

TERRITORY OF COCOS (KEELING) ISLANDS

Land Laws Amendment Ordinance 1998

No. 2 of 1998

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance under the *Cocos (Keeling) Islands Act 1955*.

Dated 28 April 1998.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

MARK VAILE
Minister for Transport and Regional Development

An Ordinance to amend certain acts of Western Australia relating to land in their application to the Territory, and for related purposes

1. Name of Ordinance

1.1 This Ordinance is the *Land Laws Amendment Ordinance 1998*.¹

2. Commencement

2.1 This Ordinance is taken to have commenced on the day the *Land Administration Act 1997 (W.A.)(C.K.I.)* commenced.

3. Amendments

3.1 The *Applied Laws (Implementation) Ordinance 1992* is amended as set out in Schedule 1.

3.2 The *Land Legislation Ordinance 1992* is amended as set out in Schedule 2.

3.3 The *Land Administration Act 1997 (W.A.)(C.K.I.)* is amended as set out in Schedule 3.

3.4 The *Local Government (Miscellaneous Provisions) Act 1960 (W.A.)(C.K.I.)* is amended as set out in Schedule 4.

3.5 The *Town Planning and Development Act 1928 (W.A.)(C.K.I.)* is amended as set out in Schedule 5.

3.6 The *Transfer of Land Act 1893 (W.A.)(C.K.I.)* is amended as set out in Schedule 6.

SCHEDULE 1

Section 3

**AMENDMENTS OF THE APPLIED LAWS
(IMPLEMENTATION) ORDINANCE 1992**

1. Schedule 1, Part 15 (*Land Act 1933 (W.A.)(C.K.I.)*)

1.1 Omit the Part.

2. Schedule 1, Part 40 (*Transfer of Land Act 1893 (W.A.)(C.K.I.)*)

2.1 Clause 1 (Section 18 (Crown lands remaining unalienated, etc)):
Omit the clause.

2.2 Clause 7 (Section 40 (Assurance fund contributions)):
Omit the clause.

2.3 Clause 8 (Section 41 (On bringing leaseholds under Act, etc)):
Omit the clause.

2.4 Clause 9 (Section 43 (Certain memorials to be, etc)):
Omit the clause.

2.5 Clause 10 (Section 44 (No contribution to the Assurance Fund, etc)):
Omit the clause.

2.6 Clause 11 (Section 45 (Additional contributions to Assurance Fund, etc)):
Omit the clause.

2.7 Clause 22 (New section 169A):
Omit the clause.

2.8 Clause 24 (Section 194 (Assurance fund to be invested, etc)):
Omit the clause.

2.9 Clause 25 (Section 195 (Moneys paid, etc)):
Omit the clause.

SCHEDULE 1—continued

2.10 Clause 26 (Section 196 (Assurance fund not liable in certain cases)):

Omit the clause.

2.11 Clause 27 (Section 197 (Indemnity chargeable in cases under this Act)):

Omit the clause.

2.12 Clause 28 (Section 201 (Compensation of party deprived of land)):

Omit the clause.

2.13 Clause 30 (Section 204 (Costs of summons and proceedings, etc)):

Omit the clause.

2.14 Clause 31 (Section 206 (Persons sustaining loss by inaccuracy in Crown survey, etc)):

Omit the clause.

2.15 Clause 34 (Section 209 (Notice to be served)):

Omit the clause.

2.16 Clause 35 (Section 210 (Payment of amount recovered)):

Omit the clause.

2.17 Clause 36 (Section 211 (Limitation of actions)):

Omit the clause.

2.18 Clause 39 (Section 224 (Contributions to the Assurance Fund)):

Omit the clause.

2.19 Clause 40 (Section 225 (Duty of one per cent to be paid)):

Omit the clause.

2.20 Clause 41 (New sections 244 and 245):

Omit the clause.

SCHEDULE 2

Section 3

AMENDMENTS OF THE *LAND LEGISLATION*
ORDINANCE 1992

1. Schedule, Part 1 (Amendments of the *Land Act 1933* (W.A.)(C.K.I.))

1.1 Omit the Part.

2. Schedule, Part 2 (Amendments of the *Local Government Act 1960* (W.A.)(C.K.I.))

2.1 Omit the Part.

3. Schedule, Part 4 (Amendments of the *Town Planning and Development Act 1928* (W.A.)(C.K.I.))

3.1 Clause 3 (Section 27A (Easements)):

Omit the clause.

4. Schedule, Part 5 (Amendments of the *Transfer of Land Act 1893* (W.A.)(C.K.I.))

4.1 Omit the Part.

SCHEDULE 3

Section 3

**AMENDMENTS OF THE *LAND ADMINISTRATION*
*ACT 1997 (W.A.)(C.K.I.)***

1. Section 3 (Interpretation)

1.1 Definition of “certificate of Crown land title”:

Omit “Crown land”, substitute “parcel of land that is Crown land for that section”.

