

TRANSFER OF LAND.

14° Geo. VI., No. XVII.

 No. 17 of 1950.

AN ACT to amend the Transfer of Land Act, 1893-1946, and, where necessary for the purpose of reprinting, to revise certain of the Acts amending the Transfer of Land Act, 1893 (Act 56 Victoriæ No. 14).

[Assented to 29th November, 1950.]

BE it enacted by the King'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. This Act may be cited as the *Transfer of Land Act Amendment Act, 1950*. Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.
3. In this Act, unless the context requires otherwise— Interpret-
tion.

“amending Acts” means Acts 60 Victoriæ No. 22, 1896, 1 and 2 Edwardi VII No. 14, 1902, 2 Edwardi VII No. 10, 1902, and Acts Nos.

20 of 1905, 25 and 54 of 1909, 26 of 1911, 32 of 1917, 30 of 1920, 5 of 1925, 14 and 42 of 1929, 38 of 1936, 23 of 1939, 28 of 1944 and 6 and 21 of 1946;

“principal Act” means the Transfer of Land Act, 1893-1946, being Act 56 Victoriae No. 14 as reprinted in The Statutes of Western Australia Volume III, 1893-1895, By Authority, 1896, and amended by the amending Acts.

Citation of
principal Act
as amended
by this Act.

4. The principal Act as amended by this Act may be cited as the Transfer of Land Act, 1893-1950.

s. 1 amended.

5. Section one of the principal Act is amended by adding between lines thirteen and fourteen the following heading:—

Division 3A—Restrictive Covenants, s.s. 129A-129C

s. 4 amended.

6. Section four of the principal Act is amended by substituting for the words—

- (a) “shall mean” wherever they occur, the word “means”;
- (b) “shall include” wherever they occur, the word “includes”;
- (c) “shall also include” wherever they occur, the words “also includes”.

s. 6 amended.

7. Section six of the principal Act is amended by—

- (a) deleting the words “In case of illness or absence” in line one;
- (b) substituting the word “the” for the word “such” in line two;
- (c) adding after the word “absence” in line three, the words “of the officer”.

s. 16
amended.

8. Section sixteen of the principal Act is amended by deleting all the words in lines three, four and five.

9. Section twenty of the principal Act is amended by adding the following paragraph—

s. 20
amended.

- (vii) A tenant for life within the meaning of the Settled Land Act, 1892, if the application contains a direction that the certificate of title issue in the names of the trustees of the settlement within the meaning of that Act, and the trustees consent to the application.

10. The principal Act is amended by adding the following section—

s. 20A added.

20A. In applications to bring land under the Act the Commissioner may accept as evidence—

Evidence and
restrictions
of requisitions.

recitals, statements and descriptions of facts, matters and parties in deeds, instruments, Acts of Parliament and statutory declarations, the date shown as that of the execution, signature, passing or making of which precedes that of the application by at least twenty years

and an applicant shall not be required to negative,

except as to the knowledge, information and belief of himself and his agents,

the existence of any unregistered conveyances or assurances affecting any part of the land the subject of the application.

11. Section twenty-five of the principal Act is amended by deleting all words between the word “or” in line three and the word “in” firstly appearing in line seven.

s. 25
amended.

12. Section forty of the principal Act is amended by—

s. 40
amended.

- (a) deleting all words between the word, “provided” in line three and the word, “there” in line five;

- (b) substituting for the words, “specified in the Last Schedule hereto”, in lines six and seven, the word, “prescribed”.

s. 50
amended

13. Section fifty of the principal Act is amended by deleting the second sentence commencing with the word "And" and concluding with the word "stated".

s. 53
amended.

14. Section fifty-three of the principal Act is amended by—

- (a) adding after the word, "instrument" in line one the words, "other than a transfer";
- (b) deleting the words in brackets in lines two and three, commencing with the word "excepting" and concluding with the word "required".

s. 66A
added.

15. The principal Act is amended by adding the following section—

No separate
certificate
for easement.

66A. A separate certificate of title for an easement shall not be issued.

s. 68
amended.

16. Section sixty-eight of the principal Act is amended by—

- (a) substituting for the words, "and also where the possession is not adverse to the interest of any tenant of the land" in lines twenty-one, twenty-two and twenty-three the words, "and to any prior unregistered lease or agreement for lease or for letting for a term not exceeding five years to a tenant in actual possession";
- (b) adding after the word, "instrument" in line twenty-four the words, "but no option of purchase or renewal in any such lease or agreement shall be valid as against a subsequent registered interest unless such lease or agreement is registered or protected by caveat".

ss. 71A and
71B added.

17. The principal Act is amended by adding the following sections—

Proprietor
may apply
for separate
certificate.

71A. (1) The Registrar, upon application being made in writing by a proprietor of land the subject of a certificate of title, may issue

to the proprietor a separate certificate of title for part of the land, and shall endorse upon the certificate of title, from the subject of which part is taken, a memorandum partially cancelling the certificate.

(2) The Registrar shall retain the duplicate of the partially cancelled certificate of title and, when required by the proprietor, shall make out to the proprietor a certificate of title for the land remaining the subject of the partially cancelled certificate of title.

71B. (1) The Registrar may, upon the delivery to him of a duplicate Crown Grant or certificate of title, issue a new certificate of title in the place of the existing Crown Grant or certificate of title, which shall thereupon be cancelled.

Power to
issue new
certificate
of title.

(2) Where the Registrar is of opinion that, because of the condition of dilapidation of a duplicate certificate of title or Crown Grant lodged with him for any purpose, it should be replaced by a new certificate of title, he may—

Power to
Registrar to
require new
certificate to
be taken out
in certain
circum-
stances.

