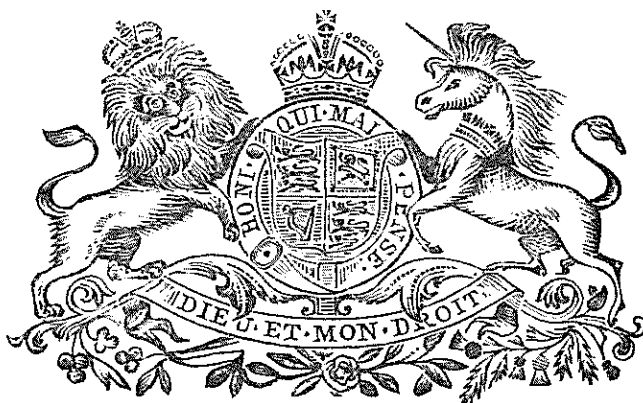


# WESTERN AUSTRALIA.



ANNO NONO

EDWARDI SEPTIMI REGIS,

L.

\*\*\*\*\*

No. 54 of 1909.

## AN ACT to further amend the Transfer of Land Act, 1893.

[Assented to 21st December, 1909.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and 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*, 1909, and shall be read as one with the Transfer of Land Act, 1893, hereinafter referred to as the principal Act, and shall come into operation on a day to be fixed by Proclamation.

Short title and  
commencement.

2. Section four of the principal Act is amended as follows:—

Amendment of  
56 Vic., No. 14, s. 4.

(a.) By adding to the word "fee," in line twenty-three, the words "and shall also include Crown Leases."

(b.) By adding the following subsection:—"Crown Lease" shall mean every lease or other holding of Crown Lands under the Land Act, 1893, or any regulation thereby repealed, granted for or extending over a period of five years or more.

Registration of  
Crown leases.

3. (1.) Every Crown Lease issued after the commencement of this Act shall be issued in duplicate under seal and be forwarded by the Minister for Lands direct to the Registrar for registration under sections fifty-three and fifty-four of the principal Act.

(2.) The Registrar shall—

- (a.) Enter in a journal particulars of the lease, and mark on each part thereof the number appearing in such journal, and sign his name to each part;
- (b.) Retain one part (to be called the original), and deliver the other part (to be called the duplicate) to the lessee or, in the case of a mortgage, to the mortgagee; and
- (c.) Register the original in the Register of Leases.

Registration of  
Crown leases  
granted before  
commencement of  
Act.

4. (1.) A Crown Lease issued before the commencement of this Act may be made subject to and registered under the operation of the principal Act, by an application in the form in the Schedule hereto.

(2.) Such application may be made by the lessee or any person claiming through him, or by any mortgagee, and shall be accompanied by—

- (a.) The instrument of lease and certified copies of all existing mortgages, subleases, and other dealings (if any) registered under the Land Act, 1898; and
- (b.) A certified copy of the lease to be supplied by the Department of Lands and Surveys to the applicant for such purpose; and
- (c.) The written consent of all registered mortgagees; and
- (d.) In applications by mortgagees, the written consent of the lessee.

(3.) The Registrar shall refer such application to the Commissioner for his direction, and if the Commissioner is satisfied as to the title of the applicant he shall direct the Registrar to bring the land under the Act, either forthwith or after advertisement.

(4.) When the Registrar is satisfied that the preceding provisions of this section have been complied with, he shall—

- (a.) Enter in a journal particulars of the lease, and of all existing mortgages and subleases, and mark on the lease and the certified copy the number appearing in the journal, and endorse on the lease and certified copy all existing mortgages and subleases, and sign his name to the lease and certified copy and such endorsements; and
- (b.) Retain and register in the Register of Leases the original lease instrument and deliver the certified copy to the lessee, or, in the case of a mortgage, to the mortgagee.

