

# TERRITORY OF CHRISTMAS ISLAND

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## Land Legislation Amendment Ordinance 1992

No. 8 of 1992

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia,  
acting with the advice of the Federal Executive Council, make the  
following Ordinance under the *Christmas Island Act 1958*.

Dated 2 November 1992.

BILL HAYDEN  
Governor-General

By His Excellency's Command,

WENDY FATIN  
Minister of State for the Arts and Territories

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An Ordinance to amend the *Land Act 1933* (W.A.) (C.I.), the *Local Government Act 1960* (W.A.) (C.I.), the *Strata Titles Act 1985* (W.A.) (C.I.), the *Town Planning and Development Act 1928* (W.A.) (C.I.) and the *Transfer of Land Act 1893* (W.A.) (C.I.).

### Short Title

1. This Ordinance may be cited as the *Land Legislation Amendment Ordinance 1992*.<sup>1</sup>

[NOTE: This Ordinance commences on gazettal: see s 9 (2) of the *Christmas Island Act 1958* ]

**Amendments**

**(1)** The *Land Act 1933* (W.A.) (C.I.) is amended as set out in Part 1 of the Schedule.

**(2)** The *Local Government Act 1960* (W.A.) (C.I.) is amended as set out in Part 2 of the Schedule.

**(3)** The *Strata Titles Act 1985* (W.A.) (C.I.) is amended as set out in Part 3 of the Schedule.

**(4)** The *Town Planning and Development Act 1928* (W.A.) (C.I.) is amended as set out in Part 4 of the Schedule.

**(5)** The *Transfer of Land Act 1893* (W.A.) (C.I.) is amended as set out in Part 5 of the Schedule.

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**SCHEDULE**

Section 3

AMENDMENTS OF LAND LEGISLATION

**PART 1—AMENDMENTS OF THE *LAND ACT 1933* (W.A.) (C.I.)**

**1. New section 170A**

1.1 After section 170, insert:

**Address for service**

“170A. Unless the contrary intention appears, a person may fulfil a requirement of this Act to provide an address within the limits of the city of Perth for service of notices or processes by providing an address in Perth or the Territory.”.

**2. New sections 176 and 177**

2.1 After section 175, insert:

**Acceptance of plans approved by Commonwealth Surveyor-General**

“176. An authorised land officer may, without carrying out further surveys, accept a plan of Crown land if the plan was approved by the Commonwealth Surveyor-General before 1 July 1992.

**Effect of acceptance of plan**

“177. An area of Crown land is taken to have been dedicated as a public road under section 294A of the *Local Government Act 1960*, in spite of a failure to comply with the requirements of that section, if the area:

- (a) is shown as a public road on a plan that has been:
  - (i) accepted by an authorised land officer under section 176 of this Act; and
  - (ii) signed by the officer; and
- (b) has been certified by the local authority as a public road.

**SCHEDULE—continued****PART 2—AMENDMENTS OF THE  
LOCAL GOVERNMENT ACT 1960 (W.A.) (C.I.)****1. Section 287 (Approval of provision or alteration of street)**

1.1 After subparagraph 287 (4) (a) (ii), insert:

“(iii) the street was used by the public as a street before 1 July 1992;  
or”.

**2. Section 288 (Declaration of dedication of public streets)**

2.1 Subsection 288 (4):

Add at the end:

“; or (e) the land that is the subject of the request was used by the public as a  
street before 1 July 1992.”.

**3. Section 294A (Provision of streets in subdivisions under the Land Act 1933)**

3.1 Subsection 294A (1):

Omit “; but no way not exceeding six metres in width shall be dedicated by virtue of this  
section”.

**4. Section 295 (Provision of streets in subdivisions under the Town Planning and  
Development Act 1928)**

4.1 Subsection 295 (5):

Omit “; but no way not exceeding six metres in width shall be dedicated or be deemed to  
have become dedicated by virtue of this subsection, subsection (5) of section one hundred  
and fifty-seven of the Road Districts Act 1919 or any Act repealed by that Act”.