(a) require the proprietor of the land the subject of the certificate of title or Crown Grant to apply for a new certificate of title;

(b) retain the Crown Grant or certificate of title so dilapidated until the proprietor applies for a new certificate of title.

18. The principal Act is amended by adding the following section—

s. 74A added.

74A. (1) Where any original grant or certificate is lost, destroyed or so dilapidated or obliterated as to become illegible, the Commissioner may cause another certificate to be prepared and to be endorsed with all such entries as were made upon the original, so far as the same can be ascertained from the records of

Lost and
dilapidated
certificate
may be
substituted
by copy.

the Office of Titles and inspection of the duplicate, and shall make and sign a memorandum upon the certificate so prepared, stating that it is a substituted certificate to be used in place of the original, and showing what has become of the original so far as is known or supposed, and on and after the date when the copy is so signed, it may be bound up in the register book and used in place of the original for the purpose of dealings and transmissions.

(2) The Commissioner may prepare the substituted certificate from the duplicate, or such other evidence as is available as to the contents of the original.

s. 80 repealed.

19. Section eighty of the principal Act is repealed.

s. 82 repealed.

20. Section eighty-two of the principal Act is amended by—

(a) adding after the section number, “82”, the figure one in brackets thus—(1);

(b) adding the following subsection—

(2) Where the consideration for a transfer is not a sum of money, the words “the sum of” in the forms of transfer contained in the Seventh Schedule shall not be used to describe the consideration but the true consideration shall be concisely stated.

s. 87 amended.

21. Section eighty-seven of the principal Act is amended by—

(a) adding after the word “may,” in line two, the words “if he thinks fit,”;

(b) deleting all words after the word “land” in line twelve to the end of the section.

s. 88A added.

22. The principal Act is amended by adding the following section—

Memorial of
easements
to be
registered.

88A. A memorial of any transfer or lease creating an easement over or upon or affecting land under the operation of this Act shall be

entered upon the folium of the register book constituted by the Grant or existing certificate of title of the land, in addition to any other entry which concerns the instrument and which is required by this Act.

23. Section ninety-one of the principal Act is amended by adding after the word, "registered" in line seven the words, "but the foregoing provisions of this section shall not prejudice the binding effect of a consent given by a mortgagee or annuitant to an unregistered lease or extension of lease for any term". s. 91
amended.

24. Section one hundred and two of the principal Act is amended by adding after the word "sublease" secondly occurring in line seven, the words "and on the lease". s. 102
amended.

25. Section one hundred and eight of the principal Act is amended by substituting for all words after the word "fit" in line eight to the end of the section, the following words, "with power to vary any contract for sale and to buy in at any auction or to rescind any contract for sale, and to resell without being answerable for any loss occasioned thereby, with power to make such roads, streets and passages, and to grant and reserve such easements as the circumstances of the case require and the mortgagee or annuitant thinks fit; and may make and sign such transfers and do such acts and things as shall be necessary for effectuating any such sale; and no purchaser shall be bound to see or inquire whether such default as aforesaid shall have been made or have happened or have continued, or whether such notice as aforesaid shall have been served or otherwise into the propriety or regularity of such sale." s. 108
amended.

26. Section one hundred and nine of the principal Act is amended by substituting the word "Commonwealth" for the words "Post Office" in line twenty-two. s. 109
amended.

27. Section one hundred and ten of the principal Act is amended by adding after the word "lease" in line ten, the words "or grant of easement". s. 110
amended.

ss. 111 and
112 amended.

28. Sections one hundred and eleven and one hundred and twelve of the principal Act are amended by adding after the section numbers, "111" and "112" respectively the words, "Subject to the provisions of section one hundred and twelve A of this Act".

s. 112A
added.

29. The principal Act is amended by adding the following section—

Abolition of
power of
distress.
Cf. No. 38 of
1936, s. 4.

112A. On the eleventh day of December, one thousand nine hundred and thirty-six, and thereafter during the operation of the Distress for Rent Abolition Act, 1936, which came into operation on that day, the power to distrain conferred by the last two preceding sections is abolished.

s. 121
amended.

30. Section one hundred and twenty-one of the principal Act is amended by substituting for the words, "of sale" in line nine the words, "to pay".

s. 125
amended.

31. Section one hundred and twenty-five of the principal Act is amended by substituting for the words, "as is mentioned in the last preceding section", in lines ten and eleven, the words "certificate of title when produced to him for that purpose".

s. 126
amended.

32. Section one hundred and twenty-six of the principal Act is amended by—

- (a) adding after section number, "126", the figure one in brackets, thus—(1);
- (b) deleting the word, "Colonial" in line four;
- (c) adding after the word "Government" in line seventeen, the words "or Commonwealth".

s. 128A
added.

33. The principal Act is amended by adding the following section—

Puisne
mortgagee
may tender
payment.
Cf. Real
Property Act,
1886 (S.A.).
s. 131.

128A. Where a mortgagee requires payment of money which is secured by a mortgage and payment of which is due, any other mortgagee of the same land may tender and pay to the mortgagee requiring payment the money so

payable, and the mortgagee making the payment shall be entitled, at his own cost, to a transfer of the estate and interest of the mortgagee requiring the payment.

34. The principal Act is amended by adding after section one hundred and twenty-nine the following heading and sections—

Division
IIIA, ss.
129A, 129B
and 129C
added.

Division IIIA.—Restrictive Covenants.