(5.) Any mortgage or sublease of a Crown Lease made prior to the lease being registered under this section, and which is still operative—

- (a.) Shall be recorded on the original instrument of lease and on the certified copy; and
- (b.) When so recorded, shall be read as if it contained all the covenants, powers, and conditions which by the principal Act are implied in mortgages or subleases or conferred upon the parties thereto, except so far as such mortgage or sublease contains express provisions to the contrary.

5. When a Crown Lease is signed by the Registrar it shall be deemed to be registered and, subject to this Act, may be transferred, subleased, and dealt with in like manner as if it had been granted by a registered proprietor and registered in the ordinary way, and the several provisions of the principal Act with respect to freehold land shall apply to such Crown lease, and every mortgage or sublease thereof, whether granted before or after the commencement of this Act, with such variations only as the difference in the nature of such property requires, or as may be necessary to render such provisions applicable to leaseholds for years.

Effect of registration.

6. (1.) No transfer, sublease, or mortgage of a Crown Lease or of a sublease thereof shall be registered until the written consent thereto of the Minister for Lands or of an officer of the Department of Lands and Surveys thereto authorised by the Minister for Lands has been filed with the Registrar.

Registration of Transfer, etc.

(2.) Nothing in this Act or the principal Act contained shall affect the provisions of the Land Act, 1898, whereby a transferee or sublessee is required to be a person who is not disqualified under that Act to be a lessee of the land intended to be transferred or sublet.

7. No order of foreclosure shall be made in respect of a mortgage of a Crown Lease without the consent, in writing, of the Minister for Lands.

No foreclosure without the consent of Minister for Lands.

8. (1.) The Registrar, upon receipt of written notice from the Minister for Lands that any Crown Lease has been forfeited or determined in whole or in part, shall make an entry to that effect on the original lease and call in the lessee's part thereof.

Entry of forfeiture.

(2.) If there is a mortgage or sublease registered against the lease so forfeited or determined, the Registrar shall post to the mortgagee or sublessee, at the address appearing in the Register, thirty days' notice of his intention to make such entry within which time the mortgagee or sublessee may carry out the conditions of

the lease and apply to the Minister for Lands to waive the forfeiture

(3.) The Minister for Lands may, by notice to the Registrar, allow a longer period than thirty days.

(4.) Unless the forfeiture or determination is cancelled by the Governor in Council under the Land Act, 1898, or is waived by the Minister for Lands under subsection two of this section, then at the expiration of such days or such longer period as the Minister for Lands shall allow, such forfeiture and determination shall become absolute.

Crown lessee to be deemed of full age.

9. (1.) Every person who for the time being is the holder of a Crown Lease shall, for all purposes in connection with transferring, subletting, mortgaging, or otherwise dealing with the lease, have the same capacity as if he were and shall be deemed of full age.

(2.) The provisions of this section shall be deemed to have applied to all holdings under the Land Act, 1898, from the first day of January, one thousand eight hundred and ninety nine.

(3.) The terms and conditions of any such transfer, sub-lease, mortgage, or other dealing may be renewed and altered upon application in Chambers to a Judge of the Supreme Court.

Certain provisions of the principal Act and of Land Act, 1898, not to apply to Crown leases.

10. (1.) Sections ninety-two, ninety-three, and ninety-four of the principal Act shall not apply to Crown Leases.

(2.) Sections eighty, one hundred and twenty-two, and one hundred and thirty-eight to one hundred and forty-four (*a*) inclusive of the Land Act, 1898, and sections seventy-four to eighty-three inclusive of the Land Act Amendment Act, 1906, shall not apply to Crown Leases registered under this Act, and section fifteen of the Land Act Amendment Act, 1900, shall in reference to Crown Leases registered under this Act be read subject to section nine of this Act.

Amendment of s. 78.

11. Section seventy-eight of the principal Act is amended by inserting after the word "sheriff" the words "or the magistrate of a local court."

Amendment of s. 90.

12. Section ninety of the principal Act is amended by inserting after the word "sheriff" the words "or magistrate of a local court," and by inserting after the words "*fi. fa.*" the words "or warrant of execution," and by striking out the words "three months" and inserting "four months" in lieu thereof.

