

Queensland



ANNO VICESIMO NONO

ELIZABETHAE SECUNDAE REGINAE

No. 49 of 1980

An Act to amend the State Housing Acts and Another Act
Amendment Act 1957–1979 in certain particulars

[ASSENTED TO 22ND SEPTEMBER, 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:—

1. Short title and citation. (1) This Act may be cited as the *State Housing (Amendment of Freeholding Provisions) Act 1980*.

(2) In this Act the *State Housing Acts and Another Act Amendment Act 1957-1979* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *State Housing (Freeholding of Land) Act 1957-1980*.

2. Amendment of long title. The Principal Act is amended by omitting from the long title the words "Lands Appurtenant to Homes to the Purchase whereof" and substituting the words "certain land in respect of which".

3. Amendment of s. 2. Section 2 of the Principal Act is amended by—

(a) inserting after the words "PART II—PROVISION FOR THE FREEHOLDING OF CERTAIN LEASEHOLDS HELD UNDER "THE STATE HOUSING ACTS, 1945 TO 1957";" the following words:—

" Division 1—Homes and Home Sites;

Division 2—Industrial, Trading and Business Sites; "

(b) inserting after the words "PART V—AMENDMENTS OF "THE WORKERS' HOMES ACTS, 1919 TO 1953." the following word:—

" SCHEDULE."

4. Division 1 of Part II. The Principal Act is amended by inserting immediately preceding section 4 the following words:—

" Division 1—Homes and Home Sites "

5. Amendment of s. 4. Section 4 of the Principal Act is amended by omitting the words "this Part II" and substituting the words "this division".

6. Amendment of s. 5. Section 5 of the Principal Act is amended in subsection (1) by omitting the word "Part" and substituting the word "division".

7. Amendment of s. 6. Section 6 of the Principal Act is amended by omitting the words "Part of this Act" where they occur in subsections (1) and (2), in the proviso to subsection (2) and in subsection (4) and substituting the word "division" in each case.

8. Amendment of s. 7. Section 7 of the Principal Act is amended by omitting the words "Part of this Act" and substituting the word "division".

9. Amendment of s. 8. Section 8 of the Principal Act is amended by omitting the words “ Part II of this Act ” and substituting the word “ division ”.

10. Amendment of s. 9. Section 9 of the Principal Act is amended by—

(a) in paragraph (i) of subsection (3), omitting the words “ Part of this Act ” and substituting the word “ division ”;

(b) in paragraph (a) of subsection (6), omitting the words “ this Part ” and substituting the words “ this division ”.

11. Amendment of s. 10. Section 10 of the Principal Act is amended by—

(a) in subsections (1) and (3), omitting the words “ Part II of this Act ” where they occur and substituting the word “ division ” in each case;

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

“(4) Section 285 of the *Land Act* 1962–1978, subject to all necessary adaptations, shall apply with respect to a deed of grant issued pursuant to this division and for those purposes references to the Department and to the Registrar of Dealings in that section shall be read and construed as references to the Commission and to the Commission or person authorized by it respectively.”.

12. Amendment of s. 10A. Section 10A of the Principal Act is amended by—

(a) omitting all words from and including the word “ grazing ” to and including the word “ compensation ” and substituting the words “ leases deemed pursuant to Division III of Part VII of that Act to be leases for terms of years ”;

(b) omitting the word “ adaptions ” and substituting the word “ adaptations ”.

13. New division 2 of Part II. The Principal Act is amended by inserting after section 10A the following heading and sections:—

“ *Division 2—Industrial, Trading and Business Sites* ”

10B. Application for conversion of certain leases in perpetuity to leases for term of years with freeholding covenant. (1) A lessee of a lease in perpetuity of land held by the lessee under the provisions of section 22B of the *State Housing Act* 1945–1979 may at any time apply in writing to the Minister to have the lease deemed a lease for a term not exceeding ten years and subject to a covenant entitling the lessee to a deed of grant in fee-simple of the land comprised in the lease.

In this division such lease for a term is referred to as a freeholding lease.

(2) The provisions of this division do not apply to any lease in perpetuity of land within the parcels of land specified in the Schedule to this Act.

(3) An application shall not be proceeded with until the Minister has been satisfied that the covenants (if any) pursuant to section 22B (2) (b) (iv) of the *State Housing Act 1945-1979* to which the lease in perpetuity is subject have been reasonably fulfilled.

10C. Purchasing price. (1) The purchasing price of the land comprised in a lease deemed, pursuant to this division, to be a freeholding lease shall be the amount of the unimproved value, as at the date of the receipt by the Minister of the application referred to in section 10B, of that land.