129A. (1) Restrictive covenants may be created and made binding in respect of land under this Act so far as the law permits by instruments in the prescribed form, but no such covenant affecting land subject to a mortgage or charge shall be registered unless the mortgagee or annuitant has consented in writing thereto prior to the same being registered.

Creation of
discharge of
restrictive
covenants.
Cf. Land
Registration
Act, 1925
(Eng.), s. 40.

(2) Upon the registration of any instrument creating a restrictive covenant it shall not be obligatory on the Registrar to make any entry relating thereto on the certificate of title of any person entitled to the benefit thereof.

129B. (1) Notwithstanding anything contained in this Act to the contrary any covenant or agreement affecting or restricting the use of land may be discharged or modified by agreement by all persons interested in the land affected by such covenant or agreement consenting to such discharge or modification.

Discharge of
restrictive
covenants.

(2) The Commissioner shall, when satisfied that all parties interested as aforesaid have agreed to the discharge or modification of any covenant entered in the register book direct the Registrar to enter a memorandum of such discharge or modification in the register book.

129C. (1) Where land under this Act is subject to any restriction arising under covenant or otherwise as to the user thereof or the right of building thereon, the court or a Judge may from time to time on the application of any person

interested in the land by order wholly or partially discharge or modify the restriction upon being satisfied—

- (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the court or a Judge may deem material the restriction ought to be deemed to have been abandoned or to be obsolete or that the continued existence thereof would impede the reasonable user of the land without securing practical benefits to other persons or (as the case may be) would unless modified so impede such user; or
- (b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction whether in respect of estates in fee simple or any lesser estates or interests in the land to which the benefit of the restriction is annexed have agreed to the same being discharged or modified or by their acts or omissions may reasonably be considered to have waived the benefit of the restriction wholly or in part; or
- (c) that the proposed discharge or modification will not substantially injure the persons entitled to the benefit of the restriction.

(2) When any proceedings by suit or otherwise are instituted to enforce a restrictive covenant affecting land under this Act any person against whom the proceedings are instituted may in such proceedings apply to the court or a Judge for an order under this section.

(3) The court or a Judge may on the application of any person interested make an order declaring—

- (a) whether or not in any particular case any land under this Act is affected by a restriction imposed by any instrument; or

- (b) what upon the true construction of any instrument purporting to impose a restriction is the nature and extent of the restriction and whether the same is enforceable and if so by whom; or
- (c) whether or not any restrictive covenant ought to be removed as an encumbrance from the register.

(4) Notice of any application under this section shall, if the court or a Judge so directs, be given to the council of the municipality or the board of the road district in which the land is situated and to such other persons and in such manner whether by advertisement or otherwise as the court or a Judge either generally or in a particular instance may order.

(5) An order under this section shall when registered as hereinafter provided be binding on all persons whether of full age or capacity or not then interested or thereafter becoming interested in enforcing any restriction which is thereby discharged modified or dealt with and whether such persons are parties to the proceedings or have been served with notice or not.

(6) This section applies to restrictions whether subsisting at the commencement of this section or imposed thereafter.

(7) The Registrar shall on the prescribed application make all necessary amendments and entries in the register book for giving effect to such order in respect of all certificates of title specified therein.

(8) The costs of and incidental to an application made pursuant to the provisions of this section to the court or a Judge shall not be awarded against the defendant or respondent in any event.

35. Section one hundred and thirty-one of the principal Act is amended by substituting the words "statement of claim" for the word "declaration" in line three.

s. 131
amended

s. 132
repealed.

36. Section one hundred and thirty-two of the principal Act is repealed.

s. 134
amended.

37. Section one hundred and thirty-four of the principal Act is amended by—

- (a) adding after the word, “transfer” in line two the words, “or other instrument”;
- (b) by adding after the word, “from” in line two the words, “a person who is or becomes”;
- (c) adding after the word, “was” in line six the words, “or becomes”;
- (d) adding after the word, “registered” in line six the words, “or required or in any manner concerned to enquire or ascertain the circumstances under or the consideration for which any mortgage or other encumbrance was or is discharged or removed from the register book at any time prior to or simultaneously with the registration of such transfer or other instrument”.

s. 137
amended

38. Section one hundred and thirty-seven of the principal Act is amended by substituting the word “State” for the word “colony” in line twenty-seven.

s. 138
amended.

39. Section one hundred and thirty-eight of the principal Act is amended by—

- (a) adding after the word, “lapsed” in line fifteen the words, “as to the land affected by the transfer or other dealing”;
- (b) adding after the word, “dealing” in line seventeen the words, “unless in the meantime such application is withdrawn”;
- (c) adding after the word, “interest” in line eighteen the words, “except subject to the state of the register book at the time of the renewal of such caveat”.

40. Section one hundred and thirty-nine of the principal Act is amended by— s. 139 amended.

- (a) adding after the section number, "139", the figure one in brackets, thus:—(1), and the words, "Subject to the provisions of the next succeeding subsection";
- (b) deleting the last sentence commencing with the words, "The consent" and ending with the word "caveat";
- (c) adding the following subsection:—

(2) Where an instrument is presented for registration and a caveat is lodged after the time of the presentation of the instrument, the caveat shall not have the effect of preventing registration of the instrument but the caveat shall take effect as if lodged after registration of the instrument.

41. The principal Act is amended by adding the following section:— s. 141A added.

141A. (1) Where it appears to the Commissioner that the estate or interest claimed by any caveator has ceased to exist, he may, either of his own motion or on the application of any person claiming any interest in the land, send by registered post notice to the caveator at the address set out in such caveat requiring him, within fourteen days from the date of such notice to withdraw such caveat or within such time to commence proceedings in Court to substantiate his claim, and in the event of the caveator failing to comply with the requirements of such notice within the time therein limited the Commissioner may direct the Registrar to remove such caveat from the register book and forward notice of such removal to the caveator.

