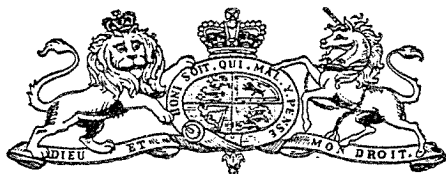


Queensland



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ELIZABETHAE SECUNDAE REGINAE

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No. 14 of 1980

**An Act to make provision for the freeholding of miners' homestead leases, miners' homestead perpetual leases, residence areas and business areas and for other purposes**

[ASSENTED TO 2ND MAY, 1980]

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:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Mining Titles Freeholding Act 1980*.

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

3. **Arrangement of Act.** This Act is arranged in Parts as follows:—

PART I—PRELIMINARY;

PART II—FREEHOLDING OF MINERS' HOMESTEAD LEASES;

PART III—CONVERSION OF MINERS' HOMESTEAD PERPETUAL LEASES, BUSINESS AREAS AND RESIDENCE AREAS;

PART IV—REGISTRATION OF UNREGISTERED PERSONS;

PART V—GENERAL PROVISIONS.

4. **Interpretation.** In this Act, save where a contrary intention appears—

“business area” means a business area registered under *The Mining Acts, 1898 to 1967* or the *Mining Act 1968–1976*;

“miner's homestead lease” means a miner's homestead lease within the meaning of the *Miners' Homestead Leases Act 1913–1979* and includes an application for a miner's homestead lease approved by the Governor in Council;

“miner's homestead perpetual lease” means a miner's homestead perpetual lease within the meaning of the *Miners' Homestead Leases Act 1913–1979* and includes an application for a miner's homestead perpetual lease approved by the Governor in Council;

“Minister” means the Minister for Mines or other Minister of the Crown for the time being charged with the administration of this Act and includes any person who for the time being performs the duties of the Minister;

“Registrar of Titles” includes the Deputy Registrars of Titles for the Central District and Northern District respectively under and within the meaning of *The Real Property (Local Registries) Act of 1887*;

“residence area” means a residence area registered under *The Mining Acts, 1898 to 1967* or the *Mining Act 1968–1976*;

“Warden” means in relation to a particular miner's homestead lease, miner's homestead perpetual lease, business area or residence area the warden to whose court the mining district within which such lease or, as the case may be, area is situated is assigned;

“Wardens Court” in relation to a particular miner’s homestead lease, miner’s homestead perpetual lease, business area or residence area means the Wardens Court to which has been assigned the mining district within which such lease or, as the case may be, area is situated;

“unimproved value” means the amount which, in the opinion of the Wardens Court or the Land Court, experienced persons would be willing to pay for an estate in fee simple in land the subject of an application under Part III, exclusive of the market value of commercial timber (except where such timber is the property of the Crown) assuming the land were unimproved and undeveloped and were offered for sale upon such reasonable terms and conditions as a bona fide seller would require.

**5. Grants in fee simple and of leases.** (1) Subject to this Act, the Governor in Council may, in the name of Her Majesty, grant in fee simple land comprised in a miner’s homestead lease or grant in fee simple or by way of lease for a term of years land comprised in a miner’s homestead perpetual lease, business area or residence area.

(2) A grant pursuant to subsection (1) shall be made—

(a) subject to the rights of the Crown in gold, coal and other minerals and in petroleum and the reservations with respect to those rights declared and prescribed by the *Mining Act* 1968–1979 and the *Petroleum Act* 1923–1976;

(b) subject to such conditions and such other reservations as are authorized or prescribed by this Act or any other Act,

and, being so made, shall be valid and effectual to convey to and vest in the person therein named the land therein described for the estate or interest therein stated.

**6. Grant may be made in name of deceased person.** (1) In any case in which a person—

(a) who is entitled; or

(b) if he had lived longer would have become entitled,

to have a grant made to him pursuant to section 5 dies before such grant is made or before his right to the grant has accrued, the Governor in Council may nevertheless (and in the latter case upon the happening of the event on which the right to the grant accrues) make such grant to and in the name of such deceased person as if he were still alive.

(2) Every grant so made is as valid as if the deceased person had been living at the time of the grant and has the same effect, as between the several persons entitled to the land comprised therein, as if the deceased person had died immediately after the grant.

