

TRANSFER OF LAND.

No. 14 of 1972.

AN ACT to amend the Transfer of Land Act,
1893-1969.

[Assented to 25th May, 1972.]

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

1. (1) This Act may be cited as the *Transfer of Land Act Amendment Act, 1972*. Short title and citation.

(2) In this Act the Transfer of Land Act, 1893-1969 is referred to as the principal Act. Reprinted as approved for reprint 5th July, 1962 and amended by Acts Nos. 113 of 1965 and 28 and 88 of 1969.

(3) The principal Act as amended by this Act may be cited as the Transfer of Land Act, 1893-1972.

S. 6 repealed
and
re-enacted.

2. Section 6 of the principal Act is repealed and re-enacted as follows—

Deputy Com-
missioner of
Titles.

6. (1) Subject to subsection (2) of this section, the Governor may, under and subject to the Public Service Act, 1904, appoint a person to be Deputy Commissioner of Titles.

(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 five 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) of this section.

(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.

3. Section 9 of the principal Act is amended by adding after the passage "Commissioner)" in line four, the passage "and of the Deputy Commissioner of Titles (hereinafter called the Deputy Commissioner)". S. 9
amended.

4. Section 129C of the principal Act is amended— S. 129C
amended.

(a) as to subsection (1)—

- (i) by adding after the word "subject", in line one, the words "to an easement or";
- (ii) by adding after the word "partially", in line six, the passage "extinguish,";
- (iii) by adding after the word "the", in line seven, the words "easement or";
- (iv) by adding after the word "reason", in line eight, the passage "of any change in the user of any land to which the easement or the benefit of the restriction is annexed, or";
- (v) by adding after the word "the", in line eleven, the words "easement or";

- (vi) by adding after the word “entitled”, in line twenty-one, the words “to the easement or”;
 - (vii) by adding after the word “which”, in line twenty-four, the words “the easement or”;
 - (viii) by adding after the word “being”, in line twenty-five, the passage “wholly or partially extinguished,”;
 - (ix) by adding after the word “have”, in line twenty-eight, the words “abandoned the easement or to have”;
 - (x) by adding after the word “proposed”, in line thirty, the passage “extinguishment,”; and
 - (xi) by adding after the word “entitled”, in line thirty-two, the words “to the easement or”;
- (b) as to subsection (2), by adding after the word “enforce”, in line two, the passage “an easement, or to enforce any rights arising out of the breach of”;
- (c) as to subsection (3)—
- (i) by adding after the word “affected”, in line four, the words “by an easement or”;
 - (ii) by adding after paragraph (a) a new paragraph as follows—
 - (aa) what is the nature and extent of the easement and whether the same is enforceable and if so by whom; or ; and
 - (iii) by adding after the word “not”, in line eleven, the words “any easement or”;

(d) as to subsection (5)—

- (i) by substituting for the word “registered”, in line two the words “entered in the register book”;
- (ii) by adding after the word “then”, in line three, the words “entitled or thereafter becoming entitled to the easement or”; and
- (iii) by adding after the word “thereby”, in line five, the passage “extinguished,” ; and

(e) as to subsection (6), by adding after the word “applies”, in line one, the words “to easements and”.

5. Subsection (1) of section 133 of the principal Act is amended by adding after the word “Court” in line five the words “or out of the District Court of Western Australia”. S. 133
amended.

6. Section 181 of the principal Act is repealed and re-enacted as follows— S. 181
repealed and
re-enacted.

181. The Commissioner may, with the approval of the Governor make regulations for or with respect to— Regulations.

- (a) the parcels of land that may be included in one certificate of title;
- (b) the medium in which documents, applications and instruments presented for registration or lodgment shall be written and executed and the size and quality of paper to be used;
- (c) prescribing the fees which may be charged by the Registrar and the contributions payable to the Assurance Fund;

- (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 to this Act; and
- (e) all matters and things authorised to be prescribed or necessary or expedient to be prescribed to give effect to this Act.

S. 229A
amended.

7. Section 229A of the principal Act is amended by repealing and re-enacting subsection (2) as follows—

(2) If the Commissioner is satisfied that the easement has not been used or enjoyed for a period of not less than twenty 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. .

S. 230
repealed and
re-enacted.

8. Section 230 of the principal Act is repealed and re-enacted as follows—

Abandon-
ment of
easement
may be
presumed
after twenty
years' adverse
possession.

230. Upon an application to bring land under this Act, if it shall be proved to the satisfaction of the Commissioner that any easement formerly affecting such land has not been used or enjoyed for a period of not less than twenty years the Commissioner may, notwithstanding section sixty-nine of this Act, at his discretion issue a certificate of title for such land without notifying such easement as an encumbrance, and thereafter the same shall not be preserved by section sixty-eight of this Act. .