



ANNO VICESIMO PRIMO

ELIZABETHAE SECUNDAE REGINAE

No. 9 of 1972

**An Act to Effect Reforms in the Rule of Law commonly known
as the Rule against Perpetuities and to Abolish the
Rule of Law commonly known as the Rule against
Accumulation, and for other purposes.**

[ASSENTED TO 15TH DECEMBER, 1972]

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, commencement, Act and Rule to bind Crown. (1) This Act may be cited as the *Perpetuities and Accumulations Act 1972*.

(2) This Act shall come into operation on a date to be fixed by Proclamation.

(3) This Act and the rule against perpetuities binds the Crown (except in respect of dispositions of property made by the Crown) not only in right of the State of Queensland but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Abbreviations used in references to other Acts in notes appearing at the beginning of sections have the following meanings:—U.K. Perpetuities and Accumulations Act 1964 (United Kingdom); Vic. Perpetuities and Accumulations Act 1968 (Victoria); W.A. Law Reform (Property, Perpetuities, and Succession) Act 1962 (Western Australia); N.Z. Perpetuities Act 1964 (New Zealand).

2. Interpretation. Cf. Vic. s. 2; W.A. s. 4; U.K. s. 15; N.Z. s. 2.

(1) In this Act unless inconsistent with the context or subject-matter—

“Court” means the Supreme Court or a Judge thereof;

“disposition” includes the conferring or exercise of a power of appointment or any other power or authority to dispose of an interest in or a right over property and any other disposition of an interest in or right over property; and references to the interest disposed of shall be construed accordingly;

“instrument” includes a will, and also includes an instrument, testamentary or otherwise, exercising a power of appointment whether general or special but does not include an Act of Parliament;

“power of appointment” includes any discretionary power to transfer or grant or create a beneficial interest in property without the furnishing of valuable consideration;

“property” includes any interest in real or personal property and any thing in action;

“will” includes a codicil.

(2) For the purposes of this Act a disposition contained in a will shall be deemed to be made at the death of the testator.

(3) For the purposes of this Act a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case only one or some of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

3. Application. Cf. Vic. s. 3; W.A. s. 3; U.K. s. 15; N.Z. s. 4. (1)

Save as otherwise provided in this Act, this Act shall apply only in relation to instruments taking effect after the commencement of this Act, and in the case of an instrument whereby a special power of appointment is exercised shall apply only where the instrument creating the power takes effect after that commencement: Provided that section 4 shall apply in all cases for construing the reference in this subsection to a special power of appointment.

(2) This Act shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

4. Powers of appointment. Cf. Vic. s. 4; W.A. s. 16; U.K. s. 7;

N.Z. s. 5. For the purposes of the rule against perpetuities a power of appointment shall be treated as a special power unless—

(a) in the instrument creating the power it is expressed to be exercisable by one person only; and

(b) it could at all times during its currency when that person is of full age and capacity be exercised by him so as immediately to transfer to or otherwise vest in himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power:

Provided that for the purpose of determining whether a disposition made under a power of appointment exercisable by will only is void for remoteness the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed.

Perpetuities

5. Power to specify perpetuity period. Cf. Vic. s. 5; W.A. s. 5; U.K. s. 1; N.Z. s. 6. (1) Save as otherwise provided in this Act, where the instrument by which any disposition is made so provides the perpetuity period applicable to the disposition under the rule against perpetuities instead of being of any other duration shall be such number of years not exceeding eighty as is specified in the instrument as the perpetuity period applicable to the disposition.

(2) Subsection (1) shall not have effect where the disposition is made in exercise of a special power of appointment but where a period is specified under that subsection in the instrument creating such a power the period shall apply in relation to any disposition under the power as it applies in relation to the power itself.

(3) If no period of years is specified in an instrument by which a disposition is made as the perpetuity period applicable to the disposition but a date certain is specified in the instrument as the date on which the disposition shall vest the instrument shall, for the purposes of this section, be deemed to specify as the perpetuity period applicable to the disposition a number of years equal to the number of years from the date of the taking effect of the instrument to the specified vesting date.

