MEM-01 Memorials

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1 General Information

The right to lodge a Memorial against land is a statutory right that is given to various Government Departments and statutory authorities by acts of parliament.

At present there are more than 30 different types of memorials which can be lodged against land. The number of them is slowly increasing as the need arises.

Memorials are lodged by many different governmental organisations and agencies for a variety of purposes, the individual legislative provisions are unique for each Memorial document type. Therefore, they can have different effects on the rights of a registered proprietor to deal with their land if a memorial has been lodged, for example:

- Some types of Memorial create an absolute bar to the registration of any dealings;
- Other types allow dealings to be registered with the written consent of the agency that lodged it;
- Still others may allow for the registration of dealings so long as it is merely shown as an encumbrance (e.g. acknowledged by a new purchaser of the land).

Memorials are not shown in the second schedule of a Duplicate Certificates of Title.

Duplicate Certificates of Title are generally not required for the lodgement of a Memorial or a withdrawal of removal of Memorials.

Note: Memorials that have been repealed and replaced with new legislation may still exist on certificates of title. These memorials may still have an effect or bind the land/registered proprietor under the legislation that replaced it.

2 Forms

The Registrar of Titles and Commissioner of Titles will work with various Government Departments and statutory authorities to create and approve forms that comply with the Transfer of Land Act 1893 schedule to enable the registering and noting of Memorials on certificate of titles. At the request of the responsible agency Landgate may make these approved forms available on the Corporate website.

Where a form is not available on Landgate’s corporate website the relevant responsible agency should be contacted.

3 Memorial Lodged against Part of the Land in a Certificate of Title
If a memorial is to be lodged against only part of the land in a title an "Interest Only" Deposited Plan will need to be lodged, unless there is already a suitable spatial definition for that piece of land. The Deposited Plan must be lodged and be "in Order for Dealings" before lodgement of the memorial. The land description in the memorial must refer specifically to the piece of land defined and depicted in the Deposited Plan. Upon lodgement and processing of the memorial the legal status of the plan will change to "Approved".

4 Aboriginal Heritage Act 1972

The Aboriginal Heritage Act 1972 (Current) (in this paragraph referred to as the Act) has, as its aim, the preservation of sites and material of cultural significance to the Aboriginal population. Subject to the direction of the Minister, responsibility for the administration of the Act is vested in the Trustees of the Western Australian Museum.

The Museum Act 1969 created the Trustees of the Western Australian Museum as a body corporate with perpetual succession and a common seal and the power (among other things) to acquire, hold and dispose of real property. The common seal may only be used by authority of a resolution of the trustees in the presence of the Chairperson or Vice Chairperson.

With the consent of the Minister, the Trustees may delegate all their powers under the Act (except the power of delegation) to any person. Many delegations have been made to the Director of the Museum, a statutory position created by the legislation.

Section 27 of the Act authorises the creation of a covenant by a person with an interest in land on which an aboriginal site is located, with the Trustees of the Western Australian Museum. The covenant may be permanent or for a specified period and prohibits any development of the site that would have a deleterious effect on it. The consent of any mortgagee or chargee (annuitant) of the land is required.

4.1 Effect on Title

The covenant does not restrict any dealing on the land but must be noted in the Limitations, Interests, Encumbrances and Notifications panel of any instrument (where there is one) which is creating or transferring any interest in it. By acknowledging the covenant as an encumbrance, the successive owners and encumbrancers of the land are bound by its provisions.

4.2 Modify and/or Removal

The covenants may be registered, modified and discharged in accordance with the provisions of Division 3A of the TLA (if the land is held in a title). See How Covenants are Removed (Section 7.5 of the Land Titles Registration practice manual).

4.3 Fees

Fees are payable on lodgement and withdrawal of these memorials.
The Agriculture and Related Resources Protection Act 1976 (Current) (in this paragraph referred to as the Act) provides methods for dealing with vermin and weeds in farming areas.

Administration of the provisions of the Act is provided from two sources:

- the Chief Agriculture Protection Officer, and a number of deputies

and

- the Agriculture Protection Board, a body corporate created by the Agriculture Protection Board Act 1950 with perpetual succession and common seal, and the power, (among other things) to purchase, hold and dispose of real property.

Both the Minister and the Agriculture Protection Board may delegate powers to the Chief Agriculture Protection Officer. No signatures or seal holders of the Agriculture Protection Board are designated by the Act and any document sealed using the common seal and countersigned by one or more members of the Board (the term members includes the Chairperson) will be accepted for registration.

The legislation also permits the Chairperson of the Board or an authorised officer to sign any notice, order or other document.

Outstanding Agriculture Protection Board Rates (commonly called Vermin Tax) are secured and recovered by the system used in the Taxation Administration Act 2003, as authorised by s.63 of the Act.

Details of the system of memorials, charges and transfers created under the Taxation Administration Act 2003 are shown in Section 28 of this guide.

5.1 Effect on Title

The effect of lodging the memorial is to prohibit the registration of any subsequent instruments without the consent of the Commissioner of State Taxation.

5.2 Fees

Fees are payable on lodgement and withdrawal of these memorials.

6 Contaminated Sites Act 2003

The Contaminated Sites Act 2003 (Current) (in this paragraph referred to as the Act) and its Regulations came into effect on 1 December 2006. The object of this Act is to protect human health, the environment and environmental values by providing for the identification, recording, management and remediation of contaminated sites in the State of Western Australia.

In the Act the term site means an area of land and includes underground water under that land and
surface water on that land.

In order to gather information on the location of contaminated sites, the Act introduces mandatory reporting of known or suspected contaminated sites by the following people:

- an owner or occupier of the land

- a person who caused, or contributed to, the contamination

- a contaminated sites auditor engaged to report on the site in accordance with the Act.

The Department of Water and Environmental Regulation will classify sites reported to it based on the risk the sites pose to human health and the environment.

It is possible that more than one memorial type is lodged against the same land.

6.1 Lodgement of Memorials against Land

Section 58 of the Act provides for the lodgement of memorials against land in the following circumstances:

Under s.58(1) (a) (i) of the Act provision is made for the registration of a memorial on the certificate(s) of title for land that has been classified as one of the following:

- Contaminated - remediation required

- Contaminated - restricted use

- Remediated for restricted use

- Possibly contaminated - investigation required

Under s.58(1) (a) (ii) a memorial is to be lodged when a statutory notice under Part 4 of the Act has been given.

Under s.58(1) (b) a memorial is to be lodged where a charge has been placed on the land in favour of the State or a public authority.

To cover all of the above circumstances, four separate memorials have been created. The effect of each of these memorials will now be considered separately.

6.1.1 Memorial (Contaminated Site – Remediation Required)

If a site is classified as Contaminated - Remediation Required, the Department of Parks and Wildlife (DPaW) can lodge the above-mentioned memorial to bar the registration of any subsequent instruments, unless the written consent of the Chief Executive Officer of DPaW is obtained and filed with the document to be lodged.

DPaW also has the option to lodge a memorial that does not bar the registration of instruments on land classified as Contaminated - Remediation Required. In this case they will lodge the generic memorial shown immediately below the following note.

A Memorial - Contaminated Site Remediation Required form has been created and can be downloaded from Landgate’s corporate website at http://www0.landgate.wa.gov.au/titles-and-surveys/forms-and-fees/land-tilting-forms.
Note: DPaW knows that it is their responsibility to choose the correct form when dealing with the above site classification. Registration Officers do not need to check whether the intention is to bar registration or not.

6.1.2 Memorial

There is a generic Memorial form for all site classifications under s.58(1) (a) (i) including Contaminated – Remediation Required where registration of subsequent dealings is not prevented (see the note above).

This memorial type is not a bar to the registration of any instruments. It merely needs to be shown in the Limitations, Interests, Encumbrances and Notifications section of the document (where there is one) that is lodged for registration.


6.1.3 Memorial (Notice under Part 4)

Under s.58(1) (a) (ii) a memorial is to be lodged when a statutory notice under Part 4 of the Act has been given. This has to do with investigation, clean up and hazard abatement notices that DPaW sends out to owners and occupiers of land when a site is classified Contaminated - Remediation Required.

This memorial contains information concerning the notices that DPaW has sent out with regard to land that may be contaminated. The purpose of this memorial is merely to give notice to those who may want to deal with the land.

This memorial type is not a bar to the registration of any instruments. It merely needs to be shown in the Limitations, Interests, Encumbrances and Notifications section of the document (where there is one) that is lodged for registration.


Note: Section 58(7) of the Act states that a memorial registered in respect of a notice under Part 4 retains its priority in relation to all other mortgages, charges and encumbrances on that land despite amendment of the notice under s.46 of the Act.

6.1.4 Memorial (Charge)

Under s.58(1) (b) a memorial is to be lodged where a charge has been placed on the land in favour of the State or a public authority sections 30(3)(b), 31(3)(b) or 32(2) of the Act. This is to secure payment for actions taken to investigate and remediate those sites.

A charge on land for the benefit of the State, or a public authority under the above sections:

- ranks equally with any other charge on the land created by any other Act and before any other encumbrance on the land, whether created or arising before or after the charge was created and

- remains on the land despite any disposal of the land, and will survive a mortgagee’s power of sale.
This memorial type is not a bar to the registration of any instruments. Unless satisfied, it must be shown in the Limitations, Interests, Encumbrances and Notifications section of a document (where there is one) that is lodged for registration.

