

, noted or marked, by means approved by the Registrar of Titles,

”;

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- (e) in the definition of “Instrument”, by deleting “and creation of an easement” and substituting the following —

“  
    , the creation of an easement or restrictive covenant and also includes a document lodged with a plan or diagram under Part IVA for the purpose of creating an easement or restrictive covenant under that Part  
”;

- (f) by inserting after the definition of “Land” the following definition —

“  
    **“Metropolitan region”** means the region described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959*.  
”;

- (g) by inserting after the definition of “Minister” the following definition —

“  
    **“Minister for Lands”** means the Minister to whom the administration of the *Land Act 1933* is committed.  
”;

- (h) by inserting after the definition of “Proprietor” the following definition —

“  
    **“Public authority”** means —  
    (a) a Minister of the Crown in right of the State;  
    (b) any State Government department, State trading

concern, State instrumentality  
or State agency; or

- (c) any public statutory body,  
whether or not corporate,  
established under a written law  
but not including a local  
government.

”;

- (i) by inserting after the definition of “Qualified valuer”  
the following definition —

“  
    **“Register”** means the Register referred to  
    in section 48.

”;

- (j) in the definition of “Sheriff”, by deleting “writ or” and  
substituting the following —

“    writ of    ”; and

- (k) by inserting after the definition of “Sheriff” the  
following definitions —

“  
    **“Strata/survey-strata plan”** has the  
    meaning that it has in the *Strata*  
    *Titles Act 1985*;

**“Symbol”** means a symbol approved by the  
    Registrar under section 48C.

”.

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(2) Section 4 of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(3) In this Act, a reference to a “**short form**” in relation to an easement of a type described in column 2 of Schedule 9A is a reference to the corresponding short form description of that type of easement set out in column 1 of that Schedule.

”.

**Section 10 repealed, a section substituted and savings**

**6.** (1) Section 10 of the principal Act is repealed and the following section is substituted —

“

**Seal**

**10.** (1) The Registrar shall have a seal which shall be in a form, and applied by means, approved by the Registrar.

(2) Certificates of title and other documents purporting to be marked with the seal shall be admissible as evidence without further proof.

(3) The mark of the seal on any entry or memorandum entered in the Register or on any registered instrument or its duplicate shall be treated by all courts as conclusive evidence that —

- (a) the entry or memorandum has been duly entered in the Register; and
- (b) the instrument, or the instrument to which the duplicate, entry or memorandum relates, has been duly registered.

(4) The mark of the seal on any memorandum referred to in section 54 shall be treated by all courts as conclusive evidence that the memorandum has been duly filed under that section.

(5) All courts, judges and persons acting judicially shall take judicial notice of the seal on —

- (a) any entry or memorandum entered in the Register;
- (b) any registered document or its duplicate; or
- (c) any memorandum filed under section 54,

and shall presume that the seal was approved by the Registrar and that the seal was duly affixed.

”.

(2) Section 10 of the principal Act as it was in effect immediately before the commencement of subsection (1) continues to have effect in relation to any document or its duplicate and to any memorandum or entry that was sealed, signed, or initialled before that commencement.

### **Section 18 repealed and a section substituted**

7. Section 18 of the principal Act is repealed and the following section is substituted —

“

#### **Registration of unalienated land to be under this Act**

**18.** Where any Crown land not alienated before section 7 of the *Transfer of Land Amendment Act 1995* comes into operation is to be alienated after that time, the grant in fee simple of that land shall be delivered to the Registrar who shall create and register a

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certificate of title for the land in accordance with the grant. ”.

**Section 20 amended**

**8.** Section 20 of the principal Act is amended —

(a) in paragraph (vi), by deleting “directed to issue” and substituting the following —

“ prepared for registration ”;

(b) in paragraph (vii), by deleting “issue” and substituting the following —

“ be registered ”; and

(c) in the proviso, by deleting “directed to issue” and substituting the following —

“ prepared for registration ”.

**Section 23 amended**

**9.** Section 23 of the principal Act is amended by deleting “in the office and shall send through the post office a registered letter marked outside “Office of Titles” containing a copy of such notice addressed to every person whom the Commissioner shall have directed to be served with notice and to the persons stated in the application to be occupiers of the land and (unless the land shall be an entire Crown allotment) to the occupiers and owners of the lands contiguous thereto and to” and substituting the following —

“ at the Department’s office and shall serve a copy of the notice on every person whom the Commissioner has directed to be served with such notice, the persons stated in the application to be occupiers of the land,



the occupiers and owners of the lands contiguous to the land (unless the land is an entire Crown allotment) and

”.

**Section 24 amended**

**10.** Section 24 of the principal Act is amended by deleting “issue” and substituting the following —

“ create ”.

**Section 25 amended**

**11.** Section 25 of the principal Act is amended by deleting “to the land in the form in the Fifth Schedule hereto” and substituting the following —

“ , in an approved form, to the land ”.

**Section 27 amended**

**12.** Section 27 of the principal Act is amended by deleting “issue of an amended” and substituting the following —

“ amendment of a ”.

**Section 28 amended**

**13.** Section 28 of the principal Act is amended by deleting “issue” and substituting the following —

“ direct the Registrar to create and register ”.

**Section 29 amended**

14. Section 29 of the principal Act is amended by deleting “issue” and substituting the following —

“ direct the Registrar to create and register ”.

**Section 30 amended**

15. Section 30 of the principal Act is amended —

(a) by deleting “the form in the Sixth Schedule hereto” and substituting the following —

“ an approved form ”; and

(b) by deleting “No such caveat shall be received unless some address or place within the limits of the city of Perth shall be appointed therein as the place at which notices and proceedings relating to such caveat may be served.” and substituting the following —

“  
A caveat under this section cannot be lodged unless it contains an address, or a number for a facsimile machine, in Australia for the service of notices in relation to the caveat.  
”.

**Section 33 amended**

16. Section 33 of the principal Act is amended —

(a) by deleting “at the Office of Titles”; and

- (b) by deleting “to whom he may have directed a certificate of title to be issued” and substituting the following —

“  
in whose name a certificate of title would  
be created if the application were to be  
successful  
”.

**Section 38 amended**

17. Section 38 of the principal Act is amended by deleting “directed to issue shall die” and substituting the following —

“ prepared for registration dies ”.

**Section 40 repealed**

18. Section 40 of the principal Act is repealed.

**Section 41 repealed**

19. Section 41 of the principal Act is repealed.

**Section 43 amended**

20. Section 43 of the principal Act is amended by deleting “For every memorial which shall be acted on as the evidence of a conveyance in fee there shall be paid to the assurance fund in augmentation thereof an additional sum of two dollars.”.

**Section 44 repealed**

21. Section 44 of the principal Act is repealed.

**Section 45 amended**

**22.** Section 45 of the principal Act is amended by deleting “upon the applicant contributing to the assurance fund in augmentation thereof such an additional sum of money as the Commissioner shall certify under his hand to be in his judgment a sufficient indemnity by reason of the non-production of any document affecting the title or of the imperfect nature of the evidence of title or against any uncertain or doubtful claim or demand arising upon the title”.

**Section 48 repealed and sections substituted**

**23.** Section 48 of the principal Act is repealed and the following sections are substituted —

“

**The Register**

**48.** (1) The Registrar shall cause a Register of certificates of title to be maintained for the purposes of this Act.

(2) The Register may be maintained in any medium for the storage and retrieval of information or combination of such media —

- (a) whether or not the kind of medium is the same as that in which the information was originally presented for registration or lodgment; and
- (b) where, in the opinion of the Registrar, the medium or combination is appropriate having regard to the purposes of this Act.

(3) Where a record of information in the Register deteriorates or is incomplete, the Registrar may cause

another record to be prepared or the record to be completed, as the case may be, and the new or completed record then has effect as the record for the purposes of the Register.

(4) The Registrar may prepare the new or completed record from such evidence as is available as to the content of the original or complete record, as the case may be.

### **Certificates of title**

**48A.** (1) Each certificate of title created for registration shall be in an approved form.

(2) The Registrar shall endorse on each certificate of title the particulars of all dealings and matters affecting the land that is the subject of the certificate where the particulars are required by this Act to be registered or entered in the Register and such endorsement shall be in a manner that preserves the priorities of those dealings or matters.

### **Duplicate certificates of title**

**48B.** (1) Where a certificate of title has been registered the Registrar shall issue a duplicate certificate of title to the proprietor of the land that is the subject of the certificate of title unless the proprietor requests, in an approved form, that —

- (a) a duplicate certificate of title not be issued;  
or
- (b) the duplicate certificate of title be issued to a person named and authorized by the proprietor, in which case the Registrar

shall issue the duplicate certificate to that person.

(2) Where the Registrar issues a duplicate certificate of title, the duplicate shall be in or on a medium approved by the Registrar.

(3) Where the original proprietor of land that is the subject of a certificate of title has requested that a duplicate certificate of title not be issued —

- (a) the Registrar shall endorse the certificate of title to that effect; and
- (b) nothing in this section prevents the Registrar from issuing a duplicate certificate of title on the request, in an approved form, of the person who, for the time being, is the proprietor of the land for a duplicate certificate of title to be issued to that proprietor or to a person named and authorized by that proprietor as the person to whom the duplicate may be issued.

### **Symbols**

**48C.** The Registrar may endorse a record of information in his possession with a symbol —

- (a) of a kind; and
- (b) with a meaning,

approved by the Registrar.

”

**Section 49 amended**

**24.** Section 49 of the principal Act is amended by deleting “issued” and substituting the following —

“ created and registered ”.

**Section 51 repealed**

**25.** Section 51 of the principal Act is repealed.

**Section 52 repealed and a section substituted**

**26.** Section 52 of the principal Act is repealed and the following section is substituted —

“

**Registration of certificates of title and instruments**

**52.** (1) A certificate of title is registered when —

- (a) it has been allocated a reference number distinguishing it from all other certificates of title; and
- (b) it has been sealed.

(2) An instrument purporting to affect any land for which a certificate of title has been registered is registered when —

- (a) a memorandum referred to in section 56 in relation to the original instrument has been entered in the Register on the certificate; and
- (b) the original instrument has been sealed.

(3) The Registrar may require a person who presents a lease for registration to also lodge a duplicate of the lease.

(4) The person named in —

(a) a certificate of title referred to in subsection (1); or

(b) an instrument referred to in subsection (2),

as the proprietor or as having an estate or interest or power in relation to the land that is the subject of the certificate or the instrument shall be deemed to be the registered proprietor of the land or to have the estate or interest or power in relation to the land, as the case may be.

”.

### **Section 53 repealed and a section substituted**

27. Section 53 of the principal Act is repealed and the following section is substituted —

“

#### **Priority of registration of instruments**

53. (1) The Registrar shall register an instrument presented for registration in the order, and from the time, of its presentation.

(2) Instruments purporting to affect the same estate or interest have priority as between each other according to the time of registration and not according to the date of the instrument, notwithstanding any actual or constructive notice.

”.



**Section 54 repealed and a section substituted**

**28.** Section 54 of the principal Act is repealed and the following section is substituted —

“

**Incorporation of terms etc. of certain memoranda**

**54.** (1) In this section, “**memorandum**” means a document containing terms, conditions, covenants or other provisions purporting to affect any land under the operation of this Act.

(2) Any person may, on payment of the prescribed fee, lodge with the Registrar a memorandum in an approved form.

(3) The Registrar may file —

(a) a memorandum lodged under subsection (2) if the content is approved by the Registrar; and

(b) a memorandum on his own behalf,

and the Registrar shall allocate to each memorandum so filed a reference number distinguishing it from all other memoranda filed under this section and seal each memorandum.

(4) A provision of a particular memorandum filed under this section may be incorporated into a certificate of title, instrument, plan, diagram or other document affecting land under the operation of this Act (“**the document**”), with or without amendment, by notation to that effect on the document.

(5) A provision of a memorandum noted as being incorporated into a document under subsection (4), or

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that provision as amended, as the case may be, shall be deemed to be set out in its entirety in the document.

(6) Nothing in this section affects any other provision of this Act by which terms, conditions, covenants or other provisions that affect land under the operation of this Act may be incorporated into a document for the purposes of this Act.

”.

**Section 55 repealed and a section substituted**

**29.** Section 55 of the principal Act is repealed and the following section is substituted —

“

**Trusts**

**55.** (1) The Registrar shall not enter in the Register notice of any trusts other than those set out in the body of the original Crown grant.

(2) Where a trust is declared in any other document and the document or a copy of it has been deposited with the Registrar, the Registrar may cause the document or copy to be kept for safe custody and reference but shall not register the document.

(3) The Commissioner may protect, in any manner he thinks fit, the rights of the persons for the time being beneficially interested in, or required to give consent under, a trust a record of which is kept under subsection (2).

(4) The rights incidental to any proprietorship, instrument, dealing or matter registered under this Act shall not be affected by the keeping of a record of a trust under subsection (2).

”.

**Section 56 amended**

**30.** Section 56 of the principal Act is amended by inserting after “memorandum” where it first occurs the following —

“ (other than a memorandum under Part IVA) ”.

**Section 57 repealed and a section substituted**

**31.** Section 57 of the principal Act is repealed and the following section is substituted —

“

**Memoranda of instruments and endorsements**

**57.** When a memorandum of any instrument is entered in the Register and the duplicate certificate of title, instrument or duplicate instrument (if any) is presented to the Registrar —

- (a) the Registrar shall endorse the instrument to the effect that the memorandum has been entered in the Register; and
- (b) the Registrar shall enter on the duplicate certificate of title or duplicate instrument, as the case may be, a memorandum in the same terms as the memorandum entered in the Register.

