

HOUSING TRUST.

21° GEO. V., No. XXXVI.

No. 36 of 1930.

AN ACT to constitute a Housing Trust, and to empower the Housing Trust to erect and dispose of cottages to persons who otherwise cannot obtain the same.

[Assented to 24th December, 1930.]

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.

1. This Act may be cited as the *Housing Trust Act, 1930.*

Division into Parts.

2. This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—THE TRUST: Its constitution and functions.

PART III.—FUNDS: The Housing Trust Fund.

PART IV.—APPLICATIONS FOR COTTAGES: How applications are dealt with; the kinds of cottage tenures that may be granted to eligible persons.

PART V.—REGULATIONS.

PART VI.—GENERAL PROVISIONS.

PART I.—PRELIMINARY.

Interpretation.

3. In this Act, unless inconsistent with or repugnant to the context, the following terms shall have the following meanings, namely:—

“Capital Cost” means the total sum expended or incurred by the Trust in purchasing or acquiring, or incidental to purchasing or acquiring the land

on which any cottage under this Act is erected, together with the costs of erecting such cottage, including all outbuildings, fences, water supply, sewerage and drainage, electric lighting, and all other improvements or conveniences, and all expenditure in and incidental to the completion of the said cottage ;

“ Cottage ” means the land on which any cottage is erected under this Act, together with the said cottage and all easements and appurtenances thereto, and all outbuildings, fences, water supply, sewerage, and drainage connections, electric lighting, and all other improvements or conveniences used for the enjoyment of the said cottage, and all the estate, right, title, and interest of the life tenant or of the purchaser in the same ;

“ Eligible person ” means—

- (a) any male person of or over the age of twenty-one years ;
- (b) any female of or over twenty-one years of age who is—
 - (i) single ; or
 - (ii) a widow ; or
 - (iii) a married woman living apart from her husband,

who proves to the satisfaction of the Trust that he or she has no reasonable prospect or means of purchasing or acquiring a house out of his or her own resources, that he or she is of good character and has at the time of making application for a cottage under this Act resided not less than two years continuously prior to such time in the State of Western Australia ;

“ Life tenant ” means a person who has entered into an agreement with the Trust in respect of a cottage under the provisions of Section thirteen of this Act, and the widow or widower of any such person who resides in any such cottage under the provisions of Section eleven paragraph (b) of this Act ;

“ Minister ” means the responsible Minister of the Crown for the time being appointed to exercise the powers conferred on the Minister under this Act ;

“Purchaser” means a person who has entered into an agreement with the Trust in respect of the purchase of a cottage under the provisions of section seventeen of this Act, and includes a person who has entered into a succession agreement under the provisions of section fourteen, paragraph (d), of this Act ;

“The Trust” means the Housing Trust as constituted by this Act ;

“Workers’ Homes Board” means the Workers’ Homes Board constituted under the provisions of the Workers’ Homes Act, 1911–1928.

PART II.—THE TRUST : ITS CONSTITUTION AND FUNCTIONS.

Constitution of the Trust.

4. (1.) A Trust is hereby constituted called the Housing Trust.

(2.) The Housing Trust shall be a body corporate, with perpetual succession and a common seal, and shall be capable in law of suing and being sued in its corporate name, and in that name of holding and disposing of land subject to the provisions of this Act, and of doing and suffering all such acts as bodies corporate may by law do or suffer.

(3.) The Trust shall consist of two members, who shall be appointed by the Governor, and who shall hold office during the pleasure of the Governor, but either of them may resign, on giving notice in writing to the Governor that he desires to do so.

(4.) In case of and during the illness, incapacity to act, or absence of a member, the Governor may appoint some other person to act as the deputy of that member, and to exercise all the powers and perform all the duties of that member.

(5.) Until such deputy is appointed, one member may exercise all the powers and functions of the two members of the Trust.

(6.) When the members of the Trust cannot agree on any particular matter arising in the course of their duties, such matter shall be decided by the Minister.

5. The Trust shall have power—

Functions of the Trust.

