

LAND SALES CONTROL

12° GEO. VI., No. IV.

No. 4 of 1948.

AN ACT to make provision for regulating and controlling prices payable in respect of certain transactions in land; and for purposes connected therewith.

[Assented to 20th September, 1948.]

BE 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
and com-
mencement.

1. (1) This Act may be cited as the *Land Sales Control Act, 1948*.

(2) This Act shall come into operation on a day to be fixed by proclamation.

Definitions.

2. In this Act, unless the context or subject matter otherwise indicates or requires—

“Commonwealth Regulations” means the regulations having the title of the National Security (Economic Organisation) Regulations, as in force immediately before the commencement of this Act under the Defence (Transitional Provisions) Act, 1946-1947, of the Parliament of the Commonwealth;

“Controller” means the person appointed to the office of Controller of Land Sales pursuant to and for the purposes of this Act;

“regulations” means regulations made under this Act.

3. (1) Subject to the general control and direction of the Minister, this Act shall be administered by the Controller. Administration.

(2) For the purposes of this Act, the Minister may appoint an advisory committee of five persons possessing expert or business knowledge, not more than two of whom shall be members of the Public Service. Advisory committee.

(3) A person appointed pursuant to the last preceding subsection shall hold office during the pleasure of the Minister and be entitled to such remuneration for his services and travelling allowances at such rates as the Minister determines. Remuneration and expenses.

4. The cost of the administration of this Act shall be paid out of moneys appropriated by Parliament for the purpose. Cost of administration.

5. (a) For the purposes of this Act there shall be a Controller of Land Sales. Appointment of controller.

(b) The Governor may appoint to the office of Controller of Land Sales a person who shall hold office for such term and subject to such conditions as the Governor determines.

6. The Governor may appoint to such other positions as, in the opinion of the Minister, are required to carry out the purposes of this Act, persons who shall be appointed and hold office under and subject to the provisions of the Public Service Act, 1904-1907, and to the provisions of all other Acts which apply to persons who are officers within the meaning of that Act. Appointment of staff.

7. (a) The Governor may at any time appoint a person to act during the absence of the Controller or during any vacancy in the office of Controller and to be called the Acting Controller. Appointment of acting controller.

(b) If the person appointed to the office of Acting Controller is an officer within the meaning of the Public Service Act, 1904-1907, the appointment to that office shall be without prejudice to the provisions of that Act and all other Acts applying to that person as such an officer immediately prior to being appointed to the office of Acting Controller.

Provisions to
co-opt ser-
vices.

8. With the consent of the Minister administering any department of the Public Service of the State, or of any other State of the Commonwealth, or of the Commonwealth, the Minister may, for the purposes of this Act, co-opt the services of any person employed in that department upon such terms as may be agreed between that Minister and the Minister.

Protection of
administrative
authority.

9. (a) No matter or thing done in good faith by the Minister or any person exercising any power or performing any duty or function pursuant to the provisions of this Act, or the regulations in operation from time to time pursuant to the provisions of this Act, shall subject him to any liability in respect thereof.

(b) Subject to the provisions of the last preceding paragraph, no action shall be brought against the Minister or any person therein referred to—

- (i) until after the expiration of one month's notice in writing specifying the name of the person intending to bring the action or proceeding, the name of the person against whom it is intended to bring the action or proceeding, and particulars of the cause or grounds of the action or proceeding;
- (ii) after the expiration of twelve months from the time when the cause or grounds of the action or proceeding arose.

Certain land
transactions
forbidden.
Cf. C'1th.
Regn. 6.

10. (1) Except as provided by this Act, a person shall not, without the consent in writing of the Controller—

- (a) purchase any land;
- (b) take an option for the purchase of any land;
- (c) take any lease of land;

- (d) take a transfer or assignment of any lease of land; or
 - (e) otherwise acquire any land.
- (2) Nothing in this section shall prevent—
- (a) the taking of a lease of land to be used by the lessee where the term of the lease does not exceed three years and is to commence not more than three months after the date of the lease;
 - (b) the taking of a transfer or assignment of a lease of land to be used by the transferee or assignee where the unexpired portion of the term of the lease does not exceed three years;
 - (c) the taking of an option for the purchase of any land where the period within which the option may be exercised is limited to one month after the taking of the option;
 - (d) the acquisition of land by way of gift;
 - (e) any transaction to which the State or Commonwealth, or any authority thereof, or person acting on behalf thereof (other than the Public Trustee) is a party;
 - (f) the acquisition of land on sale under a writ or warrant of execution issued out of any court; or
 - (g) any transaction by way of renewal or extension of a lease which was in existence prior to the twentieth day of February, one thousand nine hundred and forty-two, or to which consent was given under the Commonwealth regulations, where the rent under the lease as renewed or extended does not exceed the rent payable under the lease prior to the renewal or extension.
- (3) An application for the consent of the Controller under this section shall be in writing. The regulations may prescribe the form of such application and the particulars and information to be set out therein, may require that any statement made in the application shall be verified by statutory declaration, and may prescribe the persons by whom any such statutory declaration shall be made.