A Memorial - Contaminated Sites Charge form has been created and can be downloaded from Landgate’s corporate website at http://www0.landgate.wa.gov.au/titles-and-surveys/forms-and-fees/land-titling-forms.

6.2 Reclassification of land

Where land the subject to a Contaminated Sites Memorial has been reclassified by Department of Water and Environmental Regulation the Memorial should be withdrawn from the title and a new Memorial under the new classification should be lodged. The written consent of the registered proprietor to the lodgement of any of these memorials is not required.

6.3 Withdrawal of Memorial

A Withdrawal of Memorial form has been created and can be downloaded from Landgate’s corporate website at http://www0.landgate.wa.gov.au/titles-and-surveys/forms-and-fees/land-titling-forms.

6.4 Execution of the Memorial or Withdrawal

All of these memorials and the withdrawal of memorial are to be executed by a delegate of the Chief Executive Officer of the Department of Water and Environmental Regulation under s.91 of the Act.

All four memorial forms and the withdrawal of memorial form have an information panel (the third panel down) that must be completed by DPaW at the time of lodgement. What goes into this panel is up to DPaW but it must not be left blank.

6.5 Effect on Title

Majority of these Memorial types does not restrict any dealing on the land but must be noted in the Limitations, Interests, Encumbrances and Notifications panel of any instrument (where there is one) which is creating or transferring any interest in it. By acknowledging the covenant as an encumbrance, the successive owners and encumbrancers of the land are bound by its provisions.

Some sites that are classified as Contaminated - Remediation Required, by DPaW will create a bar to the registration of any subsequent instruments, unless the written consent of the Chief Executive Officer of DPaW is obtained and filed with the document to be lodged.

Note: A search of the Memorial is required to establish if the contaminated sites memorial on the title restricts subsequent lodgement.

6.6 Fees
Fees are payable on lodgement and withdrawal of these memorials.

Biosecurity & Agriculture Management Act 2007

Information coming soon.

7 Country Areas Water Supply Act 1947

The administration of the Country Areas Water Supply Act 1947 (Current) (in this paragraph referred to as the Act) is vested in the Minister and the Water Authority of Western Australia (WAWA), a body corporate created by the Water Authority Act 1984, with perpetual succession and a common seal. The WAWA may (among other things) hold and dispose of real property. The Act authorises delegation of power, both to officers of the staff and to local Governments. The Act contains a series of provisions aimed at controlling the clearing of land in water catchment areas, to preserve the quality of the water collected.

Section 12BA of the Act authorises the lodgement of a memorial at Landgate to give notice that unlawful clearing has occurred on the land specified in the notice, and give warning that an order for the restoration of the land is liable to be made.

Section 12BB of the Act authorises the lodgement of a memorial at Landgate containing the details of a restoration order.

Section 12EA of the Act authorises the lodgement of a memorial at Landgate containing notice that compensation has been paid to a land owner for injurious affection.


7.1 Effect on Title

These memorials do not restrict any dealing on the land but must be noted in the Limitations, Interests, Encumbrances and Notifications panel (where there is one) of any instrument creating or transferring an interest in it. By acknowledging the memorial as an encumbrance the successive owners and encumbrancers of the land are bound by its provisions.

7.2 Removal

All of the above-mentioned memorials may be removed by the Minister or a person with delegated authority. See How Covenants are Removed (Section 7.5 of the Land Titles Registration practice manual).

7.3 Fees

No registration fees are payable either to lodge or to remove these memorials.
8 Memorial of Advertisement for Unpaid Water Rates under the Country Areas Water Supply Act 1947

Section 93 of the Country Areas Water Supply Act 1947 authorises the lodgement of a memorial of advertisement with the Registrar of Titles or Registrar of Deeds. The memorial must include a full page of the newspaper advertisement offering the affected land for sale by public auction, to raise funds to repay water rates that have remained unpaid for five years or longer.

8.1 Effect on Title

Although the legislation is not specific about the effect of a current memorial of advertisement on dealings on the land in the title, in practice the presence of the memorial prevents the registration of any dealings other than a transfer by the Minister.

8.2 Removal

The memorial may be removed up to the time of the actual sale by the payment of the outstanding rates and if this occurs a certificate signed by an authorised officer of the Water Corporation, certifying that the rates and charges have been paid, and lodged with the Registrar, is sufficient to remove the memorial as an encumbrance. If not removed and a transfer is not lodged within twelve months, the memorial ceases to have any effect on the title.

8.3 Fees

Fees are payable on lodgement and withdrawal of these memorials and on the registration of the transfer.

9 Country Towns Sewerage Act 1948

The administration of the Country Towns Sewerage Act 1948 (Repealed now Water Services Legislation Amendment and Repeal Act 2012) (in this paragraph referred to as the Act) is vested in the Minister, and the Water Authority of Western Australia (WAWA), a body corporate created by the Water Authority Act 1984, with perpetual succession and a common seal. The WAWA may (amongst other things) hold and dispose of real property. The Act authorises delegations of power, both to officers of the staff and to Local Governments. The main duties of the Authority are to construct and maintain sewers and water mains. It may also fund the connection of a house to a main.

The cost of connecting any building to the sewerage system, if unpaid, becomes a charge on the land, which has priority over all other registered charges or mortgages. Division 2 of the Act contains provisions for the Authority to exercise a power of sale over the land if the rates remain unpaid for more than five years. The Authority must advertise, in a paper circulated in the region where the land is situated, its intention to sell the land, and register a memorial of the advertisement in Landgate. The memorial, consisting of the memorial form and a full page of the paper containing the advertisement, is registered on the title for freehold land, and in the Deeds Office for old system land.
9.1 Effect on Title

The memorial acts as an absolute bar to any dealing in the land except a transfer by the Authority exercising a sale for rates. If a sale does occur, a transfer, signed by the Authority as transferor, is registered, and has the effect of removing all registered charges and mortgages except a mortgage to the Bank of Western Australia Ltd.

The transfer is usually registered without the production of the duplicate title (if any), using the provisions of s.74 of the TLA. The transfer is required to be supported by a statutory declaration made by a staff member on behalf of the Authority stating that all the legislative requirements or preconditions to the sale have been complied with.

9.2 Removal

The memorial ceases to have any effect after twelve months, or it may be removed during that twelve months if all the outstanding rates and costs are paid. A form signed by the Authority certifying that the outstanding rates and costs have been paid is filed with Landgate as a withdrawal of the memorial.

9.3 Fees

Fees were payable on the lodgement of the Memorial. Fees are payable on the withdrawal of these memorials and on the registration of the transfer.

10 Criminal Property Confiscation Act 2000

The Criminal Property Confiscation Act 2000 (Current) (in this paragraph called the Act) provides for the confiscation in certain circumstances of property (including real property) acquired as a result of criminal activity and property used for criminal activity.

This Act replaced the Crimes (Confiscation of Profits) Act 1988, some of them may still be noted on titles, if so they are treated as below.

A memorial under this Act can be lodged in two ways;

10.1 Memorial of Freezing Notices

Section 34 of the Act permits the Director of Public Prosecutions or a police officer to obtain a Freezing Notice from a Magistrate or a Justice of the Peace in certain circumstances.

The Freezing Notice must describe all of the property covered by the notice. In the case of real property, the full land description including the title number must be shown.

When real property is frozen, a Memorial of a Freezing Notice must be lodged with the Registrar of Titles and takes effect on lodgement of the memorial.
If the Freezing Notice refers to more than one property and the properties have different registered proprietors, a separate memorial must be lodged for each different registered proprietor.

10.2 Memorial of Freezing Orders

Section 41 of the Act permits the Director of Public Prosecutions to apply to the Court for a Freezing Order.

The Freezing Order must describe all of the property covered by the notice. In the case of real property, the full land description including the title number must be shown.

When real property is frozen, a Memorial of a Freezing Order must be lodged with the Registrar of Titles and takes effect on lodgement of the memorial.

If the Freezing Order refers to more than one property and the properties have different registered proprietors, a separate memorial must be lodged for each different registered proprietor.

10.3 Effect on Title

Where a memorial is registered on a title, the Registrar of Titles is prevented from registering any subsequent dealings (see below under the sub-heading Dealing with Frozen Property). If any subsequent dealings are lodged, they may not be registered, but held in a Registrar’s Packet.

10.4 Withdrawal of Memorial of Freezing Notice or Freezing Order

A Withdrawal of Memorial of Freezing Notice or Freezing Order is lodged with Landgate when a Freezing Notice has been cancelled, or where a Freezing Notice or Freezing Order has been set aside or terminated for other reasons.

There is no requirement for the DPP to provide evidence in respect of a Withdrawal of either of the above Memorials. A Notice of Cancellation may be lodged for a Withdrawal of Memorial of Freezing Notice, however it is not compulsory.

10.5 Fees

Fees are payable on lodgement and withdrawal of these memorials.

10.6 Dealing with Frozen Property

Section 50 of the Act states that it is an offence for a person to deal with frozen property (including real property) over which a Memorial of Freezing Notice or Memorial of Freezing Order has been lodged. If frozen property is dealt with, that dealing is of no effect on any rights of the State under this Act (see s.51).

According to s.151 of the Act, dealing with property includes, selling, disposing or creating, increasing or altering any legal or other right in the property. Therefore, it would be an offence to
register any interest in land (including caveats and property (seizure and sale) orders etc.) that is the subject of a Freezing Notice or Freezing Order.

