

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 105 of 1985

An Act to amend the Land Sales Act 1984-1985 in certain particulars

[ASSENTED TO 18TH DECEMBER, 1985]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Land Sales Act Amendment Act 1985 (No. 2)*.

2. Commencement. (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Subject to subsection (1), this Act or the provisions thereof specified by Proclamation shall commence on the day or days appointed by Proclamation for the commencement of this Act or, as the case may be, those provisions.

3. Citation. (1) In this Act the *Land Sales Act 1984-1985* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Land Sales Act 1984-1985*.

4. Amendment of s. 6. Interpretation. Section 6 of the Principal Act is amended by, in subsection (1)—

(a) inserting after the definition "group titles plan" the following definition:—

“land held from the Crown for an estate of leasehold” means—

(a) a holding under the *Land Act 1962-1984*;

(b) a miner's homestead within the meaning of the *Miners' Homestead Leases Act 1913-1982*;

(b) in the definition "registrable instrument of transfer"—

(i) omitting from paragraph (a) the words "being registered" and substituting the words "immediate registration (subject to its being duly stamped as required by any applicable law relating to stamp duty)";

(ii) omitting from paragraph (b) the words "being registered or noted" and substituting the words "immediate registration or noting (subject to its being duly stamped as required by any applicable law relating to stamp duty)";

(iii) omitting from paragraph (c) the words "being registered" and substituting the words "immediate registration (subject to its being duly stamped as required by any applicable law relating to stamp duty)";

(c) omitting from the definition "relevant leasehold land", paragraph (c).

5. Amendment of s. 7. Construction of certain provisions. Section 7 of the Principal Act is amended by—

(a) omitting all words from and including the words “Where relevant land” to and including the words “expression in section 6 the” and substituting the word “The”;

(b) omitting the word “the” occurring after the words “apply only where”.

6. Amendment of s. 8. Restriction on selling and purchasing. (1) Section 8 of the Principal Act is amended by—

(a) omitting from subsection (1), paragraph (b) and substituting the following paragraph and words:—

“(b) in the case of relevant leasehold land, the lessee thereof has obtained the permission or approval of the appropriate Minister to the subdivision by reason whereof the land is relevant leasehold land before the event that marks the entry of a person upon the purchase,

and that approval or permission subsists at the time of such event.”;

(b) inserting after subsection (1) the following subsection:—

“(1A) In paragraph (b) of subsection (1) the expression “appropriate Minister” means—

(a) in the case of a holding under the *Land Act 1962-1984*, the Minister of the Crown who at the relevant time is charged with the administration of that Act;

(b) in the case of a miner’s homestead within the meaning of the *Miners’ Homestead Leases Act 1913-1982*, the Minister of the Crown who at the relevant time is charged with the administration of that Act.”;

(c) adding at the end of the section the following subsection:—

“(3) A person who contravenes this section by reason of a purchase by him of relevant land is not guilty of an offence by virtue of this section or section 32.”.

(2) Where—

(a) an instrument that is void by reason of its being made in contravention of section 8 of the Principal Act would not have been void if that section had not been enacted;

and

(b) the instrument would not have been void if the provisions of that section as amended by this Act had been in operation when the instrument was made,

the instrument shall be and shall be deemed always to have been as valid and effectual as it would have been if the provisions of that section

as amended by this Act had been the provisions of section 8 of the Principal Act on and from 1 July 1985.

7. Amendment of s. 9. Identification of land. Section 9 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“(1) Before a person enters upon a purchase of relevant land there shall be given to him—

- (a) in the case of relevant freehold land, a copy of the relevant subdivisional plan of survey in relation to the subdivision by reason whereof it is relevant freehold land, in the form which has been approved under the common seal of the appropriate Local Authority;
- (b) in the case of relevant leasehold land, a copy of the relevant subdivisional plan of survey in relation to the subdivision by reason whereof the land is relevant leasehold land being a subdivision to which the permission or approval of the appropriate Minister has been obtained,

clearly identifying the land to which the instrument that marks his entry upon the purchase relates.”.

