

Housing Legislation Amendment Bill 2005

Explanatory Notes

Short Title

Housing Legislation Amendment Bill 2005.

General Outline

Objective of the Bill

The objective of the Bill is to amend the *Housing Act 2003* (the Housing Act) and the *Housing (Freeholding of Land) Act 1957* (the Freeholding Act) to secure the accelerated divestment of residential perpetual town leases and to facilitate the process by which lessees become freehold owners of land.

Reasons for the objectives and how they will be achieved

The residential perpetual town leases (the leases) were issued from 1924 to provide access to affordable home ownership for low income Queensland households. Originally, the leases were issued to eligible home loan clients, to reduce their home ownership costs. Lessees may elect to convert their leases to freehold and achieve outright home ownership (house and land) by paying the purchase price of the land to the State through the chief executive, Department of Housing.

Of the more than 7000 leases issued between 1924 and 1985, only 262 were remaining at 30 June 2005. Of these remaining leases, less than 30% are held by the original lessees or their descendants. All the original home loan agreements have been finalised. Consequently the remaining leases are continuing in perpetuity on a land rent only basis until lessees choose to freehold.

The amendments will give lessees a greater incentive to convert their leases to freehold, thereby achieving outright home ownership. The amendments will also reduce the administrative costs to government in maintaining the leasehold system.

Under the amendments lessees:

- may continue as lease holders, or choose when to convert to freehold, as long as the lease is retained in the existing ownership.
- are encouraged to convert to freehold and achieve outright home ownership through the provision of freeholding incentives; and
- will with minor exceptions, from a date prescribed by regulation (but not before 1 July 2009), be subject to a requirement for automatic conversion of the lease to freehold land upon change of ownership.

The key provisions of the Bill include:

1. Reducing the purchase price for the conversion of the remaining leases to freehold and streamlining the freeholding process. This is achieved by basing the purchase price of freehold on a percentage of the unimproved value of the leased land and providing additional time limited concessions where prescribed by regulation.
2. From a date to be prescribed by regulation (not before 1 July 2009) the automatic conversion provisions will apply. A charge over the freehold land in favour of the Departmental chief executive will secure payment of the costs of converting the lease to freehold title. The automatic conversion provisions will apply in all cases of change of ownership of the lease except:
 - where one joint tenant dies and there is merely a recording of the surviving joint tenant(s) as the lessee;
 - where a lessee dies and the lease is transferred to his or her personal representative;
 - where a lessee becomes an insolvent under administration and the lease transfers to the person's trustee or from the trustee back to the lessee;
 - where otherwise prescribed by regulation.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with the *Legislative Standards Act 1992*. However, two issues concerning conformity with fundamental legislative principles may be raised in relation to the automatic conversion of residential leases to freehold land. These are:

- the requirement for automatic conversion of the leases;

- the provision that no compensation is payable for any action taken by the chief executive or the registrar of titles in relation to the automatic conversion of leases.

The requirement for automatic conversion of the leases

The amendments may affect the rights and liberties of individuals in that any transfer of a lease after commencement of the automatic conversion provisions (not before 1 July 2009) will, with minor exceptions, result in a requirement for freeholding of the lease. On change of ownership of a lease after commencement of the automatic conversion provisions a deed of grant for the land will be issued subject to a charge in favour of the departmental chief executive securing payment of the cost of converting the lease to freehold.

This may affect the amount a purchaser is prepared to pay for a lease. However, a lessee can ensure the value of the lessee's property is not reduced by voluntarily converting the lease to freehold prior to sale. The Bill contains incentives for lessees to freehold prior to commencement of the automatic conversion provisions. Under these provisions a lessee will be able to pay the cost of converting the lease to freehold. He or she would then be the freehold owner and able to offer the land for sale at a market price.

No compensation payable by chief executive or registrar of titles

Proposed new section 10A of the *Housing (Freeholding of Land) Act 1957* provides that compensation is not payable for any action taken by the chief executive or the registrar of titles under division 3 (Automatic conversion of residential leases to freehold land).

This clause is considered appropriate as the automatic conversion provision, as discussed above in relation to the potential impact on sale prices, does not remove a lessee's substantive rights. Lessees may still sell and transfer the lease asset.

In relation to the possible sale of land by the chief executive, this is provided for as a means of recovering an unpaid debt. The Bill requires the chief executive's charge to be registered in the freehold land register, so that a purchaser of the land is able to discover the existence of the charge. The Bill sets out detailed provisions to be complied with by the chief executive in recovering the debt and sets limits on the chief executive's powers.

Consultation

Community

In June 2005, the Department of Housing issued a notice to all residential lessees advising them that State Government support was being sought for a strategy to complete the original objectives of the Perpetual Town Lease program (home ownership for Queenslanders).

