

WESTERN AUSTRALIA

**LAND AMENDMENT
(TRANSMISSION OF INTERESTS)
ACT 1992**

No. 33 of 1992

AN ACT to amend the *Land Act 1933* and to validate and deal with certain leases or other interests.

[Assented to 16 June 1992.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Land Amendment (Transmission of Interests) Act 1992*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act, the *Land Act 1933** is referred to as the principal Act.

[*Reprinted as at 2 May 1985.

For subsequent amendments, see 1990 Index to Legislation of Western Australia, p. 84.]

Section 34B amended

4. Section 34B of the principal Act is amended—

(a) in subsection (1) by—

(i) deleting “and any lease” and substituting the following—

“ but any estate or interest ”;

(ii) inserting after “lawfully granted over” the following—

“ or caveat lodged in respect of ”;

(iii) deleting the passage beginning with “shall continue” and ending with “Her Majesty were the lessor.” and substituting the following—

“ shall continue, in the case of land which—

(a) remains reserved under this Act;

(b) becomes Crown land; or

(c) having become Crown land, is subsequently reserved under this Act,

subject to and in accordance with the terms of that estate or interest or subject to that caveat as if—

(d) that land not being vested in another person under an Order made under section 33 (2), Her Majesty; or

(e) that land being vested in another person under an Order made under section 33 (2), the other person,

were the person in whom that land was so vested at the time when that estate or interest was created or the estate or interest claimed by that caveat was created, as the case requires. ”;

and

(b) in subsection (2) by deleting the passage beginning with “the person thereto” and ending with “by Her Majesty.” and substituting the following—

“ each such person on any other person shall, in the case of land which—

(a) remains reserved under this Act;

(b) becomes Crown land; or

(c) having become Crown land, is subsequently reserved under this Act,

be enforceable, subject to its terms, as if it had been conferred directly—

(d) that land not being vested in another person under an Order made under section 33 (2), by Her Majesty; or

- (e) that land being vested in another person under an Order made under section 33 (2), by the other person. ”.

Section 37AA inserted

5. The principal Act is amended by inserting after section 37 the following section—

Continuation of estates or interests or caveats on cancellation, or change of purpose of, reserves

“ 37AA. (1) When the reservation under this Act, or the dedication to the purposes of, or the vesting under, another Act, of any land is cancelled, any estate or interest or caveat lawfully granted over or lodged in respect of the whole or any part of that land shall continue in the case of land which—

- (a) becomes Crown land; or
- (b) having become Crown land, is subsequently reserved under this Act,

subject to and in accordance with the terms of that estate or interest or subject to that caveat as if—

- (c) that land not being vested in a person under an Order made under section 33 (2), Her Majesty; or
- (d) that land being vested in a person under an Order made under section 33 (2), the person,

were the person in whom that land was so vested at the time when that estate or interest was created or the estate or interest claimed by the caveat was created, as the case requires.

(2) When the purpose to which any land reserved under this Act is dedicated or for which any land is reserved under this Act is changed, any estate or interest lawfully granted over or caveat lodged in respect of the whole or any part of that land shall continue, subject to and in accordance with the terms of that estate or interest or subject to that caveat, as if Her Majesty were the person in whom that land was vested at the time when that estate or interest was created or the estate or interest claimed by that caveat was created, as the case requires. ”.

Sections 149A and 149B inserted

6. The principal Act is amended by inserting after section 149 the following sections—

Transfer of estates, interests and caveats to Crown Grants

“ 149A. (1) Before a Crown Grant is issued in respect of any land in respect of which an estate or interest or caveat continues under section 34B or 37AA—

- (a) all instruments creating or evidencing any estates or interests in the land that are sought to be endorsed on the Crown Grant in accordance with a determination made under this subsection shall be produced to the Minister; and

(b) the Minister shall—

- (i) determine which, if any, of the instruments produced to the Minister under this subsection, and which, if any, of any caveats lodged in respect of the land, shall be endorsed on the Crown Grant; and
- (ii) cause a note of the determination referred to in subparagraph (i) to be made on all instruments and caveats which shall be endorsed on the Crown Grant.