8. Repeal of and new s. 10. Section 10 of the Principal Act is repealed and the following section is substituted:—

“**10. Delivery of registered plan.** (1) In the case of—

- (a) relevant freehold land, if the plan of survey to which section 9 refers is varied at any time the vendor and the vendor’s agent shall as soon as is reasonably practicable after registration of the relevant subdivisional plan of survey in the office of the Registrar of Titles give to the purchaser or his agent a copy of the plan of survey in the form which has been registered;
- (b) relevant leasehold land, if the plan of survey to which section 9 refers is varied at any time the vendor and the vendor’s agent shall as soon as is reasonably practicable after the relevant subdivisional plan of survey is registered in the office of the Department of Mapping and Surveying give to the purchaser or his agent a copy of the plan of survey in the form which has been registered.

(2) Subsection (1) applies whether the copy plan referred to in section 9 is given in due time in accordance with that section or at a later time.

(3) It shall be sufficient compliance with subsection (1) if one of them, the vendor or the vendor’s agent, discharges the duty thereby imposed, whereupon the other of them shall be

freed of the duty in respect of giving the copy plan that has been given.

(4) Where a vendor or a vendor's agent is required under subsection (1) to give to the purchaser or his agent a copy plan of survey then—

(a) the vendor or his agent shall not deliver to the purchaser or his agent a registrable instrument of transfer in respect of the relevant land the subject of the purchase in question;

and

(b) the purchaser shall not be required to pay the outstanding purchase moneys,

until the expiration of a period of 30 days after the receipt by the purchaser or his agent of a copy plan of survey in accordance with subsection (1) or until the time stipulated by the instrument in respect of the sale and purchase for the payment of those purchase moneys (whichever period is the later to expire) unless it is otherwise agreed in writing between the vendor or his agent and the purchaser or his agent after the receipt by the purchaser or his agent of a copy plan in accordance with subsection (1).”.

9. Amendment of s. 11. Contractual requirement re holding of money. Section 11 of the Principal Act is amended by—

(a) omitting from subsection (1) the words “all moneys payable thereunder by the purchaser, by way of deposit or otherwise,” and substituting the words “all moneys the payment whereof the purchaser is bound to make in terms of the instrument, whether by way of deposit or otherwise, without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor”;

(b) omitting from subsection (1) the words “, where he is a person other than the Public Trustee,” and substituting the words “established by him for the purposes of this Act or, where he is a person other than the Public Trustee, maintained or so established”;

(c) omitting from subsection (3) the words “referred to in subsection (1)” and substituting the words “first referred to in subsection (1) (being money to which that subsection applies)”;

(d) adding at the end of the section the following subsections:—

“(4) Nothing in this section or section 12 shall be construed as requiring money, on payment of which, in terms of an instrument such as is first referred to in subsection (1), the purchaser becomes entitled in terms of the instrument to a registrable instrument of transfer in exchange therefor, to be paid to a person specified in subsection (1) as trustee.

(5) Moneys payable to a trustee pursuant to the provisions of this Part shall, if they are paid to a solicitor, be deemed to be trust moneys within the meaning of the *Trust Accounts Act 1973-1978*.”.

10. Repeal of and new s. 12. Section 12 of the Principal Act is repealed and the following section is substituted:—

“12. Trustee’s duty. (1) A person who receives money as a trustee in accordance with section 11 (1) shall retain the money in his trust account until the purchaser or vendor becomes entitled, in accordance with this Part or the instrument in terms of which the money was paid or otherwise according to law, to a refund or payment of the money whereupon the trustee shall dispose of the money in accordance with the law governing the operation of his trust account.

(2) Nothing in section 11 or this section shall be construed as prohibiting the investment by the trustee, in the name of the trustee and in accordance with the law in that respect (if any) governing the operation of the trust account in question, of money retained in that account in pursuance of those sections in any manner agreed upon by the parties to the instrument under or in relation to which the money was paid and notified to the trustee in writing signed by the parties.

(3) Money invested as specified in subsection (2) continues to be money in the trust account of the trustee notwithstanding that it is so invested and upon the calling in or maturing of such an investment the proceeds thereof shall, if they are not further invested as so specified, be paid forthwith by the trustee into a trust account maintained by him or established by him for the purposes of this Act.”.