1.2 Definition of “Crown land”:

Omit the definition, substitute:

“***Crown land***, subject to subsections (2), (3), (4) and (5), means unalienated land and land held by the Commonwealth, by grant or otherwise, in fee simple, but does not include land that is a park or reserve under the *National Parks and Wildlife Conservation Act 1975* of the Commonwealth.”.

1.3 Definition of “land” (paragraph (c)):

Omit the paragraph.

1.4 Definition of “Minister”:

Omit the definition.

2. Section 7 (Minister for Lands to remain body corporate)

2.1 Omit the section.

3. Section 9 (Delegation by Minister generally)

3.1 Paragraph 9 (1) (c):

Omit the paragraph, substitute:

“(c) any other person to whom subsection 8G (7) of the *Cocos (Keeling) Islands Act 1955* applies, or who belongs to a class of persons to whom subsection 8G (7) of the *Cocos (Keeling) Islands Act 1955* applies, specified;”.

3.2 Subsection 9 (1):

Omit “(other than this power of delegation)”.

SCHEDULE 3—continued

4. Section 10 (General powers of Minister in relation to land)

4.1 Subsection 10 (1):

Omit “, in the name and on behalf of the State”.

4.2 Subsection 10 (5):

Omit “Consolidated Fund”, substitute “Commonwealth Consolidated Revenue Fund”.

5. Section 11 (Minister may acquire land in public interest)

5.1 Subsection 11 (1):

Omit “, in the name and on behalf of the State,”.

5.2 Subsection 11 (2):

Omit “, in the name and on behalf of the State,”.

6. Section 26 (Constitution, etc of land districts and townsites)

6.1 Omit the section, substitute:

Territory to be land district

“**26.** For this Act, the Territory is a land district under the name ‘Location 1 of Cocos District’.”.

7. Section 29 (Creation and registration of certificates of Crown land title, qualified certificates of Crown land title and subsidiary certificates of Crown land title)

7.1 Subsection 29 (1):

After “this section”, insert “and section 29A”.

7.2 Subsection 29 (5):

Omit “the State of Western Australia”, substitute “the Commonwealth”.

SCHEDULE 3—continued

8. New section 29A

8.1 After section 29, insert:

Issue of certificate of title for land declared a park or reserve under *National Parks and Wildlife Conservation Act 1975*

“**29A.** If a parcel of land for which no certificate of title has been issued is declared to be a park or reserve under section 7 of the *National Parks and Wildlife Conservation Act 1975* of the Commonwealth, the Registrar must create a certificate of title for the parcel in the name of the Director of National Parks and Wildlife (within the meaning given by that Act).”.

9. Section 31 (Restrictions on certain public service officers acquiring Crown land)

9.1 Subsection 31 (1):

After “the Department”, insert “, an officer of the Department administered by the Minister administering the *Cocos (Keeling) Islands Act 1955*, or an employee of the Territory,”.

9.2 Subsection 31 (2):

Omit “public service officer”, substitute “officer or employee”.

9.3 Paragraph 31 (2) (b):

Omit “Minister”, substitute “Commonwealth Minister”.

10. Section 32 (Approval of plans of survey and sketch plans)

10.1 Add at the end:

“(2) However, a plan of survey certified as correct by the Commonwealth Surveyor-General is taken to be a plan of survey for this Act.

“(3) Also, an authorised land officer may accept a plan of Crown land as correct without further survey if the plan was approved by the Commonwealth Surveyor-General before 1 July 1992.”.

SCHEDULE 3—continued

11. Section 34 (Power to enter Crown land for examination, inspection or survey)

11.1 Paragraph 34 (3) (b):

Omit “State”, substitute “Commonwealth or Territory”.

12. Section 35 (Forfeiture of interests in Crown land or certain freehold land)

12.1 Paragraph 35 (4) (a):

Omit “State”, substitute “Commonwealth”.

13. Section 36 (Action which may be taken by Minister by agreement with holders of interests or freehold on breach of certain conditions or covenants)

13.1 Subparagraph 36 (c) (ii):

Omit “State,”, substitute “Commonwealth,”.

14. Section 55 (Property in roads, etc)

14.1 Paragraph 55 (1) (a):

Omit the paragraph, substitute:

“(a) vests in the Cocos (Keeling) Islands Shire Council; and”.

14.2 Paragraph 55 (1) (b):

Omit “revested”, substitute “vested”.

14.3 Subsection 55 (4):

Omit the subsection, substitute:

“(4) The vesting in the Cocos (Keeling) Islands Shire Council of land comprising a private road under this section must not be otherwise than on just terms.”.