(4) The Controller may require any person who is a party to a proposed transaction in respect of which an application is made for the Controller's consent under this section to furnish in writing to the Controller such particulars of the proposed transaction and of any transaction connected therewith as the Controller requires.

(5) In the case of an application for consent to purchase any land, the application shall be accompanied by a valuation of the land by an independent approved valuer, unless the Controller dispenses with such a valuation.

(6) Where an application is made for the consent of the Controller to any proposed transaction, being the purchase of land, the taking of a lease of land, the taking of a transfer or assignment of a lease of land, or any other acquisition of land, the Controller may, before giving consent, if a valuation has not been furnished under subsection (5) of this section, require to be furnished to him a valuation, by an independent approved valuer, of the subject matter of the proposed transaction.

(7) A valuation under subsection (5) or subsection (6) of this section—

(a) if the proposed transaction is the purchase of any land—shall specify the amount which would have been a fair and reasonable price for the land as at the tenth day of February, one thousand nine hundred and forty-two, or, if the valuation is a valuation by the Commissioner of Taxation, may be the last valuation of the land made by the Commissioner of Taxation; and

(b) in any other case—shall specify the value of the subject matter of the transaction as at a date specified by the Controller.

(8) Where the Controller is not satisfied with any valuation furnished under subsection (5) or subsection (6) of this section, he may—

(a) require the valuer to furnish such information concerning the valuation as the Controller specifies; and

(b) require to be furnished to him a further valuation by an approved valuer nominated by the Controller.

(9) An applicant for the Controller's consent under this section shall set out in his application full and correct particulars (including the amount of the consideration paid or payable) of any option which has been granted to or by the applicant, or to the wife or husband of the applicant, in relation to the land or lease specified in the application.

Cf. C'1th.
Regn. 6 (8A).

(10) Where an applicant fails to comply with subsection (9) of this section, any consent given under this section to the transaction the subject of the application shall be void and of no effect.

Cf. C'1th.
Regn. 6 (8B).

(11) Where an applicant for consent to purchase any land on which is erected a dwelling-house has informed the Controller that he intends to live in the dwelling-house, the applicant shall not, without the consent in writing of the Controller, let the land.

Cf. C'1th.
Regn. 6 (9).

(12) Where a transaction prohibited by this section has been entered into subject to the consent of the Controller thereto being obtained, the transaction shall be deemed not to have been entered into in contravention of this section if an application for the consent of the Controller is made within three months after the date of the transaction, but the transaction shall not have any effect unless the Controller gives his consent thereto within a period of six months after the date of the transaction, or within such other period as is agreed on in writing, at the time the transaction is entered into or at any time thereafter, by all the parties to the transaction or, where the agreement is made after the death of any party, by the surviving parties and the legal personal representative of the deceased party.

(13) Notwithstanding anything contained in this Act, the Controller shall not refuse to grant his consent under subsection (1) of this section, or make the granting of his consent subject to any condition, except for the purpose of giving effect to a policy of preventing or limiting increases in prices of land.

Cf. C'1th.
Regn. 6
(10A).

Cf. C'1th.
Regn. 6 (11).

(14) In this section—

“approved valuer” means—

- (a) the Commissioner of Taxation; or
- (b) any other person who is for the time being approved by the Controller as a valuer for the purposes of this Act;

“land” includes every share, interest, or right in a mining tenement under the Mining Act, 1904-1937, or any Act amending that Act.

(15) (a) Any person who immediately before the commencement of this Act was an approved valuer within the meaning of paragraph (b) of the definition of “approved valuer” in subregulation (11) of regulation 6 of the Commonwealth Regulations, shall be deemed to be a person for the time being approved by the Controller for the purposes of paragraph (b) of the definition of “approved valuer” in subsection (14) of this section.

(b) The approval of the Controller of any person as an approved valuer under subsection (14) of this section or under paragraph (a) of this subsection may be revoked by the Controller at any time by notice in writing served by post on such person.

War service
land settle-
ment.
Cf. C'1th.
Regn. 6A.

