

LAND.

No. 78 of 1982.

AN ACT to amend the Land Act 1933-1980.

[Assented to 8 November 1982.]

B^E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Land Amendment Act 1982*.

Short title
and citation.

(2) In this Act the Land Act 1933-1980 is referred to as the principal Act.

Reprinted
as approved
17 May
1973 and
amended by
Acts Nos. 73
of 1977, 107 of
1978 and
65 and 97
of 1980.

(3) The principal Act as amended by this Act may be cited as the Land Act 1933-1982.

Section 2
repealed.

2. Section 2 of the principal Act is repealed.

Part VIIIA
inserted.

3. After section 134 of the principal Act, the following Part is inserted—

“ PART VIIIA—EASEMENTS.

Interpreta-
tion.

134A. In this Part “Crown lease” has the same meaning as it has under and for the purposes of the Transfer of Land Act 1893.

Easements
may be
granted.

134B. (1) For—

- (a) the provision of access and passage for persons as pedestrians or otherwise;
- (b) the provision of pipes, cables, electrical transmission lines, conveyor belt systems, and other services; and
- (c) the provision of any structure, plant, or equipment, the carrying out of any works, and the performance of any maintenance that is necessary for, or ancillary or incidental to, giving effect to any of the purposes referred to in paragraph (b) of this subsection,

the Governor may, upon the recommendation of the Minister, grant to any person any easement in, upon, through, over, or under any land in respect of which such a recommendation is made and may express any easement so granted to be subject to conditions and the payment of consideration as set out in the grant.

(2) A recommendation shall not be made by the Minister for the grant of an easement under subsection (1) of this section unless—

- (a) the land in, upon, through, over, or under which the easement is proposed to be granted is—

- (i) Crown land; or

- (ii) land of the Crown that is reserved for or dedicated to any public purpose, whether or not the land is classified under section 31 of this Act as of Class A;
- (b) not more than 1 year has passed since the day on which the Minister—
- (i) delivered to the Registrar of Titles a memorial containing notification of the proposed easement under section 134C (1) (a) of this Act; or
 - (ii) made a record of the proposed easement under section 134C (1) (b) of this Act,
- (in this subsection referred to as “the relevant day”) and the record made by the Registrar of Titles or the Minister, as the case may be, of the proposed easement has not been cancelled under section 134C (2) of this Act; and
- (c) every person—
- (i) who has, and on the relevant day had, any right, title, or interest in the land;
 - (ii) in whom the land is, and on the relevant day was, vested within the meaning of section 33 (2) of this Act or under any other Act; or
 - (iii) who has, and on the relevant day had, the control of the land pursuant to section 34 of this Act or section 3 of the Parks and Reserves Act 1895,
- has consented in writing to the grant of the easement.

Proposed
easement to
be recorded.

134C. (1) Before the Minister makes a recommendation under section 134B (2) of this Act for the grant of an easement he shall—

- (a) if the land concerned is the subject of a Crown lease registered under the Transfer of Land Act 1893, deliver a memorial containing notification of the proposed easement, together with a description of the proposed easement and a plan showing its location in relation to the land proposed to be affected by it, to the Registrar of Titles under that Act who shall, without requiring the payment of any fee, duly record the notification in the appropriate register;
- (b) in any other case, make a record of the proposed easement in the appropriate register kept under this Act.

(2) Where the Minister has made or caused the Registrar of Titles to make a record of a proposed easement pursuant to subsection (1) of this section and it appears to the Minister that the grant of the easement proposed is unlikely to be recommended under section 134B (2) of this Act he may—

- (a) if the land concerned is the subject of a Crown lease registered under the Transfer of Land Act 1893, deliver a memorial containing notification that the record of the proposed easement is to be cancelled to the Registrar of Titles who shall, without requiring the payment of any fee, cancel the record accordingly;

- (b) in any other case, cancel the record of the proposed easement in the appropriate register kept under this Act.