- (a) to receive, consider, and approve or reject applications for cottages under this Act ;
- (b) to enter into agreements with eligible persons whose applications for cottages under this Act are approved by the Trust ;
- (c) to purchase, with the approval of the Minister, any fee simple land or lands free of encumbrances which the Trust may consider it expedient to purchase, acquire, or hold immediately or prospectively, with the object of erecting cottages thereon for the purposes of this Act ;
- (d) subject to the approval of the Minister, to apply for and obtain Crown Grants of Crown lands under the Land Act, 1898, and any amendment of the same now or hereafter in force ;
- (e) to sell any cottages, and to sell or lease any of the surplus land or lands of the Trust which are not, in the opinion of the Trust, likely to be required within a reasonable time for the purposes of this Act :

Provided that no such sale shall be made, nor shall any such lease be made for a period exceeding five years, without the consent of the Governor in Council ;

- (f) to demolish and dispose of the materials of any cottages which in the opinion of the Trust cannot be utilised under this Act ;
- (g) to enforce agreements, and take steps for the cancellation of agreements and the forfeiture of cottages or leases under subsection (e) of this section, where default has been made by a life tenant, purchaser, or lessee in respect of the terms under which he holds the same ;
- (h) generally, unless otherwise expressly specified in this Act, to do all acts, matters, and things necessary or convenient for carrying out the objects of this Act.

6. In order to reduce to a minimum the administrative costs of the Trust, any services, administrative, technical, and clerical, including the preparation of plans and speci-

certain matters to be performed for the Trust by Government Departments.

cations, the calling for tenders, the general supervision of building operations, the preparation and execution of documents, the collection of instalments under agreements made under this Act, and the general inspection and supervision of cottages necessary to carry out the provisions of this Act, shall be performed by the several Departments of the Public Service free of charge to the Trust.

No stamp duty or fees payable on documents.

7. Any documents necessary for carrying out or evidencing the dealings and transactions of the Trust in respect of which any stamp duty fee or registration charge might otherwise, but for the provisions of this section, be levied or made against the Trust or against any applicant or eligible person by virtue of the provisions of any Act now or hereafter in force, are hereby exempted from such stamp duty fee or registration charge so far as the Trust or the applicant is concerned.

PART III.—FUNDS: THE HOUSING TRUST FUND.

Housing Trust Fund.

8. (1.) A fund is hereby constituted, called the Housing Trust Fund.

(2.) The Housing Trust Fund shall be kept at the Treasury, and shall be under and operated on by the Workers' Homes Board for the purpose of carrying out the transactions of the Trust under this Act.

(3.) The Housing Trust Fund shall consist of—

(a) such moneys as shall be made available to the Trust from time to time by Government grant, Federal or State ;

(b) private gifts or endowments (including a gift of the sum of £5,000 made by Charles McNess, Esq., and Annie Alice Ponçy McNess, his wife), payment of which has been made to the Government of this State ;

(c) payments made by life tenants or purchasers under this Act, and all moneys arising from any transactions the Trust is authorised to carry out under this Act ;

(d) any other means providing funds for the Trust.

Accounts of the Trust to be kept by the Workers' Homes Board.

9. The accounts of the Trust shall be incorporated with the accounts system of the Workers' Homes Board ; and the Workers' Homes Board shall, as near to the 30th

day of June in each year as possible, supply to the Trust, duly audited by the Auditor General, a balance sheet in respect of the Housing Trust Fund.

PART IV.—APPLICATIONS FOR COTTAGES: HOW APPLICATIONS ARE DEALT WITH; THE KINDS OF COTTAGE TENURES THAT MAY BE GRANTED TO ELIGIBLE PERSONS.

10. (1.) Subject to moneys being available from time to time in the Housing Trust Fund, the Trust shall receive and deal with applications from persons who desire to obtain a cottage under the provisions of this Act.

Trust to receive and deal with applications.

(2.) Applications shall be of two kinds, namely —

Applications.

(a) applications for life tenures;

(b) applications for fee simple tenures.

(3.) Every applicant shall prove to the satisfaction of the Trust that he or she is an eligible person within the meaning of this Act.

(4.) Applications may be in the form prescribed, and shall contain such further particulars as the Trust may require, and shall be verified by the statutory declaration of the applicant.

(5.) If the Trust is satisfied that the applicant is an eligible person, the Trust may authorise the Workers' Homes Board to prepare plans and specifications and call for tenders for the erection of the cottage.

(6.) The acceptance of such tender shall be a matter for the Workers' Homes Board: provided that no tender in excess of the sum of £250 shall be accepted by the Workers' Homes Board without the express approval in writing of the Trust.

