

Transfer of Land Amendment Bill 2018

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Transfer of Land Act 1893</i> amended		
3.	Act amended	3
4.	Section 4 amended	3
5.	Section 4A amended	3
6.	Section 9 amended	4
7.	Section 10 amended	4
8.	Section 23 amended	4
9.	Section 30 amended	4
10.	Section 48B replaced	5
	48B. No duplicate certificate of title to be issued	5
11.	Section 57 deleted	5
12.	Section 59 amended	5
13.	Section 69 amended	5
14.	Section 71 amended	5
15.	Section 71A amended	5
16.	Section 71B deleted	5
17.	Section 74 deleted	6
18.	Section 74A amended	6
19.	Sections 74B to 79 deleted	6
20.	Section 81W amended	6
21.	Section 86 amended	6
22.	Section 87 amended	7
23.	Section 105AA inserted	7
	105AA. Mortgages lodged electronically	7
24.	Section 106 amended	8

Contents

25.	Section 121 amended	9
26.	Section 123 amended	10
27.	Section 125 amended	10
28.	Section 126 amended	10
29.	Section 127 deleted	10
30.	Section 133 amended	11
31.	Section 137 amended	11
32.	Section 171 amended	11
33.	Section 173 deleted	11
34.	Section 178 amended	11
35.	Section 181 amended	12
36.	Section 182A amended	12
37.	Section 182 amended	12
38.	Section 188 amended	12
39.	Section 196 amended	13
40.	Section 214 amended	13
41.	Section 219 amended	13
42.	Section 229B amended	14
43.	Section 232A deleted	14
44.	Section 240 replaced	14
	240. Service of notices	14
45.	Section 240A amended	15
46.	Section 243 replaced	15
	243. Registrar may cancel certificate of title when land revested in Crown	15
47.	Part 16 inserted	16
	Part 16 — Transitional provisions for <i>Transfer of Land Amendment Act 2018</i>	
	248. Transitional provision for duplicate certificates of title	16
	249. Transitional provision for service of documents	16
	Part 3 — Amendments to other Acts	
	Division 1 — <i>Criminal Property Confiscation Act 2000</i> amended	
48.	Act amended	18
49.	Section 113 amended	18

	Division 2 — <i>Escheat (Procedure) Act 1940</i>	
	amended	
50.	Act amended	18
51.	Section 10 amended	19
	Division 3 — <i>Fire and Emergency Services</i>	
	<i>Act 1998</i> amended	
52.	Act amended	19
53.	Section 36ZC amended	19
	Division 4 — <i>First Home Owner Grant Act 2000</i>	
	amended	
54.	Act amended	19
55.	Section 58 amended	19
	Division 5 — <i>Local Government Act 1995</i>	
	amended	
56.	Act amended	20
57.	Schedule 6.2 amended	20
58.	Schedule 6.3 amended	20
	Division 6 — <i>Strata Titles Act 1985</i> amended	
59.	Act amended	20
60.	Section 30 amended	20
61.	Section 105 amended	21
62.	Schedule 2A amended	21

Western Australia

LEGISLATIVE ASSEMBLY

Transfer of Land Amendment Bill 2018

A Bill for

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.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Transfer of Land Amendment Act 2018*.

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.

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

2 **3. Act amended**

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

4 **4. Section 4 amended**

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

6
7 (b) the documents are in the same terms or
8 substantially the same terms.

9
10 (2) After section 4(1CA) insert:

11
12 (1CB) Without limiting subsection (1CA)(b), documents are
13 in substantially the same terms for the purposes of that
14 provision if the documents contain exactly the same
15 data or information apart from all or any of the
16 following —

- 17 (a) any signature created for or appearing on each
18 document;
- 19 (b) the details of any attesting witness;
- 20 (c) the date on which the documents were signed
21 or witnessed;
- 22 (d) any data or information authorised or required
23 by a taxation Act (as defined in the *Taxation*
24 *Administration Act 2003* Glossary);
- 25 (e) anything else prescribed by the regulations for
26 the purposes of this subsection.
27

