

Western Australia

Transfer of Land Amendment Act 2003

As at 25 Mar 2003

No. 6 of 2003

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Transfer of Land Amendment Act 2003

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Western Australia

Transfer of Land Amendment Act 2003

No. 6 of 2003

**An Act to amend the *Transfer of Land Act 1893* and to
consequentially amend the *Evidence Act 1906*.**

[Assented to 25 March 2003]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Transfer of Land Amendment Act 2003*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

The amendments in this Act, except in section 85, are to the *Transfer of Land Act 1893**.

[* *Reprinted as at 9 February 2001*
For subsequent amendments see Act No. 10 of 2001.]

4. Section 4 amended

Section 4(1) is amended as follows:

- (a) after the definition of “Department” by inserting the following definition —

“

“Digital title” means a certificate of title in a medium in which the data comprising the certificate is stored and retrieved by digital means.

”;

- (b) in the definition of “Endorsed” by deleting “the margin or at the foot of”;
- (c) after the definition of “Grantor” by inserting the following definition —

“

“Graphic” includes —

- (a) a sketch plan in the possession of the Registrar;
- (b) a plan or diagram lodged or deposited under this Act;

(c) a plan of survey of Crown land,
in such medium for the storage and retrieval of
information or combination of such media as the
Registrar approves.

”;

(d) in the definition of “Ministerial order” by inserting after
“means” —

“ an ”;

(e) after the definition of “Ministerial order” by inserting
the following definition —

“

“Paper title” means a certificate of title in a paper
medium.

”;

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

“

“Relevant graphic”, in relation to a certificate of title,
means a graphic endorsed on, annexed to, referred
to in or otherwise linked or connected to, the
certificate of title.

”.

5. Section 6 amended

(1) Section 6(1) is amended by deleting “a person to be” and
inserting instead —

“ one or more persons to be a ”.

(2) Section 6(3) is amended by deleting “the Deputy
Commissioner” and inserting instead —

“

a Deputy Commissioner nominated in writing by the
Commissioner

”.

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- (3) Section 6(4) is amended by deleting “The” and inserting instead —
“ A ”.
- (4) Section 6(5)(a) is amended by deleting “the Deputy” and inserting instead —
“ a Deputy ”.
- (5) Section 6(7) is amended by deleting “the” and inserting instead —
“ a ”.
- (6) Section 6(8) is amended by deleting “The” and inserting instead —
“ A ”.

6. Section 9 amended

- (1) Section 9 is amended as follows:
 - (a) by inserting before “All” the subsection designation “(1)”;
 - (b) by deleting “the Deputy Commissioner of Titles (hereinafter called the Deputy Commissioner)” and inserting instead —
“ any Deputy Commissioner ”.
- (2) At the end of section 9 the following subsection is inserted —
“
 - (2) Nothing in this section or section 10 limits the operation of section 55 or 56 of the *Evidence Act 1906*.”.

7. Section 10 amended

- (1) Section 10(2) is amended by inserting after “seal” —

“
 , other than copies or print-outs of documents provided
 under section 239(3),
”.

- (2) Section 10(3) is amended by deleting “all courts” and inserting instead —

“
 any court or person having by law or by consent of
 parties authority to receive evidence
”.

- (3) Section 10(5) is repealed.

8. Section 14 inserted

After section 13 the following section is inserted —

“

14. Digital signatures, entries etc. in parts of the Register or in graphics that are in digital medium

If the Registrar is required or authorised under this Act to write on, sign, note, mark, record, initial, make an entry or statement on or endorse any part of the Register or any graphic that is in a digital medium the Registrar may do so by digital means.

”.

9. Section 20 amended

Section 20 is amended by deleting “; nor a married woman unless her husband shall consent thereto and the application shall be acknowledged by her in the manner hereinafter mentioned as to the acknowledgment of instruments (except she shall be entitled to the land for her separate use or has a power to appoint the same)”.

10. Section 27 amended

Section 27 is amended as follows:

- (a) by inserting after “a certificate” —

“

or for the amendment or replacement of a relevant graphic

”;

- (b) by inserting after “certificate of title” —

“ or relevant graphic ”.

11. Section 28 amended

Section 28 is amended as follows:

- (a) by inserting after “amended certificate” —

“

or for the amendment or replacement of a relevant graphic

”;

- (b) by deleting “title of” and inserting instead —

“ title or relevant graphic of ”;

- (c) by deleting “title.” and inserting instead —

“

title and to amend or replace, if necessary, any relevant graphic.

”.

12. Section 29 amended

Section 29 is amended as follows:

- (a) by inserting after “title” —

“ or on any relevant graphic ”;

(b) by inserting after “amended certificate” —

“

or for the amendment or replacement of a relevant graphic

”;

(c) by deleting “of such allotment or portion.” and inserting instead —

“

of title and to amend or replace, if necessary, any relevant graphic.

”.

13. Section 48 amended

(1) Section 48(1) is repealed and the following subsection is inserted instead —

“

(1) The Registrar shall cause to be maintained for the purposes of this Act a Register comprising —

- (a) all registered certificates of title;
- (b) in relation to land that is the subject of a digital title, a record of the endorsements of the particulars of all dealings and matters referred to in section 48A(2) or 81P, as is relevant to the case, that used to affect, but do not currently affect, the land; and
- (c) in relation to land that is the subject of a paper title, a record of the entries of recovery of possession and of surrender made under section 102 in relation to a sublease of the land.

”.

