

WESTERN LANDS (AMENDMENT) ACT, 1977

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 87, 1977.

An Act to amend the Western Lands Act, 1901, in relation to the minimum ages for applicants for, and holders of, land under that Act, the conversion of leases subject to mortgage and the payment of arrears. [Assented to, 20th October, 1977.]

BE

Western Lands (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the "Western Lands (Amendment) Act, 1977".

Commencement.

2. (1) This section, sections 1 and 3 and Schedule 2 shall commence on the date of assent to this Act.

(2) Section 4 shall, in its application to a provision of Schedules 1, 2 and 3, commence on the day on which that provision commences.

(3) Section 5 shall commence on the day on which Schedule 1 commences.

(4) The several provisions of Schedules 1 and 3 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules.

3. This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE WESTERN LANDS ACT, 1901, RELATING TO THE COMPETENCY OF MINORS TO ACQUIRE OR HOLD LAND UNDER THAT ACT.

SCHEDULE 2.—AMENDMENTS TO THE WESTERN LANDS ACT, 1901, RELATING TO THE CONVERSION OF LEASES THAT ARE SUBJECT TO MORTGAGE.

SCHEDULE 3.—AMENDMENTS TO THE WESTERN LANDS ACT, 1901, RELATING TO THE PAYMENT OF ARREARS BY INCOMING HOLDERS ON TRANSFER OF HOLDINGS.

Western Lands (Amendment).

4. The Western Lands Act, 1901, is amended in the manner set forth in Schedules 1, 2 and 3. Amendment of Act No. 70, 1901.

5. (1) In the application of the provisions of the Western Lands Act, 1901, and the regulations made under that Act to—

- (a) an application made under that Act or those regulations but not finally dealt with as at the commencement of Schedule 1;
- (b) a transfer under that Act or those regulations executed but not registered as at that commencement; and
- (c) the acquisition or the holding of land by virtue of an application referred to in paragraph (a) or a transfer referred to in paragraph (b),

Schedule 1 shall be deemed not to have been enacted.

(2) Notwithstanding Schedule 1, sections 18JJ (2) and 18K of the Western Lands Act, 1901, as in force immediately before the commencement of Schedule 1, shall be, in relation to a person of the age of 16 years or upwards but under the age of 18 years who held a holding under the Western Lands Act, 1901, as at that commencement, deemed to continue in force during the period commencing on that commencement and ending when that person reaches the age of 18 years but only if that person holds that holding continuously during that period.

Western Lands (Amendment).

Sec. 4.

SCHEDULE 1.

AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
RELATING TO THE COMPETENCY OF MINORS TO
ACQUIRE OR HOLD LAND UNDER THAT ACT.

(1) Section 18JJ—

Omit the section, insert instead :—

Minimum
ages.

18JJ. (1) Any person who is under the age of 18 years shall not be competent to apply for, or acquire from the Crown, any lease or conditional purchase under this Act.

(2) Any person who is under the age of 18 years shall not be competent to hold a lease or conditional purchase under this Act.

(3) Nothing in this section shall be taken to prevent the devolution or holding of a lease or conditional purchase under this Act devolving under the will or intestacy of a deceased holder.

(2) Section 18K—

Omit the section.

SCHEDULE

Western Lands (Amendment).

SCHEDULE 2.

Sec. 4.

AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
RELATING TO THE CONVERSION OF LEASES THAT ARE
SUBJECT TO MORTGAGE.

(1) Section 28BB (3A)—

After section 28BB (3), insert :—

(3A) If the lease is subject to mortgage, the mortgagee shall join in the application.

(2) Section 28BB (10), (11), (12)—

After section 28BB (9), insert :—

(10) Where an application for conversion of a holding under this section made after the commencement of Schedule 2 to the Western Lands (Amendment) Act, 1977, is granted—

(a) that holding, as in force immediately before the date that that conversion took effect or is deemed to have taken effect, is referred to in subsection (12) as the converted holding; and

(b) that holding, as in force after the date referred to in paragraph (a) in relation to that holding, is referred to in subsection (12) as the new holding.

(11) In subsection (12)—

“mortgage” includes a charge or other security;

“mortgagee” means a person holding or entitled to the benefit of a mortgage.

SCHEDULE

Western Lands (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
RELATING TO THE CONVERSION OF LEASES THAT ARE
SUBJECT TO MORTGAGE—*continued.*

(12) If, on the granting of an application referred to in subsection (10), the converted holding is subject to a mortgage—

(a) the mortgagee shall be deemed—

- (i) to retain the rights, powers and remedies which are expressly or impliedly given to him against the mortgagor by the mortgage; and
- (ii) to have, in respect of the new holding to the extent that those rights, powers and remedies are relevant to the new holding, the same rights, powers and remedies which are so expressly or impliedly given as he had or would have had in respect of the converted holding if the conversion had not been effected;

(b) the covenants, conditions, stipulations and provisions of the mortgage—

- (i) shall be deemed to apply to the new holding; and
- (ii) shall be capable of being enforced as if that mortgage had been given or executed in respect of the new holding; and

SCHEDULE

Western Lands (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
RELATING TO THE CONVERSION OF LEASES THAT ARE
SUBJECT TO MORTGAGE—*continued.*

- (c) if the mortgage is constituted, wholly or in part, by a transfer registered or recorded pursuant to this Act or the regulations under this Act, that transfer shall be deemed to extend to the new holding in the same manner as it applied to the converted holding.

SCHEDULE 3.

Sec. 4.

AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
RELATING TO THE PAYMENT OF ARREARS BY INCOMING
HOLDERS ON TRANSFER OF HOLDINGS.