Removal of caveat where interest protected has ceased to exist.

(2) In any proceedings by a caveator to substantiate his claim under this section, he shall, unless otherwise ordered by the Court or a Judge, join as parties the Registrar of Titles, the registered proprietor and any other person or persons affected by the existence of such caveat.

s. 143
amended.

42. Section one hundred and forty-three of the principal Act is amended by—

- (a) adding after the section number, “143,” the figure one in brackets, thus:—(1), and the words, “Subject to the provisions of this section”;
- (b) substituting for the words, “or a duplicate or attested copy thereof shall” in lines five and six, the word, “may”;
- (c) adding after the word, “filed” in line six the words, “by lodging the original instrument of power of attorney, a duplicate, an office copy referred to in the Powers of Attorney Act, 1896, or a copy certified by the Registrar of Companies under his hand and seal to be a true copy of a power of attorney recorded pursuant to the provisions of the Companies Act, 1943-1949”;
- (d) adding the following subsections—

(2) Where a power of attorney is filed within a period of three months from the day shown as that on which it was executed, the Registrar may presume that it is in force at the time of filing, unless a revocation has been previously registered.

(3) The provisions of the last preceding subsection shall not be construed so as to affect the force of a power of attorney filed at any time after the lapse of the period of three months referred to in the last preceding subsection.

(4) Nothing contained in this section or in the Powers of Attorney Act, 1896, shall preclude the Registrar from requiring evidence to his satisfaction that a power of attorney is not revoked.

s. 144
amended.

43. Section one hundred and forty-four of the principal Act is amended by deleting the words, “or the same or a duplicate or attested copy shall have been filed and noted” in lines five and six.

44. Section one hundred and forty-five of the principal Act is amended by adding after the word “witness” in line three, the words “other than a party to the instrument or power of attorney.” s. 145
amended.

45. Section one hundred and fifty-six of the principal Act is amended by— s. 156
amended.

(a) substituting for the word, “seventy-two” in line four, the word, “sixty-six”;

(b) substituting for the words, “surveyor licensed under this Act” in line ten, the words, “licensed surveyor lawfully entitled to practise under this Act”.

46. Section one hundred and eighty-one of the principal Act is amended by adding after the word, “title” in line three, the words, “and regulations prescribing the medium, in which documents presented for registration or lodgment shall be written and executed and the kind and size of paper or other medium on which they shall be written and prescribing the fees which may be charged by the Registrar and prescribing contributions to the Assurance Fund payable on the registration of any instrument”.

s. 181
amended.

47. Section one hundred and eighty-two of the principal Act is amended by— s. 182
amended

(a) adding after the section number, “182”, the figure one in brackets, thus—(1);

(b) adding the following subsection—

(2) The provisions of this section apply to any estate or interest in land which stands registered in the name of any deceased person who was at the time of his death a trustee thereof.

48. Section one hundred and eighty-four of the principal Act is amended by— s. 184
amended

(a) substituting for the words, “the rights of an official assignee or trustee in bankruptcy or of an execution creditor” in lines two and three, the words, “any right or interest”;

- (b) substituting for the word, "affect" in line five, the word, "affects".

s. 185
amended.

49. Section one hundred and eighty-five of the principal Act is amended by—

- (a) adding after the word, "of" in line two, the words, "fieri facias or warrant of";
- (b) adding after the word "writ" occurring firstly in line six, and secondly in line seven, the words "or warrant".

Repeal and
re-enactment
of s. 187.

50. Section one hundred and eighty-seven of the principal Act is repealed and substituted by the following section:—

Entry to
be made in
register in
book of
appointment
of executor,
or adminis-
trator or
Public
Trustee.

187. (1) Upon the receipt of an office copy of the probate of any will, or of any letters of administration, or of an order to administer granted to the Public Trustee, or an election to administer filed by the Public Trustee whereby it shall appear that any person has been appointed the executor or administrator of the estate of any deceased person, or that the Public Trustee has been empowered to administer, or has elected to administer any such estate, the Registrar shall, on an application in writing of the executor, administrator, or Public Trustee (as the case may be) to be registered as proprietor in respect of any land, or of any estate, right, title, or interest therein, enter in the Register Book, and on the duplicate instrument (if any) when produced for any purpose, a memorandum notifying the appointment of such legal personal representative and the day of the death of the proprietor, when the same can be ascertained, and upon such entry being made, such legal personal representative shall become the transferee and be deemed to be the proprietor of the estate or interest of the deceased proprietor in such land, estate, right, title, or interest, or of such part thereof as then remains unadministered, and shall hold the same subject to the equities upon which the

deceased held the same; but for the purposes of any dealings therewith, such legal personal representative shall be deemed to be the absolute proprietor thereof.

(2) The title of every legal personal representative becoming a transferee under this section shall, upon such entry being made, relate back to and be deemed to have arisen upon the death of the proprietor of any land, or of any estate, right, title, or interest therein, as if there had been no interval of time between such death and entry.

(3) If in any case probate or administration is granted to more persons than one, all of them for the time being shall join and concur in every dealing relating to the land, or to the estate, right, title, or interest therein.

51. Section one hundred and ninety of the principal Act is amended by deleting the word "Colonial" in line three.

s. 190
amended.