11. (1) (a) The Under Secretary for Lands may, from time to time, by order published in the *Gazette*, declare country land specified in the order to be land suitable for settlement by former members of the Defence Force.

(b) Any order made by the appropriate Minister before the commencement of this Act under subregulation (1) of regulation 6 A of the Commonwealth Regulations, and in force in this State immediately before such commencement shall continue in force and shall be deemed to have been made under paragraph (a) of this subsection.

(c) Any order made or deemed to have been made under this subsection may be revoked by the Under Secretary for Lands by order published in the *Gazette*.

(2) The Controller shall not grant consent to an application under section three of this Act relating to land specified in any such order if he is satisfied, after consultation with the Under Secretary for Lands, that the land is likely to be required for settlement by former members of the Defence Force.

12. (1) Where, after the commencement of this Act, consent has been given under section ten of this Act to any transaction or proposed transaction, and the person from whom the land, option, or lease is to be, or has been purchased, taken, or otherwise acquired, accepts or has accepted in respect of the transaction or proposed transaction any consideration in excess of the consideration provided for in the terms of the transaction or proposed transaction as so consented to, the person who has paid or given the excess consideration may, notwithstanding that he is or may be concerned in a contravention of this Act in relation to the transaction, but subject to subsection (2) of this section, recover the amount or value of the excess consideration as a debt from the person to whom it was so paid or given by action in any court of competent jurisdiction.

Excess consideration may be recovered. Cf. O'lt. Regn. 6 AB.

(2) The court in which any such action is brought may, if, in its discretion, it considers that the circumstances of the case so warrant, refuse to give judgment for the plaintiff, or give judgment for the plaintiff in respect of part only of the amount or value of the excess consideration.

13. Nothing in this Act shall prevent—

- (a) any transaction to give effect to a contract or agreement in writing entered into prior to the twentieth day of February, one thousand nine hundred and forty-two;
- (b) the exercise of any option in writing given before that date;
- (c) any transaction—
 - (i) by way of mortgage or sub-mortgage;
 - (ii) by way of discharge of a mortgage or sub-mortgage;

Certain transactions not affected. Cf. O'lt. Regn. 8.

- (iii) by way of transfer or assignment of a mortgage to a guarantor who, in pursuance of the terms of his guarantee, has repaid the whole or part of the moneys due under the mortgage;
 - (iv) by way of partition between co-owners;
 - (v) by way of deed of family arrangement between beneficiaries under a will or settlement;
- (d) the vesting in the personal representative of a deceased person, in his capacity as such, of any property or any interest in any property;
- (e) any transaction which vests any property, or any interest in property, in any trustee of the estate of a deceased person, in a trustee in bankruptcy, or in any new trustee under any instrument, in his capacity as trustee;
- (f) any transaction which is without consideration in money or money's worth and the purpose of which is to vest any property, or any interest in property, in any person beneficially entitled thereto under or by virtue of any will or intestacy; or
- (g) the execution of any deed of assignment under Part XI. of the Bankruptcy Act, 1924-1946, of the Parliament of the Commonwealth, or of any deed of arrangement under Part XII. of that Act.

Exemptions
and consents.
Cf. C'1th.
Regn. 9.

14. (1) (a) The Governor may by regulations exempt from the whole or any of the provisions of this Act, and either unconditionally or subject to such conditions as are specified in the regulations—

- (i) persons of any particular class specified in the regulations;
- (ii) lands of any particular class specified in the regulations;
- (iii) lands situated in any particular part of the State specified in the regulations; or
- (iv) transactions of any particular class specified in the regulations.

(b) Any order made before the commencement of this Act under subregulation (1) of regulation 9 of the Commonwealth Regulations and in force in this State immediately before that commencement, shall continue in force in all respects as if that order had been made by regulations made under this Act, and may be rescinded, varied, or amended accordingly by regulations made under this Act.

(2) Where application is made for the consent of the Controller under section ten of this Act, the Controller may, in his absolute discretion, grant the consent, either unconditionally or subject to such conditions as he thinks fit, or refuse to grant the consent.

(3) Where any consent or exemption is granted subject to conditions, a person shall comply with all such conditions as are applicable to him.

15. (1) Where any transaction is entered into in contravention of this Act, or where any condition to which the transaction is subject is not complied with, the transaction shall not thereby be invalidated, and the rights, powers and remedies of any person thereunder shall be the same as if this Act had not been enacted.

Validation
of trans-
actions.
Cf. C'1th.
Regn. 10.

(2) Nothing in this section shall affect the liability of any person to any penalty in respect of any contravention of this Act.