**7. Tenants in common may request issue of separate deeds of grant.** Two or more persons entitled as tenants in common to undivided shares

of or in land the subject of a grant in fee simple shall not receive separate and distinct deeds of grant evidencing title to such undivided shares unless they all—

- (a) make a request in the prescribed form through the Warden to the Minister for the issue of the separate and distinct deeds of grant evidencing title; and
- (b) pay to the Warden when making the request the prescribed fees for the issue thereof.

#### PART II—FREEHOLDING OF MINERS' HOMESTEAD LEASES

**8. Application.** (1) The lessee of a miner's homestead lease may at any time apply in the prescribed form to the Minister for a grant in fee simple of the land comprised in the lease.

(2) The Minister may—

- (a) reject or approve the application;
- (b) where he approves an application, direct that a survey or re-survey of the land is required.

(3) Where the Minister approves an application the applicant shall upon—

- (a) notifying the Minister through the Warden, in the prescribed form, that he elects to proceed with the application;
- (b) surrender of his leasehold interest in the land;
- (c) payment of the prescribed deed fee and assurance fee;
- (d) payment of the prescribed freeholding fee;
- (e) survey or re-survey of the land where so directed by the Minister,

be entitled to the issue to him pursuant to the *Land Act 1962-1978* of a deed of grant in fee simple in respect of the land comprised in the miner's homestead lease.

(4) A surrender made pursuant to subsection (3) shall take effect as from the date of issue of the deed of grant in fee simple in respect of the land.

#### PART III—CONVERSION OF MINERS' HOMESTEAD PERPETUAL LEASES, BUSINESS AREAS AND RESIDENCE AREAS

**9. Application.** (1) The lessee of a miner's homestead perpetual lease or the holder of a business area or residence area may at any time apply in the prescribed form to the Minister for a grant in fee simple of the land comprised in the lease or, as the case may be, business area or residence area.

(2) The Minister may reject the application or if he is satisfied, having regard to the time that has elapsed since the miner's homestead perpetual lease, business area or residence area was granted or, as the case may be, registered, that the lessee or, as the case may be, holder has reasonably fulfilled the terms and conditions of the lease, business area or residence area, he may approve the application.

**10. Determination of unimproved value.** (1) Where the Minister approves an application he shall as soon as practicable thereafter—

- (a) inform the Warden of the approval and, where he has so directed, that a survey or re-survey of the land the subject of the application is required;
- (b) refer the application to the Wardens Court for the purpose of having the Court determine as at the date of receipt of the application the unimproved value of the land;
- (c) obtain a valuation of the unimproved value of the land and submit it to the Warden and the applicant prior to the hearing.

(2) The Warden shall as soon as practicable after receipt of the Minister's advice inform the applicant—

- (a) of the Minister's approval;
- (b) where necessary, that a survey or re-survey of the land will be required if he elects to proceed with the application;
- (c) of the date of hearing for determination of the unimproved value of the land.

(3) The Wardens Court in making a determination pursuant to subsection (1)—

- (a) may inform itself in such manner as it thinks fit;
- (b) may receive written or oral statements;
- (c) is not required to conduct any proceeding in a formal manner;
- (d) is not bound by rules of evidence;
- (e) shall give the Minister and the lessee or, as the case may be, holder written notice of its determination.

**11. Appeal against determination.** If the applicant is dissatisfied with the determination of the Wardens Court he may within 42 days after receipt by him of the notice of determination appeal against the determination to the Land Court.

Such appeal shall be instituted by lodging in the Land Court registry written notice of his grounds of appeal and serving a copy of that notice on the Minister.

**12. Powers of Land Court on appeal.** Upon hearing an appeal under section 11 the Land Court may—

- (a) vary the determination of the Wardens Court in such way as it thinks just; or
- (b) disallow the appeal and confirm the determination of the Wardens Court,

and may make such order as to the costs of the appeal as it thinks fit.

**13. Nature of appeal.** Every appeal under section 11 shall be by way of a rehearing.

The determination of the Land Court on appeal shall be final and conclusive.