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(2) After section 48(4) the following subsections are inserted —

“

- (5) If under subsection (3) a new record is prepared or a record is completed, the Registrar shall ensure the following are entered in the Register —
- (a) the date that the new record was prepared or the record was completed; and
 - (b) such information as will enable the history of the record to be traced.
- (6) The Registrar may at any time cause a record of information in the Register that is in one medium or a combination of media to be converted to another medium or combination of media with such advice to persons affected by the conversion as the Registrar considers appropriate.

”.

14. Section 48A amended

(1) Section 48A(1) is amended by deleting “Each” and inserting instead —

“ Subject to subsection (1a), each ”.

(2) After section 48A(1) the following subsection is inserted —

“

- (1a) The following may, with the approval of the Registrar, be endorsed on, annexed to, referred to in or otherwise linked or connected to, a certificate of title, but do not form part of the certificate of title —
- (a) information about the land that is the subject of the certificate, not being information about the title of the land or particulars that are required to be endorsed on the certificate under subsection (2);

- (b) a graphic of the extent or location of —
 - (i) the land that is the subject of the certificate;
 - (ii) an easement affecting the whole or part of the land;
 - (iii) a restrictive covenant affecting the whole or part of the land; or
 - (iv) a positive covenant, as defined in the *Land Administration Act 1997*, affecting the whole or part of the land.

”.

15. Section 48B amended

Section 48B(3) is repealed and the following subsections are inserted instead —

“

- (3) Where a proprietor of land that is the subject of a certificate of title has requested that a duplicate certificate of title not be issued, the Registrar shall endorse the certificate of title to that effect.
- (4) The Registrar may —
 - (a) on the request of a proprietor of land that is the subject of a certificate of title; and
 - (b) on delivery to the Registrar of the duplicate certificate of title for the land for retention, disposal or destruction,

cancel the duplicate certificate of title and the Registrar shall endorse the certificate of title to that effect.

- (5) 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 authorised by that proprietor as the person to whom the duplicate may be issued.

”.

16. Section 49 amended

Section 49 is amended by deleting “upon the plan on the certificate; and in any case in which it is inconvenient to draw the plan in the margin of a certificate it may be drawn upon the back thereof.” and inserting instead —

“ in a relevant graphic. ”.

17. Section 50 amended

Section 50 is amended by deleting “where the area of such parcel is less than 4 000 square metres”.

18. Section 52 amended

- (1) Section 52(1) is amended by deleting “title is” and inserting instead —

“ title, in the case of a paper title, is ”.

- (2) After section 52(1) the following subsection is inserted —

“

- (1a) A certificate of title, in the case of a digital 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 incorporated into the Registrar’s digital database as a certificate of title.

”.

19. Section 55 amended

Section 55(1) is amended as follows:

- (a) by deleting “in the Register” and inserting instead —
“ on a certificate of title ”;
- (b) by inserting after “grant” the following —
“ or certificate of title ”.

20. Section 57 amended

Section 57 is amended as follows:

- (a) after paragraph (a) by deleting “and”;
- (b) in paragraph (b) by inserting after “title” —
“ , in the case of a paper title, ”;
- (c) after paragraph (b) by deleting the full stop and inserting instead —
“
; and
(c) in the case of a digital title, the Registrar shall cancel the duplicate certificate of title (if any) and may issue a new edition of the duplicate certificate of title in accordance with section 74B(2).
”.

21. Section 63A amended

Section 63A(2) is repealed and the following subsection is inserted instead —

“

- (2) The statement or entry shall —
 - (a) contain a non-diagrammatic description of the extent or location of the easement;

- (b) refer to the instrument creating the easement if that instrument is deposited with the Department;
- (c) refer to any other record of information in the possession of the Registrar which gives a non-diagrammatic description of the extent or location of the easement; or
- (d) refer to a relevant graphic of the extent or location of the easement.

”.

22. Section 64 amended

Section 64 is amended by deleting “or any duplicate thereof”.

23. Section 72 amended

Section 72 is amended by inserting after “certificate” in both places in which it occurs —

“ of title ”.

24. Section 74 amended

- (1) Section 74 is amended by deleting “In every such case” and inserting instead —

“

If the Registrar dispenses with the production of a duplicate certificate of title in the case of a paper title,

”.

- (2) Section 74 is amended by inserting after “entered.” —

“

If the Registrar dispenses with the production of a duplicate certificate of title (if any) in the case of a digital title, the Registrar shall notify in the memorandum in the Register that the duplicate certificate of title was not produced and such dealing

shall be as valid and effectual as if such memorandum had been entered.

”.

25. Section 74A amended

(1) Section 74A is amended as follows:

- (a) by inserting before “Where” the subsection designation “(1)”;
- (b) by deleting “grant or certificate” and inserting instead —
“ Crown grant or any certificate of title ”;
- (c) by deleting “original.” and inserting instead —

“

original Crown grant or the previous certificate of title.

”.

(2) At the end of section 74A the following subsection is inserted —

“

- (2) If under subsection (1) a substitute certificate of title is created, the Registrar shall ensure the following are entered in the Register —
 - (a) the date that the substitute certificate of title was created; and
 - (b) such information as will enable the history of the creation of the certificate of title to be traced.

”.

26. Section 74B amended

(1) Section 74B is amended by inserting before “Where” the subsection designation “(1)”.