- (1) (a) Section 28B (7)—

After "240.", insert "250A, 250B."

- (b) Section 28B (8)—

After "240.", insert "250A, 250B."

- (2) Section 28BB (8)—

After "240.", insert "250A, 250B."

SCHEDULE

Western Lands (Amendment).

 SCHEDULE 3—*continued.*

 AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
 RELATING TO THE PAYMENT OF ARREARS BY INCOMING
 HOLDERS ON TRANSFER OF HOLDINGS—*continued.*

(3) Sections 36D, 36E, short heading to section 36D—

After section 36C, insert :—

Liability of incoming holder to pay arrears.

**Liability of
incoming
holder to
pay arrears**

36D. (1) For the purposes of this section and section 36E—

- (a) “holder”, in relation to a holding, does not include a mortgagee of that holding;
- (b) the amount or amounts due for payment in respect of a holding shall be deemed to include any amount or amounts that would, but for a deferment granted under this Act or the Crown Lands Consolidation Act, 1913, be due for payment in respect of that holding; and
- (c) where a deferment of payment of an amount is so granted in respect of a holding, the due date for payment of that amount shall be determined as if that deferment had not been granted.

(2) Notwithstanding the provisions of this Act, the Crown Lands Consolidation Act, 1913, the regulations under those Acts or any condition attaching to a holding under this Act, the holder of a holding under this Act is liable to pay in respect of that holding any amount—

- (a) due for payment under this Act, the Crown Lands Consolidation Act, 1913, the regulations under those Acts or any condition attaching to the holding; and

SCHEDULE

Western Lands (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
RELATING TO THE PAYMENT OF ARREARS BY INCOMING
HOLDERS ON TRANSFER OF HOLDINGS—*continued.*

(b) unpaid as at the date when he became the holder.

(3) Where a holder pays, in respect of his holding, any amount (other than an amount that is attributable to rent or to interest charged under section 36C or to penalty interest for late payment charged under a condition attached to that holding) that became, on a date prior to the date when he became the holder of that holding, due for payment under this Act, the Crown Lands Consolidation Act, 1913, the regulations under those Acts or any condition attaching to the holding, that holder may recover that amount from the person who was the holder of that holding at the time when that amount became due.

(4) Where a holder pays, in respect of his holding, any amount—

(a) that is attributable to rent or to interest charged under section 36C or to penalty interest for late payment charged under a condition attached to that holding; and

(b) that became, on a date prior to the date when he became the holder of that holding, due for payment under this Act, the Crown Lands Consolidation Act, 1913, the regulations under those Acts or any condition attaching to the holding,

that holder may recover an amount determined in accordance with subsection (5) from any person who was the holder of that holding during the period in respect of which that amount was due.

SCHEDULE

Western Lands (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
RELATING TO THE PAYMENT OF ARREARS BY INCOMING
HOLDERS ON TRANSFER OF HOLDINGS—*continued.*

(5) The amount that a holder may recover from any person under subsection (4) is the amount that is equal to the amount of the rent, interest or penalty interest paid as referred to in subsection (4), less any part of that amount that would, if that amount was calculated on a daily basis, be attributable to a period when that person was not the holder of that holding.

(6) For the purposes of subsections (3), (4) and (5), a person shall be deemed—

- (a) subject to paragraph (b), to be the holder of a holding during any period commencing on the date when that person would, but for the requirement to be registered or recorded as the holder of that holding under this Act or the regulations under this Act, have become entitled to an estate or interest in that holding (being an estate or interest that gave him the right to be so registered or recorded) and ending on the date when he was so registered or recorded; and
- (b) not to be the holder of a holding during any period commencing on the date when that person would, but for the requirement for the person who becomes entitled to his estate or interest in that holding to be registered or recorded as the holder of that holding under this Act or the regulations under this Act, have ceased to be entitled to an estate or interest in that holding (being an estate or interest that gives

SCHEDULE

Western Lands (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
RELATING TO THE PAYMENT OF ARREARS BY INCOMING
HOLDERS ON TRANSFER OF HOLDINGS—*continued.*

another person the right to be so registered or recorded) and ending on the date when that other person was so registered or recorded.

(7) Nothing in this section affects any agreement or any rule of law or equity with respect to the ultimate liability for payment of any amount due in respect of a holding.

(8) This section does not apply in respect of a holding in respect of which section 250A of the Crown Lands Consolidation Act, 1913, applies.

36E. (1) The Minister shall, upon application by any person in the manner prescribed and upon payment of a fee as prescribed, issue to that person in respect of a holding—

- (a) a certificate as to the amount or amounts due for payment under this Act, the Crown Lands Consolidation Act, 1913, the regulations under those Acts or any condition attaching to that holding; or
- (b) where there is no amount so due for payment, a certificate to that effect.

(2) A certificate referred to in subsection (1) (a) shall give particulars of the amount or amounts due, including the due date for payment in respect of the amount or each of the amounts, as the case may be.

SCHEDULE

Western Lands (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE WESTERN LANDS ACT, 1901,
RELATING TO THE PAYMENT OF ARREARS BY INCOMING
HOLDERS ON TRANSFER OF HOLDINGS—*continued.*

(3) Production of a certificate under this section shall for all purposes be deemed conclusive proof in favour of a person who, on or subsequent to the date of the certificate, becomes the holder of the holding referred to in the certificate that, at the date of the certificate, no amount, other than an amount stated in the certificate, was due for payment in respect of that holding.

(4) This section does not apply in respect of a holding in respect of which section 250B of the Crown Lands Consolidation Act, 1913, applies.
