



Western Australia

Transfer of Land Act 1893

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Western Australia

Transfer of Land Act 1893

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Defined Terms



Western Australia

Reprinted under the
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at 9 February 2001

Transfer of Land Act 1893

An Act to consolidate the law relating to the simplification of the title to and the dealing with estates in land.

1. Short title

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

[Section 1 inserted by No. 81 of 1996 s. 4.]

2. Repeal

- (1) The Acts mentioned in the First Schedule to this Act to the extent to which the same are thereby expressed to be repealed are hereby repealed. Provided that such repeal shall not affect any appointment (including those of specially licensed surveyors) declaration or any certified statement or list made or any application pending or any registration effected or any notice or certificate given or any memorandum entered or any caveat lodged or any seal prepared or any title estate interest claim right of dower or other right or power of attorney existing or duly acquired under the said Acts or any of them before the commencement of this Act.
- (2) In all cases where in any Act instrument order decree rule regulation or document whatsoever reference is made to *The Transfer of Land Act 1874* or to any Act or provision hereby repealed such reference shall be construed and have effect as if the same reference was made to the corresponding provisions of this Act.

3. Laws inconsistent not to apply to land under this Act

- (1) All laws statutes Acts Ordinances rules regulations and practice whatsoever so far as inconsistent with this Act shall not apply or be deemed to apply to land whether Crown, freehold or leasehold which shall be under the operation of this Act. This Act shall not be construed to limit abridge or extend any provisions of the *Married Women's Property Act 1892*.
- (2) This Act does not —
 - (a) apply to the registration of rights over land in respect of minerals or petroleum; or
 - (b) prevent or otherwise affect the system of registration under other Acts of mining or petroleum rights in respect of land whether Crown, freehold or leasehold.
- (3) In subsection (2)(b) —

“mining or petroleum rights” has the same meaning as it has in the *Land Administration Act 1997*.

[Section 3 amended by No. 31 of 1997 s. 88.]

4. Interpretation

- (1) In the construction of this Act except where the subject or context or the other provisions hereof require a different construction —

“Annuitant” means the proprietor of an annuity or charge.

“Annuity” means a sum of money payable periodically and charged on land under the operation of this Act by an instrument hereunder.

“Approved form”, subject to section 81K, means a form approved by the Registrar of Titles.

“Authorised land officer” has the meaning given by the *Land Administration Act 1997*.

“Certificate of Crown land title” means certificate of Crown land title within the meaning of the *Land Administration Act 1997*.

“Charge” means —

- (a) the instrument creating and charging an annuity; or
- (b) subject to section 15(10) of the *Land Administration Act 1997*, a charge referred to in section 15(9)(b) of that Act.

“Crown land” has the same meaning as it has in the *Land Administration Act 1997*.

“Crown land lease” means lease of Crown land registered under section 81Q.

“Crown Lease” means every lease or other holding of Crown lands under the *Land Act 1898*², or any regulation thereby repealed, granted for or extending over a period of 5 years or more.

“Dealing” has the same meaning as it has in the *Land Administration Act 1997*.

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

“Encumbrances” includes all prior estates interests rights claims and demands which can or may be had made or set up in to upon or in respect of the land.

“Endorsed” includes anything written, noted or marked, by means approved by the Registrar of Titles, upon or in the margin or at the foot of any document.

“Examiner of Titles” means any person being a barrister-at-law or an attorney or solicitor who shall hereafter be appointed as such examiner under this Act.

“Grant” means the grant by Her Majesty of land in fee and also includes Crown leases.

“Grantor” means the proprietor of land charged with the payment of an annuity.

“Instrument” includes —

- (a) a conveyance, assignment, transfer, lease, sublease, mortgage, charge and creation of an easement, profit à prendre or restrictive covenant in relation to freehold land;
- (b) a document lodged with a plan or diagram under Part IVA for the purpose of creating an easement or restrictive covenant under that Part in relation to freehold land; and
- (c) a dealing in relation to Crown land.

“Interest”, in relation to Crown land, has the same meaning as it has in the *Land Administration Act 1997*.

“Judge” means a judge of the Supreme Court of Western Australia.

“Land” includes messuages, tenements and hereditaments corporeal or incorporeal in freehold and Crown land; and in every certificate of title certificate of Crown land title and qualified certificate of Crown land title transfer and lease created and registered or issued or made under this Act such word also includes all easements and appurtenances appertaining to the land therein described or reputed to be part thereof or appurtenant thereto.

“Management body” has the same meaning as it has in the *Land Administration Act 1997*.

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

“Minister” means the responsible Minister in charge of the Department.

“Minister for Lands” means the Minister to whom the administration of the *Land Administration Act 1997* is committed.

“Ministerial order” means order made by the Minister for Lands under the *Land Administration Act 1997*.

“Person” includes a corporation whether aggregate or sole.

“Profit à prendre”, in relation to —

- (a) Crown land, has the same meaning as it has in the *Land Administration Act 1997*; or
- (b) other land, includes profit à prendre referred to in section 34B of the *Conservation and Land Management Act 1984* or Part 7 of the *Forest Products Act 2000*.

“Proprietor” means —

- (a) in relation to freehold land, the owner, whether in possession, remainder, reversion or otherwise, of land or of a lease, mortgage or charge over land; or
- (b) in relation to Crown land —
 - (i) the holder of an interest in Crown land; or
 - (ii) a management body empowered under the *Land Administration Act 1997* to grant or enter into interests in Crown land or to deal with or create any other right or title of a proprietary nature in Crown land,

whose name appears in the Register as the proprietor of that freehold land, or the holder of that interest or power, and includes the donee of a power to appoint or dispose of that ownership, interest or power.

“Public authority” means —

- (a) a Minister of the Crown in right of the State;
- (b) any State Government department, State trading concern, State instrumentality or State agency; or

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

“Qualified certificate of Crown land title” means qualified certificate of Crown land title within the meaning of the *Land Administration Act 1997*.

“Qualified valuer” means —

- (a) in relation to a certificate of the value of land that is produced to the Registrar pursuant to a requirement made by him before the expiration of 12 months from the coming into operation of the *Land Valuers Licensing Act 1978* —
 - (i) a person appointed as a sworn valuator under the provisions of this Act as enacted before the coming into operation of that Act; or
 - (ii) a person who is licensed under that Act;
- (b) in relation to a certificate of the value of land that is produced to the Registrar pursuant to a requirement made by him after the expiration of 12 months from the coming into operation of the *Land Valuers Licensing Act 1978* — a person who is licensed under that Act.

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

“Reserve” has the same meaning as it has in the *Land Administration Act 1997*.

“Settlement” means any document under or by virtue of which any land shall be so limited as to create partial or limited estates or interests.

“Sheriff” includes the Sheriff of Western Australia so far as concerns land within his bailiwick and any deputy sheriff or person appointed to execute any writ of fieri facias.

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

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

“Transmission” means the acquirement of the ownership of freehold land under the will of the proprietor or by descent or by executors or administrators as such or under any settlement.

(1a) This Act applies, with such modifications —

- (a) as are necessary or desirable; or
- (b) as are prescribed,

or both, to Crown land.

(1b) Without limiting the generality of subsection (1a), a reference in this Act to —

- (a) a certificate of title, document of title or muniment of title includes, unless the contrary intention appears, a reference to a certificate of Crown land title or qualified certificate of Crown land title;
- (b) a Crown grant includes, unless the contrary intention appears, a reference to a certificate of title created and registered on the registration of a transfer in fee simple of the relevant parcel of Crown land;
- (c) land, to freehold land or to land under the operation of this Act includes, unless the contrary intention appears, a reference to Crown land;
- (d) the Minister includes, unless the contrary intention appears, a reference to the Minister for Lands;
- (e) a person having an estate or interest in land includes, unless the contrary intention appears, a reference to —
 - (i) a person having an interest in Crown land; and
 - (ii) a management body empowered under the *Land Administration Act 1997* to grant or enter into interests in Crown land;

or

s. 4A

- (f) the exercise of rights by a proprietor of land to grant leases, licences or mortgages of or over the land includes, unless the contrary intention appears, a reference to the exercise by a management body of corresponding powers conferred on it under section 46(3) or 59(5) of the *Land Administration Act 1997*.
- (1c) A word or expression which is defined in the *Land Administration Act 1997* has, unless the contrary intention appears or the word or expression is otherwise defined in this Act, the same meaning in this Act as it has in that Act.
- (2) All land and every estate and interest in land under the operation of *The Transfer of Land Act 1874* and all instruments and dealings affecting any such land estate or interest shall from the commencement of this Act be deemed to be under the operation of this Act.
- (3) In this Act, a reference to a “short form” in relation to an easement of a type described in column 2 of Schedule 9A is a reference to the corresponding short form description of that type of easement set out in column 1 of that Schedule.

[Section 4 amended by 2 Edw. VII, No. 10 s. 2; No. 54 of 1909 s. 2; No. 17 of 1950 s. 6; No. 56 of 1978 s. 4; No. 126 of 1987 s. 33; No. 81 of 1996 ss. 5 and 145(1); No. 31 of 1997 s. 89; No. 34 of 2000 s. 72.]

4A. Certain provisions of this Act not to apply to Crown land

- (1) Subject to subsection (2), this Act applies to Crown land in the same way as it applies to freehold land.
- (2) Notwithstanding any other provision of this Act, sections 29, 48B, 70, 71B, 86, 222, 223 and 223A do not apply to Crown land.

[Section 4A inserted by No. 31 of 1997 s. 90.]

Part I — Officers

5. Commissioner of Titles

The Governor in Council may by warrant under his hand and public seal appoint a fit and proper person being a barrister or solicitor of the English Irish or Colonial Courts of 7 years' standing and practice to be the Commissioner of Titles. The present Commissioner shall continue to hold office under this Act. The Governor in Council may upon any vacancy occurring in such office by death resignation retirement or removal appoint a person to supply such vacancy.

6. Deputy Commissioner of Titles

- (1) Subject to subsection (2), the Governor may appoint a person to be Deputy Commissioner of Titles.
- (1a) A person appointed under subsection (1) holds office under and subject to Part 3 of the *Public Sector Management Act 1994*.
- (2) A person shall not be appointed to be Deputy Commissioner of Titles unless he is a practitioner, as defined by the *Legal Practitioners Act 1893*, of not less than 5 years' standing.
- (3) When and as often as —
 - (a) the Commissioner is incapacitated by illness, absence or other sufficient cause from performing the duties of his office; or
 - (b) the office of Commissioner is for any reason vacant,the Deputy Commissioner shall act as, and in the place of, the Commissioner during his incapacity or during the vacancy in office of the Commissioner.
- (4) The Deputy Commissioner while acting as Commissioner has all the powers of, and shall perform all the duties and functions of, the Commissioner, except the power of delegation conferred by subsection (5).

s. 7

- (5) The Commissioner may by instrument in writing under his hand —
 - (a) delegate to the Deputy Commissioner all or any of the powers, duties and functions of the Commissioner under this Act, as the Commissioner thinks fit; and
 - (b) vary or revoke a delegation given by him under this subsection.
- (6) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.
- (7) The exercise by the Deputy Commissioner of any power or function pursuant to this section is sufficient evidence of his authority to do so, and no person shall be concerned to inquire as to that authority or be affected by any notice in relation thereto.
- (8) The Deputy Commissioner is subject in all matters to the direction and control of the Commissioner.

[Section 6 inserted by No. 14 of 1972 s. 2; amended by No. 32 of 1994 s. 18.]

7. Registrar of Titles

The Governor in Council may appoint one Registrar of Titles. The present Registrar of Titles shall continue to hold office under this Act.

7A. Offices of Commissioner and Registrar may be held by one person

- (1) Any person qualified to be appointed Commissioner of Titles may be appointed both Commissioner of Titles and Registrar of Titles, and may perform the duties and exercise the powers of both offices.

- (2) Any act, matter, or thing which is required by this Act to be —
- (a) referred by the Registrar of Titles to the Commissioner of Titles; or
 - (b) done or proceeded with or granted or refused by the Registrar of Titles by the direction or order or with the consent or approval of the Commissioner of Titles, or after the Commissioner of Titles has been satisfied of any facts —

may be dealt with by a person appointed to both offices under this section without any reference, or on his own initiative or judgment, or pursuant to any order or direction made or given by himself, as in the circumstances of the case may appear to be most convenient.

- (3) Nothing in this section shall be deemed to extend the powers of any Assistant Registrar.

[Section 7A inserted by No. 5 of 1925 s. 2.]

8. Appointment of other and removal of all officers

- (1) The Governor in Council may from time to time appoint one or more Examiner or Examiners of Titles and one or more Assistant Registrar or Registrar of Titles and any other officers necessary for carrying out the provisions of this Act; and may remove any Commissioner Examiner Registrar or any other officer and supply any vacancy thereby or otherwise occurring.
- (2) The Commissioner may by instrument in writing under his hand —
- (a) delegate to an Examiner of Titles all or any of the powers, duties or functions of the Commissioner under section 81S and Division 2 of Part IIIB, as the Commissioner thinks fit; and
 - (b) vary or revoke a delegation given by him under this subsection.

- (3) A delegation under this section does not prevent the exercise of a power or the performance of a duty or function by the Commissioner.
- (4) The exercise or performance by an Examiner of Titles of any power, duty or function delegated to him under this section is sufficient evidence of his authority to do so, and no person shall be concerned to inquire as to that authority or be affected by any notice in relation thereto.
- (5) An Examiner of Titles is subject in all matters arising out of a delegation to him under this section to the direction and control of the Commissioner.

[Section 8 amended by No. 31 of 1997 s. 91.]

9. Certain signatures to be judicially noticed

All courts judges and persons acting judicially shall take judicial notice of the signature of the Commissioner of Titles (hereinafter called the Commissioner) and of the Deputy Commissioner of Titles (hereinafter called the Deputy Commissioner) and of the Registrar of Titles (hereinafter called the Registrar) and of any Assistant Registrar of Titles (hereinafter called an Assistant Registrar) and of any Examiner of Titles.

[Section 9 amended by No. 14 of 1972 s. 3; No. 31 of 1997 s. 92.]

10. Seal

- (1) The Registrar shall have a seal which shall be in a form, and applied by means, approved by the Registrar.
- (2) Certificates of title and other documents purporting to be marked with the seal shall be admissible as evidence without further proof.

- (3) The mark of the seal on any entry or memorandum entered in the Register or on any registered instrument or its duplicate shall be treated by all courts as conclusive evidence that —
- (a) the entry or memorandum has been duly entered in the Register; and
 - (b) the instrument, or the instrument to which the duplicate, entry or memorandum relates, has been duly registered.
- (4) The mark of the seal on any memorandum referred to in section 54 shall be treated by all courts as conclusive evidence that the memorandum has been duly filed under that section.
- (5) All courts, judges and persons acting judicially shall take judicial notice of the seal on —
- (a) any entry or memorandum entered in the Register;
 - (b) any registered document or its duplicate; or
 - (c) any memorandum filed under section 54,

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

[Section 10 inserted by No. 81 of 1996 s. 6³.]

11. Powers of Assistant Registrar

Everything by this Act appointed or authorised or required to be done or signed or initialled by the Registrar may be done or signed or initialled by any Assistant Registrar; and shall be as valid and effectual as if done or signed or initialled by the Registrar himself.

[Section 11 amended by No. 28 of 1969 s. 3.]

12. Commissioner and Examiner of Titles not to practise

The Commissioner shall not nor shall any Examiner of Titles under this Act directly or indirectly practise as a barrister or an attorney or solicitor or participate in the fees of any other person so practising.

13. Oaths of office

Every Registrar and Assistant Registrar to be hereafter appointed shall before executing any of the duties of his office take the following oath before a judge: —

I A.B. do solemnly swear that I will faithfully and to the best of my ability execute and perform the office and duties of Registrar of Titles [*or* Assistant Registrar of Titles] under the *Transfer of Land Act 1893*. So help me God.

[14. *Repealed by No. 56 of 1978 s. 6.*]

[15. *Repealed by No. 25 of 1909 s. 2.*]

16. Rules relating to surveyors

The Minister may from time to time make Rules and Regulations to be observed by licensed surveyors lawfully entitled to practise under this Act.

[*Section 16 amended by No. 25 of 1909 s. 29; No. 17 of 1950 s. 8.*]

[17. *Repealed by No. 25 of 1909 s. 2.*]

Part II — Bringing land under the Act

[18. *Repealed by No. 31 of 1997 s. 93(1)*⁴.]

[19. *Repealed by No. 31 of 1997 s. 94(1)*⁵.]

**20. Lands alienated in fee before the commencement of
The Transfer of Land Act 1874 may be brought under this Act**

Land alienated in fee by Her Majesty before 1 July 1875 may be brought under the operation of this Act by an application in the form in the Second Schedule; which application may be made by any of the following persons (that is to say): —

- (i) The person claiming to be the owner of the fee simple either at law or in equity.
- (ii) Persons who collectively claim to be the owners of the fee simple either at law or in equity.
- (iii) Persons who have the power of appointing or disposing of the fee simple.
- (iv) The person claiming to be the owner of the first estate of freehold provided that the owner of any vested estate of inheritance join in applying to bring the land under the operation of the Act.
- (v) Trustees for sale of the fee simple but if any previous consent to their selling be requisite the persons required to give such consent to consent to the application.
- (vi) The guardian of any infant or the committee of the estate of any lunatic or person of unsound mind unable to govern his estates so however that the application be made on behalf of such infant lunatic or person and the certificate of title be prepared for registration in his name.
- (vii) A tenant for life within the meaning of the *Settled Land Act 1892*⁶, if the application contains a direction that the certificate of title be registered in the names of the trustees of the settlement within the meaning of that Act, and the trustees consent to the application.

Provided always that a mortgagor shall not be entitled to make such application unless the mortgagee shall consent thereto; nor a mortgagee unless in the exercise of his power of sale and unless the certificate of title shall be prepared for registration in the purchaser's name; 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). Provided also that the attorney of any corporation howsoever and wheresoever incorporated whether already constituted or hereafter to be constituted by a power of attorney under a seal purporting to be the common seal of the corporation giving the power may make such application for and on behalf of the corporation of which he is the attorney and may make the requisite declaration to the best of his knowledge information and belief and may subscribe the application in his own name.

[Section 20 amended by No. 17 of 1950 s. 9; No. 81 of 1996 s. 8.]

20A. Evidence and restrictions of requisitions

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

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 20 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.

[Section 20A inserted by No. 17 of 1950 s. 10.]

21. How application to be dealt with when no dealing has been registered

The Registrar shall refer such application to the Commissioner for his direction or if there be such an officer then to an Examiner of Titles who shall report on the title and submit the same and the papers to the Commissioner for his direction; and if it shall appear to the Commissioner that no transaction affecting the land has been registered under any general registration Act concerning the registration of deeds relating to or affecting land and if he shall be satisfied as to the title of the applicant he shall direct the Registrar to bring the land under the operation of this Act either forthwith or after advertisement made as hereinafter directed by registering a certificate of title.

22. How application to be dealt with when a dealing has been registered

If it shall appear to the Commissioner that any such transaction as aforesaid has been registered and that all encumbrances affecting the land (excepting such as are hereinafter mentioned as not requiring special notification) have been released or that the owners thereof have consented to the application or that any encumbrance (not being a mortgage the owner whereof shall not have consented to the application) may be specified in the certificate of title and continue outstanding and if he shall be satisfied with the evidence submitted in support of the title and of such further evidence as he shall call for by requisition the Commissioner shall direct notice of the application to be advertised once at least in the *Government Gazette* and in one newspaper published in the city of Perth or circulating in the neighbourhood of the land and to be served on any persons named by him; and shall appoint a time not less than 14 days nor more than 12 months from such notice or from the advertisement or the first of such advertisements (if more than one) on or after the expiration of which the Registrar shall unless a caveat shall be lodged forbidding the same bring the land under the operation of this Act. The expenses of all

advertisements under this or any other section shall in all cases be paid to the Registrar before the publication thereof.

23. Notice of application to bring land under this Act and rescission of previous directions on undue delay

The Registrar shall under such direction as aforesaid cause notice to be published in such manner as by such direction may be prescribed that application has been made for bringing the land under the operation of this Act and shall cause a copy of such notice to be posted in a conspicuous place at the Department's office and shall serve a copy of the notice on every person whom the Commissioner has directed to be served with such notice, the persons stated in the application to be occupiers of the land, the occupiers and owners of the lands contiguous to the land (unless the land is an entire Crown allotment) and all persons appearing on the Register to have a then subsisting estate or interest in the land. Notwithstanding however any direction heretofore given or which shall hereafter be given by the Commissioner to bring land under the operation either of *The Transfer of Land Act 1874*, or of this Act he may after sending to the applicant or his agent one month's notice in this behalf rescind such direction and reject the title unless the applicant shall adduce satisfactory proof that he is proceeding without unnecessary delay in removing or complying with the requisitions made on the title.

[Section 23 amended by No. 81 of 1996 s. 9.]

24. Person claiming title by possession to post notice of application on land

On any application to bring land under this Act on a title claimed by possession the applicant shall post on the land the subject of the application or at such place as the Commissioner shall direct a notice in the form in the Third Schedule either accurately describing or necessarily including the land claimed by possession and shall keep the same so posted for not less

than 21 days prior to the day limited for entry of caveat; and the Commissioner may refuse to create the certificate until it has been proved to his satisfaction that the requirements of this section have been complied with.

[Section 24 amended by No. 81 of 1996 s. 10.]

25. Land to be brought under the Act unless caveat received

If before the registration of the certificate the Registrar shall not have received a caveat forbidding the same he shall bring the land under this Act by registering in the name of the applicant or in the name of such person as may have been directed in that behalf a certificate of title, in an approved form, to the land.

[Section 25 amended by No. 17 of 1950 s. 11; No. 81 of 1996 s. 11.]

26. Land occupied may be brought under this Act by a different description from that in the title on special application

On any application to bring land under this Act in which the land actually and bona fide occupied by the applicant differs in boundaries area or position from the land described in his muniments of title he may apply to bring under this Act the land so occupied; and in any such case the applicant shall state in his application in addition to the other particulars required by this Act that the land as occupied by him and as to which he applies for a certificate is not correctly described in the muniments of title lodged in support of the application and shall specify to the best of his knowledge and belief the reasons for the discrepancy between the land as occupied and the land as described in the muniments of title.

27. Applications to bring land under Act or to amend certificate may be granted as to land occupied under but not described in the title deeds or certificate

On any application to bring land under this Act by a description different from that in the muniments of title or for the

amendment of a certificate the Commissioner may grant the same as to the land in the occupation of the applicant if the discrepancy between the land as occupied and as described in the muniments or certificate of title shall appear to be due to the inaccuracy of any survey or plan or description on the sale of the land by the Crown or on any subsequent dealing therewith or to any discrepancy between the actual measurements or bearings at any time made or marked on the ground and those represented or mentioned in any plan or description.

[Section 27 amended by No. 81 of 1996 s. 12.]

28. Title may be given to excess of land occupied under Crown grant over land described in Crown grant

If the land included in any application to bring land under this Act or for an amended certificate consist of a Crown town or suburban allotment or country location and it shall be found by survey or otherwise that by reason of erroneous measurements in the original Crown survey the actual dimensions of such section allotment or portion as marked on the ground exceed or fall short of the dimensions given in the Crown grant or certificate of title of such land the Commissioner may direct the Registrar to create and register a certificate in respect of such land as if the dimensions marked on the ground had been the dimensions given in the Crown grant or certificate of title.

[Section 28 amended by No. 81 of 1996 s. 13; No. 31 of 1997 s. 95.]

29. Excess of land may be apportioned between different owners or proprietors

Where land has been subdivided by the Crown into allotments or portions of equal area and by reason of erroneous measurements in the original Crown survey the area of the section as marked on the ground exceeds the sum of the areas of all the allotments or portions as shown by any plan or description used at the Crown sale or by any grant or certificate

of title of any such allotment or portion the total excess of area of the section shall be deemed originally distributable amongst the allotments or portions equally; and if the area of the land included in any application to bring land under this Act or for an amended certificate is in the applicant's possession and was in such applicant's possession or those through whom he claims for over 12 years previous to the application and does not exceed the area obtained by dividing the area of the section as shown on the ground by the number of original allotments or portions the Commissioner may without ascertaining the dimensions of the other allotments or portions and without the consent of the owner or owners thereof direct the Registrar to create and register a certificate in respect of the land included in such application as if the whole of it had been included by metes and bounds in the original grant or certificate of such allotment or portion.

[Section 29 amended by No. 81 of 1996 s. 14.]

30. Parties interested may lodge caveat

Any person claiming any estate or interest in the land described in the advertisement may in person or by agent before the registration of the certificate lodge a caveat with the Registrar in an approved form forbidding the bringing of such land under this Act. Every such caveat shall be signed by the caveator or by his agent and shall particularise the estate or interest claimed; and the Registrar may by notice require any person lodging such caveat to support the same by a statutory declaration within 7 days after the service of such notice stating the nature of the title under which the claim is made and also to deliver a perfect abstract of the title to such estate or interest. Unless such declaration be lodged within the time aforesaid the caveat shall lapse. A caveat under this section cannot be lodged unless it contains an address, or a number for a facsimile machine, in Australia for the service of notices in relation to the caveat.

[Section 30 amended by No. 81 of 1996 s. 15.]

31. If caveat received, proceedings suspended

The Registrar upon receipt of such caveat shall notify the same to the applicant and shall suspend proceeding in the matter until such caveat shall have been withdrawn or shall have lapsed as in this Act provided or until an order in the matter shall have been obtained from the Supreme Court or a judge. The applicant may if he think fit summon the caveator to attend before the Supreme Court or a judge in chambers to show cause why such caveat should not be removed; and such Court or judge may upon proof that such caveator has been summoned make such order in the premises either ex parte or otherwise as to such Court or judge may seem fit.

32. Caveat to lapse unless proceedings taken within one month

After the expiration of one month from the receipt thereof such caveat shall be deemed to have lapsed unless the person by whom or on whose behalf the same was lodged shall within that time have taken proceedings in a court of competent jurisdiction to establish his title to the estate or interest specified in the caveat and shall have given written notice thereof to the Registrar or shall have obtained and served on him an injunction or order of the Supreme Court or a judge restraining him from bringing the land under this Act. A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest.

33. A judge may require the production of title deeds in support of an application to bring land under the Act

After an application has been made to have any land brought under the operation of this Act a judge may require all persons having in their possession or custody any deeds instruments or evidences of title relating to or affecting the land the subject of such application to produce the same to the Commissioner and in case there be such to any Examiner of Titles for his inspection upon such terms and subject to such conditions and

for such charge or fee as the judge making the order may think just and shall fix. All applications to be made to a judge under this section may be made by summons in chambers by the applicant owner or by the person in whose name a certificate of title would be created if the application were to be successful.

[Section 33 amended by No. 81 of 1996 s. 16.]

34. Applicant may withdraw application

An applicant may withdraw his application at any time prior to the registration of the certificate; and the Registrar shall in such case return to the applicant or to the person appearing by the application to be entitled thereto all evidences of title lodged in support of the application; but in such case if a caveator shall have been put to expense without sufficient cause by reason of such application he shall be entitled to receive from the applicant such compensation as a judge on a summons in chambers shall deem just and order.

35. Documents of title

Upon registering a certificate of title the Registrar shall retain in his custody and possession all grants and instruments evidencing the title of the person registered and shall endorse upon the last of them if there be more than one a memorandum that the land included in the certificate has been brought under this Act and shall sign such memorandum. Provided always that if any of such grants or instruments relate to any property other than the land included in such certificate the Registrar shall return such grant or instrument to the person from whom he received the same. No person shall be entitled to an inspection of any of such instruments except upon the written order of the person who originally deposited the same or of some person claiming through or under him or upon the order of a Judge or of the Commissioner. No action or suit at law or in equity shall be brought or maintained upon any covenant or agreement for the production of the documents which shall be so retained or

upon any agreement to give or enter into a covenant for the production thereof; and if any such action or suit shall be commenced it shall be a sufficient answer thereto that such documents have been retained under this Act.

36. Subsisting lease to be endorsed and returned

Where any subsisting lease has been lodged the Registrar shall after he has endorsed the same as above provided in the case of the last material registered document, return such lease to the person lodging the same upon the applicant lodging with the Registrar a certified copy of such lease.

37. Additional evidence to be scheduled

When any additional evidence is produced in support of any application either to bring land under the operation of this Act or upon a transmission the documents shall be delivered to the Registrar who shall thereupon add them to the schedule of the application noting thereon the time of their production and affixing his initials thereto before submitting such additional evidence to the Commissioner.

38. Certificate of title to issue in name of deceased applicant or his nominee

In case the applicant or the person in whose name the certificate of title has been prepared for registration dies between the application and the registration of the certificate it shall be registered in the name of such applicant or of such person as the case may be; and such land shall devolve or pass in like manner as if the certificate had been registered prior to the death of such applicant or person.

[Section 38 amended by No. 81 of 1996 s. 17.]

39. Registration of leaseholds

Land leased for a term of years of which 10 years are unexpired or leased for years determinable with a life or lives may be

brought under the operation of this Act as near as may be in a similar manner and subject to the same or similar provisions as are hereinbefore contained with respect to freehold land. The application may be made by persons having such estates and interests in the leasehold land as are similar or correspondent to the estates and interests of the persons entitled to apply to bring freehold land under this Act. Every certificate of title to leasehold land shall always be subject to the rights and powers of the lessor or his representative and of any person entitled to the inheritance in the land immediately expectant on the term as well as to the encumbrances hereinafter mentioned as not requiring special notification. The several provisions of this Act with respect to freehold land shall apply to leasehold and 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.

[40. *Repealed by No. 81 of 1996 s. 18.*]

[41. *Repealed by No. 81 of 1996 s. 19.*]

42. Production of lease may be dispensed with on bringing land under Act

On any application to bring land under this Act the Commissioner may dispense with the production of any lease and may accept the memorial of the registration thereof as sufficient evidence of its contents; and if the memorial does not disclose any right of renewal or purchase no such right shall be assumed to have existed and the lease shall be deemed to have expired at the time at which it would have expired according to the date and term appearing in the memorial.

43. Certain memorials to be sufficient evidence of conveyances in fees

A memorial of any release conveyance or reconveyance registered under any Ordinance or Act concerning the

registration of deeds relating to or affecting land may for the purpose of bringing land under this Act be deemed by the Commissioner sufficient evidence of the deed referred to being a conveyance in fee simple of the lands described in such memorial unless the contrary can reasonably be inferred from the prior or subsequent title or from something appearing on the face of such memorial.

[Section 43 amended by No. 113 of 1965 s. 4; No. 81 of 1996 s. 20.]

[44. Repealed by No. 81 of 1996 s. 21.]

45. Commissioner may direct Registrar to bring land under the operation of this Act

Notwithstanding anything hereinbefore contained the Commissioner may after the publication of such advertisements as he may deem fit direct the Registrar to bring any land under the operation of this Act.

[Section 45 amended by No. 81 of 1996 s. 22.]

46. The title to land sold under an order or decree may be deemed sufficient

An office copy of any order heretofore made or which shall hereafter be made by the Supreme Court (whether such order shall hereafter be in the form of an order confirming the report of the Master or in any other form) confirming a person as the purchaser of any land sold in fee simple under or in pursuance of any decree or order of such court together with an office copy of such decree or order and such certificate of payment as hereinafter mentioned may for the purpose of bringing land under this Act be deemed by the Commissioner sufficient evidence of the title of the purchaser to such land subject to any estate or interest appearing by the decree or order or order of confirmation or subsequently created, and registered.

47. Formalities of order

Every order of confirmation of a purchase which shall hereafter be made shall be drawn up so as to refer to a schedule thereto containing the name and address of the purchaser and a description of the land purchased by him; and the Master of the Supreme Court is hereby required after payment and acceptance of all the money payable in respect of any particular purchase to give upon any such office copy order of confirmation a written certificate that the purchase money and all interest in respect thereof payable by any purchaser named in such certificate for any land therein referred to has been wholly paid.

[Section 47 amended by No. 81 of 1996 s. 146(1).]

Part III — Certificates of titles and registration

48. The Register

- (1) The Registrar shall cause a Register of certificates of title to be maintained for the purposes of this Act.
- (2) The Register may be maintained in any medium for the storage and retrieval of information or combination of such media —
 - (a) whether or not the kind of medium is the same as that in which the information was originally presented for registration or lodgment; and
 - (b) where, in the opinion of the Registrar, the medium or combination is appropriate having regard to the purposes of this Act.
- (3) Where a record of information in the Register deteriorates or is incomplete, the Registrar may cause another record to be prepared or the record to be completed, as the case may be, and the new or completed record then has effect as the record for the purposes of the Register.
- (4) The Registrar may prepare the new or completed record from such evidence as is available as to the content of the original or complete record, as the case may be.