”.

**Section 58 amended**

**32.** Section 58 of the principal Act is amended by deleting “; and should two or more instruments signed by the same proprietor and purporting to affect the same estate or interest be at the same time presented to the Registrar for registration he shall register and endorse that instrument which shall be

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presented by the person producing the duplicate grant or certificate of title”.

**Section 59 repealed and a section substituted**

**33.** Section 59 of the principal Act is repealed and the following section is substituted —

“

**Notations as to legal disability of proprietor**

**59.** Where the proprietor of land under the operation of this Act is a minor or a person under any other legal disability the Registrar shall state on the certificate of title and on the duplicate certificate of title (if any) the age of such minor or the nature of the disability, as the case may be, so far as is known to the Registrar.

”.

**Section 61 amended**

**34.** Section 61 of the principal Act is amended by deleting “issued to” and substituting the following —

“ registered in the name of ”.

**Section 63 amended**

**35.** Section 63 of the principal Act is amended —

(a) by deleting “No certificate of title issued” and substituting the following —

“ No certificate of title created and registered ”;

- (b) by deleting “every certificate of title issued” and substituting the following —

“ every certificate of title created and registered ”;  
and

- (c) by inserting after “set forth”, the following —

“ or incorporated ”.

**Section 63A amended**

- 36.** Section 63A (2) of the principal Act is repealed and the following subsection is substituted —

“ (2) Every such statement or entry shall set forth a true and accurate description of the easement or, if the instrument, plan or diagram creating the easement is deposited with the Department, shall refer to such instrument, plan or diagram, and the certificate of title shall contain a plan of the land over which the easement extends or, if a plan or diagram showing the extent of such easement is deposited with the Department, the certificate of title shall refer to such plan or diagram. ”.

**Section 65 repealed, sections substituted and savings**

- 37.** (1) Section 65 of the principal Act is repealed and the following sections are substituted —

“ **Effect of short forms etc. for easements**

- 65.** (1) Where a transfer, lease or certificate of title contains the words “together with a right of

carriage way over...” or words to that effect and specifies the road or land over which the easement is created by reference to a map on which the road or land is indicated by a symbol then, unless the contrary intention appears, the words of the Ninth Schedule shall be deemed to have effect in relation to the transfer, lease or certificate of title, as the case requires.

(2) Where a plan or an instrument referred to in Part IVA contains the words “right of carriage way” in relation to a place indicated on the plan or, in the case of an instrument, on the plan in relation to which the instrument was lodged then, unless the contrary intention appears, the words of the Ninth Schedule applicable to a transfer shall be deemed to have effect in relation to that plan or instrument.

(3) Where —

(a) a transfer, lease or certificate of title; or

(b) a plan or an instrument referred to in Part IVA,

contains a short form of easement then the words in column 2 of Schedule 9A corresponding to the short form shall be deemed to have effect in relation to that transfer, lease, certificate of title, plan or instrument, unless the contrary intention appears.

### **Memorandum of easement**

**65A.** (1) Subject to subsection (2), a memorandum of an easement affecting land under the operation of this Act that has been created by a plan, diagram or instrument shall be entered on the certificate of title for each dominant and servient tenement.

(2) Where —

- (a) an easement has been created under Part IVA by notation on a strata/survey-strata plan; and
- (b) the easement has been notified on a registered strata/survey-strata plan,

it is not necessary for a memorandum of the easement to be entered on the certificates of title for the dominant and servient tenements that are also a subject of that plan.

”.

(3) Section 65 of and the Ninth Schedule to the principal Act as in force immediately before the commencement of subsection (1) continue to apply to all transfers, leases and certificates of title in effect before that commencement on which an easement was marked in accordance with those provisions.

#### **Section 66 repealed**

**38.** Section 66 of the principal Act is repealed.

#### **Section 66A amended**

**39.** Section 66A of the principal Act is amended by deleting “issued” and substituting the following —

“ created ”.

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**Section 68 amended**

**40.** Section 68 of the principal Act is amended by deleting “folium of the register book constituted by the certificate of title” and substituting the following —

“ on the registered certificate of title for the land ”.

**Section 69 amended**

**41.** Section 69 of the principal Act is amended —

(a) by deleting “the duplicate thereof” and substituting the following —

“ its duplicate (if any) ”;

(b) by deleting “the duplicates thereof” and substituting the following —

“ their duplicates (if any) ”; and

(c) by deleting “and duplicate” and substituting the following —

“ and its duplicate (if any) ”.



**Section 70A inserted**

**42.** The principal Act is amended by inserting after section 70 the following section —

“

**Record on title of factors affecting use and enjoyment of land**

**70A.** (1) Where, in relation to land under the operation of this Act —

- (a) the local government of the district in which the land is situated; or
- (b) a public authority,

considers it desirable that proprietors or prospective proprietors of the land be made aware of a factor affecting the use or enjoyment of the land or part of the land, the local government or the public authority may, on payment of the prescribed fee, cause a notification of the factor to be prepared in an approved form and lodged with the Registrar.

(2) Where —

- (a) a notification is lodged under subsection (1); and
- (b) the written consent of the proprietor of the land accompanies the notification,

the Registrar shall endorse the certificate of title for the land to that effect.

(3) The local government or the public authority which lodged the notification under subsection (1) and the proprietor of the land for the time being may, at any time after the notification has been lodged, on

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payment of the prescribed fee and in an approved form, request the Registrar to remove the notification from the certificate of title for the land or modify the notification.

(4) Without limiting subsection (2), the Registrar shall endorse certificates of title with such information about notifications and their modification or removal, and in such manner, as the Registrar thinks fit.

”.

**Section 71 amended**

**43.** Section 71 of the principal Act is amended by deleting “duplicates thereof the Registrar may issue to him” and substituting the following —

“ duplicate (if any) of each certificate the Registrar may create and register in the proprietor’s name ”.

**Section 71A amended**

**44.** (1) Section 71A (1) of the principal Act is amended by deleting “issue to the proprietor” and substituting the following —

“ create and register in the proprietor’s name ”.

(2) Section 71A (2) of the principal Act is amended by deleting “of the partially cancelled certificate of title and, when required by the proprietor, shall make out to the proprietor” and substituting the following —

“  
    (if any) of the partially cancelled certificate of title  
    and, when required by the proprietor, shall create and  
    register in the proprietor’s name  
”.

**Section 71B amended**

**45.** (1) Section 71B (1) of the principal Act is amended —

(a) by inserting before “certificate” in the 3 places where it occurs the following —

“ duplicate ”; and

(b) by inserting after “existing” the following —

“ duplicate ”.

(2) Section 71B (2) of the principal Act is amended by inserting after “new” in the 3 places where it occurs the following —

“ duplicate ”.

**Section 74 amended**

**46.** (1) Section 74 of the principal Act is amended in the second sentence by inserting after “duplicate” the following —

“ (if any) ”.

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(2) Section 74 of the principal Act is amended in the third sentence by inserting after “title” the following —

“ (if any) ”.

**Section 74A repealed and a section substituted**

**47.** Section 74A of the principal Act is repealed and the following sections are substituted —

“

**Creation of substitute certificate of title**

**74A.** Where any original grant or certificate kept by the Registrar is lost, destroyed or so dilapidated or obliterated as to be illegible, the Commissioner may cause a substitute certificate of title to be created and registered and may prepare the substitute certificate from the duplicate or such other evidence as is available as to the contents of the original.

**Issue of subsequent duplicate certificates of title**

**74B.** Where a duplicate certificate of title has been issued and —

- (a) the duplicate has been destroyed by, or in circumstances known to, the Registrar; and
- (b) the proprietor of the land that is the subject of the certificate of title requests, in an approved form, that a new duplicate certificate of title be issued without cancellation of the certificate of title,

then the Registrar may cause a new duplicate certificate of title to be issued to the proprietor or to a person named and authorized by the proprietor as the person to whom the duplicate may be issued.

”.

**Section 75 amended**

**48.** (1) Section 75 (1) of the principal Act is amended —

(a) by deleting “the issue of a new certificate of title to replace the duplicate certificate of title or Crown lease” and substituting the following —

“ the creation and registration of a certificate of title to replace the duplicate certificate of title or Crown lease the duplicate of ”;

(b) by deleting “to issue” and substituting the following —

“ to create and register ”; and

(c) in the proviso, by deleting “issuing” and substituting the following —

“ registering ”.

(2) Section 75 (2) of the principal Act is amended by deleting “issued under this section to take the place of a duplicate certificate of title or Crown lease alleged to have been lost, and such” and substituting the following —

“ registered under this section and the replaced ”.

(3) Section 75 (4) of the principal Act is repealed and the following subsection is substituted —

“ (3) Where a replaced duplicate certificate of title or Crown lease has not been cancelled as required by subsection (2), such duplicate certificate of title or Crown lease shall, by virtue of the registration of the new certificate of title, cease to have effect. ”.

**Section 76 amended**

**49.** Section 76 of the principal Act is amended —

- (a) by inserting before “writing” the following —  
“ notice in ”;
- (b) by inserting before “certificate” in the 5 places in which it occurs the following —  
“ duplicate ”;
- (c) by inserting after the section designation “76.” the subsection designation “(1)”; and
- (d) by inserting after subsection (1) the following subsection —

“  
(2) Where a person has not complied with a requisition under subsection (1) and the Registrar has not applied to a Judge for the issue of a summons referred to in that subsection, nothing in subsection (1) prevents any other interested person from applying to a Judge to issue a summons referred to in that subsection.  
”.

**Section 77 amended**

**50.** Section 77 of the principal Act is amended —

- (a) by deleting “as aforesaid” and substituting the following —  
“ under section 76 (1) or (2) ”;

- (b) by deleting “such certificate” in the first and second places in which it occurs and substituting in both cases the following —

“ such duplicate certificate ”; and

- (c) by deleting “as hereinbefore directed the Registrar shall (if the circumstances of the case require it) issue on the direction of the Commissioner to the proprietor of the land such certificate of title as is herein provided to be issued in the case of any duplicate certificate of title being lost or destroyed and shall enter in the register book notice of the issuing of such” and substituting the following —

“ under section 76 (1) or (2) —

- (a) the Commissioner may (if the circumstances of the case require it and subject to paragraph (b)) direct the Registrar to issue to the proprietor of the land; or
- (b) the Court or a Judge may, upon the application of the Registrar or any other interested person, order the Registrar to issue to such person as the Court or Judge directs,

such duplicate certificate of title as can be issued in the case of any duplicate certificate of title being lost or destroyed and the Registrar shall enter in the Register on the relevant certificate of title notice of the issuing of such duplicate.

”.

**Section 78 amended**

51. Section 78 of the principal Act is amended by deleting “or triplicate certificate mortgage lease or other instrument or the person having the possession custody or control of any such duplicate or triplicate to bring the same into the Office of Titles” and substituting the following —

“  
certificate or instrument or the person having the possession, custody or control of any such duplicate certificate or instrument to bring the same to the Department  
”.

**Section 81A amended**

52. Section 81A of the principal Act is amended by deleting “sections fifty-three and fifty-four of this Act” and substituting the following —

“ section 53 ”.

**Section 81D amended**

53. Section 81D (1) of the principal Act is amended by deleting “until the written consent thereto of the Minister for Lands or of an officer of the Department of Lands and Surveys thereto authorised by the Minister for Lands has been filed with the Registrar.” and substituting the following —

“  
until —  
(a) the Minister for Lands, or an officer authorized by that Minister to do so, has informed the Registrar in writing of his consent to the registration; and



- (b) if the Registrar so requests, the duplicate Crown Lease is presented to the Registrar for any endorsement or other action required by the Registrar.

”.

**Section 81F amended**

54. Section 81F (2) of the principal Act is amended by deleting “post to the mortgagee or sublessee, at the address appearing in the Register, thirty” and substituting the following —

“ serve the mortgagee or sublessee with 30 ”.

**Section 81I amended**

55. Section 81I (1) of the principal Act is amended —

- (a) by deleting “on the folium of the Register Book” and substituting the following —

“ in the Register ”; and

- (b) by deleting “original registered instrument of mortgage and the duplicate thereof” and substituting the following —

“ instrument of mortgage ”.

**Section 82 amended**

56. Section 82 of the principal Act is amended —

- (a) in subsection (1) by deleting “one of the forms in the Seventh Schedule hereto” and substituting the following —

“ an approved form ”; and

- (b) in subsection (2) by deleting “the words “the sum of” in the forms of transfer contained in the Seventh Schedule shall not be used to describe the consideration but”.

**Section 86 repealed and a section substituted**

57. Section 86 of the principal Act is repealed and the following section is substituted —

“

**Duplicate certificate to be delivered to Registrar on transfer**

**86.** (1) If a transfer purports to transfer the whole or part of the land mentioned in any certificate of title the transferor shall deliver up to the Registrar the duplicate certificate (if any) and the Registrar shall after registering the transfer endorse on the original certificate a memorandum cancelling the same either wholly or partially in accordance with the transfer.

(2) The duplicate (if any) of any wholly or partially cancelled certificate shall be retained by the Registrar.

(3) The Registrar shall create and register in the transferee's name a certificate of title to the land mentioned in such transfer and, on the application of the proprietor of the untransferred portion, shall create and register in the proprietor's name a certificate of title to such portion.