(7.) On the acceptance of a tender, the Workers' Homes Board shall, under its supervision, cause the building of the cottage to be proceeded with and completed without delay and in accordance with the plans and specifications, and shall give the Trust at least fourteen days' notice prior to the completion of the cottage.

(8.) On receiving such notification from the Workers' Homes Board, the Trust shall send written notice to the person who made the application to the address disclosed on his application, and request him to sign the necessary documents required under the provisions of this Act before such person shall be entitled to obtain the cottage.

Life Tenures.

Life tenures.

11. (1.) An application for a life tenancy of a cottage shall, if granted by the Trust, and subject to the completion by the applicant of the necessary documents and compliance by the applicant with the provisions of this Act, confer on the applicant the following rights and privileges, namely—

- (a) The right to reside in and occupy rent free for life or such lesser period as the Trust may think proper the cottage to be erected or provided by the Trust ;
- (b) The Trust may extend to the widow or widower of the life tenant the right to reside rent free in the cottage during the life of such widow or widower or during such lesser period as the Trust may think proper ;
- (c) The Trust shall at all times keep the cottage insured against fire in the name of the Trust (provided that the life tenant shall be liable to pay to the Trust the premiums in respect of such insurance as hereinafter mentioned), and the life tenant shall, in the event of loss or damage to the cottage by fire, be entitled to have any insurance moneys obtained by the Trust applied in or towards reinstatement of the cottage ;
- (d) Subject as aforesaid, after the death of the life tenant or the widow or widower of the life tenant, as the case may be, the cottage shall revert to the Trust absolutely ;

(2.) No rates, taxes, assessments, charges, and outgoings which now are or which but for the provisions of this section may hereafter be assessed, charged, or imposed on the cottage, or on the owner or occupier in respect thereof, shall be so assessed, charged, or imposed.

Obligations of life tenant.

12. (1.) The granting of a cottage under the preceding clause shall impose on the life tenant the following obligations—

- (a) to keep the cottage in good and tenantable repair and condition ;
- (b) forthwith on the same becoming due to pay to the Trust all insurance premiums which may be payable in respect of the insurance effected by the Trust under paragraph (c) of section eleven ;

- (c) not to commit or permit any nuisance in the cottage or on the premises whereon the same is situated ;
- (d) to reside continuously in the cottage ;
- (e) not to transfer, sublet, part with the possession of, or mortgage, charge, or encumber the said cottage or in any way attempt so to do, or dispose, or attempt to dispose, of the cottage or any interest therein ;
- (f) not to commit or permit any act of destruction or waste to the materials of the cottage ;
- (g) not to do or omit to do or suffer anything to be done that might vitiate or prejudicially affect the policy of insurance effected by the Trust ;
- (h) not to make any structural alterations or additions to the cottage without first obtaining the written consent of the Trust and effecting at his own expense any additional insurance necessary by reason thereof ;
- (i) to permit the Workers' Homes Board or its servants or agents at all reasonable times to enter and inspect the cottage.
- (j) to deliver up possession of the cottage in good and tenantable repair and condition at the end or sooner determination of the term fixed by the Trust.

(2.) In case of the breach by the life tenant of any of the aforesaid obligations, the Trust may terminate the rights and privileges granted in respect of the cottage under this Act and re-enter the same.

13. Before a prospective life tenant shall be permitted to enter into occupation of a cottage, he shall enter into an agreement with the Trust embodying the matters stated in paragraphs (a) to (j), both inclusive, of the preceding section, including a condition to the effect that if the financial circumstances or condition of such tenant, or of the widow or widower of such tenant, shall have altered to his or her advantage so that in the opinion of the Trust such tenant is no longer entitled to continue to enjoy the occupancy of such cottage, then it shall be lawful for the Trust, on giving one calendar month's notice in writing to such tenant, to terminate the tenancy or occupancy of such cottage, notwithstanding that the term thereof may not have expired, and to resume possession thereof ;

Agreement to be signed by life tenant.

provided, however, that in lieu of resuming possession of such cottage the Trust may enter into an agreement with the tenant permitting him or her to remain in occupation of such cottage as a tenant from year to year at such rent and on such terms and conditions as the Trust may determine, and such other matters, if any, as may be prescribed or deemed necessary by the Crown Solicitor.

Fee simple purchase of Cottage.

Fee simple tenures.

