



Western Australia

## **Transfer of Land Amendment Act 2022**



# Transfer of Land Amendment Act 2022

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Western Australia

## Transfer of Land Amendment Act 2022

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No. 21 of 2022

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**An Act to amend the *Transfer of Land Act 1893* to —**

- **provide greater flexibility in relation to the service of notices under the Act; and**
- **remove references to duplicate certificates of title; and**
- **make consequential and other amendments to various Acts, and for related purposes.**

[Assented to 24 June 2022]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Transfer of Land Amendment Act 2022*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.



## **Part 2 — *Transfer of Land Act 1893* amended**

### **3. Act amended**

This Part amends the *Transfer of Land Act 1893*.

### **4. Section 4 amended**

(1) Delete section 4(1CA)(b) and insert:

- (b) the documents are in the same terms or substantially the same terms.

(2) After section 4(1CA) insert:

(1CB) Without limiting subsection (1CA)(b), documents are in substantially the same terms for the purposes of that provision if the documents contain exactly the same data or information apart from all or any of the following —

- (a) any signature created for or appearing on each document;
- (b) the details of any attesting witness;
- (c) the date on which the documents were signed or witnessed;
- (d) any data or information authorised or required by a taxation Act (as defined in the *Taxation Administration Act 2003* Glossary);
- (e) anything else prescribed by the regulations for the purposes of this subsection.

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**5.        Section 4A amended**

In section 4A(2) delete “48B, 70, 71B,” and insert:

70,

**6.        Section 9 amended**

After section 9(2) insert:

- (3) Nothing in this section applies to or in relation to a duplicate certificate of title issued before the day on which the *Transfer of Land Amendment Act 2022* section 10 comes into operation.

**7.        Section 10 amended**

In section 10(3):

- (a) delete “or its duplicate”;
- (b) in paragraph (b) delete “duplicate,”.

**8.        Section 23 amended**

In section 23(1) delete “and shall cause a copy of such notice to be posted in a conspicuous place at the Authority’s office”.

**9.        Section 30 amended**

- (1) Delete section 30(5)(b).

(2) After section 30(5) insert:

- (6) A number for a facsimile machine in Australia may be used for the purposes referred to in subsection (5) if —
  - (a) a caveat under this section is lodged before the day on which the *Transfer of Land Amendment Act 2022* section 9 comes into operation; and
  - (b) that number is specified in the caveat.

**10. Section 48B replaced**

Delete section 48B and insert:

**48B. No duplicate certificate of title to be issued**

The Registrar must not issue a duplicate certificate of title.

**11. Section 57 deleted**

Delete section 57.

**12. Section 59 amended**

In section 59 delete “and on the duplicate certificate of title (if any)”.

**13. Section 69 amended**

- (1) In section 69(1) delete “and its duplicate (if any)”.
- (2) In section 69(2):
  - (a) delete “and their duplicates (if any)”;
  - (b) delete “and its duplicate (if any)”.

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**14.      Section 71 amended**

In section 71 delete “and on his delivering up the duplicate (if any) of each certificate”.

**15.      Section 71A amended**

In section 71A(2) delete “Registrar shall retain the duplicate (if any) of the partially cancelled certificate of title and,” and insert:

Registrar,

**16.      Section 71B deleted**

Delete section 71B.

**17.      Section 74 deleted**

Delete section 74.

**18.      Section 74A amended**

In section 74A(1) delete “the duplicate or”.

**19.      Sections 74B to 79 deleted**

Delete sections 74B to 79.

**20.      Section 81W amended**

(1) Delete section 81W(9)(b).

(2) After section 81W(9) insert:

- (10) A number for a facsimile machine in Australia may be used for the purposes referred to in subsection (9) if —
- (a) a caveat is lodged under subsection (6) before the day on which the *Transfer of Land*

*Amendment Act 2022* section 20 comes into operation; and

- (b) that number is specified in the caveat.