**PART 3—AMENDMENTS OF THE  
STRATA TITLES ACT 1985 (W.A.) (C.I.)****1. Section 23 (Certificate of local government authority)**

1.1 Paragraph 23 (1) (a):

After “inspected and”, insert “, subject to subsection (1A),”.

**SCHEDULE—continued**

1.2 After subsection 23 (1), insert:

“(1A) The local government authority is not required to certify that a building shown on a strata plan is consistent with building plans and specifications approved for the building, if:

- (a) the building was commenced before 1 July 1992; and
- (b) the authority did not approve plans for the building.”.

**PART 4—AMENDMENTS OF THE *TOWN PLANNING AND DEVELOPMENT ACT 1928 (W.A.) (C.I.)***

**1. New section 20AA**

1.1 After section 20A, insert:

**Vesting of access areas and reserves in Shire Council**

“20AA. (1) This section applies when:

- (a) the Commission has approved, under this Act, a subdivision of land on the condition that parts of the land shown on a diagram or plan of survey of the subdivision as approved vest in the Christmas Island Shire Council for the purpose of:
  - (i) conservation or protection of the environment; or
  - (ii) a waterway; or
  - (iii) a pedestrian accessway; or
  - (iv) a right-of-way; or
  - (v) a reserve for water supply, sewerage, drainage, foreshore management, waterway management or recreation; and
- (b) the diagram or plan is received registered or deposited in the Office of Titles.

“(2) The Registrar of Titles must vest in the Council those parts of the land:

- (a) in accordance with the condition; and
- (b) without a conveyance, transfer, assignment or payment of a fee.”.

1.2 After subparagraph 27A (1) (b) (iv), insert:

“; or (v) Christmas Island Shire Council or the Crown for a purpose referred to in subparagraph (iii) or (iv);”.

**SCHEDULE**—continued**PART 5—AMENDMENTS OF THE  
TRANSFER OF LAND ACT 1893 (W.A.) (C.I.)****1. Section 4 (Interpretation)**

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

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

**2. Sections 81A and 81B**

2.1 Omit the sections, substitute:

*Division 1—Registration of Crown Leases After October 1992***Registration of Crown leases after October 1992**

“81A. (1) An original and a duplicate of a Crown lease issued after the date of commencement of this section must be:

- (a) issued under seal; and
- (b) forwarded by the Minister for Lands to the Registrar for registration under sections 53 and 54.

“(2) The Registrar must register the lease:

- (a) by allocating a distinctive reference to it; and
- (b) making any other notation on the lease and duplicate lease which the Registrar considers appropriate.

*“Division 2—Registration of Pre-existing Leases***Interpretation**

“81B. In this Division, unless the contrary intention appears:

‘**Commonwealth Department**’ means the Commonwealth Department administering the Christmas Island Act;

‘**pre-existing lease**’ means a lease granted before the date of commencement of this section under the *Lands Ordinance 1987*.

**SCHEDULE—continued****Giving lease documents to the Registrar**

“81BA. (1) Subject to subsection (2), the lessee under a pre-existing lease must give to the Registrar, before dealing with the lease:

- (a) the lessee’s part of the instrument of lease; and
- (b) a certified copy of any instrument of mortgage, sublease or other dealing relating to the pre-existing lease.

“(2) If a pre-existing lease is subject to a mortgage and the mortgagee holds the lessee’s part of the instrument of lease:

- (a) the mortgagee must give to the Registrar, before dealing with the lease or returning it to the lessee:
  - (i) the lessee’s part of the instrument of lease; and
  - (ii) a certified copy of the instrument of mortgage relating to the lease; and
- (b) the lessee must give to the Registrar, before dealing with the lease, a certified copy of any instrument of sublease or other dealing relating to the lease.