11. Amendment of s. 13. Avoidance of instrument for breach of s. 9. Section 13 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) Where in respect of a purchase to which section 9 (1) relates—

(a) there has not been given to the purchaser or his agent a copy plan referred to in that section;

(b) there has not been given to the purchaser or his agent when required by section 10 (1) a copy plan referred to in that section;

or

(c) a copy plan in accordance with section 9 (1) (whether given in due time in accordance with that section or at a later time) and a copy plan in accordance with section 10 (1), have been given to the purchaser or his agent,

the purchaser may avoid the instrument made in respect of the purchase by notice in writing given to the vendor or the vendor’s agent if the purchaser has been materially prejudiced by the failure to give a copy plan referred to in paragraph (a) or (b) or,

in the case referred to in paragraph (c), by any variation of the copy plan firstmentioned in that paragraph.”;

(b) omitting from subsection (2) all words from and including the words “(b) in the case where at any time” to and including the words “by the purchaser of the notice of rectification; or” and substituting the following words:—

“(b) where the purchaser seeks to avoid the instrument in question by reason of any variation of the copy plan given in accordance with section 9 (1)—

(i) before the expiration of a period of 30 days after the receipt by the purchaser or his agent of the copy plan given in accordance with section 10 (1);
or”.

12. Amendment of s. 14. Avoidance of instrument for breach of s. 11. Section 14 of the Principal Act is amended by—

(a) omitting the words “to which section 11 (1) applies” and substituting the words “such as is first referred to in section 11 (1)”;

(b) omitting all words from and including the words “time before” to the end of the section and substituting the words “time before a registrable instrument of transfer that relates to the land in question has been delivered by the vendor or the vendor’s agent to the purchaser or his agent.”.

13. Amendment of s. 15. Avoidance of instrument upon ground of lapse of time. Section 15 of the Principal Act is amended by—

(a) omitting all words from and including the words “made and” to and including the words “before a registrable” and substituting the words “made and a period of nine months, or that period as extended or further extended under section 31B, has elapsed from the date on which it was made before a registrable”;

(b) omitting all words from and including the words “time before” to the end of the section and substituting the words “time before such a registrable instrument of transfer has been so delivered.”.

14. Repeal of s. 16. When purchaser’s interest disposed of. Section 16 of the Principal Act is repealed.

15. Repeal of and new s. 18. Section 18 of the Principal Act is repealed and the following section substituted:—

“**18. Declaration of non-application of Part in respect of certain relevant leasehold land.** (1) The Governor in Council may by instrument published in the Gazette declare that, subject

to any specified conditions, the provisions of this Part, or any of those provisions, do not have effect in relation to—

- (a) a specified miner's homestead within the meaning of the *Miners' Homestead Leases Act 1913-1982* or a specified class of such miner's homestead; or
- (b) a specified holding under the *Land Act 1962-1984* or a specified class of such holding,

or in relation to any subdivision or any subdivisional portion or proposed subdivisional portion thereof.

(2) Where a person has contravened or failed to comply with a condition to which a declaration under subsection (1) is subject, the Supreme Court may, on the application of a person who is a purchaser under any sale or purchase of the holding or miner's homestead in question, or any subdivisional portion or proposed subdivisional portion thereof to which the declaration relates, order the person firstmentioned in this subsection to comply with the condition.”.

16. Amendment of s. 19. Exemption from Part. Section 19 of the Principal Act is amended by—

(a) omitting from subsection (1) the word “three” and substituting the word “five”;

(b) omitting from subsection (1) the words “from section 8” and substituting the words “from compliance with all or any of the provisions of this Part in relation to the subdivision in respect of which the application is made”;

(c) omitting subsection (2) and substituting the following subsection:—

“(2) Within 15 working days after his receipt of an application under subsection (1) the Registrar shall furnish his recommendation thereon to the Minister who, as soon as is practicable thereafter, shall grant the application to the extent he thinks fit, or refuse the application by instrument in writing and who, where the application is granted—

- (a) may subject the grant to such conditions as he thinks fit and as are specified in the instrument of exemption; and
- (b) shall specify in the instrument of exemption the provisions of this Part in respect of which the application is granted.”;

(d) omitting from subsection (4) the expression “section 8” and substituting the words “such of the provisions of this Part as are specified in the instrument of exemption”;

(e) by adding at the end of the section the following subsections:—

“(5) Where a person has contravened or failed to comply with a condition to which an exemption under subsection (2) is

subject, the Supreme Court may, on application of a purchaser of a subdivisational portion in respect of which the exemption was granted, order the person to comply with the condition.