[Section 48 inserted by No. 81 of 1996 s. 23.]

48A. Certificates of title

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

[Section 48A inserted by No. 81 of 1996 s. 23.]

48B. Duplicate certificates of title

- (1) Where a certificate of title has been registered the Registrar shall issue a duplicate certificate of title to the proprietor of the land that is the subject of the certificate of title unless the proprietor requests, in an approved form, that —
 - (a) a duplicate certificate of title not be issued; or
 - (b) the duplicate certificate of title be issued to a person named and authorised by the proprietor, in which case the Registrar shall issue the duplicate certificate to that person.
- (2) Where the Registrar issues a duplicate certificate of title, the duplicate shall be in or on a medium approved by the Registrar.
- (3) Where the original proprietor of land that is the subject of a certificate of title has requested that a duplicate certificate of title not be issued —
 - (a) the Registrar shall endorse the certificate of title to that effect; and
 - (b) nothing in this section prevents the Registrar from issuing a duplicate certificate of title on the request, in an approved form, of the person who, for the time being, is the proprietor of the land for a duplicate certificate of title to be issued to that proprietor or to a person named and authorised by that proprietor as the person to whom the duplicate may be issued.

[Section 48B inserted by No. 81 of 1996 s. 23.]

48C. Symbols

The Registrar may endorse a record of information in his possession with a symbol —

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

approved by the Registrar.

[Section 48C inserted by No. 81 of 1996 s. 23.]

49. One certificate may be created for lands not contiguous

One certificate of title may be created and registered for several parcels of land though the same are not contiguous if in the opinion of the Registrar their relative positions can be sufficiently and conveniently shown 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.

[Section 49 amended by No. 32 of 1917 s. 2; No. 81 of 1996 s. 24.]

50. Area of land need not be mentioned in certificate

It shall not be necessary to mention the area of any parcel of land included in a certificate where the area of such parcel is less than 4 000 square metres and the omission to refer to the area of the land comprised in a certificate shall not in any case invalidate the certificate.

[Section 50 amended by No. 17 of 1950 s. 13; No. 94 of 1972 s. 4.]

[51. Repealed by No. 81 of 1996 s. 25.]

52. Registration of certificates of title and instruments

- (1) A certificate of title is registered when —
 - (a) it has been allocated a reference number distinguishing it from all other certificates of title; and
 - (b) it has been sealed.
- (2) An instrument purporting to affect any land for which a certificate of title has been registered is registered when —
 - (a) a memorandum referred to in section 56 in relation to the original instrument has been entered in the Register on the certificate; and
 - (b) the original instrument has been sealed.

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

(4) The person named in —

- (a) a certificate of title referred to in subsection (1); or
- (b) an instrument referred to in subsection (2),

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

[Section 52 inserted by No. 81 of 1996 s. 26.]

53. Priority of registration of instruments

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

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

[Section 53 inserted by No. 81 of 1996 s. 27.]

54. Incorporation of terms etc. of certain memoranda

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

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

(3) The Registrar may file —

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

(b) a memorandum on his own behalf,

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

- (4) A provision of a particular memorandum filed under this section may be incorporated into a certificate of title, instrument, plan, diagram or other document affecting land under the operation of this Act (“**the document**”), with or without amendment, by notation to that effect on the document.
- (5) A provision of a memorandum noted as being incorporated into a document under subsection (4), or that provision as amended, as the case may be, shall be deemed to be set out in its entirety in the document.
- (6) Nothing in this section affects any other provision of this Act by which terms, conditions, covenants or other provisions that affect land under the operation of this Act may be incorporated into a document for the purposes of this Act.

[Section 54 inserted by No. 81 of 1996 s. 28.]

55. Trusts

- (1) The Registrar shall not enter in the Register notice of any trusts other than those set out in the body of the original Crown grant or contained or referred to in the transfer, or the ministerial order for the conveyance, of the relevant Crown land into the fee simple.
- (2) Where a trust is declared in any other document and the document or a copy of it has been deposited with the Registrar, the Registrar may cause the document or copy to be kept for safe custody and reference but shall not register the document.
- (3) The Commissioner may protect, in any manner he thinks fit, the rights of the persons for the time being beneficially interested in, or required to give consent under, a trust a record of which is kept under subsection (2).

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

[Section 55 inserted by No. 81 of 1996 s. 29; amended by No. 31 of 1997 s. 96.]

56. Memorandum to state certain particulars

Every memorandum (other than a memorandum under Part IVA) entered in the Register shall state the date of lodgment for registration of the instrument to which the memorandum relates and such other particulars as the Registrar directs.

[Section 56 inserted by No. 28 of 1969 s. 5; amended by No. 81 of 1996 ss. 30 and 145(1).]

57. Memoranda of instruments and endorsements

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

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

[Section 57 inserted by No. 81 of 1996 s. 31.]

58. Instruments not effectual until registered

No instrument until registered in manner herein provided shall be effectual to pass any estate or interest in any land under the operation of this Act or to render such land liable to any mortgage or charge or to make any dealing in respect of Crown

land effective, as the case requires; but upon such registration the estate or interest comprised in the instrument shall pass or as the case may be the land shall become liable in manner and subject to the covenants and conditions set forth and specified in the instrument or by this Act declared to be implied in instruments of a like nature, or the dealing in respect of Crown land is made effective, as the case required.

[Section 58 amended by No. 81 of 1996 s. 32; No. 31 of 1997 s. 97.]

59. Notations as to legal disability of proprietor

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

[Section 59 inserted by No. 81 of 1996 s. 33.]

60. Joint tenants and tenants in common

Two or more persons who may be registered as joint proprietors of land shall be deemed to be entitled to the same as joint tenants; and in all cases where 2 or more persons are entitled as tenants in common to undivided shares of or in any land such persons may receive one certificate for the entirety or separate certificates for the undivided shares.

61. Effect of insertion of the words “no survivorship”

Upon the transfer of any land and upon the lease of any freehold land to 2 or more persons as joint proprietors with the words “no survivorship” endorsed thereon the Registrar shall enter such words in the memorandum of such transfer or lease and also upon any certificate of title registered in the name of such joint proprietors pursuant to such transfer and sign his name thereto. Two or more joint proprietors of any land or of any

such lease or of any charge may by writing, under their hands direct the Registrar to enter the words “no survivorship” upon the certificate of title or instrument relating to the property. In every case after such words shall have been signed by the Registrar whether under this or any preceding section it shall not be lawful for any persons other than the proprietors registered to transfer or otherwise deal with the property without the order of the Supreme Court or a Judge thereof obtained on motion or petition or the order of the Commissioner.

[Section 61 amended by No. 81 of 1996 s. 34.]

62. Notice to be published before effect is given to order

Before making any such order the Court or Judge or Commissioner shall cause notice of the intention so to do to be advertised once at least in one newspaper published in the city of Perth or circulating in the neighbourhood of the land and shall appoint a time within which it shall be lawful for any person interested to show cause against such order being made; after the expiration of which time it shall be lawful for the said Court or Judge or Commissioner to give directions for the transfer of such land or lease or charge to any new proprietor or proprietors solely or jointly with or in the place of any existing proprietor or proprietors, or to make such order in the premises as shall be just for the protection of any persons beneficially interested in such property or in the proceeds thereof; and on such order being deposited with the Registrar he shall make such entries and perform such acts for giving effect thereto as the provisions of this Act may render necessary. The Commissioner in any case within the last preceding section in which members of any a corporation that is a friendly society within the meaning of section 16C of the *Life Insurance Act 1995* of the Commonwealth are interested may before making an order thereunder dispense with the aforesaid advertisement.

[Section 62 amended by No. 26 of 1999 s. 106(2).]

63. Certificate to be conclusive evidence of the title

- (1) No certificate of title created and registered upon an application to bring land under this Act or upon an application to be registered as proprietor on a transmission shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate; and every certificate of title created and registered under any of the provisions herein contained shall be received in all courts of law as evidence of the particulars therein set forth or incorporated and of the entry thereof in the Register, and shall be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.
- (2) A reference in subsection (1) to a certificate of title does not include a reference to a qualified certificate of Crown land title.

*[Section 63 amended by No. 81 of 1996 ss. 35 and 145(1);
No. 31 of 1997 s. 98.]*

63A. Certificates may contain statement of easements

- (1) 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 land therein described is subject to any right or right-of-way or other easement.
- (2) Every such statement or entry shall set forth a true and accurate description of the easement or, if the instrument, plan or diagram creating the easement is deposited with the Department, shall refer to such instrument, plan or diagram, and the certificate of title shall contain a plan of the land over which the easement extends or, if a plan or diagram showing the extent of such easement is deposited with the Department, the certificate of title shall refer to such plan or diagram.

[Section 63A amended by No. 54 of 1909 ss. 15 and 16; No. 17 of 1950 s. 75; No. 81 of 1996 s. 36.]

64. Certificate conclusive evidence as to title to easements

Whenever any certificate of title or any duplicate thereof either already registered or issued or hereafter to be registered or issued under any of the provisions or otherwise under the operation of this Act shall contain any statement to the effect that the person named in the certificate is entitled to any easement therein specified such statement shall be received in all courts of law and equity as conclusive evidence that he is so entitled.

65. Effect of short forms etc. for easements

- (1) Where a transfer, lease or certificate of title contains the words “together with a right of carriage way over...” or words to that effect and specifies the road or land over which the easement is created by reference to a map on which the road or land is indicated by a symbol then, unless the contrary intention appears, the words of the Ninth Schedule shall be deemed to have effect in relation to the transfer, lease or certificate of title, as the case requires.
- (2) Where a plan or an instrument referred to in Part IVA contains the words “right of carriage way” in relation to a place indicated on the plan or, in the case of an instrument, on the plan in relation to which the instrument was lodged then, unless the contrary intention appears, the words of the Ninth Schedule applicable to a transfer shall be deemed to have effect in relation to that plan or instrument.
- (3) Where —
 - (a) a transfer, lease or certificate of title; or
 - (b) a plan or an instrument referred to in Part IVA,contains a short form of easement then the words in column 2 of Schedule 9A corresponding to the short form shall be deemed to have effect in relation to that transfer, lease, certificate of title, plan or instrument, unless the contrary intention appears.

[Section 65 inserted by No. 81 of 1996 s. 37⁷.]

s. 65A

65A. Memorandum of easement

- (1) Subject to subsection (2), a memorandum of an easement affecting land under the operation of this Act that has been created by a plan, diagram or instrument shall be entered on the certificate of title for each dominant and servient tenement.
- (2) Where —
 - (a) an easement has been created under Part IVA by notation on a strata/survey-strata plan; and
 - (b) the easement has been notified on a registered strata/survey-strata plan,

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

[Section 65A inserted by No. 81 of 1996 s. 37.]

[66. Repealed by No. 81 of 1996 s. 38.]

66A. No separate certificate for easement

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

[Section 66A inserted by No. 17 of 1950 s. 15; amended by No. 81 of 1996 s. 39.]

67. Certificate to be conclusive evidence in suit for specific performance or action for damages

In any action for specific performance or for damages brought by a proprietor of any land under the operation of this Act against a person who may have contracted to purchase such land not having notice of any fraud or other circumstances which according to the provisions of the said Act or of this Act would affect the right of the vendor the certificate of title of such proprietor shall be held to be conclusive evidence that such proprietor has a good and valid title to the land for the estate or interest therein mentioned or described and shall in any such

action entitle such proprietor to a decree for the specific performance of such contract.

68. Estate of registered proprietor paramount

- (1) Notwithstanding the existence in any other person of any estate or interest whether derived by grant or transfer of the fee simple from the Crown or otherwise which but for this Act might be held to be paramount or to have priority the proprietor of land or of any estate or interest in land under the operation of this Act shall except in case of fraud hold the same subject to such encumbrances as may be notified on the registered certificate of title for the land; but absolutely free from all other encumbrances whatsoever except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser. Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations exceptions conditions and powers (if any) contained in the grant thereof or transfer of the fee simple or otherwise and to any rights subsisting under any adverse possession of such land and to any public rights of way and to any easements acquired by enjoyment or user or subsisting over or upon or affecting such land and to any unpaid rates and to any mining lease or licence issued under the provisions of any statute and to any prior unregistered lease or agreement for lease or for letting for a term not exceeding 5 years to a tenant in actual possession notwithstanding the same respectively may not be specially notified as encumbrances on such certificate or instrument 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.
- (2) Notwithstanding the existence in any other person of any interest in Crown land which but for this Act might be held to

be paramount or to have priority, the holder of an interest in Crown land shall, except in case of fraud, hold that interest —

- (a) subject to such encumbrances as may be notified on the registered certificate of Crown land title for the Crown land; but
- (b) absolutely free from all other encumbrances whatsoever, except —
 - (i) the interest of a proprietor claiming the same Crown land under a prior registered certificate of Crown land title; and
 - (ii) as regards any portion of Crown land that may by wrong description of parcels or boundaries be included in the certificate of Crown land title or other instrument evidencing the Crown title of that proprietor, not being a purchaser for valuable consideration or deriving from or through such a purchaser.
- (3) Notwithstanding subsection (2), the Crown land included in any registered certificate of Crown land title, registered qualified certificate of Crown land title or registered instrument shall be deemed to be subject to —
 - (a) any reservation, exception, condition, covenant or power to which the relevant interest in Crown land is subject;
 - (b) any public right of way;
 - (c) any easement subsisting over or upon or affecting that Crown land;
 - (d) any unpaid rates;
 - (e) any mining tenement within the meaning of the *Mining Act 1978*; and
 - (f) any prior unregistered lease or agreement for lease or for letting for a term not exceeding 5 years to a tenant in actual possession,

even if it is, or they are, not specially notified as an encumbrance on that certificate of Crown land title or

instrument, but no option of purchase or renewal of any lease or agreement referred to in paragraph (f) shall be valid as against a subsequent registered interest unless that lease or agreement is registered or protected by a caveat.

- (4) In subsections (2) and (3), a reference to a certificate of Crown land title or registered instrument does not include a reference to a qualified certificate of Crown land title.

[Section 68 amended by No. 81 of 1996 s. 40; No. 31 of 1997 s. 99.]

69. Easements existing under deed or writing and certain conditions to be noted as encumbrances

Notwithstanding the reservation in the last preceding section of any easements subsisting over or upon or affecting any land comprised in any certificate of title the Registrar shall specify upon any future certificate of such land and its duplicate (if any) as an encumbrance affecting the same any subsisting easement over or upon or affecting the same which shall appear to have been created by any deed or writing. And notwithstanding the proviso to the said last preceding section the Registrar shall endorse as an encumbrance upon all future certificates of title and their duplicates (if any) any special building condition or condition against free alienation or other condition (not being a power of resumption by the Crown for any public purpose) contained in any grant conveyance or other document of title of the land described in such certificate and its duplicate (if any) and such endorsement may be in the words following or to the like effect (that is to say): —

“Special building condition contained in
to [A.B.] registered vol. fol. ,” *or as the
case may be.*

“Condition against (free alienation *or other condition*)
contained in to [A.B.] registered vol.
fol. ,” *or as the case may be.*

[Section 69 amended by No. 81 of 1996 s. 41.]

70. As to reversions expectant on leases

The person named in any certificate of title as the proprietor of an estate of freehold in possession in the land therein described shall be held in every court of law to be seised of the reversion and inheritance in the land immediately expectant upon the term of any lease that may be mentioned as an encumbrance in such certificate and to have all powers rights and remedies to which such a reversioner is by law entitled and shall be subject to all the covenants and conditions in such lease to be performed and observed by or on the part of the lessor.

70A. Record on title of factors affecting use and enjoyment of land

- (1) Where, in relation to land under the operation of this Act —
- (a) the local government of the district in which the land is situated; or
 - (b) a public authority,

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

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

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

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

approved form, request the Registrar to remove the notification from the certificate of title for the land or modify the notification.

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

[Section 70A inserted by No. 81 of 1996 s. 42.]

71. Upon surrender of existing certificates a single certificate may be obtained

On the application of any proprietor or of any person entitled to become a proprietor of land under separate certificates of title and on his delivering up the duplicate (if any) of each certificate the Registrar may create and register in the proprietor's name a single certificate of title for the whole of such land or several certificates as to portions thereof in accordance with such application so far as the same may be done consistently with any regulations for the time being in force respecting the parcels of land that may be included in one certificate of title; and upon registering any certificate under this section the Registrar shall cancel the previous certificate and shall endorse thereupon a memorandum setting forth the occasion of such cancellation and referring to the new certificate.

[Section 71 amended by No. 81 of 1996 s. 43.]

71A. Proprietor may apply for separate certificate

- (1) The Registrar, upon application being made in writing by a proprietor of land the subject of a certificate of title, may create and register in the proprietor's name 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.

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- (2) The Registrar shall retain the duplicate (if any) of the partially cancelled certificate of title and, when required by the proprietor, shall create and register in the proprietor's name a certificate of title for the land remaining the subject of the partially cancelled certificate of title.

[Section 71A inserted by No. 17 of 1950 s. 17; amended by No. 81 of 1996 s. 44.]

71B. Power to issue new duplicate certificate of title

- (1) The Registrar may, upon the delivery to him of a duplicate Crown grant or duplicate certificate of title, issue a new duplicate certificate of title in the place of the existing duplicate Crown grant or duplicate certificate of title, which shall thereupon be cancelled.
- (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 duplicate certificate of title, he may —
- (a) require the proprietor of the land the subject of the certificate of title or Crown grant to apply for a new duplicate certificate of title;
 - (b) retain the Crown grant or certificate of title so dilapidated until the proprietor applies for a new duplicate certificate of title.

[Section 71B inserted by No. 17 of 1950 s. 17; amended by No. 81 of 1996 s. 45.]

72. A history of the various dealings to be preserved

Such references shall be noted in the Register and on instruments filed hereunder as will allow the title to be traced either downwards from or upwards to the original certificate; but it shall not be necessary in any certified copy of any certificate or instrument to insert such references; and every such copy shall be deemed complete notwithstanding the omission of such references.

[Section 72 amended by No. 81 of 1996 s. 145(1).]

[73. *Repealed by No. 31 of 1997 s. 100.*]

74. Duplicate may be dispensed with in certain cases

The Registrar with the consent of the Commissioner may dispense with the production of any duplicate certificate of title or duplicate instrument (if any) for the purpose of entering thereon the memorandum by this Act required. In every such case upon the registration of the dealing the Registrar shall notify in the memorandum in the Register that no entry of such memorandum has been made on the duplicate (if any) and such dealing shall thereupon be as valid and effectual as if such memorandum had been entered. The Registrar may with the like consent dispense with the production of the duplicate certificate of title (if any) required to be delivered up prior to the registration of any person as proprietor on the transmission of an estate of freehold. Provided always that before registering such dealing or transmission the Registrar shall require proof by statutory declaration that the duplicate is not deposited or held as a security or lien and shall give at least 14 days' notice of his intention to register such dealing in at least one newspaper published in the city of Perth or circulating in the neighbourhood of the land.

[Section 74 amended by No. 81 of 1996 ss. 46 and 145(1).]

74A. Creation of substitute certificate of title

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

[Section 74A inserted by No. 81 of 1996 s. 47.]

s. 74B

74B. Issue of subsequent duplicate certificates of title

Where a duplicate certificate of title has been issued and —

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

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

[Section 74B inserted by No. 81 of 1996 s. 47.]

75. Where duplicate certificate lost, destroyed or obliterated

- (1) In the event of any duplicate certificate of title or Crown lease being lost or destroyed or becoming so obliterated as to be useless, application may be made to the Commissioner for the creation and registration of a certificate of title to replace the duplicate certificate of title or Crown lease the duplicate of which has been lost or destroyed or obliterated as aforesaid, and the Commissioner may, upon proof to his satisfaction of the loss or destruction or obliteration of such duplicate certificate of title or Crown lease, direct the Registrar to cancel the certificate of title or the Crown lease for the land then comprised in the certificate of title or the Crown lease the duplicate whereof has been lost or destroyed or obliterated and to create and register a new certificate of title for such land.

Provided that the Registrar, before registering such new certificate of title, shall give at least 14 days' notice of his intention so to do in at least one newspaper published in the city of Perth or circulating in the neighbourhood of the land.

- (2) In the event of a new certificate of title being registered under this section and the replaced duplicate certificate of title or Crown lease being at any time thereafter found or recovered, such duplicate certificate of title or Crown lease shall be forthwith lodged by the person who finds or recovers the same with the Registrar who shall cancel the same.
- (3) Where a replaced duplicate certificate of title or Crown lease has not been cancelled as required by subsection (2), such duplicate certificate of title or Crown lease shall, by virtue of the registration of the new certificate of title, cease to have effect.
- (4) When a duplicate Crown lease is replaced under subsection (1), the Registrar shall, in cancelling that Crown lease under that subsection, endorse the relevant certificate of Crown land title or qualified certificate of Crown land title, as the case requires, with all the particulars of, or endorsed on, that Crown lease.
- (5) In this section, a reference to a Crown lease includes a reference to a Crown land lease issued by the Minister for Lands.

[Section 75 amended by No. 28 of 1944 s. 2; No. 17 of 1950 s. 75; No. 81 of 1996 s. 48; No. 31 of 1997 s. 101.]

76. Person to whom duplicate certificate or instrument of title has been issued in error or who wrongfully retains such instrument may be summoned

- (1) In case it shall appear to the satisfaction of the Commissioner that any duplicate certificate of title or instrument has been issued in error or contains any misdescription of land or of boundaries or that any entry or endorsement has been made in error on any duplicate certificate of title or instrument or that any duplicate certificate instrument entry or endorsement has been fraudulently or wrongfully obtained or that any duplicate certificate or instrument is fraudulently or wrongfully retained he may by notice in writing require the person to whom such document has been so issued or by whom it has been so obtained or is retained to deliver up the same for the purpose of being cancelled or corrected or

given to the proper party as the case may require; and in case such person shall refuse or neglect to comply with such requisition the Registrar on the direction of the Commissioner may apply to a Judge to issue a summons for such person to appear before the Supreme Court or a Judge and show cause why such duplicate certificate or instrument should not be delivered up for the purpose aforesaid; and if such person when served with such summons shall neglect or refuse to attend before such Court or a Judge thereof at the time therein appointed it shall be lawful for a Judge to issue a warrant authorising and directing the person so summoned to be apprehended and brought before the Supreme Court or a Judge for examination.

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

[Section 76 amended by No. 81 of 1996 s. 49.]

77. Party appearing may be examined on oath

Upon the appearance before the Court or a Judge of any person summoned or brought up by virtue of a warrant under section 76(1) or (2) it shall be lawful for the Court or Judge to examine such person upon oath and (in case the same shall seem proper) to order such person to deliver up such duplicate certificate of title or instrument as aforesaid; and upon refusal or neglect by such person to deliver up the same pursuant to such order to commit such person to gaol until such duplicate certificate or instrument shall be delivered up; and in such case or in case such person cannot be found so that a requisition and summons may be served upon him under section 76(1) or (2) —

- (a) the Commissioner may (if the circumstances of the case require it and subject to paragraph (b)) direct the Registrar to issue to the proprietor of the land; or

- (b) the Court or a Judge may, upon the application of the Registrar or any other interested person, order the Registrar to issue to such person as the Court or Judge directs,

such duplicate certificate of title as can be issued in the case of any duplicate certificate of title being lost or destroyed and the Registrar shall enter in the Register on the relevant certificate of title notice of the issuing of such duplicate certificate and the circumstances under which the same was issued and thereupon the duplicate certificate so refused or neglected to be delivered up as aforesaid shall be deemed for all purposes to be null and void.

[Section 77 amended by No. 81 of 1996 s. 50.]

78. Registrar may call in duplicate certificate, etc.

On any transfer by a sheriff or the magistrate of a local court or mortgagee to a purchaser of any land estate or interest under this Act or for the purpose of rectifying or cancelling any certificate under the provisions of this Act or for the purpose of inspection in case of loss destruction or obliteration of any original certificate of title the Registrar shall by writing under his hand require the judgment debtor mortgagor or mortgagee or proprietor of the land comprised in any duplicate certificate or instrument or the person having the possession, custody or control of any such duplicate certificate or instrument to bring the same to the Department within a period named in such requisition not less than 7 days from the date thereof to be endorsed cancelled rectified or otherwise dealt with as the case may require.

[Section 78 amended by No. 54 of 1909 s. 11; No. 81 of 1996 s. 51.]

79. Person refusing to bring in duplicate certificate, etc., may be brought before Court or Judge

If any person shall refuse or neglect to comply with any such requisition as aforesaid the Registrar or any person interested may apply to a Judge to issue a summons for such person to

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appear before the Supreme Court or a Judge and show cause why the document mentioned in such requisition should not be delivered up or produced for the purpose mentioned in such requisition; and upon appearance before the Court or a Judge of any person so summoned it shall be lawful for the Court or Judge to examine such person upon oath and to receive other evidence or if he did not appear after being duly served with such summons then to receive evidence in his absence and (in case the same shall seem proper) to order such person to deliver up such document upon such terms or conditions as to such Court or Judge shall seem fit and the cost of the summons and proceedings thereon shall be in the discretion of the Court or Judge.

[80. *Repealed by No. 17 of 1950 s. 19.*]

81. Words of inheritance or succession to be implied

Every certificate of any person or corporation sole or aggregate being the proprietor of an estate in fee simple whether in possession remainder or reversion, the holder of an interest in Crown land or the holder of a power conferred on a management body and every instrument transferring, creating or giving effect to such an estate, interest or power to or in favour of any person or corporation shall imply and be deemed to include the heirs of such person or the successors of such corporation.

[Section 81 amended by No. 31 of 1997 s. 102.]

Part IIIA — Crown leases

[Heading inserted by No. 17 of 1950 s. 75.]

81A. Registration of Crown leases

- (1) Subject to subsection (3), every Crown lease issued after the commencement of the *Transfer of Land Act Amendment Act 1909*¹, shall be issued in duplicate under seal and forwarded by the Minister for Lands direct to the Registrar for registration under section 53.
- (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.
- (3) No Crown lease shall be issued after the commencement of the *Acts Amendment (Land Administration) Act 1997*¹.

[Section 81A inserted by No. 54 of 1909 s. 3; amended by No. 17 of 1950 s. 75; No. 81 of 1996 s. 52; No. 31 of 1997 s. 103.]

81B. Registration of Crown leases granted before commencement of Act

- (1) A Crown lease issued before the commencement of the *Transfer of Land Act Amendment Act 1909*¹, may be made subject to and registered under the operation of this Act, by an application in the form in the Twenty-eighth Schedule.

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- (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*²; and
 - (b) a certified copy of the lease to be supplied by the Department of Lands and Surveys⁸ 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 this 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.

[Section 81B inserted by No. 54 of 1909 s. 4; amended by No. 17 of 1950 s. 75.]

81C. Effect of registration

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 this 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 the *Transfer of Land Act Amendment Act 1909*¹; 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.

[Section 81C inserted by No. 54 of 1909 s. 5; amended by No. 17 of 1950 s. 75.]

81D. Registration of transfer, etc.

- (1) No transfer, sublease, or mortgage of a Crown lease or of a sublease thereof shall be registered until —
 - (a) the Minister for Lands, or an officer authorised by that Minister to do so, has informed the Registrar in writing of his consent to the registration; and
 - (b) if the Registrar so requests, the duplicate Crown lease is presented to the Registrar for any endorsement or other action required by the Registrar.
- (2) Nothing in this Act contained shall affect the provisions of the *Land Act 1898*², whereby a transferee or sublessee is required

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to be a person who is not disqualified under that Act to be a lessee of the land intended to be transferred or sublet.

[Section 81D inserted by No. 54 of 1909 s. 6; amended by No. 17 of 1950 s. 75; No. 81 of 1996 s. 53.]

81E. No foreclosure without the consent of Minister for Lands

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.

[Section 81E inserted by No. 54 of 1909 s. 7; amended by No. 17 of 1950 s. 75.]

81F. Entry of forfeiture

- (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.
- (2) If there is a mortgage or sublease registered against the lease so forfeited or determined, the Registrar shall serve the mortgagee or sublessee with 30 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 30 days.
- (4) Unless the forfeiture or determination is cancelled by the Governor in Council under the *Land Act 1898*², or is waived by the Minister for Lands under subsection (2), 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.

[Section 81F inserted by No. 54 of 1909 s. 8; amended by No. 17 of 1950 s. 75; No. 81 of 1996 s. 54.]

81G. Crown lessee to be deemed of full age

- (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*², from 1 January 1899.
- (3) The terms and conditions of any such transfer, sublease, mortgage, or other dealing may be reviewed and altered upon application in Chambers to a Judge of the Supreme Court.

[Section 81G inserted by No. 54 of 1909 s. 9; amended by No. 17 of 1950 s. 75.]

81H. Certain provisions of this Act and of *Land Act 1898* not to apply to Crown leases

- (1) Sections 92, 93 and 94 of this Act shall not apply to Crown leases.
- (2) Sections 80, 122 and 138 to 144 inclusive of the *Land Act 1898*², and sections 74 to 83 inclusive of the *Land Act Amendment Act 1906*, shall not apply to Crown leases registered under this Act, and section 15 of the *Land Act Amendment Act 1900*, shall in reference to Crown leases registered under this Act be read subject to section 81F.

[Section 81H inserted by No. 54 of 1909 s. 10; amended by No. 26 of 1911 s. 3; No. 17 of 1950 s. 75.]

81I. Mortgage of Crown lease to be transferred to Crown grant

- (1) Where the holder of a Crown lease has executed a mortgage thereof, either before or after the commencement of the *Transfer of Land Act Amendment Act 1911*¹, and the holder for the time being under the provisions of such Crown lease becomes entitled to a Crown grant in fee simple of the land comprised in and demised by such lease, the mortgage shall,

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by the operation of the *Transfer of Land Act Amendment Act 1911*, be transferred and apply to such Crown grant, and to the land thereby granted, in all respects as if such Crown grant had been referred to in the mortgage, and a memorandum of such mortgage shall be endorsed by the Registrar of Titles as an encumbrance on such Crown grant and in the Register on his registering such grant, and a memorandum stating the fact of such transfer shall also be made by the Registrar of Titles on the instrument of mortgage.

- (2) This section shall be deemed to have been in operation from the commencement of the *Transfer of Land Act Amendment Act 1909*¹.

[Section 81I inserted by No. 26 of 1911 s. 2; amended by No. 17 of 1950 s. 75; No. 81 of 1996 s. 55.]

Part IIIB — Registration and recording in relation to Crown land

[Heading inserted by No. 31 of 1997 s. 104(1).]

Division 1 — General

[Heading inserted by No. 31 of 1997 s. 104(1).]

81J. Application of Part IIIB

This Part applies solely to Crown land.

[Section 81J inserted by No. 31 of 1997 s. 104(1).]

81K. Interpretation in Part IIIB

In this Part, unless the contrary intention appears —

“**approved form**” means form approved under section 278 of the *Land Administration Act 1997*;

“**Commissioner**” means Commissioner of Titles referred to in section 5 or Deputy Commissioner of Titles referred to in section 6;

“**management order**” has the same meaning as it has in the *Land Administration Act 1997*;

“**transitional period**” has the same meaning as it has in the *Land Administration Act 1997*;

“**repealed Act**” has the same meaning as it has in the *Land Administration Act 1997*.

[Section 81K inserted by No. 31 of 1997 s. 104(1).]

81L. Creation and registration of certificates of Crown land title and qualified certificates of Crown land title

On receiving from the Minister for Lands an application requesting him to do so in respect of a parcel of Crown land, the Registrar shall create and register a certificate of Crown land title or a qualified certificate of Crown land title in an approved

form for that parcel and may endorse on the certificate of Crown land title or qualified certificate of Crown land title such particulars of any dealing as he considers appropriate.

[Section 81L inserted by No. 31 of 1997 s. 104(1).]

81M. Lodging, etc. of management orders

- (1) An instrument which is a management order within the meaning of the *Land Administration Act 1997* may be lodged with the Registrar in duplicate.
- (2) The Registrar shall, when he has registered a management order in duplicate, forward the duplicate copy of the management order to the management body to which the management order relates.

[Section 81M inserted by No. 31 of 1997 s. 104(1).]

81N. Crown surveys

Crown surveys required for the purposes of this Part shall comply in all respects with current Rules and Regulations made under section 16.