“(3) If the lessee’s part of the instrument of lease has been lost or destroyed, the lessee must give the Registrar a written statement:

- (a) setting out the lessee’s name and address; and
- (b) giving details of the lease; and
- (c) explaining why the lessee cannot give his or her part of the instrument to the Registrar; and
- (d) stating that the lessee’s part of the instrument of lease has not been deposited by way of security with any mortgagee or chargee.

(4) If the Registrar has received a statement under subsection (3) or the lessee otherwise fails to give the Registrar the lessee’s part of the instrument of lease within the time required, then the Registrar may request the Commonwealth Department for a certified copy of the instrument of lease relating to the lease described in the statement.

**Administrator’s copy of instrument of lease**

81BB. The Administrator appointed, or a person employed under, the *Administration Ordinance 1968* must give to the Registrar the Administrator’s part of the instrument of lease and a certified copy of any mortgage, sublease or other dealing relating to the lease held by the Administrator.

**SCHEDULE—continued****Registration of pre-existing leases**

“81BC. (1) When the Registrar has received, in relation to a pre-existing lease:

- (a) the Administrator’s part of the instrument of lease; and
- (b) either:
  - (i) the lessee’s part of the instrument of lease; or
  - (ii) if the lessee has provided a statement under subsection 81BB (3) or otherwise failed to give the Registrar the lessee’s part of the instrument of lease within the time required—a certified copy of the instrument of lease from the Commonwealth Department ; and
- (c) a certified copy of any instrument of a current mortgage, sublease or dealing; and
- (d) certification from the Administrator or a Commonwealth officer approved by the Minister that the Registrar has been given a certified copy of any mortgage, sublease or other dealing relating to the lease;

the Registrar must, if satisfied as to the title of the lessee, register, without charge and in accordance with subsection (2), the lease and any current mortgage, sublease or dealing.

“(2) For the purposes of subsection (1), the Registrar must:

- (a) enter in a numbered journal particulars of the lease and any current mortgage, sublease or other dealing; and
- (b) mark on each part of the instrument of lease referred to in subsection (1) the number appearing in the place in the journal where the particulars of the lease were entered; and
- (c) if there is a current mortgage, or sublease or other dealing relating to the lease—endorse the mortgage, sublease or other dealing on each part of the instrument of lease; and
- (d) sign each part of the instrument of lease and any endorsements; and
- (e) enter in the Register of Leases the Administrator’s part of the instrument of lease.

“(3) When the Registrar has registered the lease, he or she must give the lessee’s part of the instrument of lease to:

- (a) the lessee; or
- (b) if the copy was received from the mortgagee of the lease—the mortgagee.



**SCHEDULE**—continued**Effect of endorsement of mortgage or sublease**

“81BD. Subject to an express provision to the contrary in the instrument of mortgage or sublease, a mortgage or sublease endorsed on an instrument of lease under paragraph 81BC (2) (c) has effect as if:

- (a) the mortgage or sublease contained all the covenants and conditions implied by this Act in a mortgage or sublease; and
- (b) the parties to the mortgage or sublease had the powers given by this Act to parties to a mortgage or sublease.

*“Division 3—Dealing with a Crown Lease”.*

**3. Section 169A (Territory transition)**

3.1 Section 169A:

Omit “for inclusion in the Register Book”.

3.2 Add at the end:

“(2) If:

- (a) a plan showing land as a public road has been:
  - (i) approved by an authorised land officer within the meaning of section 173 of the *Land Act 1987* on or after 1 July 1992; and
  - (ii) signed by the Inspector of Plans and Surveys; and
- (b) the Christmas Island Shire Council gives written approval of the dedication of the land as a public road; and
- (c) the land was used by the public as a street, way, public place, bridge, or thoroughfare before 1 July 1992;

the land is taken to be dedicated as a public road in spite of a failure to comply with the requirements of Part XI of the *Local Government Act 1960*.”.

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 9 November 1992.