SCHEDULE 3—continued

15. Section 56 (Dedication of roads)

15.1 Subsection 56 (6):

Omit the subsection, substitute:

“(6) If a dedication under this section has effect as an acquisition of property, the acquisition must not be otherwise than on just terms.”.

16. Section 86 (Minister may sell by private treaty, or lease, Crown land)

16.1 Paragraph 86 (a):

Omit the paragraph, substitute:

“(a) to a State or Territory; and”.

17. Section 172 (No transactions to affect land under notice without Minister’s approval)

17.1 Paragraph 172 (7) (a):

Omit the paragraph, substitute:

“(a) to which the Commonwealth, or an authority of the Commonwealth or the Territory, or a person acting on behalf of the Commonwealth or such an authority, is a party;”.

18. Section 178 (Content of a taking order)

18.1 Paragraph 178 (1) (c):

Omit “in the name of the State of Western Australia”.

19. Section 195 (Easements in gross may be made generally in favour of the Commonwealth, etc)

19.1 Paragraph 195 (a):

Omit the paragraph, substitute:

“(a) to create in favour of the Commonwealth or in favour of a Commonwealth or Territory instrumentality, statutory body corporate or local government, an easement without a dominant tenement; and”.

SCHEDULE 3—continued

20. Section 196 (Creation of public access easements)

20.1 Subsection 196 (9):

Omit the subsection, substitute:

“(9) A public access easement in favour of the Commonwealth may be varied or surrendered on behalf of the Commonwealth by a deed made by the Commonwealth Minister responsible for the administration of the *Town Planning and Development Act 1928* (W.A.)(C.K.I.)”.

21. New section 196A

21.1 After section 196, insert:

Creation of easements in gross for public amenities

“**196A.** (1) If a plan of survey of land in the Territory:

- (a) was prepared on or before 30 June 1992; and
- (b) is certified correct by the Surveyor-General of the Commonwealth; and
- (c) identifies the location of equipment, pipes, cables, electrical transmission lines, structures or paths for the provision or maintenance by the Commonwealth of:
 - (i) water, sewerage or drainage; or
 - (ii) electricity or other energy supply; or
 - (iii) telephone services; or
 - (iv) foreshore access; or
 - (v) jetties; or
 - (vi) other public amenities; and
- (d) is accepted for this section by an authorised land officer and signed by that officer;

an easement is taken to be granted in favour of the Commonwealth for the provision and maintenance of, and access to, those services.

“(2) A plan of survey may be accepted by an authorised land officer for the purposes of this section without further survey.

SCHEDULE 3—continued

“(3) The easement created under subsection (1) does not attach to a dominant tenement and persists despite the alienation of any Crown land by the Commonwealth.

“(4) The Registrar of Titles, or the Registrar of Deeds, as the case requires, must register the easement on the appropriate register.

“(5) This section does not affect the rights of any person to an easement otherwise acquired under common law, by agreement or by statute.”.

22. Section 264 (Liability of Crown and management bodies in relation to certain land)

22.1 Subsection 264 (4) (definition of “the Crown”):

Omit the definition, substitute:

“*the Crown* includes a Commonwealth or Territory agency or instrumentality, and an officer or employee of the Commonwealth or of such an agency or instrumentality.”.

23. Section 274 (Service of documents)

23.1 Paragraph 274 (4) (a):

Omit “the metropolitan region”, substitute “the Territory”.

23.2 Paragraph 274 (4) (b):

Omit the paragraph.

23.3 Paragraph 274 (4) (c):

Omit “third business day”, substitute “tenth business day”.

23.4 Subsection 274 (6):

Omit the subsection.

SCHEDULE 3—continued

24. Schedule 2 (Transitional, savings and validation provisions related to *Land Act 1933 (W.A.)(C.K.I.)*)

24.1 Add at the end:

Dedication of roads

“**57.** An area of Crown land that is taken, by section 177 of the repealed Act, to have been dedicated as a public road under section 294A of the *Local Government (Miscellaneous Provisions) Act 1960* in spite of a failure to comply with the requirements of that section, is taken to be dedicated as a road for this Act.”

SCHEDULE 4

Section 3

**AMENDMENT OF THE *LOCAL GOVERNMENT*
*(MISCELLANEOUS PROVISIONS) ACT 1960 (W.A.)(C.K.I.)***

**1. Section 295 (Provisions of streets in subdivisions under the
Town Planning and Development Act 1928 (W.A.)(C.K.I.))**

1.1 Subsection 295 (5):

Omit “; but no way not exceeding 6 metres in width shall be dedicated or be deemed to have become dedicated as a street by virtue of this subsection”.

SCHEDULE 5

Section 3

**AMENDMENTS OF THE *TOWN PLANNING AND
DEVELOPMENT ACT 1928 (W.A.)(C.K.I.)***

1. Section 27A (Easements)

1.1 Subparagraph 27A (1) (b) (i):

Omit the subparagraph.