28 **5. Section 4A amended**

29 In section 4A(2) delete “71B,”.

s. 6

1 **6. Section 9 amended**

2 After section 9(2) insert:

3

- 4 (3) Nothing in this section applies to or in relation to a
5 duplicate certificate of title issued before the *Transfer*
6 of *Land Amendment Act 2018* section 10 comes into
7 operation.
8

9 **7. Section 10 amended**

10 In section 10(3):

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

13 **8. Section 23 amended**

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

16 **9. Section 30 amended**

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

18 (2) After section 30(5) insert:

19

20 (6) If —

- 21 (a) a caveat under this section is lodged before the
22 day on which the *Transfer of Land Amendment*
23 Act 2018 section 9 comes into operation; and
24 (b) a number for a facsimile machine in Australia
25 is specified in the caveat,

26 that number may be used for the purposes referred to in
27 subsection (5).
28

1 **10. Section 48B replaced**

2 Delete section 48B and insert:

3

4 **48B. No duplicate certificate of title to be issued**

5 The Registrar must not issue a duplicate certificate of
6 title.

7

8 **11. Section 57 deleted**

9 Delete section 57.

10 **12. Section 59 amended**

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

13 **13. Section 69 amended**

14 (1) In section 69(1) delete “and its duplicate (if any)”.

15 (2) In section 69(2):

16 (a) delete “and their duplicates (if any)”;

17 (b) delete “and its duplicate (if any)”.

18 **14. Section 71 amended**

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

21 **15. Section 71A amended**

22 Delete section 71A(2).

23 **16. Section 71B deleted**

24 Delete section 71B.

s. 17

1 **17. Section 74 deleted**

2 Delete section 74.

3 **18. Section 74A amended**

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

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

6 Delete sections 74B to 79.

7 **20. Section 81W amended**

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

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

10

11 (10) If —

12 (a) a caveat is lodged under subsection (6) before
13 the day on which the *Transfer of Land*
14 *Amendment Act 2018* section 20 comes into
15 operation; and

16 (b) a number for a facsimile machine in Australia
17 is specified in the caveat,

18 that number may be used for the purposes referred to in
19 subsection (9).
20

21 **21. Section 86 amended**

22 (1) In section 86(1) delete “the transferor shall deliver up to the
23 Registrar the duplicate certificate (if any) and”.

24 (2) Delete section 86(2).

25 (3) In section 86(4) delete “instead of being retained by the
26 Registrar”.

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

28 **Registration of transfer**

1 **22. Section 87 amended**

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

3

4 (1) If a transfer purports to transfer the whole of the land
5 mentioned in a paper title, the Registrar may, if the
6 Registrar thinks fit, instead of cancelling the certificate
7 of title under section 86, enter on the certificate of title
8 a memorandum of the transfer.

9 (2) If a transfer purports to transfer the whole of the land
10 mentioned in a digital title, the Registrar may, instead
11 of cancelling the certificate of title under section 86,
12 enter the name of the transferee as the new proprietor
13 on the certificate of title.

14

15 **23. Section 105AA inserted**

16 After section 105 insert:

17

18 **105AA. Mortgages lodged electronically**

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

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

25

s. 24

- 1 **24. Section 106 amended**
- 2 (1) In section 106(2):
- 3 (a) delete “Notwithstanding section 240, service” and
- 4 insert:
- 5
- 6 Service
- 7
- 8 (b) delete paragraph (d) and insert:
- 9
- 10 (d) the notice is sent to the mortgagor or the
- 11 grantor or the mortgagor’s or grantor’s
- 12 transferees, as the case requires, in compliance
- 13 with a way of sending notices electronically
- 14 (for example, to an email address) that is
- 15 prescribed by the regulations for the purposes
- 16 of this paragraph.
- 17
- 18 (2) After section 106(2) insert:
- 19
- 20 (3) A notice may be sent under subsection (2) to the
- 21 number of the facsimile machine of the mortgagor or
- 22 the grantor or the mortgagor’s or grantor’s transferees,
- 23 as the case requires, if, under subsection (2)(d) as in
- 24 force immediately before the commencement of the
- 25 *Transfer of Land Amendment Act 2018*
- 26 section 24(1)(b), the mortgagor, the grantor or the
- 27 transferee has specified in writing that notices under
- 28 this section may be served by facsimile transmission.
- 29

1 **25. Section 121 amended**

2 (1) In section 121(2):

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

5

6 Service

7

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

9

10 (d) the notice is sent to the person in compliance
11 with a way of sending notices electronically
12 (for example, to an email address) that is
13 prescribed by the regulations for the purposes
14 of this paragraph.