(4) If the land to be transferred is leasehold, the lease and duplicate (if any) shall not be cancelled and the latter document instead of being retained by the Registrar shall be delivered to the transferee.

”.

**Section 87 amended**

**58.** Section 87 of the principal Act is amended —

- (a) by deleting “in the register book and on the duplicate certificate” and substituting the following —

“  
on the certificate of title and on the  
duplicate certificate (if any)  
”;  
and

- (b) by deleting “issued to the transferee in his own name” and substituting the following —

“  
created and registered in the name of the  
transferee  
”.

**Section 88A amended**

**59.** Section 88A of the principal Act is amended by deleting “upon the folium of the register book constituted by” and substituting the following —

“ in the Register on ”.

**Section 90 amended**

**60.** Section 90 of the principal Act is amended —

- (a) by deleting “On” and substituting the following —

“ Notwithstanding section 53, on ”; and

- (b) by deleting “nor deemed produced for registration within the meaning of section fifty-three of this Act”.

**s. 61**

**Section 91 amended**

**61.** Section 91 of the principal Act is amended by deleting “the form in the Eleventh Schedule hereto” and substituting the following —

“ an approved form ”.

**Section 97 amended**

**62.** Section 97 of the principal Act is amended by deleting “by being given to him or them or by being sent through the post office by a registered letter directed to him or them at his or their address as stated in the mortgage or transfer thereof”.

**Section 99 amended**

**63.** Section 99 of the principal Act is amended by deleting “the form in the Thirteenth Schedule hereto” and substituting the following —

“ an approved form ”.

**Section 101 repealed and a section substituted**

**64.** Section 101 of the principal Act is repealed and the following section is substituted —

“

**Register of sub-leases**

**101.** The Registrar shall keep a register of sub-leases and cause to be entered in that register details of the parties to, and the term and memorandum number or symbol of, each registered sub-lease.

”.

**Section 105 repealed and sections substituted**

**65.** Section 105 of the principal Act is repealed and the following sections are substituted —

“

**Mortgages and charges**

**105.** (1) The proprietor of land under the operation of this Act may —

- (a) mortgage the land; or
- (b) charge the land with the payment of an annuity.

(2) A mortgage or charge shall be in an approved form.

**Extension of mortgage, charge or lease**

**105A.** (1) A mortgage, charge or lease may be extended by an instrument of extension executed by all the parties to the mortgage, charge or lease, as the case may be, and setting out the term of the extension and the conditions on which the extension is made.

(2) Where an instrument of extension is presented to the Registrar —

- (a) he shall enter a memorandum of it on the certificate of title or, in the case of a Crown Lease, on the Register of Leases; and
- (b) he may also, in the case of a lease, enter a memorandum of it on the record of the lease held by the Department.

**s. 66**

(3) No dealing registered subsequent to any mortgage, charge or lease shall be affected by the extension of the mortgage, charge or lease, as the case may be, unless the proprietor in whose favour the dealing was registered gives written consent to the extension.

”.

**Section 106 amended**

**66.** Section 106 of the principal Act is amended —

- (a) by deleting “by giving such notice to him or them or by leaving the same on some conspicuous place on the mortgaged or charged land or by sending the same through the post office by a registered letter directed to the then proprietor of the land at his address appearing in the register book”;
- (b) by inserting after the section designation “**106.**” the subsection designation “(1)”; and
- (c) by inserting after subsection (1) the following subsection —

“

(2) Notwithstanding section 240, service of the notice referred to in subsection (1) is not properly effected unless —

- (a) the notice is delivered personally to the mortgagor or the grantor or his transferees, as the case requires;

- (b) the notice is sent by certified mail to —
  - (i) the address entered in the Register as the address of the mortgagor or the grantor or his transferees, as the case requires; or
  - (ii) the address known to the mortgagee or the annuitant or his transferees as the current address of the mortgagor or the grantor or his transferees, as the case requires;
- (c) the notice is left in a conspicuous place on the mortgaged or charged land; or
- (d) the notice is sent to the number of the facsimile machine of the mortgagor or the grantor or his transferees, as the case requires (but only where the mortgagor or the grantor or the transferee has specified in writing to the mortgagee or the annuitant or his transferees, as the case requires, that notices under this section may be served on him by facsimile transmission).

”.

**Section 110 amended**

**67.** Section 110 of the principal Act is amended by deleting “shall be entitled to receive a certificate of title to the same” and substituting the following —

“  
the Registrar may either register the purchaser as the proprietor of the land on the existing certificate of title or create and register a new certificate of title in the purchaser’s name as proprietor of the land  
”.

**Section 121 amended**

**68.** Section 121 of the principal Act is amended —

(a) by deleting “served as hereinbefore provided” and substituting the following —

“ was served in accordance with section 106 ”;

(b) by deleting “by being given him or them or by being left on the mortgaged land or by the same being sent through the post office by a registered letter directed to him or them at his or their address appearing in the register book”;

(c) by deleting “appearing by the register book” and substituting the following —

“ appearing by the Register ”;

(d) by deleting “by being given to him or sent through the post office by a registered letter directed to him at his address appearing in the register book”;

(e) by inserting after the section designation “**121.**” the subsection designation “(1)”; and



- (f) by inserting after subsection (1) the following subsection —

“

(2) Notwithstanding section 240, service on a person of a notice of intention to apply for foreclosure is not properly effected unless —

- (a) the notice is delivered personally to the person;
- (b) the notice is sent by certified mail to —
  - (i) the address entered in the Register as the address of the person; or
  - (ii) the address known to the mortgagee or his transferees as the person's current address;
- (c) the notice is left in a conspicuous place on the mortgaged land; or
- (d) the notice is sent to the number of the person's facsimile machine (but only where the person has specified in writing to the mortgagee or his transferees, as the case requires, that such notices may be served on the person by facsimile transmission).

”.

**s. 69**

**Section 122 amended**

**69.** Section 122 of the principal Act is amended by deleting “be entitled to receive a certificate of title to the same” and substituting the following —

“ the Registrar may either register the mortgagee or the transferee as the proprietor of the land on the existing certificate of title or create and register a new certificate of title in the name of the mortgagee or the transferee as the proprietor of the land ”.

**Section 123 amended**

**70.** Section 123 of the principal Act is amended by inserting after “title” the following —

“ (if any) ”.

**Section 124 amended**

**71.** Section 124 of the principal Act is amended —

(a) by deleting “issued” and substituting the following —

“ been registered ”; and

(b) by deleting “issuing” and substituting the following —

“ registration ”.

**Section 126 amended**

**72.** (1) Section 126 (1) of the principal Act is amended by inserting after “title” the following —

“ (if any) ”.

(2) Section 126 (2) of the principal Act is amended by deleting “Certificate of Title” and substituting the following —

“ certificate of title (if any) ”.

**Part IV, Division 3A heading repealed and substituted**

**73.** Part IV of the principal Act is amended by repealing the heading to Division 3A and substituting the following heading —

“

***Division 3A — Restrictive covenants and the  
modification, discharge and enforcement of  
restrictive covenants and easements***

”.

**Section 129A amended**

**74.** (1) Section 129A (1) of the principal Act is amended by deleting “the prescribed” and substituting the following —

“ an approved ”.

(2) Section 129A of the principal Act is amended by repealing subsection (2) and substituting the following subsections —

“

(2) Nothing in subsection (1) limits the creation of a restrictive covenant under Part IVA.

(3) Notwithstanding section 52 (2) (a), the Registrar may register an instrument creating a restrictive covenant (other than a restrictive covenant created under Part IVA) without entering a memorandum of the restrictive covenant on the certificate of title for the land (if any) benefited by the restrictive covenant.

(4) Nothing in subsection (3) shall be read as affecting any requirement, in relation to the registration of an instrument creating a restrictive covenant, to enter a memorandum of the restrictive covenant on the certificate of title for the land burdened by the restrictive covenant.

(5) Subject to subsection (6), where a restrictive covenant is created under Part IVA, the Registrar shall enter a memorandum of the restrictive covenant on the certificate of title for the land (if any) benefited, and the land burdened, by the restrictive covenant.

(6) Where —

(a) a restrictive covenant has been created under Part IVA by notation on a strata/survey-strata plan; and

(b) the restrictive covenant has been notified on a registered strata/survey-strata plan,

it is not necessary for a memorandum of the restrictive covenant to be entered on the certificates of title for the land (if any) benefited, and the land burdened, by the restrictive covenant, if that land is also a subject of that plan.

”.

### **Section 129B amended**

**75.** (1) Section 129B (1) of the principal Act is amended by inserting after “contrary” the following —

“ , but subject to subsection (3), ”.

(2) Section 129B (2) of the principal Act is amended by deleting “in the register book direct the Registrar to enter a

memorandum of such discharge or modification in the register book” and substituting the following —

“  
on any certificate of title in the Register, direct the Registrar to enter a memorandum of the discharge or modification on each such certificate  
”.

(3) Section 129B of the principal Act is amended by inserting after subsection (2) the following subsection —

“  
(3) Notwithstanding subsection (1), the discharge or modification of a restrictive covenant created under —  
(a) section 129BA shall be in accordance with section 129BB; or  
(b) Part IVA shall be in accordance with section 136J.  
”.

**Sections 129BA and 129BB inserted**

**76.** The principal Act is amended by inserting after section 129B the following sections —

“  
**Restrictive covenants benefiting local governments and public authorities**

**129BA.** (1) A restrictive covenant may, under this section, be created and made binding in respect of land under the operation of this Act for the benefit of —

- (a) the local government in whose district the land is situated; or

- (b) a public authority,

notwithstanding that the benefit of the restrictive covenant would not be in respect of land.

(2) A restrictive covenant under this section shall be in an instrument in an approved form that is lodged with the Registrar and accompanied by —

- (a) the written consent of each person who has a registered interest in any land that would be burdened by the restrictive covenant; and
- (b) the prescribed fee.

**Discharge and modification of s. 129BA covenants**

**129BB.** (1) Either —

- (a) the proprietor of land burdened by a restrictive covenant created under section 129BA; or
- (b) a local government or public authority for whose benefit a restrictive covenant has been created under section 129BA (“**the relevant authority**”),

may apply, in an approved form and on payment of the prescribed fee, for the restrictive covenant to be discharged or to be modified in the manner set out in the application.

(2) An application under this section shall be accompanied by either —

- (a) the written consent of —
  - (i) the relevant authority; and

- (ii) each person who has a registered interest in any land burdened by the restrictive covenant,

to the discharge or the modification of the restrictive covenant as proposed; or

- (b) the documents referred to in subsection (3).

(3) Where an application under this section is not accompanied by the written consents referred to in subsection (2) (a), it shall be accompanied by —

- (a) the applicant's statutory declaration to the effect that —

- (i) the relevant authority and each person who has a registered interest in any land burdened by the restrictive covenant (not being the applicant) has been given 28 days' written notice of both the intention to make the application and the substance of the proposed application;

- (ii) notice of both the intention to make the application and the substance of the proposed application has been published —

- (I) at least 28 days before the day on which the application is made;

- (II) in a newspaper circulating either throughout the State or in the district where the land is situated;

(iii) both of the notices referred to in subparagraphs (i) and (ii) stated —

(I) the applicant's address for service of notices of objection to the proposed application or any part of the proposed application; and

(II) the day, being at least 3 days before the application was proposed to be made, by which notice of objections were to be received;

and

(iv) up to the time of making the application, the applicant had received no notice of objection to either the proposed application or any part of the proposed application;

and

(b) a copy of the notice referred to in paragraph (a) (ii) showing the name of the newspaper in which it was published and the day of publication.

(4) On an application under this section the Registrar, if directed by the Commissioner to do so, shall discharge the restrictive covenant or modify the restrictive covenant in the manner set out in the application.

(5) The Commissioner shall not direct the Registrar to discharge or modify a restrictive covenant under this section if the Commissioner is aware of any notice that has been served under subsection



(3) (a) (iii) by which an objection has been made to either the application or any part of the application.

(6) Where a restrictive covenant is discharged or modified under this section the Registrar shall enter a memorandum of the discharge or modification on each certificate of title in the Register on which is entered a memorandum of the restrictive covenant.

”.

**Section 129C amended**

77. (1) Section 129C (1) of the principal Act is amended by inserting after “the land” where it first occurs, the following —

“

burdened or benefited, or any local government or public authority benefited, by the easement or restriction,

”.

(2) Section 129C (2) of the principal Act is amended by inserting after “Act” the following —

“ or any local government or public authority then ”.

(3) Section 129C (3) of the principal Act is amended —

(a) in paragraph (a) —

(i) by inserting after “Act” the following —

“

or any local government or public authority

”;

and

(ii) by inserting after “instrument” the following —

“ or created under Part IVA ”;

and

(b) in paragraph (b) by inserting after “instrument” the following —

“ , plan or diagram ”.

(4) Section 129C (6) of the principal Act is amended by inserting after “thereafter” the following —

“ whether or not created under Part IVA ”.

### **Section 133 amended**

**78.** (1) Section 133 (1) of the principal Act is amended —

(a) in the first paragraph by deleting “such one of the forms in the Seventeenth Schedule hereto as the case requires” and substituting the following —

“ an approved form ”; and

(b) in the third paragraph by deleting “certificate, or the duplicate of a Crown lease, Mortgage, or other instrument of title” and substituting the following —

“ (if any) of the certificate of title or a Crown lease or of any other instrument ”.