6. "Wait and see" rule. Cf. Vic. s. 6; W.A. s. 7; U.K. s. 3; N.Z. s. 8. (1) Where, apart from the provisions of this section and of section 9, a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time the disposition shall be treated until such time (if any) as it becomes established that the vesting must occur, if at all, after the end of the perpetuity period as if the disposition were not subject to the rule against perpetuities; and its becoming so established shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

(2) Where, apart from the provisions of this section and of section 9, a disposition consisting of the conferring of a general power of appointment would be void on the ground that the power might not become exercisable until too remote a time the disposition shall be treated until such time (if any) as it becomes established that the power will not be exercisable within the perpetuity period as if the disposition were not subject to the rule against perpetuities.

(3) Where, apart from the provisions of this section and of section 9, a disposition consisting of the conferring of any power, option or other right would be void on the ground that the right might be exercised at too remote a time the disposition shall be treated as regards any exercise of the right within the perpetuity period as if it were not subject to the rule against perpetuities and subject to the said provisions shall be treated as void for remoteness only if and so far as the right is not fully exercised within that period.

(4) Nothing in this section makes any person a life in being for the purposes of ascertaining the perpetuity period unless the life of that person is one expressed or implied as relevant for this purpose by the terms of the disposition and would have been reckoned a life in being for such purpose if this section had not been enacted:

Provided however that in the case of a disposition to a class of persons or to one or more members of a class, any person living at the date of the disposition whose life is so expressed or implied as relevant for any member of the class may be reckoned a life in being in ascertaining the perpetuity period.

7. Power to apply to court for declaration as to validity. Cf. Vic. s. 7; W.A. s. 8; N.Z. s. 22. (1) A trustee of any property, or any person interested under or on the invalidity of, a disposition of property may at any time apply to the Court for a declaration as to the validity, in respect to the rule against perpetuities, of a disposition of that property.

(2) The Court may, on an application under subsection (1), make a declaration on the basis of facts existing and events that have occurred at the time the declaration is made, as to the validity or otherwise of the disposition in respect of which the application is made; but the Court shall not make a declaration in respect of any disposition the validity of which cannot be determined at the time at which the Court is asked to make the declaration.

8. Presumptions and evidence as to future parenthood. Cf. Vic. s. 8; W.A. s. 6; U.K. s. 2; N.Z. s. 6. (1) Where in any proceedings there arises on the rule against perpetuities a question which turns on the capacity of a person to have a child at some future time, then—

(a) it shall be presumed, subject to paragraph (b), that a male can have a child at the age of twelve years or over but not under that age and that a female can have a child at the age of twelve years or over but not under that age or over the age of fifty-five years; but

(b) in the case of a living person evidence may be given to show that he or she will or will not be capable of having a child at the time in question.

(2) Where any such question is decided by treating a person as incapable of having a child at a particular time and he or she does so, the Court may make such order as it thinks fit for placing the persons interested in the property comprised in the disposition so far as may be just in the position they would have held if the question had not been so decided.

(3) Subject to subsection (2), where any such question is decided in relation to a disposition by treating a person as capable or incapable of having a child at a particular time then he or she shall be so treated for the purpose of any question which may arise on the rule against perpetuities in relation to the same disposition in any subsequent proceedings.

(4) In the foregoing provisions of this section references to having a child are references to begetting or giving birth to a child; but those provisions (except paragraph (b) of subsection (1)) shall apply in relation to the possibility that a person will at any time have a child by adoption, legitimation or other means as they apply to his or her capacity at that time to beget or give birth to a child.

9. Reduction of age and exclusion of class members to avoid remoteness. Cf. Vic. s. 9; W.A. s. 9; U.K. s. 4; N.Z. s. 9. (1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding twenty-one years and it is apparent at the time the disposition is made or becomes apparent at a subsequent time—

(a) that the disposition would apart from this section be void for remoteness; but

(b) that it would not be so void if the specified age had been twenty-one years,

the disposition shall be treated for all purposes as if instead of being limited by reference to the age in fact specified it had been limited by reference to the age nearest to that age which would if specified instead, have prevented the disposition from being so void.

(2) Where in the case of any disposition different ages exceeding twenty-one years are specified in relation to different persons—

(a) the reference in paragraph (b) of subsection (1) to the specified age shall be construed as a reference to all the specified ages; and

(b) that subsection shall operate to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

(3) Where the inclusion of any persons being potential members of a class or unborn persons who at birth would become members or potential members of the class prevents the preceding provisions of this section from operating to save a disposition from being void for remoteness those persons shall thenceforth be deemed for all the purposes of the disposition to be excluded from the class and the said provisions shall thereupon have effect accordingly.