134D. (1) A person to whom an easement is granted under section 134B of this Act shall, if the land concerned is the subject of a Crown lease registered under the Transfer of Land Act 1893, lodge the instrument creating the easement with the Registrar of Titles who shall duly register the easement under that Act. Easement to be recorded.

(2) Where an easement is granted under section 134B of this Act and the land concerned is not the subject of a Crown lease registered under the Transfer of Land Act 1893, the Minister shall, upon payment of the prescribed fee, duly register the easement under this Act, but may, where he sees fit, dispense wholly or in part with the requirement to pay the prescribed fee.

134E. (1) The Minister may, by notice in writing served on the person to whom an easement is granted under section 134B, cancel the easement if— Cancellation.

- (a) default occurs in any condition or any payment to which the grant of the easement is expressed to be subject; or
- (b) the person to whom the easement is granted requests the Minister in writing to cancel the easement,

and shall—

- (c) if the easement is registered under the Transfer of Land Act 1893, deliver notice of the cancellation to the Registrar of Titles who shall, without requiring the payment of any fee, record the cancellation accordingly; or
- (d) if the easement is registered under this Act, duly record the cancellation under this Act.

Easement to
subsist.

134F. Where an easement granted under section 134B of this Act in respect of land is registered under this Act or the Transfer of Land Act 1893 pursuant to section 134D of this Act, the easement shall, subject to sections 134E and 134J of this Act and section 229A of the Transfer of Land Act 1893 but notwithstanding any other provision of this or any other Act, continue to have effect in respect of the land notwithstanding the grant of any estate or interest in the land or the transfer or surrender or other extinguishment of any estate or interest in the land, and—

- (a) where the easement is so registered under this Act, the Minister shall, upon land affected by the easement becoming the subject of a grant in fee or a Crown lease, cause the grant or Crown lease delivered to the Registrar of Titles to be accompanied by the instrument creating the easement and the Registrar of Titles shall duly register the easement;
- (b) where the easement is so registered under the Transfer of Land Act 1893, the Minister shall, upon the land concerned ceasing to be under the operation of the Transfer of Land Act 1893, duly register the easement under this Act.

134G. A person holding land for an estate in fee simple granted under section 33 (4) of this Act in trust for a purpose is not prevented by reason only—

Easements over land dedicated to a purpose.

- (a) that the land is held in trust for that purpose or of any condition, limitation, or restriction imposed in relation to the purpose; or
- (b) that the land may be classified under section 31 of this Act as of Class A,

from creating in favour of any person an easement affecting the land for any purpose mentioned in section 134B (1) of this Act but shall not create any such easement without the consent of the Minister.

134H. (1) Where land is disposed of under this Act subject to the right of the holder to acquire the fee simple of the land, the holder is not prevented by reason only that he has not yet acquired the fee simple of the land from creating in favour of any person an easement affecting the land for any purpose mentioned in section 134B (1) of this Act but an easement shall not be so created without the consent of the Minister and an easement so created terminates if the right to acquire the fee simple is forfeited in accordance with this Act.

Easements in anticipation of grant of fee simple.

(2) An instrument creating an easement referred to in subsection (1) of this section may be lodged, together with the prescribed fee, with the permanent head of the Department and shall be duly registered under this Act.

(3) The Minister may, where he sees fit, dispense wholly or in part with the requirement to pay the prescribed fee.

Easements in
gross.

134I. An easement granted under section 134B or referred to in section 134G or 134H of this Act may be created without there being a dominant tenement and there may be made appurtenant or annexed to any such easement another easement or the benefit of a restriction as to the user of the land.

Abandon-
ment.

134J. (1) Where an easement in respect of land is registered under this Act, the permanent head of the Department or—

- (a) where the easement is granted under section 134B of this Act, any person whose consent would be required by subsection (2) (c) of that section if it were desired to grant an easement affecting the land under that section; or
- (b) where the easement is an easement referred to in section 134H of this Act, any person having any right, title, or interest in the land,

may request the Minister to remove from the register the record in respect of that land of the easement.