(2) Section 133 of the principal Act is amended by inserting after subsection (2) the following subsection —

“ (3) This section applies to the sale, under a warrant of execution issued for the purposes of

section 140 of the *Mining Act 1978* (“**that section**”),  
of land under the operation of this Act, as if —

- (a) a reference to a writ of *feri facias* issued out of the Supreme Court were a reference to a warrant of execution under that section;
- (b) a reference to a sale by the sheriff under a writ of *feri facias* were a reference to a sale under that section;
- (c) a reference to the sheriff were a reference to the person authorized under that section to sell property; and
- (d) a reference to a decree or order of the Supreme Court were a reference to an order of execution under that section.

”.

#### **Section 135 amended**

**79.** Section 135 of the principal Act is amended by deleting “be registered and receive a certificate” and substituting the following —

“ have registered a certificate of title ”.

#### **Section 136 amended**

**80.** Section 136 of the principal Act is amended —

- (a) by inserting after “colour” the following —

“ or symbols ”; and

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- (b) by deleting “stamped with the seal of the Office of Titles” and substituting the following —

“ sealed ”.

**Part IVA inserted**

**81.** After Part IV of the principal Act the following Part is inserted —

“

**PART IVA — CREATION OF EASEMENTS AND  
RESTRICTIVE COVENANTS BY NOTATIONS ON  
SUBDIVISION PLANS AND DIAGRAMS**

**Interpretation**

**136A.** In this Part, “**plan**” means —

- (a) a plan or diagram referred to in section 166; or
- (b) a strata/survey-strata plan lodged for registration under the *Strata Titles Act 1985*,

for the subdivision of land under the operation of this Act.

**Application of this Part**

**136B.** The provisions of this Part are in addition to, and are not to be read as limiting the operation of —

- (a) the provisions of this Act in relation to the creation, registration or effect of easements or restrictive covenants except to the extent provided for in those provisions; and

- (b) the provisions of any other Act in relation to the creation, registration or effect of easements or restrictive covenants.

### **Notation of easements on subdivision plans**

**136C.** (1) A proprietor of land that is a subject of a plan may note, in an approved form, on the plan the location of an easement to which the land is proposed to be subject.

(2) An easement cannot be noted on a plan unless the land to be burdened by the easement is a subject of the plan but any land to be benefited by the easement need not be a subject of the plan.

(3) An easement for the benefit of —

- (a) the local government in whose district the land is situated; or
- (b) a public authority,

may be noted on a plan under this section notwithstanding that the benefit of the easement would not be in respect of land.

(4) Where an easement is noted on a plan in accordance with this section an instrument in an approved form may, but need not, be lodged in relation to the plan unless, under subsection (6), certain information is required to be specified in an instrument and where an instrument is lodged the prescribed fee shall be paid for the lodgment of the instrument.

(5) The following information about the easement shall, subject to subsection (6), be specified in either

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the plan or in an instrument lodged in relation to the plan —

- (a) the land to be burdened by the easement;
- (b) either —
  - (i) the land to be benefited; or
  - (ii) the name of the local government or the public authority to be benefited,by the easement, as the case may be;
- (c) a description of the easement, whether by way of a short form, a modified or supplemented short form or in another manner;
- (d) if the easement is for a particular term, the duration of the term; and
- (e) any prescribed matter.

(6) The Registrar may issue directions to the effect that any information referred to in subsection (5) is to be specified in either the plan or in an instrument lodged in relation to the plan and any such direction shall be published in a document a copy of which is available to the public free of charge.

**Notation of restrictive covenants on subdivision plans**

**136D.** (1) A proprietor of land that is a subject of a plan may note, in an approved form, on the plan a restrictive covenant to which the land is proposed to be subject.

(2) A restrictive covenant cannot be noted on a plan unless the land to be burdened by the restrictive covenant is a subject of the plan but the land to be benefited by the restrictive covenant need not be a subject of the plan.

(3) A restrictive covenant cannot be noted on a plan unless an instrument in an approved form is lodged in relation to the plan and the prescribed fee is paid for lodgment of the instrument.

(4) The terms of the restrictive covenant shall be specified in an instrument lodged in relation to the plan.

(5) The following information about the restrictive covenant shall, subject to subsection (6), be specified in either the plan or in an instrument lodged in relation to the plan —

- (a) the land to be burdened by the restrictive covenant;
- (b) the land to be benefited by the restrictive covenant;
- (c) if the restrictive covenant is for a particular term, the duration of the term; and
- (d) any prescribed matter.

(6) The Registrar may issue directions to the effect that any information referred to in subsection (5) is to be specified in either the plan or in an instrument lodged in relation to the plan and any such direction shall be published in a document a copy of which is available to the public free of charge.

**Consent of certain persons required to the creation of easements and restrictive covenants**

**136E.** An easement or a restrictive covenant cannot be created under this Part unless the proprietor lodges in relation to the plan the written consent to the creation of the easement or restrictive covenant of each person who, immediately before the time referred to in section 136F (1) (a) or (b), as the case requires, either —

- (a) has a registered interest in any land that would be burdened by the easement or the restrictive covenant;
- (b) is a caveator in respect of any land that would be burdened by the easement or the restrictive covenant;
- (c) has a registered interest in any land that would be benefited by the easement or the restrictive covenant (whether or not that land is a subject of the plan); or
- (d) is a caveator in respect of any land that would be benefited by the easement or the restrictive covenant (whether or not that land is a subject of the plan).

**When easements and restrictive covenants under this Part have effect**

**136F.** (1) Land becomes subject to an easement or restrictive covenant noted on a plan in accordance with this Part —

- (a) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the



time the Registrar registers the plan under that Act; and

- (b) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the plan have been registered.

(2) Where an instrument is lodged under this Part in relation to a plan, the instrument shall be deemed to be registered for the purposes of section 58 at the time the land becomes subject to the easement or restrictive covenant under subsection (1).

**Easements and restrictive covenants under this Part may be effective for a specified term only**

**136G.** An easement or a restrictive covenant created under this Part for a term specified in either the plan on which the easement or restrictive covenant was noted or in the instrument (if any) lodged in relation to the plan is, by virtue of this section and without the need to apply for discharge of the easement or restrictive covenant, of no effect when the specified term expires.

**Easements and restrictive covenants under this Part may both burden and benefit land of same proprietor**

**136H.** An easement or a restrictive covenant created under this Part has effect even though any land burdened by the easement or restrictive covenant has the same proprietor as any land benefited by the easement or restrictive covenant.

**Recordings in the Register**

**136I.** Subject to sections 65A and 129A (4), the Registrar shall make such records and entries in the Register as to easements and restrictive covenants created under this Part as the Registrar thinks fit.

**Discharge and modification of easements and restrictive covenants under this Part**

**136J.** (1) Either —

- (a) the proprietor of land burdened or benefited by an easement or a restrictive covenant created under this Part; or
- (b) a local government or public authority for whose benefit an easement has been created under this Part (“**the relevant authority**”),

may apply, in an approved form and on payment of the prescribed fee, for the easement or restrictive covenant to be discharged or to be modified in the manner set out in the application.

(2) An application under this section shall be accompanied by either —

- (a) the written consent of —
  - (i) each person who has a registered interest in, or is a caveator in respect of, any land that is either burdened or benefited by the easement or restrictive covenant; and
  - (ii) if applicable, the relevant authority,

to the discharge or the modification of the easement or restrictive covenant as proposed; or

(b) the documents referred to in subsection (3).

(3) Where an application under this section is not accompanied by the written consents referred to in subsection (2) (a), it shall be accompanied by —

(a) the applicant's statutory declaration to the effect that —

(i) each person who has a registered interest in, or is a caveator in respect of, any land that is either burdened or benefited by the easement or restrictive covenant and, if applicable, the relevant authority (not being the applicant) has been given 28 days' written notice of both the intention to make the application and the substance of the proposed application;

(ii) notice of both the intention to make the application and the substance of the proposed application has been published —

(I) at least 28 days before the day on which the application is made;

(II) in a newspaper circulating either throughout the State or in the district where the land is situated;

(iii) both of the notices referred to in subparagraphs (i) and (ii) stated —

(I) the applicant's address for service of notices of objection to the proposed application or any part of the proposed application; and

(II) the day, being at least 3 days before the application was proposed to be made, by which notice of objections were to be received;

and

(iv) up to the time of making the application, the applicant had received no notice of objection to either the proposed application or any part of the proposed application;

and

(b) a copy of the notice referred to in paragraph (a) (ii) showing the name of the newspaper in which it was published and the day of publication.

(4) On an application under this section the Registrar, if directed by the Commissioner to do so, shall discharge the easement or restrictive covenant or modify the easement or restrictive covenant in the manner set out in the application.

(5) The Commissioner shall not direct the Registrar to discharge or modify an easement or a restrictive covenant under this section if the Commissioner is aware of any notice that has been served under subsection (3) (a) (iii) by which an

objection has been made to either the application or any part of the application.

(6) Where an easement or a restrictive covenant is discharged or modified under this section the Registrar shall enter a memorandum of the discharge or modification on each certificate of title in the Register on which is entered a memorandum of the easement or restrictive covenant.

”.

**Section 136K inserted**

**82.** Part V of the principal Act is amended by inserting before section 137 the following section —

“

**Interpretation in, and application of, Part V**

**136K.** (1) In sections 138B to 138D, “**section 138A caveat**” has the meaning given by section 138A.

(2) The provisions of sections 138A to 138D are in addition to, and are not to be read as limiting the operation of —

- (a) the other provisions of this Act in relation to caveats; and
- (b) a person’s entitlement, if any, to apply for an injunction in relation to a caveat.

”.

**Section 137 amended**

**83.** Section 137 of the principal Act is amended —

- (a) by deleting “the form of the Eighteenth Schedule hereto or as near thereto as circumstances will permit” and substituting the following —

“ an approved form ”;

- (b) by deleting “No such caveat shall be received unless some address or place within the limits of the city of Perth shall be appointed therein as the place at which notices and proceedings relating to such caveat may be served.” and substituting the following —

“  
A caveat under this section cannot be lodged unless it contains an address, or a number for a facsimile machine, in Australia for the service of notices in relation to the caveat.  
”;

and

- (c) by deleting “A caveator may however give an additional address elsewhere within the State at the foot of such caveat in which case any notice relating to such caveat shall be sent through the post office by registered letter to such address on the same day as that on which the notice is served in Perth. Every notice relating to such caveat and any proceedings in respect thereof if served at the address or place appointed as aforesaid shall be deemed to be duly served.”.

**Sections 138A to 138D inserted**

**84.** After section 138 of the principal Act the following sections are inserted —

“

**Caveats to which sections 138B to 138D apply**

**138A.** A caveat that has not been lodged —

- (a) under section 30, 176 or 223A;
- (b) by or on behalf of a beneficiary claiming under a will or settlement;
- (c) under a court order;
- (d) by the Registrar on the direction of the Commissioner;
- (e) under any written law other than this Act;
- (f) under any Commonwealth Act; or
- (g) by or on behalf, or with the consent, of the Minister for Lands,

is a caveat for the purposes of sections 138B to 138D.

**Certain caveats may lapse unless justified by caveator**

**138B.** (1) If a section 138A caveat has been lodged then the proprietor of the land in respect of which the caveat was lodged may apply, in an approved form and on payment of the prescribed fee, for the Registrar to serve the caveator with a notice to the effect that, unless the caveator takes the action referred to in subsection (2) within 21 days after the

day on which the notice is served, the caveat will lapse.

(2) If the notice referred to in subsection (1) is served on the caveator then the caveat lapses 21 days after the day on which the notice was served unless, before that time, the caveator has —

- (a) obtained from the Supreme Court an order extending the operation of the caveat —
  - (i) for such further period as is specified in the order; or
  - (ii) until the further order of the Court;
- and
- (b) lodged with the Registrar a copy of the order.

#### **Powers of Supreme Court**

**138C.** (1) A caveator who is served with a notice under section 138B (1) may apply to the Supreme Court, in accordance with rules of the Court, for an order extending the operation of the caveat.

(2) On the hearing of an application under subsection (1), the Supreme Court —

- (a) if satisfied that the caveator's claim has or may have substance —
  - (i) may make an order extending the operation of the caveat for such period as is specified in the order;



- (ii) may make an order extending the operation of the caveat until the further order of the Court; or
  - (iii) may make such other orders as it thinks fit concerning the caveat or the land in respect of which the caveat was lodged;
- (b) if not satisfied that the caveator's claim has or may have substance, shall dismiss the application; and
- (c) may make such ancillary orders in relation to the application as it thinks fit.
- (3) An interim order under this section may be made *ex parte* unless the Court orders otherwise.
- (4) The applicant shall ensure that the Registrar is served with a copy of each order made by the Court on an application under subsection (1).

**Restrictions on further lodgment of certain caveats**

- 138D.** (1) If a section 138A caveat —
- (a) is withdrawn after a notice under section 138B (1) is served on the caveator but before the caveat could lapse under section 138B (2);
  - (b) has lapsed under section 138B (2); or
  - (c) no longer has effect because of the operation of an order made, or a dismissal, under section 138C by the Supreme Court,

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then the caveator cannot lodge with the Registrar any further section 138A caveat in respect of the same land unless —

- (d) the proprietor's consent to do so is endorsed on the further caveat; or
- (e) the Supreme Court has made an order giving leave for the lodgment of the further caveat and a copy of that order has been served on the Registrar.