The notice informed lessees the strategy was expected to include a 'freeholding incentives package' and other changes to support the conversion of the leases to freehold. Lessees were advised to contact the Department of Housing on a 1300 number (the Leases hotline) for more information.

Government

The Draft Bill was provided for comment to the Department of the Premier and Cabinet; Queensland Treasury; the Department of Natural Resources and Mines; the Department of State Development, Trade and Innovation and the Department of Justice and Attorney-General.

Notes on Provisions

Part 1—Preliminary

Short title

Clause 1 sets out the short title as the Housing Legislation Amendment Act 2005.

Commencement

Clause 2 provides for the commencement of the Act on 1 July 2006.

Part 2—amendment of housing act 2003

Act amended in pt 2

Clause 3 provides that this part amends the *Housing Act 2003*.

Amendment of s 113 (Chief executive's power to sell houses to eligible persons)

Clause 4 omits section 113(1AB) and (6) to (6J) and omits the reference to (1AB) in (1A) and replaces it with a reference to (1AA). Section 113 (1AB) and (6) to (6J) of the *Housing Act 2003* are provisions continued from the repealed section 24 of the *State Housing Act 1945* (the repealed Act). These provisions are no longer required as there are no remaining instalment contracts (referred to as section 24 or section 113 contracts) for home and land purchase, issued under section 24 of the repealed Act involving perpetual leases.

The reference to (1AB) is replaced with a reference to (1AA) in (1A). This is to ensure that (1A) does not contain a reference to an omitted section.

Amendment of s 134 (Other lease under the repealed Act, s 24)

Clause 5 provides for the insertion of new sub-sections (4), (5) and (6) in section 134 of the *Housing Act 2003*. Section 134 provides for the continuation of section 24 of the repealed Act as saved and amended by section 113 of the *Housing Act 2003*.

The new sub-sections (4), (5) and (6) of section 134 remove any doubt in relation to the leases issued under section 24 of the repealed Act, that:

- the *Land Act 1994* does not apply to the conversion of these leases to freehold;
- conversion of the leases occurs according to the *Housing (Freeholding of Land) Act 1957*; and
- in regard to existing section 134(3) a reference in the *Land Act 1994* to the Minister is taken to be a reference to the Minister administering the *Housing Act 2003*.

Amendment of s 135 (Sale, lease or arrangements under the repealed Act, s 24A)

Clause 6 inserts a new sub-section (4) into section 135 of the *Housing Act 2003*. Section 135 is a transitional provision from the repealed Act to the *Housing Act 2003*. Section 135(1) applies to agreements, leases or arrangements under section 24A of the repealed Act that were in force immediately before the commencement day of the *Housing Act 2003* on 1 January 2004.

The new sub-section (4) of section 135 removes any doubt, and confirms the transitional nature of the provision by providing that on 1 July 2006, section 135 stops applying to a lease.

The provisions of section 24A of the repealed Act as saved by section 135(2) are no longer required. There are no continuing agreements or arrangements in force and new agreements or arrangements of this type cannot be entered into under section 135. A new transitional provision, section 154, provides for any remaining leases issued under the section 24A that are still in force immediately before 1 July 2006.

Replacement of s 150 (Land Act 1994 applies to deed of grant)

Clause 7 replaces existing section 150 of the *Housing Act 2003* with a new section 150. The heading and wording of the new section clarifies and removes any doubt that a deed of grant required to be issued under the *Housing Act 2003* must be issued under the *Land Act 1994*.

‘Division 6 - Transitional provisions for Housing Legislation Amendment Act 2005**Insertion of new pt 10, div 6**

Clause 8 inserts new transitional provisions in Part 10 of the *Housing Act 2003* that apply to leases granted or in force immediately before commencement of the *Housing Legislation Amendment Act 2005* on 1 July 2006.

The new division 6 of Part 10 (Repeal, Savings and Transitional Provisions) of the *Housing Act 2003* establishes transitional provisions, sections 153, 154 and 155.

The new transitional provision, section 153, applies to a lease granted under s 113 of the *Housing Act 2003* that was in force immediately before 1 July 2006. Section 113 continues to apply to the leases while they are in force. Section 113 saves provisions of section 24 of the repealed Act as amended and relocated to the *Housing Act 2003*.

The new transitional provision, section 154, applies to a lease granted under the repealed Act, section 24A that was in force immediately before 1 July 2006. Section 24A provisions are saved by section 135 of the *Housing Act 2003*. The *Housing Legislation Amendment Act 2005* amends section 135 by providing that it stops applying to a lease on 1 July 2006.