Note: Although it is an offence to register any dealings against frozen land, nothing prevents the lodgement of dealings with the Registrar of Titles. These dealings will remain in the Registrar’s Packet as unregistered dealings until the relevant memorial is withdrawn or a Memorial of Declaration of Confiscation is lodged with the Registrar of Titles (see below).

If the relevant memorial is withdrawn, any unregistered dealings held in the Registrar’s Packet will be registered according to their date of lodgement.

10.7 Memorial of Declaration of Confiscation

Frozen land is automatically confiscated if there is no objection filed in court from interested parties (within 28 days after service of notice) to a Freezing Notice or Freezing Order. Interested parties that will receive notice include any person having a registered interest in the land and any caveator in respect of any caveat lodged.

If a person is declared a drug trafficker under the Misuse of Drugs Act 1981, their property is automatically confiscated without the need for the Freezing Notice or Freezing Order or notice to interested parties (s.8 of the Act).

Once a property has been confiscated under the Act, the Director of Public Prosecutions can apply to the court for a declaration that the property has been confiscated (ie. a Declaration of Confiscation).

Confiscated property vests in the State of Western Australia when a Memorial of Declaration of Confiscation is lodged at Landgate and is registered against the relevant land. The signed original Declaration of Confiscation must be attached to the memorial. Alternatively, a photocopy of the Declaration of Confiscation, with confirmation that Landgate has sighted the original Declaration, may be attached to the memorial.

If the Declaration of Confiscation refers to more than one property and the properties have different registered proprietors, a separate memorial must be lodged for each different registered proprietor.

The Registrar of Titles may dispense with the requirement to produce the duplicate certificate of title when the memorial is lodged.

10.8 Effect of a Memorial of Declaration of Confiscation when Registered

On registration of a memorial of Declaration of Confiscation the relevant land vests free of all encumbrances and other interests whether registered or not (including caveats) but not including rights of way, easements and restrictive covenants. Any unregistered dealings affecting the confiscated land being held in a Registrar’s Packet will be rejected when the memorial is registered.

According to s.151 of the Act, dealing with property includes, selling, disposing or creating, increasing or altering any legal or other right in the property. Therefore, it would be an offence to register any interest in land (including caveats and property (seizure and sale) orders etc.) that is the subject of a Freezing Notice or Freezing Order.
Note: When a Memorial of Declaration of Confiscation is lodged it is not necessary to withdraw the original Memorial of Freezing Notice or Memorial of Freezing Order that started the process. If there is any inconsistency between this Act and the TLA, this Act shall prevail.

10.9 Fees

Fees are payable on lodgement of a Memorial of Declaration of Confiscation.

10.10 Interstate Freezing Orders

Interstate freezing orders will apply in Western Australia if that order is registered at the Supreme Court in accordance with the rules of the Supreme Court. Once the interstate freezing order is registered it will be endorsed by the court and it will have effect as if it were a freezing order under the Act. However, there is no requirement for registration of an interstate Freezing Order under the TLA.

To register an interstate freezing order against the relevant property, a Memorial of Freezing Order must be lodged with the Registrar of Titles. The original interstate freezing order, endorsed by the Supreme Court, must be attached to the memorial. Alternatively, a photocopy of the original order, with confirmation that Landgate has sighted the original order, may be attached to the memorial.

10.11 Interstate Confiscation Declarations

Interstate confiscation declarations will apply in Western Australia if that declaration is registered at the Supreme Court in accordance with the rules of the Supreme Court. The interstate freezing order will be endorsed by the court and will have effect and may be enforced as though it relates to property confiscated under the Act.

To register an interstate confiscation declaration against the relevant property, a Memorial of Confiscation Declaration must be lodged with the Registrar of Titles. The original interstate confiscation declaration, endorsed by the Supreme Court, must be attached to the memorial. Alternatively, a photocopy of the original declaration, with confirmation that the original declaration has been sighted by Landgate, may be attached to the memorial.

10.12 Charge

In certain circumstances (as outlined in s.123 of the Act) a charge can be created over property. The charge may be registered on the land by lodgement of a Memorial of Charge. Appropriate evidence of the charge must be attached to the memorial.

11 East Perth Redevelopment Act 1991

The East Perth Redevelopment Act 1991 (Repealed now Metropolitan Redevelopment Authority
Act 2011) (in this paragraph referred to as the Act) created a body corporate known as the East Perth Redevelopment Authority, with perpetual succession and a common seal, and the powers (among other things) to acquire, hold and dispose of real property.

No signatories or seal holders are designated by the Act, and documents sealed with the common seal of the Authority will be accepted for registration when the seal is countersigned by one or more members (the term members includes the chairperson and the deputy chairperson).

The Authority may delegate any of its functions (apart from the power of delegation) to any person listed in the legislation as eligible. Evidence of the delegation will be required when any document executed by a delegate on behalf of the Authority is registered.

Section 20 of the Act empowers the Authority to sell land subject to special development conditions, or restrictions on the further disposition or dealing with the land, by the purchaser. The restriction or conditions are recorded by lodging, with the Registrar of Titles, a memorial against the land.

11.1 Effect on Title

While the memorial remains registered on the title instruments creating or transferring an interest in the land must show the memorial in the Limitations, Interests, Encumbrances and Notifications panel (where there is one), and bear the endorsed consent of the Authority. By acknowledging the memorial as an encumbrance the successive owners or encumbrancers of the land are bound by its provisions.

11.2 Removal

The memorial may be removed by the lodgement of a withdrawal form signed by the Authority or its delegate.

11.3 Fees

Fees were payable on lodgement of these Memorial types. Fees are payable on the withdrawal of these memorials.


Section 25(3) of the Act provides for the Authority to lodge a memorial, in a form approved by the Registrar, with the Registrar.

12 Environmental Protection Act 1986

The Environmental Protection Act 1986 (Current) (in this paragraph referred to as the Act) has as its aim the protection of the environment and the prevention, control and abatement of pollution.
The administration of the Act is (subject to the direction of the Minister) vested in the Environmental Protection Authority, and the Authority may delegate powers (other than the power to delegate) to any person and the names of persons so appointed shall be published in the Government Gazette.

Section 65 of the Act authorised the issue and service of a Pollution Abatement Notice on the owner or occupier of any premises emitting any waste, noise, odour or electromagnetic radiation into the environment that caused pollution. The notice specified the measures required to prevent, control or abate the emissions.

Section 66 of the Act provided for a copy or memorial of the notice to be delivered to Landgate for registration on the title for freehold land, on a Crown lease, in the Deeds Office for Old System land and on a Crown land title for Crown land.

12.1 Effect on Title

The memorial does not restrict the registration of any instrument creating or transferring an interest in the land, but must be noted in the Limitations, Interests, Encumbrances and Notifications panel of the instrument (where there is one). By acknowledging the memorial as an encumbrance the successive transferees or encumbrancers of the land are bound by its provisions.

12.2 Removal

While Pollution Abatement Notices are no longer issued, existing memorials on titles may need to be removed. A Revocation of Memorial form has been created for this purpose and can be downloaded from Landgate’s corporate website at http://www.landgate.wa.gov.au/titles-and-surveys/forms-and-fees/land-titling-forms.

12.3 Fees

The notice may be revoked or amended by the Authority and no fees are payable for the lodgement, amendment or revocation of a memorial.

13 Fines, Penalties and Infringement Notices Enforcement Act 1994

In general terms, (Current) this Act provides for the enforcement of the payment of fines and other penalties in respect of court decisions made pursuant to the Justices Act, Child Welfare Act, Young Offenders Act and the Criminal Code and for the enforcement of infringement notices issued pursuant to the Road Traffic Act or another written law.

13.1 Two ways to enforce the payment of fines or penalties

There are two ways to enforce the payment of fines or penalties under this Act:

- Suspension of Driver's Licence (in Civil Proceedings)
Infringement notices may be issued under any written law by an approved prosecuting officer who, after giving to the Fines Enforcement Registry a signed Enforcement Certificate and issuing a final demand for payment of the penalty, may register an infringement notice with the Registrar of that Registry.

If monies under an Enforcement Certificate remain unpaid, the Registrar of the Fines Enforcement Registry may then issue a Notice of Intention to Suspend Licences. Further failure to pay the fine constitutes a conviction of the offender for the alleged offence.

- Warrants of Execution Against Personal Property and Land (in Criminal Proceedings)

A warrant of execution can be issued under Part 4 or Part 6 of the Act where a monetary penalty is imposed on an offender by a court in criminal proceedings. Under a warrant of execution, the Sheriff may seize personal or real property.

Seizure of real property is effected by the Sheriff lodging with the Registrar of Titles or the Registrar of Deeds:

- a memorial in the prescribed form describing the land and setting out the amount owed under the warrant and the enforcement fees owed, and

- a copy of the Warrant

A warrant issued under this Act has an indefinite life and remains in force until the amount has been paid or an order is served on the offender. The signature of the Sheriff on the memorial does not have to be witnessed.

A statutory declaration, identifying the offender, is required if there are any discrepancies in the name and addition shown in the memorial (warrant) when compared to the registered proprietor on the title for the land.

On being satisfied that the memorial has been prepared in the prescribed form and on receiving any statutory declaration clarifying any discrepancies in the warrant and the title concerned, the Registrar of Titles will endorse the memorial on the title for the land described.