(2) If a caveat has been withdrawn before a notice under section 138B (1), if any, is served on the caveator then nothing in subsection (1) prevents the caveator from lodging a further section 138A caveat in respect of the same land.

”.

**Section 141 repealed and a section substituted**

**85.** Section 141 of the principal Act is repealed and the following section is substituted —

“

**Endorsing certificates as to, and sending copies of, caveats**

**141.** (1) Where —

- (a) a caveat is lodged under section 137; or
- (b) a caveat lapses, whether because of the effect of a provision of this Act or the operation of an order of the Supreme Court,

the Registrar shall enter a memorandum of the caveat or the lapse of the caveat, as the case requires, on the

certificate of title for the land in respect of which the caveat was lodged.

(2) A copy of a caveat lodged under section 137 or of so much of the caveat as the Registrar thinks is material to the person to be notified under section 138 shall be sent with the notification under section 138.

”.

#### **Section 141A amended**

**86.** Section 141A (1) of the principal Act is amended by deleting “send by registered post notice to the caveator at the address set out in such caveat” and substituting the following —

“ serve the caveator with notice ”.

#### **Section 145 repealed and a section substituted**

**87.** Section 145 of the principal Act is repealed and the following section is substituted —

“

#### **Witnessing of instruments etc.**

**145.** (1) Subject to subsection (2), an instrument or power of attorney executed after section 87 of the *Transfer of Land Amendment Act 1995* comes into operation shall be deemed to be duly executed if —

- (a) in the case of such a document executed in Australia, the Registrar is satisfied that each signature is witnessed by a person —
  - (i) who is not a party to the instrument or power of attorney;

- (ii) who is not a minor and not under any other legal disability; and
  - (iii) whose full name, address and occupation are stated on the instrument or power of attorney;
- and
- (b) in the case of such a document executed outside Australia, the Registrar is satisfied that each signature is witnessed by a person who is not a party to the instrument or power of attorney and who is —
    - (i) a notary public;
    - (ii) an Australian consular officer;
    - (iii) an elected member of Parliament or other representative body at the equivalent of State or federal level;
    - (iv) a judge or magistrate;
    - (v) qualified and entitled to practise law;
    - (vi) qualified and entitled to practise as a doctor of medicine;
    - (vii) qualified and entitled to practise as a civil, electrical or mechanical engineer;
    - (viii) qualified as a school teacher;
    - (ix) a university lecturer;
    - (x) the mayor of a town or city; or
    - (xi) a person with managerial responsibility in a bank.

(2) If Her Majesty is the registered proprietor of land, an instrument relating to the land shall be deemed to be executed if the Minister signs, and affixes the seal of his office to, the instrument.

(3) If it appears to the Registrar that a signature of a party to an instrument or a power of attorney under this Act has not been witnessed in the manner required by subsection (1), the Registrar may, if he thinks fit, register or file and note the instrument or power of attorney if the genuineness of the signature of the party is proved to his satisfaction by a statutory declaration of a person who knows the party and the party's signature.

(4) In this section "**Australian consular officer**" means a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside the Commonwealth, namely, ambassador, high commissioner, minister, head of mission, commissioner, chargé d'affaires, consul or secretary at an embassy, high commissioner's office, legation or other post, consular-general, consul, vice-consul, trade commissioner and consular agent.

”.

### **Section 146 amended**

**88.** Section 146 of the principal Act is amended —

(a) by deleting “the form in the Twenty-First Schedule hereto” and substituting the following —

“ an approved form ”; and

(b) by deleting “the form in the said schedule contained by affixing the seal of the office with the initials of the officer attaching the same and the day hour and

minute at which the seal is affixed” and substituting the following —

“  
an approved form which is sealed and on which is noted the date and time of the sealing  
”.

**Section 148 amended**

**89.** Section 148 of the principal Act is amended —

(a) by deleting “the form in the Twenty-second Schedule hereto” and substituting the following —

“ an approved form ”; and

(b) by deleting “the form in the said schedule” and substituting the following —

“ an approved form ”.

**Section 149 amended**

**90.** Section 149 of the principal Act is amended by deleting “in the office” and substituting the following —

“ with the Department ”.

**Section 150 amended**

**91.** Section 150 of the principal Act is amended by deleting “in the office” and substituting the following —

“ by the Department ”.

**Section 153A amended**

**92.** Section 153A of the principal Act is amended by deleting “issued” and substituting the following —

“ registered ”.

**Section 159 amended**

**93.** Section 159 of the principal Act is amended by deleting “issue” and substituting the following —

“ direct the Registrar to create and register ”.

**Section 160 amended**

**94.** Section 160 of the principal Act is amended —

(a) by deleting “issued” and substituting the following —

“ created and registered ”; and

(b) by deleting “issue” and substituting the following —

“ registration ”.

**Section 162 amended**

**95.** Section 162 of the principal Act is amended by deleting “register to be owners or proprietors of the fee simple of any portion of such land by sending the same through the post-office in a registered letter marked on the outside “Office of Titles” to the address appearing upon the register and also to any other address ascertained by the Commissioner to be the address for the time being of the person notified; such notice shall state that

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such provisionally adopted plan can be inspected at the Office of Titles” and substituting the following —

“

Register to be owners or proprietors of the fee simple of any portion of such land; such notice shall state that such provisionally adopted plan can be inspected at the Department’s office

”.

**Section 163 amended**

**96.** Section 163 of the principal Act is amended —

- (a) by deleting “Chief Draftsman or officer discharging the duties of Chief Draftsman signing a statement written on the face of the plan in the form in the Twenty-third Schedule hereto and the plan so verified shall be marked with a distinguishing symbol and kept in the Office of Titles as an approved lodged map of subdivision and shall as from the date of such verification govern the titles thereafter issued under this Act to” and substituting the following —

“

an inspector of plans and surveys signing a statement in an approved form on the plan and the plan so verified shall be marked with a distinguishing symbol and kept by the Registrar as an approved lodged map of subdivision and shall as from the date of such verification govern the titles subsequently created and registered under this Act in respect of

”;

- (b) by deleting “issued in pursuance” and substituting the following —

“ registered for the purposes ”;



- (c) by inserting after the section designation “**163.**” the subsection designation “(1)”; and
- (d) by inserting after subsection (1) the following subsection —

“

(2) In this section, a reference to an “**inspector of plans and surveys**” is a reference to a person who, for the purposes of section 18 of the *Licensed Surveyors Act 1909*, approves plans of authorized surveys within the meaning of that Act.

”.

#### **Section 165 amended**

**97.** Section 165 of the principal Act is amended by deleting “issued” and substituting the following —

“ created and registered ”.

#### **Section 166 amended**

**98.** (1) Section 166 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) A proprietor of land under the operation of this Act who, after section 98 of the *Transfer of Land Amendment Act 1995* comes into operation, wishes to subdivide the land shall apply, in an approved form and on payment of the prescribed fee, to the Registrar for the creation and registration of new certificates of title for the land and the application shall be made in relation to a plan or diagram of the land complying with subsection (2).

”.

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(2) Section 166 (3) and (4) of the principal Act are repealed and the following subsections are substituted —

“

(3) On an application under this section but subject to subsection (5) and to section 20 (2) of the *Town Planning and Development Act 1928*, the Registrar may create and register a new certificate or certificates of title for the land the subject of the application.

(4) For the purposes of subsection (3), the Registrar may have regard to a request of the applicant in relation to when the new certificate or certificates of title are to be created and registered.

(5) Where a portion only of the land comprised in a certificate of title is to be subdivided under this section, the Registrar shall cancel the existing certificate to the extent of the portion and create and register a new certificate for the portion.

”.

**Section 167 amended**

**99.** Section 167 of the principal Act is amended by deleting “After the subdivision of land and deposit of plan under the last preceding section of this Act the numbers of the allotments marked upon such plan” and substituting the following —

“

On an application under section 166 the numbers of the allotments marked on the plan of subdivision

”.

**Section 167A amended**

**100.** Section 167A (2) (b) (i) of the principal Act is amended by deleting “issue” and substituting the following —

“ registration ”.

**Section 168 amended**

**101.** Section 168 of the principal Act is amended —

(a) by deleting “issued” and substituting the following —

“ created and registered ”; and

(b) by deleting “twenty-five and forty-eight and the Fifth Schedule of this Act” and substituting the following —

“ 25 and 48A (1) ”.

**Section 170 amended**

**102.** Section 170 of the principal Act is amended by deleting “issued” and substituting the following —

“ was registered ”.

**Section 171 amended**

**103.** Section 171 of the principal Act is amended by inserting after “duplicate” the following —

“ (if any) ”.

**Section 174 amended**

**104.** Section 174 of the principal Act is amended —

(a) by deleting “issue” and substituting the following —

“ be registered ”; and

(b) by deleting “Office of Titles” and substituting the following —

“ Department’s office ”.

**Section 175 amended**

**105.** Section 175 of the principal Act is amended by deleting “Office of Titles together with any plan deposited as hereinbefore mentioned and shall send through the post office a registered letter marked outside “Office of Titles” to” and substituting the following —

“  
Department’s office together with any plan referred to  
in section 174 and shall serve  
”.

**Section 177 amended**

**106.** Section 177 of the principal Act is amended by deleting “issued” and substituting the following —

“ created and registered ”.

**Section 178 amended**

**107.** Section 178 of the principal Act is amended —

(a) by deleting “duplicate certificate” and substituting the following —

“ duplicate certificate (if any) ”;

(b) by deleting “in or brought to the office” and substituting the following —

“ with or brought to the Department ”; and

(c) by deleting “duplicate shall” and substituting the following —

“ duplicate (if any) shall ”.

**Section 179 amended**

**108.** Section 179 of the principal Act is amended —

(a) by deleting “being brought in to the Office of Titles” and substituting the following —

“ (if any) being brought to the Department ”; and

(b) by deleting “new certificate” and substituting the following —

“ new duplicate certificate ”.

**Section 181 amended**

**109.** Section 181 (1) of the principal Act is amended —

(a) by deleting paragraph (b) and substituting the following paragraphs —

“  
(b) the type and quality of medium or media in or on which applications, instruments, plans and diagrams and other documents to be presented for lodgment with the Department or registration or entry in the Register shall be presented;

(ba) the manner or manners in which applications, instruments, plans and diagrams and other documents to be presented for lodgment with the Department or registration or entry in the Register may be presented;

(bb) the manner of, and the evidence required to prove, the execution or attestation of applications, instruments, plans and diagrams and other documents to be presented in an electronic medium for lodgment with the Department or registration or entry in the Register;

”;

and

(b) in paragraph (c), by deleting “by the Registrar and the contributions payable to the Assurance Fund” and substituting the following —

“  
for the purposes of this Act including the indemnity of any amount payable out of the Consolidated Fund under Part XII that is not recovered under Part XI

”.

**Section 184 amended**

**110.** Section 184 of the principal Act is amended by deleting “issued” and substituting the following —

“ registered ”.

**Section 187 amended**

**111.** Section 187 (1) of the principal Act is amended by deleting “Book,”.

**Section 188 amended**

**112.** (1) Section 188 (iii) of the principal Act is amended by deleting “any instrument” and substituting the following —

“ any plan, diagram or instrument ”.

(2) Section 188 (iv) of the principal Act is amended by deleting “at the Office of Titles” and substituting the following —

“ in the Department ”.

**Section 189 amended**

**113.** Section 189 of the principal Act is amended by deleting “office” and substituting the following —

“ Department ”.

**Section 190 amended**

**114.** Section 190 of the principal Act is amended by deleting “(except sums received as contributions to the assurance fund or in augmentation thereof)”.

**Part XI amended**

**115.** Part XI of the principal Act is amended by deleting the heading “PART XI. — ASSURANCE FUND.” and substituting the following heading —

“  
**PART XI — RESTRICTIONS ON, AND  
RECOVERY OF, PAYMENTS OF  
COMPENSATION BY STATE**”

**Section 194 repealed**

**116.** Section 194 of the principal Act is repealed.

**Section 195 amended**

**117.** Section 195 of the principal Act is amended —

- (a) by deleting “out of the assurance fund on account of any person who may be dead such amount may be recovered” and substituting the following —

“  
by the State under section 201 on account  
of any deceased person such amount may  
be recovered by the State”

- (b) by deleting “out of the assurance fund and delivered to the trustee shall be sufficient proof of such debt; and whenever any amount has been paid out of the assurance fund” and substituting the following —

“  
and delivered to the trustee shall be  
sufficient proof of such debt; and whenever  
any amount has been paid by the State  
under section 201”



- (c) by deleting “Registrar as nominal defendant to allow the Registrar to sign judgment against such person forthwith for the amount so paid out of the assurance fund” and substituting the following —

“  
State with the Registrar as nominal  
defendant to allow the State to have  
judgment against such person forthwith for  
the amount so paid  
”;

and

- (d) by deleting “it shall be lawful for the Registrar to” and substituting the following —

“  
the State may, in the name of the  
Registrar,  
”.

**Section 196 amended**

**118.** Section 196 of the principal Act is amended —

- (a) by deleting “assurance fund shall” and substituting the following —

“ State shall ”;

- (b) by deleting “issue to any registered proprietor of a new certificate of title” and substituting the following —

“  
registration of a new certificate of title in  
the name of any registered proprietor  
”;

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- (c) by deleting “assurance fund be” and substituting the following —

“ State be ”; and

- (d) by deleting “out of the assurance fund on account of any person who may have absconded may be recovered from such person by action in the name of the Registrar at any time thereafter if such person shall be found within the jurisdiction of the Supreme Court. Provided also that the said fund” and substituting the following —

“ by the State under section 201 on account of any person who may have absconded may be recovered by the State from such person by action in the name of the Registrar at any time thereafter if such person shall be found within the jurisdiction of the Supreme Court. Provided also that the State ”.