Transitional provisions, section 153 and 154, confirm a lease in force immediately before 1 July 2006 is taken to be perpetual lease for residential purposes under the *Land Act 1994*. However, sections 153 and 154 also remove doubt and clarify that:

- the *Housing (Freeholding of Land) Act 1957*, part 2 applies for converting the lease to freehold land and not the *Land Act 1994*, chapter 4, part 3, division 3.
- a reference in the *Land Act 1994* to the Minister is taken to be a reference to the Minister administering this Act (the *Housing Act 2003*).

Clause 8 provides a new section 155 of the *Housing Act 2003* (Delegation by Minister of powers under *Land Act 1994*). This section provides the Minister may delegate the Minister's powers under a prescribed provision to the chief executive or to an officer or employee of the department. The prescribed provisions are:

- *Housing Act 2003* sections 133, 134, 153 or 154; and
- the *Housing (Freeholding of Land) Act 1957*, section 10J or 11.

Part 3—Amendment of Housing (Freeholding of Land) Act 1957

Act amended in pt 3 and schedule

Clause 9 provides that part 3 and the schedule amend the *Housing (Freeholding of Land) Act 1957*.

Insertion of new s 2

Clause 10 inserts into schedule 2 a dictionary that defines words used in the *Housing (Freeholding of Land) Act 1957*.

Omission of pt 2, hdg (Provision for the freeholding of certain leaseholds held under the Housing Act 2003)

Clause 11 omits the Part 2 heading of the *Housing (Freeholding of Land) Act 1957*.

Amendment of s 3 (Interpretation)

Clause 12 amends the heading and wording of section 3 of the *Housing (Freeholding of Land) Act 1957*. Section 3 required only part 2 to be read as one with the *Housing Act 2003*. The amended heading and wording provide the Act is to be read as one with the *Housing Act 2003*.

Omission of pt 2, div 1 (Homes and home sites) and pt 2, div 2, hdg (Industrial, trading and business sites)

Clause 13 omits this heading from the *Housing (Freeholding of Land) Act 1957*.

Insertion of new pt 2 and pt 3, hdg

Clause 14 provides for the insertion of a new Part 2 (Homes and home sites) and Part 3 (Industrial, trading and business sites) to be inserted after section 3 of the *Housing (Freeholding of Land) Act 1957*.

The new part 2, division 1 (Preliminary) includes a new provision 3A. Section 3A(1) establishes how the chief executive must declare the percentage of the unimproved value of the residential lease, for a voluntary conversion to freehold land (division 2, subdivision 1), or an automatic conversion to freehold land (division 3).

The declared percentage for establishing the purchase price (for voluntary conversions) or conversion costs (for automatic conversions) must not be more than 100% and be worked out in accordance with requirements prescribed under a regulation.

Clause 14 also establishes sections under a new division 2 (Voluntary conversion of residential leases to freehold land). These provisions simplify the conversion process from application to establishing the purchase price, through to the issuing of a deed of grant.

Subdivision 1 of division 2 establishes a process for the voluntary conversion of residential leases to freehold. Sections 3C and 4 of this division provide that:

- a lessee may, at any time, make a written application to the chief executive to convert the lease to freehold land, or the chief executive may take the initiative and give a lessee an offer to convert;
- the chief executive's offer to convert must contain the purchase price, the availability period, the effective day, and conditions if the offer is subject to conditions.

The purchase price for converting a residential lease to freehold land may include any additional concessions that apply as prescribed under a regulation; and adjustments the chief executive may make (for example, for rent credit or arrears).

To accept the chief executive's conversion offer the lessee must pay the purchase price, comply with the conditions stated in the offer and provide all documents required to surrender the lease. Section 4B requires the conversion offer to outline everything a lessee must do to convert the lease to freehold. Section 4C sets out how conversion takes effect, including the issuing of a deed of grant (freehold title).

If a lessee does not accept the offer within the availability period, the offer lapses and another application or conversion offer may be made.

The new Part 2, Subdivision 2 (Conversion in progress leases) allows a lease to convert to freehold based on a purchase price worked out under previous sections of the Act. These provisions only relate to where a lessee applies for the lease to be deemed a freeholding lease before 1 July 2006. The purpose of these provisions is to provide a limited window for lessees engaged in the freeholding process prior to commencement of the Amendment Bill.

Sections 5A and 5B establish the availability period and what the lessee must do to accept the purchase price based on the previous approach to converting the lease. If the lessee does not accept the purchase price within the availability period the lease is no longer a conversion in progress lease. This means the lease may no longer convert to freehold on the previous provisions. An offer or application may still be made under part 2 division 2 (Voluntary conversion of residential leases to freehold) or the lease converted under division 3 (Automatic conversion of a residential lease to freehold) once it takes effect.