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- (2) At the end of section 74B the following subsection is inserted —

“

- (2) If, in the case of a digital title —
- (a) a duplicate certificate of title has been issued and is later cancelled; and
 - (b) the cancelled duplicate certificate of title has been produced to the Registrar,

the Registrar may cause a new edition of the duplicate certificate of title to be issued to the proprietor of the land that is the subject of the digital title or to a person named and authorised by the proprietor as the person to whom the duplicate may be issued.

”.

27. Section 75 amended

- (1) Section 75(1) is amended as follows:
- (a) by inserting after “any duplicate certificate of title” —
“ in the case of a paper title ”;
 - (b) by inserting after “a certificate of title” —
“ or a Crown lease ”;
 - (c) by inserting after “new certificate of title” in both places where it occurs —
“ or Crown lease ”.
- (2) Section 75(2) and (3) are repealed and the following subsections are inserted instead —

“

- (1a) In the event of any duplicate certificate of title in the case of a digital title being lost or destroyed or becoming so obliterated as to be useless, application may be made to the Commissioner for the issue of a new edition of the duplicate certificate of title to

replace the lost, destroyed or obliterated duplicate certificate of title and the Commissioner may, upon proof to his satisfaction of the loss or destruction or obliteration of such duplicate certificate of title, direct the Registrar to issue a new edition of the duplicate certificate of title.

- (2) A duplicate certificate of title or Crown lease replaced by a duplicate certificate of title or Crown lease under subsection (1) and section 48B ceases to have effect on the registration of the new certificate of title or Crown lease under subsection (1).
- (3) A duplicate certificate of title replaced by a duplicate certificate of title under subsection (1a) ceases to have effect on the issue of the new edition of the duplicate certificate of title under that subsection.
- (3a) If the duplicate certificate of title or Crown lease replaced by a duplicate certificate of title or Crown lease under subsection (1) and section 48B or under subsection (1a) is found or recovered, the person who finds or recovers the duplicate shall immediately lodge it with the Registrar who shall endorse it to note that it has ceased to have effect under subsection (2) or (3), as is relevant to the case.

”.

28. Section 78 amended

Section 78 is amended as follows:

- (a) by deleting “rectifying or cancelling any certificate” and inserting instead —

“

amending or cancelling any certificate or its duplicate

”;

s. 29

- (b) by deleting “original”;
- (c) by deleting “cancelled rectified” and inserting instead —
“ , cancelled, amended ”.

29. Section 81Q amended

After section 81Q(3) the following subsection is inserted —

“

- (4) If a dealing is lodged in respect of —
 - (a) a Crown lease that is treated under section 81ZD(1) as if it were a lease registered under this section; or
 - (b) a lease of Crown land (not being a Crown lease) that is treated under section 104(2) of the *Acts Amendment (Land Administration) Act 1997* as if it were a lease registered under this section,

the Registrar may make such endorsements as the Registrar thinks fit on the original and duplicate lease instrument.

”.

30. Section 82 amended

Section 82(1) is amended by deleting “form; and a woman entitled to any right or contingent right to dower in or out of any freehold land shall be deemed a proprietor within the meaning hereof.” and inserting instead —

“ form. ”.

31. Section 86 amended

Section 86(1) is amended by deleting “original”.

32. Section 87 replaced

Section 87 is repealed and the following section is inserted instead —

“

87. Total transfer by endorsement on paper title or by entering transferee's name on digital title

- (1) If a transfer purports to transfer the whole of the land mentioned in a paper title the Registrar may if he thinks fit instead of cancelling the certificate of title under section 86 enter on the certificate of title and on the duplicate certificate (if any) a memorandum of the transfer and deliver the duplicate to the transferee or to a person named and authorised by the transferee as the person to whom the duplicate may be delivered.
- (2) If a transfer purports to transfer the whole of the land mentioned in a digital title the Registrar may if he thinks fit instead of cancelling the certificate of title under section 86 —
 - (a) enter the name of the transferee as the new proprietor on the certificate of title;
 - (b) cancel the duplicate certificate of title (if any); and
 - (c) issue a new edition of the duplicate certificate of title in accordance with section 74B(2).
- (3) Every certificate with such memorandum or such change shall be as effectual for the purpose of evidencing title and for all other purposes of this Act as if the old certificate had been cancelled and a new certificate had been created and registered in the name of the transferee and such process in lieu of cancellation may be repeated upon every transfer of the whole of the land.

”.

33. Section 98 amended

Section 98 is amended by deleting “shall likewise endorse upon the duplicate” and inserting instead —

“

may likewise endorse on either or both the lease and the duplicate lease

”.

34. Section 100 replaced

Section 100 is repealed and the following section is inserted instead —

“

100. Registration of subleases

(1) A sublease is registered —

- (a) in the case of a sublease of land that is the subject of a paper title, when a memorandum of the sublease as described in section 56 has been endorsed on the original lease; or
- (b) in the case of a sublease of land that is the subject of a digital title, when a memorandum of the sublease as described in section 56 has been endorsed on the certificate of title,

and the person named in any sublease registered as the sublessee shall be deemed to be the proprietor of the sublease.

(2) The Registrar shall endorse on the sublease a certificate of the time at which the memorandum was endorsed under subsection (1)(a) or (b) and shall authenticate such certificate by signing his name on the certificate; and such certificate shall be treated by any court or person having by law or by consent of parties authority to receive evidence as conclusive evidence that such sublease has been duly registered.

”.

35. Section 101 repealed

Section 101 is repealed.