**Section 197 repealed**

**119.** Section 197 of the principal Act is repealed.

**Section 201 amended**

**120.** Section 201 of the principal Act is amended by deleting “out of the assurance fund by action against the Registrar as nominal defendant” and substituting the following —

“ from the State by action against the Registrar as nominal defendant; and all damages and costs to be paid by the State under this section shall be charged to the Consolidated Fund and this section appropriates the Consolidated Fund accordingly ”.

**Section 203 amended**

**121.** Section 203 of the principal Act is amended by deleting “document issued” and substituting the following —

“ document created, registered or issued ”.

**Section 204 amended**

**122.** Section 204 of the principal Act is amended by deleting “paid out of the assurance fund” and substituting the following —

“  
charged to the Consolidated Fund and this section appropriates the Consolidated Fund accordingly  
”.

**Section 205 amended**

**123.** Section 205 of the principal Act is amended by inserting after “against the” the following —

“ State with the ”.

**Section 206 amended**

**124.** Section 206 of the principal Act is amended —

(a) by deleting “issue” and substituting the following —

“ registration ”; and

(b) by deleting “Registrar as nominal defendant for recovery of damages and may recover the damages

awarded together with the costs of the action out of the assurance fund” and substituting the following —

“  
State with the Registrar as nominal  
defendant for recovery of damages  
”.

**Section 207 amended**

**125.** Section 207 of the principal Act is amended —

- (a) by deleting “Registrar as nominal defendant for recovery of damages and may recover the damages awarded together with the costs of the action out of the assurance fund” and substituting the following —

“  
State with the Registrar as nominal  
defendant for recovery of damages  
”;

and

- (b) by deleting “and all damages and costs recovered against the Registrar in such action whether by the plaintiff or a co-defendant may be recovered out of the assurance fund”.

**Section 208 amended**

**126.** Section 208 of the principal Act is amended —

- (a) by inserting after “against the” the following —

“ State with the ”; and

- (b) by deleting “out of the assurance fund” and substituting the following —

“  
and such amount shall be charged to the Consolidated Fund and paid to the claimant and this section appropriates the Consolidated Fund accordingly  
”.

**Section 209 amended**

**127.** Section 209 of the principal Act is amended —

- (a) by inserting after “against the” the following —

“ State with the ”; and

- (b) by inserting after “recovered” the following —

“ by the State ”.

**Section 210 repealed and a section substituted**

**128.** Section 210 of the principal Act is repealed and the following section is substituted —

“

**Payment of damages etc. from Consolidated Fund**

**210.** If, in an action under section 205, 206 or 207 for the recovery of damages against the State with the Registrar as nominal defendant, the plaintiff or a co-defendant obtains final judgment against the State

then the judge before whom the action was tried or the Supreme Court shall certify —

- (a) the fact of such judgment; and
- (b) the amount of damages and costs ordered to be paid,

and the amount of such damages and costs shall be paid to the person who obtained the judgment and shall be charged to the Consolidated Fund and this section appropriates the Consolidated Fund accordingly.

”.

#### **Section 211 amended**

**129.** Section 211 of the principal Act is amended by deleting “assurance fund” and substituting the following —

“ State ”.

#### **Section 214B amended**

**130.** Section 214B of the principal Act is amended by deleting “is liable to a maximum pecuniary penalty of two hundred dollars (\$200) or a maximum term of imprisonment for twelve months” and substituting the following —

“  
for which no other penalty is provided is liable to a fine of \$10 000 or to imprisonment for 2 years  
”.

**Section 219 amended**

**131.** Section 219 of the principal Act is amended by deleting “or title prior to his being entered in the register book” and substituting the following —

“ of title (if any) before being entered in the Register ”.

**Section 224 repealed**

**132.** Section 224 of the principal Act is repealed.

**Section 225 repealed**

**133.** Section 225 of the principal Act is repealed.

**Section 229A amended**

**134.** (1) Section 229A (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) The Commissioner shall not make an order under subsection (2) until 21 days after the Registrar has served —

(a) each person appearing from the Register to have an estate or interest in the land to which the easement is appurtenant; and

(b) each person named by the Commissioner,

with notice of the application.

”.

(2) Section 229A (5) and (6) of the principal Act are repealed and the following subsection is substituted —

“  
(5) This section does not apply to any easement created under Part IVA.  
”.

**Section 229B amended**

**135.** Section 229B (1) of the principal Act is amended —

(a) by inserting after “duplicate certificate” the following —

“ (if any) ”; and

(b) by deleting “in the Office of Titles” and substituting the following —

“ with the Department ”.

**Section 230 amended**

**136.** Section 230 of the principal Act is amended by deleting “issue” and substituting the following —

“ direct the Registrar to create and register ”.

**Section 231 amended**

**137.** Section 231 of the principal Act is amended by deleting “issue” and substituting the following —

“ direct the Registrar to create and register ”.



**Section 232 amended**

**138.** Section 232 of the principal Act is amended —

- (a) by deleting “an acknowledgment of the same having been lodged” and substituting the following —  
“ a receipt in an approved form ”;
- (b) by deleting “Provided always that to obtain such acknowledgment the person lodging such documents shall fill in duplicate lists of the same upon printed forms supplied by the Office of Titles one of which signed by such person shall be retained by the office and the other with the seal of the Office of Titles attached and bearing the initials of the officer attaching the same shall constitute the acknowledgment so to be given.”; and
- (c) by deleting “also”.

**Section 234 amended**

**139.** Section 234 of the principal Act is amended by deleting “on the register book upon the folium containing the registration of” and substituting the following —

“ in the Register on the certificate of title for ”.

**Section 239 repealed and a section substituted**

**140.** Section 239 of the principal Act is repealed and the following section is substituted —

“  
**Inspection and obtaining copies of the Register and related documents**

**239.** (1) Any person, on payment of the prescribed fee, may inspect, from Mondays to

Fridays during such times as are prescribed by regulation —

- (a) any registered certificate of title and any plan or diagram relating to land that is the subject of a certificate of title, including a strata/survey-strata plan;
- (b) any registered Crown lease or Crown grant;
- (c) any registered instrument;
- (d) any caveat, power of attorney or discharge of mortgage lodged or deposited under this Act;
- (e) any application made under this Act; and
- (f) any memorandum filed under section 54.

(2) The Registrar, on receiving payment of the prescribed fee for a certified copy, shall furnish to any person applying for the same a copy, in an approved form that has been certified and sealed by the Registrar, of any certificate of title, Crown grant or lease, plan or diagram, strata/survey-strata plan, registered instrument, caveat, power of attorney, or memorandum filed under section 54 affecting land under the operation of this Act; and every such copy shall be received in evidence in any court of justice or before any person having by law or by consent of parties authority to receive evidence as *prima facie* proof of the original certificate, Crown grant or lease, plan or diagram, strata/survey-strata plan, instrument, caveat, power of attorney or memorandum and of all matters contained or recited or incorporated in or endorsed on the document respectively.

(3) Where a person applies to inspect any part of the Register or any document to which subsection (1) applies, the Registrar may produce to that person a copy of the relevant part of the Register or a copy of the document which the person wishes to inspect and the copy may be in such medium as is approved by the Registrar for the purposes of this subsection.

”.

**Section 239A inserted**

**141.** The principal Act is amended by inserting after section 239 the following section —

“

**Provision of land-related information**

**239A.** (1) The Registrar may provide a person with, or allow a person to have access to, information that has been derived from records and dealings in relation to land under the operation of this Act —

- (a) on such terms and conditions as the Registrar thinks fit; and
- (b) on payment of the prescribed fee for the provision of, or access to, the information.

(2) A person must not contravene, or fail to comply with, any term or condition applying —

- (a) to the provision of information under subsection (1) to that person; or
- (b) to that person’s access to information under subsection (1).

Penalty: \$10 000 or imprisonment for 2 years.

(3) This section does not apply to the provision of, or access to —

- (a) any document which can be inspected under section 239 (1);
- (b) any document a copy of which can be obtained under section 239 (2); or
- (c) any information which can be obtained under section 146.

”.

### **Section 240 repealed and a section substituted**

**142.** Section 240 of the principal Act is repealed and the following section is substituted —

“

#### **Service of notices**

**240.** (1) For the purposes of this Act, service of a notice on a person may be effected —

- (a) by delivering the notice to the person personally;
- (b) by sending the notice by letter (by pre-paid post) to the person’s address; or
- (c) where a person has specified in a caveat or in an approved form that notices under this Act may be served on him by facsimile transmission to the number of the person’s facsimile machine, by facsimile transmission to such number.

(2) For the purposes of subsection (1) (b), **“address”** in relation to a person means —

- (a) the address specified by the person in a caveat or in an approved form as the address to which notices to that person are to be sent;
- (b) if an address has not been specified under paragraph (a), the address entered in the Register as the person’s address;
- (c) in the case of a natural person where an address has not been specified under paragraph (a) or entered in the Register, the person’s last known address;
- (d) in the case of a person other than a natural person where an address has not been specified under paragraph (a) or entered in the Register, any of the following —
  - (i) the person’s registered office (if any) within the meaning of the Corporations Law, the person’s principal place of business or the person’s principal office in the State; or
  - (ii) the address of the office of any administrator, manager, receiver or liquidator appointed under the Corporations Law in relation to the person if that address is the most recent address lodged with the Australian Securities Commission for the administrator, manager, receiver or liquidator.

(3) Unless the contrary is proved, in relation to service by or on behalf of the Registrar or the Commissioner —

- (a) service by letter shall be deemed to be effected at the time when the letter would have been delivered in the ordinary course of post; and
- (b) service by facsimile transmission shall be deemed to be effected at the time when a facsimile machine at the office of the Department prints a statement showing that —
  - (i) the transmission has been made to another facsimile machine; and
  - (ii) the other machine has received the transmission.

(4) For the purposes of subsection (3) (a), a letter shall be deemed to be delivered in the ordinary course of post —

- (a) to an address in the metropolitan region, on the next business day after the letter is posted;
- (b) to an address outside the metropolitan region but in the State, on the second business day after the letter is posted;
- (c) to an address outside the State but in Australia, on the third business day after posting; or
- (d) to an address outside Australia, on the fourteenth business day after posting.

(5) Where the Commissioner or Registrar attempts to serve a notice by sending it in a letter but the letter is returned by the post office because the letter is unable, for any reason, to be delivered to the person to whom it is addressed, the Commissioner or Registrar, as the case requires, may if he thinks fit in the circumstances and having regard to the provisions of this Act —

- (a) direct any further notice to be served;
- (b) direct that the notice be served in such other manner as the Commissioner or Registrar, as the case requires, thinks is appropriate; or
- (c) proceed without the notice being served.

”.

**Sections 240A and 241 inserted**

**143.** The principal Act is amended by inserting after section 240 the following sections —

“

**Notification of change of address etc.**

**240A.** A person who wishes to —

- (a) change the record of an address for service or a facsimile number for service that has been specified in an approved form for the purposes of section 240 or in a caveat; or
- (b) notify the Registrar of any change to an address recorded in the Register in respect of that person,

shall apply in an approved form and pay the prescribed fee and the Registrar, if satisfied that it

**s. 144**

would be in order to do so, shall alter accordingly the record of the address or facsimile number.

***Interpretation Act 1984 to apply to fees under this Act***

**241.** Section 45 (1) and (2) of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act notwithstanding sections 3 (3) and 45 (3) of that Act.

”.

**Section 243 amended**

**144.** Section 243 of the principal Act is amended by deleting “in his office by the Minister for Lands, cancel the Certificate of Title of the lands mentioned in such proclamation, and call in and cancel the duplicate of such Certificate, and the lands the subject of such Certificate” and substituting the following —

“

with the Department by the Minister for Lands, cancel the certificate of title of the lands mentioned in such proclamation, and call in and cancel the duplicate (if any) of such certificate, and the lands the subject of such certificate

”.

**Various provisions amended in relation to “Register”**

**145.** (1) The principal Act is amended by deleting “Register Book” or “register book”, as the case may be, in each place where it occurs in the provisions referred to in the Table to this subsection and substituting in each case the following —

“ Register ”.



Table

s. 4 (definition of “Proprietor”)	s. 116	s. 182 (1) (twice)
s. 56	s. 122	s. 185
s. 63	s. 123	s. 188 (ii) (twice)
s. 72	s. 125	s. 200
s. 74	s. 126 (1)	s. 201
s. 85 (twice)	s. 126 (2)	s. 205
s. 90	s. 129C (5)	s. 214 (twice)
s. 96	s. 129C (7)	s. 220
s. 97 (twice)	s. 133 (1) (3 times)	s. 223
s. 98 (twice)	s. 134	s. 226 (3 times)
s. 100	s. 138	s. 242 (1) (b)
s. 102	s. 139 (1)	s. 242 (3)
s. 104	s. 141A (1)	
	s. 178	

(2) The principal Act is amended by deleting “the register” in each place where it occurs in the provisions referred to in the Table to this subsection and substituting in each place the following —

“ the Register ”.

