

**PURCHASERS' PROTECTION.**

12° and 13° GEO. VI., No. LVII.

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**No. 57 of 1948.**

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**AN ACT to amend the Purchasers' Protection Act, 1933-1946.***[Assented to 21st January, 1949.]*

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Purchasers' Protection Act Amendment Act, 1948*, and shall be read as one with the *Purchasers' Protection Act, 1933-1946* (Act No. 44 of 1933, reprinted with amendments to and including Act No. 41 of 1936, incorporated, pursuant to the provisions of the *Amendments Incorporation Act, 1938*, in Volume 2 of *The Reprinted Acts of the Parliament of Western Australia, 1943*, and further amended by Act No. 37 of 1946), hereinafter referred to as the principal Act.

Citation of  
the principal  
Act as  
amended by  
this Act.

2. The principal Act, as amended by this Act, may be cited as the *Purchasers' Protection Act, 1933-1948*.

3. Section ten of the principal Act is amended by substituting for subsection (1) the following:—

Amendment  
of s. 10.

(1) (a) For the purposes of this section—

“vendor” means the vendor mentioned in the contract, and his executors and administrators and assigns;

“purchaser” means the purchaser mentioned in the contract and his executors and administrators.

(b) If in any proceedings taken in any court—

for recovery of purchase money, or enforcement of any other remedy against the purchaser under the provisions of a contract, or for performance by the purchaser of his part of a contract,—

the court is satisfied—

that the payment of the purchase money, or the enforcement of the remedy against the purchaser, or performance by the purchaser of his part of the contract, will inflict hardship on the purchaser, by reason of his poverty or other inability to carry out his obligations under the contract or,—

on the application of the purchaser, that the amount of the valuation,—

made by the Commissioner of Taxation pursuant to the provisions of the Land and Income Tax Assessment Act, 1907-1945,—

of the subdivisinal land, the subject of the contract, was, within three months prior to the application, less than fifty per centum of the purchase price under the contract;—

instead of adjudging—

that all or any part of the purchase money shall be paid, or that the remedy be enforced against the purchaser, or that the purchaser shall perform his part of the contract,—

the court, on the application of the purchaser—

- (i) in the case of subdivisinal land which can be restored to the vendor in substantially similar condition to that in which it was at the time of sale;

may order that—

- (A) the contract shall be cancelled;  
and
  - (B) possession of the land shall be delivered to the vendor; and
  - (C) the amount of any consideration by way of purchase price, paid by or on behalf of the purchaser to the vendor, shall be forfeited to the vendor; and
  - (D) in addition, if the court thinks fit, that damages, not exceeding in amount one fourth part of the amount of the purchase price, shall be paid by the purchaser to the vendor, for non-performance of the purchaser's part of the contract;
- (ii) in the case of subdivisinal land which cannot be restored to the vendor in substantially similar condition to that in which it was at the time of sale because of its resumption pursuant to the provisions of any Act;

may order that—

- (A) the contract shall be cancelled;  
and
- (B) the amount of any consideration by way of purchase price, paid by or on behalf of the purchaser to the vendor, shall be forfeited to the vendor; and
- (C) subject as hereinafter in this subsection provided, the amount of any compensation for the resumption of the interests of the vendor and the purchaser, shall be payable to the vendor; and

(D) in addition, if the court thinks fit, that damages, not exceeding in amount one fourth part of the amount of the purchase price, shall be paid by the purchaser to the vendor, for non-performance of the purchaser's part of the contract:

Provided that in any order made pursuant to the provisions of this paragraph, the total of the amounts included pursuant to any of those provisions, contained in items (B), (C) and (D), shall not be in excess of the amount of the purchase price, but if in any order so made there be an excess, the order shall to the extent of that excess only, be a nullity, but otherwise shall be valid and operative;

(E) when the total of—

the amount of any consideration by way of purchase price paid by the purchaser to the vendor,—

plus—

any amount payable as compensation for the resumption of the interests of the vendor and the purchaser,—

exceeds the purchase price,—

the vendor shall have only such part of that total as shall equal the purchase price and the purchaser shall have the balance of that total—

and the court may make such order by way of adjustment between the vendor and purchaser on that basis, as shall be necessary.