(4) Where in the case of a disposition to which subsection (3) does not apply it is apparent at the time the disposition is made or becomes apparent at a subsequent time that apart from this subsection the inclusion of any persons, being potential members of a class or unborn persons who at birth could become members or potential members of the class would cause the disposition to be treated as void for remoteness those persons shall unless their exclusion would exhaust the class thenceforth be deemed for all the purposes of the disposition to be excluded from the class.

(5) Where this section has effect in relation to a disposition to which section 6 applies the operation of this section shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

10. Unborn husband or wife. Cf. Vic. s. 10; W.A. s. 12; N.Z. s. 13; U.K. s. 5. The widow or widower of a person who is a life in being for the purposes of the rule against perpetuities shall be deemed to be a life in being for the purpose of—

(a) a disposition in favour of that widow or widower; and

(b) a disposition in favour of a charity which attains or of a person who attains or of a class the members of which attain according to the terms of the disposition a vested interest

on or after the death of the survivor of the said person who is a life in being and that widow or widower, or on or after the death of that widow or widower or on or after the happening of any contingency during her or his lifetime.

11. Dependent dispositions. Cf. Vic. s. 11; W.A. s. 13; U.K. s. 6; N.Z. s. 14. A disposition shall not be treated as void for remoteness by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so void, and the vesting of an interest shall not be prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remoteness.

12. Abolition of the rule against double possibilities. Cf. Eng. L.P.A., s. 161. (1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished.

(2) This section applies only to limitations or trusts created by an instrument coming into operation after the commencement of this Act.

13. Restrictions on the perpetuity rule. Cf. Vic. s. 13. (1) For removing doubts, it is hereby declared that the rule of law relating to perpetuities does not apply and shall be deemed never to have applied—

- (a) to any power to distrain on or to take possession of land or the income thereof given by way of indemnity against a rent, whether charged upon or payable in respect of any part of that land or not; or
- (b) to any rentcharge created only as an indemnity against another rentcharge, although the indemnity rentcharge may arise or become payable only on breach of a condition or stipulation; or
- (c) to any power, whether exercisable on breach of a condition or stipulation or not, to retain or withhold payment of any instalment of a rentcharge as an indemnity against another rentcharge; or
- (d) to any grant, exception or reservation of and right of entry on, or user of, the surface of land or of any easements, rights or privileges over or under land for the purpose of—
 - (i) winning, working, inspecting, measuring, converting, manufacturing, carrying away and disposing of mines and minerals;
 - (ii) inspecting, grubbing up, felling and carrying away timber and other trees, and the tops and lops thereof;
 - (iii) executing repairs, alterations or additions to any adjoining land, or the buildings and erections thereon;
 - (iv) constructing, laying down, altering, repairing, renewing, cleansing and maintaining sewers, watercourses, cesspools, gutters, drains, water-pipes, gas-pipes, electric wires or cables or other like works.

(2) This section shall apply to instruments coming into operation before or after the commencement of this Act.

(3) In this section “instrument” includes a statute creating a settlement.

14. Options. Cf. Vic. s. 15; W.A. s. 14; U.K. ss. 9, 10; N.Z. s. 17.

(1) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reversionary (whether directly or indirectly) on the term of a lease if—

- (a) the option is exercisable only by the lessee or his successors in title; and
- (b) it ceases to be exercisable at or before the expiration of one year following the determination of the lease.

This subsection shall apply in relation to an agreement for a lease as it applies in relation to a lease, and “lessee” shall be construed accordingly.

(2) An option to acquire an interest in land (not being an option to which subsection (1) refers) or a right of pre-emption in respect of land, which according to its terms is or may be exercisable at a date more than twenty-one years from the date of its grant shall after the expiration of twenty-one years from the date of its grant be void and not exercisable by any person and no remedy shall lie in contract or otherwise for giving effect to it or making restitution for its lack of effect, but—

- (a) this subsection shall not apply to an option or right of pre-emption conferred by will; and
- (b) nothing in this subsection shall affect an option for renewal or right of pre-emption contained in a lease or an agreement for a lease.