When a memorial is registered under the TLA or Registration of Deeds Act 1856, the Registrar must serve the offender with a copy of the memorial.

13.2 Effect on Title

The Registrar is prohibited from registering, and accepting for registration any instrument affecting any estate or interest in the land without consent of the Sheriff.

13.3 Removal

Cancellation of the memorial is effected by the lodgement of a withdrawal of memorial by the Sheriff.

The signature of the Sheriff on the withdrawal of memorial does not have to be witnessed.

13.4 Fees
No registration fees are required to lodge or withdraw these memorials, and no fee is required in connection with the performance of functions under a warrant by the Sheriff and any delegate of the Sheriff.

13.5 Reciprocating State or Territory

Regulations under this Act may prescribe another State or Territory, having laws providing for enforcement in that State or Territory of a fine imposed on a corporate body by a court of summary jurisdiction in WA, to be a reciprocating State or Territory for the purposes of enforcing a fine imposed on a body corporate in WA.

A warrant can also be used to enforce fines imposed on a corporate body by another State or Territory. Regulations may prescribe which other State or Territory is a reciprocating State or Territory for the purposes of enforcement in this State and also, which court having summary jurisdiction in a reciprocating State or Territory is a reciprocating court for the purposes of the enforcement in this State of a fine payable under a conviction or order of that court against a body corporate.

A warrant of execution of another State or Territory lodged with a memorial under this Act must be issued by a Sheriff of WA and must be a copy certified by and registered with the Registrar of the Fines Enforcement Registry in the Magistrates Court in Perth. A warrant under this Act has priority over any Property (Seizure and Sale) Order against the property of the offender issued under the Civil Judgments Enforcement Act 2004.

13.6 Sale and Transfer of Land Seized

A warrant issued under this Act has effect in respect of land of the offender as if the warrant were a Property (Seizure and Sale) Order and the offender was a judgment debtor as provided for under s.133 of the TLA.

Under the terms of this Act, if the Sheriff wishes to sell the land under the warrant, he must firstly withdraw the memorial and lodge the warrant in accordance with the requirements for Property (Seizure and Sale Orders under s.133 of the TLA (see TRF-10 Transfer pursuant to Property (Seizure & Sale) Order).

14 First Home Owner Grant Act 2000

The First Home Owner Grant Act 2000 (Current) (in this paragraph referred to as the Act) is administered by the Commissioner of State Revenue (the Commissioner) and came into operation on 1 July 2000.

This is an Act to encourage and assist home ownership by establishing a scheme for the payment of grants to first homeowners. Incorporated into this Act is the provision for the Commissioner under sections 51 and 53 of the Act to take action to recover the moneys paid to a person(s) who was not or is not now eligible to receive the grant.

Pursuant to s.35 of the Act the Commissioner may delegate his powers (apart from the power of
delegation) to other persons. Any person signing a document (including the lodgement and Withdrawal of Memorials referred to below) on behalf of the Commissioner should have written delegation to do the act achieved by the document.

14.1 Lodgement of a Memorial (Section 55)

To recover any moneys outlined in s.53 of the Act the Commissioner may lodge a memorial against the land in relation to which the grant was sought.

When the Registrar of Titles registers the memorial it creates a first charge against the land to which it relates and has priority over all other mortgages, charges and other encumbrances shown on that certificate of title.

Note: If there is another charge against the land that ranks as a first charge under another Act, the relative priority of the various charges is to be determined according to the order of registration.

14.2 Effect on Title

When a memorial is registered, the Registrar of Titles is prevented from accepting for registration an instrument affecting the land without consent of the Commissioner.

14.3 Cancelling the Memorial

The memorial may be cancelled by:

- the lodgement of an Application form signed by the Commissioner or his authorised delegate together with a witness to their signature

or

- the lodgement of an Application form by the Registered Proprietor(s) that is accompanied by an instrument signed by the Commissioner or his delegate releasing the land from the charge created by the registration of the memorial.

14.4 Fees

Fees are payable on lodgement and cancellation of these memorials.

14.5 Order for Sale (Section 58)

If the outstanding amount remains unpaid for 18 months after the registration of the above-mentioned memorial, the Commissioner may apply to the Supreme Court for an order for the sale of the land so that the proceeds of sale may be applied towards satisfaction of the outstanding amount.

The Supreme Court may order the sale of the land and make incidental orders. Incidental orders include:
- Authorising an officer of the Court to execute documents, and to do anything else necessary, for the sale and conveyance of the land

and

- Authorising the Registrar of Titles to register a transfer to a purchaser without requiring the duplicate (if any) of the certificate of title.

A sale by order of the Supreme Court discharges the land from any mortgage, charge or other encumbrance securing a monetary obligation, but the land remains subject to any lease, easement, or other encumbrance.

15 Heritage of Western Australia Act 1990

The Heritage of Western Australia Act (Current) (in this paragraph referred to as the Act) created the Heritage Council of Western Australia, as a body corporate, with perpetual succession and a common seal, and the powers (among other things) to acquire, hold and dispose of real property.

No signatures or seal holders are designated by the Act, and documents sealed with the seal of the Council will be accepted for registration when the seal is countersigned by one or more councillors (the term councillors includes a councillor holding a position of office bearer). The Council may, by resolution delegate any of its powers (apart from the power of delegation) to any other person. Notice of the resolution creating the delegation must be published in the Government Gazette, and documents signed by authorised delegates should also quote the issue date and page of the Gazette containing the authority.

There are 3 types of memorials:

15.1 Conservation Orders

Part 6 of the Act authorises the Minister to make Conservation Orders and where an order is made in relation to any land the legislation requires the Heritage Council to advise Landgate by way of a memorial of the effect of the Order.

The memorials are registered on the title for freehold land in the Deeds Office for Old System land and on a Crown land title for Crown land. The Council may also lodge a caveat.

15.1.1 Removal

The memorial may be withdrawn by the Council. A Withdrawal of Memorial has been created to effect the removal. The withdrawal must be signed and witnessed.

15.2 Heritage Agreements

Part 4 of the Act authorises the creation by a registered proprietor, in favour of either the Heritage Council of Western Australia, or a public authority or a body corporate of a heritage agreement that may (inter alia) contain conservation covenants intended to run with the ownership of the land. The agreements (and therefore the covenants) may be for a specified time, or intended to be
permanent. The covenant does not have to conform to the usual law of covenants in that it may be positive in nature. The Heritage Council may lodge a memorial with a copy of the Heritage Agreement (certified by the Minister in accordance with s.32 (1) or his delegate under s.6) for registration on the title for freehold land, the Deeds Office for Old System land and on a Crown land title for Crown land.

15.2.1 Removal

The memorial may be removed from land under the TLA, or modified, using the provision of Sections 129B and 129C of the TLA. Similar provisions apply to the modification or restriction of covenants over land registered in the Deeds Office, and for Crown land.

15.3 Register of Heritage Places

Part 5 of the Act authorises the creation by the Heritage Council of a register of Heritage Places, and for the amendment and removal of the entries in the register. Division 3 of the Act authorises the lodgement of a memorial with Landgate showing the particulars of an entry in the register of Heritage Places. The memorials are registered on the title for freehold land, in the Deeds Office for old system land and on a Crown land title for Crown land.

Once a memorial is lodged, a further memorial may be lodged amending the original particulars of the entry, or if appropriate, the first memorial may be either partially or totally withdrawn.

15.4 Effect on Title

All 3 types of these memorials do not restrict any dealing on the land, but must be noted in the Limitations, Interests, Encumbrances and Notifications panel (where there is one) of any instrument creating or transferring an interest in it. By acknowledging the memorial as an encumbrance the successive owners or encumbrancers of the land are bound by its provisions.

15.5 Fees

Fees are payable on lodgement and withdrawal of all 3 types of memorials.

16 Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002

The Department of Commerce promulgated the above-mentioned regulations (in this paragraph referred to as the Regulations) under the Home Building Contracts Act 1991 (Current) (in this paragraph referred to as the Act). The Regulations, which became operational on 8 April 2003, allow developers to claim an exemption from taking out home indemnity insurance for three categories of residential building work. These are as follows:

- multi-storey unit development

- leased retirement villages where all units are to be leased
and

- residential building work carried out by or on behalf of the State Housing Commission for dwellings that will be leased or let.

With regard to the multi-storey unit developments and the State Housing Commission developments an exemption will be granted and any future purchaser must be given notification of the lack of insurance. A purchaser has a right to rescind any contract where the required notice is not given by the vendor.

With regard to the leased retirement villages a Memorial under the Regulations must be lodged with the Registrar of Titles before the exemption is granted.

16.1 Lodgement of a Memorial for Leased Retirement Villages

Part 3 of the Regulations allows an exemption from the Part 3A requirement of the Act for the builder to have insurance if the owner of the retirement village intends the village to be a leased retirement village.

A leased retirement village is defined in the Regulations to mean a retirement village in which all the dwellings are occupied under a residential tenancy agreement or any other lease or licence.

To qualify for the exemption, the proprietor must have taken the following steps before the issue of a building licence:

- Lodged a memorial to the effect that there is no indemnity insurance

and

- Provided to the local government a statutory declaration stating their intention not to take out home indemnity insurance and advising that a memorial has been lodged with the Registrar of Titles.