(6) Notwithstanding the provisions of section 8, a person may agree to sell or purchase relevant land that is land in respect of which a person is eligible to make an application for exemption under subsection (1) if the instrument that binds a person to purchase the relevant land is conditional upon the grant under subsection (2) of an exemption from section 8 or from that section and any other provision of this Part.

(7) In a case to which subsection (6) applies application for the exemption shall be made within 30 days after the event that marks the entry of a purchaser upon the purchase of the relevant land in question.

(8) Where application for exemption for the purposes of subsection (6) is not made within the time prescribed by subsection (7) the instrument in question referred to in subsection (6) is void and any person who has paid money thereunder shall be entitled to recover the amount thereof, together with the amount of interest (if any) that has accrued in respect of the money since it was so paid, by action as for a debt due and owing to him by the person to whom the money was paid.”.

17. Repeal of and new s. 20. Section 20 of the Principal Act is repealed and the following section is substituted:—

“**20. Application of Part to sale or purchase of proposed lots.**

(1) The provisions of this Part apply to and in relation to the sale or purchase of a proposed lot.

(2) Nothing in this Part applies to or in relation to any right or interest in or in respect of a proposed lot where the right or interest in question is a right of participation in a time-sharing scheme within the meaning of the *Companies (Queensland) Code*.”.

18. Amendment of s. 22. Rectification of statement under s. 21. Section 22 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) If a statement in writing of particulars referred to in section 21 (1) given in accordance with, or pursuant to section 21 (4) in sufficient compliance with, section 21 (1)—

(a) is not accurate at the time it is given;

or

(b) contains information that subsequently to the time it is given becomes inaccurate in any respect,

it is the duty of the vendor and the vendor’s agent to give to the purchaser or his agent a statement in writing signed by the vendor or the vendor’s agent of particulars required to be included

in a statement given for the purposes of section 21 (1) as soon as is reasonably practicable after the proposed lot has become a registered lot.”;

(b) omitting subsections (4) and (5) and substituting the following subsection:—

“(4) Where a vendor or a vendor’s agent is required under subsection (1) to give to the purchaser or his agent a statement of particulars then—

(a) the vendor or his agent shall not deliver to the purchaser or his agent a registrable instrument of transfer in respect of the lot the subject of the purchase in question;

and

(b) the purchaser shall not be required to pay the outstanding purchase moneys,

until the expiration of a period of 30 days after the receipt by the purchaser or his agent of a copy of the statement of particulars in accordance with subsection (1) or until the time stipulated by the instrument made in respect of the sale and purchase for the payment of those moneys (whichever period is the later to expire) unless it is otherwise agreed in writing between the vendor or his agent and the purchaser or his agent, after receipt by the purchaser or his agent of a copy of the statement of particulars in accordance with subsection (1).”.

19. Amendment of s. 23. Contractual requirement re holding of money. Section 23 of the Principal Act is amended by—

(a) omitting from subsection (1) the words “all moneys payable thereunder by the purchaser, by way of deposits or otherwise,” and substituting the words “all moneys the payment whereof the purchaser is bound to make in terms of the instrument, whether by way of deposit or otherwise, without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor”;

(b) omitting from subsection (1) the words “, where he is a person other than the Public Trustee,” and substituting the words “established by him for the purposes of this Act or, where he is a person other than the Public Trustee, maintained or so established”;

(c) omitting from subsection (3) the words “referred to in subsection (1)” and substituting the words “first referred to in subsection (1) (being money to which that subsection applies)”;

(d) adding at the end of the section the following subsections:—

“(4) Nothing in this section or section 24 shall be construed as requiring money, on payment of which, in terms of an instrument such as is first referred to in subsection (1), the purchaser becomes entitled in terms of the instrument to a registrable instrument of transfer in exchange therefor, to be paid to a person specified in subsection (1) as trustee.