15. Determinable interests. Cf. Vic. s. 16; W.A. s. 15; U.K. s. 12; N.Z. s. 18. (1) The rule against perpetuities shall apply—

- (a) to a possibility of reverter in land on the determination of a determinable fee simple; in which case if the fee simple does not determine within the perpetuity period it shall thereafter continue as a fee simple absolute;
- (b) to a possibility of a resulting trust on the determination of any other determinable interest in property; in which case if the first interest created by the trust does not determine within the perpetuity period the interest it creates shall thereafter continue as an absolute interest;
- (c) to a right of entry for condition broken the exercise of which may determine a fee simple subject to a condition subsequent and to an equivalent right in the case of property other than land; in which case if the right of entry or other right is not exercised within the perpetuity period the fee simple shall thereafter continue as an absolute interest and any such other interest in property shall thereafter continue free from the condition.

(2) This section shall apply whether or not the determinable or conditional disposition is charitable except that the rule against perpetuities shall not apply to a gift over from one charity to another.

(3) Where a disposition is subject to any provision that causes an interest to which paragraph (a) or paragraph (b) of subsection (1) applies to be determinable, or to any condition subsequent giving rise on breach thereof to a right of re-entry or an equivalent right in the case of property other than land, or to any exception or reservation

the disposition shall be treated for the purposes of this Act as including a separate disposition of any rights arising by virtue of the provision condition subsequent exception or reservation.

16. Trustee powers and superannuation funds. Cf. Vic. s. 17 and No. 6401 of 1958 (Victoria) s. 73, 61 Vic. No. 10, s. 59. (1)^{*} The rule of law known as the rule against perpetuities does not apply and shall be deemed never to have applied so as to render void—

- (a) a trust or power to sell property, where a trust of the proceeds of sale is valid;
- (b) a trust or power to lease or exchange property, where the lease or exchange directed or authorized by the trust or power is ancillary to the carrying out of a valid trust;
- (c) any other power which is ancillary to the carrying out of a valid trust or the giving effect to a valid disposition of property;
- (d) a trust or fund established for the purpose of making provision by way of assistance, benefits, superannuation, allowances, gratuities or pensions for the directors, officers, servants or employees of any employer or the spouses, children, grandchildren, parents, dependants or legal personal representatives of any such directors, officers, servants or employees or for any persons duly selected or nominated for that purpose by any such directors, officers, servants or employees pursuant to the provisions of such trust or fund;
- (e) a trust or fund established for the purpose of making provision by way of superannuation for persons (not being employees) engaged in any lawful profession, trade, occupation or calling or the spouses, children, grandchildren, parents, dependants or legal personal representatives of any of those persons or for any persons duly selected or nominated for that purpose pursuant to the provisions of the trust or fund; or
- (f) any provision for the remuneration of trustees.

(2) This section does not—

- (a) render any trustee liable for any acts done prior to the commencement of this Act for which that trustee would not have been liable had this section not been enacted; or
- (b) enable any person to recover any money distributed or paid under any trust, if he could not have recovered that money had this section not been enacted.

(3) Section 59 of *The Trustees and Executors Acts 1897 to 1964* is repealed.

17. Non-charitable purpose trusts. Cf. Vic. s. 18; U.K. s. 15; N.Z. s. 20. (1) Except as provided in subsection (2), nothing in this Act shall affect the operation of the rule of law rendering non-charitable purpose trusts and trusts for the benefit of corporations which are not charities void for remoteness in cases where the trust property may be applied for the purposes of the trusts after the end of the perpetuity period.

(2) If any such trust is not otherwise void the provisions of sections 5 and 6 shall apply to it and the property subject to the trust may be applied for the purposes of the trust during the perpetuity period but not thereafter.

Accumulations

18. Accumulation of income. Cf. Vic. s. 19; W.A. s. 17; U.K. ss. 13, 14; N.Z. s. 21. (1) Where property is settled or disposed of in such manner that the income thereof may be or is directed to be accumulated wholly or in part the power or direction to accumulate that income shall be valid if the disposition of the accumulated income is or may be valid but not otherwise.

(2) Nothing in this section shall affect the power of any person or persons to terminate an accumulation that is for his or her benefit and any jurisdiction or power of the Court to maintain or advance out of accumulations or any power of a trustee under *The Trustees and Executors Acts 1897 to 1964* or under any other Act or law or under any instrument creating a trust or making a disposition.

(3) The Imperial Act 39 & 40 Geo. 3, c. 98 (The Accumulations Act, 1800) ceases to apply in the State.