[Section 81N inserted by No. 31 of 1997 s. 104(1).]

81O. No duplicate certificates of Crown land title or duplicate qualified certificates of Crown land title to be issued

The Registrar shall not issue duplicate certificates of Crown land title or duplicate qualified certificates of Crown land title.

[Section 81O inserted by No. 31 of 1997 s. 104(1).]

81P. Endorsements on certificates of Crown land title and qualified certificates of Crown land title

- (1) The Registrar shall endorse on each certificate of Crown land title or qualified certificate of Crown land title the particulars of all dealings and matters affecting the Crown land that is the subject of a certificate of Crown land title or qualified certificate of Crown land title when those particulars are required by this

Act or the *Land Administration Act 1997* to be registered or recorded in the Register.

- (2) Any endorsement under subsection (1) of a certificate of Crown land title shall be made in such manner as preserves the priorities of those dealings or matters.

[Section 81P inserted by No. 31 of 1997 s. 104(1).]

81Q. Leases and subleases of Crown land

- (1) The Registrar may register on a certificate of Crown land title or qualified certificate of Crown land title a lease or sublease of Crown land for a term of 12 months or more.
- (2) If the fee simple in Crown land in respect of which a lease or sublease is registered under subsection (1) is transferred under the *Land Administration Act 1997* and a certificate of title is created and registered in respect of that Crown land —
- (a) the lease or sublease continues to be registered in respect of the relevant freehold land, until the lease or sublease terminates according to law, as if it had been registered in respect of that freehold land; and
 - (b) any encumbrance registered in respect of the lease or sublease before that transfer continues to be registered in respect of the relevant freehold land until that encumbrance is terminated, discharged or surrendered or expires.
- (3) The Registrar may register any variation of the provisions of a registered lease or sublease effected under the *Land Administration Act 1997*.

[Section 81Q inserted by No. 31 of 1997 s. 104(1) ⁹.]

81R. Registration of profits à prendre

- (1) The Registrar may register on a certificate of Crown land title or qualified certificate of Crown land title a profit à prendre granted under section 91(1) of the *Land Administration Act 1997* in respect of Crown land.

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- (2) The Registrar may, while a profit à prendre is registered under subsection (1), register any dealing or record any caveat in respect of the profit à prendre.
- (3) If the fee simple in Crown land in respect of which a profit à prendre is registered under subsection (1) is transferred under the *Land Administration Act 1997* and a certificate of title is created and registered in respect of that Crown land, the profit à prendre continues to be registered in respect of the relevant land until it is terminated or surrendered or expires.

[Section 81R inserted by No. 31 of 1997 s. 104(1).]

81S. Prerequisites to registration of dealings in respect of Crown land

- (1) When a dealing in respect of Crown land is received by the Commissioner or the Registrar for registration, the Commissioner or the Registrar shall satisfy himself that the permission of the Minister for Lands has been obtained in respect of that dealing.
- (2) The Registrar shall not, unless he is satisfied that the provisions of —
 - (a) sections 42 and 43 of the *Land Administration Act 1997* have been complied with, register any dealing, other than a dealing referred to in paragraph (b), in respect of a class A reserve;
 - (b) section 44 of the *Land Administration Act 1997* have been complied with, register the granting or creation of an easement in respect of a class A reserve; or
 - (c) section 45 of the *Land Administration Act 1997* have been complied with, register any dealing in respect of land reserved under section 41 of that Act for the purpose of a national park, conservation park or class A nature reserve.

[Section 81S inserted by No. 31 of 1997 s. 104(1).]

81T. Registered proprietors, etc. protected against ejectment except in certain cases referred to in *Land Administration Act 1997*

- (1) Subject to section 68, an action of ejectment or other action for the recovery of any alienated land does not lie, and is not sustainable, against the person registered as the proprietor of that land under this Act, except in the case of —
 - (a) the Minister for Lands exercising the powers of sale conferred by section 16(4) of the *Land Administration Act 1997* as against that person;
 - (b) the Minister for Lands causing the forfeiture of the freehold of that alienated land under section 35 of the *Land Administration Act 1997* as against that person;
 - (c) the Minister for Lands exercising the power conferred by section 36(c)(ii) of the *Land Administration Act 1997* as against that person;
 - (d) the Minister for Lands acquiring that alienated land as Crown land under section 52 of the *Land Administration Act 1997* as against that person; or
 - (e) an acquiring authority taking an interest in that alienated land under Part 9 of the *Land Administration Act 1997* as against that person.
- (2) Subject to section 68, an action of ejectment or other action for the recovery of any Crown land does not lie, and is not sustainable, against the management body of a reserve or mall reserve except in the case of —
 - (a) the Minister for Lands exercising the power conferred by section 50(1) or (2) or 62(3)(a) of the *Land Administration Act 1997*; or
 - (b) an acquiring authority exercising the power conferred by section 161(1)(c) of the *Land Administration Act 1997*,
as against that management body.
- (3) Subject to section 68, an action of ejectment or other action for the recovery of a Crown lease or other lease of Crown land does

not lie, and is not sustainable, against the person registered as the proprietor of that Crown lease or other lease under this Act except in the case of —

- (a) the Minister for Lands extinguishing that Crown lease or other lease under section 10(4) of the *Land Administration Act 1997*;
- (b) the Minister for Lands extinguishing that Crown lease or other lease under section 27(4) of the *Land Administration Act 1997*;
- (c) the Minister for Lands causing the forfeiture of that Crown lease or other lease under section 35 of the *Land Administration Act 1997* in respect of the breach of a condition or covenant;
- (d) the Minister for Lands accepting the surrender of that Crown lease or other lease under section 81(1) of the *Land Administration Act 1997*;
- (e) an acquiring authority taking that Crown lease or other lease under Part 9 of the *Land Administration Act 1997*;
- (f) the purchaser of that Crown lease or other lease under section 261(1) of the *Land Administration Act 1997*; or
- (g) the Minister for Lands acting under section 270 of the *Land Administration Act 1997*,

as against that person.

[Section 81U inserted by No. 31 of 1997 s. 104(1).]

Division 2 — Transitional

[Heading inserted by No. 31 of 1997 s. 104(1).]

81U. Registrar may accept for registration signed and stamped duplicate original documents

- (1) The Registrar may accept for registration under this Division not only signed original documents stamped as original

documents, but also, in the absence of such original documents, signed duplicate original documents stamped as duplicate original documents before the commencement of the *Acts Amendment (Land Administration) Act 1997*¹.

- (2) A duplicate original document accepted for registration under subsection (1) is to be treated, when registered, as if it were the original document.
- (3) In subsection (1) —
“**stamped**” has the same meaning as it has in the *Stamp Act 1921*.

[Section 81U inserted by No. 31 of 1997 s. 104(1).]

81V. Minister for Lands may apply to Registrar for certificates of Crown land title, qualified certificates of Crown land title, etc.

- (1) The Minister for Lands may at any time apply, whether on behalf of another person or on his own initiative, to the Registrar for —
 - (a) the cancellation of a qualified certificate of Crown land title in respect of a parcel of Crown land and its replacement with a certificate of Crown land title created and registered in respect of that parcel; or
 - (b) the creation and registration of a certificate of Crown land title or qualified certificate of Crown land title.
- (2) If the Registrar —
 - (a) is satisfied in respect of an application made under subsection (1) that any interests in, or caveats or dealings in respect of, the relevant Crown land are clearly identified and that there is, in the case of 2 or more such interests or caveats, no dispute concerning the respective priorities of those interests or caveats, the Registrar shall grant that application; or

- (b) is not so satisfied, the Registrar may refuse that application or refer it to the Commissioner.

[Section 81V inserted by No. 31 of 1997 s. 104(1).]

81W. Procedure when applications referred to Commissioner

- (1) Subject to this section, when an application is referred to the Commissioner under section 81V(2)(b), the Commissioner may, if —

- (a) he is satisfied in respect of the application that any interests in, or caveats or dealings in respect of, the relevant Crown land are clearly identified and that there is, in the case of 2 or more such interests or caveats, no dispute concerning the respective priorities of those interests or caveats, cause notice of that application to be —

- (i) advertised at least once in a newspaper circulating throughout the State or in the local government district where that Crown land is situated; or

- (ii) served on any persons named by him,

or both; or

- (b) he is not so satisfied —

- (i) refuse that application; or

- (ii) in the case of an application for the creation and registration of a certificate of Crown land title, direct the Registrar to create and register a qualified certificate of Crown land title in respect of the relevant Crown land.

- (2) Without limiting the generality of subsection (1) —

- (a) the Commissioner may be satisfied in respect of an application for the purposes of that subsection if he accepts as evidence recitals, statements and descriptions of facts, matters and parties in deeds, instruments, dealings, Acts and statutory declarations, the date shown as that of the execution, signature, passing or making of

which precedes the date of making of the application by at least 12 years; and

- (b) any person on whose behalf the application was made shall not be required to negative, except in relation to the knowledge, information and belief of himself and his agents, the existence of any unregistered conveyances, assurances or other dealings affecting any part of the Crown land the subject of the application.
- (3) The cost of any advertisement or service of notice under subsection (1) is to be paid to the Registrar before the publication of the relevant advertisement or the effecting of the relevant service.
- (4) If —
- (a) the Commissioner is satisfied in respect of the matters referred to in subsection (1)(a);
 - (b) the Minister for Lands has, before making the relevant application under section 81V(1), advertised under clause 45(3) of Schedule 2 to the *Land Administration Act 1997* in connection with the matter the subject of that application; and
 - (c) the Commissioner is in consequence satisfied that there is no need to cause notice of that application to be advertised or served under subsection (1)(a),

the Commissioner shall, unless a caveat is in force under this Division forbidding him to do so or he is restrained from doing so by an order made under section 81X(3), direct the Registrar to grant that application.

- (5) The Commissioner shall, if he causes notice of an application to be —
- (a) advertised under subsection (1)(a), fix a period of not less than 14 days, and not more than 12 months, from the date of —
 - (i) that advertisement; or

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- (ii) if there is more than one such advertisement, the later or last such advertisement;
- (b) served under subsection (1)(a), fix a period of not less than 14 days, and not more than 12 months, from the date of —
 - (i) that service; or
 - (ii) if there is more than one such service, the later or last such service;
- or
- (c) both advertised and served under subsection (1)(a), fix a period which is the later of the periods capable of being fixed under paragraphs (a) and (b),

on or after the expiry of which period the Commissioner shall, unless a caveat is in force under this Division forbidding him to do so or he is restrained from doing so by an order made under section 81X(3), direct the Registrar to grant the application.

- (6) Any person claiming an interest in Crown land the subject of an application referred to the Commissioner under section 81V(2)(b) may before the creation and registration of a certificate of Crown land title or qualified certificate of Crown land title in respect of that Crown land sign and lodge with the Registrar a caveat in an approved form forbidding the grant of that application.
- (7) The Registrar may by notice served on a caveator acting under subsection (6) require that caveator to support the caveat by lodging with the Registrar within a period of 7 days from that service —
 - (a) a statutory declaration stating the nature of the interest in Crown land under which the relevant claim is made; and
 - (b) a perfect abstract of the title to that interest.
- (8) If the statutory declaration and abstract supporting a caveat are not lodged within the period referred to in subsection (7), the caveat lapses.

- (9) A caveat cannot be lodged under subsection (6) unless it contains an address, or a number for a facsimile machine, in Australia for the service of notices in relation to the caveat.

[Section 81W inserted by No. 31 of 1997 s. 104(1).]

81X. Procedure on lodging of caveats, etc.

- (1) When a caveat is lodged with the Registrar under section 81W(6), the Registrar shall forthwith notify the Commissioner and the Minister for Lands.
- (2) On being notified under subsection (1) —
- (a) the Commissioner shall not direct the Registrar to grant the relevant application until the caveat has been withdrawn or has lapsed or an order setting aside the caveat has been made under subsection (3); and
 - (b) the applicant may, if he so wishes, summon the caveator to attend before the Supreme Court or a Judge to show cause why the caveat should not be set aside.
- (3) The Supreme Court or a Judge may, on proof that the caveator has been summoned under subsection (2), make such order, whether ex parte or otherwise, in respect of the caveat as the Supreme Court or Judge thinks fit.
- (4) A caveat shall lapse on the expiry of one month from the date on which it was lodged under section 81W(6), unless the caveator before that expiry —
- (a) takes proceedings in a court of competent jurisdiction to establish his claim to the interest specified in the caveat and gives notice of that taking to the Registrar; or
 - (b) obtains and serves on the Registrar an order of the Supreme Court or a Judge restraining the Commissioner from making a direction under section 81W(4) or (5).
- (5) A caveat shall not be renewed by or on behalf of the same person in respect of the same interest.

[Section 81X inserted by No. 31 of 1997 s. 104(1).]

81Y. Action to be taken by Registrar in consequence of granting applications made under section 81V(1)(a)

- (1) When the Registrar grants an application made under section 81V(1)(a), whether under section 81V(2)(a) or under a direction made under section 81W(4) or (5), the Registrar shall —
- (a) create a certificate of Crown land title in an approved form in respect of the parcel of Crown land referred to in the qualified certificate of Crown land title cancelled as a result of the granting of that application; and
 - (b) endorse on the certificate of Crown land title in correct order of priority particulars of the interests, caveats and dealings —
 - (i) set out in that qualified certificate of Crown land title; or
 - (ii) specified in information provided in compliance with a requirement made under clause 45(2) of Schedule 2 to the *Land Administration Act 1997*,
or both, as the case requires, together with a memorandum of any reservation or vesting made under the repealed Act and affecting that parcel.
- (2) After complying with subsection (1), the Registrar shall register the certificate of Crown land title referred to in that subsection.

[Section 81Y inserted by No. 31 of 1997 s. 104(1).]

81Z. Action to be taken by Registrar in consequence of granting applications made under section 81V(1)(b)

- (1) When the Registrar grants an application made under 81V(1)(b), whether under section 81V(2)(a) or under a direction made under section 81W(1)(b), (4) or (5), the Registrar shall —
- (a) create a certificate of Crown land title or a qualified certificate of Crown land title in an approved form for the parcel of Crown land referred to; and

- (b) endorse on —
 - (i) the certificate of Crown land title in correct order of priority; or
 - (ii) the qualified certificate of Crown land title, particulars of the interests, caveats and dealings specified,

in that application.

- (2) After complying with subsection (1), the Registrar shall register the certificate of Crown land title or qualified certificate of Crown land title referred to in that subsection.

[Section 81Z inserted by No. 31 of 1997 s. 104(1).]

81ZA. Procedure for registration of interests for which no certificate of Crown land title or qualified certificate of Crown land title exists

- (1) Subject to section 20(2) of the *Land Administration Act 1997*, a person claiming an interest in a parcel of Crown land in respect of which —
 - (a) no certificate of Crown land title has been created and registered; and
 - (b) no qualified certificate of Crown land title exists,may lodge with the Registrar for registration or recording a dealing evidencing, or a caveat claiming, that interest.
- (2) On receiving a dealing or caveat lodged with him under subsection (1), the Registrar shall refer that dealing or caveat to the Minister for Lands.
- (3) When a dealing or caveat is referred to him under subsection (2), the Minister for Lands shall —
 - (a) if he is satisfied that any interests in, or caveats or dealings in respect of, the relevant parcel of Crown land are clearly identified and that there is, in the case of 2 or

more such interests or caveats, no dispute concerning the respective priorities of those interests or caveats, apply to the Registrar for the creation and registration of a certificate of Crown land title; or

- (b) if he is not so satisfied, apply to the Registrar for the creation and registration of a qualified certificate of Crown land title,

in respect of that parcel.

[Section 81ZA inserted by No. 31 of 1997 s. 104(1).]

81ZB. Matters relating to qualified certificates of Crown land title

- (1) A person is not entitled to recover any compensation or damages from the State, the Minister for Lands, the Commissioner, the Registrar or any Examiner of Titles or other officer as a result of any loss or damage suffered as a result of —
 - (a) any error in; or
 - (b) anything that the Minister for Lands, the Commissioner, the Registrar or any Examiner of Titles or other officer has or has not, in good faith, done to or in relation to, a qualified certificate of Crown land title.
- (2) Nothing in subsection (1) affects the validity of anything lawfully done under the repealed Act.
- (3) The Registrar may —
 - (a) register any additional interests or dealings in, or record any additional caveats in respect of, Crown land on a qualified certificate of Crown land title; and
 - (b) if so directed by the Commissioner, make any necessary corrections to the particulars recorded on a qualified certificate of Crown land title.

[Section 81ZB inserted by No. 31 of 1997 s. 104(1).]

81ZC. Interests in Crown land not registered within transitional period void as against registered interests in Crown land, etc.

- (1) A person who has a document evidencing an interest in Crown land granted, disposed of or entered into under the repealed Act, or under another written law before the repeal of the repealed Act, may, within the transitional period, lodge —
- (a) that document; or
 - (b) a caveat in respect of that interest,
- with the Registrar for registration or recording.
- (2) An interest —
- (a) to which subsection (1) applies; and
 - (b) in respect of which a document or caveat is not registered or recorded within the transitional period,
- is void as against —
- (c) an interest which has been so registered;
 - (d) a caveat which has been so recorded; or
 - (e) an interest which has been registered or a caveat which has been recorded —
 - (i) after the repeal of the repealed Act; and
 - (ii) before a document or caveat is registered or recorded in respect of the first-mentioned interest,
- in relation to the same parcel of Crown land to the extent of any inconsistency between the first-mentioned interest and an interest or caveat referred to in paragraph (c), (d) or (e).
- (3) Nothing in this section prevents the registration of an interest, or the recording of a caveat, referred to in subsection (1) after the expiry of the transitional period.

[Section 81ZC inserted by No. 31 of 1997 s. 104(1).]

81ZD. Registrar may convert Crown leases into leases registered under section 81Q

- (1) The Registrar may, when a dealing is lodged with him in respect of a Crown lease, treat the Crown lease as if it were a lease registered under section 81Q on the relevant certificate of Crown land title, and may alter the Register and take such other steps as are necessary for that purpose.
- (2) Apart from being treated as if it were a lease registered under section 81Q, a Crown lease referred to in subsection (1) continues to have effect until it terminates according to law.

[Section 81ZD inserted by No. 31 of 1997 s. 104(1).]

Part IV — Dealings with land

Division 1 — Transfers

82. Transfers

- (1) The proprietor of land or of a lease mortgage or charge or of any estate right or interest therein respectively may transfer the same by a transfer in an approved 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. Upon the registration of the transfer the estate and interest of the proprietor as set forth in such instrument or which he shall be entitled or able to transfer or dispose of under any power with all rights powers and privileges thereto belonging or appertaining shall pass to the transferee; and such transferee shall thereupon become the proprietor thereof and whilst continuing such shall be subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if he had been the former proprietor or the original lessee mortgagee or annuitant.
- (2) Where the consideration for a transfer is not a sum of money, the true consideration shall be concisely stated.

[Section 82 amended by No. 17 of 1950 s. 20; No. 81 of 1996 s. 56.]

83. Transfer to include right to sue thereunder

By virtue of every such transfer as is herein mentioned the right to sue upon any mortgage or other instrument and to recover any debt sum of money annuity or damages thereunder (notwithstanding the same may be deemed or held to constitute a chose in action) and all interest in any such debt sum of money annuity or damages shall be transferred so as to vest the same at law as well as in equity in the transferee thereof. Provided always that nothing herein contained shall prevent a court in its equitable jurisdiction from giving effect to any trusts

affecting such debt sum of money annuity or damages in case the transferee shall as between himself and any other person hold the same as a trustee.

84. Proprietor may vest estate jointly in himself and others without limiting any use, etc.

The proprietor of land or any estate or interest in land under the operation of this Act whether of the nature of real or personal property may transfer such land estate or interest to his wife; or if such proprietor be a married woman it shall be lawful for her to make such transfer to her husband; or it shall be lawful for such proprietor to make such transfer directly to himself and another person or jointly with any other person to himself alone or to create or execute any power of appointment or disposition or to create or limit estates in remainder or otherwise as legal estates of or concerning land the subject thereof without the intervention of any precedent or particular estate and also like estates as legal estates without the employment or intervention of any form of use; and upon the registration of such transfer the land estate or interest shall vest in the transferee solely or jointly as the case may be or in the person in whose favour any such power may have been executed or who may have taken under any such limitation or otherwise according to the intent and meaning of such instrument; and she he or they shall become and be deemed the proprietor or proprietors thereof.

85. Instruments when signed and registered to have the same efficacy as a deed acknowledged, but married women to acknowledge instruments signed by them

Every transfer or other instrument shall be deemed of the same efficacy as if under seal; and when signed by the proprietor and registered shall be as valid and effectual to all intents and purposes for conveying passing or conferring the estates interests or rights expressed to be thereby transferred leased or created respectively as a deed duly executed and acknowledged by the same person would have been under any law heretofore

or now in force in Western Australia or as any other form of document would have been either at law or in equity; and every instrument acknowledged within Western Australia by any woman appearing by the Register to be married (whether a sole proprietor or not) and certified under the hand of the Registrar or of some Assistant Registrar or Commissioner for taking affidavits in the Supreme Court of Western Australia in the form in the Tenth Schedule and every instrument acknowledged out of Western Australia by any woman appearing by the Register to be married (whether a sole proprietor or not) and certified under the hand of a Commissioner for taking affidavits in the Supreme Court of Western Australia in the form in the said schedule shall when such instrument has been registered be as valid and effectual to all intents and purposes as a deed duly executed and acknowledged or an instrument duly signed and acknowledged by her would have been under any law heretofore or now in force in Western Australia or as any other form of document would have been either at law or in equity; and such certificate shall be deemed and received as sufficient evidence of the due signature and acknowledgment by her of the instrument therein referred to. Provided always that a married woman entitled to her separate use and not restrained from anticipation or having a power of appointment shall for the purposes of this Act be deemed a *feme sole*.

[Section 85 amended by No. 81 of 1996 s. 145(1).]

86. Duplicate certificate to be delivered to Registrar on transfer

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

- (3) The Registrar shall create and register in the transferee's name a certificate of title to the land mentioned in such transfer and, on the application of the proprietor of the untransferred portion, shall create and register in the proprietor's name a certificate of title to such portion.
- (4) If the land to be transferred is leasehold, the lease and duplicate (if any) shall not be cancelled and the latter document instead of being retained by the Registrar shall be delivered to the transferee.

[Section 86 inserted by No. 81 of 1996 s. 57.]

87. Total transfer by endorsement

If a transfer purports to transfer the whole of the land mentioned in any certificate of title the Registrar may if he thinks fit instead of cancelling such certificate as provided in the last preceding section of this Act enter on the certificate of title and on the duplicate certificate (if any) a memorandum of such transfer and deliver the duplicate to the transferee; and every certificate with such memorandum 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.

[Section 87 amended by 42 Vict. No. 15 s. 2; No. 30 of 1920 s. 2; No. 17 of 1950 s. 21; No. 81 of 1996 s. 58.]

88. Transferee of land subject to encumbrance to indemnify transferor

In every transfer of land under the operation of *The Transfer of Land Act 1874*, or of this Act subject to a mortgage or charge there shall be implied a covenant with the transferor by the transferee binding the latter and his heirs executors administrators and transferees that he or they will pay the

interest secured by such mortgage after the rate and at the times and in the manner therein specified and will pay the annuity at the times and in the manner specified in the charge and will indemnify and keep harmless the transferor and his representatives from and against the principal sum secured by the mortgage and from and against all liability in respect of any of the covenants therein contained or by this Act declared to be implied therein on the part of the transferor.

88A. Memorial of easements to be registered

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 in the Register on 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.

[Section 88A inserted by No. 17 of 1950 s. 22; amended by No. 81 of 1996 s. 59.]

[89. Repealed by No. 26 of 1999 s. 106(3).]

90. Copy of fi. fa. or warrant must be registered before transfer from sheriff produced for registration

Notwithstanding section 53, on a transfer from a sheriff or magistrate of a local court being presented for registration it shall not be registered unless previously and within 4 months preceding the transfer being so presented a copy of the writ of fi. fa. or warrant of execution in pursuance of which such transfer purports to have been made shall have been duly served upon the Registrar for entry by him in the Register in accordance with section 133.

[Section 90 amended by No. 54 of 1902 s. 12; No. 81 of 1996 ss. 60 and 145(1).]

Division 2 — Leases and subleases

91. Leases of land

The proprietor of any freehold land under the operation of this Act may lease the same for any term exceeding 3 years by signing a lease thereof in an approved form; but no lease or extension of lease as hereinafter provided subject to a mortgage or charge shall be valid or binding against the mortgagee or annuitant unless he shall have consented in writing to such lease prior to the same being registered 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.

[Section 91 amended by No. 17 of 1950 s. 23; No. 81 of 1996 s. 61.]

92. Covenants to be implied in every lease against the lessee

In every lease made under the provisions of this Act there shall be implied the following covenants with the lessor and his transferees by the lessee binding the latter and his heirs executors administrators and transferees (that is to say): —

- (i) That he or they will pay the rent reserved by the lease at the time therein mentioned and all rates and taxes which may be payable in respect of the leased property during the continuance of the lease unless otherwise provided by law.
- (ii) That he or they will keep and yield up the leased property in good and tenantable repair accidents and damage from storm and tempest and reasonable wear and tear excepted.

93. Powers to be implied in lessor

In every lease made under this Act there shall also be implied in the lessor and his transferees the following powers (that is to say): —

- (1) That he or they may with or without surveyors workmen or others once in every year during the term at a

reasonable time of the day enter upon the leased property and view the state of repair thereof.

- (2) That in case the rent or any part thereof shall be in arrear for the space of one month although no legal or formal demand shall have been made for payment thereof, or in case of any breach or non-observance of any of the covenants expressed in the lease or by this Act declared to be implied therein on the part of the lessee or his transferees and such breach or non-observance continuing for the space of one month it shall be lawful for the lessor or his transferees to re-enter upon and take possession of the leased property.

94. Short forms of covenants by lessees

Whenever in any lease made under this Act the lessee shall employ any of the forms of words contained in column one of the Twelfth Schedule hereto and distinguished by any number therein such lease shall be taken to have the same effect and be construed as if he had inserted therein the form of words contained in column two of the same schedule and distinguished by the corresponding number; and every such form shall be deemed a covenant with the lessor and his transferees by the lessee binding the latter and his heirs executors administrators and transferees; but it shall not be necessary in any such lease to insert any such number. There may be introduced into or annexed to any of the forms in the first column any express exceptions from or express qualifications thereof respectively; and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

95. Covenant to be implied on transfer of lease

In every transfer of lease made under *The Transfer of Land Act 1874*, or this Act and in every transfer of a grant for years there shall be implied a covenant with the transferor by the transferee binding him his heirs executors administrators and transferees that he or they will thenceforth pay the rent by the

lease or grant reserved and perform and observe all the covenants contained in the lease or grant or by the said Act or this Act declared to be implied in the lease and on the part of the lessee or his transferees to be performed and observed and will indemnify and keep harmless the transferor and his representatives against all actions claims and expenses in respect of the non-payment of such rent or the breach or non-observance of such covenants or any of them.

96. Recovery of possession by lessors to be entered in Register

The Commissioner upon proof to his satisfaction of recovery of possession by a lessor or his transferees by any legal proceeding may direct the Registrar to make an entry of the same in the Register; and the term for which the land was leased shall upon such entry being made determine 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 by this Act declared to be implied therein.

[Section 96 amended by No. 81 of 1996 s. 145(1).]

97. Mortgagee of interest of bankrupt lessee may apply to be entered as transferee of the lease and on default lessor may apply

Upon the bankruptcy of the proprietor of any lease made under this Act subject to one mortgage only or to several mortgages if owned by the same person the Registrar on the application in writing of the mortgagee or his transferee accompanied by a statement signed by the trustee or official assignee of such bankrupt refusing to accept such lease shall enter in the Register a note of such refusal; and such entry shall operate as a foreclosure and as a transfer of the interest of the bankrupt in such lease to the mortgagee or his transferees; and if he or they shall neglect or refuse to make such application as aforesaid within 21 days after notice in writing in that behalf from the lessor or his transferees shall have been served on the

mortgagee or his transferees the Registrar on the application in writing of the lessor or his transferees to be registered as surrenderee or surrenderees of the lease accompanied by such a statement as aforesaid and proof of such neglect or refusal shall enter in the Register notice of such statement and of such neglect or refusal; and such entry shall operate as a surrender of such lease discharged from the mortgage or several mortgages aforesaid 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 by this Act or by any Act hereby repealed declared to be implied therein.

[Section 97 amended by No. 81 of 1996 ss. 62 and 145(1).]

98. Lease may be surrendered by endorsement by lessee with concurrence of lessor

A lease made under this Act may be surrendered and determined as well by operation of law or under any Ordinance or Statute now or hereafter to be in force relating to bankrupts and their estates as by the word "Surrendered" with the date being endorsed upon such lease or on the duplicate thereof (if any) and signed by the lessee or his transferee and by the lessor or his transferee and attested by a witness. The Registrar shall enter in the Register a memorandum recording the date of such surrender and shall likewise endorse upon the duplicate (if any) a memorandum recording the fact of such entry having been made. Upon such entry in the Register the estate and interest of the lessee or his transferee shall vest in the lessor or in the proprietor for the time being of the reversion and inheritance in the land immediately expectant on the term; and production of such lease or duplicate (if any) bearing such endorsement and memorandum shall be sufficient evidence that such lease has been legally surrendered. Provided that no lease subject to a mortgage or charge shall be so surrendered without the consent in writing of the proprietor thereof.

[Section 98 amended by No. 81 of 1996 s. 145(1).]

99. Lessee may sublet

Subject to section 81Q, the proprietor of any lease under this Act may subject to any provisions in his lease affecting his right so to do sublet for a term not less than 3 years by signing a sublease in an approved form; but no sublease of any land subject to a mortgage or charge upon the lease of the land comprised in the sublease shall be valid or binding against the mortgagee or annuitant of the lease unless he shall have consented in writing to such sublease previously to the same being registered.

[Section 99 amended by No. 81 of 1996 s. 63; No. 31 of 1997 s. 106.]

100. Mode of registering sublease

A sublease shall be deemed and taken to be registered when a memorandum thereof as described in section 56 has been endorsed on the original lease in the Register and the person named in any sublease registered as the sublessee shall be deemed and taken to be the proprietor thereof. The Registrar shall endorse on the sublease a certificate of the time at which the memorandum was endorsed on the original lease and shall authenticate such certificate by signing his name thereto; and such certificate shall be received in all courts as conclusive evidence that such sublease has been duly registered.

[Section 100 amended by No. 81 of 1996 s. 145(1).]

101. Register of subleases

The Registrar shall keep a register of subleases and cause to be entered in that register details of the parties to, and the term and memorandum number or symbol of, each registered sublease.

[Section 101 inserted by No. 81 of 1996 s. 64.]

102. Provisions as to leases applicable to subleases

The provisions of this Act affecting leases to lessors and lessees shall apply to subleases sublessors and sublessees with such

modifications and exceptions as the difference between a lease and sublease and in the mode of registration thereof shall require; and the entries of recovery of possession and of surrender provided for by sections 96 and 98 shall in the case of 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.

If the lease be determined by forfeiture or operation of law or by surrender under any Act relating to bankrupts and their estates such determination or surrender shall determine the sublease.

[Section 102 amended by No. 17 of 1950 s. 24; No. 81 of 1996 s. 145(1).]

103. Covenants to be implied in sublease

In addition to the covenants specified in section 92 to be implied in every lease there shall be implied in every sublease the following covenant with the sublessee and his transferees by the sublessor binding the latter and his executors administrators and transferees (that is to say): —

That he or they will during the term thereby granted pay the rent reserved by and perform and observe the covenants and agreements contained in the original lease and on his or their parts to be paid performed and observed.

104. Determination of lease or sublease by re-entry to be entered in Register

- (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

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contained in the lease or sublease or under the power of the second subsection of section 93 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 to make an entry of such re-entry in the Register or in the sublease register (as the case may be) and 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 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.

- (2) The Commissioner shall not make a direction under subsection (1) in relation to a Crown lease or other lease or sublease of Crown land without the prior permission of the Minister for Lands.

[Section 104 amended by No. 81 of 1996 s. 145(1); No. 31 of 1997 s. 107.]

Division 3 — Mortgages and annuities

105. Mortgages and charges

- (1) The proprietor of land under the operation of this Act may —
- (a) mortgage the land; or
 - (b) charge the land with the payment of an annuity.
- (2) A mortgage or charge shall be in an approved form.