Should the proprietor enter into a contract of sale for one or more of the dwellings in the retirement village within 6 years of the practical completion date a policy of insurance, which complies with the Regulations, is to be in force and the purchaser must have been given a certificate evidencing that policy or the provision of corresponding cover.

Practical completion means brought to the stage where the home building work is completed except for any omissions or defects which do not prevent the home building work from being reasonably capable of being used for its intended purpose (s.11 of the Act).

Note: The above-mentioned memorials should not be confused with memorials lodged under s.15 of the Retirement Villages Act 1992 (See Section 24 of this guide).

16.2 Effect on Title

Where a memorial lodged pursuant to the Regulations is shown in the Limitations, Interests, Encumbrances and Notification panel (where there is one) of an instrument or dealing relating to land, the memorial will not prevent the registration of that instrument or dealing on the certificate of title.
16.3 Removal of the Memorial

Regulation 9 (6) provides that the Registrar may cancel the registration of a memorial lodged under these regulations after 6 years from the day of practical completion of the leased retirement village (for a definition of practical completion see above).

Upon proof that 6 years from the practical completion date has elapsed, the Registrar will cancel the memorial by sundry document.

If a written request to cancel a memorial, enclosing a certificate of completion, is provided to Landgate on a dealing driven basis or by a separate request, Examination Team Supervisors will cancel the memorial.

Where one or more of the dwellings in the retirement village is sold before the 6-year period has elapsed, the Registrar of Titles will cancel the memorial upon receiving proof that a policy of insurance, which complies with the regulations, is in force.

16.4 Fees

Fees are payable on lodgement of these memorials. No registration fee is payable to cancel these memorials.

17 Industrial Lands Development Authority Act 1966

The Industrial Lands Development Authority Act 1966 (Repealed) (in this paragraph referred to as the Act) was repealed on 23rd June, 1992 and replaced by the Western Australian Land Authority Act 1992. Under the provisions of the Act however certain memorials and caveats were placed on titles to give notice that the land was subject to certain requirements as to use and restrictions as to disposition.

Where the memorials or caveats are in force the laws set out in the Act continue to govern, but the administration of those laws is transferred to the Western Australian Land Authority.

17.1 Effect on Title

Any instrument transferring or creating an interest in land the subject of a memorial must show it in the Limitations, Interests, Encumbrances and Notifications panel (where there is one) and bear the endorsed consent of the Minister.

Instruments lodged without the consent of the Minister are void.

17.2 Removal

A memorial may be withdrawn by the Western Australian Land Authority, or a caveat lodged by the Registrar of Titles will be withdrawn by the Registrar on the request of the Authority.
17.3 Fees

No fees are payable on the lodgement of a withdrawal of a memorial under this legislation.

18 Land Administration Act 1997

The Land Administration Act 1977 (LAA) provides for the creation of the following two types of memorial that can be registered under the TLA as amended. (Current)

18.1 Memorials to secure the performance of conditions

When a (freehold) title is created for Conditional Tenure land, the Minister for Lands may lodge a memorial under s.16 of the LAA to secure the performance of the conditions imposed upon the registered proprietor of the land. The memorial, when registered, is a charge on the land.

If default is made by the registered proprietor in respect of the performance of the conditions set out in the memorial, the Minister has the same powers of sale as are given by the TLA to a mortgagee under a mortgage where default has been made in the payment of the principal.

18.2 Effect on Title

These memorials may or may not state that no dealings or other instruments are to be registered in respect of the subject land while the memorial remains registered under s.16 of the LAA, and serve to:

- where the memorial includes the above statement, prevent the registration of any dealings or other instruments and give notice of its contents to those concerned with the land (i.e. act in a similar manner to an absolute caveat)

or

- where the memorial does not include the above statement, merely give notice of its contents to those concerned with the land (i.e. act in a similar manner to a subject to claim caveat).

18.3 Removal

If the charge over the land is no longer required, the Minister may, by an Order, request the Registrar of Titles to withdraw the memorial.

18.4 Hazard warnings or other factors affecting the use of enjoyment of land

When a (freehold) title has been created and transferred under the provisions of the LAA, the Minister for Lands may, with the consent of the registered proprietor, have that title endorsed with a statement warning of hazards or other factors affecting, or likely to affect, the use or enjoyment of
that land by lodging a memorial under s.17 the LAA.

Also, when an interest in Crown land has been or is to be granted, the Minister for lands may have the relevant certificate of Crown land title endorsed with a statement warning of hazards or other factors affecting, or likely to affect, the use or enjoyment of that land by lodging a memorial under s.17 the LAA.

18.5 Effect on Title

These memorials serve to give notice of its contents to those concerned with the land. They do not prevent the registration of any dealings but must be shown in the Limitations, Interests, Encumbrances and Notifications panel (where there is one).

18.6 Removal

The Minister may, by an Order, request the Registrar of Titles to withdraw the memorial upon lodgement of a Withdrawal of Memorial form

18.7 Fees

No fees are payable upon the lodgement or withdrawal of these either of these memorial types.

19 Legal Aid Commission Act 1976

The Legal Aid Commission Act 1976 (Current) (in this paragraph referred to as the Act) created a body corporate known as the Legal Aid Commission of Western Australia with perpetual succession and a common seal, and the power (among other things) to acquire, hold and dispose of real property.

The legislation also creates the statutory position of Director of Legal Aid. No signatures or seal holders are designated by the Act and documents sealed with the common seal will be accepted for registration when the seal is countersigned by one or more members (the term member includes the Chairperson). The commissioner may delegate its powers apart from the power of delegation.

Section 44A of the Act authorises the Director of Legal Aid to deliver to Landgate a memorial certifying that legal costs are to be a charge on specified land.

19.1 Effect on Title

While the memorial remains registered on the title instruments creating or transferring an interest in the land must show the memorial in the Limitations, Interests, Encumbrances and Notifications panel (where there is one). By acknowledging the memorial as an encumbrance the successive owners and encumbrancers of the land are allowing the charge to rank first in priority to their own
interest.

19.2 Removal

The memorial may be withdrawn by the Director upon lodgement of a Withdrawal of Memorial form.

19.3 Fees

Fees are payable on lodgement and withdrawal of these memorials.

20 Local Government Act 1995

The Local Government Act 1995 (Current) (in this paragraph referred to as the Act) provides the third tier of government in Western Australia, administered (subject to the direction of the Minister) by a series of Shire, Town or City Councils. Documents not formally attested by using the common seal are nevertheless authorised by the signature of the Chief Executive Officer of the relevant Local Government.

20.1 Memorial of a notice to rectify the illegal modification or erection of buildings


The Local Government may withdraw the memorial by lodging at Landgate a certificate certifying that the contravention has ceased.

20.2 Effect on Title

While the memorial is registered no instrument affecting the land may be registered under the TLA, or lodged in the Deeds Office without the consent of the Local Government.

20.3 Memorials of advertisement to sell land for non-payment of rates

Where a Local Government proposes to sell land for non-payment of rates, under the authority contained in Part 6 Division 6 Subdivision 6 of the Act, it must lodge with the Registrar a memorial of the advertisement of such sale.

The advertisement must be substantially in the manner of Form 5 as set out in Regulation 75 of the Local Government (Finance Management) Regulations 1996.
The memorial must be a true copy of the original advertisement and be certified as such by the Chief Executive Officer of the relevant Local Government. A full page of the state-wide newspaper in which the advertisement appeared should also be supplied.

20.4 Effect on title

The memorial is effective from the time of registration and binds the Register for twelve months from that time. The Registrar is prohibited from accepting for registration an instrument affecting the land without the consent of the Local Government until the land ceases under s.6.69 or clause 7 of schedule 6.3 of the Act to be bound. During the period of currency of the memorial a transfer by the Local Government effecting a sale for rates may be lodged - see TFR-09 Transfers by Sale for Rates (Local Government Act 1995).

20.5 Removal prior to sale

On receipt of a certificate signed by the Chief Executive Officer of the relevant Local Government stating that the rates, costs and expenses have been paid in respect of a specified piece of land, the Registrar causes to be entered on the relevant title a memorandum that the land has ceased to be bound by the memorial.

If after the expiry of twelve months the memorandum has not been removed, it is ignored as an encumbrance.

20.6 Fees

No fees are payable for either the lodgement or withdrawal of both memorial types.

21 Metropolitan Water Supply, Sewerage and Drainage Act 1909

The Metropolitan Water Supply Sewerage & Drainage Act 1909 (Current but relevant section Repealed) (in this paragraph referred to as the Act) is administered by the Western Australian Water Authority, a body corporate with perpetual succession and a common seal, and the power (among other things) to acquire, hold and dispose of real property.

The Act authorises the delegation of powers to officers of the Authority. Although the Act provides that unpaid rates are a charge on land with priority over other securities, no method of recording the charge on the relevant title is set out. The Authority may take possession of the land and lease it and collect the rent, or it may sell the land by way of a warrant of execution issued by the Local Court.

Section 124A of the Act (now repealed) allowed the Authority to lodge a memorial with Landgate for registration on the title for freehold land, on a Crown land title or Crown lease for Crown land, or in the Deeds Office for Old System land, when water rates or charges were in arrears.

The memorial was removed by the lodgement of a certificate signed by the Managing Director of the Authority certifying that the payments have ceased to be in arrears.
The memorial was not a form of charge, but while it remained registered, neither the Registrar of Titles nor the Registrar of Deeds could accept for registration an instrument affecting the land without the consent of the Authority.