36. Section 102 amended

Section 102 is amended as follows:

- (a) by inserting before “The” the subsection designation “(1)”;
- (b) by inserting before “If” the subsection designation “(3)”;
- (c) by deleting “leases to” and inserting instead —
“ leases, ”;
- (d) by deleting “a sublease be made on the sublease and on the lease and not in the Register; and the memorandum directed by the latter section to be endorsed on the duplicate shall be written across the entry of such sublease in the sublease register; and in case of a surrender evidenced by a separate document such document shall be annexed to the original sublease.” and inserting instead —

“

the sublease of land that is the subject of —

- (a) a paper title, be made on the sublease and on the lease but not on the certificate of title and the memorandum directed by section 98 to be endorsed on either or both the lease and the duplicate lease (if any) shall be endorsed on either or both the sublease and the duplicate sublease (if any); and
- (b) a digital title, be made on the certificate of title and the memorandum directed by section 98 to be endorsed on either or both the lease or the duplicate lease (if any) shall be endorsed on either or both the sublease and the duplicate sublease (if any).

- (2) In the case of a surrender of a sublease evidenced by a separate document such document shall be annexed to the original sublease.

”

37. Section 104 amended

Section 104(1) is repealed and the following subsections are inserted instead —

“

- (1) In the case of a lease or sublease of land under this Act if it be proved to the satisfaction of the Commissioner that the lessor or sub-lessor his assign or transferee has re-entered upon the premises in strict conformity with the provisions for re-entry contained in the lease or sublease or under the power of section 93(2) where the lease or sublease is under this Act or that the lessee or sublessee has abandoned the leased premises and the lease and that the lessor or sublessor his assign or transferee has thereupon re-entered upon and occupied the said premises by himself or tenants undisturbed by the lessee or sublessee the Commissioner may, subject to subsection (2), direct the Registrar —
- (a) in the case of a lease, to make an entry of such re-entry on the certificate of title for the land that is the subject of the lease;
 - (b) in the case of a sublease of land that is the subject of a digital title, to make an entry of such re-entry on that title; or
 - (c) in the case of a sublease of land that is the subject of a paper title, to make an entry of such re-entry on the sublease.
- (1a) The term for which the land was leased or subleased shall, upon such entry being made, determine and may be removed as an encumbrance from a certificate of title but without prejudice to any action or cause of

action which shall previously have been commenced or have accrued in respect of any breach or non-observance of any covenant expressed in the lease or sublease or by this Act or any amendment thereof declared to be implied therein.

”.

38. Section 105A amended

Section 105A(2) is repealed and the following subsection is inserted instead —

“

- (2) Where an instrument of extension is presented to the Registrar he shall enter a memorandum of it on the certificate of title and the Registrar may also —
- (a) in the case of a lease, enter a memorandum of it on the record of the lease held by the Department; or
 - (b) in the case of a sublease of land that is the subject of a paper title, enter a memorandum of it on the sublease.

”.

39. Section 123 amended

Section 123 is amended by deleting “and the Registrar shall make a corresponding entry on the duplicate grant or certificate of title (if any) when produced to him for that purpose.” and inserting instead —

“

and if the land is the subject of —

- (a) a paper title, the Registrar shall make a corresponding entry on the duplicate certificate of title (if any) when produced to him for that or any other purpose; or

- (b) a digital title, the Registrar shall cancel the duplicate certificate of title (if any) and may issue a new edition of the duplicate certificate of title in accordance with section 74B(2).

”.

40. Section 125 amended

Section 125 is amended by deleting “and the Registrar shall make the like entry on the duplicate certificate of title when produced to him for that purpose.” and inserting instead —

“

and if the land is the subject of —

- (a) a paper title, the Registrar shall make a corresponding entry on the duplicate certificate of title (if any) when produced to him for that or any other purpose; or
- (b) a digital title, the Registrar shall cancel the duplicate certificate of title (if any) and may issue a new edition of the duplicate certificate of title in accordance with section 74B(2).

”.

41. Section 126 amended

- (1) Section 126(1) is amended by deleting “and the Registrar shall make a corresponding entry on the duplicate grant or certificate of title (if any) when produced to him for that purpose.” and inserting instead —

“

and if the land is the subject of —

- (a) a paper title, the Registrar shall make a corresponding entry on the duplicate certificate of title (if any) when produced to him for that or any other purpose; or

- (b) a digital title, the Registrar shall cancel the duplicate certificate of title (if any) and may issue a new edition of the duplicate certificate of title in accordance with section 74B(2).

”.

- (2) Section 126(2) is amended by deleting “and the Registrar shall make a corresponding entry on the duplicate grant or certificate of title (if any) when produced to him for that purpose.” and inserting instead —

“

and if the land is the subject of —

- (a) a paper title, the Registrar shall make a corresponding entry on the duplicate certificate of title (if any) when produced to him for that or any other purpose; or
- (b) a digital title, the Registrar shall cancel the duplicate certificate of title (if any) and may issue a new edition of the duplicate certificate of title in accordance with section 74B(2).

”.

42. Section 136 amended

Section 136 is amended as follows:

- (a) by deleting “originally”;
- (b) by deleting “or be annexed to” and inserting instead —

“

, annexed to, referred to in or otherwise linked or connected to,

”.

43. Section 136A amended

Section 136A is amended by deleting “section 166 or 166A” and inserting instead —

“ section 166(1), 166A(1) or 166C(2)(a) ”.