[Section 105 inserted by No. 81 of 1996 s. 65.]

105A. Extension of mortgage, charge or lease

- (1) A mortgage, charge or lease may be extended by an instrument of extension executed by all the parties to the mortgage, charge or lease, as the case may be, and setting out the term of the extension and the conditions on which the extension is made.
- (2) Where an instrument of extension is presented to the Registrar —
 - (a) he shall enter a memorandum of it on the certificate of title or, in the case of a Crown lease, on the Register of Leases; and
 - (b) he may also, in the case of a lease, enter a memorandum of it on the record of the lease held by the Department.
- (3) No dealing registered subsequent to any mortgage, charge or lease shall be affected by the extension of the mortgage, charge or lease, as the case may be, unless the proprietor in whose favour the dealing was registered gives written consent to the extension.

[Section 105A inserted by No. 81 of 1996 s. 65.]

106. Mortgage or charge not to operate as transfer; and default procedures

- (1) Subject to Division 2 of Part 6 of the *Land Administration Act 1997* in the case of conditional tenure land, a mortgage and a charge under this Act shall when registered as hereinbefore provided have effect as a security but shall not operate as a transfer of the land thereby mortgaged or charged; and in case default be made in payment of the principal sum interest or annuity secured or any part thereof respectively or in the performance or observance of any covenant expressed in any mortgage or charge or hereby declared to be implied in any mortgage and such default be continued for one month or for such other period of time as may therein for that purpose be expressly fixed the mortgagee or annuitant or his transferees may serve on the mortgagor or grantor or his transferees notice in writing to pay the money owing on such mortgage or charge or to perform and observe the aforesaid covenants (as the case may be).

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- (2) Notwithstanding section 240, service of the notice referred to in subsection (1) is not properly effected unless —
- (a) the notice is delivered personally to the mortgagor or the grantor or his transferees, as the case requires;
 - (b) the notice is sent by registered post to —
 - (i) the address entered in the Register as the address of the mortgagor or the grantor or his transferees, as the case requires; or
 - (ii) the address known to the mortgagee or the annuitant or his transferees as the current address of the mortgagor or the grantor or his transferees, as the case requires;
 - (c) the notice is left in a conspicuous place on the mortgaged or charged land; or
 - (d) the notice is sent to the number of the facsimile machine of the mortgagor or the grantor or his transferees, as the case requires (but only where the mortgagor or the grantor or the transferee has specified in writing to the mortgagee or the annuitant or his transferees, as the case requires, that notices under this section may be served on him by facsimile transmission).

[Section 106 amended by No. 81 of 1996 s. 66; No. 31 of 1997 s. 108; No. 10 of 1998 s. 69(1).]

107. Written demand equivalent to written notice

Subject to Division 2 of Part 6 of the *Land Administration Act 1997* in the case of conditional tenure land, when money secured by a mortgage under this Act is made payable on demand a demand in writing pursuant to the mortgage shall be equivalent to the notice in writing to pay the money owing provided for by the last preceding section of this Act; and no other notice shall be required to create the default in payment mentioned in the next following section to this Act.

[Section 107 amended by No. 31 of 1997 s. 109.]

108. Power to sell

Subject to Division 2 of Part 6 of the *Land Administration Act 1997* in the case of conditional tenure land, if such default in payment or in performance or observance of covenants shall continue for one month after the service of such notice or for such other period as may in such mortgage or charge be for that purpose fixed the mortgagee or annuitant or his transferees may sell the land mortgaged or charged or any part thereof either altogether or in lots by public auction or by private contract and either at one or at several times and subject to such terms and conditions as may be deemed fit; 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.

[Section 108 amended by No. 17 of 1950 s. 25; No. 31 of 1997 s. 110.]

109. Application of purchase money

- (1) The purchase money arising from the sale of the mortgaged or charged land shall be applied as follows: —

If the sale be by the mortgagee or his transferees —

First in payment of the expenses of and incidental to such sale and consequent on such behalf; secondly in payment of the moneys which may be due or owing on the mortgage; thirdly in payment of subsequent mortgages and of any money which may be due or

owing in respect of any subsequent charge in the order of their respective priorities; and the surplus (if any) shall be paid to the mortgagor. Provided always that if the sale be made by a mortgagee or his transferees and there is a subsequent charge the purchase moneys after there shall have been made thereout all proper prior payments shall be deposited by him or them in the manner and names and for purposes corresponding with those after mentioned.

If the sale be by the annuitant or his transferees —

First in payment of the expenses of and incidental to such sale and consequent on such default; then in payment of the moneys which may be due or owing to the annuitant or his transferees; and the residue shall be deposited by him or them at interest in the Commonwealth Savings Bank or in some other bank in Perth in the joint names of the annuitant or his transferees and of the Registrar to satisfy the accruing payments of the charge and subject thereto for the benefit of the parties who may be or become entitled to the residue of the deposited money.

- (2) This section does not apply to the application of the proceeds of a sale by a mortgagee in accordance with section 77 of the *Land Administration Act 1997*.

[Section 109 amended by No. 17 of 1950 s. 26; No. 31 of 1997 s. 111.]

110. Registrar to give effect to sale by mortgagee or annuitant

Subject to section 15(10) of the *Land Administration Act 1997*, upon the registration of any transfer signed by a mortgagee or annuitant or his transferees for the purpose of such sale as aforesaid the estate and interest of the mortgagor or grantor in the land therein described at the time of the registration of the mortgage or charge or which he was then entitled or able to

transfer or dispose of under any power of appointment or disposition or under any power herein contained shall pass to and vest in the purchaser freed and discharged from all liability on account of such mortgage or charge and of any mortgage charge or encumbrance registered subsequent thereto excepting a lease or grant of easement to which the mortgagee or annuitant or his transferees shall have consented in writing and the purchaser when registered as the proprietor shall be deemed a transferee of such land and the Registrar may either register the purchaser as the proprietor of the land on the existing certificate of title or create and register a new certificate of title in the purchaser's name as proprietor of the land.

[Section 110 amended by No. 17 of 1950 s. 27; No. 81 of 1996 s. 67; No. 31 of 1997 s. 112.]

111. Remedies by mortgagee or annuitant

Subject to the provisions of section 112A the mortgagee or annuitant or his transferees upon default in payment of the principal sum or interest or annuity or any part thereof respectively at the time mentioned in the mortgage or charge may enter into possession of the mortgaged or charged land by receiving the rents and profits thereof and may distrain upon the occupier or tenant of the land under the power to distrain hereinafter contained or may bring an action of ejectment to recover the land either before or after entering into the receipt of the rents and profits thereof or making any distress and either before or after any sale of such land shall be effected under the power of sale aforesaid in the same manner in which he or they might have brought such action if the mortgage money or annuity had been secured to him or them by an assurance of the legal estate in the land mortgaged or charged; and any mortgagee or his transferees shall be entitled to foreclose the right of the mortgagor or his transferees to redeem the mortgaged land in manner hereinafter provided.

[Section 111 amended by No. 17 of 1950 s. 28.]

112. Further remedies by mortgagee or annuitant

Subject to the provisions of section 112A besides his other remedies every mortgagee or annuitant for the time being and every transferee of a mortgage or charge for the time being shall be entitled as often as it shall happen that the interest or annuity or any part thereof respectively shall be in arrear for 21 days and after 7 days shall have elapsed from an application to the occupier or tenant for the payment thereof to enter upon the mortgaged or charged land and distrain the goods and chattels of such occupier or tenant for the arrears of the said interest or annuity and the distress and distresses then and there found to dispose of in like manner as landlords may do in respect of distresses for rent reserved upon common demises and out of the sale moneys to retain the moneys which shall be so in arrear and all costs and expenses occasioned by such distress and sale. Provided that no occupier or tenant shall be liable to pay to any such mortgagee or annuitant or transferee a greater sum than the amount of rent which at the time of making such application for payment shall be due from such occupier or tenant, and any amount so paid as well as any amount which shall be paid by him to any such mortgagee or annuitant or transferee during the time he may be in receipt of the rents and profits shall be held to be *pro tanto* satisfaction of the rent; and provided also that if there be more than one mortgage or charge on any land the mortgagees or annuitants shall be entitled to exercise the remedy given by this section according to their priorities.

[Section 112 amended by No. 17 of 1950 s. 28.]

112A. Abolition of power of distress

On 11 December 1936, 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 2 preceding sections is abolished.

[Section 112A inserted by No. 17 of 1950 s. 29.]

113. Covenants to be implied in every mortgage

In every mortgage made under the provisions of this Act there shall be implied covenants with the mortgagee and his transferees by the mortgagor binding the latter and his heirs executors administrators and transferees that he or they will pay the principal money therein mentioned on the day therein appointed and will so long as the principal money or any part thereof shall remain unpaid pay interest thereon or on so much thereof as shall for the time being remain unpaid at the rate and on the days and in manner therein specified; also that he or they will repair and keep in repair all buildings or other improvements which shall have been or shall be erected or made upon the mortgaged land; and that the mortgagee and his transferees may at all reasonable time until such mortgage be redeemed enter into and upon such land with or without surveyors or others to view and inspect the state of repair of such buildings or improvements.

114. Mortgagee or annuitant of leasehold entering into possession to become liable to lessor

A mortgagee of or annuitant upon land leased under this Act and his transferee after entering into possession of the land or the receipt of the rents and profits thereof shall during such possession or receipt and to the extent of any benefit rents and profits which may be received become and be subject and liable to the lessor of the said land or his transferees or the person for the time being entitled to the reversion and inheritance expectant on the term of the lease for the payment of the rent reserved by the lease and for the performance and observance of the covenants therein contained or by this Act declared to be implied therein on the part of the lessee or his transferees.

115. Short form of covenant by mortgagor to insure

Whenever in any mortgage made under this Act the mortgagor shall employ the form of words contained in column one of the

Sixteenth Schedule such mortgage shall be taken to have the same effect and be construed as if he had inserted therein the form of words contained in column two of the same schedule; and every such form shall be deemed a covenant with the mortgagee and his transferees by the mortgagor binding the latter and his heirs executors administrators and transferees. There may be introduced into or annexed to the said form in the first column any express exception from or express qualification thereof; and the like exception or qualification shall be taken to be made from or in the form in the second column.

116. Certain qualities of the legal estate annexed to a mortgage

In addition to and concurrently with the rights and powers conferred on a mortgagee and on a transferee of a mortgage by this Act every present and future mortgagee for the time being of land under this Act and every transferee of a mortgage for the time being upon any such land shall until a discharge from the whole of the money secured or until a transfer upon a sale or an order for foreclosure (as the case may be) shall have been registered have the same rights and remedies at law and in equity (including proceedings before justices of the peace) as he would have had or been entitled to if the legal estate in the land or term mortgaged had been actually vested in him with a right in the mortgagor of quiet enjoyment of the mortgaged land until default in payment of the principal and interest money secured or some part thereof respectively or until a breach in the performance or observance of some covenant expressed in the mortgage or to be implied therein by the provisions of this Act. Nothing contained in this section shall affect or prejudice the rights or liabilities of any such mortgagee or transferee after an order for foreclosure shall have been entered in the Register; or shall until the entry of such an order render a mortgagee of land leased under this Act or the transferee of his mortgage liable to or for the payment of the rent reserved by the lease or for the performance or observance of the covenants expressed or to be implied therein.

[Section 116 amended by No. 81 of 1996 s. 145(1).]

117. Mortgagor not to sue at law for the same cause of action without a written consent

A mortgagor or his transferee shall not either before or after such default or breach as aforesaid commence in his own name any action at law for or in respect of any cause of action for which a mortgagee or his transferee may sue under the last preceding section without obtaining the previous consent in writing of such mortgagee or transferee or his agent to the commencement of such action after giving which consent such mortgagee or transferee shall not be entitled to bring in his name any action at law in respect of the cause of action specified in such consent. Provided however that if a mortgagor or his transferee shall bring any such action in his own name and the defendant shall prove the existence of a mortgage the plaintiff shall not be nonsuited nor shall there be a verdict against him if he prove in reply that the action was brought with the written consent of the mortgagee or of the transferee of his mortgage or his agent.

118. Application of moneys obtained from actions by the mortgagor for waste of or damage to the mortgaged lands

Any sum of money which shall become payable to the mortgagor or his transferee under any decree or order in any action by him in the Supreme Court for or on account of any waste or damage of or to the land mortgaged shall be paid to the mortgagee or his transferee in reduction or satisfaction of the money secured; and if he shall not be willing to receive the same or shall thereby be fully paid off the same or the balance shall be paid to any subsequent mortgagee or his transferee according to priority in like reduction or satisfaction; and if no mortgagee or his transferee shall be willing or be entitled to receive the same then to the mortgagor or his transferee for his own benefit.

119. Application of moneys obtained from actions by the mortgagor in other cases

Any mortgagee or his transferee may either before or after judgment or execution obtained in any action at law brought by the

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mortgagor or his transferee apply to a judge for a summons in such action calling on the plaintiff and defendant or their attorneys or agents to attend before a judge and show cause why any sum beyond \$50 which shall have been or shall be recovered for damages in such action or which shall become payable on the settlement thereof should not be paid to such persons and for such purposes as are hereinbefore mentioned with respect to money payable under any decree or order in any action by the mortgagor or his transferee; and the judge hearing the summons shall determine the matter thereof in a summary manner, and shall make such order therein as to costs and all other matters as may appear to be just and reasonable; and the decision of such judge shall be final and conclusive against all parties. Provided always that every order made in pursuance of this section shall be liable to be rescinded or altered by the court in like manner as other orders made by a single judge. The sheriff or other officer who shall have the execution of any writ of fieri facias issued in such action shall on being served with a copy of such order obey the same.

[Section 119 amended by No. 113 of 1965 s. 4.]

120. Application of moneys obtained in proceedings by a mortgagee

Any money received by a mortgagee or his transferee under any proceeding commenced in his name at law or in equity shall after payment by thereout of his costs be applied in reduction or satisfaction of the moneys secured and subject thereto shall be disposed of according to the equities of the parties interested.

121. Mortgagee may apply for an order for foreclosure

- (1) Whenever default has been made in payment of the principal or interest moneys secured by a mortgage and such default shall be continued for 6 months after the time for payment mentioned in the mortgage, the mortgagee or his transferee may make application in writing to the Commissioner for an order for foreclosure; and such application shall state that such default has been made and has continued for the period aforesaid and

that the land mortgaged has been offered for sale at public auction by a licensed auctioneer after notice to pay was served in accordance with section 106 and that the amount of the highest bidding at such sale (which amount shall also be stated) was not sufficient to satisfy the moneys secured by such mortgage together with the expenses occasioned by such sale or that there was no bid and that notice in writing of the intention of the mortgagee or his transferee to make an application for foreclosure has been served on the mortgagor or his transferees, and also that a like notice of such intention has been served on every person appearing by the Register to have any right estate or interest to or in the mortgaged land subsequently to such mortgage. Such application shall be accompanied by a certificate of the auctioneer by whom such land was put up for sale and by such further evidence in the premises as the Commissioner may require; and the statements made in such application shall be verified by statutory declaration.

- (2) Notwithstanding section 240, service on a person of a notice of intention to apply for foreclosure is not properly effected unless —
- (a) the notice is delivered personally to the person;
 - (b) the notice is sent by registered post to —
 - (i) the address entered in the Register as the address of the person; or
 - (ii) the address known to the mortgagee or his transferees as the person's current address;
 - (c) the notice is left in a conspicuous place on the mortgaged land; or
 - (d) the notice is sent to the number of the person's facsimile machine (but only where the person has specified in writing to the mortgagee or his transferees, as the case requires, that such notices may be served on the person by facsimile transmission).

[Section 121 amended by 60 Vict. No. 22 s. 3; No. 17 of 1950 s. 30; No. 81 of 1996 s. 68; No. 10 of 1998 s. 69(2).]

122. Application for foreclosure to be advertised

Upon such application the Commissioner may direct the Registrar to cause notice to be published once in each of the 3 successive weeks in at least one newspaper published in the city of Perth offering such land for private sale and shall appoint a time not less than one month from the date of the first of such advertisements upon or after which the Registrar shall issue to such applicant an order for foreclosure, unless in the interval a sufficient amount has been obtained by the sale of such land to satisfy the principal and interest moneys secured and all expenses occasioned by such sale and proceedings; and every such order for foreclosure under the hand of the Registrar when entered in the Register shall have the effect of vesting in the mortgagee or his transferee the land mentioned in such order free from all right and equity of redemption on the part of the mortgagor or of any person claiming through or under him subsequently to the mortgage; and such mortgagee or his transferee shall upon such entry being made be deemed a transferee of the mortgaged land and become the proprietor thereof and the Registrar may either register the mortgagee or the transferee as the proprietor of the land on the existing certificate of title or create and register a new certificate of title in the name of the mortgagee or the transferee as the proprietor of the land.

[Section 122 amended by No. 81 of 1996 ss. 69 and 145(1).]

123. Discharge of mortgages and annuities

Upon production of a memorandum signed by the mortgagee or annuitant or his transferees and attested by a witness to the satisfaction of the Commissioner discharging the land from the whole or part of the moneys or annuity secured or discharging any part of the land from the whole of such moneys or annuity the Registrar shall make an entry in the Register stating the time at which it was made that such mortgage or charge is discharged wholly or partially or that part of the land is discharged as aforesaid (as the case may be); and upon such entry being made the land or the portion of land described in such memorandum

shall cease to be subject to or liable for such moneys or annuity or for the part thereof mentioned in such entry as discharged; 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.

[Section 123 amended by No. 81 of 1996 ss. 70 and 145(1).]

124. Satisfaction of mortgages executed prior to land being registered and remedies of mortgagees

When land shall have been brought under the operation of *The Transfer of Land Act 1874* or of this Act and a certificate shall have been registered subject to a mortgage or other encumbrance made or given before the registration of such certificate such mortgage or other encumbrance may be transferred or discharged in like manner as if it were a mortgage or other encumbrance prescribed by and registered under the said Acts or either of them and the mortgagee or the other person claiming under such mortgage or encumbrance may exercise the same rights and remedies as if the mortgage or other encumbrance had been made and registered in the form and manner prescribed by the said Acts or either of them.

[Section 124 amended by 2 Edw. VII No. 10. 1902 s. 5; 47 Vict. No. 22 s. 3; No. 81 of 1996 s. 71.]

125. Entry of satisfaction of annuity

Upon proof to the satisfaction of the Commissioner of the death of the annuitant or of the occurrence of the event or circumstance upon which in accordance with the provisions of any charge the annuity thereby secured shall cease to be payable and upon proof to the like satisfaction that all arrears of the annuity and all costs occasioned by non-payment thereof have been paid or satisfied he shall direct the Registrar to make an entry in the Register that such annuity is satisfied; and upon such entry being made the land shall cease to be subject to or liable for such annuity; and the

Registrar shall make the like entry on the duplicate certificate of title when produced to him for that purpose.

[Section 125 amended by No. 17 of 1950 s. 31; No. 81 of 1996 s. 145(1).]

126. Mortgage money may be paid to Treasurer if mortgagee absent from Western Australia and mortgage discharged

- (1) In case a mortgagee or his transferee shall be absent from Western Australia and there be no person authorised to give a receipt for the mortgage money at or after the date appointed for payment thereof it shall be lawful for the Treasurer to receive such mortgage money with all arrears of interest due thereon in trust for the mortgagee or other person entitled thereto; and thereupon the interest upon such mortgage shall cease to run or accrue; and the Registrar shall upon production of the receipt of the Treasurer for the amount of the mortgage money and interest make an entry in the Register discharging the land from such mortgage stating the time at which such entry was made; and such entry shall be a valid discharge from such mortgage; 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. The Treasurer shall from time to time invest all mortgage moneys and interest which shall be received by him under this section together with all dividends and interest which shall accrue thereon in Western Australian Government or Commonwealth securities for the benefit of the persons who shall for the time being be entitled thereto; but nothing herein contained shall render any Treasurer in any manner liable for not investing the same respectively. The Registrar shall address to the Treasurer requisitions countersigned by the Commissioner to pay to such persons the moneys to which they may be entitled hereunder; and such moneys shall be issued in like manner as moneys are now issued from the Consolidated Fund. For the purposes of this subsection the words “**mortgage money**” shall include any outstanding balance of the principal moneys secured.

- (2) If it be proved to the satisfaction of the Commissioner that the whole of the moneys payable under a mortgage, whether as principal or interest, have been paid and that the mortgagee or his transferee is dead or absent from Western Australia or cannot be found and there is no person empowered or authorised to discharge the mortgage on his behalf the Commissioner may direct the Registrar to make an entry in the Register discharging the land from such mortgage stating the time at which such entry was made and such entry shall be a valid discharge from such mortgage 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.

[Section 126 amended by No. 6 of 1946 s. 2; No. 17 of 1950 s. 32; No. 6 of 1993 s. 11; No. 81 of 1996 ss. 72 and 145(1).]

127. First mortgagee to produce title for registration of subsequent instrument

When any instrument subsequent to a first mortgage is made by the proprietor of any land and such proprietor or the person entitled to the benefit of such subsequent instrument desires the registration of such subsequent instrument the first mortgagee should he hold the duplicate certificate of title which comprises the land in such subsequent instrument shall upon being requested so to do by the proprietor of the land or the person entitled to the benefit of such subsequent instrument but at the cost of the person making such request produce such duplicate certificate of title to the Registrar so that such subsequent instrument may be registered.

128. Title to land brought under this Act subject to mortgage to be held good in favour of mortgagee or his purchaser

When any land has been brought under or shall be brought under this Act subject to any mortgage and the mortgagee or any person claiming under him shall apply for a certificate of title to the land foreclosed or purchased the mortgage shall be deemed to have conferred upon the mortgagee or the purchaser

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under the power of sale contained in the mortgage the right to be registered as proprietor at law as well as in equity of the same estate in the land as that for which the mortgagor was registered and the only inquiry into title shall be as to the validity of the foreclosure or sale and of any subsequent transfers or transmissions of title to the applicant and no caveat which might have been or which was lodged against the original application shall be lodged or renewed in respect of the same estate or interest against the application of the mortgagee or any person claiming under him.

128A. Puisne mortgagee may tender payment

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.

[Section 128A inserted by No. 17 of 1950 s. 33.]

[129. Repealed by No. 26 of 1999 s. 106(4).]

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[Heading inserted by No. 81 of 1996 s. 73.]

129A. Creation of restrictive covenants

- (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 an approved 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.

- (2) Nothing in subsection (1) limits the creation of a restrictive covenant under Part IVA.
- (3) Notwithstanding section 52(2)(a), the Registrar may register an instrument creating a restrictive covenant (other than a restrictive covenant created under Part IVA) without entering a memorandum of the restrictive covenant on the certificate of title for the land (if any) benefited by the restrictive covenant.
- (4) Nothing in subsection (3) shall be read as affecting any requirement, in relation to the registration of an instrument creating a restrictive covenant, to enter a memorandum of the restrictive covenant on the certificate of title for the land burdened by the restrictive covenant.
- (5) Subject to subsection (6), where a restrictive covenant is created under Part IVA, the Registrar shall enter a memorandum of the restrictive covenant on the certificate of title for the land (if any) benefited, and the land burdened, by the restrictive covenant.
- (6) Where —
 - (a) a restrictive covenant has been created under Part IVA by notation on a strata/survey-strata plan; and
 - (b) the restrictive covenant has been notified on a registered strata/survey-strata plan,

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

[Section 129A inserted by No. 17 of 1950 s. 34; amended by No. 81 of 1996 s. 74.]

129B. Discharge of restrictive covenants

- (1) Notwithstanding anything contained in this Act to the contrary, but subject to subsection (3), 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

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affected by such covenant or agreement consenting to such discharge or modification.

- (2) The Commissioner shall, when satisfied that all parties interested as aforesaid have agreed to the discharge or modification of any covenant entered on any certificate of title in the Register, direct the Registrar to enter a memorandum of the discharge or modification on each such certificate.
- (3) Notwithstanding subsection (1), the discharge or modification of a restrictive covenant created under —
 - (a) section 129BA shall be in accordance with section 129BB; or
 - (b) Part IVA shall be in accordance with section 136J.

[Section 129B inserted by No. 17 of 1950 s. 34; amended by No. 81 of 1996 s. 75.]

129BA. Restrictive covenants benefiting local governments and public authorities

- (1) A restrictive covenant may, under this section, be created and made binding in respect of land under the operation of this Act for the benefit of —
 - (a) the local government in whose district the land is situated; or
 - (b) a public authority,notwithstanding that the benefit of the restrictive covenant would not be in respect of land.
- (2) A restrictive covenant under this section shall be in an instrument in an approved form that is lodged with the Registrar and accompanied by —
 - (a) the written consent of each person who has a registered interest in any land that would be burdened by the restrictive covenant; and

(b) the prescribed fee.

[Section 129BA inserted by No. 81 of 1996 s. 76.]

129BB. Discharge and modification of section 129BA covenants

(1) Either —

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

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

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

- (a) the written consent of —
 - (i) the relevant authority; and
 - (ii) each person who has a registered interest in any land burdened by the restrictive covenant, to the discharge or the modification of the restrictive covenant as proposed; or
- (b) the documents referred to in subsection (3).

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

- (a) the applicant’s statutory declaration to the effect that —
 - (i) the relevant authority and each person who has a registered interest in any land burdened by the restrictive covenant (not being the applicant) has been given 28 days’ written notice of both the

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- intention to make the application and the substance of the proposed application;
- (ii) notice of both the intention to make the application and the substance of the proposed application has been published —
- (I) at least 28 days before the day on which the application is made;
 - (II) in a newspaper circulating either throughout the State or in the district where the land is situated;
- (iii) both of the notices referred to in subparagraphs (i) and (ii) stated —
- (I) the applicant's address for service of notices of objection to the proposed application or any part of the proposed application; and
 - (II) the day, being at least 3 days before the application was proposed to be made, by which notice of objections were to be received;
- and
- (iv) up to the time of making the application, the applicant had received no notice of objection to either the proposed application or any part of the proposed application;
- and
- (b) a copy of the notice referred to in paragraph (a)(ii) showing the name of the newspaper in which it was published and the day of publication.
- (4) On an application under this section the Registrar, if directed by the Commissioner to do so, shall discharge the restrictive covenant or modify the restrictive covenant in the manner set out in the application.

- (5) The Commissioner shall not direct the Registrar to discharge or modify a restrictive covenant under this section if the Commissioner is aware of any notice that has been served under subsection (3)(a)(iii) by which an objection has been made to either the application or any part of the application.
- (6) Where a restrictive covenant is discharged or modified under this section the Registrar shall enter a memorandum of the discharge or modification on each certificate of title in the Register on which is entered a memorandum of the restrictive covenant.

[Section 129BB inserted by No. 81 of 1996 s. 76.]

129C. Judge may vary restriction or easement

- (1) Subject to subsection (1a), where land under this Act is subject to an easement or 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 burdened or benefited, or any local government or public authority benefited, by the easement or restriction, by order wholly or partially extinguish, discharge or modify the easement or restriction upon being satisfied —
 - (a) that by reason of any change in the user of any land to which the easement or the benefit of the restriction is annexed, or 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 easement or 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 easement or to the benefit of the restriction whether in respect of estates

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in fee simple of any lesser estates or interests in the land to which the easement or the benefit of the restriction is annexed have agreed to the same being wholly or partially extinguished, discharged or modified or by their acts or omissions may reasonably be considered to have abandoned the easement or to have waived the benefit of the restriction wholly or in part; or

- (c) that the proposed extinguishment, discharge or modification will not substantially injure the persons entitled to the easement or to the benefit of the restriction.
- (1a) An application under subsection (1)(a) or (c) to extinguish, discharge or modify a single dwelling covenant that benefits more than 10 lots shall be accompanied by —
- (a) the applicant's affidavit to the effect that the registered proprietor of each lot that is —
 - (i) wholly or partially within the prescribed area; and
 - (ii) benefited by the covenant the subject of the application or any other single dwelling covenant,has been given written notice, the form and content of which has been approved by the Registrar, of the proposed application; and
 - (b) the written consent of the registered proprietors (at the time the application is made) of the majority of the lots referred to in paragraph (a) to the extinguishment, discharge or the modification of the covenant as proposed.
- (1b) For the purposes of subsection (1a)(b), the written consent of the registered proprietor of a lot that has 2 or more registered proprietors is taken to have been given if consent has been given by —
- (a) in the case of proprietors who are joint tenants, the majority of those proprietors; or

- (b) in the case of proprietors who are tenants in common, a proprietor who is, or 2 or more proprietors who between them are, entitled to the majority of undivided shares in the lot.
- (1c) If a lot is subject to a mortgage or charge, the written consent of the registered proprietor of that lot is not to be taken into account for the purposes of subsection (1a)(b) unless it is accompanied by the written consent of the mortgagee or chargee of the mortgage or charge that is first in order of priority.
- (1d) In subsection (1a), (1b) and (1c) —
 - “lot”** means a parcel of land that is shown on a plan (as defined in section 136A) as a lot, other than a common property lot on a survey-strata plan;
 - “single dwelling covenant”** means a restrictive covenant that prohibits the construction of more than one dwelling on the lot burdened by the covenant.
- (2) When any proceedings by suit or otherwise are instituted to enforce an easement, or to enforce any rights arising out of the breach of a restrictive covenant affecting land under this Act or any local government or public authority then 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 or any local government or public authority is affected by an easement or by a restriction imposed by any instrument or created under Part IVA; or
 - (aa) what is the nature and extent of the easement and whether the same is enforceable and if so by whom; or
 - (b) what upon the true construction of any instrument, plan or diagram purporting to impose a restriction is the

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nature and extent of the restriction and whether the same is enforceable and if so by whom; or

- (c) whether or not any easement or 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 local government of the 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 entered in the Register as hereinafter provided be binding on all persons whether of full age or capacity or not then entitled or thereafter becoming entitled to the easement or interested or thereafter becoming interested in enforcing any restriction which is thereby extinguished, 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 easements and to restrictions whether subsisting at the commencement of this section or imposed thereafter whether or not created under Part IVA.
- (6a) If an order is made on an application to which subsection (1a) applies, the applicant for the order shall apply to the Registrar, in an approved form and with payment of the prescribed fee, for the Registrar to make the amendments and entries in the Register necessary to give effect to the order.
- (7) The Registrar shall on the prescribed application make all necessary amendments and entries in the Register 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.
- (9) This section does not apply to easements granted under section 144 of the *Land Administration Act 1997*.

[Section 129C inserted by No. 17 of 1950 s. 34; amended by No. 14 of 1972 s. 4; No. 14 of 1996, s. 4; No. 81 of 1996 ss. 77 and 145(1) and (2); No. 31 of 1997 s. 113; No. 3 of 1999 s. 4.]

Division 4 — Miscellaneous

130. Seal of corporation substitute for signature

A corporation for the purpose of transferring or otherwise dealing with any land under the operation of this Act or any lease mortgage or charge may in lieu of signing and obtaining the attestation of the instrument for such purpose required affix thereto its common seal. The seal of the attorney of any corporation whose chief or head office of business shall be out of Western Australia whether such attorney shall have been already constituted or shall hereafter be constituted by a power of attorney under a seal purporting to be the common seal of the corporation giving the power shall be deemed to be the common seal of such corporation within the meaning and for the purposes of this section.

131. Implied covenants and powers may be modified or negatived

Every covenant and power to be implied in any instrument by virtue of this Act may be negatived or modified by express declaration in the instrument or endorsed thereon; and in the statement of claim in any action for a breach of any such covenant it shall be lawful to allege that the party against whom or against whose real or personal representatives such action is brought did so covenant precisely in the same manner as if such covenant had been expressed in words at length in such

instrument any law or practice to the contrary notwithstanding; and every such implied covenant shall have the same force and effect as if it had been set out at length in such instrument; and where in any instrument there shall be more than one covenantor such covenants as are by this Act declared to be implied in instruments of the like nature shall be construed to be several as well as joint.

[Section 131 amended by No. 17 of 1915 s. 35.]

[132. Repealed by No. 17 of 1950 s. 36.]