Note:

It is no longer possible to lodge the above-mentioned memorials. s.45 of the Water Legislation Amendment (Competition Policy) Act 2005 (proclaimed on 3 June 2006) repealed s.124A of the Metropolitan Water Supply, Sewerage, and Drainage Act 1909.

Section 66 of the Water Legislation Amendment (Competition Policy) Act 2005 amended the Water Services Licensing Act 1995 to include s.44F which allows for the lodgement of a memorial with regard to water service charges that are in arrears

A memorial that has been lodged under s.124A of the Metropolitan Water Supply, Sewerage, and Drainage Act 1909 is deemed to be a memorial under s.44F of the Water Services Licensing Act 1995 (see s.44G).

21.1 Fees

No fees were payable on lodgement or withdrawal of these memorials.

22 Proceeds of Crime Act 1987 (Cth)

The Proceeds of Crime Act 1987 (Repealed now Proceeds of Crime Act 2002 (Cth)) (in this paragraph referred to as the Act) is a Commonwealth statute intended to deprive persons of property purchased from the proceeds or profits derived from offences against the Commonwealth and Territories. Where land is involved, either the Official Trustee in Bankruptcy or the Director of Public Prosecutions may register charges or orders.

Where a pecuniary penalty order is made against a person or a restraining order is made against property in reliance on the pecuniary penalty order, then a charge is created to secure the payment to the Commonwealth of the penalty amount. Either the Official Trustee in Bankruptcy or the Director of Public Prosecutions can apply for the registration of the charge by lodging a certified copy of the Court order creating the charge, with a memorial of the charge.

The memorial must certify that a restraining order was made under s.43 of the Act over the land described in the memorial and identify the Court order by reference to its date and plaint number.

For orders made in other States or outside Australia, the memorial must identify the Court order by reference to the State or Country in which made, the Court, its date and plaint or identifying number and be re-sealed in the Supreme Court of Western Australia.

The charge takes effect from the time of lodgement of the memorial, but does not prevent the registration of any instrument creating or transferring an interest in the land, as long as the memorial is shown in the Limitations, Interests, Encumbrances and Notifications panel (where there is one) of the instrument. By acknowledging the memorial as an encumbrance the successive transferees or encumbrancers of the land are liable for, or hold their interest subject to, the charge.
If the monies protected by the memorial are not paid, then a right is created for the Commonwealth to sell the land and recover the original amount and subsequent costs.

22.1 Removal

The memorial may be withdrawn from the certificate of title by the Director of Public Prosecutions or the Official Trustee in Bankruptcy, or by an application by the registered proprietor on an Application form supported by evidence (usually in the form of a Court order) that the memorial no longer has any effect.

22.2 Fees

Fees were payable on lodgement of the Memorial. Fees are payable to withdraw these memorials.

23 Proceeds of Crime Act 2002 (Cth)

The Proceeds of Crime Act 2002 (Current) (in this paragraph referred to as the Act) is a Commonwealth statute intended to deprive persons of property purchased from the proceeds or profits derived from offences against the Commonwealth and Territories. The Act was passed on 11 October 2002 and came into operation on 1 January 2003. The Act was amended with effect from 1 January 2012 by the Crimes Legislation Amendment Act (No.2) 2011 so that the Commissioner of the Australian Federal Police (AFP) is defined, under s.338, as a Proceeds of Crime Authority.

Where land is involved, either the Official Trustee in Bankruptcy, the Director of Public Prosecutions or the Commissioner of the Australian Federal Police may register charges or orders.

Where a pecuniary penalty order is made against a person or a restraining order is made against property in reliance on the pecuniary penalty order, then a charge is created to secure the payment to the Commonwealth of the penalty amount. Either the Official Trustee in Bankruptcy, the Director of Public Prosecutions or the Commissioner of the Australian Federal Police can apply for the registration of the charge by lodging a certified copy of the Court order creating the charge, with a memorial of the charge.

The memorial must certify that a restraining order was made under either section 17, 18, 19 or 20 of the Act over the land described in the memorial and identify the Court order by reference to its date and plaint number.

For orders made in other States or outside Australia, the memorial must identify the Court order by reference to the State or Country in which made, the Court, its date and plaint or identifying number and be re-sealed in the Supreme Court of Western Australia.

A foreign restraining order registered in a court under s34E of the Mutual Assistance in Crime Matters Act 1987 (MACMA) has effect, and may be enforced, as if it were a restraining order that was made by the court under the Proceeds of Crime Act 2002 at the time of the registration. Once an order is made under MACMA s34E, the order may be dealt with in exactly the same manner as if it were made under the Proceeds of Crime Act 2002. The Proceeds of Crime Act 2002 Memorial
should be used and should include a statement that “the restraining order has effect, and may be enforced, as if it were a restraining order that was made under the Proceeds of Crime Act 2002.

23.1 Effect on title

Where a restraining order has been noted on a title, the Act prohibits any dealings or transactions that have “the direct or indirect effect of reducing the value of the person’s interest in the property” – s.18 & 338. This in turn means that the Registrar should not register and debt or charge-related caveats or memorials, which may indirectly reduce the value of the property interest concerned.

If any subsequent dealings are lodged, they may not be registered, but held in a Registrar’s Packet. These dealings will remain in the Registrar’s Packet as unregistered dealings until the relevant memorial is withdrawn or the land is forfeited to the Commonwealth.

If the monies protected by the memorial are not paid, then a right is created for the Commonwealth to sell the land and recover the original amount and subsequent costs.

23.2 Removal

The memorial may be withdrawn from the certificate of title by the Director of Public Prosecutions, the Official Trustee in Bankruptcy, the Commissioner of the Australian Federal Police or by an application by the registered proprietor on an application form supported by evidence (usually in the form of a Court order) that the memorial no longer has any effect.

23.3 Fees

Fees are payable on lodgement and withdrawal of these memorials.

24 Retirement Villages Act 1992

Section 15 of the Retirement Villages Act 1992 (Current) provides that retirement villages shall only operate from land registered under the TLA and requires that a memorial giving notice that the land is being so used must be lodged before the registered proprietor can advertise the property for sale, rent or lease or otherwise dispose of or encumber the interest in the land.

In addition to its role as a notice, the memorial is also evidence of the existence of a statutory charge against the property securing, in priority, to all other encumbrances, the resident’s right to a refund of the payment of a premium under the Act.

Memorials for retirement villages established before 19 June 1992 must carry the endorsed consent of any encumbrancers of the land. On registration the memorial is endorsed on the relevant title and where appropriate, on the relevant strata plan.

24.1 Effect on Title
The memorial does not restrict the registration of any instrument dealing in the land but must be shown in the Limitations, Interests, Encumbrances and Notifications panel of such instrument (where there is one). By acknowledging the memorial as an encumbrance the successive owners and encumbrancers of the land are deemed to have knowledge of the use of the land and the implications of that use.

24.2 Removal

24.2.1 Total removal of a retirement villages memorial

The memorial may be removed by application to the Registrar of Titles, who must be satisfied that no part of the land to which the memorial relates is still used or proposed to be used as a retirement village. The following is required to remove the memorial from the land:

- the applicant (who may not always be the registered proprietor) is to lodge an application form. The reason for the application (third panel) should state:

"to have number ................ removed from the above land on the grounds that the land is no longer to be used as a retirement village"

- a supporting statutory declaration setting out the circumstances in which the use of the land has changed and confirming the request to have the memorial removed on the grounds previously stated

and

- consents from all registered encumbrancers and caveators should also be supplied.

24.2.2 Removal of a retirement villages memorial that has been incorrectly lodged

Sometimes a registered proprietor of a strata lot incorrectly lodges a retirement villages act memorial over land that has not been set aside as a retirement village. These memorials have at times been accepted for registration because Landgate does not have any way of knowing whether or not the strata scheme is to be used as a retirement village.

The procedure for removal of retirement village memorials that have been incorrectly lodged against land is as follows:

- The lodgement of an application form signed by the registered proprietor of the land.

The reason for the application (third panel) should state:

"to have memorial number ............... removed from the above land on the grounds that the land did not at the time of registration of the memorial and does not now fall within a definition of a retirement village scheme under the Retirement Villages Act 1992."

- A supporting statutory declaration by the registered proprietor stating that:

- the registered proprietor’s strata lot contained in the strata plan and the buildings on the strata plan did not at the time of registration of the memorial and does not now fall within a definition of a retirement village scheme under the Retirement Villages Act 1992

and

- the registered proprietor’s strata lot will not be used in the future by that proprietor as part of a
retirement village scheme as defined under the Retirement Villages Act 1992.

- A supporting statutory declaration by a councillor of the strata company stating, on behalf of the strata company, that:

- Now and at the time of registration of the memorial there is and was no current by-law or notice of a proposed amendment to the by-laws of the strata company which provides that the land in the strata plan will be used as a retirement villages scheme.

and

- There will not be in the future a change to the by-laws of the strata company which provides that the land in the strata plan will be used as a retirement villages scheme or part of a retirement village scheme as defined under the Retirement Villages Act 1992.

- A certificate or letter from the Department of Commerce (Consumer Protection) confirming that the land in question is not, has never been used nor is proposed to be used as a retirement village.

24.2.3 Partial removal of a retirement villages memorial


24.3 Fees

Fees are payable both on lodgement of the memorial and on an application to remove it.