44. Section 136C amended

- (1) Section 136C(5) is amended by inserting after “to the plan” —
“ , or in both the plan and the instrument ”.
- (2) Section 136C(6) is amended by inserting after “to the plan” —
“ , or in both the plan and the instrument ”.

45. Section 136D amended

- (1) Section 136D(5) is amended by inserting after “to the plan” —
“ , or in both the plan and the instrument ”.
- (2) Section 136D(6) is amended by inserting after “to the plan” —
“ , or in both the plan and the instrument ”.

46. Section 138 amended

Section 138 is amended as follows:

- (a) by inserting after “any transfer” —
“
(including a disposition statement accompanying an
application under section 166C)
”;
- (b) by deleting “think” and inserting instead —
“ thinks ”.

47. Section 151 amended

Section 151 is amended by inserting after “title” —
“ or on a relevant graphic ”.

48. Section 155 amended

Section 155 is amended by deleting “plan drawn on and referred to in” and inserting instead —

“
 graphic endorsed on, annexed to, referred to in or
 otherwise linked or connected to,
”.

49. Section 156 amended

Section 156 is amended by inserting after “amended” —

“ or to have a relevant graphic amended or replaced ”.

50. Section 159 amended

Section 159 is amended as follows:

(a) by inserting after “title” —

“ or on any relevant graphic ”;

(b) by inserting after “amended certificate” —

“
 or for the amendment or replacement of a relevant
 graphic
”;

(c) by deleting “thereof.” and inserting instead —

“
 of title and to amend or replace, if necessary, any
 relevant graphic.
”.

51. Section 160 amended

Section 160 is amended as follows:

- (a) by inserting after “amended” —

“

or for a relevant graphic to be amended or replaced

”;

- (b) by deleting “the last preceding section” and inserting instead —

“ section 159 ”.

52. Section 163 amended

- (1) Section 163(1) is amended by deleting “an inspector” and inserting instead —

“ the inspector ”.

- (2) Section 163(2) is repealed and the following subsection is inserted instead —

“

- (2) In subsection (1) —

“the inspector of plans and surveys” means the person who, for the purposes of section 18 of the *Licensed Surveyors Act 1909*, is appointed by the Governor to approve plans of authorised surveys within the meaning of that Act.

”.

53. Section 165 amended

Section 165 is amended by inserting after “amended” —

“ or for a relevant graphic to be amended or replaced ”.

54. Section 166 amended

- (1) Section 166(3) is amended by deleting “subsection (5)” and inserting instead —

“

section 295 of the *Local Government (Miscellaneous Provisions) Act 1960*

”.

- (2) Section 166(5) is repealed.

55. Section 166A amended

- (1) After section 166A(1) the following subsection is inserted —

“

- (1a) A sketch plan referred to in subsection (1) shall comply with the rules and regulations for the time being for the guidance of surveyors when practising under this Act.

”.

- (2) Section 166A(2) is amended by deleting “subsection (4) and”.

- (3) Section 166A(4) is repealed.

56. Section 166C inserted

After section 166B the following section is inserted —

“

166C. Alternative application (using disposition statements) for new certificates of title on subdivision of land between existing owners

- (1) Notwithstanding section 166 but subject to subsections (5) and (6) where land under the operation of this Act —
- (a) comprises 2 or more parcels not having the same proprietor for all the parcels; or

- (b) is held by 2 or more proprietors as joint tenants or as tenants in common,

and the proprietors of the freehold in the land (the “**proprietors**”) wish to subdivide the land between themselves only, they may apply to the Registrar under this section, instead of applying under section 166, for the creation and registration of new certificates of title for the land.

- (2) An application under this section shall be in an approved form and —
 - (a) shall be made in relation to a plan or diagram of the proposed subdivision that —
 - (i) is lodged or deposited with the Department;
 - (ii) is prepared in accordance with any relevant regulations made under this Act or the *Licensed Surveyors Act 1909*;
 - (iii) contains, or is accompanied by a document that contains, such information, certificates and consents as are prescribed in the regulations; and
 - (iv) is signed by or on behalf of the inspector of plans and surveys referred to in section 163 as being in order for dealings with or without conditions;
 - (b) shall be accompanied by a disposition statement —
 - (i) that is in an approved form; and
 - (ii) in which is set out the amount of any consideration passing between any of the proprietors of the freehold in the land in consideration for the subdivision;

- (c) shall be accompanied by a document that contains such information, certificates and consents as are prescribed in the regulations;
 - (d) shall be accompanied by such documents as the Registrar determines are necessary to satisfy any conditions before the plan or diagram referred to in subsection (2)(a) is in order for dealing; and
 - (e) shall be accompanied by the prescribed fee.
- (3) A disposition statement accompanying an application under this section is a request to the Registrar to endorse the new certificates of title for the land that is the subject of the application and, if applicable, to take such other action in relation to the Register or any graphic as is required, to give effect to the extent provided for in regulations to any of the following —
- (a) the disposal of the land or interests in the land to, or the vesting of the land or interests in the land in, the State of Western Australia, a public authority or a local government;
 - (b) the allocation of lots on the plan or diagram referred to in subsection (2)(a) between the proprietors;
 - (c) the allocation of other registered interests and caveats affecting the land to lots (or part lots as shown on a graphic) on the plan or diagram referred to in subsection (2)(a);
 - (d) the attachment or discharge of other registered interests and caveats affecting the land to or from lots (or part lots as shown on a graphic) on the plan or diagram referred to in subsection (2)(a).
- (4) Section 166(3) and (6) apply to an application under this section as if the references to the plan or diagram

were references to the plan or diagram referred to in subsection (2)(a) and the Registrar may endorse the new certificates of title for the land that is the subject of the application and take such other action in relation to the Register or any graphic as is required to give effect to the application and requests in the disposition statement.