For the purposes of this section, the unimproved value of land shall be the amount which experienced persons would be willing to pay for the fee-simple of the land, assuming that it were unimproved and were offered for sale on such reasonable terms and conditions as a bona fide seller would require.

(2) (a) At the option of the lessee, the unimproved value of the land comprised in the lease in question shall be determined by—

- (i) the Commission;
- (ii) the Valuer-General; or
- (iii) the Land Court.

In every case, the lessee shall exercise his option under this subsection by stating in the application referred to in section 10B or in a separate writing given to the Minister the manner in which he desires the unimproved value of the land comprised in the lease in question to be determined.

(b) In every case where the lessee requires the Valuer-General to determine the unimproved value of the land comprised in the lease in question, the Commission shall request the Valuer-General to determine and the Valuer-General shall determine that value.

(c) In every case where the lessee requires the Land Court to determine the unimproved value of the land comprised in the lease in question, the Commission shall refer, or cause to be referred, to that Court for hearing and determination the matter of the amount of the unimproved value of that land and thereupon that Court shall hear and determine that matter.

(d) Where pursuant to this subsection the Valuer-General or the Land Court determines the unimproved value of the land comprised in the lease in question, the Commission may require the lessee to pay the whole or such part of the costs incurred by it thereby as it may determine and if the lessee fails to pay the whole of the amount which pursuant to this subsection he is required to pay, the Commission may recover from the lessee in any court of competent jurisdiction, by action as for a debt, the unpaid balance of any such amount.

(3) No appeal shall lie against a determination pursuant to subsection (2) of the unimproved value of land by the Commission, the Valuer-General or, as the case may be, the Land Court.

(4) The valuation of the unimproved value of any land determined by the Commission, the Valuer-General or the Land Court pursuant to this section shall have no force or effect save for the purpose for which that valuation is so determined or made.

10D. Matters to be determined by Minister. (1) After determination of the purchasing price of land pursuant to section 10C, the Minister shall, upon the recommendation of the Commission, determine—

- (a) the term (not exceeding ten years) of the freeholding lease;
 - (b) the amount of the deposit that is to accompany the notice of election to proceed with the application; and
 - (c) the terms and conditions (if any) in addition to the terms and conditions specified in section 10C to which the freeholding lease shall be subject.
- (2) The Commission shall give to the lessee notice in writing of
- (a) the amount of the purchasing price;
 - (b) the term of the freeholding lease;
 - (c) the amount of the deposit that is to accompany the notice of election to proceed with the application; and
 - (d) the terms and conditions determined by the Minister pursuant to subsection (1) (c).

10E. Lessee to elect whether to proceed with application. (1) The lessee shall, within 30 days from the date when he receives from the Commission the notice referred to in section 10D (2), notify the Commission in writing where he elects to proceed with his application under this division.

(2) An application under this division shall lapse at the expiration of 30 days after the date when the Commission gives to the lessee the notice referred to in section 10D (2) unless the lessee has sooner notified the Commission in writing that he elects to proceed therewith:

Provided that a lessee may, with the prior approval of the Minister, make a second or any subsequent application under this division notwithstanding that a prior application made by him has lapsed.

(3) A notice under this section in respect of a lease shall not affect or prejudice howsoever any mortgage or other encumbrance, estate or interest then subsisting over, upon or in the land comprised in the lease.

(4) A lessee who elects to proceed with his application under this division shall be deemed to comply with the requirements of the perpetual lease with respect to the payment of rent if he pays rent until and including the day preceding the quarter day when the term of the freeholding lease commences at the rate thereof actually payable at the date when the Minister receives the application referred to in section 10B.

10F. Conversion to freeholding lease. Upon and from the quarter day next following the receipt by the Commission pursuant to section 10E of notice from a lessee that he elects to proceed with his application under this division, the perpetual lease, the subject of the application, shall be deemed to be a freeholding lease—

- (a) for the term of years determined pursuant to section 10D commencing on the quarter day next following the date when the Commission receives the notice; and
 - (b) subject in every respect to the provisions of this division,
- and the Commission shall cause the lease to be appropriately endorsed.