(2) An estate or interest created or evidenced by an instrument, or a caveat, endorsed on a Crown Grant in accordance with a determination made under subsection (1) continues and applies to the Crown Grant and the land thereby granted or the relevant part thereof.

(3) The Minister may, before making a determination under subsection (1), require each person known to the Minister to have an estate or interest in the relevant land and each caveator claiming an estate or interest in that land to make a statutory declaration stating the nature of that estate or interest and the title thereto or the nature of the estate or interest so claimed and the claimed title thereto, as the case requires.

(4) On the delivery to the Registrar of Titles of—

- (a) a Crown Grant;
- (b) any relevant internal interests plan referred to in section 149B; and

- (c) each instrument creating or evidencing an estate or interest, and each caveat, endorsed on the Crown Grant referred to in paragraph (a),

the Registrar of Titles shall endorse a memorandum of each estate or interest referred to in paragraph (c) as an encumbrance, and a memorandum of each caveat referred to in that paragraph, on the relevant folium of the register book on the registration of the Crown Grant referred to in paragraph (a).

(5) On the endorsement of a memorandum under subsection (4), the encumbrance or caveat to which the memorandum relates is by operation of this subsection transferred to and applies to the relevant certificate of title and to the land therein contained or the relevant part thereof in all respects as if that certificate of title had been referred to in the relevant instrument or that caveat.

(6) When one or more Crown Grants are issued in respect of one or more parts of a piece of land, subsections (2) and (5) apply to that part or each of those parts as if the references in those subsections to "the land thereby granted" were references to that part or each of those parts.

(7) Encumbrances and caveats, memoranda of which are endorsed under subsection (4), shall for the purposes of the *Transfer of Land Act 1893* when the relevant instruments or those caveats are endorsed on the certificate of title be entitled to priority as between themselves according to the order, and as from the dates and times, of their respective—

- (a) production for registration under this Act or the *Transfer of Land Act 1893*, whichever first occurs; or

(b) in the case of caveats, lodging under this Act.

(8) If the Minister does not make a determination under subsection (1) for endorsement on the Crown Grant of an instrument creating an estate or interest in, or of a caveat lodged in respect of, any land, that estate or interest continues subject to and in accordance with the terms of that estate or interest or subject to that caveat, but a Crown Grant shall not be issued in respect of the land until that estate or interest terminates or that caveat lapses or is removed or is withdrawn, as the case requires.

(9) A reference in this section to an instrument includes a reference to a certified copy of the instrument.

**Matters ancillary to transfer of estates,
interests and caveats to Crown Grants**

149B. (1) A person in whom land is or was vested under an Order made under section 33 (2) or who has or had control of land under an Order in Council made under section 34 as in force before the coming into operation of section 9 of the *Acts Amendment (Reserves) Act 1982* or under an Act other than this Act and each other person having an estate or interest in the land (in this subsection called "the principal estate or interest") and a caveator in respect of the land shall, when requested by the chief executive officer of the Department to do so, submit to that chief executive officer in a form approved by that chief executive officer—

(a) all available documentary evidence concerning the principal estate or interest or the caveat, as the case requires, and concerning each estate or interest (in this

section called a “dependent estate or interest”) to which the principal estate or interest, or the claimed estate or interest, of that person in the land is subject;

- (b) if a dependent estate or interest relates to part only of the piece of land the subject of the principal estate or interest, or the claimed estate or interest, of that person, a plan describing to the satisfaction of that chief executive officer the location and boundaries of that part;
- (c) such other information as that chief executive officer requires; and
- (d) a statutory declaration verifying that—
 - (i) all dependent estates or interests of that person in the land have been fully disclosed under this subsection; and
 - (ii) the evidence, plan or plans and any other information submitted under this subsection are accurate and complete.