- (5) The Registrar is not to grant an application under this section if —
 - (a) the land that is the subject of the application is held by 2 or more proprietors as joint tenants; and
 - (b) an effect of granting the application would be to sever the joint tenancy.

- (6) The Registrar is not to grant an application under this section unless —
 - (a) all the proprietors have signed the disposition statement; and
 - (b) each person who has a registered interest in the land and each caveator in relation to the land consents to the person's interest or caveat being allocated in accordance with the disposition statement on the subdivision.

- (7) On registration of the certificates of title for the land that is the subject of an application under this section —
 - (a) every lot that is enlarged or diminished under the plan or diagram referred to in subsection (2)(a) is, by operation of law, subject to each encumbrance, caveat, notification or memorial allocated to it in the disposition statement to the extent provided in the disposition statement; and

- (b) every such encumbrance, caveat, notification and memorial is deemed to be amended accordingly.

”.

57. Section 167 amended

Section 167 is amended by deleting “or 166A” and inserting instead —

“ , 166A or 166C ”.

58. Section 168 amended

Section 168 is amended as follows:

- (a) by inserting after “amended certificate” —

“

or for the amendment or replacement of a relevant graphic

”;

- (b) by inserting after “registered” —

“ or amended or in the relevant graphic ”;

- (c) by deleting “both in the body of the certificate and in the plan thereon or in the plan only” and inserting instead —

“ in the certificate, in a relevant graphic or in both ”.

59. Section 169 amended

Section 169 is amended by inserting after “certificate of title” in both places where it occurs —

“ or relevant graphic ”.

60. Part IX heading replaced

The heading to Part IX is repealed and the following heading is inserted instead —

“

Part IX — Amendment of certificates and amendment or replacement of graphics

”.

61. Section 170 amended

Section 170 is amended as follows:

- (a) by inserting after “amended” —
“ or a relevant graphic amended or replaced ”;
- (b) by inserting after “in the certificate” —
“ or on the relevant graphic ”.

62. Section 171 amended

Section 171 is amended as follows:

- (a) by deleting “rectification of the original and duplicate (if any) certificate of any other proprietor or proprietors” and inserting instead —

“

amendment of the certificate of title of any other proprietor and the duplicate (if any) or the amendment or replacement of a relevant graphic

”;

- (b) by inserting after “certificate” in the second place where it occurs —
“ or relevant graphic ”;
- (c) by deleting “certificates.” and inserting instead —
“ relevant graphic. ”.

63. Section 172 amended

- (1) Section 172 is amended by inserting before “Any” the subsection designation “(1)”.
- (2) After section 172 the following subsections are inserted —
 - “
 - (2) The Commissioner may require an application to be accompanied by either of the following plans setting out such information as is required by the Commissioner for the purposes of the application —
 - (a) a plan of the applicant’s land; or
 - (b) a plan of the applicant’s land and any land adjoining the applicant’s land.
 - (3) A copy of each plan required by the Commissioner under subsection (2) shall be kept for inspection at the Department’s office until the application has been determined.

”.

64. Section 174 replaced

Section 174 is repealed and the following section is inserted instead —

“

174. Special notice to be given to certain persons interested in adjoining land affected by application

If the granting of an application under section 170 or 171 or of an application to bring land under this Act would affect adjoining land or would cause a certificate of title to be registered which would be inconsistent with the certificate of title or relevant graphic for any adjoining land, the Commissioner shall in addition to any other notices which he may require direct notice of the application to be served upon all persons appearing

by the Register to be the owners of an estate in fee simple in, or lessees or mortgagees of, the adjoining land accompanied by a copy of each plan required under section 172(2) in relation to the application.

”.

65. Section 175 amended

Section 175 is amended as follows:

- (a) by inserting after “title” —
“ or to amend or replace a relevant graphic ”;
- (b) by deleting “any plan referred to in section 174” and inserting instead —

“

each plan required under section 172(2) in relation to the application

”.

66. Section 177 amended

Section 177 is amended as follows:

- (a) by deleting “the rectification of the Register to be made” and inserting instead —

“

amended or the relevant graphic to be amended or replaced

”.

- (b) by inserting after “other certificate” in both places where it occurs —

“ or relevant graphic ”.

67. Section 178 replaced

Section 178 is repealed and the following section is inserted instead —

“

178. On granting application other certificates, relevant graphics and duplicate certificates may be amended, replaced or reissued

- (1) Upon granting an application under section 170 or 171 or to bring land under this Act the Commissioner shall direct the Registrar to amend any certificate of title or to amend or replace any relevant graphic that is a subject of the application by making the requisite alteration in the relevant certificate of title or relevant graphic accompanied by a statement made and signed by him in the certificate or relevant graphic of the circumstances under which the amendment or replacement has been made.
- (2) If the land is the subject of a paper title the Registrar shall make the requisite amendment in the duplicate certificate (if any) when brought to him for that or any other purpose and may retain the duplicate until the amendment is completed.
- (3) If the land is subject to a digital title the Registrar shall cancel the duplicate certificate of title (if any) and may issue a new edition of the duplicate certificate of title in accordance with section 74B(2).
- (4) If the application is under section 171 the Registrar shall give notice in writing to the proprietor of the land described in the certificate that is being amended or the relevant graphic that is being amended or replaced, informing him of the amendment or replacement and that on the duplicate certificate (if any) being brought

to the Department the duplicate certificate will be amended or reissued free of charge.