133. Sale under writ of fi. fa. or decree or order of Supreme Court

- (1) No execution issued prior to or after the commencement of this Act shall bind charge or affect any land or any lease mortgage or charge; but the Registrar on being served with a copy of any writ of fieri facias issued out of the Supreme Court or out of The District Court of Western Australia or of any decree or order of such court accompanied by a statement signed by any party interested or his attorney solicitor or agent specifying the land lease mortgage or charge sought to be affected thereby shall after marking upon such copy the time of such service enter the same in the Register; and after any land lease mortgage or charge so specified shall have been sold under any such writ decree or order the Registrar shall on receiving a transfer thereof in an approved form (which transfer shall have the same effect as if made by the proprietor) enter such transfer in the Register; and on such entry being made the purchaser shall become the transferee and be deemed the proprietor of such land lease mortgage or charge. Provided always that until such service as aforesaid no sale or transfer under any such writ shall be valid as against a purchaser for valuable consideration notwithstanding such writ was actually lodged for execution at the time of the purchase and notwithstanding the purchaser had actual or constructive notice of the lodgment of such writ. After the commencement of this Act no unregistered instrument

document or writing and no equitable mortgage or charge by deposit or otherwise without writing affecting any land lease sublease mortgage annuity or other charge shall prevail against a sale by the sheriff under a writ of fieri facias unless a caveat in respect of such unregistered instrument document or writing or equitable mortgage or charge shall have been lodged with the Registrar in pursuance of the provisions of section 137 or the similar provisions of *The Transfer of Land Act 1874*, before the service of the copy of the said writ of fieri facias on the Registrar as aforesaid but in the absence of a caveat all the estate and interest in the land lease mortgage or charge as well as of the judgment debtor as of his unregistered purchaser transferee mortgagee or other person claiming through or under him shall be extinguished and shall pass to the purchaser by virtue of a transfer under this section. Upon production to the Commissioner of sufficient evidence of the satisfaction of any writ a copy whereof shall have been served as aforesaid he shall direct an entry to be made in the Register of a memorandum to that effect; and on such entry having been made such writ shall be deemed to be satisfied.

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 4 months from the day on which the copy was served.

The Registrar may register a transfer under any writ or warrant of execution without requiring the production of the duplicate (if any) of the certificate of title or a Crown lease or of any other instrument.

Provided that the Registrar shall give such notice of intention to register the transfer, at the cost of the transferee, and cause the same to be published, as in the case of the production of a duplicate certificate being dispensed with under section 74.

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- (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.
- (3) This section applies to the sale, under a warrant of execution issued for the purposes of section 140 of the *Mining Act 1978* (“**that section**”), of land under the operation of this Act, as if —
- (a) a reference to a writ of fieri facias issued out of the Supreme Court were a reference to a warrant of execution under that section;
 - (b) a reference to a sale by the sheriff under a writ of fieri facias were a reference to a sale under that section;
 - (c) a reference to the sheriff were a reference to the person authorised under that section to sell property; and
 - (d) a reference to a decree or order of the Supreme Court were a reference to an order of execution under that section.

[Section 133 amended by No. 54 of 1909 s. 14; No. 14 of 1929 s. 2; No. 17 of 1950 s. 75; No. 14 of 1972 s. 5; No. 81 of 1996 ss. 78 and 145(1) and (2).]

134. Purchaser from registered proprietor not to be affected by notice

Except in the case of —

- (a) fraud; or
- (b) Crown land the subject of a qualified certificate of Crown land title,

no person contracting or dealing with or taking or proposing to take a transfer or other instrument from a person who is or becomes the proprietor of any registered land lease mortgage or charge shall be required or in any manner concerned to inquire or ascertain the circumstances under or the consideration for which such proprietor or any previous proprietor thereof was or becomes registered 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 at any time prior to or simultaneously with the registration of such transfer or other instrument or to see to the application of any purchase or consideration money or shall be affected by notice actual or constructive of any trust or unregistered interest any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

[Section 134 amended by No. 17 of 1950 s. 37; No. 81 of 1996 s. 145(1); No. 31 of 1997 s. 114.]

135. Transferee of tenant in tail may be registered for the larger estate which a tenant in tail can confer

A transfer or mortgage in the ordinary form by a tenant in tail under this Act having power to create an estate in fee simple shall create such estate in favour of a transferee mortgagee or transferee under the power of sale in the mortgage and a transferee from a tenant in tail or under a mortgage from a tenant in tail or a mortgagee after foreclosure shall be entitled to have registered a certificate of title for the larger estate which the tenant in tail is empowered to confer but a mortgage under this Act if discharged shall not bar the entail.

[Section 135 amended by No. 81 of 1996 s. 79.]

136. Registrar to furnish plan showing land dealt with where the memorandum on certificate does not describe such land

Where part only of the land comprised in a certificate has been dealt with by a registered dealing but the memorandum of such dealing endorsed on the certificate does not specify such part the Registrar shall furnish to any person applying for the same on payment of the fee payable in that behalf a skeleton diagram of the land originally comprised in the certificate showing by metes and bounds and a distinguishing colour or symbols the

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position and dimensions of the part included in such dealing; and such diagram shall either be endorsed on or be annexed to such certificate and the same shall be sealed. Provided always that if there be different registered dealings affecting different parts of the land comprised in the certificate and a plan be required showing such different parts a separate fee shall be paid in respect of each such part. Provided also that where different parcels of land not contiguous are included in the certificate the skeleton diagram hereinbefore mentioned need only be of the parcel or parcels which includes or include the part or parts so dealt with.

[Section 136 amended by No. 81 of 1996 s. 80.]

**Part IVA — Creation of easements and restrictive
covenants by notations on subdivision plans and
diagrams**

[Heading inserted by No. 81 of 1996 s. 81.]

136A. Interpretation

In this Part, “**plan**” means —

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

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

[Section 136A inserted by No. 81 of 1996 s. 81; amended by No. 31 of 1997 s. 115.]

136B. Application of this Part

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

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

[Section 136B inserted by No. 81 of 1996 s. 81.]

136C. Notation of easements on subdivision plans

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

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- (2) An easement cannot be noted on a plan unless the land to be burdened by the easement is a subject of the plan but any land to be benefited by the easement need not be a subject of the plan.
- (3) An easement for the benefit of —
 - (a) the local government in whose district the land is situated; or
 - (b) a public authority,may be noted on a plan under this section notwithstanding that the benefit of the easement would not be in respect of land.
- (4) Where an easement is noted on a plan in accordance with this section an instrument in an approved form may, but need not, be lodged in relation to the plan unless, under subsection (6), certain information is required to be specified in an instrument and where an instrument is lodged the prescribed fee shall be paid for the lodgment of the instrument.
- (5) The following information about the easement shall, subject to subsection (6), be specified in either the plan or in an instrument lodged in relation to the plan —
 - (a) the land to be burdened by the easement;
 - (b) either —
 - (i) the land to be benefited; or
 - (ii) the name of the local government or the public authority to be benefited,by the easement, as the case may be;
 - (c) a description of the easement, whether by way of a short form, a modified or supplemented short form or in another manner;
 - (d) if the easement is for a particular term, the duration of the term; and
 - (e) any prescribed matter.

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

[Section 136C inserted by No. 81 of 1996 s. 81.]

136D. Notation of restrictive covenants on subdivision plans

- (1) A proprietor of land that is a subject of a plan may note, in an approved form, on the plan a restrictive covenant to which the land is proposed to be subject.
- (2) A restrictive covenant cannot be noted on a plan unless the land to be burdened by the restrictive covenant is a subject of the plan but the land to be benefited by the restrictive covenant need not be a subject of the plan.
- (3) A restrictive covenant cannot be noted on a plan unless an instrument in an approved form is lodged in relation to the plan and the prescribed fee is paid for lodgment of the instrument.
- (4) The terms of the restrictive covenant shall be specified in an instrument lodged in relation to the plan.
- (5) The following information about the restrictive covenant shall, subject to subsection (6), be specified in either the plan or in an instrument lodged in relation to the plan —
- (a) the land to be burdened by the restrictive covenant;
 - (b) the land to be benefited by the restrictive covenant;
 - (c) if the restrictive covenant is for a particular term, the duration of the term; and
 - (d) any prescribed matter.
- (6) The Registrar may issue directions to the effect that any information referred to in subsection (5) is to be specified in either the plan or in an instrument lodged in relation to the plan

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and any such direction shall be published in a document a copy of which is available to the public free of charge.

[Section 136D inserted by No. 81 of 1996 s. 81.]

136E. Consent of certain persons required to the creation of easements and restrictive covenants

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

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

[Section 136E inserted by No. 81 of 1996 s. 81.]

136F. When easements and restrictive covenants under this Part have effect

- (1) Land becomes subject to an easement or restrictive covenant noted on a plan in accordance with this Part —
 - (a) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar registers the plan under that Act; and
 - (b) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the plan have been registered.

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

[Section 136F inserted by No. 81 of 1996 s. 81.]

136G. Easements and restrictive covenants under this Part may be effective for a specified term only

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

[Section 136G inserted by No. 81 of 1996 s. 81.]

136H. Easements and restrictive covenants under this Part may both burden and benefit land of same proprietor

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

[Section 136H inserted by No. 81 of 1996 s. 81.]

136I. Recordings in the Register

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

[Section 136I inserted by No. 81 of 1996 s. 81.]

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136J. Discharge and modification of easements and restrictive covenants under this Part

(1) Either —

- (a) the proprietor of land burdened or benefited by an easement or a restrictive covenant created under this Part, other than a single dwelling covenant (as defined in section 129C); or
- (b) a local government or public authority for whose benefit an easement has been created under this Part (“**the relevant authority**”),

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

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

- (a) the written consent of —
 - (i) each person who has a registered interest in, or is a caveator in respect of, any land that is either burdened or benefited by the easement or restrictive covenant; and
 - (ii) if applicable, the relevant authority, to the discharge or the modification of the easement or restrictive covenant as proposed; or
- (b) the documents referred to in subsection (3).

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

- (a) the applicant’s statutory declaration to the effect that —
 - (i) each person who has a registered interest in, or is a caveator in respect of, any land that is either burdened or benefited by the easement or

restrictive covenant and, if applicable, the relevant authority (not being the applicant) has been given 28 days' written notice of both the intention to make the application and the substance of the proposed application;

- (ii) notice of both the intention to make the application and the substance of the proposed application has been published —
 - (I) at least 28 days before the day on which the application is made;
 - (II) in a newspaper circulating either throughout the State or in the district where the land is situated;
- (iii) both of the notices referred to in subparagraphs (i) and (ii) stated —
 - (I) the applicant's address for service of notices of objection to the proposed application or any part of the proposed application; and
 - (II) the day, being at least 3 days before the application was proposed to be made, by which notice of objections were to be received;

and

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

and

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

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- (4) On an application under this section the Registrar, if directed by the Commissioner to do so, shall discharge the easement or restrictive covenant or modify the easement or restrictive covenant in the manner set out in the application.
- (5) The Commissioner shall not direct the Registrar to discharge or modify an easement or a restrictive covenant under this section if the Commissioner is aware of any notice that has been served under subsection (3)(a)(iii) by which an objection has been made to either the application or any part of the application.
- (6) Where an easement or a restrictive covenant is discharged or modified under this section the Registrar shall enter a memorandum of the discharge or modification on each certificate of title in the Register on which is entered a memorandum of the easement or restrictive covenant.

[Section 136J inserted by No. 81 of 1996 s. 81; amended by No. 3 of 1999 s. 5.]

Part V — Caveats

136K. Interpretation in, and application of, Part V

- (1) In sections 138B to 138D, “**section 138A caveat**” has the meaning given by section 138A.
- (2) The provisions of sections 138A to 138D are in addition to, and are not to be read as limiting the operation of —
 - (a) the other provisions of this Act in relation to caveats; and
 - (b) a person’s entitlement, if any, to apply for an injunction in relation to a caveat.
- (3) Subject to subsection (4) and to section 20 of the *Land Administration Act 1997*, this Part applies to caveats in respect of Crown land.
- (4) Neither the second and third sentences of section 138, nor the whole of section 141A, apply or applies to caveats lodged under section 21 of the *Land Administration Act 1997*.

[Section 136K inserted by No. 81 of 1996 s. 82; amended by No. 31 of 1997 s. 116.]

137. Lodgment of caveat where land already under Act

Any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease mortgage or charge under any unregistered instrument document or writing or under any equitable mortgage or charge by deposit without writing or by devolution in law or otherwise may lodge a caveat with the Registrar in an approved form forbidding the registration of any person as transferee or proprietor of and of any instrument affecting such estate or interest either absolutely or until after notice of the intended registration or dealing be given to the caveator or unless such instrument be expressed to be subject to the claim of the caveator as may be required in such caveat. Every such caveat shall state the name and address

of the person by whom or on whose behalf the same is lodged and (except in case of a caveat lodged by order of the Supreme Court or by the Registrar pursuant to the direction of the Commissioner as hereinafter provided) shall be signed by the caveator or by his agent. The person lodging such caveat shall if required by the Registrar support the same by statutory declaration stating the nature of the estate or interest claimed and the title thereto and may withdraw any such caveat. If such declaration when required by the Registrar be not lodged with him within 7 days from the date of such requisition the caveat shall be absolutely null and void. A caveat under this section cannot be lodged unless it contains an address, or a number for a facsimile machine, in Australia for the service of notices in relation to the caveat.

[Section 137 amended by 60 Vict., No. 22 s. 4; No. 17 of 1950 s. 38; No. 81 of 1996 ss. 83 and 146(1).]

138. Consequences of lodgment of caveat

Upon receipt of such caveat the Registrar shall notify the same to the person against whose application to be registered as proprietor or (as the case may be) to the proprietor against whose title to deal with the estate or interest such caveat has been lodged; and such applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may if he think fit summon the caveator to attend before the Supreme Court or a Judge in chambers to show cause why such caveat should not be removed; and such court or Judge may upon proof that such caveator has been summoned make such order in the premises either ex parte or otherwise as to such court or Judge may seem fit. Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement or by the Registrar pursuant to the direction of the Commissioner every caveat lodged against a proprietor shall be deemed to have lapsed as to the land affected by the transfer or other dealing upon the expiration of 14 days after notice served on the caveator that such proprietor has

applied for the registration of a transfer or other dealing unless in the meantime such application is withdrawn. A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest except subject to the state of the Register at the time of the renewal of such caveat; but if before the expiration of the said period of 14 days or such further period as shall be specified in any order made under this section the caveator or his agent appears before a judge and gives such undertaking or security or lodges such sum in court as such judge may consider sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed then and in such case such judge may direct the Registrar to delay registering any dealing with the land lease mortgage or charge for a further period to be specified in such order or may make such other order as may be just.

[Section 138 amended by No. 17 of 1950 s. 39; No. 81 of 1996 s. 145(1).]

138A. Caveats to which sections 138B to 138D apply

A caveat that has not been lodged —

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

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

[Section 138A inserted by No. 81 of 1996 s. 84.]

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138B. Certain caveats may lapse unless justified by caveator

- (1) If a section 138A caveat has been lodged then the proprietor of the land in respect of which the caveat was lodged may apply, in an approved form and on payment of the prescribed fee, for the Registrar to serve the caveator with a notice to the effect that, unless the caveator takes the action referred to in subsection (2) within 21 days after the day on which the notice is served, the caveat will lapse.
- (2) If the notice referred to in subsection (1) is served on the caveator then the caveat lapses 21 days after the day on which the notice was served unless, before that time, the caveator has —
 - (a) obtained from the Supreme Court an order extending the operation of the caveat —
 - (i) for such further period as is specified in the order; or
 - (ii) until the further order of the Court;and
 - (b) lodged with the Registrar a copy of the order.

[Section 138B inserted by No. 81 of 1996 s. 84.]

138C. Powers of Supreme Court

- (1) A caveator who is served with a notice under section 138B(1) may apply to the Supreme Court, in accordance with rules of the Court, for an order extending the operation of the caveat.
- (2) On the hearing of an application under subsection (1), the Supreme Court —
 - (a) if satisfied that the caveator's claim has or may have substance —
 - (i) may make an order extending the operation of the caveat for such period as is specified in the order;

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

[Section 138C inserted by No. 81 of 1996 s. 84.]

138D. Restrictions on further lodgment of certain caveats

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

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

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

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

[Section 138D inserted by No. 81 of 1996 s. 84.]

139. No entry to be made in Register affecting land in respect to which caveat continues in force

- (1) Subject to the provisions of the next succeeding subsection except in the cases provided by section 142 so long as any caveat shall remain in force prohibiting any registration or dealing the Registrar shall not enter in the Register any change in the proprietorship of or any transfer or other instrument purporting to transfer or otherwise deal with or affect the estate or interest in respect to which such caveat may be lodged.
- (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.

[Section 139 amended by No. 17 of 1950 s. 40; No. 81 of 1996 s. 145(1).]

140. Compensation for lodging caveat without reasonable cause

Any person lodging any caveat with the Registrar either against bringing land under this Act or otherwise without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as a judge on a summons in chambers shall deem just and order.

141. Endorsing certificates as to, and sending copies of, caveats

- (1) Where —
- (a) a caveat is lodged under section 137; or

- (b) a caveat lapses, whether because of the effect of a provision of this Act or the operation of an order of the Supreme Court,

the Registrar shall enter a memorandum of the caveat or the lapse of the caveat, as the case requires, on the certificate of title for the land in respect of which the caveat was lodged.

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

[Section 141 inserted by No. 81 of 1996 s. 85.]

141A. Removal of caveat where interest protected has ceased to exist

- (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, serve the caveator with notice requiring him within 14 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, or to comply with subsection (1a), the Commissioner may direct the Registrar to remove such caveat from the Register and forward notice of such removal to the caveator.
- (1a) If a caveator commences proceedings in Court to substantiate his claim under this section, he shall —
- (a) within the 14 days referred to in subsection (1); or
- (b) within 2 days after commencing proceedings,

whichever time expires later, serve the Registrar with notice that the proceedings have been commenced.

- (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.

[Section 141A inserted by No. 17 of 1950 s. 41; amended by No. 81 of 1996 ss. 86 and 145(1); No. 24 of 2000 s. 42(1) and (2).]

142. A caveat on behalf of a beneficiary under a will or settlement does not bar registration in certain cases

Where a caveat has been lodged by or on behalf of a beneficiary claiming under a will or settlement and a change in the proprietorship of or a transfer or other dealing with or affecting the land estate or interest in respect of which the caveat was lodged is presented for registration the same may notwithstanding section 139 be registered without the caveat being withdrawn and without determining the operation of the caveat provided the Commissioner is of opinion that such change of proprietorship or such transfer or other dealing is authorised by the will or settlement and the caveator either consents to the registration or does not lodge a written protest against such registration within 14 days after being served with notice as such caveator.

Part VI — Powers of attorney and attestation of instruments

143. Powers of attorney and revocation thereof

- (1) Subject to the provisions of this section the proprietor of any land under the operation of this Act or of any lease mortgage or charge may appoint any person to act for him in transferring the same or otherwise dealing therewith by signing a power of attorney in the form in the Nineteenth Schedule or to the effect thereof. Every such power may be filed by lodging the original instrument of power of attorney, a duplicate, an office copy referred to in the *Powers of Attorney Act 1896*¹⁰, or a copy certified by the Commissioner for Corporate Affairs to be a true copy of a power of attorney recorded pursuant to the *Companies (Western Australia) Code*¹¹, the *Companies Act 1961*¹², or any corresponding previous enactment with the Registrar who shall note the effect of the same in a book to be kept for that purpose and such power shall be in force from the time of noting until the registration of a revocation or extinguishment thereof.
- (2) Where a power of attorney is filed within a period of 3 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 3 months referred to in the last preceding subsection.
- (4) Nothing contained in this Act or in any other written law precludes the Registrar from requiring evidence to his satisfaction that a power of attorney is not revoked.
- (5) Subject to any other written law —
 - (a) the holder of an interest in Crown land may appoint a person to act for him in dealing with that interest; or

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- (b) the management body of a reserve may appoint a person to act for it in dealing with Crown land within that reserve,

and shall, if he or it does so, file the necessary power of attorney under this section.

[Section 143 amended by 62 Vict., No. 22 s. 2; No. 17 of 1950 s. 42; No. 10 of 1982 s. 28; No. 31 of 1997 s. 117.]

144. Existing and future powers of attorney when filed available

A power of attorney given by a person before as well as after becoming a proprietor of any land or of any lease mortgage or charge shall be deemed to be within the meaning of the last preceding section; and every power of attorney heretofore given or which shall hereafter be given when filed and noted as aforesaid shall while continuing in force be valid and available within the scope to the extent of the powers and authorities given or to be given by such power concerning the lands tenements and chattels real generally of the principal for similar or corresponding dealings under this Act with any land under the operation hereof or with any lease mortgage or charge.

[Section 144 amended by No. 17 of 1950 s. 43.]

145. Witnessing of instruments etc.

- (1) Subject to subsection (2), an instrument or power of attorney executed after section 87 of the *Transfer of Land Amendment Act 1996*¹ comes into operation shall be deemed to be duly executed if —
 - (a) in the case of such a document executed in Australia, the Registrar is satisfied that each signature is witnessed by a person —
 - (i) who is not a party to the instrument or power of attorney;
 - (ii) who is not a minor and not under any other legal disability; and

- (iii) whose full name, address and occupation are stated on the instrument or power of attorney;
- and
- (b) in the case of such a document executed outside Australia, the Registrar is satisfied that each signature is witnessed by a person who is not a party to the instrument or power of attorney and who is —
 - (i) a notary public;
 - (ii) an Australian consular officer;
 - (iii) an elected member of Parliament or other representative body at the equivalent of State or federal level;
 - (iv) a judge or magistrate;
 - (v) qualified and entitled to practise law;
 - (vi) qualified and entitled to practise as a doctor of medicine;
 - (vii) qualified and entitled to practise as a civil, electrical or mechanical engineer;
 - (viii) qualified as a school teacher;
 - (ix) a university lecturer;
 - (x) the mayor of a town or city; or
 - (xi) a person with managerial responsibility in a bank.
- (2) If Her Majesty or the State is the registered proprietor of land, an instrument relating to the land shall be deemed to be executed if the Minister signs, and affixes the seal of his office to, the instrument.
- (3) If it appears to the Registrar that a signature of a party to an instrument or a power of attorney under this Act has not been witnessed in the manner required by subsection (1), the Registrar may, if he thinks fit, register or file and note the instrument or power of attorney if the genuineness of the

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signature of the party is proved to his satisfaction by a statutory declaration of a person who knows the party and the party's signature.

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

[Section 145 inserted by No. 81 of 1996 s. 87; amended by No. 31 of 1997 s. 118.]

Part VII — Search certificates and stay orders

146. **Persons desiring information as to whether proprietor is free to deal may obtain such certificate**

Any person desiring information as to whether a proprietor is able to deal with the land comprised in his certificate free from obstruction caused by any caveat instrument lodged for registration order injunction or other cause known to the Registrar but not appearing upon the certificate may sign an application for search certificate in an approved form; and on payment of the fee in that behalf provided the Registrar shall cause the necessary searches and inquiries to be made for the purpose of affording the information required; and the result thereof shall be certified in an approved form which is sealed and on which is noted the date and time of the sealing.

[Section 146 amended by No. 81 of 1996 s. 88.]

147. **Person applying for search certificate entitled to inspect certificate of title**

Such search certificate shall refer to the dealing or encumbrance last noted on the certificate of title for the purpose of showing the state of the Register at the time of issuing the search certificate but not of informing the person applying for the search certificate as to what is upon the certificate of title; and such person shall be entitled to inspect the certificate of title and shall be deemed to know all of which an inspection of the certificate of title would have informed him.

[Section 147 amended by No. 81 of 1996 s. 145(2).]

148. **Person proposing to deal with proprietor may obtain stay of registration for 48 hours if title is clear**

Any person proposing to deal for value with a proprietor may with the consent in writing of such proprietor or his agent authorised in writing in that behalf and on stating the particulars

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of the proposed dealing lodge with the application for search certificate an application for stay or registration in an approved form; and if the result of the search shows that the proprietor is free to deal the Registrar shall on payment of the fee in that behalf provided sign an order in an approved form staying registration of any instrument affecting the land to be comprised in the proposed dealing for 48 hours from the time mentioned in the search certificate; and the said order shall be affixed to the certificate and a copy thereof given to the applicant.

[Section 148 amended by No. 81 of 1996 s. 89.]

149. Instrument effecting proposed dealing entitled to priority if lodged within 48 hours

If within the said period of 48 hours a properly perfected instrument effecting the proposed dealing be duly lodged for registration such instrument shall have priority over any other instrument which may be lodged for registration after the time mentioned in the search certificate and the same shall be registered notwithstanding any caveat copy of writ or application by assignee in bankruptcy which may have been lodged with the Department after the time mentioned in such search certificate.

[Section 149 amended by No. 81 of 1996 s. 90.]

150. Instrument to be received and to have priority according to the ordinary course if proposed dealing not lodged for registration

Subject to the lodging of such duly perfected instrument within such period any other instrument and any caveat copy writ or application received by the Department during such period shall be dealt with in the same manner shall have the same priority as between themselves and shall be as effectual as if no stay of registration had been obtained.

[Section 150 amended by No. 81 of 1996 s. 91.]

Part VIII — Surveys, plans, parcels and boundaries**151. Crown survey boundaries as marked on the ground to be deemed the true boundaries**

The survey boundaries of any Crown section location allotment or other parcel of land marked on the ground at the time of the Crown Survey thereof and shown by survey posts pegs trenches or other survey marks shall as to any such parcel of land heretofore or hereafter granted, transferred in fee simple or demised by the Crown be and be deemed to have been the true boundaries of such parcel of land whether such boundaries upon admeasurement are or are not found to be of the same dimensions or to include the same area as the boundaries or description of such parcel given in the Crown grant or certificate of title but it shall be lawful for an authorised land officer to alter the survey boundaries marked upon the ground as aforesaid so that however such alteration does not interfere with any improvements which may have been in good faith effected by the lessee, grantee or transferee from the Crown.

[Section 151 amended by No. 126 of 1987 s. 34; No. 31 of 1997 s. 119.]

152. Crown grant or lease to be deemed to convey the land within the survey boundaries

Every Crown grant or transfer of Crown land in fee simple purporting to convey a location allotment or other parcel of land whether describing it by distinguishing number or letter or by metes and bounds or otherwise shall be deemed to convey the land included within the survey boundaries of such parcel of land marked on the ground in the Crown survey thereof notwithstanding any discrepancy between the dimensions of such survey boundaries or the area they include and the dimensions or area expressed in such grant or in the relevant certificate of title or shown in any plan used in connection with the alienation by the Crown of such parcel of land. Provided that nothing in this and the next preceding section shall apply to

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any such section location allotment or parcel of land where an actual patent mistake or error has been made.

[Section 152 amended by No. 31 of 1997 s. 120.]

153. As to aliquot parts of Crown sections having excess of area

Where a Crown section has been subdivided by the Crown into allotments or portions of equal area and by reason of excessive measurements in the original Crown survey the area of the section as marked on the ground by the survey boundaries exceeds the sum of the areas of all the allotments or portions as shown by any plan or description used at the Crown sale or as deducible from any Crown grant of any such allotment or portion the total excess of area of the section shall be deemed originally distributable amongst the allotments or portions equally; and every Crown grant or transfer of Crown land in fee simple purporting to be a grant or transfer of one of such allotments or portions shall where the original subdivisional survey boundaries thereof do not exist or if not inconsistent with such boundaries where they do exist be construed to be a grant of such aliquot part of the total area included within the survey boundaries of such section as is obtained by dividing such area by the number of original allotments or portions.

[Section 153 amended by No. 31 of 1997 s. 121.]

153A. Land included in certificate by error in survey may be vested in proprietor

If any certificate of title registered before or after the passing of the *Transfer of Land Act Amendment Act 1902*¹, a piece of Crown land not included in the grant or transfer from the Crown is, in consequence of an error in the survey, included in the certificate of title, the Minister may, on the recommendation of the Registrar of Titles, order that such piece of land shall be deemed to have been included in the grant or transfer.

[Section 153A amended by 2 Edw. VII. No. 10 s. 7; No. 17 of 1950 s. 75; No. 126 of 1987 s. 35; No. 81 of 1996 s. 92; No. 31 of 1997 s. 122.]

154. How survey boundaries may be proved in the absence of survey marks

When the survey marks of the boundaries of any section allotment or other parcel of land have been removed or obliterated but it is proved in some court of competent jurisdiction or to the satisfaction of the Commissioner of Titles (where the land is under *The Transfer of Land Act 1874*, or is under or is proposed to be brought under the operation of this Act) in any proceeding or application in which the boundaries of such parcel of land have to be determined that certain buildings fences walls or other improvements of a permanent nature or a succession of such improvements —

- (i) have ever since the removal or obliteration of such survey marks indicated or agreed in position with the boundaries originally marked on the ground by the survey marks so removed or obliterated; or
- (ii) have for the full period of 20 years without interruption been used and regarded by the owner or occupier or successive owners or occupiers of such parcel of land as marking or agreeing in position with the boundaries of the parcel of land comprised in the document of title under or by virtue of which such land is or has been occupied,

such proofs as aforesaid shall be deemed and received as sufficient evidence of the true positions of the original survey boundaries of such parcel of land.

155. Margin of error allowed in description of boundaries

From and after the coming into operation of this Act the dimensions of the boundaries of any parcel of land as stated in any document of title now made or hereafter to be made relating to such land or as represented on any plan drawn on and referred to in any such document of title shall unless such construction is expressly negated or modified by such

document of title or contract be construed as though the phrase “a little more or less” immediately followed and referred to the dimensions so stated or represented; and such phrase shall in all cases whether so implied or expressed be deemed to cover any difference between the dimensions so stated or represented as aforesaid and the actual dimension of such boundaries as found by admeasurement on the ground when such difference does not exceed the following limits that is to say a limit of 50 millimetres for any one boundary line irrespective of its length where the length does not exceed 40 metres but where it exceeds 40 metres a limit equivalent to 1 in 500 computed upon the total length of such boundary line. No action shall be brought by reason or in respect of such difference (whether of excess or deficit) where it does not exceed the aforesaid limits; and in any case where such difference does exceed such limits an action for damages or compensation in respect thereof shall only lie in respect of such excess.

[Section 155 amended by No. 94 of 1972 s. 4.]

156. Commissioner may require special survey of land

On any application made to bring land under this Act or to have a certificate of title amended as to the description of land therein as hereinafter authorised and on any proposed subdivision under section 166 the Commissioner may require such survey and plans to be made and such particulars of the boundaries abuttals adjacent buildings of stone or brick area and position to be furnished at the cost of the applicant or registered proprietor as the Commissioner shall think fit. All surveys required by the Commissioner in bringing land under this Act shall be made by a licensed surveyor lawfully entitled to practise under this Act.

[Section 156 amended by No. 17 of 1950 s. 45.]

157. Commissioner may require accuracy of survey to be verified

The Commissioner may require any such survey to be tied on to any general or local survey of Western Australia or any district

city or town at such permanent datum or other point or points of connection and the measurement of the boundaries to be commenced from such starting point on the land and carried round the boundaries in such direction and order as he may direct; and he may require the accuracy of any such survey to be verified by the signature of the surveyor making the same.

158. Commissioner may disregard minute errors of dimensions

In dealing with any applications involving the amendment of a certificate or adjustment of boundaries the Commissioner may disregard any difference in the dimensions of boundaries or any encroachment excess or deficit which does not exceed 50 millimetres in town and suburban allotments and 1 metre in 1 000 metres in rural locations.

[Section 158 amended by No. 94 of 1972 s. 4.]

159. Excess of land may be apportioned between different owners or proprietors

Where a block of land has been subdivided into allotments and by reason of erroneous measurements in the original survey the area of the block as marked on the ground exceeds the sum of the areas of all the allotments and roadways (if any) as shown by any plan or description used at the sale thereof or by the grants or certificates of title of such allotments the total excess of area of the block shall be deemed originally apportionable amongst the allotments and roadways (if any) proportionately to their relative dimensions and if the area of the land included in any application to bring land under this Act or for an amended certificate is in the applicant's possession and was in the possession of the applicant or of him and those through whom he claims for a period of not less than 15 years previous to the application and does not exceed the area attributable to the allotment or allotments or fraction of an allotment represented by the land included in such application after such apportionment of excess as aforesaid the Commissioner may

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without ascertaining the dimensions of the other allotments or fraction of allotment and without the consent of the owner or owners thereof direct the Registrar to create and register a certificate in respect of the land included in such application as if the whole of it had been included by metes and bounds in the original grant or certificate thereof.

[Section 159 amended by No. 81 of 1996 s. 93.]