52. Section one hundred and ninety-one of the principal Act is repealed and substituted by the following:—

s. 191
repealed and
re-enacted

191. The Registrar may demand the fees prescribed.

53. Section one hundred and ninety-four of the principal Act is amended by—

s. 194
amended

(a) deleting the word "Colonial" in line three;

(b) adding after the word "Government" in line seven the words "or Commonwealth".

54. Section one hundred and ninety-five of the principal Act is amended by deleting the word "Colonial" occurring firstly in line eight, and secondly in line sixteen.

s. 195
amended

s. 199
amended.

55. Section one hundred and ninety-nine of the principal Act is amended by adding after the section number, "199", the words, "Subject to the provisions of section sixty-eight of this Act".

s. 203
amended.

56. Section two hundred and three of the principal Act is amended by adding after the word "Court" appearing firstly in line fourteen, secondly, in line twenty, thirdly in line twenty-one and fourthly in line twenty-six the words "or a Judge".

s. 204
amended.

57. Section two hundred and four of the principal Act is amended by—

- (a) adding after the word "Court" in line two, the words "or Judge";
- (b) substituting for the word "it" in line four, the words "the Court or Judge".

s. 209
amended.

58. Section two hundred and nine of the principal Act is amended by adding after the word, "if" in line five, the word, "in".

s. 211
amended.

59. Section two hundred and eleven of the principal Act is amended by—

- (a) deleting the word "coverture" in line nine;
- (b) adding after the word "infancy" in line nine, the word "or";
- (c) deleting the words "or absence from Western Australia" in lines nine and ten.

s. 214
amended

60. Section two hundred and fourteen of the principal Act is amended by adding after the word "registered" in line twenty-two, the words "that person commits an offence against this Act; and".

61. The principal Act is amended by adding the following section:—

s. 214A
243.
added.

214A. A person who wilfully neglects to lodge with the Registrar a duplicate certificate of title or Crown lease when required to do so, pursuant to the provisions of this Act, commits an offence against this Act.

Failure to lodge duplicate certificate of title or Crown Lease.
Cf. ss. 75 (2); 229B (2);

62. The principal Act is amended by adding the following section:—

s. 214B added

214B. A person who commits an offence against this Act is liable to a maximum pecuniary penalty of one hundred pounds (£100) or a maximum term of imprisonment for twelve months, or both.

Penalty.

63. Sections two hundred and fifteen, two hundred and sixteen, two hundred and seventeen and two hundred and eighteen of the principal Act are repealed.

ss. 215, 216, 217 and 218 repealed.

64. The principal Act is amended by adding the following section:—

s. 223A added

223A. A person claiming an estate or interest in the land in respect of which any such application is made, may before the granting thereof, lodge a caveat with the Registrar forbidding the granting of such application. Such caveat shall in all other respects be in the same form and shall have the same effect with respect to the application against which it is lodged, and be subject to the same conditions as an ordinary caveat against bringing land under the operation of this Act.

Caveat against application

65. The principal Act is amended by adding the following sections:—

ss. 229A and 229B added

229A. (1) A proprietor of land may apply to the Commissioner for the removal from the certificate of title of any easement notified thereon.

Removal or easement notified as an encumbrance.

(2) If the Commissioner is satisfied that the easement—

(a) has not been used or enjoyed for a period of not less than twenty years; and

(b) has been abandoned;
he may make an order directing the removal of the entry or statement of the easement, and thereupon the easement shall be deemed to have been abandoned and extinguished.

(3) An order shall not be made until the expiration of twenty-one days after notice of the application has been given by the Registrar to every person appearing by the Register Book to have any estate or interest in the land to which the easement is appurtenant, and also to any other person named by the Commissioner.

(4) The notice shall be in writing and dated and shall include or contain a plan showing the extent to which such easement is affected.

(5) The notice may be served by being sent in a registered letter to each person, to be served at his address appearing in the Register Book, or in the case of any person named by the Commissioner at the address supplied by the applicant for that purpose.

(6) The Registrar shall cause a copy of each notice to be filed with a memorandum of the same having been sent, and the memorandum shall be sufficient evidence that the notice was duly sent.

Cancellation
of easement
entered on
certificate
affected.

229B. (1) If an order is made under the last preceding section of this Act and affects the right, estate, or interest of the registered proprietor of land included in any certificate of title in respect of any registered easement appearing thereon, the Registrar shall cancel the entry of such easement to the extent to which it has been determined or extinguished upon the original of such certificate, and

also upon the duplicate certificate when brought to him for that purpose, or when the same is lodged in the Office of Titles for the purpose of any dealing with the land comprised therein.

(2) The Registrar may call in such duplicate certificate for the purpose of such cancellation and may detain the duplicate until such cancellation is effected and refuse to register any dealing with the land or any estate or interest therein until the duplicate has been brought in or lodged.

(3) For the purposes of this section the right, estate, or interest of a registered proprietor of land shall be deemed to be affected by an order relating to an easement, whether the land was as regards such easement in the position of a dominant or servient tenement.

66. Section two hundred and thirty of the principal Act is repealed and substituted by the following section:—

s. 230
repealed and
re-enacted.

230. Upon an application to bring land under this Act, if it shall be proved to the satisfaction of the Commissioner that any easement formerly affecting such land—

Abandonment of easement may be presumed after twenty years' adverse possession.

(a) has not been used or enjoyed for a period of not less than twenty years; and

(b) has been abandoned;

the Commissioner may, notwithstanding section sixty-nine of this Act, at his discretion issue a certificate of title for such land without notifying such easement as an encumbrance, and thereafter the same shall not be preserved by section sixty-eight of this Act.