(5) Moneys payable to a trustee pursuant to the provisions of this Part shall, if they are paid to a solicitor, be deemed to be trust moneys within the meaning of the *Trust Accounts Act 1973-1978*.”

20. Repeal of and new s. 24. Trustee's duty. Section 24 of the Principal Act is repealed and the following section is substituted:—

“**24. Trustee's duty.** (1) A person who receives money as a trustee in accordance with section 23 (1) shall retain the money in his trust account until the purchaser or vendor becomes entitled, in accordance with this Part or the instrument in terms of which the money was paid or otherwise according to law, to a refund or payment of the money whereupon the trustee shall dispose of the money in accordance with the law governing the operation of his trust account.

(2) Nothing in section 23 or this section shall be construed as prohibiting the investment by the trustee, in the name of the trustee and in accordance with the law in that respect (if any) governing the operation of the trust account in question, of money retained in that account in pursuance of those sections in any manner agreed upon by the parties to the instrument under or in relation to which the money in question was paid and notified to the trustee in writing signed by the parties.

(3) Money invested as specified in subsection (2) continues to be money in the trust account of the trustee notwithstanding that it is so invested and upon the calling in or maturing of such an investment the proceeds thereof shall, if they are not further invested as so specified, be paid forthwith by the trustee into a trust account maintained by him or established by him for the purposes of this Act.”

21. Amendment of s. 25. Avoidance of instrument for breach of s. 21 (1). Section 25 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) Where in respect of a purchase to which section 21 (1) relates—

(a) there has not been given to the purchaser or his agent a statement in writing in accordance with, or that pursuant to section 21 (4) sufficiently complies with, section 21 (1);

(b) there has not been given to the purchaser or his agent when required by section 22 (1) a statement in writing in accordance with that section;

or

(c) a statement in writing in accordance with, or that pursuant to section 21 (4) sufficiently complies with, section 21 (1) (whether given in due time in

accordance with that section or at a later time) and a statement in writing in accordance with section 22 (1), have been given to the purchaser or his agent,

the purchaser may avoid the instrument made in respect of the purchase of the proposed lot by notice in writing given to the vendor or the vendor's agent if the purchaser has been materially prejudiced by the failure to give a statement in writing referred to in paragraph (a) or (b) or, in the case referred to in paragraph (c), by the inaccuracy of any particular in the statement in writing first mentioned in that paragraph.”;

(b) omitting from subsection (2) all words from and including the words “(b) in the case where at any time” to and including the words “by the purchaser or his agent of the notice of rectification; or” and substituting the following words:—

“(b) where the purchaser seeks to avoid the instrument in question by reason of the inaccuracy of any particular in the statement in writing given in accordance with, or pursuant to section 21 (4) in sufficient compliance with, section 21 (1)—

(i) before the expiration of a period of 30 days after the receipt by the purchaser or his agent of the statement in writing given in accordance with section 22 (1);
or”.

22. Amendment of s. 26. Avoidance of instrument for breach of s. 23. Section 26 of the Principal Act is amended by—

(a) omitting the words “to which section 23 (1) applies” and substituting the words “such as is first referred to in section 23 (1)”;

(b) omitting all words from and including the words “time before” to the end of the section and substituting the words “time before a registrable instrument of transfer that relates to the lot in question has been delivered by the vendor or the vendor's agent to the purchaser or his agent.”.

23. Amendment of s. 27. Avoidance of instrument upon ground of lapse of time. Section 27 of the Principal Act is amended by—

(a) omitting all words from and including the words “made and” to and including the words “before a registrable” and substituting the words “made and a period of 36 months, or that period as extended or further extended under section 31B, has elapsed from the date on which it was made before a registrable”;

(b) omitting all words from and including the words “time before” to the end of the section and substituting the words “time before such a registrable instrument of transfer has been so delivered.”.