- (5) The Registrar may refuse to register any dealing with the land or any estate or interest therein until the duplicate certificate (if any) has been brought in for amendment or reissue.

”.

68. Section 179 repealed

Section 179 is repealed.

69. Section 182 amended

Section 182(1) is amended as follows:

- (a) by deleting “in the Register and on the duplicate” and inserting instead —
“ on the ”;
- (b) by deleting all the words and full stops after the semicolon and inserting instead —

“

and if the land is the subject of —

- (a) a paper title, the Registrar shall make a corresponding entry on the duplicate certificate of title (if any) when produced to him for that or any other purpose; or
- (b) a digital title, the Registrar shall cancel the duplicate certificate of title (if any) and may issue a new edition of the duplicate certificate of title in accordance with section 74B(2).
- (1a) Upon such entry on the certificate of title such person shall become the transferee and be deemed to be the proprietor of the land, estate or interest.

- (1b) Unless and until such entry on the certificate of title has been made the order has no effect or operation in transferring or otherwise vesting the land, estate or interest.

”.

70. Section 184 amended

Section 184 is amended by deleting “on the certificate” and inserting instead —

“

, in the case of a paper title, on the certificate or noted, in the case of a digital title, on the record referred to in section 48(1)(b)

”.

71. Section 185 amended

Section 185 is amended as follows:

- (a) by deleting “write the word “Satisfied” with his” and inserting instead —

“

direct the Registrar, in the case of a paper title, to write the word “Satisfied” with the Registrar’s

”;

- (b) by deleting “made.” and inserting instead —

“

made and in the case of a digital title, may direct the Registrar to note the satisfaction of the writ on the record referred to in section 48(1)(b).

”.

72. Section 188 amended

Section 188(ii) is amended as follows:

- (a) by inserting after “certificates” —
“ (in cases of paper titles) ”;
- (b) by inserting after “instruments” —
“ or graphics ”;
- (c) by inserting after “any such error” —
“ in a paper medium ”;
- (d) by inserting after “words” —
“ or lines ”;
- (e) by inserting after “same;” —
“

and in the correction of any such error in a digital medium the Registrar shall keep a permanent record of any words or lines to be deleted and the date on which the correction was made or the entry supplied and if correcting a digital title the Registrar shall cancel the duplicate certificate of title and may issue a new edition of the duplicate certificate of title in accordance with section 74B(2);

”.

73. Section 189 amended

Section 189 is amended as follows:

- (a) by deleting “paragraph (ii) of the last preceding section” and inserting instead —
“ section 188(ii) ”;
- (b) by deleting “the said section.” and inserting instead —
“ section 188. ”.

74. Section 192 amended

(1) Section 192 is amended as follows:

- (a) by inserting before “Whenever” the subsection designation “(1)”;
- (b) by deleting “document and thereupon half the fees paid on the lodging of the document shall be forfeited and dealt with as a penalty under section 190 and the other half may be returned to the person lodging the document on his withdrawing the same.” and inserting instead —
“ document. ”.

(2) At the end of section 192 the following subsection is inserted —

“

(2) If the Registrar rejects a document under subsection (1) —

- (a) the Registrar shall retain from the fees paid on the lodging of the document such amount as is prescribed by the regulations (the “**prescribed amount**”);
- (b) the prescribed amount shall be forfeited and dealt with as a penalty under section 190; and
- (c) the amount being the difference between the fees paid on the lodging of the document and the prescribed amount may be returned to the person lodging the document when the document is withdrawn from lodgment.

”.

75. Section 206 amended

Section 206 is amended by deleting “rectification” in both places where it occurs and inserting instead —

“ amendment ”.

76. Section 226 repealed

Section 226 is repealed.

77. Section 227 amended

Section 227 is amended as follows:

- (a) by deleting “the death in the life-time of his wife of any husband registered as joint proprietor with her of an estate in fee simple or of a lease mortgage or charge in her right or upon the death of any female proprietor whose husband shall be entitled as tenant by the curtesy to any freehold land or upon”;
- (b) by deleting “widow husband or”;
- (c) by deleting “the proprietor thereof but as regards any tenancy by the curtesy for the life-time only of such husband.” and inserting instead —
“ its proprietor. ”.

78. Section 229B amended

- (1) Section 229B(1) is amended by deleting “the last preceding section of this Act” and inserting instead —
“ section 229A(2) ”.
- (2) Section 229B(1) is amended by deleting “original of such certificate, and also upon the duplicate certificate (if any) when brought to him for that purpose, or when the same is lodged with the Department for the purpose of any dealing with the land comprised therein.” and inserting instead —
“
certificate of title and if the land is the subject of —
(a) a paper title, the Registrar shall make a corresponding entry on the duplicate certificate of title (if any) when produced to him for that or any other purpose; or

- (b) a digital title, the Registrar shall cancel the duplicate certificate of title (if any) and may issue a new edition of the duplicate certificate of title in accordance with section 74B(2).

”.

- (3) Section 229B(2) is amended by deleting “detain” and inserting instead —

“ retain ”.

79. Section 231 amended

Section 231 is amended as follows:

- (a) by inserting after “amend a certificate” —
“ or to amend or replace a relevant graphic ”;
- (b) by deleting “a certificate for” and inserting instead —

“

or amend a certificate or to amend or replace a relevant graphic for

”.