(2) When all the estates, interests or caveats to which land referred to in subsection (1) is subject or by which it is affected relate to the whole of that land, a Crown Grant of that land may be issued with adjustments showing locations and boundaries different from those set out or described in the instrument creating or evidencing each estate or interest, or in each caveat, referred to in that subsection if that difference is due to—

- (a) the inaccuracy or inadequacy of any description, diagram, plan or survey of that land;

(b) any discrepancy between the actual measurements or bearings at any time made or marked on the ground and those represented in that instrument or caveat;
or

(c) any prescribed circumstance,

and, on the issue of that Crown Grant, that estate or interest or caveat and all dependent estates or interests relating to the whole of that land apply to the land the subject of that Crown Grant instead of to the land the subject of that instrument or caveat.

(3) When not all of the estates, interests or caveats to which land referred to in subsection (1) is subject or by which it is affected relate to the whole of that land, the Minister shall prepare from the evidence, plan or plans and other information submitted under that subsection a plan showing the location and boundaries of the land—

(a) the subject of each such estate or interest;
or

(b) affected by each such caveat,

in respect of which an endorsement may be made on the relevant Crown Grant in accordance with a determination made under section 149A (1).

(4) The Minister may prepare an internal interests plan with adjustments showing the location and boundaries of the land the subject of each relevant estate or interest, or affected by each relevant caveat, different from the location and boundaries set out or

described in the instrument creating or evidencing that estate or interest, or in that caveat, if that difference is due to—

- (a) the inaccuracy or inadequacy of any description, diagram, plan or survey of that land;
- (b) any discrepancy between the actual measurements or bearings at any time made or marked on the ground and those represented in that instrument or caveat; or
- (c) any prescribed circumstance,

and, on the endorsement of that estate or interest or that caveat on the relevant Crown Grant in accordance with a determination made under section 149A (1), that estate or interest or that caveat applies to the relevant piece of land shown on the internal interests plan as being subject to that estate or interest or as being affected by that caveat, as the case requires, instead of applying to the piece of land to which that instrument or caveat relates.

(5) Notwithstanding anything in the *Transfer of Land Act 1893*, an action shall not be brought against the Registrar of Titles as nominal defendant for payment out of the assurance fund referred to in that Act by reason or in respect of any inaccuracy or inadequacy in any diagram, description, plan or survey of land used in respect of any estate or interest or caveat—

- (a) on an instrument creating or evidencing which estate or interest, or on which caveat, the relevant determination made under section 149A (1) is noted;

- (b) which is passed by an instrument registered, or a caveat lodged, under this Act or the *Transfer of Land Act 1893*;
- (c) a memorandum of which is endorsed under section 149A (4); and
- (d) which applies to the relevant Crown Grant and the land thereby granted or the relevant part thereof,

or which is based on or arises out of any such estate or interest or caveat.

(6) When an internal interests plan is delivered to the Registrar of Titles with the Crown Grant to which it relates—

- (a) an authorized land officer shall, if he is satisfied that the internal interests plan adequately sets out or describes for the purposes of the *Transfer of Land Act 1893* the location and boundaries of the land the subject of each estate or interest, or affected by each caveat, referred to in subsection (3), approve the internal interests plan; and
- (b) in the case of a Crown Grant issued to a State agency or instrumentality, the Minister may within the period ending—
 - (i) 5 years after that issue; or
 - (ii) when the State agency or instrumentality disposes of the title conferred by that Crown Grant,

whichever is the shorter period, make such adjustments, with or without the consent of each of the holders of the estates or interests, or of each of the caveators of the caveats, referred to in paragraph (a), to the locations and boundaries of those estates or interests, or claimed estates or interests, as the Minister considers necessary by preparing a revised internal interests plan.

(7) If a revised internal interests plan is delivered to the Registrar of Titles, an authorized land officer shall, if he is satisfied the revised internal interests plan adequately sets out or describes for the purposes of the *Transfer of Land Act 1893* the location and boundaries of the land the subject of each estate or interest, or affected by each caveat, referred to in subsection (3), approve the revised internal interests plan.

(8) On the approval under subsection (6) (a) or (7) of an internal interests plan or a revised internal interests plan, the location and boundaries of the land the subject of each estate or interest, or affected by each caveat, to which the internal interests plan or revised internal interests plan relates are adjusted accordingly.