**14. Jurisdiction of Courts not affected.** The jurisdiction of the Wardens Court or, as the case may be, the Land Court to make a determination under this Act shall not be affected by any amendment to the area of land the subject of the application between the date of lodging the application and the date in question and a determination may be made of the value of the area as so amended.

**15. Applicant to elect.** (1) The applicant shall within three months, or such longer period as the Minister may allow, from the date of the receipt by him of the final determination made in accordance with this Part notify the Minister through the Warden in the prescribed form whether he elects—

- (a) to proceed with his application for a grant in fee simple of the land referred to in his application; or
- (b) to have granted to him a lease for a term of 30 years.

(2) If the applicant fails to notify the Minister in accordance with subsection (1) his application shall lapse.

(3) Upon an application lapsing a determination made pursuant to this Part shall cease to have force or effect for any purpose whatever.

**16. Applicant electing for fee simple.** (1) An applicant who elects to proceed with his application for a grant in fee simple of the land referred to in his application shall forthwith—

- (a) surrender his interest in the lease or, as the case may be, business area or residence area;
- (b) pay the purchasing price of the land as calculated in accordance with section 19;
- (c) pay the prescribed deed fee and assurance fee;
- (d) where necessary, lodge a survey or re-survey of the land,

whereupon he shall be entitled to the issue to him pursuant to the *Land Act 1962-1978* of a deed of grant in fee simple in respect of that land.

(2) A surrender made pursuant to subsection (1) shall take effect as from the date of issue of the deed of grant in fee simple in respect of the land the subject of the application.

(3) Where an election is made in respect of a miner's homestead perpetual lease, moneys paid as rent in respect of the lease in respect of any time prior to the receipt of the notice of election referred to in section 15 shall not be credited to the purchasing price, but moneys so paid in respect of any time after such receipt shall be credited to the purchasing price.

**17. Applicant electing for lease for term of years.** (1) An applicant who elects to have granted to him a lease for a term of 30 years shall pay, by forwarding with the notice of election referred to in section 15 a deposit of one-thirtieth of the purchasing price, and shall forthwith—

- (a) surrender his interest in the lease or, as the case may be, business area or residence area;
- (b) pay any prescribed fees;

(c) where necessary, lodge a survey or re-survey of the land, whereupon he shall be entitled to the issue to him pursuant to this Act of an instrument of lease in respect of that land.

The applicant may set off against the amount of the deposit all sums paid by way of rent which pursuant to paragraph (e) of section 18 are to be credited to the purchasing price.

(2) A surrender made pursuant to subsection (1) shall take effect as from the date of the grant to the applicant of a lease in respect of the land the subject of the application.

**18. Terms and conditions of lease for term of years.** (1) The following provisions, terms and conditions shall apply to every lease granted pursuant to this Act—

- (a) the purchasing price of the land comprised in the lease shall be the amount of the unimproved value of the land as determined in accordance with this Part;
- (b) the term of the lease shall be 30 years;
- (c) the term of the lease shall commence on the date of the grant of the lease;
- (d)—
  - (i) the lessee shall pay the deposit prescribed by section 17 and the balance of the purchasing price shall be payable in equal annual instalments on or before 31 December each year during the term of the lease;
  - (ii) the first such annual instalment shall be payable on or before 31 December next following the grant of the lease;
- (e) where an election is made in respect of a miner's homestead perpetual lease moneys paid as rent in respect of the miner's homestead perpetual lease in respect of any time prior to the receipt of the notice of election referred to in section 15 shall not be credited to the purchasing price, but moneys so paid in respect of any time after such receipt shall be credited to the purchasing price.

(2) The provisions of the *Miners' Homestead Leases Act 1913-1979* shall apply to land subject to a lease granted under this Act as if the land were a miner's homestead perpetual lease granted under the firstmentioned Act.

**19. Completion of purchase.** A lessee may at any time complete the purchase of land granted by way of lease under this Act by paying, in full satisfaction of the purchasing price or, as the case may be, the balance thereof then outstanding, the amount of the present value of such purchasing price or, as the case may be, such balance, such present value being calculated on the basis of an interest earning rate of five per centum per annum—

- (a) where the payment is made within three months after the date notification is given to the Minister pursuant to section 15, over the full term of the lease;

- (b) in any other case, on the total amount of instalments due and payable as at the date immediately preceding the date on which the next annual instalment of the purchasing price will become due and payable.