Amendment of s. 105.

13. Section one hundred and five of the principal Act is repealed, and the following section shall be read in lieu thereof:—

105. (1.) The proprietor of any land under the operation of this Act may mortgage the same or may charge the same with the payment of an annuity.

(2.) A mortgage or charge may be in the form in the Fourteenth and Fifteenth Schedules respectively to this Act.

(3.) If a mortgage includes freehold land and a Crown Lease the Registrar may require a duplicate or certified copy of the mortgage to be lodged for registration.

(4.) A mortgage, charge, or lease may be extended by an instrument of extension executed by all the parties to such mortgage, charge, or lease, and stating the term of the extension and the terms and conditions on which the extension is made.

(5.) On production to the Registrar of such instrument and of the duplicate mortgage, charge, or lease, he shall retain such instrument and enter a memorandum of such extension on the original instrument of mortgage, charge, or lease filed in the Office of Titles and also on the certificate of title or, in the case of a Crown Lease, on the Register of Leases.

(6.) No dealing registered subsequent to any mortgage, charge, or lease shall be affected by the extension of any such mortgage, charge, or lease unless the proprietor in whose favour such dealing was registered shall have consented in writing to such extension.

14. Section one hundred and thirty-three of the principal Act is amended by adding a paragraph as follows:—"Every such writ shall cease to bind, charge, or affect any land, lease, mortgage, or charge specified as aforesaid unless a transfer upon a sale under such writ shall be left for entry upon the register within four months from the day on which the copy was served."

Amendment of  
s. 133.

15. Any certificate of title may contain a statement therein or entry thereon to the effect that the land therein described has appurtenant thereto any easement, or that the person therein named is entitled to any easement in gross, or that the land therein described is subject to any right or right-of-way or other easement.

Certificates may  
contain statement  
of easements.  
S.A. No. 380, s. 81.

16. Every such statement or entry shall set forth a true and accurate description of the easement, or if the instrument creating the same is deposited in the Lands Titles Office shall refer to such instrument, and the certificate of title shall contain a plan of the land over which such easement extends, or if a plan showing the extent of such easement is deposited in the Lands Titles Office shall refer to such plan.

Nature of easement.  
S.A. No. 380, s. 82.

Assurance Fund  
not liable for  
breach of trust, etc.  
S.A. No. 380,  
s. 211.

17. The Assurance Fund shall not be liable for compensation for loss, damage, or deprivation occasioned

- (a.) by any breach by a registered proprietor of any trust, whether express, implied or constructive, or by the improper exercise of any power of sale expressed or implied in any mortgage or encumbrance; or
- (b.) to any person claiming under any 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 special certificate.

Amendment of  
Seventeenth  
Schedule.

18. The forms in the Seventeenth Schedule of the principal Act shall be read with reference to any transfer pursuant to a sale under a warrant of execution issued under the Local Courts Act, 1904, as if the words "warrant of execution issued out of a local court" were inserted in place of "writ of *feri facias* issued out of the Supreme Court," and as if the words "magistrate of the local court" were inserted in place of the word "sheriff."

---

THE SCHEDULE.

---

*Application to register a Crown Lease under the Transfer of Land Act, 1893.*

To the Registrar of Titles.

I [*insert name, address, and occupation*] hereby apply to have the land herein-after described brought under the operation of the *Transfer of Land Act, 1893*. And I declare—

1. That I am the lessee [*or mortgagee or as the case may be*] of a Crown lease of ALL THAT

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.

3. That I am not aware of any mortgage or encumbrance or sub-lease 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*].

Dated this                      day                      , One thousand nine hundred and  
Made and subscribed at  
in the presence of

[*The applicant if within Western Australia to sign before the Registrar or an Assistant Registrar, or a notary public, justice of the peace, or commissioner for taking affidavits; if abroad before a notary public or a commissioner for taking affidavits in the Supreme Court of Western Australia.*]

SCHEDULE OF DOCUMENTS REFERRED TO.