**21. Section 86 amended**

- (1) In section 86(1) delete “the transferor shall deliver up to the Registrar the duplicate certificate (if any) and”.
- (2) Delete section 86(2).
- (3) In section 86(4) delete “instead of being retained by the Registrar”.

Note: The heading to amended section 86 is to read:

**Registration of transfer**

**22. Section 87 amended**

Delete section 87(1) and (2) and insert:

- (1) If a transfer purports to transfer the whole of the land mentioned in a paper title, the Registrar may, if the Registrar thinks fit, instead of cancelling the certificate of title under section 86, enter on the certificate of title a memorandum of the transfer.
- (2) If a transfer purports to transfer the whole of the land mentioned in a digital title, the Registrar may, if the Registrar thinks fit, instead of cancelling the certificate of title under section 86, enter the name of the transferee as the new proprietor on the certificate of title.

**23.        Section 105AA inserted**

After section 105 insert:

**105AA. Mortgages lodged electronically**

A mortgage must not be lodged electronically under the *Electronic Conveyancing Act 2014* unless the mortgagee —

- (a) has signed the mortgage instrument; and
- (b) holds a counterpart of the mortgage instrument signed by the proprietor of the land.

**24.        Section 106 amended**

(1) In section 106(2):

- (a) delete “Notwithstanding section 240, service” and insert:

Service

- (b) delete paragraph (d) and insert:

- (d) the notice is sent to the mortgagor or the grantor or the mortgagor’s or grantor’s transferees, as the case requires, in compliance with a way of sending notices electronically (for example, to an email address) that is prescribed by the regulations for the purposes of this paragraph.

- (2) After section 106(2) insert:
- (3) A notice may be sent under subsection (2) to the number of the facsimile machine of the mortgagor or the grantor or the mortgagor's or grantor's transferees, as the case requires, if, under subsection (2)(d) as in force immediately before the commencement of the *Transfer of Land Amendment Act 2022* section 24(1)(b), the mortgagor, the grantor or the transferee has specified in writing that notices under this section may be served by facsimile transmission.

**25. Section 121 amended**

- (1) In section 121(2):
- (a) delete "Notwithstanding section 240, service" and insert:
- Service
- (b) delete paragraph (d) and insert:
- (d) the notice is sent to the person in compliance with a way of sending notices electronically (for example, to an email address) that is prescribed by the regulations for the purposes of this paragraph.
- (2) After section 121(2) insert:
- (3) A notice may be sent under subsection (2) to the number of the person's facsimile machine if, under subsection (2)(d) as in force immediately before the

commencement of the *Transfer of Land Amendment Act 2022* section 25(1)(b), the person has specified in writing to the mortgagee or the mortgagee's transferees, as the case requires, that notices of intention under this section may be served on the person by facsimile transmission.

**26.      Section 123 amended**

In section 123:

- (a)    delete “discharged; and if the land is the subject of —”  
         and insert:

                 discharged.

- (b)    delete paragraphs (a) and (b).

**27.      Section 125 amended**

In section 125:

- (a)    delete “annuity; and if the land is the subject of —” and  
         insert:

                 annuity.

- (b)    delete paragraphs (a) and (b).

**28.      Section 126 amended**

- (1)    Delete section 126(1B).



- (2) In section 126(2):
  - (a) delete “mortgage and if the land is the subject of —”  
and insert:  
  
mortgage.
  - (b) delete paragraphs (a) and (b).

**29. Section 127 deleted**

Delete section 127.

**30. Section 133 amended**

Delete section 133(10).

**31. Section 137 amended**

- (1) Delete section 137(1D)(b).
- (2) After section 137(1D) insert:
  - (1E) A number for a facsimile machine in Australia may be used for the purposes referred to in subsection (1D) if —
    - (a) a caveat under this section is lodged before the day on which the *Transfer of Land Amendment Act 2022* section 31 comes into operation; and
    - (b) that number is specified in the caveat.