Clause 14 also provides for a new part 2, division 3 (Automatic conversion of residential leases to freehold land). Section 5C of subdivision 1 provides that this division does not apply to a residential lease until a day (the application day), not before 1 July 2009, prescribed under a regulation.

A lease automatically converts to freehold land under division 3, where a prescribed change in ownership of the lease is registered on or after the application day (as prescribed under a regulation). Section 6A establishes exclusions to the automatic conversion of a lease to freehold. A 'prescribed change of ownership' is a change in the lessees' ownership of the lease, other than the following:

- (a) if 1 or more of the joint tenants die—the recording of the surviving joint tenant or tenants as the lessee for the lease;
- (b) where a lease held by a lessee who dies is transmitted to the deceased lessee's personal representative;
- (c) where the lease is held by a person who becomes an insolvent under administration within the meaning of the Corporations Act, section 9 and is transmitted —
 - (i) to the person's trustee; or
 - (ii) if the person ceases to be an insolvent under administration—from the person's trustee to the person;
- (d) another change in the lessee's ownership of a type prescribed under a regulation.

Part 2 subdivision 2 (sections 6B to 9B) sets out the 'Process of automatic conversion of residential leases to freehold land'. This includes provisions for the cancellation of the lease on the registration of a prescribed change of ownership and the issuing of a deed of grant (freehold title).

A lessee may pay the conversion cost before a deed of grant is issued and there is no fee payable for recording the cancellation of the lease.

The deed of grant is subject to a charge in favour of the chief executive. This secures payment of the conversion cost (section 7A). The charge is binding on the registered owner of the land and the registered owner's successors in title. This ensures that the charge remains over the land when it is sold or passed to a beneficiary, until it is paid or otherwise released.

Sections 7A and 8B establish the process between the chief executive and the registrar of titles for ensuring the charge and other relevant details are recorded in the freehold land register. This ensures prospective buyers can easily discover the existence of the charge. When the charge is paid, or the

chief executive has agreed and accepted a lesser amount, the release of the charge is recorded in the freehold land register.

The period for payment of the charge is 2 years from the registration of the change of ownership. Where a beneficiary transmission causes the automatic conversion of a lease to freehold title, a maximum of 5 years for payment is provided from the day of a lessee's death.

The chief executive may enforce payment of the charge if the total amount is not paid in the period provided.

If the chief executive decides to enforce payment, a written notice of intention to sell the land must be issued to the registered owner and any mortgagee. The notice of intention to sell must include all the matters mentioned in section 8A(3) and provide the registered owner with at least 14 days to pay the 'demand amount'. The 'demand amount' is the unpaid conversion costs and any interest, which the chief executive may decide to apply from the day the payment period ends. If the chief executive's notice requires interest to be paid, it is set at the standard variable interest rate under section 92 of the *Housing Act 2003* or if more than 1 standard variable rate applies, at the lowest applicable rate.

If the demand amount is not paid in the period provided in the notice, the chief executive may sell the land by public auction or private contract. Section 9 provides how the chief executive must apply the proceeds of the sale and how the registrar of titles must register a purchaser as the new registered owner of the land.

Where the land is subject to a local government charge (for example, the non-payment of rates) the chief executive before selling the land must give written notice to the local government. This provision ensures the chief executive may only sell the land subject to the local government charge or on conditions agreed by the local government.

Part 2, subdivision 3 contains 'Miscellaneous provisions'.

Sections 9B and 10 of the Bill include new provisions in the *Housing (Freeholding of Land Act) 1957*. These provisions protect the interests of prospective buyers by seeking to encourage fair trading. Section 10 states that a lessee must disclose the conversion requirement in any sale contract.

If the requirement is not disclosed, the buyer may cancel the contract.

Section 9B provides that the chief executive must notify the chief executive (land) of the relevant provisions (for automatic conversion of the lease to freehold). The registrar of titles will enter a notification to each

unconverted lease. The notification will be discoverable through a title search.

Section 10A provides that compensation is not payable for any action taken by the chief executive or the registrar of titles under the division (Automatic conversion of residential leases to freehold land).

Insertion of new pt 4

Clause 15 of the Bill inserts a new part 4 (Transitional provisions for Housing Legislation Amendment Act 2005). Part 4 inserts a new section 11 into the *Housing (Freeholding of Land) Act 1957*, which provides that the previous part 2, division 1 continues to apply, as if it had not been repealed, for the conversion of an existing residential freeholding lease to freehold land.

Insertion of new sch 2

Clause 16 inserts a new schedule 2, dictionary.

Schedule, Consequential amendment

The Bill inserts a schedule containing minor consequential amendments to the *Housing (Freeholding of Land) Act 1957*.