16. The Registrar of Titles or other proper officer may, upon submission to him for registration of any instrument relating to a transaction in connection with any land, require such evidence as he deems necessary that the transaction to which the instrument relates is not in contravention of any provisions of this Act, and may refuse to register the instrument until that evidence is submitted to him.

Registrar
of Titles may
require
evidence that
transactions
are not in
contravention
of Act.
Cf. C'1th.
Regn. 10B.

17. (1) The Controller may, in relation to any particular matter or class of matters, or in relation to any particular part of the State, by writing under his hand, delegate all or any of his powers and functions under this Act (except this power of delegation) so that the

Delegation of
powers under
Act.

delegated powers or functions may be exercised by the delegate with respect to the matter or class of matters, or the part of the State, specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Controller.

(3) Where under this Act the exercise of any power or function by the Controller is dependent upon the opinion, belief, or state of mind of the Controller in relation to any matter, that power or function may be exercised by the delegate upon the opinion, belief, or state of mind of that delegate.

False state-
ment.
Cf. C'1th.
Regn. 20.

18. A person shall not make to the Controller, or to any person having duties connected with the provisions of this Act, any statement, whether oral or in writing, relating to any matter dealt with or arising under this Act, which he knows to be untrue in any particular or which is made by him without his having first made proper inquiries to ascertain the truth thereof.

Contracts to
evade Act.
Cf. C'1th.
Regn. 21.

19. A person shall not—

- (a) enter into any contract or agreement purporting to do, whether presently or at some future time, or upon the happening of any contingency, anything forbidden by this Act; or
- (b) enter into any transaction, or make any contract or arrangement, whether orally or in writing, for the purpose of or which has the effect of, in any way, whether directly or indirectly, defeating, evading, or avoiding, or preventing the operation of this Act in any respect.

Power to ob-
tain informa-
tion.
Cf. C'1th.
Regn. 22.

20. (1) The Controller may, by order, require any person—

- (a) to furnish to the Controller, or to such other person as he directs, such information as the Controller or that other person requires; and

- (b) to attend and give evidence before the Controller or such other person as the Controller directs,

with respect to any act, transaction, matter or thing prohibited by this Act, or to which any provision of this Act applies, and may require him to produce all books, documents, and other papers whatever in his custody or under his control relating thereto.

(2) The Minister may require the information or evidence to be given on oath or affirmation and either orally or in writing, and for that purpose the Controller or person before whom the evidence is given may administer an oath.

The Controller may require that any information or particulars required to be furnished to him or to any person under this Act, shall be verified by statutory declaration.

(3) A person shall not—

- (a) refuse or fail to comply with any requirement made in pursuance of subsection (1) or subsection (2) of this section; or
- (b) with intent to evade the provisions of this Act, destroy, mutilate, deface, secrete, or remove any book, document or other paper.

21. (1) Any person who contravenes or fails to comply with any provision of this Act, or the regulations, or any order, direction, or other instrument made or given under this Act, shall be guilty of an offence against this Act.

Offences and penalties.
Cf. O'ith. Act
No. 77 of
1946, s. 15.

(2) No prosecution for an offence against this Act shall be instituted without the written consent of the Attorney General.

(3) Any person who is guilty of an offence against this Act shall be liable—

- (a) if a body corporate—to a penalty not exceeding two hundred pounds;
- (b) if any other person—to a penalty not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

Proceedings
for offences.

22. All proceedings for offences against this Act or the regulations shall be disposed of in a summary manner before a court of petty sessions holden before a stipendiary, police, or resident magistrate.

Transitional
and saving
provisions.
Cf. No. 30 of
1918, ss. 15
and 16.

23. Subject to, and in so far as not inconsistent with, the provisions of this Act—

- (a) all applications, requirements, orders, approvals, consents, notices and documents, made, published, or given;
- (b) any duty, obligation and liability imposed, created, or incurred;
- (c) any investigation, legal proceeding and remedy, available, competent, commenced or being conducted or applied; and
- (d) all other acts, matters and things whatsoever, in existence, or in force or operation pursuant to the provisions of Part III. of the Commonwealth Regulations shall, with such adaptations as are necessary, and subject to any amendment and any revocation which may be made pursuant to the provisions of this Act, subsist and inure for the purposes of this Act.

Regulations.

24. The Governor may make regulations prescribing all matters and things which by the provisions of this Act are required or permitted to be prescribed, or are convenient for carrying into operation, or for facilitating the operation of the provisions and purposes of this Act.

Duration.

25. This Act shall continue in operation until the thirty-first day of December, one thousand nine hundred and forty-nine, and no longer.