25 Rural Adjustment and Finance Corporation Act 1993

The Rural Adjustment and Finance Corporation Act 1993 (Repealed now Rural Business Development Corporation Act 2000.) (in this paragraph referred to as the Act) repealed the Rural Adjustment and Finance Corporation Act 1971 but continued on in existence the body known as the Rural Adjustment and Finance Corporation of Western Australia, a body corporate with perpetual succession and a common seal.

The signatories or seal holders are designated by the Act, and documents sealed with the common seal of the Corporation will be accepted for registration when the seal is countersigned by two members (the term member includes the chairperson) or a member and an officer, or three officers. The corporation may delegate any of its powers (apart from the power to delegate) to an individual member, or to the officers of the organisation.

Note: The Rural Adjustment and Finance Corporation Act 1993 was repealed by the Rural Business Development Corporation Act 2000.

25.1 Protection Order

In addition to financial assistance, the corporation may grant an applicant a protection order, halting any default proceedings already commenced and forbidding the commencement of new actions...
without the permission of the corporation. The corporation must immediately, on granting the order, file with Landgate a copy of the order for recording on the title for freehold land or on the Crown land title or Crown lease for Crown land, or in the Deeds Office for old system land.

The protection order continues in operation for 3 months, and may be extended, and the extension must be filed at Landgate. The order may also be cancelled by the corporation, and the Act requires it (the corporation) to file a notice at Landgate of the expiration due to time, or cancellation of the order.

Instruments creating or transferring an interest in land encumbered by a protection order will not be registered.

25.2 Restriction on dealing in land

The corporation may, under a rural assistance scheme, transfer land to a person, and deliver a memorial to the Registrar of Titles or the Registrar of Deeds and Transfers for registration either on the title for freehold land, or on the Crown land title or Crown lease for Crown land, or in the Deeds Office for old system land.

A transfer, assignment or lease of land affected by such a memorial is not registrable unless it bears the appropriate authorisation of the corporation.

On the registration of an instrument with the authorisation of the corporation the memorial ceases to bind the (freehold) title, Crown land title or Crown lease and is removed.

25.3 Fees

No fees are payable on any notice or memorial lodged under the Act.

26 Rural Business Development Corporation Act 2000


The Rural Business Development Corporation (the Corporation) has been set up to provide financial assistance to persons eligible for assistance under approved assistance schemes to foster the development of rural businesses.

The corporation may, under an approved assistance scheme, transfer land to a person, and deliver a memorial to the Registrar of Titles or the Registrar of Deeds and Transfers for registration either on the title for freehold land, or on the Crown land title or Crown lease for Crown land, or in the Deeds Office for old system land.

26.1 Effect on titles

A transfer, assignment or lease of land affected by such a memorial is not registrable unless it
bears the appropriate authorisation of the corporation.

On the registration of an instrument with the authorisation of the corporation the memorial ceases to bind the (freehold) title, Crown land title or Crown lease and is removed.

26.2 Fees

No fees are payable on any notice or memorial lodged under the Act.

27 Soil and Land Conservation Act 1945

The Soil and Land Conservation Act 1945 (Current) (in this paragraph referred to as the Act) is administered, subject to the direction of the Minister, by the statutory position of Commissioner of Soil and Land Conservation, and a Deputy Commissioner. The Commissioner may delegate any of his functions (apart from the power of delegation). Any person signing a document on behalf of or in the name of the Commissioner must state his delegation to do so.

27.1 Vegetation conservation covenants

A landowner may, by agreement with the Commissioner, set aside all or part of a lot or location for the protection and management of natural vegetation. The Commissioner may lodge a memorial for registration on the title for freehold land, on a Crown land title or Crown lease for Crown land, or in the Deeds Office for old system land.

27.2 Removal

The Commissioner may remove the memorial by lodging at Landgate a form certifying that the agreement has been discharged. The Registrar may also cancel the registration of the memorial where he is satisfied that the covenant or agreement has ceased to have effect. Action would be taken by the Registrar on receipt of an application form by the registered proprietor to remove the memorial, supported by evidence proving that the agreement has ceased to have effect. The proof may be in the form of a statutory declaration.

27.3 Effect on Title

The memorial does not restrict any dealing on the land, but must be noted in the Limitations, Interests, Encumbrances and Notifications panel (where there is one) of any instrument creating or transferring an interest in it. By acknowledging the agreement as an encumbrance the successive owners and encumbrancers of the land are bound by its provisions.

27.4 Soil Conservation Charge
The Commissioner may under certain circumstances authorise contractors to enter upon land and take action to conserve natural vegetation. The costs of the action, if not paid by the landowner or occupier, can become a charge on the land ranked first in priority to all other registered charges and mortgages, except those created in favour of the Crown or the Bank of Western Australia Ltd.

Registration of the charge is effected by lodging a memorial for registration on the title for freehold land or on a Crown land title or Crown lease for Crown land or the Deeds Office for old system land.

The Commissioner may remove the memorial by lodging at Landgate a form certifying that payment of the amount charged has been made in full.

27.5 Effect on Title

The memorial does not restrict any dealing on the land, but must be noted in the Limitations, Interests, Encumbrances and Notifications panel (where there is one) of any instrument creating or transferring an interest in it. By acknowledging the memorial as an encumbrance the successive owners and encumbrancers of the land are bound by its provisions.

If the amount owing under the charge remains unpaid the Commissioner has the same powers conferred on a mortgagee by the TLA and the Land Act, including the power to sell the land to recover the costs.

27.6 Fees

No registration fees are required to lodge or withdraw these memorials, and no stamp duty is payable on any charge created.

27.7 Soil Conservation Notice

The Commissioner may issue a notice to a land owner or occupier requiring him to take action (or refrain from an action) to conserve the natural vegetation. A memorial of the notice may be lodged for registration on the title for freehold land, on a Crown land title or Crown lease for Crown land, or in the Deeds Office for old system land.

27.8 Effect on Title

The memorial does not restrict any dealing on the land, but must be noted in the Limitations, Interests, Encumbrances and Notifications panel (where there is one) of any instrument creating or transferring an interest in it. By acknowledging the memorial as an encumbrance the successive owners and encumbrancers of the land are bound by its provisions.

27.9 Removal

The Commissioner may remove the memorial by lodging at Landgate a form certifying that the soil conservation notice has been quashed or discharged.
No registration fees are payable on the lodgement or withdrawal of these memorials.

28 Taxation Administration Act 2003

The Taxation Administration Act 2003 (Current) (in this paragraph referred to as the Act) provides for the administration and enforcement of legislation dealing with State taxation. The Act provides for the lodgement of Memorials to charge land to secure the payment of Land Tax and to charge land to secure payment of Stamp Duty on instruments. The former provisions of the Land Tax Assessment Act 1976 and the Stamp Act 1921 with regard to the lodgement of memorials, was repealed by this Act.

The administration of the Act is vested in the statutory position of Commissioner for State Taxation, and a number of Assistant Commissioners (subject to the direction and control of the Minister). The Commissioner may delegate his powers (apart from the power of delegation) to any Assistant Commissioner or other officer. Any person signing on behalf of the Commissioner should state that he is the holder of a written delegation to do the act achieved by the registration of the document.

Where a Survivorship or Transmission application or a Property (Seizure and Sale) Order is lodged in relation to land over which a memorial under s.76 or s.77 has been lodged by the Commissioner of State Taxation then consent will be required by the Tax Commissioner to allow registration of the Survivorship or Transmission application or Property (Seizure and Sale) Order.

28.1 Memorial (Land Tax)

Where Land Tax is in arrears, the Commissioner for State Taxation may lodge a memorial against freehold land and in the Deeds Office for old system land. The Memorial is lodged under s.76 of the Act.

Section 76(1) of the Act states that unpaid Land Tax is a first charge on the land, whether or not the land tax is due for payment and whether or not a memorial of the charge has been registered, under s.83 of the Act.

The effect of lodging the memorial is to prohibit the registration of any subsequent instruments without the consent of the Commissioner of State Taxation.

The memorial may be removed by the Commissioner for State Taxation by lodging under s.81 of the Act a document called a Memorial of Release of Charge.

A Memorial of Release of Charge can also be used to withdraw memorials formerly lodged under the Land Tax Assessment Act 1976.

28.1.1 Fees

Fees are payable on lodgement and withdrawal of these memorials.

28.2 Memorial (Stamp Duty)
Where Stamp Duty is payable on an instrument under the Act, but was not paid on the due date or the payment of the duty is dishonoured, the Commissioner for State Taxation may lodge a memorial against freehold land and in the Deeds Office for old system land. The Memorial is lodged under s.77 of the Act.

Section 77(4) of the Act states that a charge only arises on land for unpaid stamp duty when a memorial of the charge has been registered under s.83 of the Act.

The effect of lodging the memorial is to prohibit the registration of any subsequent instruments without the consent of the Commissioner of State Taxation.

The memorial may be removed by the Commissioner for State Taxation by lodging under s.81 of the Act a document called a Memorial of Release of Charge.

A Memorial of Release of Charge can also be used to withdraw memorials formerly lodged under the Stamp Act 1921.

28.2.1 Fees

Fees are payable on lodgement and withdrawal of these memorials.