Table

s. 129C (3) (c)	Twenty-fourth Schedule (clause 1 under the heading “ <i>Application to rectify Register</i> ”).
s. 133 (1) (second paragraph)	
s. 147	
s. 174	
s. 177	
s. 178	

**Various provisions amended in relation to “addition”**

**146.** (1) The principal Act is amended by deleting “addition” in each place where it occurs in the provisions referred to in the Table to this section and substituting in each case the following —

“ address ”.

Table

s. 47	s. 182 (1)
s. 137	s. 226

(2) The principal Act is amended by deleting “*addition*” in each place where it occurs in the provisions referred to in the Table to this section and substituting in each case the following —

“ *address* ”.

Table

Fourth Schedule (twice)  
Eighth Schedule  
Twenty-Fifth Schedule (twice)

(3) The Second Schedule to the principal Act is amended —

(a) in the introductory clause by deleting “*addition*” and substituting the following —

“ *address* ”; and

(b) in clause 5 by deleting “*and addition*”.

**Third Schedule amended**

**147.** The Third Schedule to the principal Act is amended by deleting “Office of Titles” and substituting the following —

“ Department ”.

**Ninth Schedule amended**

**148.** The Ninth Schedule to the principal Act is amended —

(a) by deleting, in both places where it occurs “horses or other animals carts or other carriages” and substituting in each case the following —

“ animals or vehicles ”; and

- (b) by deleting, in both places where it occurs, “coloured brown” and substituting in each case the following —

“ indicated by a symbol ”.

**Schedule 9A inserted**

**149.** The principal Act is amended by inserting after the Ninth Schedule the following Schedule —

“

**SCHEDULE 9A — SHORT AND LONG FORMS OF CERTAIN EASEMENTS**

[Section 65 (3)]

<b>Column 1</b>	<b>Column 2</b>
<b>Short form description of easement</b>	<b>Long form description of easement</b>
an easement for a right of footway	the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person’s employees, agents and visitors, at any time, to go, pass and repass on foot for any purpose, without vehicles, to and from the dominant tenement or any such part of it by the way delineated in this plan /diagram /instrument
an easement for water supply purposes	the right of every person, who for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant

tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to break the surface of, dig, open up and use that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining pipes and of using and maintaining those pipes for water supply purposes and to enter that land at any time (if necessary with vehicles and equipment) for any of those purposes

an easement  
for drainage  
purposes

the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to break the surface of, dig, open up and use that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining drains or drainage pipes and of using and maintaining those drains and drainage pipes for drainage purposes and to enter that land at any time (if necessary with vehicles and equipment) for any of those purposes

an easement  
for gas supply  
purposes

the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to break the surface of, dig, open up and use that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining pipes and of using and maintaining those pipes for the purpose of supplying gas and to enter that 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 of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time —

- (a) to suspend cables across that part of the land within the servient tenement (described for that purpose in this plan /diagram /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 the purposes referred to in paragraph (a), (b) or (c); and
- (e) to enter the land at any time (if necessary with vehicles and equipment) for any of the purposes referred to in paragraph (a), (b), (c) or (d)

an easement for the transmission of electricity by underground cable

the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and for the person's employees and agents, at any time —

- (a) to lay under the surface of that part of the land within the servient tenement (described for that purpose in this plan /diagram /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 the purposes referred to in paragraph (a), (b) or (c); and
- (e) to enter the land at any time (if necessary with vehicles and equipment) for any of the purposes referred to in paragraph (a), (b), (c) or (d)

an easement for the transmission of television signals by underground cable

the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time —

- (a) to lay under the surface of that part of the land within the servient tenement (described for that purpose in this plan /diagram /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 the purposes referred to in paragraph (a), (b) or (c); and
- (e) to enter the land at any time (if necessary with vehicles and equipment) for any of the purposes referred to in paragraph (a), (b), (c) or (d)

party wall rights

the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment to use a party wall within or bordering the servient tenement (described for that purpose in this plan /diagram /instrument) for the support of the walls, floors, ceilings, roofs or other parts of any building built or placed on the dominant tenement

an easement for eaves and gutters

the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to construct, inspect, alter, maintain, repair, replace and use eaves, gutters and downpipes over that part of the land within the servient tenement (described for that



purpose in this plan /diagram /instrument) and to enter that land at any time for those purposes

an easement for sewerage purposes

the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to break the surface of, dig, open up and use that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining pipes and of using and maintaining those pipes for sewerage purposes and to enter that land at any time (if necessary with vehicles and equipment) for any of those purposes

an easement for motor vehicle parking

the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees, agents and visitors, at any time, to park motor vehicles for the periods and for the times specified in this plan /diagram /instrument

”.

**s. 150**

**Twenty-fifth Schedule amended**

**150.** The principal Act is amended in the Twenty-fifth Schedule by deleting “the office of Titles Perth” and substituting the following —

“ [insert details of place for appearance] ”.

**Various Schedules repealed**

**151.** The principal Act is amended by repealing the Schedules referred to in the Table to this section.

Table

Fifth Schedule	Seventeenth Schedule
Sixth Schedule	Eighteenth Schedule
Seventh Schedule	Twentieth Schedule
Eleventh Schedule	Twenty-first Schedule
Thirteenth Schedule	Twenty-second Schedule
Fourteenth Schedule	Twenty-third Schedule
Fifteenth Schedule	

**Savings and transitional in relation to the assurance fund**

**152.** (1) In this section —

“**commencement**” means the day on which section 1 of this Act comes into operation.

(2) The account called the “assurance fund” immediately before commencement is to be closed on commencement and the money that is in the account at the time when the account is being closed is to be credited to the Consolidated Fund.

(3) Subsection (2) does not affect or prejudice the application of the *Interpretation Act 1984* but a right, obligation or liability of, or in respect of, the assurance fund subsisting immediately

before commencement becomes, on commencement, a right, obligation or liability of, or in respect of, the State in accordance with Part XI or XII of the principal Act, as the case requires.

**Consequential amendments to other Acts**

**153.** (1) The Acts in column 1 of Schedule 1 are amended in the provisions opposite them in column 2 of that Schedule in the manner set out in column 2.

(2) The Acts in column 1 of Schedule 2 are amended in the provisions opposite them in column 2 of that Schedule by deleting “Office of Titles” and substituting the following —

“

Department within the meaning of the *Transfer of Land Act 1893*

”.

(3) The Acts in column 1 of Schedule 3 are amended in the provisions opposite them in column 2 of that Schedule by deleting “Land Titles Office” and substituting the following —

“

Department within the meaning of the *Transfer of Land Act 1893*

”.

**SCHEDULE 1**

[Section 153 (1)]

**CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

<b>Column 1</b> <b>Act amended</b>	<b>Column 2</b> <b>Provision and amendment</b>
<i>Administration Act 1903</i>	Section 19 (3) is amended by deleting “issued to him” and substituting the following —  “ created and registered in the allottee’s name ”.  Section 19 (4) is amended by deleting “issue” and substituting the following —  “ be created and registered ”.
<i>Agriculture and Related Resources Protection Act 1976</i>	Section 94 (1) (b) (i) is amended by deleting “any registry book kept” and substituting the following —  “ the Register ”.
<i>Argentine Ant Act 1968</i>	Section 15 (1) (b) (ii) is amended by deleting “Book kept”.
<i>Australia and New Zealand Banking Group Limited (NMRB) Act 1991</i>	Section 26 is amended by deleting “Book”.
<i>Australia and New Zealand Banking Group Limited (Town and Country) Act 1995</i>	Section 20 is amended by deleting “Book”.
<i>Bush Fires Act 1954</i>	Section 66 (1) (b) (ii) is amended by deleting “Book kept”.

*City of Perth  
Parking  
Facilities  
Act 1956*

Section 11B is amended in subsections (3), (4) and (8) by deleting in each case “register book” and substituting in each case the following —

“ Register ”.

*Country Areas  
Water Supply  
Act 1947*

Section 90 (1) (a) is amended by deleting “on the person registered as the proprietor in fee simple thereof by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the register book” and substituting the following —

“ , in accordance with that Act, on the person who is the proprietor of the land for the purposes of that Act ”.

Section 90 (1) (c) is amended by —

- (a) deleting “register book kept at the Land Titles Office” and substituting the following —

“ Register within the meaning of the *Transfer of Land Act 1893* ”;

and

- (b) deleting “register book or” and substituting the following —

“ Register or ”.

Section 90 (2) is amended by deleting “register book” and substituting the following —

“ Register ”.

Section 97 (3) is amended by inserting before “certificate” in both places where it occurs the following —

“ duplicate ”.

Sections 97 (4) and 102 (5) (b) are amended by deleting in each case “or the assurance fund established under the Transfer of Land Act 1893-1946”.

Section 102 (3) is amended by deleting “register book or other book of the Office of Titles or” and substituting the following —

“ Register within the meaning of the *Transfer of Land Act 1893* or the Book of Registry of ”.

Section 120 (1) (b) (i) is amended by deleting “any registered book kept” and substituting the following —

“ the Register ”.

*Country Towns  
Sewerage  
Act 1948*

Section 84 (1) (a) is amended by deleting “on the person registered as the proprietor in fee simple thereof by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the register book” and substituting the following —

“ , in accordance with that Act, on the person who is the proprietor of the land for the purposes of that Act ”.

Section 84 (1) (c) is deleted and the following paragraph is substituted —

“ (c) served on every person appearing by the Register within the meaning of the *Transfer of Land Act 1893* or by any memorial in the Office of the Registrar of Deeds to have any estate or interest in the land by being served in accordance with the *Transfer of Land Act 1893* or by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the memorial, as the case requires; ”.

Section 84 (2) is amended by deleting “register book” and substituting the following —

“ Register ”.

Section 91 (3) is amended by inserting before “certificate” in both places where it occurs the following —

“ duplicate ”.

Sections 91 (4) and 96 (5) (b) are amended by deleting in each case “or the assurance fund established under the Transfer of Land Act 1893-1946”.

Section 96 (3) is amended by deleting “register book or other book of the Office of Titles or” and substituting the following —

“ Register within the meaning of the *Transfer of Land Act 1893* or the Book of Registry of ”.

Section 118 (1) (b) (i) is amended by deleting “any register book kept” and substituting the following —

“ the Register ”.

*Dog Act 1976*

Section 3 (1) is amended in the definition of “townsite” in paragraph (b) by deleting “registered in the Office of Titles or the Department of Land Administration” and substituting the following —

“ lodged with the Department within the meaning of the *Transfer of Land Act 1893* or the Department within the meaning of the *Land Act 1933*; ”.

*Environmental Protection Act 1986*

Section 66 is amended in subsections (2) and (4) by deleting in each case “Book”.

*Escheat (Procedure) Act 1940*

Section 10 (2) is amended by inserting before “certificate” in both places where it occurs the following —

“ duplicate ”.

*Friendly Societies Act 1894*

Subsections (5) and (7) of section 15 and section 26 (8) are amended by deleting in each case “register book” and substituting in each case the following —

“ Register within the meaning of that Act ”.

*Health Act 1911* Section 356 (1) (b) is amended by deleting “any register book kept” and substituting the following —

“ the Register ”.

*Housing Act 1980* Section 24 (2) is amended by deleting “at the Office of Titles under the Transfer of Land Act 1893” and substituting the following —

“ under the *Transfer of Land Act 1893* with the Department within the meaning of that Act ”.

*Land Act 1933* Section 114 (2) is amended in paragraphs (b) and (c) by deleting in each case “register book” and substituting in each case the following —

“ relevant register under the *Transfer of Land Act 1893* ”.

Section 118F (3) is amended by deleting “issued under” and substituting the following —

“ registered under ”.

Section 118F (4) is amended by deleting “issue” and substituting the following —

“ create and register ”.

Section 149 is amended by deleting “on the folium of the Registrar Book” and substituting the following —

“ in the relevant register under the *Transfer of Land Act 1893* ”.

Section 149A (4) is amended by deleting “on the relevant folium of the register book” and substituting the following —

“ in the relevant register under the *Transfer of Land Act 1893* ”.

Section 149B (5) is amended by deleting “against the Registrar of Titles as nominal defendant for



payment out of the assurance fund referred to in that Act” and substituting the following —

“ under that Act against the State with the Registrar of Titles as nominal defendant ”.

*Land Tax Assessment Act 1976*

Section 5 (1) is amended in the definition of “lot” —

(a) by inserting after “issued” where it first occurs the following —

“ , registered ”; and

(b) in paragraph (b) by deleting “issued” and substituting the following —

“ registered ”.

Section 15A (1) (b) (ii) is amended by deleting “issue” and substituting the following —

“ creation and registration ”.

Section 51 (d) is amended —

(a) by inserting before “certificate” in the first 2 places where it occurs the following —

“ duplicate ”; and

(b) by deleting “the purchaser shall be entitled to receive a certificate of title to the land purchased” and substituting the following —

“ a new certificate of title for such land shall be created and registered ”.

*Local Courts Act 1904*

Section 125 is amended —

(a) by deleting “Section one hundred and thirty-three” and substituting the following —

“ Subsections (1) and (2) of section 133 ”;

and

(b) by deleting “that section” and substituting the following —

“ those subsections ”.

*Local  
Government  
Act 1995*

Section 6.72 is amended by deleting “assurance fund established” and substituting the following —

“ State with the Registrar as the nominal defendant ”.