24. Repeal of s. 28. When purchaser's interest is disposed of. Section 28 of the Principal Act is repealed.

25. Repeal of s. 30. Notices to Registrar. Section 30 of the Principal Act is repealed.

26. Repeal of and new ss. 31A and 31B. The Principal Act is amended by repealing sections 31A and 31B and substituting the following sections:—

“31A. Giving of notices. (1) A notice, copy plan of survey or statement in writing (hereinafter in this section referred to as a “notice”) required or authorized to be given by this Act to any person may be given to that person—

- (a) by delivering the notice to him personally;
- (b) by leaving the notice for him at his usual or last known place of business or residence;
- (c) by sending the notice to him by registered post;
- (d) in the case of a corporate person by leaving the notice at or sending the notice to its registered office or principal place of business in the State.

(2) If a person is absent from the State, the notice may be given as is provided in subsection (1) to his agent in the State.

(3) If the person is deceased, the notice may be given as is provided in subsection (1) to his legal personal representative.

(4) Notwithstanding anything in the foregoing provisions of this section, the Supreme Court may in any case make an order directing the manner in which any notice to which this section applies is to be given.

31B. Extension of period specified in s. 15 or 27. (1) Where an instrument is made in respect of the purchase of relevant land or a proposed lot, the vendor thereunder may make an application to the Minister for an extension of the period—

- (a) specified in section 15, where the instrument relates to relevant land;

or

- (b) specified in section 27, where the instrument relates to a proposed lot,

or that period as previously extended or further extended pursuant to this section.

(2) An application under this section shall be made in the prescribed form and manner and shall be made—

- (a) in the case of an application in respect of the period specified in section 15, not later than 30 days before the expiration of the period, or the period as previously extended or further extended pursuant to this section;
- (b) in the case of an application in respect of the period specified in section 27, not later than 60 days before the expiration of the period, or the period as previously extended or further extended pursuant to this section.

(3) The Minister may require an applicant to supply him with such further information as he considers necessary in relation to the application.

(4) The Minister may cause such enquiries and reports to be made as he deems proper.

(5) The Minister may require notice in writing of the application to be given to such person or persons as he thinks fit.

(6) As soon as is practicable after his receipt of an application under subsection (1), or, where the applicant has been required to supply further information under subsection (3), after the receipt of the further information, the Minister—

(a) shall grant the application by extending the period, the period as previously extended or further extended;

or

(b) shall refuse to grant the application,

as he thinks fit and the Minister's decision on the application is final.

(7) The Minister may, if he grants an application, grant it without conditions or grant it subject to such conditions as he thinks fit and specifies in the grant of the application.

(8) Where a person has contravened or failed to comply with a condition to which a grant of an application is subject pursuant to subsection (7), the Supreme Court may, on the application of the purchaser concerned, order the person firstmentioned in this subsection to comply with the condition.

(9) Where an application has been made under this section and before the application has been determined the period to which the application relates would, but for this subsection, have expired, that period shall be deemed not to have elapsed until such time as the application is determined but where there is any delay on the part of the vendor in furnishing information that he has been required to supply under this section, being a delay that the Minister considers unreasonable, the Minister may refuse the application."

27. Amendment of s. 32. Offence provision. Section 32 of the Principal Act is amended by—

(a) omitting from subsection (1) the words "a provision of this Act" and substituting the expression "section 8 (1), 11 (1), 11 (3), 12, 23 (1), 23 (3) or 24";

(b) inserting after subsection (1) the following subsection:—

"(1A) A person who contravenes or fails to comply with a provision of this Act, other than a provision specified in subsection (1), commits an offence against this Act and, unless that provision

or another provision of this Act provides a specific penalty in respect of the offence, is liable—

- (a) being a natural person, to a penalty not exceeding \$500;
- (b) being a corporate entity, to a penalty not exceeding \$1 000.”.

28. Amendment of s. 34. Evidentiary provision. Section 34 of the Principal Act is amended by—

- (a) omitting subsection (1);
- (b) omitting the expression “(2)”.

29. Amendment of s. 35. Regulations. Section 35 of the Principal Act is amended by omitting paragraphs (c) and (d).