10G. Terms and conditions of freeholding lease. A lease deemed pursuant to this division to be a freeholding lease shall be subject to the following provisions, terms and conditions:—

- (a) the purchasing price of the land comprised in the lease shall be the amount of the unimproved value, as determined pursuant to section 10c;
- (b) the term of the lease shall commence on the quarter day next following the date when the Commission receives from the lessee, pursuant to section 10E, notice of his election to proceed with his application;
- (c) the lessee shall pay, as prescribed by section 10H the purchasing price of the land;
- (d) the lessee shall pay, as prescribed by section 10H interest on the outstanding balance of the purchasing price;
- (e) moneys paid as rent under the perpetual lease in respect of any time before the commencement of the term of the freeholding lease shall not be credited to the purchasing price;
- (f) subject to paragraphs (a) to (e), both inclusive, all such terms and conditions as, pursuant to the *State Housing Act 1945-1979*, applied with respect to the lease in question as a perpetual lease.

10H. Payment of purchasing price including interest thereon. (1) The deposit determined pursuant to section 10D (1) (b) shall accompany and be paid with the notice by the lessee that he elects to proceed with his application under this division.

(2) The balance of the purchasing price, together with interest on the amount thereof outstanding at the beginning of each month of the term of the lease at the rate per centum per annum prescribed from time to time, shall be liquidated by such monthly instalments as shall be determined by the Commission from time to time which instalments are payable respectively on or before the last day of each month of the term of the lease commencing on the quarter day next following the date when the deposit is paid.

(3) Notwithstanding any term or condition of the freeholding lease, the lessee may at any time complete payment in full of the purchasing price of the land paying the unpaid amount of the purchasing price of

the land together with the interest payable thereon up to the date of the payment thereof.

(4) Without prejudice to any other remedy had by it, the Commission may recover, by action as for a debt in any court of competent jurisdiction, any moneys due and not paid to it in respect of the purchasing price (including interest thereon) of the land comprised in a freeholding lease.

(5) In respect of the purchasing price of land under this section, the Governor in Council may from time to time by Order in Council—

- (a) prescribe the rate per centum per annum of the interest payable thereon;
- (b) vary the rate per centum per annum of the interest payable thereon by increasing above or reducing below the rate fixed by the preceding Order in Council.

An Order in Council made under this subsection shall come into force on such date as may be specified therein or, if no such date is so specified, on the date of the publication thereof in the Gazette and shall continue in force until and including the day next preceding the date when the next following such an Order in Council comes into force.

10I. Freeholding covenant. (1) Every lease, deemed pursuant to this division to be a freeholding lease, 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, including interest thereon, payable in respect of the purchasing price of the land comprised in the freeholding lease and any other moneys unpaid on any account in respect of the lease; and
- (b) upon the due performance by the lessee of the terms and conditions binding upon him of the lease.

(2) Upon a lessee becoming entitled to performance of the covenant referred to in subsection (1), the Commission shall surrender to the Crown any estate or interest of the Commission in the land concerned.

(3) The Governor in Council shall, in the name of Her Majesty, grant in fee-simple any land to a person thereunto entitled under this division.

(4) Section 285 of the *Land Act* 1962–1978, subject to all necessary adaptations, shall apply with respect to a deed of grant issued pursuant to this division and for those purposes references to the Department and to the Registrar of Dealings in that section shall be read and construed as references to the Commission and to the Commission or person authorized by it respectively.

(5) Every grant in fee-simple by the Governor in Council pursuant to this division and every deed of grant issued accordingly shall be deemed to have been granted and issued under the *Land Act* 1962–1978 the provisions whereof relating to deeds of grant apply thereto.

10J. Application of Land Act 1962–1978 to freeholding leases. Subject to the provisions of this Act, the provisions of the *Land Act* 1962–1978 which apply to leases deemed pursuant to Division III of Part VII of that Act to be leases for terms of years shall, with and subject to all necessary adaptations apply to a freeholding lease and for that purpose—

- (a) a reference to the Minister in that Act shall be read and construed as a reference to the Minister charged with the administration of this Act;
- (b) a reference to the Department of Lands or to the Department in that Act shall be read and construed as a reference to the Commission.”.

14. New Schedule. The Principal Act is amended by inserting after section 21 the following Schedule:—

“ SCHEDULE [s. 10B (2)]

LANDS TO WHICH DIVISION 2 OF PART II DOES NOT
APPLY

- (a) The parcel of land situated at Inala Brisbane in the State of Queensland and bounded by Inala Avenue, Kittyhawk Avenue, Wirraway Parade and Corsair Avenue;
- (b) The parcel of land situated at Acacia Ridge Brisbane in the State of Queensland and described as Lots 1 to 11 on Registered Plan 105875, Portion 875 on Survey Plan Sl. 6411 and Portions 876 and 990 on Survey Plan Sl. 8482 in the County of Stanley, Parish of Yeerongpilly.”.