**20. Freeholding covenant.** Every lease granted under the provisions of this Act shall be deemed to contain a covenant that the Governor in Council shall, in the name of Her Majesty, grant in fee simple to the lessee the land comprised in the lease—

- (a) upon payment of all moneys payable in respect of the purchasing price of the lease and any other moneys unpaid on any account in respect of the lease;
- (b) upon payment of the prescribed deed fee and assurance fee;
- (c) upon survey or re-survey of the land where so required by the Minister.

**21. Instalments of purchasing price deemed to be rent.** For the purposes of the application of the provisions of section 18 with respect to a lease granted under this Act all moneys payable in respect of the purchasing price shall be deemed to be payable as rent under the *Miners' Homestead Leases Act 1913-1979*.

#### PART IV—REGISTRATION OF UNREGISTERED PERSONS

**22. Who may apply.** Where any person who claims to be entitled to be registered as the lessee or, as the case may be holder of—

- (a) a miner's homestead lease;
- (b) a miner's homestead perpetual lease;
- (c) a business area; or
- (d) a residence area,

is unable to secure the transfer to him of such lease or, as the case may be, area he may apply to the Minister to be registered as the lessee or, as the case may be, holder thereof.

**23. Form of application.** (1) An application under section 22 shall—

- (a) be in the prescribed form or in words to the like effect;
- (b) be signed by the applicant;
- (c) state the estate or interest in such land applied for;
- (d) state full particulars of the possession upon which the application is based;
- (e) state whether any documents of title affecting the land are in his possession or under his control;
- (f) state the nature of every estate or interest held by other persons at law or in equity in such land within the applicant's knowledge;



- (g) state whether the land is occupied or unoccupied and if occupied the name and description of the occupant and the nature of his occupancy;
- (h) state the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect of which the application is made so far as is known to him;
- (i) state the value as at the time of making the application of the land and improvements thereon; and
- (j) state that he verily believes himself to be entitled to the estate or interest in respect of which he applies to be registered.

(2) Such statement shall be verified by the statutory declaration of the applicant.

(3) The applicant shall deposit with his application all documents of title affecting the land in his possession or under his control and shall, if required by the Minister, furnish him with a plan of survey or re-survey and field notes of the land in respect of which the application is made.

**24. Minister may require further particulars.** The Minister may require an applicant to furnish such additional particulars, verified by statutory declaration, and documents relating to his application as the Minister thinks fit.

**25. Rejection of application.** If the Minister is satisfied that the evidence does not establish that the applicant is entitled to be registered as the lessee or, as the case may be, holder of the land the subject of the application the Minister shall reject the application.

**26. Application to be advertised.** (1) If an application is not rejected the Minister shall cause a notice of the application in a form fixed by him—

- (a) to be published at least once in the Gazette and in a newspaper circulating in the locality where the land is situated and if he thinks necessary in any other newspaper;
- (b) to be given by advertisement or otherwise in such manner as he thinks fit to any person who, in the Minister's opinion, has or may have an estate or interest in the land; and
- (c) to be published in any other way or given to any other person as he thinks fit.

(2) The notice shall fix a time not less than two months nor more than three years from the first publication of the notice in the Gazette after the expiration of which the Minister may, unless an objection is lodged, approve the application.

**27. Objection to application.** (1) A person claiming an estate or interest in land to which an application under this Part relates may, within the time fixed under section 26 (2), lodge with the Minister an objection in the prescribed form forbidding the approval of the application.

(2) Such objection shall state the nature of the estate or interest claimed by the person lodging it, the ground upon which it is founded, and shall give an address at which notices and proceedings relating to the objection may be served.

(3) The Minister may require an objector to furnish him with such additional information, verified by statutory declaration, and documents relating to his objection as the Minister thinks fit.

**28. Objection to be inquired into.** (1) Where an objection is lodged in accordance with section 27 (1) the Minister shall appoint a person to decide and report to the Minister whether the objector is the registered lessee or, as the case may be, holder of the land the subject of the objection or is entitled to an estate or interest therein derived through, under or from the registered lessee or holder or from the applicant.