Schedule 6.2 clause 1 (2) (b) is amended by deleting “at the direction of the Commissioner of Titles, may dispense with the production of the certificate of title but the Land Titles Office may cause such orders to be made and such advertisements to be published as are provided for by that Act in the case of dealing with land the” and substituting the following —

“ with the consent of the Commissioner of Titles, may dispense with the production of the duplicate certificate of title (if any) but the Registrar may cause such orders to be made and such advertisements to be published as are provided for by that Act in the case of dealing with land the duplicate ”.

Schedule 6.3 clause 1 (1) (a) is amended by deleting “the register book, memorial, or record” and substituting the following —

“ a register kept under the *Transfer of Land Act 1893* or in a memorial or record kept by the Registrar of Deeds ”.

Schedule 6.3 clause 1 (3) is amended by deleting “the register book, memorial, or record” and substituting the following —

“ a register kept under the *Transfer of Land Act 1893* or in a memorial or record kept by the Registrar of Deeds ”.

Schedule 6.3 clause 4 (3) is amended by deleting “at the direction of the Commissioner of Titles may dispense with the production of the certificate of title but the Land Titles Office may cause such orders to be made and such advertisements to be published as are provided for by that Act in the

case of dealing with land the” and substituting the following —

“ with the consent of the Commissioner of Titles, may dispense with the production of the duplicate certificate of title (if any) but the Registrar may cause such orders to be made and such advertisements to be published as are provided for by that Act in the case of dealing with land the duplicate ”.

Schedule 6.3 clause 8 (2) is amended by deleting “may dispense with the production of the certificate of title but the Registrar may make such orders and publish such advertisements as are provided for by that Act in the case of dealings with land when the certificate of title” and substituting the following —

“ , with the consent of the Commissioner of Titles, may dispense with the production of the duplicate certificate of title (if any) but the Registrar may cause such orders to be made and such advertisements to be published as are provided for by that Act in the case of dealing with land the duplicate certificate of title of which ”.

*Local Government (Miscellaneous Provisions) Act 1960*

Section 297A (8) (a) is amended by deleting “Certificate of Title” in the second and third places where it occurs and substituting in each case the following —

“ duplicate Certificate of Title (if any) ”.

*Metropolitan Region Town Planning Scheme Act 1959*

Section 36 (8) is amended by deleting “Book” and substituting the following —

“ within the meaning of the *Transfer of Land Act 1893* ”.

*Metropolitan Water Supply, Sewerage, and Drainage Act 1909*

Section 114 (8) is amended by inserting before “certificate” the following —

“ duplicate ”.

Section 124 is amended by inserting before “certificate” in both places where it occurs the following —

“ duplicate ”.

Section 165 (2) (a) is amended by deleting “any register book kept” and substituting the following —

“ the Register ”.

*Plant Diseases Act 1914*

Section 38 (1) (b) (ii) is amended by deleting “any registry book kept” and substituting the following —

“ the Register ”.

*Port Kennedy Development Agreement Act 1992*

Section 10 (1) is amended by deleting “on the register book” and substituting the following —

“ in the Register within the meaning of the *Transfer of Land Act 1893* ”.

Section 10 (2) is amended by deleting “register book” and substituting the following —

“ Register ”.

*Property Law Act 1969*

Section 53 (2) is amended by deleting “register book” and substituting the following —

“ Register within the meaning of that Act ”.

*Public Works Act 1902*

Section 23 (3) is amended by inserting before “certificate” the following —

“ duplicate ”.

Section 23 (4) (a) is amended by deleting “issue” and substituting the following —

“ create and register ”.

Section 33B is amended by deleting “issue” and substituting the following —

“ be created or registered ”.

*Real Property  
(Commonwealth  
Titles) Act 1925*

Section 4 (iv) is amended —

- (a) by deleting “issuing” and substituting the following —  
“ creating and registering ”; and
- (b) by deleting the colon and substituting a full stop.

Section 4 (v) is deleted.

Section 7 is amended by deleting “Book” and substituting the following —

“ within the meaning of the *Transfer of Land Act 1893* ”.

*Redemption of  
Annuities  
Act 1909*

Section 3 (3) is amended by deleting “register book” and substituting the following —

“ Register within the meaning of the *Transfer of Land Act 1893* ”.

*Resumption  
Variation  
(Boulder  
-Kambalda  
Road) Act 1973*

Section 4 is amended by deleting “Book kept”.

*Retirement  
Villages  
Act 1992*

Section 15 is amended in subsections (7) and (8) by deleting “Book” in each case and substituting the following —

“ within the meaning of that Act ”.

*Rights in Water  
and Irrigation  
Act 1914*

Section 79 (2) (b) is amended by deleting “any register book kept” and substituting the following —

“ the Register ”.

*Roman Catholic  
Church Property  
Act 1911*

Section 12 is amended by deleting “Book kept”.

**Sch. 1***Sale of Land  
Act 1970*

Section 7 (1) is amended by deleting “Book referred to in section 48 of” and substituting the following —

“ within the meaning of ”.

Section 13 (2) is amended by deleting “Office of Titles” and substituting the following —

“ Department within the meaning of that Act ”.

*Settlement  
Agents Act 1981*

Schedule 2 is amended in clause 1 (1) (a) by deleting “office of titles and searching for caveats lodged at that office” and substituting the following —

“ Department within the meaning of the *Transfer of Land Act 1893* and searching for caveats lodged with that Department ”.

Schedule 2 is amended in clause 1 (2) (e) (i) by deleting “issue” and substituting the following —

“ creation and registration ”.

*Soil and Land  
Conservation  
Act 1945*

Sections 30B (1), 30F (2), 34A (2) and (4) are amended by deleting in each case “Register Book or”.

Sections 36 (1) (a) and (c) and 36 (3) (a) and (c) are amended by deleting in each case “Book”.

*Stamp Act 1921*

Section 76AF (d) is amended by deleting “issued” and substituting the following —

“ created and registered ”.

*Strata Titles  
Act 1985*

Section 3 (1) in the definition of “person concerned” is amended by deleting “register book kept under the Transfer of Land Act 1893” and substituting the following —

“ Register ”.

Section 3 (1) is amended by inserting the following definition in its appropriate alphabetical position —

“ **“Register”** has the meaning given by the *Transfer of Land Act 1893*; ”.

Section 4 (3) is amended by deleting “register book kept under the Transfer of Land Act 1893” and substituting the following —

“ Register ”.

Section 4 (4) is amended by deleting “issue” and substituting the following —

“ create and register ”.

Section 4 (5) is amended by deleting “on folia of the register book constituting titles” and substituting the following —

“ in the Register in relation ”.

Section 10 (2) (c) is amended by deleting “folio of the Register Book comprising” and substituting the following —

“ Register in relation to ”.

Section 19 (8) (a) is deleted and the following paragraph is substituted —

“ (a) in the case of a transfer of common property under this section, register the transfer by creating and registering in the transferee’s name a certificate of title for the land transferred, and no notification of the transfer shall be otherwise made in the Register; ”.

Section 19 (9) is amended by deleting “issuing” and substituting the following —

“ creating and registering ”.

Section 30 (5) (a) is amended by inserting after “title” the following —

“ (if any) ”.

Section 30 (5) (b) is deleted and the following paragraph is substituted —

“ (b) the Registrar of Titles, after cancelling the certificates of title relating to the lots, shall create and register in the transferee’s name a new certificate of title for the land transferred. ”.

Section 129A (1) is amended in paragraphs (a) and (b) by deleting “register book” in each case and substituting the following —

“ Register ”.

Section 129A (4) is amended by deleting “register book” and substituting the following —

“Register ”.

*The Salvation  
Army (Western  
Australia)  
Property Trust  
Act 1931*

Section 22 is amended by deleting “book”.

*Town Planning  
and Development  
Act 1928*

Section 2 (1) is amended in the definition of “lot”, in paragraph (b), by deleting “issued” and substituting the following —

“ registered ”.

Section 20 (2) is amended by deleting “issue” and substituting the following —

“ create or register ”.

Section 20A is amended —

- (a) by deleting “the commencement of this section, the diagram or plan of subdivision of the land as so approved is received, registered or deposited in the Office of Titles or Registry of Deeds and is approved by the Inspector of Plans and Surveys or other officer appointed for the purpose, the Registrar of Titles or the Registrar of Deeds shall, in accordance with the condition, on the date of the last-



mentioned approval” and substituting the following —

“ section 98 of the *Transfer of Land Amendment Act 1995* comes into operation, the diagram or plan or subdivision of the land as so approved is received in the Department within the meaning of the *Transfer of Land Act 1893* or the Registry of Deeds and is approved for the purposes of the *Transfer of Land Act 1893*, the Registrar of Titles or the Registrar of Deeds shall, in accordance with the condition ”;

- (b) by inserting after the section designation “**20A.**” the subsection designation “(1)”; and
- (c) by inserting after subsection (1) the following subsection —

“ (2) The Registrar of Titles or the Registrar of Deeds shall ensure that land vested under subsection (1) is vested —

- (a) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and
- (b) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the plan or diagram have been registered under the

*Transfer of Land Act 1893.* ”.

Section 21 (2) is amended by deleting “issue” and substituting the following —

“ create and register ”.

Section 27A (1) is amended —

- (a) by deleting paragraph (a) and substituting the following paragraph —

“ (a) a plan or diagram of subdivision approved by the Commission after section 98 of the *Transfer of Land Amendment Act 1995* comes into operation is received at the Department within the meaning of the *Transfer of Land Act 1893* or the Registry of Deeds; ”;

- (b) by deleting “shall, on and from the date of the approval of the plan or diagram by the Inspector of Plans and Surveys be” and substituting the following —

“ becomes ”; and

- (c) by deleting “thereon” and substituting the following —

“ on the plan or diagram —

- (a) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and

- (b) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the plan or diagram have been registered under the *Transfer of Land Act 1893*. ”.

Section 28 (3) (b) is amended —

- (a) by deleting the full stop at the end of paragraph (b) (ii) and substituting a semicolon; and
- (b) by inserting after subparagraph (ii) the following subparagraph —

“ (iii) operate, in the case of a plan or diagram of subdivision deposited after section 98 of the *Transfer of Land Amendment Act 1995* comes into operation —

- (I) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and

- (II) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the plan or diagram have been registered under the *Transfer of Land Act 1893*. ”.

**Sch. 1**

*Valuation of  
Land Act 1978*

Section 4 (1) is amended in the definition of “unimproved value” in paragraph (b) (ii) (V) by deleting “issued” and substituting the following —

“ registered ”.

*Water Boards  
Act 1904*

Section 160 (2) (b) is amended by deleting “any register book kept” and substituting the following —

“ the Register ”.

## SCHEDULE 2

[Section 153 (2)]

**DELETION OF “OFFICE OF TITLES” AND SUBSTITUTION OF  
“DEPARTMENT WITHIN THE MEANING OF THE *TRANSFER  
OF LAND ACT 1893*”**

<b>Column 1 Act amended</b>	<b>Column 2 Provision amended</b>
<i>Agriculture and Related Resources Protection Act 1976</i>	s. 92 (4) (b)
<i>Anglican Church of Australia Lands Act 1914</i>	s. 5
<i>Country Areas Water Supply Act 1947</i>	s. 85 (1), s. 102 (4)
<i>Country Towns Sewerage Act 1948</i>	s. 96 (4)
<i>Friendly Societies Act 1894</i>	s. 33 (2)
<i>Health Act 1911</i>	s. 372, s. 375 (b)
<i>Land Act 1933</i>	s. 23 (3), s. 62 (2), s. 113 (7), s. 118F (1), s. 128 (3), s. 130 (3), s. 149, s. 149B (9), s. 149B (13)
<i>Land Drainage Act 1925</i>	s. 173 (1) (b) (ii)
<i>Land Tax Assessment Act 1976</i>	s. 5 (1) in the definition of “lot” (twice)
<i>Local Government Act 1960</i>	s. 295 (5), s. 297A (6) (c) and (f)
<i>Metropolitan Water Supply, Sewerage, and Drainage Act 1909</i>	s. 114 (1), s. 118 (2), Tenth Schedule
<i>Roman Catholic Church Property Act 1911</i>	s. 11
<i>Sale of Land Act 1970</i>	s. 13 (3) (twice)

<i>Settlement Agents Act 1981</i>	Schedule 2 clause 1 (1) (f) and (g), clause 1 (2) (g) (i)
<i>Stamp Act 1921</i>	s. 83 (7)
<i>Town Planning and Development Act 1928</i>	s. 2 (1) in the definition of "lot" (twice), s. 12A (2), s. 21 (1), s. 22 (3), s. 28 (1), s. 28 (2), s. 28 (3) (a)

## SCHEDULE 3

[Section 153 (3)]

**DELETION OF "LAND TITLES OFFICE" AND SUBSTITUTION  
OF "DEPARTMENT WITHIN THE MEANING OF THE  
TRANSFER OF LAND ACT 1893"**

<b>Column 1 Act amended</b>	<b>Column 2 Provision Amended</b>
<i>Builders' Registration Act 1939</i>	Schedule (5 times)
<i>City of Perth (Leederville Park Lands) Act 1950</i>	s. 2
<i>Land Tax Assessment Act 1976</i>	s. 5 (1) in the definition of "registered", s. 8
<i>Metropolitan Region Town Planning Scheme Act 1959</i>	Third Schedule (twice)
<i>Painters' Registration Act 1978</i>	Schedule (5 times)
<i>Valuation of Land Act 1978</i>	s. 9
<i>Western Australian Land Authority Act 1992</i>	Schedule 2 (3 times)