160. Commissioner may determine doubtful boundaries of old subdivisions

Where a block of land has been subdivided and the whole or part thereof sold in allotments according to a plan of subdivision but such block is altogether or in part unoccupied and by reason of errors of survey or misdescription in the muniments of title the boundaries and positions of such subdivisional allotments cannot be ascertained with certainty or are found to be inconsistent with each other and with the scheme of subdivision indicated by what appears on the ground or in the muniments of title and if the original external survey boundaries of such block can be determined and sufficient evidence is available to satisfy the Commissioner as to the governing features of the original scheme the number and relative positions and relative dimensions of the subdivisional allotments roads streets and ways he may upon an application to bring any such subdivisional allotment or allotments under this Act or where such land is already under *The Transfer of Land Act 1874* or this Act to have a separate certificate of title created and registered for such allotment or allotments or an existing certificate amended cause a survey to be made and if it be found that such land or any portion thereof has been erroneously described as regards position dimensions or area or that an excess or deficiency of measurement exists he may if of opinion that such a course is necessary and expedient for the recognition or registration of title to land comprised in the said block prepare a scheme of subdivision of the whole or any portion of such block agreeing as near as may be with the original scheme as indicated

by such evidence as aforesaid and for that purpose may adjust and determine all or any of the boundary lines and the position and dimensions of the roads streets and ways and apportion any excess either in accordance with the last preceding section or in such other manner as he shall deem equitable and expedient for the purposes of such subdivision.

[Section 160 amended by No. 10 of 1902 s. 6; No. 81 of 1996 s. 94.]

161. Plan of scheme to be made

The scheme of subdivision so prepared shall be embodied in a plan and adopted provisionally for the purposes of the notices hereinafter mentioned.

162. Notice to be advertised and given to registered owners and proprietors

After such plan has been constructed the Commissioner shall in addition to any other notices which he may think fit direct notice of the proposed subdivision to be advertised once at least in a newspaper published in Perth and in a newspaper (if any) published and circulating in the neighbourhood of the land and also to be served upon all persons appearing by the Register to be owners or proprietors of the fee simple of any portion of such land; such notice shall state that such provisionally adopted plan can be inspected at the Department's office and appoint a time not less than 14 days nor more than 6 months within which objections or proposals to alter the same and evidence in support of such objections or proposals will be received by the Commissioner. But it shall be in the discretion of the Commissioner whether or not he will concede to any objections or adopt any alteration submitted to him upon such notice; and if he do adopt any such alteration whether or not any and what notice thereof shall be given to all or any of the persons previously notified.

[Section 162 amended by No. 81 of 1996 s. 95.]

163. Subdivisional plan to be verified and kept as an approved lodged map of subdivision

- (1) After a scheme of subdivision has been finally decided upon the plan embodying it shall be verified by the Commissioner and an inspector of plans and surveys signing a statement in an approved form on the plan and the plan so verified shall be marked with a distinguishing symbol and kept by the Registrar as an approved lodged map of subdivision and shall as from the date of such verification govern the titles subsequently created and registered under this Act in respect of the block so subdivided or any portion thereof. And the remedy of any person having an estate or interest in the land subdivided or in any portion thereof who shall be injured by any certificate of title registered for the purposes of such subdivision shall lie in damages only and the same may be sued for and recovered in manner indicated by section 207.

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

[Section 163 amended by No. 81 of 1996 s. 96.]

164. Notice of subdivision and plan to be published in the *Government Gazette*

Notice of such subdivision and verification of the plan shall be published in the *Government Gazette* and in some newspaper circulating in the neighbourhood of the land.

165. Expense of survey, how paid

The expense of any survey which the Commissioner shall cause to be made under section 160 shall in the first instance be defrayed out of the Consolidated Fund but every applicant who after such subdivision shall apply to bring any portion of the land comprised in such subdivision under this Act or to have a certificate created and registered or amended as to any such land

for the first time after such subdivision shall in addition to any other moneys chargeable in such case paid to the Registrar (to be by him paid into the Consolidated Fund) such amount as the Commissioner shall under his hand certify to be in his judgment an equitable share of such expense to be contributed in respect of the land comprised in such application.

[Section 165 amended by No. 6 of 1993 s. 12; No. 81 of 1996 s. 97.]

166. Application for new certificates of title on subdivision of land

- (1) A proprietor of land under the operation of this Act who, after section 98 of the *Transfer of Land Amendment Act 1996*¹ comes into operation, wishes to subdivide the land shall apply, in an approved form and on payment of the prescribed fee, to the Registrar for the creation and registration of new certificates of title for the land and the application shall be made in relation to a plan or diagram of the land complying with subsection (2).
- (2) Such plan or diagram shall exhibit distinctly delineated all roads streets passages thoroughfares squares or reserves appropriated or set apart for the use of the purchasers and all permanent drains and also all allotments into which the said land may be divided marked with distinct numbers or symbols and shall also show the areas and shall comply in every respect with the Rules and Regulations for the time being for the guidance of surveyors when practising under this Act.
- (3) On an application under this section but subject to subsection (5) and to section 20(2) of the *Town Planning and Development Act 1928*, the Registrar may create and register a new certificate or certificates of title for the land the subject of the application.
- (4) For the purposes of subsection (3), the Registrar may have regard to a request of the applicant in relation to when the new certificate or certificates of title are to be created and registered.
- (5) Where a portion only of the land comprised in a certificate of title is to be subdivided under this section, the Registrar shall

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cancel the existing certificate to the extent of the portion and create and register a new certificate for the portion.

- (6) References in this section to —
- (a) plans or diagrams include references to plans of survey of Crown land; and
 - (b) certificates of title include references to certificates of Crown land title as they apply to plans of survey of Crown land.

[Section 166 amended by No. 25 of 1909 s. 2; No. 28 of 1969 s. 7; No. 81 of 1996 s. 98; No. 31 of 1997 s. 123.]

166A. Sketch plans in respect of subdivision of Crown land

- (1) The Minister for Lands may, if he wishes to subdivide Crown land at the request of the proprietor of that Crown land or on his own initiative, apply in an approved form, on payment of the prescribed fee, if any, payable by the Minister for Lands and on furnishing a sketch plan in an approved form of that Crown land, to the Registrar for the creation and registration of new certificates of Crown land title or qualified certificates of Crown land title for that Crown land, and that application shall be made in relation to that sketch plan.
- (2) On an application under subsection (1) but subject to subsection (4) and Part IVA, the Registrar may create and register new certificates of Crown land title or qualified certificates of Crown land title for the Crown land the subject of the application.
- (3) For the purposes of subsection (2), the Registrar may have regard to a request of the Minister for Lands in relation to when the new certificates of Crown land title or qualified certificates of Crown land title are to be created and registered.
- (4) When a portion only of the Crown land comprised in a certificate of Crown land title or qualified certificate of Crown land title is to be subdivided under this section, the Registrar may cancel the existing certificate of Crown land title or

qualified certificate of Crown land title to the extent of that portion and create and register new certificates of Crown land title or qualified certificates of Crown land title for that portion.

[Section 166A inserted by No. 31 of 1997 s. 124.]

166B. Sketch plans of internal interests

- (1) The Minister for Lands may, if he wishes a subsidiary certificate of Crown land title to be created and registered in respect of one or more interests in Crown land the subject of a lease or reserve, prepare a sketch plan in an approved form showing those interests and lodge that sketch plan, together with an application for the creation and registration of the subsidiary certificate of Crown land title, with the Registrar.
- (2) On receiving a sketch plan and application lodged under subsection (1), the Registrar may create and register a subsidiary certificate of Crown land title in respect of the relevant interests.
- (3) For the purposes of subsection (2), the Registrar may have regard to a request of the Minister for Lands relating to the time when the subsidiary certificate of Crown land title is to be created and registered.

[Section 166B inserted by No. 31 of 1997 s. 124.]

167. Number of allotment on plan of subdivision sufficient description for purposes of dealing

On an application under section 166 or 166A the numbers of the allotments marked on the plan of subdivision or sketch plan may be used as sufficient description of the land for the purpose of dealings with any one or more of such allotments on the sale thereof according to such plan of subdivision or sketch plan and on any subsequent dealings comprising the whole of one or more allotment or allotments.

[Section 167 amended by No. 81 of 1996 s. 99; No. 31 of 1997 s. 125.]

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167A. Right-of-way on subdivision to be easement appurtenant

- (1) Subject to subsection (2), every right-of-way shown and marked as such upon any map or plan deposited with the Registrar, under the provisions of Part VIII, on the subdivision of any land shall, unless the contrary is stated, be deemed an easement appurtenant to the land comprised in such map or plan and abutting upon such right-of-way, and not a public way or thoroughfare.
- (2) Subsection (1) does not apply, and is deemed never to have applied, to or in relation to land —
 - (a) vested in the Crown under section 20A of the *Town Planning and Development Act 1928* for the purpose of a pedestrian accessway or right-of-way; or
 - (b) shown and marked as a footway or right-of-way on a map or plan (being a map or plan deposited with the Registrar of Titles) and transferred to the Crown —
 - (i) at the same time as, or after, the registration of certificates of title in accordance with that map or plan; and
 - (ii) before the commencement of section 20A of the *Town Planning and Development Act 1928*.

[Section 167A inserted by 2 Edw. VII. No. 10 s. 8; amended by No. 17 of 1950 s. 75; No. 57 of 1991 s. 22; No. 81 of 1996 s. 100.]

168. Abuttals may be used in description of land in certificate

On an application to bring land under this Act or for an amended certificate the land included in the certificate to be created and registered shall at the request of the applicant and may at the discretion of the Commissioner notwithstanding sections 25 and 48A(1) be described by its abuttals both in the body of the certificate and in the plan thereon or in the plan only. Any abuttal so used may be described by the name by which it is commonly known and with or without the name of its reputed owner; and if the abuttal is upon or consists of land

under this Act the number of the certificate of the land constituting the abuttal or on which the abuttal stands shall be mentioned; and abuttals shall be used in addition to and not in substitution for dimensions unless the Commissioner shall specially authorise the land or any boundary of the land being described by abuttals only.

[Section 168 amended by No. 81 of 1996 s. 101.]

169. Objects which may constitute abuttals

For the purpose of this Act any of the objects hereinafter mentioned may be mentioned as an abuttal: — Any building wall sectional division of party wall fence permanent drain public or private street or road lane or passage land dedicated to or reserved for the public Government reserve Crown section allotment or portion land described in any certificate of title and any bay lake river creek or natural or artificial water-course; and mention of an abuttal in any certificate of title shall not be deemed to give title to the abuttal or to be evidence of the title of any person who may be referred to in the description as owner or occupant of the land upon which any abuttal stands or of any land constituting an abuttal.

Part IX — Rectification of certificate

169A. Only Minister for Lands may alter areas, boundaries or positions of parcels of Crown land

Nothing in this Part enables any person, other than the Minister for Lands acting under the *Land Administration Act 1997*, to cause the alteration of the area, boundaries or position of a parcel of Crown land.

[Section 169A inserted by No. 31 of 1997 s. 126.]

170. Proprietor may apply for amendment of certificate to make boundaries coincide with land occupied under certificate

A proprietor may apply to have his certificate of title amended in any case in which the boundaries area or position of the land therein described differ from the boundaries area or position of the land actually and bona fide occupied by him and purporting to be so occupied under the title in respect of which the certificate was registered or in any case in which the description in the certificate is erroneous or imperfect on the face of it.

[Section 170 amended by No. 81 of 1996 s. 102.]

171. Proprietor may apply to have other certificates amended where inconsistent with the description of the land in his certificate and occupied by him

A proprietor may apply for the rectification of the original and duplicate (if any) certificate of any other proprietor or proprietors in any case in which the land described in the applicant's certificate and actually and bona fide occupied by him comprises land which by reason of any error in survey other misdescription is included in the land described in any other certificate or certificates.

[Section 171 amended by No. 81 of 1996 s. 103.]

172. Form of application

Any application to be made as aforesaid shall be in the form set forth in the Twenty-fourth Schedule and the attorney of any corporation registered as proprietor may apply on behalf of the corporation in manner provided by section 20.

173. How application to be dealt with

The Registrar shall refer any application made as aforesaid to an Examiner of Titles who shall report thereon and submit the same to the Commissioner for his direction (or if there be no Examiner then to the Commissioner himself) who shall direct notice of the application to be advertised once at least in one newspaper published in the city of Perth or circulating in the neighbourhood of the land and to be served on any persons named by him and to be posted in a conspicuous place outside a post office in the neighbourhood of such land and shall appoint a time not less than 14 days from such notice or from the advertisement or the first of such advertisements if more than one on or after the expiration of which the application may be granted unless a caveat shall be lodged forbidding the granting thereof.

174. Special notice to be given to other proprietors where application affects land described in their certificate

In any case in which the granting of an application to be made as aforesaid or of an application to bring land under this Act would affect land comprised in any other certificate or cause a certificate to be registered which would be inconsistent with any other certificate 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 land which would be affected or the land comprised in the certificate as to which the inconsistency would arise accompanied by a plan showing accurately the extent to which

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the certificate thereof would be affected if the application were granted and a copy of such plan shall until such application has been finally dealt with be kept open for inspection at the Department's office.

[Section 174 amended by No. 81 of 1996 ss. 104 and 145(2).]

175. Notice of application to be published and posted in office

The Registrar shall under such direction as aforesaid cause notice to be published in such manner as by such direction may be prescribed that application has been made to amend the certificate of title in the manner specified and shall cause a copy of such notice to be posted in a conspicuous place in the Department's office together with any plan referred to in section 174 and shall serve every person whom the Commissioner shall have directed to be served with notice; and notwithstanding any direction given by the Commissioner as to any such application he may reject the same if the applicant shall not comply to his satisfaction within such time as to him may seem reasonable with any requisition which he may have made in regard to such application.

[Section 175 amended by No. 81 of 1996 s. 105.]

176. Person objecting to application being granted may lodge caveat

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

177. Application may be granted although other certificates may be affected thereby

On any application under section 170 or 171 or to bring land under this Act the Commissioner may grant the same although the certificate to be created and registered or the rectification of the Register to be made upon such application may affect land comprised in any other certificate if it shall appear that the land so affected has been included in such other certificate by reason of some error in survey or other misdescription unless the title to the land so affected has been theretofore determined in a contested proceeding under this Act or in any court of competent jurisdiction in which the right to the possession of such land was in question.

[Section 177 amended by No. 81 of 1996 ss. 106 and 145(2).]

178. On granting application other certificates may be rectified and substituted certificates issued

Upon granting any such application the Commissioner shall direct the Registrar to rectify the Register by making the requisite alteration in the original of any other certificate accompanied by a statement made and signed by him in the Register of the circumstances under which the rectification has been made; and the Registrar shall make the requisite alteration in the duplicate certificate (if any) when brought to him for that purpose or when the same shall be lodged with or brought to the Department for the purpose of any dealing with the land comprised therein and may detain the duplicate until the rectification thereof shall be completed; and the Registrar may refuse to register any dealing with the land or any estate or interest therein until the duplicate (if any) shall have been brought in for rectification.

[Section 178 amended by No. 81 of 1996 ss. 107 and 145(1) and (2).]

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179. Proprietor of land as to which certificate is rectified to have notice of rectification

Upon rectifying the original of any certificate as hereinbefore mentioned the Registrar shall give notice in writing to the proprietor of the land comprised in the certificate informing him of the rectification and that on the duplicate certificate (if any) being brought to the Department a new duplicate certificate with the amended description will be issued to him free of cost; and on the same being brought in the proprietor shall be entitled to receive a new duplicate certificate with an amended description in substitution for the duplicate certificate so brought in, and every new duplicate certificate so issued shall bear the same number as that for which it is substituted with the word “substituted” prefixed to the number.

[Section 179 amended by No. 81 of 1996 s. 108.]

Part X — Special powers and duties of the Commissioner and Registrar

180. Power to the Commissioner to require explanation and production of documents

The Commissioner may by summons under his hand in form in the Twenty-fifth Schedule require the proprietor or mortgagee or other person interested in any land under or proposed to be brought under the operation of this Act in respect of which any transfer lease mortgage charge or other dealing or any discharge from any mortgage or charge is proposed to be transacted or registered or in respect of which any transmission is proposed to be registered to appear at a time and place to be appointed in such summons and give any explanation concerning such land or any document affecting the title thereto and to produce any grant certificate of title will mortgage or other instrument or document in his possession or within his control affecting such land or the title thereto; and the Commissioner is hereby authorised to examine upon oath (which oath he is hereby empowered to administer) any such proprietor mortgagee or other person as aforesaid; and any such proprietor mortgagee or other person who shall fail refuse or neglect to attend the Commissioner for the purpose of being examined or to produce any such document or to allow the same to be inspected or shall refuse or neglect to give any such explanation as aforesaid shall be liable on any such default to be dealt with as in the case of a contempt of the Supreme Court; and if the information or document withheld appears to the Commissioner to be material the Registrar shall not be bound to proceed with the transaction.

181. Regulations

- (1) The Commissioner may, with the approval of the Governor make regulations for or with and respect to —
 - (a) the parcels of land that may be included in one certificate of title;

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- (b) the type and quality of medium or media in or on which applications, instruments, plans and diagrams and other documents to be presented for lodgment with the Department or registration or entry in the Register shall be presented;
 - (ba) the manner or manners in which applications, instruments, plans and diagrams and other documents to be presented for lodgment with the Department or registration or entry in the Register may be presented;
 - (bb) the manner of, and the evidence required to prove, the execution or attestation of applications, instruments, plans and diagrams and other documents to be presented in an electronic medium for lodgment with the Department or registration or entry in the Register;
 - (c) prescribing the fees which may be charged for the purposes of this Act including the indemnity of any amount payable out of the Consolidated Fund under Part XII that is not recovered under Part XI;
 - (d) prescribing forms for the purposes of this Act including forms for alternative use or to be used in substitution for or in addition to the forms in the Schedules; and
 - (e) all matters and things authorised to be prescribed or necessary or expedient to be prescribed to give effect to this Act.
- (2) The Registrar may, with the approval of the Governor and after consultation with the Land Surveyors Licensing Board constituted under the *Licensed Surveyors Act 1909*, make regulations providing direction and guidance for licensed surveyors performing surveys authorised or required within the meaning of the definition of “Authorised Survey” in section 3 of the *Licensed Surveyors Act 1909*.

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

[Section 181 inserted by No. 14 of 1972 s. 6; amended by No. 126 of 1987 s. 36; No. 81 of 1996 s. 109; No. 24 of 2000 s. 42(3).]

182. Registrar to carry out order vesting trust estate

- (1) Whenever any person interested in land under the operations of this Act or any estate or interest therein shall appear to the Supreme Court or to the Commissioner to be a trustee of such land estate or interest within the intent and meaning of any Act now or hereafter to be in force relating to trusts and trustees and any vesting order shall be made in the premises by the said court or by the Commissioner (which order he is hereby empowered to make concurrently with the said court) the Registrar on being served with such order or an office copy thereof shall enter in the Register and on the duplicate certificate of title and duplicate instrument (if any) the date of the said order the time of its production to him and the name and address of the person in whom the said order shall purport to vest the said land estate or interest; and upon such entry in the Register such person shall become the transferee and be deemed to be the proprietor thereof. Unless and until such entry shall be made the said order shall have no effect or operation in transferring or otherwise vesting the said land estate or interest.
- (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.

[Section 182 amended by No. 17 of 1950 s. 46; No. 81 of 1996 ss. 145(1) and 146(1).]

183. Power to Commissioner to make a vesting order in cases of completed purchase

If it be proved to the satisfaction of the Commissioner that land under this Act has been sold by the proprietor and the whole of

the purchase money paid and that the purchaser or those claiming under him have entered and taken possession under such purchase and such entry and possession have been acquiesced in by the vendor or his representatives but that no transfer or formal conveyance has ever been executed by the vendor and cannot be obtained by reason that the vendor is dead or residing out of the jurisdiction or cannot be found the Commissioner may in his discretion make a vesting order in the premises and the Registrar on being served with such order shall make the entries directed to be made by the last preceding section in this Act in the case of the vesting orders therein mentioned and the making or the omission to make such entries shall be attended by the same results as declared by the said section in respect of the vesting orders therein mentioned.

184. Certain encumbrances which have ceased to affect the title may be removed from the Register

Where it shall be proved to the satisfaction of the Commissioner that any right or interest notified as an encumbrance on the certificate have been fully satisfied extinguished or otherwise determined and no longer affects the land comprised in the certificate the Commissioner may either direct a statement to that effect signed by the Registrar to be endorsed on the certificate or permit any subsequent certificate dealing with the same land to be registered free from such encumbrance.

[Section 184 amended by No. 17 of 1950 s. 48; No. 81 of 1996 s. 110.]

185. Satisfaction of judgment may be entered before the expiration of 3 months from the entry of copy of writ

On proof to the Commissioner that any judgment of which a copy writ of fieri facias or warrant of execution has been entered under section 133 has been satisfied before the period for which such entry is operative has elapsed the Commissioner may write the word "Satisfied" with his signature and the date

of the signing upon or below the entry of copy writ or warrant in the Register and thereupon such writ or warrant shall cease to affect the land as to which the entry was made.

[Section 185 amended by No. 17 of 1950 s. 49; No. 81 of 1996 s. 145(1).]

[186. Repealed by No. 20 of 1905 s. 20.]

187. Entry to be made in Register of appointment of executor, or administrator or Public Trustee

- (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 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.

[Section 187 amended by No. 17 of 1950 s. 50; No. 81 of 1996 s. 111.]

188. Powers of Registrar

The Registrar may exercise and shall perform the following power and duties (that is to say): —

- (i) He may administer an oath and may take and receive the declaration of any person voluntarily making the same (in this Act called a “**statutory declaration**”).
- (ii) He shall upon the direction of the Commissioner correct errors in the Register or in entries made therein or in duplicate certificates or instruments and may supply entries omitted to be made under the provisions of this Act; but in the correction of any such error he shall not erase or render illegible the original words and shall affix the date on which such correction was made or entry supplied and initial the same; and every error or entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted except as regards any entry made in the Register prior to the actual time of correcting the error or supplying the omitted entry.
- (iii) He shall upon the direction of the Commissioner lodge a caveat on behalf of Her Majesty or on behalf of any person who shall be under the disability of infancy coverture lunacy unsoundness of mind or absence from

Western Australia to prohibit the transfer or dealing with any land belonging or supposed to belong to any such person and also to prohibit the dealing with any land in any case in which it shall appear that an error has been made by misdescription of such land or otherwise in any certificate of title or in any plan, diagram or instrument or for the prevention of any fraud or improper dealing.

- (iv) He may, notwithstanding any other provision of this Act with the approval of the Minister, destroy any record, document, instrument, plan, diagram, book or paper or any other paper writing whether of the same kind as those before enumerated or not, that is deposited with or registered in the Department the retention of which, in the opinion of the Commissioner of Titles and the Registrar, serves no useful purpose.

[Section 188 amended by No. 9 of 1959 s. 2; No. 81 of 1996 ss. 112 and 145(1).]

189. Registrar may correct apparent errors in instruments without direction of Commissioner

The Registrar may without the direction of the Commissioner correct any patent error appearing on the face of any instrument lodged for registration without such instrument being withdrawn from the Department. Provided always that such correction be made in compliance with paragraph (ii) of the last preceding section and such correction shall have the same validity and effect as if made under the direction of the Commissioner under the said section.

[Section 189 amended by No. 81 of 1996 s. 113.]

190. Registrar to pay moneys to Treasurer and to render accounts

The Registrar shall keep a correct account of all sums of money which shall be received by him under the provisions of this Act and shall pay the same to the Treasurer at such times and shall render accounts of the same to such persons and in such manner

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as may be directed by any Act or regulations for the time being in force relating to the collection and payment of the public moneys and the audit of the public accounts. All penalties and fees received under the provisions of this Act shall be carried to and form part of the Consolidated Fund.

[Section 190 amended by No. 17 of 1950 s. 51; No. 6 of 1993 s. 12; No. 81 of 1996 s. 114.]

191. Fees to be paid under Act

The Registrar may demand the fees prescribed.

[Section 191 amended by No. 17 of 1950 s. 52.]

192. Defective instrument or document lodged if not amended on notice within time allowed by Registrar may be rejected

Whenever any instrument caveat surrender discharge of encumbrance writ of fi. fa. or other document lodged for registration or in relation to any land title estate or interest or in connection with any application or dealing is erroneous or defective the Registrar may require the correction and re-execution or correction only (as the case may require) of such document to be made or procured by the person lodging the same; and if such error or defect is not duly amended within the time allowed by the Registrar, after notice of the error or defect and the time so allowed has been given to the person, the Registrar may if he thinks fit reject such document and notify such rejection to the person lodging the 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.

[Section 192 amended by No. 28 of 1969 s. 8.]

193. Power to state a case for Supreme Court

It shall be lawful for the Commissioner whenever any question shall arise with regard to the performance of any duty or the

exercise of any of the functions by this Act conferred or imposed either on him or on the Registrar to state a case for the opinion of the Supreme Court; and thereupon it shall be lawful for the said court to give its judgment thereon; and such judgment shall be binding upon the Commissioner and Registrar respectively.

**Part XI — Restrictions on, and recovery of, payments
of compensation by State**

[Heading inserted by No. 81 of 1996 s. 115.]

[194. Repealed by No. 81 of 1996 s. 116.]

195. Moneys paid by State under section 201 may be recovered

Whenever any amount has been paid by the State under section 201 on account of any deceased person such amount may be recovered by the State from the estate of such person by action against his personal representatives in the name of the Registrar; and whenever such amount has been paid on account of a person who shall have been adjudged bankrupt the amount so paid shall be considered to be a debt due from the estate of such bankrupt and a certificate signed by the Treasurer certifying the fact of such payment and delivered to the trustee shall be sufficient proof of such debt; and whenever any amount has been paid by the State under section 201 on account of any person who may have absconded or who cannot be found within the jurisdiction of the Supreme Court and may have left any real or personal estate within Western Australia it shall be lawful for the said Court or a judge thereof upon the application of the Registrar and upon the production of a certificate signed by the Treasurer certifying that the amount has been paid in satisfaction of a judgment against the State with the Registrar as nominal defendant to allow the State to have judgment against such person forthwith for the amount so paid together with the costs of the application and such judgment shall be final and signed in like manner as a final judgment by confession or default in an adverse suit and execution may issue immediately; and if such person shall not have left real or personal estate within Western Australia sufficient to satisfy the amount for which execution may have been issued as aforesaid the State may, in the name of the Registrar, recover such amount or the unrecovered balance thereof by action against such person at

any time thereafter if he shall be found within the jurisdiction of the Supreme Court.

[Section 195 amended by No. 17 of 1950 s. 54; No. 81 of 1996 s. 117.]

196. State not liable in certain cases

- (1) The State shall not under any circumstances be liable for compensation for any loss damage or deprivation occasioned by 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 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 registration of a new certificate of title in the name of any registered proprietor pursuant to section 75; in any case in which the same land may have been included in 2 or more grants from the Crown or transfers of Crown land in fee simple; nor shall the State be liable in any case in which loss or deprivation has been occasioned by any land being included in the same certificate of title with other land through misdescription of boundaries or parcels of any land unless in the case last aforesaid it shall be proved that the person liable for compensation and damages is dead or has absconded or has been adjudged bankrupt or the sheriff shall certify that such person is unable to pay the full amount awarded in any action for recovery of such compensation and damages. Provided always that any amount paid by the State under section 201 on account of any person who may have absconded may be recovered by the State from such person by action in the name of the Registrar at any time thereafter if such person shall be found within the jurisdiction of the Supreme Court. Provided also that the State shall be liable for such amounts only as the sheriff shall fail to recover from the person liable as aforesaid.

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- (2) The State shall not be liable for compensation for any loss, damage or deprivation occasioned by any error in —
- (a) the description of the area, boundaries or position of a parcel of Crown land to which a certificate of Crown land title endorsed with the words “Subject to survey” relates;
 - (b) a qualified certificate of Crown land title;
 - (c) a document accepted for recording or registration in respect of a qualified certificate of Crown land title; or
 - (d) the order of priority of a document recorded or registered in respect of a qualified certificate of Crown land title.

[Section 196 amended by No. 54 of 1909 s. 17; No. 17 of 1950 s. 75; No. 81 of 1996 s. 118; No. 31 of 1997 s. 127.]

[197. *Repealed by No. 81 of 1996 s. 119.]*

Part XII — Actions and other remedies

198. Officers not to be liable for acts done bona fide

The Commissioner shall not nor shall the Registrar or any person acting under the authority of either of them be liable to any action suit or proceeding for or in respect of any act or matter bona fide done or omitted to be done in the exercise or supposed exercise of the powers of this Act.

199. Registered proprietor protected against ejectment except in certain cases

Subject to sections 68 and 81T, no action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act except in any of the following cases (that is to say): —

- (i) The case of a mortgagee as against a mortgagor in default.
- (ii) The case of an annuitant as against a grantor in default.
- (iii) The case of lessor as against a lessee in default.
- (iv) The case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud.
- (v) The case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of such other land or of its boundaries as against the registered proprietor of such other land not being a transferee thereof bona fide for value.
- (vi) The case of a registered proprietor claiming under a certificate of title prior in date of registration under the provisions of this Act in any case in which 2 or more certificates of title or a certificate of title may be registered under the provisions of this Act in respect of the same land.

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And in any case other than as aforesaid the production of the registered certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the proprietor or lessee of the land therein described any rule of law or equity to the contrary notwithstanding.

[Section 199 amended by No. 31 of 1997 s. 128.]

200. Powers of court to direct cancellation of certificate or entry in certain cases

Upon the recovery of any land estate or interest by any proceeding at law or in equity from the person registered as proprietor thereof it shall be lawful for the court or a judge in any case in which such proceeding is not herein expressly barred to direct the Registrar to cancel any certificate of title or instrument or any entry or memorandum in the Register relating to such land estate or interest and to substitute such certificate of title or entry as the circumstances of the case may require; and the Registrar shall give effect to such order.

[Section 200 amended by No. 81 of 1996 s. 145(1).]

201. Compensation of party deprived of land

Any person deprived of land or of any estate or interest in land in consequence of fraud or through the bringing of such land under the operation of this Act or by the registration of any other person as proprietor of such land estate or interest or in consequence of any error or misdescription in any certificate of title or in any entry or memorandum in the Register may bring and prosecute an action at law for the recovery of damages against the person upon whose application such land was brought under the operation of this Act or such erroneous registration was made or who acquired title to the estate or interest through such fraud error or misdescription. Provided always that except in the case of fraud or of error occasioned by any omission misrepresentation or misdescription in the

application of such person to bring such land under the operation of this Act or to be registered as proprietor of such land estate or interest or in any instrument signed by him such person shall upon a transfer of such land bona fide for value cease to be liable for the payment of any damage beyond the value of the consideration actually received which but for such transfer might have been recovered from him under the provisions herein contained; and in such last-mentioned case and also in case the person against whom such action for damages is directed to be brought as aforesaid shall be dead or shall have been adjudged bankrupt or cannot be found within the jurisdiction of the Supreme Court then and in any such case such damages with costs of action may be recovered from the State by action against the Registrar as nominal defendant; and all damages and costs to be paid by the State under this section shall be charged to the Consolidated Fund and this section appropriates the Consolidated Fund accordingly. Provided also that in estimating such damages the value of all buildings and other improvements erected or made subsequently to the deprivation shall be excluded.

[Section 201 amended by No. 81 of 1996 ss. 120 and 145(1).]

202. Purchasers protected

Nothing in this Act contained shall be so interpreted as to leave subject to an action of ejectment or to an action for recovery of damages as aforesaid or for deprivation of the estate or interest in respect to which he is registered as proprietor any purchaser bona fide for valuable consideration of land under the operation of this Act on the ground that the proprietor through or under whom he claims may have been registered as proprietor through fraud or error or may have derived from or through a person registered as proprietor through fraud or error; and this whether such fraud or error shall consist in wrong description of the boundaries or of the parcels of any land or otherwise howsoever.

203. Proprietor may summon Commissioner or Registrar to show cause if dissatisfied

If upon the application of any owner or proprietor to have land brought under the operation of this Act or to have any dealing or transmission registered or recorded or to have any certificate of title foreclosure order or other document created, registered or issued or to have any act or duty done or performed which by this Act is required to be done or performed by the Commissioner or Registrar either of them shall refuse so to do or if such owner or proprietor shall be dissatisfied with the direction upon his application given by the Commissioner it shall be lawful for such owner or proprietor to require the Commissioner or Registrar to set forth in writing under his hand the grounds of his refusal or the grounds upon which such direction was given, and such owner or proprietor may if he think fit at his own costs summon the Commissioner or Registrar as the case may be to appear before the Supreme Court or a Judge to substantiate and uphold the grounds of his refusal or of such direction as aforesaid such summons to be issued under the hand of a Judge and to be served upon the Commissioner or Registrar 6 clear days at least before the day appointed for hearing the complaint of such owner or proprietor. Upon such hearing the Commissioner or Registrar or his counsel shall have the right of reply; and the said court or a Judge may if any question of fact be involved direct an issue to be tried to decide such fact; and thereafter the said court or a Judge shall make such order in the premises as the circumstances of the case may require; and the Commissioner or Registrar shall obey such order and all expenses attendant upon any such proceedings shall be borne and paid by the applicant or other person preferring such complaint unless the court or a Judge shall certify that there was no reasonable ground for such refusal or direction as aforesaid.