**32. Section 171 amended**

In section 171 delete “and the duplicate (if any)”.

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**33.        Section 173 amended**

In section 173 delete “and to be posted in a conspicuous place outside a post office in the neighbourhood of such land”.

**34.        Section 178 amended**

- (1) Delete section 178(2) and (3).
- (2) In section 178(4) delete the passage that begins with “replacement and” and ends with “free of charge.” and insert:

replacement.

- (3) Delete section 178(5).

Note: The heading to amended section 178 is to read:

**Certificate of title and relevant graphics may be amended or replaced on granting application**

**35.        Section 181 amended**

In section 181(1):

- (a) delete paragraph (bd);
- (b) in paragraph (bj) delete “means; and” and insert:

means and when any notice given under this Act is taken to have been received; and

**36.        Section 182A amended**

Delete section 182A(1)(b).

**37. Section 182 amended**

In section 182(1):

- (a) delete the passage that begins with “and duplicate” and ends with “the subject of —” and insert:

the date of the order, the time of its production to the Registrar and the name and address of the person in whom the order purports to vest the land, estate or interest.

- (b) delete paragraphs (a) and (b).

**38. Section 188 amended**

- (1) In section 188(3) delete “duplicate certificates (in case of paper titles) or”.
- (2) In section 188(5) delete the passage that begins with “supplied and if” and ends with “section 74B(2).” and insert:

supplied.

- (3) Delete section 188(9).

**39. Section 196 amended**

In section 196(1) delete the passage that begins with “or to any person” and ends with “pursuant to section 75;”.

**40. Section 214 amended**

In section 214(3):

- (a) delete paragraph (h);

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- (b) in paragraph (i)(iii) delete “registered;” and insert:  
  
registered.

- (c) delete paragraph (j).

**41.        Section 219 amended**

Delete section 219(3).

**42.        Section 229B amended**

- (1) In section 229B(1):

- (a) delete “title and if the land is the subject of —” and insert:  
  
title.

- (b) delete paragraphs (a) and (b).

- (2) Delete section 229B(2).

**43.        Section 232A deleted**

Delete section 232A.

**44.        Section 240 replaced**

Delete section 240 and insert:

**240.       Service of notices**

- (1) For the purposes of this Act, service of a notice on a person —
  - (a) must be effected in the manner provided for in this Act or, if the manner of service is not provided for in this Act, in a manner prescribed by the regulations; and

- (b) may be taken to have been effected for the purposes of paragraph (a) in the circumstances prescribed by the regulations.
- (2) If the Commissioner or Registrar attempts to serve a notice under this Act on a person but, for any reason, the notice is unable to be served, the Commissioner or Registrar may —
  - (a) serve a further notice on the person in the manner determined by the Commissioner or Registrar; or
  - (b) proceed without the notice being served.

**45. Section 240A amended**

In section 240A(1) in the definition of *notification details* delete paragraphs (b) and (c) and insert:

- (b) a way of receiving notices electronically (for example, an email address) that is prescribed by the regulations for the purposes of this paragraph.

Note: The heading to amended section 240A is to read:

**Notification of change of address or way of receiving notices electronically**

**46. Section 243 replaced**

Delete section 243 and insert:

**243. Registrar may cancel certificate of title when land revested in Crown**

The Registrar may, on registering a ministerial order made under the *Land Administration Act 1997*

section 82, cancel the certificate of title of the land  
revested.

**47.        Part 16 inserted**

After section 247 insert:

**Part 16 — Transitional provisions for *Transfer  
of Land Amendment Act 2022***

**248.        Transitional provision for duplicate certificates of  
title**

- (1) In this section —  
*commencement day* means the day on which the  
*Transfer of Land Amendment Act 2022* section 10  
comes into operation.
- (2) A duplicate certificate of title in effect immediately  
before the commencement day has no legal effect on  
and after the commencement day.