(9) When a diagram or plan of subdivision of land drawn up in accordance with an internal interests plan or revised internal interests plan is received or deposited in the Office of Titles, an authorized land officer may approve that diagram or plan of subdivision and, if he does so, the Registrar of Titles shall issue certificates of title for lots shown on that diagram or plan of subdivision notwithstanding the endorsement on the relevant Crown Grant of any instrument or caveat in accordance with a

determination made under section 149A (1) and without the consent of any person entitled to the benefit of—

- (a) the estate or interest created or evidenced by the instrument; or
- (b) the caveat,

as the case requires.

(10) The Minister may make, without any obligation to make or pay compensation, an adjustment under subsection (4) or (6) (b) notwithstanding that the adjustment affects, or may affect, the value of—

- (a) one or more of the relevant estates or interests; or
- (b) one or more of the estates or interests claimed in any relevant caveat.

(11) The Minister shall ensure that an adjustment made under subsection (4) or (6) (b) is made in conformity with sound planning and land management principles and so as to cause as little detriment as possible to the holder of any estate or interest, or to any caveator, affected by that adjustment.

(12) Before a revised internal interests plan is delivered to the Registrar of Titles, the Minister may obtain the approval of the State Planning Commission under section 20 of the *Town Planning and Development Act 1928* to the plan or diagram of subdivision referred to in subsection (9), but nothing in this subsection makes it necessary for any internal interests plan or revised internal interests plan to be approved by the State Planning Commission.

(13) If the Minister elects not to seek the approval of the State Planning Commission under section 20 of the *Town Planning and Development Act 1928*, the plan or diagram of subdivision shall still be registered in the Office of Titles without the approval of the State Planning Commission.

(14) In this section—

“internal interests plan” means plan prepared under subsection (3);

“revised internal interests plan” means revised internal interests plan prepared under subsection (6) (b);

“the State Planning Commission” means the State Planning Commission established by section 4 of the *State Planning Commission Act 1985*,

and a reference to an instrument includes a reference to a certified copy of the instrument. ”.

Section 172 amended

7. Section 172 of the principal Act is amended in paragraph (c) by inserting after “this Act” the following—

“ , and any such form may be used with such variations as circumstances may render necessary in any particular case ”.

Validation

8. (1) Each estate or interest or caveat in respect of the land that is at the commencement of this Act Swan Location 11526 and the subject of Certificate of Title Volume 1898 Folio 640 that

was lawfully created or lodged prior to the issue of a Crown Grant of that land shall—

- (a) be deemed to have continued and been effectual to pass the relevant estate or interest or maintain the claim set out in the relevant caveat; and
- (b) subject to subsection (2), be dealt with as though each instrument for that estate or interest and each such caveat had been endorsed on that Crown Grant in accordance with a determination made under section 149A (1) of the principal Act prior to the issue of that Crown Grant.

(2) Notwithstanding subsection (1), a memorandum of an estate or interest, or a caveat, referred to in and continued by that subsection shall be endorsed on the relevant folium of the Register Book under section 149A (4) of the principal Act as at the date and time of delivery to the Registrar of Titles of—

- (a) the relevant internal interests plan within the meaning of section 149B of the principal Act; and
- (b) all relevant instruments and caveats referred to in section 149A (4) of the principal Act, or certified copies of those instruments or caveats,

and for the purpose of determining priority as between—

- (c) an estate, interest or caveat referred to in and continued by subsection (1);
- and
- (d) an estate, interest or caveat a memorandum of which is endorsed under the *Transfer of Land Act 1893*,

the instrument for the estate or interest, or the caveat, referred to in paragraph (c) shall be deemed to have been registered or lodged under the *Transfer of Land Act 1893* at the date and time of that delivery.

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(3) Notwithstanding subsection (1), an estate or interest or caveat referred to in, and continued by, that subsection shall be subject to any estate or interest or caveat, a memorandum of which has been endorsed under section 149A (4) of the principal Act prior to the date and time referred to in subsection (2).

(4) The provisions of section 149A and 149B of the principal Act, as modified by this section, apply to and in relation to an estate, interest or caveat referred to in, and continued by, subsection (1).

(5) Words and expressions used in this section shall be construed as if this section were a provision of the principal Act.