[Section 203 amended by No. 17 of 1950 s. 56; No. 81 of 1996 s. 121.]

204. Cost of summons and proceedings under section 203 to be in the discretion of the court

Upon any summons or proceeding under the last preceding section the court or Judge may notwithstanding anything in the said section to the contrary make such order as to the costs expenses of and attendant upon such summons or proceeding as the court or Judge shall deem just; and all costs and expenses to be paid by the Registrar under such order shall be charged to the Consolidated Fund and this section appropriates the Consolidated Fund accordingly.

[Section 204 amended by No. 17 of 1950 s. 57; No. 81 of 1996 s. 122.]

205. Actions for recovery of damages may in certain cases be brought against the Registrar as nominal defendant

Any person sustaining loss through any omission mistake or misfeasance of the Registrar or any other officer or clerk in the execution of their respective duties under the provisions of this Act or by any error omission or misdescription in any certificate or title or any entry or memorandum in the Register or by the registration of any other person as proprietor and who by the provisions of this Act is barred from bringing an action of ejectment or other action for the recovery of land estate or interest may in any case in which the remedy by action for recovery of damages as herein provided is inapplicable bring an action against the State with the Registrar as nominal defendant for recovery of damages; in estimating which damages however the value of all buildings and other improvements erected or made subsequently to the loss or deprivation shall be excluded.

[Section 205 amended by No. 81 of 1996 ss. 123 and 145(1).]

206. Persons sustaining loss by inaccuracy in Crown survey may recover damages against the State

Any person sustaining any loss or damage by any rectification of a certificate under this Act or by the bringing of land under

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this Act if the rectification or the registration of the certificate by which such loss or damage was occasioned was in consequence of or justified by any inaccuracy in any survey or plan or description of land used upon any sale of land by the Crown then notwithstanding the provisions of section 201 and section 205 but without prejudice to the rights (if any) of such person thereunder he may in the first instance and without any obligation to pursue the remedies provided by such sections bring an action against the State with the Registrar as nominal defendant for recovery of damages.

[Section 206 amended by No. 81 of 1996 s. 124.]

207. Actions against the State in certain other cases

Any person who shall have sustained or shall hereafter sustain any loss or damage in or by the exercise by the Commissioner of any of the powers conferred on him by *The Transfer of Land Act 1874* or by this Act and who shall not have been party or privy to the application or dealing in connection with which such power was exercised may notwithstanding the provisions of section 201 and section 205 and without prejudice to the rights (if any) of such person thereunder in the first instance and without any obligation to pursue the remedies provided by such sections bring an action against the State with the Registrar as nominal defendant for recovery of damages. And where such person shall have been party or privy to such application or dealing he shall be at liberty to join the Registrar as a nominal co-defendant in any action brought by him in respect of such loss or damage against any other person or persons who shall have been party or privy to such application or dealing.

[Section 207 amended by No. 81 of 1996 s. 125.]

208. Persons claiming may before action brought apply to Commissioner in writing for compensation

Any person sustaining loss or damage in any case in which heretofore he would have been entitled to bring an action to

recover damages against the State with the Registrar as nominal defendant may before commencing proceedings against the Registrar make application in writing to the Commissioner for compensation and such application shall be supported by affidavit or declaration. If the Commissioner admit the claim or any part thereof and certify accordingly to the Attorney General thereupon the Governor may if he shall think fit issue a warrant to the Treasurer for the amount so certified and such amount shall be charged to the Consolidated Fund and paid to the claimant and this section appropriates the Consolidated Fund accordingly.

[Section 208 amended by No. 81 of 1996 s. 126.]

209. Notice of action to be served

In any case in which an action for recovery of damages is permitted to be brought against the State with the Registrar as nominal defendant notice in writing of such action and of the cause thereof shall be served upon such nominal defendant one month at least before the commencement of such action; and if in any such action judgment be given in favour of the nominal defendant or the plaintiff discontinue or become nonsuit the plaintiff shall be liable to pay the full costs of defending such action and the same when taxed shall be recovered by the State in the name of the nominal defendant by the like process of execution as in other actions.

[Section 209 amended by No. 17 of 1950 s. 58; No. 81 of 1996 s. 127.]

210. Payment of damages etc. from Consolidated Fund

If, in an action under section 205, 206 or 207 for the recovery of damages against the State with the Registrar as nominal defendant, the plaintiff or a co-defendant obtains final judgment against the State then the judge before whom the action was tried or the Supreme Court shall certify —

- (a) the fact of such judgment; and

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

[Section 210 inserted by No. 81 of 1996 s. 128.]

211. Limitation of actions

No action for recovery of damages sustained through deprivation of land or of any estate or interest in land shall lie or be sustained against the State or against the person upon whose application such land was brought under the operation of this Act or against the person who applied to be registered as proprietor in respect to such land unless such action shall be commenced within the period of 6 years from the date of such deprivation. Provided nevertheless that any person being under the disability of infancy or unsoundness of mind may bring such action within 6 years from the date on which such disability shall have ceased so however that such action be brought within 30 years next after the date of such deprivation. The plaintiff in any such action at whatever time it may be brought and the plaintiff in any action for the recovery of land shall be nonsuited in any case in which the deprivation complained of may have been occasioned through the bringing of land under the operation of this Act if it shall be made to appear to the satisfaction of the judge before whom such action shall be tried that such plaintiff or the persons through or under whom he claims title had notice by personal service or otherwise or was aware that application had been made to bring such land under the operation of this Act and had wilfully or collusively or negligently omitted to lodge a caveat forbidding the same or had allowed such caveat to lapse.

[Section 211 amended by No. 17 of 1950 s. 59; No. 73 of 1954 s. 5; No. 81 of 1996 s. 129.]

212. Rules of Supreme Court to apply and same right of appeal as in ordinary actions

In the conduct of actions under this Act the same rules of procedure and practice shall apply and there shall be the same rights of appeal as shall be in force or exist for the time being in respect of ordinary actions in the court in which such action may be tried. Provided that the judges shall have power from time to time to make rules and orders for regulating proceedings in the Supreme Court under this Act and from time to time to rescind alter or add to such rules and orders.

213. Obligation to make discovery not excluded

Nothing in this Act contained shall entitle any person to refuse to make a complete discovery in any action or to answer any question or interrogatory in any civil proceeding in any court of law or bankruptcy; but no answer to any question or interrogatory shall be admissible in evidence against such person in any criminal proceeding except in any case where the contrary may be specially enacted.

Part XIII — Offences

214. Certain fraudulent acts to be deemed offences

- (1) If any person wilfully makes any false statement or declaration in any application to bring land under the operation of this Act or in any application to be registered as proprietor whether in possession remainder reversion or otherwise on a transmission or in any other application to be registered under this Act as proprietor of any land lease mortgage or charge or suppresses or conceals or assists or joins in or is privy to the suppressing withholding or concealing from the Commissioner or Registrar any material document fact or matter of information or wilfully makes any false statutory declaration required under the authority or made in pursuance of this Act or if any person in the course of his examination before the Commissioner wilfully and corruptly gives false evidence or if any person fraudulently procures assists in fraudulently procuring or is privy to the fraudulent procurement of any certificate of title or instrument or of any entry in the Register or of any erasure or alteration in any entry in the Register or whether fraudulently or not defaces erases or alters any words memorandum or diagram in or upon any duplicate certificate or duplicate instrument or knowingly misleads or deceives any person hereinbefore authorised to require explanation or information in respect to any land or the title to any land under the operation of this Act or in respect of which any dealing or transmission is proposed to be registered that person commits an offence against this Act and any certificate of title entry erasure or alteration so procured or made by fraud shall be void as against all parties or privies to such fraud.
- (2) Section 51 of the *Justices Act 1902* does not apply to any offence under subsection (1) in respect of the registration of any dealing in Crown land.

[Section 214 amended by 1 and 2 Edw. VII 1902 s. 3; No. 17 of 1950 s. 60; No. 81 of 1996 s. 145(1); No. 31 of 1997 s. 129.]

214A. Failure to lodge duplicate certificate of title or Crown lease

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.

[Section 214A inserted by No. 17 of 1950 s. 61.]

214B. Penalty

A person who commits an offence against this Act for which no other penalty is provided is liable to a fine of \$10 000 or to imprisonment for 2 years, or both.

[Section 214B inserted by No. 17 of 1950 s. 62; amended by No. 113 of 1965 s. 4; No. 81 of 1996 s. 130.]

[215-218. Repealed by No. 17 of 1950 s. 63.]

Part XIV — Miscellaneous

219. Application on a transmission

A devisee or person claiming any estate of freehold in possession or a power to appoint transfer or dispose of the same on a transmission may make application in writing to the Commissioner to be registered as proprietor thereof and shall produce the will or an office copy or probate of the will of the deceased proprietor or letters of administration with his will annexed or the letters of administration in case of intestacy or the settlement under which such applicant claims and shall afterwards furnish such other evidence as may be deemed necessary. Such application shall state the nature of every interest held by any other person at law or equity in the land within the applicants' knowledge and that he verily believes himself to be entitled to the estate in or power over such land in respect to which he applies to be registered and shall also state the value of the property. The devisee or other person making such application shall deliver up the duplicate certificate of title (if any) before being entered in the Register as the proprietor.

[Section 219 amended by No. 81 of 1996 s. 131.]

220. Application how dealt with

Such application shall be referred to the Commissioner or if there be such an officer then to an Examiner of Titles for his examination and report who shall afterwards submit the papers to the Commissioner and the Commissioner may either reject such application altogether or direct notice thereof to be published once at least in one newspaper published in the city of Perth or circulating in the neighbourhood of the land and such further publicity to be given to such application as he may deem fit; and the Commissioner shall appoint a time not less than 14 days from the advertisement or the first of such advertisements if more than one upon or after which the Registrar shall unless a caveat shall be lodged forbidding the same register such applicant as the proprietor of such land or estate by entering in the Register the

particulars of the transmission through which such applicant claims and by registering a certificate of title to the land or estate so transmitted. Upon such entry being made the applicant shall become the transferee of such land or estate and be deemed to be the proprietor thereof. Provided always that the person registered consequent on such direction shall hold such land or estate for the purposes for which it may be applicable by law; but for the purpose of any dealings therewith under the provisions of this Act he shall be deemed to be the absolute proprietor thereof. The Commissioner may direct a caveat to be entered by the Registrar for the protection of the interests of any other persons interested in such land or estate.

[Section 220 amended by No. 81 of 1996 s. 145(1).]

221. Remainderman or revisioner may apply to be registered as such

Any person claiming to have acquired any estate in remainder reversion or otherwise on a transmission may apply to be registered as so entitled in like manner and supported by the like evidence as near as may be as is herein provided with respect to a devisee or other person claiming an estate of freehold in possession on a transmission. Such application shall be dealt with in like manner as is mentioned in the last preceding section; and any entry made thereupon shall have the same effect and the person registered shall hold the land for the same purposes and shall have the same powers as is and are mentioned in such section. If there shall be any doubt dispute or litigation under this or under either of the last 2 preceding sections as to the true construction or legal validity or effect of any will or settlement relating to any freehold land or estate or if the person entitled under any of the provisions of this Act to any land or estate under any will settlement or instrument cannot be ascertained the Supreme Court sitting in the exercise of its equitable jurisdiction may appoint a person to be registered as the representative of such land or estate; and such person when registered shall become the transferee and be deemed to be the

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proprietor thereof for the purposes of this Act subject however to any directions which shall from time to time be given by the court sitting as aforesaid touching the disposition thereof or the dealing therewith.

222. Person claiming title under a statute of limitations may apply to be registered

Any person claiming to have acquired under or by virtue of any statute of limitations an estate in fee simple in possession in land under the operation of this Act may make application in the form in the Fourth Schedule to be registered as proprietor thereof and shall furnish such evidence as the Commissioner may deem necessary to prove his title. Such application shall also state the value of the land.

223. Application to be referred to Commissioner

Such application with the papers shall be submitted to the Commissioner who may either reject such application altogether or direct notice thereof to be published once at least in a newspaper published in the city of Perth or circulating in the neighbourhood of the land and to be served on any persons named by him and such further publicity to be given as he shall think fit; and the Commissioner shall in such notice appoint a time not less than 14 days nor more than 12 calendar months from such notice or from the advertisement or the first of such advertisements (if more than one) on or after the expiration of which the Registrar shall unless a caveat shall be lodged forbidding the same register such applicant as the proprietor of such land by endorsing on the registered certificate in the register the particulars of the title under which such applicant claims and registering in his name a certificate of title to the land. Upon such registry being effected the applicant shall become the transferee of such land and be deemed to be the proprietor thereof.

[Section 223 amended by No. 14 of 1996 s. 4; No. 81 of 1996 s. 145(1).]

223A. Caveat against application

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.

[Section 223A inserted by No. 17 of 1950 s. 64.]

[224. Repealed by No. 81 of 1996 s. 132.]

[225. Repealed by No. 81 of 1996 s. 133.]

226. Marriage of female proprietor

The Commissioner upon production of sufficient proof of the marriage of a female proprietor of any land or of any lease mortgage or charge not appearing by the Register to be held for her separate use accompanied by an application in writing signed by such female proprietor to register her husband as joint proprietor thereof in her right shall direct the Registrar to enter in the Register and also upon the duplicate certificate of title and duplicate instrument (if any) evidencing the title of such female proprietor when produced to him for that purpose the name and address of her husband the date and place of the marriage and the time of making such entry; and the husband of such female proprietor shall on such entry being made in the Register become a joint transferee thereof and be deemed to be joint proprietor thereof in right of his wife. Until such entry shall be made she shall be deemed to be the sole and absolute proprietor of such land lease mortgage or charge and may transfer or otherwise deal with the same at law and in equity.

[Section 226 amended by No. 81 of 1996 ss. 145(1) and 146(1).]

227. Registration of survivor of joint proprietors

Upon 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 the death of any person registered with any other person as joint proprietor of any land or of any lease or charge or as joint proprietor of any mortgage owned on a joint account in equity the Commissioner on the application of the widow husband or person entitled and proof to his satisfaction of such events as aforesaid may direct the Registrar to register such applicant as the proprietor thereof; and she or he shall upon being registered in the manner herein prescribed for the registration of a like estate or interest become the transferee of such land lease mortgage or charge and be deemed the proprietor thereof but as regards any tenancy by the curtesy for the life-time only of such husband.

228. Proprietors and transferees for the time being to stand in the places of previous owners

Without lessening or prejudicing any of the other rights powers and remedies hereby given and conferred every proprietor and every transferee when registered of any lease mortgage or charge shall whilst continuing so registered have the same estates rights powers and remedies and be subject to the same engagements obligations and liabilities and may sue and be sued in his own name at law and in equity in respect thereof or thereupon in like manner as if he had been the original proprietor of the land by or with whom the engagement obligation or liability sued upon was entered into or incurred or the original lessee mortgagee or annuitant.

229. Proprietor to allow his name to be used by person interested

The proprietor of any land or of any lease mortgage or charge shall on the application of any beneficiary or person interested

therein be bound to allow his name to be used by such beneficiary or person in any action suit or proceeding which it may be necessary or proper to bring or institute in the name of such proprietor concerning such land lease mortgage or charge or for the protection or benefit of the title vested in such proprietor or of the interest of any such beneficiary or person; but nevertheless such proprietor shall in any such case be entitled to be indemnified in like manner as if being a trustee he would before the passing of this Act have been entitled to be indemnified in a similar case of his name being used in any such action suit or proceeding by his *cestui que trust*.

229A. Removal of easement not used or enjoyed for 20 years

- (1) A proprietor of land may apply to the Commissioner for the removal from the certificate of title of any easement notified thereon.
- (2) If the Commissioner is satisfied that the easement has not been used or enjoyed for a period of not less than 20 years, 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) The Commissioner shall not make an order under subsection (2) until 21 days after the Registrar has served —
 - (a) each person appearing from the Register to have an estate or interest in the land to which the easement is appurtenant; and
 - (b) each person named by the Commissioner,with notice of the application.
- (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.

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- (5) This section does not apply to any easement created under Part IVA or granted under section 144 of the *Land Administration Act 1997*.

[Section 229A inserted by No. 17 of 1950 s. 65; amended by No. 14 of 1972 s. 7; No. 81 of 1996 s. 134; No. 31 of 1997 s. 130.]

229B. Cancellation of easement entered on certificate affected

- (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 (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.
- (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.
- (4) This section does not apply to any easement granted under section 144 of the *Land Administration Act 1997*.

[Section 229B inserted by No. 17 of 1950 s. 65; amended by No. 81 of 1996 s. 135; No. 31 of 1997 s. 131.]

230. Abandonment of easement may be presumed after 20 years' adverse possession

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 has not been used or enjoyed for a period of not less than 20 years the Commissioner may, notwithstanding section 69, at his discretion direct the Registrar to create and register a certificate of title for such land without notifying such easement as an encumbrance, and thereafter the same shall not be preserved by section 68.

[Section 230 inserted by No. 14 of 1972 s. 8; amended by No. 81 of 1996 s. 136.]

231. Where encroachment on road has existed 20 years, title may be given

If upon an application to bring land under this Act or to amend a certificate it is found that a building of a permanent nature has been erected so as to encroach upon the width or alignment of a public road street or way within the limits of the city of Perth or city of Fremantle but it is proved to the satisfaction of the Commissioner that such encroachment has continued for a period of not less than 20 years the Commissioner may direct the Registrar to create and register a certificate for or including the land covered by such building provided notice of such application and alleged encroachment shall have been duly given to the corporation or other body in whom such road street or way is vested or who have the trust or legal control thereof. In the event of such body sending in objections it shall be heard in support thereof and the Commissioner shall have power to examine witnesses upon oath on behalf of the applicant and the corporation or other body and make such order as to him may seem fit. Provided always that no encroachment so allowed by the Commissioner shall exceed one metre. Provided also that the Governor in Council may from time to time upon a petition in that behalf signed by two-thirds of the total number of

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members of the council of any local government sealed with the common seal of the local government affected order that the operations of this section be extended to such local government and every order so made shall be published in the *Government Gazette* and shall take effect as from the day of such publication.

[Section 231 amended by No. 94 of 1972 s. 4; No. 14 of 1996 s. 4; No. 81 of 1996 s. 137.]

232. Receipt for documents lodged

On any documents being lodged with the Registrar for any of the purposes of this Act the Registrar shall if required so to do give to the person lodging the same a receipt in an approved form. Provided that documents so lodged shall be returned only to the person who lodged the same or to some person claiming through or under him or authorised in writing by the person entitled to receive the same.

[Section 232 amended by No. 81 of 1996 s. 138.]

233. *Lis pendens* not to affect dealings with land under this Act

To determine doubts which may arise as to the operation of *lis pendens* on land under this Act it is hereby declared that no *lis pendens* or registration of *lis pendens* shall affect or be deemed to have affected the right of any person to obtain the registration of any dealing under this Act or shall deprive or be deemed to have deprived any person dealing under this Act of the benefit of section 134 or of any other section of this Act.

234. Devolution on bankruptcy or insolvency

Every person who, as trustee, assignee, or by any other name, is representative of a bankrupt or insolvent estate is entitled to be registered as proprietor of any property under this Act, which is portion of such estate, and the Registrar, upon receipt of an office copy of the appointment of such representative, accompanied by an application under his hand to be so

registered, shall enter in the Register on the certificate of title for such property, a memorandum notifying the appointment of such representative, who shall thereupon become the transferee, and be deemed to be the proprietor of such property, and shall hold the same subject to the duties and trusts affecting the estate, but for the purpose of dealing therewith under the said Act, shall be deemed the absolute proprietor thereof. All property which any bankrupt or insolvent, before adjudication, or after adjudication and before obtaining his certificate of discharge became entitled to, or became entitled under any power of appointment or disposition to dispose of for his own benefit, shall be deemed a portion of the estate of such bankrupt or insolvent.

[Section 234 amended by 60 Vict., No. 22 s. 5; No. 81 of 1996 s. 139.]

235. Until assignee registered bankruptcy of proprietor not to affect dealings

Until such applications shall be made as aforesaid and subject to the operation of any caveat which may be lodged by such trustee dealings by a bankrupt proprietor with land under the operation of this Act may be registered and thereupon shall not be affected by the order of adjudication either at law or in equity.

236. Tenant in tail

An estate tail under this Act shall have the same incidents as a similar estate under the general law and the proprietor of such an estate shall have the same power to bar the estate tail and create an estate in fee simple absolute as against all persons whose estates are to take effect after the determination or in defeasance of the estate tail.

237. Conditions of sale in Twenty-sixth Schedule to apply in the absence of other conditions and may be adopted by reference

On any sale of land under the operation of this Act by public auction or private contract the conditions set out in the table marked A in the Twenty-sixth Schedule may be adopted by

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inserting the words “The conditions in Table A of the *Transfer of Land Act 1893*, shall apply to this contract” and when so adopted the said conditions shall be construed as part of the contract subject to any express modification or exclusion of any of them which may be contained in the contract.

238. Forms may be modified

The forms contained in the several schedules and the forms for the time being in force under this Act may be modified or altered in expression to suit the circumstances of every case; and any variation from such forms respectively in any respect not being matter of substance shall not affect their validity or regularity.

239. Inspection and obtaining copies of the Register and related documents

- (1) Any person, on payment of the prescribed fee, may inspect, from Mondays to Fridays during such times as are prescribed by regulation —
 - (a) any registered certificate of title and any plan or diagram relating to land that is the subject of a certificate of title, including a strata/survey-strata plan;
 - (b) any registered Crown lease or Crown grant;
 - (c) any registered instrument;
 - (d) any caveat, power of attorney or discharge of mortgage lodged or deposited under this Act;
 - (e) any application made under this Act; and
 - (f) any memorandum filed under section 54.
- (2) The Registrar, on receiving payment of the prescribed fee for a certified copy, shall furnish to any person applying for the same a copy, in an approved form that has been certified and sealed by the Registrar, of any certificate of title, Crown grant or lease, plan or diagram, strata/survey-strata plan, registered instrument, caveat, power of attorney, or memorandum filed under

section 54 affecting land under the operation of this Act; and every such copy shall be received in evidence in any court of justice or before any person having by law or by consent of parties authority to receive evidence as prima facie proof of the original certificate, Crown grant or lease, plan or diagram, strata/survey-strata plan, instrument, caveat, power of attorney or memorandum and of all matters contained or recited or incorporated in or endorsed on the document respectively.

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

[Section 239 inserted by No. 81 of 1996 s. 140.]

239A. Provision of land-related information

- (1) The Registrar may provide a person with, or allow a person to have access to, information that has been derived from records and dealings in relation to land under the operation of this Act —
- (a) on such terms and conditions as the Registrar thinks fit; and
 - (b) on payment of the prescribed fee for the provision of, or access to, the information.
- (2) A person must not contravene, or fail to comply with, any term or condition applying —
- (a) to the provision of information under subsection (1) to that person; or
 - (b) to that person's access to information under subsection (1).

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

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- (3) This section does not apply to the provision of, or access to —
- (a) any document which can be inspected under section 239(1);
 - (b) any document a copy of which can be obtained under section 239(2); or
 - (c) any information which can be obtained under section 146.

[Section 239A inserted by No. 81 of 1996 s. 141.]

240. Service of notices

- (1) For the purposes of this Act, service of a notice on a person may be effected —
- (a) by delivering the notice to the person personally;
 - (b) by sending the notice by letter (by pre-paid post) to the person's address; or
 - (c) where a person has specified in a caveat or in an approved form that notices under this Act may be served on him by facsimile transmission to the number of the person's facsimile machine, by facsimile transmission to such number.
- (2) For the purposes of subsection (1)(b), “**address**” in relation to a person means —
- (a) the address specified by the person in a caveat or in an approved form as the address to which notices to that person are to be sent;
 - (b) if an address has not been specified under paragraph (a), the address entered in the Register as the person's address;
 - (c) in the case of a natural person where an address has not been specified under paragraph (a) or entered in the Register, the person's last known address;

- (d) in the case of a person other than a natural person where an address has not been specified under paragraph (a) or entered in the Register, any of the following —
 - (i) the person's registered office (if any) within the meaning of the Corporations Law, the person's principal place of business or the person's principal office in the State; or
 - (ii) the address of the office of any administrator, manager, receiver or liquidator appointed under the Corporations Law in relation to the person if that address is the most recent address lodged with the Australian Securities and Investments Commission for the administrator, manager, receiver or liquidator.
- (3) Unless the contrary is proved, in relation to service by or on behalf of the Registrar or the Commissioner —
 - (a) service by letter shall be deemed to be effected at the time when the letter would have been delivered in the ordinary course of post; and
 - (b) service by facsimile transmission shall be deemed to be effected at the time when a facsimile machine at the office of the Department prints a statement showing that —
 - (i) the transmission has been made to another facsimile machine; and
 - (ii) the other machine has received the transmission.
- (4) For the purposes of subsection (3)(a), a letter shall be deemed to be delivered in the ordinary course of post —
 - (a) to an address in the metropolitan region, on the next business day after the letter is posted;
 - (b) to an address outside the metropolitan region but in the State, on the second business day after the letter is posted;

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- (c) to an address outside the State but in Australia, on the third business day after posting; or
 - (d) to an address outside Australia, on the 14th business day after posting.
- (5) Where the Commissioner or Registrar attempts to serve a notice by sending it in a letter but the letter is returned by the post office because the letter is unable, for any reason, to be delivered to the person to whom it is addressed, the Commissioner or Registrar, as the case requires, may if he thinks fit in the circumstances and having regard to the provisions of this Act —
- (a) direct any further notice to be served;
 - (b) direct that the notice be served in such other manner as the Commissioner or Registrar, as the case requires, thinks is appropriate; or
 - (c) proceed without the notice being served.

[Section 240 inserted by No. 81 of 1996 s. 142; amended by No. 26 of 1999 s. 106(5).]

240A. Notification of change of address etc.

A person who wishes to —

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

shall apply in an approved form and pay the prescribed fee and the Registrar, if satisfied that it would be in order to do so, shall alter accordingly the record of the address or facsimile number.

[Section 240A inserted by No. 81 of 1996 s. 143.]

[241. Repealed by No. 24 of 2000 s. 42(4).]

242. Registration of dispositions off the Register

- (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.
- (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 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 to any disposition.
- (4) In this section, except where a contrary intention appears —
 “**disposition**” includes a disclaimer surrender or release; and

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“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.

[Section 242 inserted by No. 17 of 1950 s. 70; amended by No. 81 of 1996 s. 145(1).]

243. Revesting of land held by Crown in fee simple as Crown land

- (1) The Registrar may, on registering a ministerial order made under section 82 of the *Land Administration Act 1997* —
 - (a) cancel the certificate of title of the land revested;
 - (b) by notice in writing served on the person having possession of the duplicate of that certificate of title, require that person to deliver up that duplicate to the Registrar; and
 - (c) cancel that duplicate.
- (2) If a person does not comply with a requisition made against him under subsection (1)(b) within 30 days after the service on him of the relevant notice, the Registrar may act against the person under section 76(1) as if that requisition were a requisition made against the person under that section and section 76(2) applies accordingly.

[Section 243 inserted by No. 31 of 1997 s. 132.]

First Schedule

[Section 2]

Western Australia

Date	Title of Act	Extent of Repeal
38 Vict. No. 13	<i>“The Transfer of Land Act 1874.”</i>	So much as is not already repealed
42 Vict. No. 15	<i>“The Transfer of Land Act 1874, Amendment Act 1878.”</i>	So much as is not already repealed
42 Vict. No. 17	<i>“An Act to enforce the payment of Duty on the Transfer of Land.”</i>	The whole
43 Vict. No. 17	<i>“An Act to further amend ‘The Transfer of Land Act 1874’.”</i>	The whole
44 Vict. No. 23	<i>“The Transfer of Land Act 1874, Amendment Act 1880.”</i>	The whole
47 Vict. No. 22	<i>“The Transfer of Land Amendment Act 1883.”</i>	The whole

Second Schedule

[Section 20]

Western Australia

Application to bring Land under the operation of the Transfer of Land Act 1893

To the Registrar of Titles

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

1. That I am the owner of an estate in fee simple in possession [*or of an estate of freehold in possession for my life or otherwise as the case may require*] in All That

[if the land be part only of that granted by the Crown add which land contains (insert area) or thereabouts and is described in the document numbered

in the Schedule hereto or otherwise after the word thereabouts set forth a sufficient description to identify the land.]

2. That such land including all buildings and other improvements thereon is of the value of \$ and no more.
3. 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.
4. That I am not aware of any mortgage or encumbrance or lease affecting the said land or that any other person hath any estate or interest therein at law or in equity in possession remainder reversion or expectancy [*if there be any add other than as follows and set the same forth.*]
5. That the said land is occupied [*if unoccupied prefix un to occupied if occupied add by whom and state the name and address of the occupant and the nature of his occupancy.*]
6. That the names and addresses so far as known to me of the occupants of all lands contiguous to the said land are as follows: —

Second Schedule

7. That the names and addresses so far as known to me of the owners of all lands contiguous to the said land are as follows: —

Dated this day of , 20

Made and subscribed at }
in the presence of }

(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).

Schedule of Documents Referred To.

[Second Schedule amended by No. 17 of 1950 s. 71; No. 113 of 1965 s. 4; No. 81 of 1996 s. 146(3).]

Third Schedule

Third Schedule

[Section 24]

Western Australia

Notice

Application has been made to bring the land hereunder described under the *Transfer of Land Act 1893* on a title claimed by possession (*insert if applicable* "as to part").

The number of the application is

Date of lodging in Department

Name address and occupation of applicant

Land applied for.

(Here insert description the same as in advertisement.)

Dated this day of , 20

(Signature of applicant or his agent.)

[Third Schedule amended by No. 81 of 1996 s. 147.]

Fourth Schedule

[Section 222]

Western Australia

Application to be registered as Proprietor by possession of Land already under the Transfer of Land Act 1893.

To the Registrar of Titles

I (insert name and address) do hereby apply to be registered as proprietor of all that (insert description of land according to the existing certificate or if part only of the land certificated to be applied for state the fact and set forth in metres the boundaries and refer to a map). I claim to have acquired an estate in fee simple in possession in such land under the circumstances and on the grounds following: — (here set forth the circumstances and grounds of claim.)

And I declare

- 1. That such land including all buildings and other improvements thereon is of the value of \$ and no more.
2. That there are no documents or evidences of title affecting such land in my possession or control other than those included in the Schedule hereto.
3. That the said land is occupied (if unoccupied prefix un to occupied, if occupied add by whom and state the name and address of the occupant and the nature and period of his occupancy.)
4. That the names and addresses so far as known to me of the occupants of all lands contiguous to the said land are as follows: —
5. That the names and addresses so far as known to me of the owners of all lands contiguous to the said land are as follows: —

Dated this day of , 20

Made and subscribed at in the presence of }

Fourth Schedule

(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).

Schedule of Documents Referred to.

[Fourth Schedule amended by No. 113 of 1965 s. 4; No. 94 of 1972 s. 4; No. 81 of 1996 s. 146(2).]

[Fifth, Sixth and Seventh Schedules repealed by No. 81 of 1996 s. 151.]

[Eighth Schedule repealed by No. 26 of 1999 s. 106(6).]

Ninth Schedule

[Section 65]

Western Australia

Creation of Right of Carriage-way in a Transfer of Freehold Land

Together with full and free right and liberty to and for the transferee hereunder and to and for the registered proprietor or proprietors for the time being of the land hereby transferred or any part thereof and his her and their tenants servants agents workmen and visitors to go pass and repass at all times hereafter and for all purposes and either with or without animals or vehicles into and out of and from the said land or any part thereof through over and along the road or way or several roads or ways delineated and indicated by a symbol on the said map.

Creation of Right of Carriage-way in a Lease of Freehold Land

Together with full and free right and liberty to and for the said lessee and his transferees proprietors for the time being of the land hereby leased or any part thereof and his her and their tenants servants agents workmen and visitors to go pass and repass at all times hereafter during the continuance of this lease and for all purposes and either with or without animals or vehicles into and out of and from the said land and any part thereof through over and along the road or way or several roads or ways delineated and indicated by a symbol on the said map.