28.3 Orders for Sale of Land

If Land Tax or Stamp Duty remains unpaid for 18 months after registration of either of the above-mentioned memorials, the Commissioner of State Taxation may apply to the Supreme Court for an order for the sale of the land so that the proceeds of sale may be applied toward satisfaction of the outstanding tax liability (see Sections 85 and 86 of the Act).

To complete the sale a transfer of land executed by the court nominated in the order on behalf of the registered proprietor is registered.

The duplicate title (if any) need not be produced, and if it is not produced the transfer will be registered after the procedures set out in s.74 of the TLA have been complied with.

A sale by order of the Supreme Court is to discharge the land from any mortgage or other encumbrance securing a monetary obligation, but the land remains subject to any lease easement or other encumbrance.

28.3.1 Fees

Fees are payable on the registration of a transfer giving effect to the order of the Supreme Court.

29 Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996 (Deferral of Charges and Headworks Contributions)

The Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996 (Deferral of Charges and Headworks Contributions) (in this paragraph referred to as the Act) made changes to the way the Water Corporation and other water agencies collect water charges and headworks contributions for newly subdivided residential land.

Developers of residential land may apply to the Water Corporation or other water agencies for:

- exemption of charges for residential lots created by subdivision approved by the Western Australian Planning Commission

and

- deferral of headworks contributions for residential lots created by subdivision.

The deferral applies only if the lot:

- is not serviced and is not a habitable lot

- is created to be used solely or principally for residential purposes

and

- has an area of not more than 2000 square metres or if the area is more than 2000 square metres, it is to be used for a building or group of buildings that is solely for residential purposes and contains a number of separate residential units.

Payment is deferred until the lot:

- is serviced

- becomes a habitable lot

or

- one year passes after the subdivision plan or diagram is approved by the Western Australian Planning Commission.

Note: For the purpose of the Act the definition of a lot does not include a lot depicted on a Strata Plan unless it is a lot in a survey-strata scheme.

In order to obtain a deferral of headworks contributions, the developer must agree to a memorial (on each lot where it is proposed to defer headworks contributions) in favour of the Water Corporation under s.67B of the Water Agencies (Power) Act 1984 and also, in some cases, by other water agencies under s.62D of the Water Boards Act 1904.

The memorials can be created:

- in the form of a document

or

- automatically on the lodgement of the deposited plan of survey.

29.1 Memorials Lodged in Document Form

Memorials created by document must be lodged after the lodgement of the relevant plan, deposited plan or diagram at Landgate but before the application to create and register the new titles the subject of the plan or diagram is lodged. A memorial under s.67B of the Water Agencies
(Power) Act 1984, and if necessary under s.62D of the Water Boards Act 1904, can be incorporated into the one document.

The land description in the document must refer to the land the subject of the plan, deposited plan or diagram. The memorial will be endorsed on the title for the land the subject of the plan, deposited plan or diagram and will be brought forward onto the new titles for the lots when they are created and registered.

Memorials created by document will be removed by the lodging of a withdrawal of Memorial document. In the case of land encumbered by a memorial lodged under s.67B of the Water Agencies (Power) Act 1984 and s.62D of the Water Boards Act 1904, separate documents will need to be lodged (one for the withdrawal of memorial under s.67B and another for the withdrawal of memorial under s.62D).

29.2 Memorials Created on Subdivisional Plans and Diagrams

When the plan, deposited plan or diagram is lodged at Landgate it may (in the circumstances outlined above) contain a notation that s.67B of the Water Agencies (Power) Act 1984 and if applicable, that s.62D of the Water Boards Act 1904 applies to certain lots shown on the plan, deposited plan or diagram. The memorial will be entered on the title for the land the subject of the plan, deposited plan or diagram and will be brought forward onto the new titles for the lots when they are created and registered.

Memorials created on subdivisional plans and diagrams will be removed by the lodging of an application to remove the Memorial. In the case of land encumbered by a memorial lodged under s.67B of the Water Agencies (Power) Act 1984 and s.62D of the Water Boards Act 1904, separate applications to remove the memorials will need to be lodged (one for the memorial under s.67B and another for the memorial under s.62D).

29.3 Effect as an Encumbrance

When these memorials encumber land, they act as a bar to the registration of an instrument to transfer land unless there is the written consent of the Water Corporation and if applicable other water agencies.

Note: Any enquiries with regard to the creation or removal of these memorials should be directed to the Water Corporation.

29.4 Fees

Fees are payable on lodgement and withdrawal of these memorials.

A registration fee for the creation of the memorial is to be paid at the time of lodgement of the plan or diagram and also upon their removal.

30 Town Planning and Development Act 1928
See Policy and Procedure Guide NOT-01 Notifications section 11.¹

¹[Guide updated on 06/09/2018 to replace reference 'Section 28 of this guide' with 'Policy and Procedure Guide NOT-01 Notifications section 11']

31 Water Services Act 2012

The Water Services Act 2012 (Current) (in this paragraph referred to as the Act) relates to the provision of water services and the regulation of water service providers, and for related purposes. In 2013 the Water Services Act 2012 replaced the Water Services Licensing Act 1995.

31.1 Lodging a Memorial Against the Land – Section 128(2) of the Water Services Act 2012

Section 128(2) of the Act allows a licensee to lodge a memorial against land where the payment of an amount due to the licensee in respect of any water services charge is in arrears.

31.2 Effect on Title

Where the memorial is shown in the second schedule of a certificate of title, the Registrar of Titles is prohibited from registering an instrument affecting the land without the written consent to the licensee.

31.2.1 Water Corporation Memorials for the Deferral of Headworks

Section 128(2) of the Act requires a memorial document to be registered on the certificate of title of the land being subdivided. Section 128(2) replaces section 67B of the Water Agencies (Powers) Act 1984, which required a memorial to be created on plans of subdivision.

The new memorial should be lodged at Landgate on the approved form prior to the lodgement of the application for new certificates of title for the lots on the plan of subdivision.

Section 128(3) of the Act states that, until the memorial is withdrawn, the Registrar must not register, without the written consent of the licensee, an instrument affecting the land that is lodged for registration after the memorial is lodged.

31.3 Withdrawal of Memorials – Section 128(4) of the Water Services Act 2012

Under section 128(4) of the Act, the licensee is to withdraw a memorial when the charge, contribution or monies due under the Water Services Act 2012 that was previously in arrears or deferred and that was the subject of a memorial, has been paid or has ceased to be in arrears.

31.4 Forms

The Memorial and the Withdrawal of Memorial Form can be downloaded from Landgate’s corporate website at http://www0.landgate.wa.gov.au/titles-and-surveys/forms-and-fees/land-tilting-forms.
31.5 Fees

Fees are payable on the lodgement and withdrawal of these memorials. Fees will no longer be included with the deposited plan audit lodgement fee.

31.6 Transfer Order and Notification

Pursuant to s.46B of the Act the Minister may make a Transfer Order that transfers the assets of a statutory asset owner to a transferee.

Asset as defined in s.46A of the Act means any works, or any other thing used or intended to be used for the provision of irrigation or drainage services, that:
- is the property of a statutory asset owner

and

- is upon, in, over or under the land that is not the property of the statutory asset owner.

Section 46G of the Act requires that a notification be placed on relevant titles so as to ensure that a person searching the title to that land receives notice that the assets on the land that were transferred vest in the statutory owner.

Two forms have been created and approved by Landgate specifically for the Act. One form to create a notification (Form Approval B6548) and one to remove a notification (Form Approval B6549).

31.7 Fees

Fees are payable on lodgement and withdrawal of these notifications.

32 Western Australian Land Authority Act 1992

32.1 By-Laws

Part 6 (By-laws) of the Western Australian Land Authority Act 1992 (Current) (in this paragraph referred to as the Act) authorises the creation of by-laws for the development, management and use of certain land and the registration of these conditions in a memorial in the name of the Western Australian Land Authority lodged in Landgate. The memorials may be registered on the title for freehold land, the Deeds Office for Old System land and on a Crown land title for Crown land. The memorial may be registered on land in the name of the authority before the land is sold.

The memorial does not contain the by-laws; it only gives notice of the intention of the authority to create them. The by-laws may be amended or removed by the publication of an order by the Minister in the Government Gazette. On the delivery of the order to Landgate the memorial is amended or removed as an encumbrance.
32.2 Effect on Title

The memorial does not restrict any dealing or instrument on the land as long as the dealing or instrument shows it in the Limitations, Interests, Encumbrances and Notifications panel (where there is one). By acknowledging the covenant as an encumbrance the successive owners and encumbrancers of the land are bound by its provisions.

32.3 Conditional Disposition

Part 4 (Conditional Disposition of Land) of the Act, authorises the creation of conditions attached to the sale of land and the registration of those conditions in Landgate in a memorial in the name of the Western Australian Land Authority. The memorials may be registered on the title for freehold land, the Deeds Office for Old System land and on a Crown land title for Crown land. The memorials may be removed by a withdrawal signed by the Authority.

Dealings on the land encumbered by a memorial may be accepted if the memorial is shown in the Limitations, Interests, Encumbrances and Notifications panel (where there is one) and the instrument or dealing bears the written consent of the Minister charged with the administration of the Act. A dealing or instrument registered without the consent is void.

The mortgagee of a mortgage registered with the consent of the Minister can, after obtaining a further approval, exercise the power of sale or foreclose in cases where the mortgagor defaults.

32.4 Fees

While fees are payable for the lodgement of a memorial, no fees are required on the documents removing it.