(2) The Minister may, if he is satisfied after making all reasonable enquiry that an easement affecting land no longer serves any purpose, remove from the appropriate register the record in respect of that land of the easement and thereupon the easement affecting the land shall be deemed to have been abandoned and extinguished.

(3) The Minister shall not under subsection (2) of this section remove the record of an easement until the expiration of 21 days after notice of the request under subsection (1) of this section has been served by the Minister on the person to whom the

easement was granted and, where there is a dominant tenement, every other person appearing to the Minister to have any estate or interest in the land comprised in the dominant tenement.

(4) A notice under subsection (3) of this section—

- (a) shall be in writing and dated and shall include or contain a plan showing the extent to which such easement is affected; and
- (b) may be served on a person for whom an address appears in the appropriate register by being sent in a registered letter addressed to that person at the address so appearing,

and a memorandum made in the appropriate register recording that such notice was served and the day on which it was served shall be admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the facts so recorded.

134K. (1) Any person in possession of any deed, certificate, or other instrument evidencing the title to any land that is or would be affected by an easement granted or proposed to be granted under section 134B of this Act or referred to in section 134G or 134H of this Act shall, upon receiving notice requiring him to do so, deliver up to the Registrar of Titles or the Minister for Lands, as the case may be, such deed, certificate, or other instrument for the purpose of enabling a record to be made thereon of the proposed easement or the grant, cancellation or abandonment of the easement, as the case may require, corresponding to the record

Production
of instru-
ments.

thereof required by this Part, but the Registrar of Titles or Minister for Lands, as the case may be, may make a record required by this Part without requiring such delivery and make the corresponding record on such deed, certificate, or other instrument when it is subsequently produced or delivered to him.

(2) A person who, in contravention of subsection (1) of this section, fails to deliver up any deed, certificate, or other instrument is guilty of an offence and is liable to a penalty of not more than \$100.

Evidence.

134L. A record made pursuant to this Part in a register kept under this Act of an easement in favour of a person in respect of land shall be admissible in evidence in any proceedings and is conclusive of the fact that the person is entitled to the easement in respect of that land.

Land under
Transfer of
Land Act.

134M. The provisions of the Transfer of Land Act 1893 concerning easements in respect of land for which there is a certificate of title under that Act apply, with the necessary modifications, to land the subject of a Crown lease registered under that Act, and for the purposes of those provisions the registered Crown lease relating to the land shall be regarded as the certificate of title.

Tabling of
report of
grant of
certain
easements.

134N. Where the Minister—

- (a) makes a recommendation under section 134B (2) of this Act for the grant of an easement; or
- (b) consents for the purposes of section 134G of this Act to the creation of an easement,

and land to be made subject to the easement is classified under section 31 of this Act as of Class A, the Minister shall present a special report to both Houses of Parliament setting forth the reasons for the recommendation or consent and the purpose of the easement; and such report shall be made to both Houses of Parliament within 14 days from the making of the recommendation or the giving of consent as the case may be, if Parliament is then in session, and, if not, within 14 days after the commencement of the next session. ” .

4. Section 149 of the principal Act is amended— Section 149 amended.

(a) by inserting after “1906,” the following—

“ or is affected by an easement referred to in section 134H of this Act, ” ;

(b) by deleting, “mortgage or caveat” in each place where it occurs and substituting in each case the following—

“ mortgage, easement, or caveat ” ;
and

(c) by deleting “unless discharged, or caveat, unless withdrawn, removed or lapsed” and substituting the following—

“ easement, or caveat, unless discharged, terminated, withdrawn, removed, or lapsed, as the case may be ” .

5. Section 154 of the principal Act is amended by deleting “caveat.” and substituting the following— Section 154 amended.

“ caveat, but where such consent is given the caveat does not prevent the registration of an easement granted under section 134B of this Act or the making of a record in the appropriate register of the proposal to grant the easement. ” .