**249.        Transitional provision for service of documents**

- (1) In this section —  
*commencement day* means the day on which the  
*Transfer of Land Amendment Act 2022* section 44  
comes into operation.
- (2) Subsection (4) applies if —
  - (a) before the commencement day a document is  
presented for lodgment with the Authority,  
whether for the purposes of registration or  
otherwise; and
  - (b) the presentation or lodgment of the document  
causes a notice to be served under this Act (the

***notice to be served***) on or after the commencement day.

- (3) Subsection (4) also applies if —
  - (a) before the commencement day a document is lodged with the Authority; and
  - (b) a notice is to be served under this Act (the ***notice to be served***) on or after the commencement day in relation to the lodged document.
- (4) The notice to be served may be served under this Act as in force —
  - (a) immediately before the commencement day; or
  - (b) at the time of service.

## **Part 3 — Amendments to other Acts**

### **Division 1 — *Community Titles Act 2018* amended**

**48. Act amended**

This Division amends the *Community Titles Act 2018*.

**49. Section 52 amended**

Delete section 52(3).

### **Division 2 — *Criminal Property Confiscation Act 2000* amended**

**50. Act amended**

This Division amends the *Criminal Property Confiscation Act 2000*.

**51. Section 113 amended**

- (1) In section 113(3) delete “certificate of title or any duplicate instrument for the purposes of entering on the duplicate certificate or” and insert:

instrument for the purposes of entering on the

- (2) In section 113(4):
- (a) delete “duplicate certificate of title or” (first occurrence);
  - (b) in paragraphs (a) and (b) delete “the duplicate certificate of title or”.
- (3) Delete section 113(5).



**Division 3 — *Escheat (Procedure) Act 1940* amended**

**52. Act amended**

This Division amends the *Escheat (Procedure) Act 1940*.

**53. Section 10 amended**

In section 10(2) delete the passage that begins with “transfer and, notwithstanding” and continues to the end of the subsection and insert:

transfer.

**Division 4 — *Fire and Emergency Services Act 1998* amended**

**54. Act amended**

This Division amends the *Fire and Emergency Services Act 1998*.

**55. Section 36ZC amended**

In section 36ZC(3)(c) delete “a duplicate certificate of title or other” and insert:

any

**Division 5 — *First Home Owner Grant Act 2000* amended**

**56. Act amended**

This Division amends the *First Home Owner Grant Act 2000*.

**57. Section 58 amended**

Delete section 58(3)(c) and insert:

- (c) authorising the Registrar to register a transfer to a purchaser without requiring any document; and

**Division 6 — *Local Government Act 1995* amended**

**58. Act amended**

This Division amends the *Local Government Act 1995*.

**59. Schedule 6.2 clause 1 amended**

Delete Schedule 6.2 clause 1(2) and insert:

- (2) The Registrar of Titles, upon production of the lease, must register it if —
  - (a) the lease is of land that is subject to the provisions of the *Transfer of Land Act 1893*; and
  - (b) the term of the lease exceeds 3 years.

**60. Schedule 6.3 clause 4 amended**

Delete Schedule 6.3 clause 4(3).

**61. Schedule 6.3 clause 8 amended**

Delete Schedule 6.3 clause 8(2).

**Division 7 — *Strata Titles Act 1985* amended**

**62. Act amended**

This Division amends the *Strata Titles Act 1985*.

**63. Section 58 amended**

Delete section 58(3).

**64. Section 105 amended**

In section 105(5)(a)(ii) delete “a duplicate or”.

**65. Section 183 amended**

Delete section 183(17)(b).

**66. Schedule 2A clause 21Z amended**

Delete Schedule 2A clause 21Z(2).

**67. Schedule 2A clause 31E amended**

Delete Schedule 2A clause 31E(2).

**68. Schedule 2A clause 31K amended**

Delete Schedule 2A clause 31K(2).

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