1.2 Paragraph 27A (1) (b):

Add at the end:

“; or (vi) Cocos (Keeling) Islands Shire Council or the Crown for a purpose referred to in subparagraph (ii), (iv) or (v) or for any other public amenity;”.

Note The *Town Planning and Development Act 1928 (W.A.)(C.K.I.)* is also amended by Part 4 of the *Land Legislation Ordinance 1992*.

SCHEDULE 6—continued

SCHEDULE 6

Section 3

**AMENDMENTS OF THE *TRANSFER OF LAND ACT 1893*
(W.A.)(C.K.I.)**

1. Section 4 (Interpretation)

1.1 Subsection 4 (1) (definition of “Grant”):

After “Majesty”, insert “or the Commonwealth”.

1.2 Subsection 4 (1) (definition of “public authority”):

Omit the definition, substitute:

“*public authority* means:

- (a) a Commonwealth or State government department, trading concern, instrumentality or public utility; or
- (b) any other person or body who, under the authority of any applied law, Commonwealth Act or Territory Ordinance, administers or carries on for the benefit of the Territory, the State or the Commonwealth, a social service or public utility.”.

2. New section 169B

2.1 After section 169A, insert:

Territory transition

“**169B.** If an applicant to bring land in the Territory under this Act:

- (a) provides an original of, or a certified copy of, a plan of survey of the land; and
- (b) the plan has been approved by the Surveyor-General of the Commonwealth;

the Registrar may accept the plan of survey without further survey investigation.”.

SCHEDULE 6—continued

3. Section 195 (Moneys paid by Commonwealth under section 201 may be recovered in certain circumstances)

3.1 Omit “the State”, substitute “the Commonwealth” (wherever occurring).

3.2 Omit “in the name of the Registrar” (first occurring).

3.3 Omit “the application of the Registrar”, substitute “the application of the Commonwealth”.

3.4 Omit “Western Australia”, substitute “the Territory” (wherever occurring).

3.5 Omit “with the Registrar”, substitute “the Commonwealth”.

3.6 Omit “, in the name of the Registrar,”.

4. Section 196 (Commonwealth not liable in certain cases)

4.1 Omit “State”, substitute “Commonwealth” (wherever occurring).

5. Section 201 (Compensation of party deprived of land)

5.1 Omit “from the State by action against the Registrar”, substitute “by action against the Commonwealth”.

5.2 Omit “paid by the State”, substitute “paid by the Commonwealth”.

5.3 Omit “Consolidated Fund” (twice occurring), substitute “Commonwealth Consolidated Revenue Fund”.

6. Section 204 (Cost of summons and proceedings under section 203 to be in the discretion of the court)

6.1 Omit “the Registrar”, substitute “the Commonwealth”.

6.2 Omit “Consolidated Fund” (twice occurring), substitute “Commonwealth Consolidated Revenue Fund”.

SCHEDULE 6—continued

7. Section 205 (Actions for recovery of damages may in certain cases be brought against the Commonwealth as nominal defendant)

7.1 Omit “the State with the Registrar”, substitute “the Commonwealth”.

8. Section 206 (Persons sustaining loss by inaccuracy in Crown survey may recover damages against the Commonwealth)

8.1 Omit “the State with the Registrar”, substitute “the Commonwealth”.

9. Section 208 (Persons claiming may before action brought apply to Commissioner in writing for compensation)

9.1 Omit “Consolidated Fund” (twice occurring), substitute “Commonwealth Consolidated Revenue Fund”.

10. Section 209 (Notice of action to be served)

10.1 Omit “the State with the Registrar”, substitute “the Commonwealth”.

10.2 Omit “by the State”, substitute “by the Commonwealth”.

11. Section 210 (Payment of damages etc from Commonwealth Consolidated Revenue Fund)

11.1 Omit “the State with the Registrar”, substitute “the Commonwealth”.

11.2 Omit “the State then”, substitute “the Commonwealth then”.

11.3 Omit “Consolidated Fund” (twice occurring), substitute “Commonwealth Consolidated Revenue Fund”.

12. Section 211 (Limitation of actions)

12.1 Omit “the State”, substitute “the Commonwealth”.

SCHEDULE 6—continued

13. Section 240 (Service of notices)

13.1 Paragraph 240 (4) (a):

Omit “the metropolitan region”, substitute “the Territory”.

13.2 Paragraph 240 (4) (b):

Omit the paragraph.

13.3 Paragraph 240 (4) (c):

Omit “third business day”, substitute “tenth business day”.

Note The *Transfer of Land Act 1893* (W.A.)(C.K.I.) is also amended by Part 39 of the *Applied Laws (Implementation) Ordinance 1992*.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 5 May 1998.