(2) For the purposes of the performance of his functions under this Act any person appointed pursuant to subsection (1) has all the powers, authorities, protection and jurisdiction of a Commission of Inquiry under *The Commissions of Inquiry Acts, 1950 to 1954*, save such as are by those Acts confined to a Judge of the Supreme Court.

**29. When registration may be approved.** (1) Where no objection to an application is lodged the Minister may, after the expiration of the time fixed by section 26 (2), if he is satisfied that the applicant is entitled to be registered as the lessee or, as the case may be, holder of the land the subject of the application, approve that the applicant be registered as such lessee or, as the case may be, holder.

(2) Where an objection to an application is lodged the Minister may, after considering the report furnished to him pursuant to section 28 (1), reject the application or, if he is satisfied that the applicant is entitled to be registered as the lessee or, as the case may be, holder of the land the subject of the application approve that the applicant be registered as such lessee or, as the case may be, holder.

**30. Notice of approval to be given.** Where the Minister approves an application he shall give notice, in the prescribed form, to the applicant and to all objectors to the application that after the expiration of 60 days from the date of the notice he intends to direct that the applicant be registered as the lessee or, as the case may be, holder of the land the subject of the application.

**31. Registration.** On being so directed by the Minister the Warden shall register the applicant as the lessee or, as the case may be, holder of the land the subject of the application.

**32. Effect of registration.** The registration of a person pursuant to this Part shall be final and shall not be capable of being called into question in any court.

**33. Protection of Minister, etc.** No liability shall attach to the Crown, the Minister or a Warden on account of any direction or action taken by the Minister or Warden in exercise of the powers or duties given to or imposed on him by this Part.

PART V—GENERAL PROVISIONS

**34. Preservation of encumbrances.** (1) Where land granted in fee simple pursuant to this Act is—

- (a) subject to a mortgage or other charge;
- (b) subject to a sublease;
- (c) affected by an easement, or an easement is annexed to or used and enjoyed together with the land,

the Under Secretary, Department of Mines shall transmit to the Registrar of Titles a copy of every subsisting entry kept in the appropriate register relating to such mortgage, charge, sublease or, as the case may be, easement together with—

- (d) the original memorandum of mortgage or charge;
- (e) the original of the instrument of the sublease and the original of any memorandum of mortgage or charge registered in respect thereof; or
- (f) as the case may be, the original of the instrument of easement or a certified copy thereof.

(2) Before the issue of the deed of grant, the Registrar of Titles shall—

- (a) endorse thereon a note of the entries transmitted to him in such manner as to preserve the priority of the respective mortgages or charges, in case there is more than one;
- (b) endorse thereon a note of every entry transmitted to him in respect of subleases;
- (c) as the case requires, note every easement thereon in such manner as to preserve its priority or enter thereon a memorial of the instrument creating the easement.

(3) Upon such issue every—

- (a) mortgage or charge shall have operation and effect as a mortgage or charge under the *Real Property Act 1861–1979*;
- (b) sublease shall have operation and effect as a lease registered under that Act,

subject to the terms and conditions of such mortgage, charge or, as the case may be, sublease.

(4) The holder of the first mortgage shall be entitled to possession of the deed of grant.

(5) (a) The granting of a lease pursuant to this Act shall not affect or prejudice any mortgage, charge, sublease or easement then subsisting over, upon or in the land comprised in the lease.

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(b) Before the issue of an instrument of lease there shall be endorsed thereon a note of any such mortgage, charge, sublease or easement in such manner as to preserve the priority of any such encumbrance.

(c) The holder of the first mortgage shall be entitled to possession of the instrument of lease.

**35. Right to appear.** The Minister, in any proceedings under this Act, may appear either personally, or by counsel or solicitor, or by an officer of the Public Service of Queensland in any court or in any proceedings.

The statement of any such counsel, solicitor or officer that he so appears by the authority of the Minister shall be accepted as sufficient evidence of such authority.

**36. Regulations.** The Governor in Council may make regulations not inconsistent with this Act providing with respect to—

- (a) all matters that are required or permitted by this Act to be prescribed;
- (b) all matters that in his opinion are necessary or convenient to be prescribed for the proper administration of this Act;
- (c) all matters that in his opinion are necessary or convenient to be prescribed to achieve the objects and purposes of this Act.