67. Section two hundred and thirty-nine of the principal Act is amended by adding after the word, "caveat" in line eight the words, "power of attorney".

s. 239
amended.

s. 240
repealed
and re-
enacted.

68. Section two hundred and forty of the principal Act is repealed and substituted by the following section:—

Service of
notices.

240. (1) Any notice by this Act required to be served or given to any person may be served or given by being sent in a registered letter posted to that person at his address for service.

(2) The address of any person as entered in the Register Book shall until amended or altered be his address for service.

(3) The address or place within the city of Perth appointed in a caveat as the place at which notices relating to the caveat may be served shall be the address for service of the caveator within this section.

(4) The Registrar shall cause a copy of each notice so sent to be filed with a memorandum of the same having been sent and the memorandum shall be sufficient proof that the notice was duly sent.

(5) The Registrar shall on request in writing made by any person whose address is entered in the Register Book and on production of the duplicate certificate of title or Crown grant or instrument and on payment of the prescribed fee amend or alter the address.

(6) The Registrar shall on request in writing by a caveator and on payment of the prescribed fee amend or alter the address appointed in the caveat at which notices may be served and the additional address (if any) given by the caveator.

(7) When a notice is sent in a registered letter posted to any person at his address for service and the letter is returned by the post office the Registrar may if in the circumstances and having regard to the provisions of this Act he thinks fit—

- (a) direct any further notice to be given;
or
- (b) direct substituted service; or

(c) proceed without notice.

(8) This section applies notwithstanding any other provisions in this Act relating to service of notices.

69. Section two hundred and forty-one of the principal Act is repealed. s. 241 repealed.

70. The principal Act is amended by adding the following section:— s. 242 added

242. (1) (a) Where by the operation of any statute or statutory or other power or by virtue of any vesting order of any court or Judge or an order appointing a person to convey or of a vesting declaration appointment or other assurance an interest in land under this Act being an interest capable of being registered is disposed of or created the registered proprietor shall subject to proper provision being made for payment of costs, be bound to give effect to the disposition. Registration of dispositions off the register.

(b) If the registered proprietor is unable or refuses to make the requisite transfer or other disposition under this Act or cannot be found or if for any other reason a transfer or other disposition by him under this Act cannot be obtained within a reasonable time then the Registrar upon the direction of the Commissioner may give effect thereto in the Register Book by making an entry therein containing such particulars relating to such disposition as he may consider necessary.

(c) The disposition shall take effect in like manner as nearly as may be as if it had been made by the registered proprietor by transfer or other registered disposition:

Provided that nothing in this subsection shall prejudicially affect the rights of a personal representative in relation to the estate of the deceased.

(2) This section shall apply whether the disposition to which the registered proprietor is bound to give effect subject as aforesaid is made before or after the commencement of this Act.

(3) This section shall not apply in those cases in which other provision has been made for giving effect in the Register Book to any disposition.

(4) In this section, except where a contrary intention appears—

“disposition” includes a disclaimer surrender or release; and

“registered disposition” means a disposition which takes effect under the powers conferred by this Act on the registered proprietor of land by way of transfer, lease, mortgage or charge or otherwise.

Second
Schedule
amended.

71. The Second Schedule to the principal Act is amended by substituting for the last paragraph relating to persons authorised to attest the signature of the applicant, the following words:—

(The applicant if within the State to sign before the Registrar or an Assistant Registrar or a notary public, justice of the peace, commissioner for taking affidavits in the Supreme Court of Western Australia or legal practitioner; if out of the State, before a notary public, justice of the peace, or a commissioner for taking affidavits in the Supreme Court of Western Australia).

Fourth
Schedule
amended.

72. The Fourth Schedule to the principal Act is amended by substituting for the last paragraph relating to persons authorised to attest the signature of the applicant, the following words:—

(The applicant if within the State to sign before the Registrar or an Assistant Registrar or a notary public, justice of the peace, commissioner for taking affidavits in the Supreme

Court of Western Australia or legal practitioner; if out of the State, before a notary public, justice of the peace, or a commissioner for taking affidavits in the Supreme Court of Western Australia).

73. The Seventeenth Schedule to the principal Act is repealed and substituted by the following schedule:—

Seventeenth
Schedule
repealed and
substituted.

SEVENTEENTH SCHEDULE.

Western Australia.

FORM OF TRANSFER OF LAND UNDER WRIT OF *FIERI FACIAS* OR WARRANT OF EXECUTION.

Sections
90 and 133.

I (insert name)..... as the (Sheriff of).....
(or Magistrate of the Local Court held at).....
in pursuance of a writ of *feri facias* tested the..... day
of..... one thousand nine hundred and.....
and issued out of the Supreme Court (or warrant of execu-
tion dated the..... day of..... one thousand
nine hundred and..... and issued out of the Local
Court) in an action wherein (A.B.)..... is the plaintiff
and (C.D.)..... is the defendant, and (C.D.).....
is registered as the proprietor of an estate (here state nature
of the estate) in the land hereinafter described subject to
the encumbrances notified hereunder and to effectuate the
sale made under the writ (or warrant) do hereby in con-
sideration of the sum of..... paid to me by (E.F.)
(insert addition)..... transfer to (E.F.).....
all the estate and interest of (C.D.)..... in all that
..... (if the land transferred be part only of the land
comprised in the grant or existing certificate, set forth in
links or links and feet the boundaries and refer to a map).

Dated the..... day of..... one thousand nine
hundred and.....

Signed by the said..... }
(Sheriff or Magistrate) in the }
presence of— }
Signed by the said..... }
(E.F.) in the presence of— }

Encumbrances referred to.