15

16 (2) After section 121(2) insert:

17

18 (3) A notice may be sent under subsection (2) to the
19 number of the person’s facsimile machine if, under
20 subsection (2)(d) as in force immediately before the
21 commencement of the *Transfer of Land Amendment*
22 *Act 2018* section 25(1)(b), the person has specified in
23 writing to the mortgagee or the mortgagee’s
24 transferees, as the case requires, that notices under
25 subsection (2) may be served on the person by
26 facsimile transmission.

27

s. 26

1 **26. Section 123 amended**

2 In section 123:

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

5
6 discharged.

7
8 (b) delete paragraphs (a) and (b).

9 **27. Section 125 amended**

10 In section 125:

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

13
14 annuity.

15
16 (b) delete paragraphs (a) and (b).

17 **28. Section 126 amended**

18 (1) Delete section 126(1B).

19 (2) In section 126(2):

20 (a) delete “mortgage and if the land is the subject of —”
21 and insert:

22
23 mortgage.

24
25 (b) delete paragraphs (a) and (b).

26 **29. Section 127 deleted**

27 Delete section 127.

1 **30. Section 133 amended**

2 Delete section 133(10).

3 **31. Section 137 amended**

4 (1) Delete section 137(1D)(b).

5 (2) After section 137(1D) insert:

6

7 (1E) If—

8 (a) a caveat under this section is lodged before the
9 day on which the *Transfer of Land Amendment*
10 *Act 2018* section 31 comes into operation; and

11 (b) a number for a facsimile machine in Australia
12 is specified in the caveat,

13 that number may be used for the purposes referred to in
14 subsection (1D).

15

16 **32. Section 171 amended**

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

18 **33. Section 173 deleted**

19 Delete section 173.

20 **34. Section 178 amended**

21 (1) Delete section 178(2) and (3).

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

24

25 replacement.

26

s. 35

1 (3) Delete section 178(5).

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

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

5 **35. Section 181 amended**

6 In section 181(1):

7 (a) delete paragraph (bd);

8 (b) in paragraph (bj) delete “means; and” and insert:

9
10 means and when any notice given under this Act is taken
11 to have been received; and
12

13 **36. Section 182A amended**

14 Delete section 182A(1)(b).

15 **37. Section 182 amended**

16 In section 182(1):

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

19
20 the date of the order, the time of its production to the
21 Registrar and the name and address of the person in
22 whom the order purports to vest the land, estate or
23 interest.
24

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

26 **38. Section 188 amended**

27 (1) In section 188(3) delete “duplicate certificates (in case of paper
28 titles) or”.

1 (2) In section 188(5) delete the passage that begins with “supplied
2 and if” and ends with “section 74B(2).” and insert:

3

4 supplied.

5

6 (3) Delete section 188(9).

7 **39. Section 196 amended**

8 In section 196(1) delete “caveat, by or in consequence of the
9 registration of a new certificate of title in the name of any
10 registered proprietor pursuant to section 75;” and insert:

11

12 caveat;

13

14 **40. Section 214 amended**

15 In section 214(3):

16 (a) delete paragraph (h);

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

18

19 registered.

20

21 (c) delete paragraph (j).

22 **41. Section 219 amended**

23 Delete section 219(3).

s. 42

1 **42. Section 229B amended**

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

3 (a) delete “title and if the land is subject of —” and insert:
4
5 title.

6
7 (b) delete paragraphs (a) and (b).

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

9 **43. Section 232A deleted**

10 Delete section 232A.

11 **44. Section 240 replaced**

12 Delete section 240 and insert:
13

14 **240. Service of notices**

15 (1) For the purposes of this Act, service of a notice on a
16 person —

17 (a) must be effected in the manner provided for in
18 this Act or, if the manner of service is not
19 provided for in this Act, in a manner prescribed
20 by the regulations; and

21 (b) may be taken to have been effected for the
22 purposes of paragraph (a) in the circumstances
23 prescribed by the regulations.