80. Section 239 replaced

Section 239 is repealed and the following section is inserted instead —

“

239. Inspection of the Register and related documents; copies and print-outs

- (1) A person may, on payment of the prescribed fee and during such times as are prescribed by regulation, inspect any of the following —
 - (a) a registered certificate of title;
 - (b) a plan or diagram relating to land that is the subject of a certificate of title, including a graphic or a strata/survey-strata plan;

- (c) in relation to land that is the subject of a digital title, the record of an endorsement referred to in section 48(1)(b) in relation to the land;
 - (d) in relation to land that is the subject of a paper title, the record of an entry referred to in section 48(1)(c) in relation to a sublease of the land;
 - (e) a registered Crown lease or Crown grant;
 - (f) a registered instrument;
 - (g) a caveat, power of attorney or discharge of mortgage lodged or deposited under this Act;
 - (h) a —
 - (i) notification or memorial under this or any other Act; or
 - (ii) warrant or writ of execution, that is registered, entered or otherwise noted on a certificate of title or lodged or deposited under this Act;
 - (i) an application made under this Act;
 - (j) a memorandum filed under section 54.
- (2) The Registrar may produce to a person who wishes to inspect any document referred to in subsection (1) a copy of the document that the person wishes to inspect and the copy may be in such medium as is approved by the Registrar for the purposes of this section.
- (3) The Registrar, on receiving payment of the prescribed fee, shall provide to a person applying for the same a copy or print-out of any document referred to in subsection (1) and the copy or print-out may be in an approved form.

”.

81. Section 239A amended

Section 239A(3)(b) is amended by deleting “of which can be obtained under section 239(2);” and inserting instead —

“

or print-out of which can be obtained under section 239(3);

”.

82. Section 239B inserted

After section 239A the following section is inserted —

“

239B. Evidentiary documents as to current and historical matters

- (1) The Registrar, on receiving payment of the prescribed fee, shall provide to a person applying for the same —
 - (a) a certified and sealed copy or print-out of any document referred to in section 239(1); or
 - (b) a certified and sealed document in an approved form that sets out the matters that, at a particular point in time, were contained or recited or incorporated in or endorsed on a document referred to in section 239(1).
- (2) A document referred to in subsection (1)(a) or (b) shall be admissible as evidence in any court or by any person having by law or by consent of parties authority to receive evidence as prima facie proof of the document and of the matters set out in the document.

”.

83. Schedule 9A amended

Schedule 9A is amended by inserting after “enjoyment” in each place where it occurs —

“

or in the case of an easement in gross the person having the benefit of the easement

”.

84. Twenty-fourth Schedule amended

- (1) The Twenty-fourth Schedule is amended in the heading “Application to Amend Certificate” by inserting after “Certificate” —

“ *or to amend or replace a relevant graphic: s. 170* ”.

- (2) The Twenty-fourth Schedule is amended in item 1 of the “Application to Amend Certificate” as follows:

- (a) by inserting after “amended” —

“

or graphic [*state identifying details*] amended or replaced

”;

- (b) by inserting after “amendment” —

“ *or replacement* ”;

- (c) by inserting after “in the certificate” —

“ *or graphic* ”;

- (d) by inserting after “that the certificate” —

“ *or graphic* ”.

- (3) The Twenty-fourth Schedule is amended in item 2 of the “Application to Amend Certificate” by inserting after “amended” —

“ *or a relevant graphic when amended or replaced* ”.

- (4) The Twenty-fourth Schedule is amended in item 6 of the “Application to Amend Certificate” by inserting after “certificate” —

“ or graphic ”.

- (5) The Twenty-fourth Schedule is amended in the heading “Application to rectify Register” by deleting “rectify Register” and inserting instead —

“ amend certificate or to amend or replace a relevant graphic: s. 171 ”.

- (6) The Twenty-fourth Schedule is amended in the “Application to rectify Register” by deleting item 1 and inserting the following item instead —

1. I the registered proprietor of the land which is described as follows in the certificate of title No. — [*set out full particulars as in certificate*] or graphic [*state identifying details*] — apply to have a certificate amended or a graphic amended or replaced in the following particulars: — [*State the nature of the proposed amendment or replacement and mention the number of every certificate or identifying details of each relevant graphic and the name of every registered proprietor whose certificate of title or relevant graphic would be affected by the proposed amendment or replacement*].

- (7) The Twenty-fourth Schedule is amended in the “Application to rectify Register” in item 2 by deleting “and that in the other certificates” and inserting instead —

“ or graphic and that in the other certificates or graphics ”.

- (8) The Twenty-fourth Schedule is amended in the “Application to rectify Register” in item 3 by deleting “rectification” and inserting instead —

“ amendment or replacement ”.

s. 85

- (9) The Twenty-fourth Schedule is amended in the “Application to rectify Register” in item 4 by inserting after “certificate” —
“ or graphic ”.

85. Consequential amendments to the *Evidence Act 1906*

- (1) Section 56(b) of the *Evidence Act 1906** is amended by deleting “Assistant or Deputy Registrar” and inserting instead —
“ Deputy Commissioner of Titles or Assistant Registrar ”.
- (2) The Fifth Schedule of the *Evidence Act 1906** is amended by deleting “Deputy” and inserting instead —
“ Assistant ”.

[* *Reprinted as at 4 January 2001.*]
