REG-01 The Transfer of Land Act

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1 The Legislation and its Purpose

The Transfer of Land Act 1893 (T LA) is the statute governing the registration in Western Australia of titles to Freehold land and dealings on those titles.

Other Statutes affecting land in Western Australia that are referred to throughout the Land Titles Registration Policy and Procedure Guides are:

- Transfer of Land Regulations 2004
- Land Administration Act 1997 (LAA) that governs Crown land
- Planning and Development Act 2005 (P&D Act)
- Strata Titles Act 1985 as amended (STA)
- Strata Titles General Regulations 1996 (ST GR).

The T LA, which is a Torrens System enactment, has as its object:

"The simplification of the title to and dealing with estates in land."

It sets up a public register of titles to land, maintained by the Registrar of Titles whose duty it is to certify the entitlement of proprietors. A person who attains the status of a registered proprietor obtains, by the official certification of that interest, indefeasibility of title, subject to the exceptions set out in the T LA. The public registry, required to be maintained by the T LA, is administered by Landgate and is located in Midland Square, Midland.

The registered proprietor and persons dealing with a registered proprietor may place the utmost reliance upon the certificate of title. Each title to land is guaranteed by the State and in general, persons wrongfully deprived of their land or interest may claim the monetary value of the land or interest from the government to compensate them for their loss.
2 Officers

The principal officers appointed under the TLA are the Commissioner of Titles and a Deputy, the Registrar of Titles and a number of Assistant Registrars of Titles.

Another Statutory Officer in the land titles process is the Inspector of Plans and Surveys, appointed under the survey regulations, who is responsible for the approval of all freehold deposited plans. The Inspector has the role of ensuring that all land boundaries are defined with a high level of integrity.

3 Land in the Cocos (Keeling) Islands and Christmas Island

Both the Islands are Commonwealth Territories and are administered by the Commonwealth.

By a series of Commonwealth Acts enacted in 1992 the Shire of Cocos Keeling and the Shire of Christmas Island were created and the property (and other) laws of Western Australia as amended by Commonwealth legislation now apply to both areas. The Islands are still Commonwealth Territories but the laws of Western Australia, as modified and adopted by Commonwealth legislation, are applied.

Dealings on these titles (and on leases issued and also lodged at Landgate) may be lodged in the same way as dealings on any other land. Land transaction forms, similar to the normal transfer and other forms issued under the Commonwealth Act are available via Landgate’s website. Section 8A(1) of the Territories Law Reform Act 104 of 1992 (Commonwealth) provides the legislative base for the application of Western Australian laws to the Territories.

Some variations in the land registration legislation have been made but most of these are extensions of the time limits in the notice provisions to allow for transportation delays between Landgate’s location in Midland and the Territories. The Land Titles Registration Policy and Procedure Guides contain further details applicable to dealings on land on the Cocos (Keeling) and Christmas Islands under the subject headings.

Information relevant to Commonwealth matters may be obtained from the Commonwealth department responsible for the Indian Ocean Territories.

5 How Land is Brought under The Torrens System

Land alienated before 1 July 1875 may be brought under the TLA by:

- voluntary application pursuant to the provisions of Part II of the TLA

- application under the provisions of the Real Property (Commonwealth Titles) Act 1925 (No 5 of 1925)

and

- the lodgement of a Memorial in the Deeds Office of a Taking Order under Part 9 of the LAA.

After 1 July 1875, land alienated from the Crown was brought under the TLA as amended by lodgement of a Crown Grant at Landgate, where it was allocated a certificate of title number pursuant to s.18.
The registration, under Part IIIA of the TLA of a Crown lease issued under the Land Act 1933, granted for a period of five years or longer, also had the effect of registering the land under the TLA. With the introduction of the LAA, land alienated from the State is now brought under the TLA by the lodgement of a transfer.

Note: All transactions affecting Crown land are now registered under the TLA on the Crown land title (see s.68 (2), (3) & (4) of the TLA and s.19 of the LAA).

6 Also see

- REG-02 The Register
- REG-04 Rectification in the Register and on Instruments (after Registration)
- REG-05 Service of Court Orders on the Registrar