- 1 (2) If the Commissioner or Registrar attempts to serve a
2 notice under this Act on a person but, for any reason,
3 the notice is unable to be served, the Commissioner or
4 Registrar may —
- 5 (a) serve a further notice on the person in the
6 manner determined by the Commissioner or
7 Registrar; or
- 8 (b) proceed without the notice being served.
- 9

10 **45. Section 240A amended**

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

13

- 14 (b) a way of receiving notices electronically (for
15 example, an email address) that is prescribed by
16 the regulations for the purposes of this
17 paragraph.
- 18

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

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

22 **46. Section 243 replaced**

23 Delete section 243 and insert:

24

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

27 The Registrar may, on registering a ministerial order
28 made under the *Land Administration Act 1997*
29 section 82, cancel the certificate of title of the land
30 revested.

31

1 **47. Part 16 inserted**

2 After section 247 insert:

3

4 **Part 16 — Transitional provisions for *Transfer***
5 ***of Land Amendment Act 2018***

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

8 (1) In this section —

9 *commencement day* means the day on which the
10 *Transfer of Land Amendment Act 2018* section 10
11 comes into operation.

12 (2) A duplicate certificate of title in effect immediately
13 before the commencement day has no legal effect on
14 and after the commencement day.

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

16 (1) In this section —

17 *commencement day* means the day on which the
18 *Transfer of Land Amendment Act 2018* section 44
19 comes into operation.

20 (2) Subsection (4) applies if —

21 (a) before the commencement day a document is
22 presented for lodgment with the Authority,
23 whether for the purposes of registration or
24 otherwise; and

25 (b) the presentation or lodgment of the document
26 causes a notice to be served under this Act (the
27 *notice to be served*) on or after the
28 commencement day.

- 1 (3) Subsection (4) also applies if —
- 2 (a) before the commencement day a document has
- 3 been lodged with the Authority; and
- 4 (b) a notice is to be served under this Act (the
- 5 ***notice to be served***) on or after the
- 6 commencement day in relation to the lodged
- 7 document.
- 8 (4) The notice to be served may be served under this Act
- 9 as in force —
- 10 (a) immediately before the commencement day; or
- 11 (b) at the time of service.
- 12

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Part 3 — Amendments to other Acts

Division 1 — *Criminal Property Confiscation Act 2000* amended

48. Act amended

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

49. 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 2 — *Escheat (Procedure) Act 1940* amended

50. Act amended

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

1 **51. Section 10 amended**

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

5

6 transfer.

7

8 **Division 3 — *Fire and Emergency Services Act 1998* amended**

9 **52. Act amended**

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

12 **53. Section 36ZC amended**

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

15

16 any document

17

18 **Division 4 — *First Home Owner Grant Act 2000* amended**

19 **54. Act amended**

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

21 **55. Section 58 amended**

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

23

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

27

1 **Division 5 — *Local Government Act 1995* amended**

2 **56. Act amended**

3 This Division amends the *Local Government Act 1995*.

4 **57. Schedule 6.2 amended**

5 In Schedule 6.2 delete clause 1(2) and insert:

6

7 (2) If—

8 (a) the lease is of land that is subject to the provisions
9 of the *Transfer of Land Act 1893*; and

10 (b) the term of the lease exceeds 3 years,

11 the Registrar of Titles, upon the production of the lease, is to
12 register it.
13

14 **58. Schedule 6.3 amended**

15 Delete Schedule 6.3 clauses 4(3) and 8(2).

16 **Division 6 — *Strata Titles Act 1985* amended**

17 **59. Act amended**

18 This Division amends the *Strata Titles Act 1985*.

19 **60. Section 30 amended**

20 Delete section 30(5) and insert:

21

22 (5) Where land is transferred by the strata company
23 pursuant to this section, the Registrar of Titles, after
24 cancelling the certificates of title relating to the lots,
25 must create and register in the transferee's name a new
26 certificate of title for the land transferred.
27

1 **61. Section 105 amended**

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

3 **62. Schedule 2A amended**

4 Delete Schedule 2A clauses 21Z(2), 31E(2) and 31K(2).

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