Western Australia.

FORM OF TRANSFER OF LEASE, MORTGAGE, OR
CHARGE UNDER WRIT OF *FIERI FACIAS* OR
WARRANT OF EXECUTION.

I (insert name) as the (Sheriff of)
 (or Magistrate of the Local Court held at)
 in pursuance of a writ of *feri facias* tested the day
 of one thousand nine hundred and
 and issued out of the Supreme Court (or warrant of execu-
 tion dated the day of one thousand
 nine hundred and and issued out of the Local
 Court) in an action wherein (A.B.) is the plaintiff
 and (C.D.) is the defendant and (C.D.)
 is registered as the proprietor of a lease of (or mortgage or
 charge, as the case may be), numbered upon
 the land hereinafter described subject to the encumbrances
 notified hereunder and to effectuate the sale made under the
 writ (or warrant) do hereby in consideration of the sum of
 paid to me by (E.F.) (insert addition)
 transfer to (E.F.) all the estate and interest of
 (C.D.) as such registered proprietor in all that
 (or otherwise according to the description in
 the lease, mortgage, or charge, or describe the land in
 general terms by reference to the registered instrument).

Dated the day of one thousand nine
 hundred and

Signed by the said }
 (Sheriff or Magistrate) in the }
 presence of— }
 Signed by the said }
 (E.F.) in the presence of— }

Encumbrances referred to.

Western Australia.

FORM OF TRANSFER OF LAND UNDER DECREE
OR ORDER OF SUPREME COURT.

I (insert name) in pursuance of a decree or
 order of the Supreme Court dated the day of
 one thousand nine hundred and and
 entered in the register book vol. fol. hereby
 transfer to (E.F.) (insert addition) subject to
 the encumbrances notified hereunder all the estate and
 interest of (who is registered as the proprietor
 of an estate (here state nature of the estate)

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in the land hereinafter described) in all that.....
(if the land transferred be part only of the land comprised
in the grant or existing certificates set forth in links or
links and feet the boundaries and refer to a map).

Dated the day of one thousand nine
hundred and

Signed by the said }
in the presence of— }
Signed by the said }
(E.F.) in the presence of— }

Encumbrances referred to.

Western Australia.

FORM OF TRANSFER OF LEASE, MORTGAGE, OR
CHARGE UNDER DECREE OR ORDER OF
SUPREME COURT.

I (insert name) in pursuance of a decree or
order of the Supreme Court dated the day of
..... one thousand nine hundred and and
entered in the register book vol. fol. hereby
transfer to (E.F.) (insert addition) subject to
the encumbrances notified hereunder all the estate and
interest of (who is registered as the proprietor
of a lease of (or mortgage or charge, as the case may be),
numbered, upon the land hereinafter described)
in all that (or otherwise according to the descrip-
tion in the lease, mortgage, or charge or describe the land
in general terms by reference to the registered instrument).

Dated the day of one thousand nine
hundred and

Signed by the said }
in the presence of— }
Signed by the said }
(E.F.) in the presence of— }

Encumbrances referred to.

74. The last Schedule to the principal Act is repealed. Repeal of
last schedule.

75. (1) By way of revision, for the purpose of re-
printing, the provisions of the amending Acts are
amended to the extent specified in the Schedule to
this Act. Revision of
certain of
the pro-
visions of
the amend-
ing Acts.

(2) The provisions of the last preceding sub-
section shall not be construed so as to affect the
provisions of the Amendments Incorporation Act,
1938.

SCHEDULE

S. 74.

No. of Act.	Short title.	Item.	Amendment.
60 Vict. No. 22.	Transfer of Land Act, 1893, Amendment Act, 1896.	1.	Add after the section number, "6" the following:— The said Act is amended by adding as section two hundred and forty-three the following:—
2 Edw., VII No. 10.	Transfer of Land Act Amendment Act, 1902.	2.	Add after the section number, "7" the following:— The principal Act is amended by adding as section one hundred and fifty-three A the following:—
		3.	Substitute for the words "this Act" in line two of section seven, the words "the Transfer of Land Act Amendment Act, 1902."
		4.	Add after the section number, "8" the following:— The principal Act is amended by adding as section one hundred and sixty-seven A the following:—
		5.	Substitute for the words "the principal" in line three of section eight the word "this."
No. 54 of 1909.	Transfer of Land Act Amendment Act, 1909.	6.	Add as section one A the following:— The principal Act is amended by adding between lines eight and nine of section one the following heading:— Part IIIA.—Crown Leases, ss. 81A-81L.
		7.	Add as section two A the following:— The principal Act is amended by adding after section eighty-one the following heading:— Part IIIA. Crown Leases.
		8.	Add after the section number, "3" the following:— The principal Act is amended by adding as section eighty-one A the following:—
		9.	Substitute for the words "this Act" in line two of subsection (1) of section three the words "the Transfer of Land Act Amendment Act, 1909."

SCHEDULE—continued.