[Ninth Schedule amended by No. 81 of 1996 s. 148⁷.]

Schedule 9A

Short and Long Forms of Certain Easements

[Section 65(3)]

Column 1 Short form description of easement	Column 2 Long form description of easement
an easement for a right of footway	the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees, agents and visitors, at any time, to go, pass and repass on foot for any purpose, without vehicles, to and from the dominant tenement or any such part of it by the way delineated in this plan /diagram /instrument
an easement for water supply purposes	the right of every person, who for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to break the surface of, dig, open up and use that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining pipes and of using and maintaining those pipes for water supply purposes and to enter that land at any time (if necessary with vehicles and equipment) for any of those purposes
an easement for drainage purposes	the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to break the surface of, dig, open up and use that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining drains or drainage pipes and of using and maintaining those drains and drainage pipes for drainage purposes and to enter that land at any time (if necessary with vehicles and equipment) for any of those purposes

<p>Column 1 Short form description of easement</p>	<p>Column 2 Long form description of easement</p>
<p>an easement for gas supply purposes</p>	<p>the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to break the surface of, dig, open up and use that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining pipes and of using and maintaining those pipes for the purpose of supplying gas and to enter that land at any time (if necessary with vehicles and equipment) for any of those purposes</p>
<p>an easement for the transmission of electricity by overhead cable</p>	<p>the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time —</p> <ul style="list-style-type: none"> (a) to suspend cables across that part of the land within the servient tenement (described for that purpose in this plan/diagram /instrument) and construct supports for those cables; (b) to inspect, alter, maintain, repair and replace those cables and supports; (c) to use the cables for the purpose of transmitting electricity; (d) to break the surface of, dig, open up and use the land for any of the purposes referred to in paragraph (a), (b) or (c); and (e) to enter the land at any time (if necessary with vehicles and equipment) for any of the purposes referred to in paragraph (a), (b), (c) or (d)
<p>an easement for the transmission of electricity by underground cable</p>	<p>the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and for the person's employees and agents, at any time —</p> <ul style="list-style-type: none"> (a) to lay under the surface of that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) ducts, pipes and cables;

Schedule 9A

Column 1 Short form description of easement	Column 2 Long form description of easement
<p>an easement for the transmission of television signals by underground cable</p>	<p>(b) to inspect, alter, maintain, repair and replace those ducts, pipes and cables;</p> <p>(c) to use the cables for the purpose of transmitting electricity;</p> <p>(d) to break the surface of, dig, open up and use the land for any of the purposes referred to in paragraph (a), (b) or (c); and</p> <p>(e) to enter the land at any time (if necessary with vehicles and equipment) for any of the purposes referred to in paragraph (a), (b), (c) or (d)</p> <p>the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time —</p> <p>(a) to lay under the surface of that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) ducts, pipes and cables;</p> <p>(b) to inspect, alter, maintain, repair and replace those ducts, pipes and cables;</p> <p>(c) to use the cables for the purpose of transmitting television signals;</p> <p>(d) to break the surface of, dig, open up and use the land for any of the purposes referred to in paragraph (a), (b) or (c); and</p> <p>(e) to enter the land at any time (if necessary with vehicles and equipment) for any of the purposes referred to in paragraph (a), (b), (c) or (d)</p>
<p>party wall rights</p>	<p>the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment to use a party wall within or bordering the servient tenement (described for that purpose in this plan /diagram /instrument) for the support of the walls, floors, ceilings, roofs or other parts of any building built or placed on the dominant tenement</p>

Schedule 9A

<p>Column 1 Short form description of easement</p>	<p>Column 2 Long form description of easement</p>
<p>an easement for eaves and gutters</p>	<p>the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to construct, inspect, alter, maintain, repair, replace and use eaves, gutters and downpipes over that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) and to enter that land at any time for those purposes</p>
<p>an easement for sewerage purposes</p>	<p>the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees and agents, at any time, to break the surface of, dig, open up and use that part of the land within the servient tenement (described for that purpose in this plan /diagram /instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining pipes and of using and maintaining those pipes for sewerage purposes and to enter that land at any time (if necessary with vehicles and equipment) for any of those purposes</p>
<p>an easement for motor vehicle parking</p>	<p>the right of every person who, for the time being, is entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part of the land with which the right is capable of enjoyment and the right for that person and the person's employees, agents and visitors, at any time, to park motor vehicles for the periods and for the times specified in this plan /diagram /instrument</p>

[Schedule 9A inserted by No. 81 of 1996 s. 149.]

Tenth Schedule

Tenth Schedule

[Section 85]

Western Australia

I certify that the within-named B.B. came the _____ day
of _____ 20 _____ before me at [*state place*] and
acknowledged apart from any person that the within document (which I did not
prepare and under which I am not interested) was understood by her and that
she signed it without coercion.

[Eleventh Schedule repealed by No. 81 of 1996 s. 151.]

Twelfth Schedule

[Section 94]

<i>Column One</i>	<i>Column Two</i>
1. The lessee will not transfer or sublet.	1. The lessee his executors administrators or transferees will not during the said term transfer, assign, or sublet the premises hereby leased or any part thereof or otherwise by any act or deed procure the said premises or any part thereof to be transferred or sublet without the consent in writing of the lessor or his transferees first had and obtained.
2. The lessee will fence.	2. The lessee his executors administrators or transferees will during the continuance of the said term erect and put up on the boundaries of the said land or upon those boundaries upon which no substantial fence now exists a good and substantial fence.
3. The lessee will cultivate.	3. The lessee his executors administrators or transferees will at all times during the said term cultivate use and manage in a proper and husbandlike manner all such parts of the land as are now or shall hereafter with the consent in writing of the said lessor or his transferees be broken up or converted into tillage and will not impoverish or waste the same.
4. The lessee will not cut timber.	4. The lessee his executors and administrators or transferees will not cut down fell injure or destroy any growing or living timber or timber-like trees standing and being upon the said land without the consent in writing of the said lessor or his transferees.
5. The lessee will insure against fire in the name of the lessor.	5. The lessee his executors administrators or transferees will insure and during the said term keep insured against loss or damage by fire in the name of the lessor or his transferees in some public insurance office approved of by him or them to the amount of their full value all buildings which shall for the time being be erected on the said land and which shall be of a nature or kind capable of being insured against damage by fire and will when required deposit with the lessor or his transferees the policy of such insurance and within 7 days after each premium shall become payable the receipt for such premium and on any breach or non-observance of this covenant the lessor or his transferees may without prejudice to and concurrently with the powers granted to him and them by this lease and by the <i>Transfer of Land Act 1893</i> , insure such buildings and the costs of effecting such insurance shall during the said term be a charge upon the said land.

Twelfth Schedule

Column One

6. The lessee will paint outside every third year.

7. The lessee will paint and paper inside every fourth year.

8. The lessee will not use the premises as a shop.

9. The lessee will not carry on any offensive trade.

10. The lessee will carry on the business of publican and conduct the same in an orderly manner.

Column Two

All moneys which shall be received under or by virtue of any such insurance shall be laid out and expended in making good the loss or damage.

6. The lessee his executors administrators or transferees will in every third year during the continuance of the said term paint all the outside woodwork and ironwork belonging to the leased property with 2 coats of proper oil colours in a workmanlike manner.

7. The lessee his executors administrators or transferees will in every fourth year during the continuance of the said term paint the inside wood iron and other work now or usually painted with 2 coats of proper oil colours in a workmanlike manner and also re-paper with paper of the same quality as at present such parts of the said premises as are now papered and also whiten or colour such parts of the said premises as are now whitened or coloured respectively.

8. The lessee his executors administrators or transferees will not convert use or occupy the said premises or any part thereof into or as a shop warehouse or other place for carrying on any trade or business whatsoever or permit or suffer the said premises or any part thereof to be used for any such purpose or otherwise than as a private dwelling-house without the consent in writing of the said lessee or his transferees.

9. The lessee his executors administrators or transferees will not at any time during the said term use exercise or carry on or permit or suffer to be used exercised or carried on in or upon the said premises or any part thereof any noxious noisome or offensive art trade business occupation or calling and no act matter or thing whatsoever shall at any time during the said term be done in or upon the said premises or any part thereof which shall or may be or grow to the annoyance nuisance grievance damage or disturbance of the occupiers or owners of the adjoining lands and properties.

10. The lessee his executors administrators or transferees will at all times during the continuance of the said term use exercise and carry on in and upon the premises the trade or business of a licensed victualler or publican and seller of fermented and spirituous liquors and keep open and use the house inn and buildings standing and being upon the land as and for an inn or

Twelfth Schedule

Column One

Column Two

11. The lessee will apply for renewal of licence.

public-house for the reception accommodation and entertainment of travellers guests and other persons resorting thereto or frequenting the same and manage or conduct such trade or business in a quiet and orderly manner and will not do or commit or suffer to be done or committed any act matter or thing whatsoever whereby or by means whereof any licence shall be allowed to expire or to become void or shall or may be liable to be forfeited suspended taken away or refused.

12. The lessee will facilitate the transfer of licence.

11. The lessee his executors administrators or transferees will from time to time during the continuance of the said term at the proper times for that purpose apply for and endeavour to obtain such licence or licences as is or are or may be necessary for carrying on the said trade or business of a licensed victualler or publican in and upon the said premises and keeping the said house or inn open as and for an inn or public-house as aforesaid.

12. The lessee his executors administrators or transferees will at the expiration or other sooner determination of the said term sign and give such notice or notices and allow such notice or notices of a transfer or renewal of any licence as may be required by law to be affixed to the said house or inn to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf and generally will do and perform all such acts matters and things as shall be necessary to enable the said lessor or his transferees or any person authorised by him or them to obtain the transfer of any licence then existing and in force or the renewal of any licence or any new licence.

[Thirteenth, Fourteenth and Fifteenth Schedules repealed by No. 81 of 1996 s. 151.]

Sixteenth Schedule

[Section 115]

Column One

That I will insure against fire in the name of the mortgagee.

Column Two

That I my heirs executors administrators or transferees will insure and so long as any money shall remain secured by this mortgage kept insured against loss or damage by fire in the name of the mortgagee or his transferees in some public insurance office to be approved by him or them all buildings which shall for the time being be erected on the said land and which shall be of a nature or kind capable of being so insured to the amount either of the principal money hereby secured or of the full value of such buildings and will when required deposit with the mortgagee or his transferees the policy of such insurance and within 7 days after each premium shall become payable the receipt for such premium. And that the moneys which shall be received on account of such insurance shall at his or their option be applied either in or towards satisfaction of the moneys secured by this mortgage or in rebuilding or reinstating under the superintendence of his or their surveyor the buildings destroyed or damaged. And that on any breach or non-observance of this covenant he or they shall be at liberty to effect such insurance and continue the same for such period as may be deemed fit and the costs and expenses paid on account thereof shall be a charge upon the said land and bear interest at the same rate as if principal money overdue.

[Seventeenth and Eighteenth Schedules repealed by No. 81 of 1996 s. 151.]

Transfer of Land Act 1893

Nineteenth Schedule

- (a) Signature of Donor/s. (See note 1) Signed (a) (c)
- (b) Signature, address and occupation of witness. (See note 2) in the presence of (b)
- Signed (a) in the presence of (b)
- (c) Add attestations as required. (c)

NOTES

1. A separate attestation should be made by each person signing this document; i.e. each signature should be separately witnessed.
2. If executed within the Commonwealth of Australia or its Territories witnesses must be 21 years of age or over and not a party to this document. If executed outside the Commonwealth of Australia or its Territories the witness should be one of the persons listed in section 145 of the *Transfer of Land Act 1893*.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

No.

POWER OF ATTORNEY

FEES (office use)	\$	c

Parties

.....

.....

Lodged by
Address
Phone No.

Use this space for instructions if any documents are to issue to other than lodging party.

Nineteenth Schedule

	Duplicates, Declarations, etc., lodged with this document. (To be filled in by person lodging.) 1. } Received items 2. } 3. } No's 4. } 5. } 6. } Rec. Clerk.	
BELOW THIS LINE FOR OFFICE USE ONLY		
	Deposited at o'clock this day of 20	
EXAMINED.	<table border="1"><tr><td>Initials of Signing Officer.</td></tr></table> <u>REGISTRAR OF TITLES</u>	Initials of Signing Officer.
Initials of Signing Officer.		

*[Nineteenth Schedule inserted in Gazette 24 February 1970
pp. 544-5; amended by No. 31 of 1997 s. 133.]*

[Twentieth to Twenty-third Schedules repealed by No. 81 of 1996 s. 151.]

Twenty-fourth Schedule

Twenty-fourth Schedule

[Section 172]

Western Australia

Application to Amend Certificate

To the Registrar of Titles

1. I _____ hereby apply to have the certificate of title No. _____ amended in the following particulars: —

[State the nature of proposed amendment and in a case in which the description in the certificate is erroneous or imperfect on the face of it add the words on the ground that the certificate is erroneous or imperfect on the face of it].

2. That the land which would be described by the certificate when amended in accordance with this application is now in my occupation, and has been actually and bona fide occupied by me or persons holding under me since —
3. That the nature of such occupation was as follows: — *[State generally how and by whom the land has been occupied as for instance by myself as a farm and dwelling; by my tenants A.B. and C.D. as shops or partly by me as a dwelling and partly by my tenant A.B. as a shop].*
4. That the names and addresses so far as known to me of the occupants of all land contiguous to the land so occupied by me are as follows: —
5. That the names and addresses so far as known to me of the owners of all lands contiguous to the land so occupied by me as follows: —
6. That to the best of my knowledge and belief the reasons why the description of the land in the said certificate does not accord with the description of the land so occupied by me are the following: — *[Set out reasons].*

Dated the _____ day of _____ 20____
Made and subscribed at _____ in the presence of _____

Twenty-sixth Schedule

[Section 237]

Western Australia

Table A

General Conditions of Sale

1. The purchaser shall complete his purchase upon the day that the last of the acceptances or notes for purchase money become due; but he shall be entitled to the possession of the lot or lots purchased by him or to the receipt of the rents and profits thereof upon his acceptance of the title to such lot or lots; and if from any cause whatsoever his purchase shall not be completed at the time above specified the purchaser shall pay interest on such of his acceptances or notes as shall become overdue at the rate of 8% per annum to the time of completion without prejudice however to the vendor's right under the sixth condition.
2. All roads or ways adjoining or leading to or from the land sold or shown on the existing certificate of title to the property the areas of which roads are not included in such certificate shall be deemed by the purchaser either to be appurtenant to such land or to have become public roads.
3. The certificate of title to the property sold shall be produced and a copy thereof may be made by the purchaser or his solicitor on application in that behalf to the vendor or his solicitor and the purchaser shall within 14 days after the day of sale deliver to the vendor or his solicitor a statement in writing of all objections or requisitions (if any) to or on the title or concerning any matter appearing on the particulars or conditions and in this respect time shall be of the essence of the contract. All objections or requisitions not included in such statements to be delivered within the time aforesaid shall be deemed absolutely waived by the purchaser and in default of such objections (if none) and subject only to such (if any) so delivered the purchaser shall be considered as having accepted the title and it shall be lawful for the auctioneer to pay over and deliver to the said vendor all sums of money paid and acceptances or notes given by the said purchaser on account of the purchase money without being liable to any action or other proceeding for recovery of the same.

Twenty-sixth Schedule

4. In case the purchaser shall within the time aforesaid make any objection to or requisition on the title or otherwise which the vendor shall be unable or unwilling to remove or comply with and such objection or requisition shall be insisted on it shall be lawful for the vendor or his solicitor (whether he shall have attempted to remove such objection or to comply with such requisition or not and notwithstanding any negotiation or litigation in respect of the same) at any time by notice in writing to annul the sale and within 1 week after giving such notice to repay the purchaser the amount of his purchase money or so much thereof as shall have been paid in full satisfaction of all claims and demands whatsoever by the purchaser and also to return all unpaid acceptances given by the purchaser but without any interest costs or damages of any description.
5. If any mistake be made in the description or area of the property or if any other error whatsoever shall appear in the particulars of the property such mistake or error shall not annul the sale; but a compensation or equivalent to be settled by 2 referees mutually appointed in writing or their umpire shall be given or taken as the case may require. The party discovering such mistake or error to give notice in writing thereof to the other party within 7 days after such discovery and each party within 7 days after such notice shall appoint in writing a referee and if either party shall refuse to appoint a referee within the term above specified the referee of the other party alone may proceed in the matter and make a final decision. If 2 referees be appointed they are to nominate an umpire in writing before they enter upon the business and the decision of such referee or umpire as the case may be shall be final.
6. If the purchaser shall fail to comply with the above conditions or shall not pay the whole of the deposit or shall not give the acceptances or notes provided for by the contract or shall not duly pay the same or any of them his deposit money or so much thereof as shall have been paid shall be actually forfeited to the vendor who shall be at liberty without notice to rescind the contract and to re-sell the property bought by the purchaser by public auction or private contract and the deficiency (if any) in price occasioned by such sale together with all expenses attending the same shall immediately be made good by the defaulter at this present sale and in case of non-payment the amount of such deficiency and expenses shall be recoverable by the vendor as and for liquidated damages and it shall not be necessary previously to tender a transfer to the purchaser or the vendor may deduct and retain such deficiency and expenses out of the amount of any of

Twenty-sixth Schedule

the before-mentioned acceptances or notes which shall then have been paid re-paying unto such defaulter within 7 days after the completion of the sale the residue of such amount but without any interest and returning without any unnecessary delay any then unpaid acceptances or notes.

7. That the vendor will upon due payment of the full amount of purchase money sign a transfer of the property to the purchaser such transfer to be prepared by and at the expense of the purchaser.
8. That the purchaser shall pay or bear the expense of all stamp duties on or in respect of the acceptances or notes provided for by the contract and of the transfer to him.
9. The vendor shall not at any time be required by any purchaser or purchasers at the present sale to join in erecting any dividing fence upon any part of the land sold or offered for sale nor shall the vendor be liable at any time to contribute towards the expense of erecting any such dividing fence whether the land now offered for sale be sold or not; but this condition shall not prejudice or affect the rights of purchasers as to dividing fences as between themselves and all other parties except the vendor.

[Twenty-sixth Schedule amended by No. 113 of 1965 s. 8.]

[Twenty-seventh Schedule repealed by No. 25 of 1909 s. 2]

Notes

¹ This reprint is a compilation as at 9 February 2001 of the *Transfer of Land Act 1893* and includes the amendments effected by the other Acts referred to in Part I of the following Table and by the other regulations referred to in Part II of the Table ^{1a}.

Table of Amendments

Part I — Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>The Transfer of Land Act 1893</i> (56 Victoriae No.14)	14 of 1893	13 January 1893	13 January 1893	Short title subsequently amended (see footnote to section 1)
<i>Transfer of Land Act 1893 Amendment Act 1896</i> , (60 Victoriae No. 22)	22 of 1896	27 October 1896	27 October 1896	
<i>Criminal Code Act 1902</i> [s. 3; Schedule 3] (1 and 2 Edwardi VII No. 14)	14 of 1902	19 February 1902	1 May 1902 (see sections 2 and 3)	
<i>Transfer of Land Act Amendment Act 1902</i> , (2 Edwardi VII No. 10)	10 of 1902	18 November 1902	18 November 1902	
<i>Stamp Act Amendment Act 1905</i> , section 20	20 of 1905	23 December 1905	1 January 1906 (see section 2)	
<i>Licensed Surveyors Act 1909</i> , sections 28 and 29	25 of 1909	29 October 1909	1 January 1910 (see section 1)	

Transfer of Land Act 1893

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Transfer of Land Act Amendment Act 1909</i>	54 of 1909	21 December 1909	Proclaimed 2 May 1910 (see section 1 and <i>Gazette</i> 4 March 1910 p. 649)	
<i>Transfer of Land Act Amendment Act 1911</i>	26 of 1911	16 February 1911	16 February 1911	
<i>Transfer of Land Act Amendment Act 1917</i>	32 of 1917	11 December 1917	11 December 1917	
<i>Transfer of Land Act Amendment Act 1920</i>	30 of 1920	31 December 1920	31 December 1920	
<i>Transfer of Land Act Amendment Act 1925</i>	5 of 1925	24 September 1925	24 September 1925	
<i>Transfer of Land Act Amendment Act 1929</i>	14 of 1929	30 October 1929	30 October 1929	
<i>Transfer of Land Act Amendment Act (No. 2) 1929</i>	42 of 1929	31 December 1929	31 December 1929	
<i>Transfer of Land Act Amendment Act 1939</i>	23 of 1939	22 November 1939	22 November 1939	
<i>Transfer of Land Act Amendment Act 1944</i>	28 of 1944	23 December 1944	23 December 1944	
<i>Transfer of Land Act Amendment Act 1946</i>	6 of 1946	13 November 1946	13 November 1946	
<i>Transfer of Land Act Amendment Act (No. 2) 1946</i>	21 of 1946	14 January 1947	14 January 1947	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Transfer of Land Act Amendment Act 1950</i>	17 of 1950	29 November 1950	Proclaimed 16 March 1951 (see section 2 and <i>Gazette</i> 16 March 1951 p. 567)	Section 75: transitional ¹³
<i>Limitation Act Amendment Act 1954, section 8</i>	73 of 1954	14 January 1955	Proclaimed 1 March 1955 (see section 2 and <i>Gazette</i> 18 February 1955 p. 343)	
<i>Transfer of Land Act Amendment Act 1959</i>	9 of 1959	25 September 1959	25 September 1959	
<i>Decimal Currency Act 1965, section 4</i>	113 of 1965	21 December 1965	14 February 1966 (see section 2(2))	
<i>Transfer of Land Act Amendment Act 1969</i>	28 of 1969	16 May 1969	16 May 1969	
<i>Transfer of Land Act Amendment Act (No. 3) 1969</i>	88 of 1969	17 November 1969	17 November 1969	
<i>Transfer of Land Act Amendment Act 1972</i>	14 of 1972	25 May 1972	25 May 1972	
<i>Metric Conversion Act 1972, section 4(1)</i>	94 of 1972	4 December 1972	The relevant amendments, as set out in the First Schedule, took effect on 1 January 1974 (see section 4(2) and <i>Gazette</i> 7 December 1973 p. 4490)	The Schedule to No. 94 of 1972 was redesignated as the First Schedule by the <i>Metric Conversion Act Amendment Act 1973</i> (No. 19 of 1973)

Transfer of Land Act 1893

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Land Valuers) Act 1978, Parts I and II</i>	56 of 1978	6 September 1978	1 July 1979 (see section 2 and <i>Gazette</i> 22 June 1979 p. 1677)	
<i>Companies (Consequential Amendments) Act 1982, Part VIII</i>	10 of 1982	14 May 1982	1 July 1982 (see section 2(1))	
<i>Acts Amendment (Land Administration) Act 1987, Part VII</i>	126 of 1987	31 December 1987	Proclaimed 16 September 1988 (see section 2 and <i>Gazette</i> 16 September 1988 p. 3637)	
<i>Reserves and Land Revestment Act 1991, section 22</i>	57 of 1991	17 December 1991	17 December 1991 (see section 2)	
<i>Financial Administration Legislation Amendment Act 1993, sections 11 and 12</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	
<i>Acts Amendment (Public Sector Management) Act 1994, section 18</i>	32 of 1994	29 June 1994	Proclaimed 1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p. 4948)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Transfer of Land Amendment Act 1996</i>	81 of 1996	14 November 1996	Sections 6(1) (to the extent that if refers to section 10(4) and (5c) of the principal Act), 28, 30, 37, 42, 73, 74, 75, 76, 77, 81, 98, 134, 140, 141 proclaimed 3 February 1997 (see section 2 and <i>Gazette</i> 31 January 1997 p. 613); balance: 14 November 1996	Section 6(2): savings ³ ; section 152: savings and transitional ¹⁴ ; section 37(3): savings ⁷
<i>Acts Amendment (Land Administration) Act 1997, Part 60</i>	31 of 1997	3 October 1997	30 March 1998 (see section 2 and <i>Gazette</i> 27 March 1998 p. 1765)	Section 93(2): transitional ⁴ ; section 94(2): saving ⁵ ; section 104(2): validation ⁹
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 69</i>	10 of 1998	30 April 1998	30 April 1998 (see section 2(1))	
<i>Transfer of Land Amendment Act 1999</i>	3 of 1999	25 March 1999	Proclaimed 1 June 1999 (see section 2 and <i>Gazette</i> 11 May 1999 p. 1905)	
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999, section 106</i>	26 of 1999	29 June 1999	Proclaimed 1 July 1999 (see section 2 and <i>Gazette</i> 30 June 1999 p. 2905)	
<i>Statutes (Repeals and Minor Amendments) Act 2000, section 42</i>	24 of 2000	4 July 2000	4 July 2000 (see section 2)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Forest Products Act 2000</i> , section 72	34 of 2000	10 October 2000	Proclaimed 16 November 2000 (see section 2 and <i>Gazette</i> 15 November 2000 p. 6275)	

Part II — Regulations

Citation	Gazettal	Commencement	Miscellaneous
	24 February 1970 pp. 516-45	24 February 1970	
	8 February 1972 p. 244	8 February 1972	

^{1a} As at the date of this reprint clause 4 of Schedule 1 of the *Land Administration Amendment Act 2000* (No. 59 of 2000) had not commenced. It reads as follows —

“

4. Transfer of Land Act 1893 amended

- (1) This clause amends the *Transfer of Land Act 1893*.
- (2) Section 4(1) is amended in the definition of “Encumbrances” after “land” by inserting —
“ , and a dealing that is registered under this Act ”.
- (3) After section 81D(2) the following subsections are inserted —

“

- (3) If a lease is divided under section 134(4)(a) of the *Land Administration Act 1997* the Registrar shall —
 - (a) register, and has power to do all things necessary to register, the division of the land under the lease and the transfer of each part of the land under the lease; and
 - (b) register any other dealing or thing that may be done in relation to each part of the pastoral lease, despite anything to the contrary in this Act.
- (4) If a lease is divided under section 134(4)(b) of the *Land Administration Act 1997* the Registrar shall —
 - (a) register and has power to do all things necessary to register the division of the lease and the

- amalgamation of part of the land with the land of an adjoining pastoral lease; and
- (b) register any other dealing or thing that may be done in relation to each part of the pastoral lease, despite anything to the contrary in this Act.
- (5) If a lease is divided under section 134(4)(c) of the *Land Administration Act 1997* the Registrar shall —
- (a) register, and has power to do all things necessary to register, the division of the lease and transfer of part of the lease; and
 - (b) register any other dealing or thing that may be done in relation to each part of the pastoral lease, despite anything to the contrary in this Act.

”.

- (4) After section 81R the following section is inserted —

“

81RA. Other encumbrances in respect of fee simple in Crown land

- (1) In subsection (2) —
- “**encumbrance**” means an encumbrance (as defined in section 4(1)) that is shown on the transfer or other document by which the transfer of Crown land in fee simple is effected.
- (2) If —
- (a) the fee simple in Crown land in respect of which an encumbrance is registered is transferred under the *Land Administration Act 1997*; and
 - (b) a certificate of title is created and registered in respect of the fee simple of that former Crown land,
- the encumbrance is by operation of this subsection transferred to and applies to the fee simple when transferred in all respects as if the fee simple had been referred to in the encumbrance until that encumbrance is terminated, withdrawn, discharged, surrendered or expires.
- (3) This section does not apply to an encumbrance referred to in section 81Q or 81R.

(4) This section applies to a transfer effected on or after the coming into operation of the *Land Administration Act 1997*.

(5) Section 81S(1) is amended by inserting after “that dealing” —

“
unless the dealing is one in respect of which the Minister’s permission is not required under the *Land Administration Act 1997*

2 Repealed by the *Land Act 1933* which was repealed by the *Land Administration Act 1997* (No. 30 of 1997).

3 Section 6(2) of the *Transfer of Land Amendment Act 1996* (No. 81 of 1996) reads as follows —

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

4 Section 93(2) of the *Acts Amendment (Land Administration) Act 1997* (No. 31 of 1997) reads as follows —

“
(2) If the alienation of Crown land has resulted in the delivery of the grant in fee simple to the Registrar under section 18 of the principal Act, but the Registrar has not created and registered a certificate of title for the land under that section before the commencement of this section, that creation and registration may be completed as if that section had not been repealed.

5 Section 94(2) of the *Acts Amendment (Land Administration) Act 1997* (No. 31 of 1997) reads as follows —

“
(2) Section 19 of the principal Act continues to apply to each grant in fee to 2 or more persons in joint tenancy for any public purpose, which grant was in existence immediately before the repeal of that section, as if that section had not been repealed.

⁶ Repealed by the *Trustees Act 1962* (No. 78 of 1962).

⁷ Section 37(3) of the *Transfer of Land Amendment Act 1996* (No. 81 of 1996) reads as follows —

“

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

”

⁸ Under the *Public Sector Management Act 1994* (No. 31 of 1994) the names of departments may be changed. At the date of this reprint the former Department of Lands and Surveys is called the Department of Land Administration and its administrative head is called the Chief Executive.

⁹ Section 104(2) of the *Acts Amendment (Land Administration) Act 1997* (No. 31 of 1997) reads as follows —

“

- (2) A lease of Crown land (not being a Crown lease) granted before the commencement of this section, which lease would have been valid had it been granted as a lease under the *Land Administration Act 1997*, is validated by force of this subsection and is to be treated as if it were a lease registered under section 81Q of the principal Act as amended by this Act.

”

¹⁰ Repealed by the *Property Law Act 1969* (No. 32 of 1969).

¹¹ In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions of Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990* (No. 105 of 1990).

¹² Superseded by the *Companies (Applications of Laws) Act 1981* (No. 119 of 1981) and associated Acts and Codes.

¹³ The *Transfer of Land Act Amendment Act 1950* (No. 17 of 1950), provides as follows —

“

75. Revision of certain of the provisions of the amending Acts

- (1) By way of revision, for the purpose of reprinting, the provisions of the amending Acts are amended to the extent specified in the Schedule to this Act.

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

”

¹⁴ Section 152 of the *Transfer of Land Amendment Act 1996* (No. 81 of 1996) reads as follows —

“

152. Savings and transitional in relation to the assurance fund

- (1) In this section —
“**commencement**” means the day on which section 1 of this Act comes into operation.
- (2) The account called the “assurance fund” immediately before commencement is to be closed on commencement and the money that is in the account at the time when the account is being closed is to be credited to the Consolidated Fund.
- (3) Subsection (2) does not affect or prejudice the application of the *Interpretation Act 1984* but a right, obligation or liability of, or in respect of, the assurance fund subsisting immediately before commencement becomes, on commencement, a right, obligation or liability of, or in respect of, the State in accordance with Part XI or XII of the principal Act, as the case requires.

”

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
address	240(2)
Annuitant	4(1)
Annuity	4(1)
Approved form.....	4(1), 81K
Australian consular officer.....	145(4)
Authorised land officer	4(1)
Certificate of Crown land title	4(1)
Charge.....	4(1)
Commissioner	81K
Crown land.....	4(1)
Crown land lease.....	4(1)
Crown Lease	4(1)
Dealing.....	4(1)
Department.....	4(1)
disposition.....	242(4)
Encumbrances.....	4(1)
Endorsed	4(1)
Examiner of Titles	4(1)
Grant	4(1)
Grantor	4(1)
inspector of plans and surveys	163(2)
Instrument	4(1)
Interest	4(1)
Judge	4(1)
Land	4(1)
lot.....	129C(1d)
Management body.....	4(1)
management order.....	81K
memorandum	54(1)
Metropolitan region	4(1)
mining or petroleum rights.....	3(3)
Minister.....	4(1)
Minister for Lands	4(1)
Ministerial order	4(1)
mortgage money	126(1)
Person	4(1)
plan	136A
Profit à prendre	4(1)
Proprietor	4(1)

Transfer of Land Act 1893

Defined Terms

Public authority	4(1)
Qualified certificate of Crown land title	4(1)
Qualified valuer	4(1)
Register	4(1)
registered disposition	242(4)
repealed Act	81K
Reserve	4(1)
section 138A caveat	136K(1)
Settlement	4(1)
Sheriff	4(1)
single dwelling covenant	129C(1d)
stamped	81U(3)
statutory declaration	188(i)
Strata/survey-strata plan	4(1)
Symbol	4(1)
that section	133(3)
the document	54(4)
the relevant authority	129BB(1)(b), 136J(1)(b)
transitional period	81K
Transmission	4(1)