No. of Act.	Short title.	Item.	Amendment.
		10.	Substitute for the words "the principal" in line four of subsection (1) of section three the word "this."
		11.	Add after the section number, "4" the following:— The principal Act is amended by adding as section eighty-one B the following:—
		12.	Substitute for the words "this Act in lines one and two of subsection (1) of section four the words "the Transfer of Land Act Amendment Act, 1909."
		13.	Substitute for the words "the principal" in line three of subsection (1) of section four the word "this."
		14.	Add before the word "Schedule" in line three of subsection (1) of section four the words "Twenty-Eighth."
		15.	Substitute for the words "the principal" in line three of paragraph (b) of subsection (5) of section four, the word "this."
		16.	Add after the section number, "5" the following:— The principal Act is amended by adding as section eighty-one C the following:—
		17.	Substitute for the words "the principal" in line five of section five the word "this."
		18.	Substitute for the words "this Act" in line eight of section five the words "the Transfer of Land Act Amendment Act, 1909."
		19.	Add after the section number, "6" the following:— The principal Act is amended by adding as section eighty-one D the following:—
		20.	Delete the words "or the principal Act" in line one of subsection (2) of section six.
		21.	Add after the section number, "7" the following:— The principal Act is amended by adding as section eighty-one E the following:—
		22.	Add after the section number, "8" the following:—

SCHEDULE—continued.

No. of Act.	Short title.	Item. Amendment.
		<p>The principal Act is amended by adding as section eighty-one F the following:—</p> <p>23. Add after the section number, "9" the following:—</p> <p>The principal Act is amended by adding as section eighty-one G the following:—</p> <p>24. Substitute for the word "renewed" in line two of subsection (3) of section nine the word, "reviewed."</p> <p>25. Add after the section number, "10" the following:—</p> <p>The principal Act is amended by adding as section eighty-one H the following:—</p> <p>26. Substitute for the words "the principal" in line two of subsection (1) of section ten the word "this."</p> <p>27. Substitute for the word "eight" in line eight of subsection (2) of section ten the word "eighty-one F."</p> <p>28. Add after the section number, "15" the following:—</p> <p>The principal Act is amended by adding as subsection (1) of section sixty-three A the following:—</p> <p>29. Delete the words between the word "easement" in line three and the word "or" in line four of section fifteen.</p> <p>30. Add after the section number, "16" the following:—</p> <p>The principal Act is amended by adding as subsection (2) of section sixty-three A the following:—</p> <p>31. Substitute for section seventeen the following:—</p> <p>17. Section one hundred and ninety-six of the principal Act is amended by substituting for the words "the breach by a proprietor of any trust whether express, implied or constructive; nor" in lines three and four, the words "any breach by a registered proprietor of any trust, whether express or implied or constructive, or by the improper exercise of any power of sale expressed or implied in any</p>

SCHEDULE—continued.

No. of Act.	Short title.	Item. Amendment.
		<p>mortgage or encumbrance; or to any person claiming under an unregistered instrument, document or writing, or any equitable mortgage or charge by deposit or otherwise without writing, or any other interest not protected by caveat, by or in consequence of the issue to any registered proprietor of a new certificate of title pursuant to section seventy-five of this Act."</p> <p>32. Section eighteen is repealed.</p> <p>33. Add the following sections:—</p> <p>19. The principal Act is amended by adding the following Schedule:—</p> <p>Twenty-Eighth Schedule.</p> <p>Application to register a Crown Lease under the Transfer of Land Act, 1893.</p> <p>To the Registrar of Titles—</p> <p>I (insert name, address, and occupation) hereby apply to have the land hereinafter described brought under the operation of the Transfer of Land Act, 1893. And I declare:—</p> <p>1. That I am the lessee (or mortgagee or as the case may be) of a Crown lease of all that.</p> <p>2. That there are no documents or evidences of title affecting such land in my possession or under my control other than those included in the Schedule hereto.</p> <p>3. That I am not aware of any mortgage or encumbrance or sublease affecting the said land or that any other person has any estate or interest therein at law or in equity (if there are any add other than as follows and set the same forth).</p> <p>Dated this ... day of ..., one thousand nine hundred and</p> <p>Made and subscribed at in the presence of—</p>

SCHEDULE—continued.

No. of Act.	Short title.	Item.	Amendment.
			<p>(The applicant if within the State to sign before the Registrar or an Assistant Registrar or a notary public, justice of the peace, commissioner for taking affidavits in the Supreme Court of Western Australia or legal practitioner; if out of the State, before a notary public, justice of the peace, or a commissioner for taking affidavits in the Supreme Court of Western Australia).</p> <p>Schedule of Documents referred to.</p>
No. 26 of 1911.	Transfer of Land Act Amendment Act, 1911.	34. Add after the section number, "2" the following:—	<p>The principal Act is amended by adding as section eighty-one I the following:—</p>
		35. Substitute for the words "this Act" appearing firstly in lines two and three and secondly in line six of subsection (1) of section two, the words "the Transfer of Land Act Amendment Act, 1911".	
		36. Section three is repealed.	
No. 14 of 1929.	Transfer of Land Act Amendment Act, 1929.	37. Substitute for subsection (2) of section two the following:—	<p>(2) This section as amended by the Transfer of Land Act Amendment Act, 1929, applies to transfers received by the Registrar before or after the commencement of that Act.</p>
No. 42 of 1929.	Transfer of Land Act Amendment Act, 1929 (No. 2).	38. Substitute for the words "this Act" in the last line of the section substituted for section one hundred and forty-five of the Transfer of Land Act, 1893, by section two, the words, "the Transfer of Land Act Amendment Act, 1929 (No. 2)."	
		39. Section three is repealed.	
No. 28 of 1944.	Transfer of Land Act Amendment Act, 1944.	40. Repeal subsection (3) of the section substituted for section seventy-five of the principal Act by section two.	

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SCHEDULE—*continued.*

No. of Act.	Short title.	Item.	Amendment.
No. 6 of 1946.	Transfer of Land Act Amendment Act, 1946.	41. Section three is repealed.	
		42. Add to section two after the word, "amended" in line two the following paragraph:— (aa) by adding after the section number, "126" the figure one in brackets thus—(1).	