14. An application for the purchase of a fee simple cottage shall, if granted by the Trust and subject to the completion of the necessary documents, and compliance with the provisions of this Act, confer on the proposed purchaser the following rights and privileges, namely:—

- (a) An undertaking by the Trust to sell, and the right on the part of the proposed purchaser to purchase the cottage, and a fee simple estate in possession of the lands on which such cottage stands, on payment of a regular monthly instalment of £1 1s. 8d. ;
- (b) The right to pay off at any time the whole or any portion outstanding of the capital cost of the cottage ;
- (c) If a purchaser has resided in a cottage for not less than five years, and is desirous of retiring from his agreement, he shall be entitled, on giving at least three calendar months' previous notice in writing to the Trust to that effect, and provided that he has up to the time of the expiration of such notice and vacation of the cottage duly complied with his obligations as hereinafter mentioned, to be repaid by the Trust that portion of his monthly payments which has been applied towards payment of the capital cost of the cottage, and upon such payment all rights of the purchaser under such agreement shall cease, and the cottage shall revert to the Trust ;
- (d) If a purchaser who has entered into an agreement dies, then, subject to such agreement not being in default, the beneficial interest of the purchaser shall pass to his personal representative, who shall assign the same to the person or persons entitled thereto under the will or intestacy of the deceased: Provided that—

- (i) no such assignment shall be made to any person or persons who in the opinion of the Trust are not eligible within the meaning of this Act ;
 - (ii) the Trust shall refund to such personal representative, for the use of any person or persons who are not eligible, a proportion of the capital cost paid by the deceased purchaser, according to his or their several shares or interests under the will or intestacy of the deceased purchaser ;
 - (iii) so long as any part of the capital cost of a cottage remains unpaid, no eligible person or persons shall be entitled to have assigned to them any interest therein until he or they have entered into a fresh agreement with the Trust called a succession agreement, undertaking to pay the outstanding balance of the capital cost and any sums refunded under this proviso, and to carry out and observe all obligations undertaken by the original purchaser.
- (e) Upon and subject to the due compliance by the purchaser with his obligations as hereinafter mentioned, the purchaser (which term includes a purchaser under a succession agreement) shall be entitled to receive a proper registrable transfer or assurance of the cottage from the Trust.

15. (1.) A purchaser under the preceding section relating to the purchase of a fee simple cottage shall be deemed to undertake the following obligations :—

Payments to be made by fee simple purchaser.

- (a) regularly to pay the instalments of £1 1s. 8d. monthly to the Workers' Homes Board or its accredited agent ;
- (b) the like obligations *mutatis mutandis* as are imposed in the case of a life tenant under the provisions of this Act.

(2.) In case of a breach by the purchaser of any of the aforesaid obligations, the Trust may terminate the agreement, whereupon the rights of the purchaser thereunder shall cease and the Trust may re-enter the cottage, without prejudice, however, to the liability of the purchaser for any antecedent breach of the agreement.

Appropriation of payments.

16. The instalments and other payments of purchase moneys paid by purchasers of fee simple cottages shall be paid to the Workers' Homes Board for the Trust, and shall be placed by the Board to the credit of the Housing Trust Fund, but the same shall be appropriated for the payment of the following charges:—

- (i.) Insurance ;
- (ii.) Rates, taxes, and other government or local authority assessment ;
- (iii.) Maintenance and renovation of the cottage ;
- (iv.) After payment of the aforesaid charges, towards or on account of the capital cost.

Purchaser to enter into agreement before taking possession of cottage.

17. Before a proposed purchaser shall be permitted to enter into occupation of a cottage, he shall enter into an agreement with the Trust embodying the matters stated in paragraphs (a) and (b) of Section fifteen and such further matters as may be prescribed or deemed necessary by the Crown Solicitor.

PART V.—REGULATIONS.

Regulations.

18. The Trust may, with the approval of the Governor in Council, make regulations not inconsistent with this Act providing for any of the following matters:—

- (a) The times and places of its meetings and the conduct of its proceedings and business ;
- (b) The use of its common seal ;
- (c) The forms to be used under this Act ;
- (d) The use of model plans and specifications ;
- (e) Generally for the more convenient exercise of any of the powers and authorities conferred on the Trust under the provisions of this Act.

PART VI.—GENERAL.

Offences and penalties.

19. (1.) If any person who is not entitled to a cottage under this Act obtains a cottage by making a false statement, or by making a false declaration, or by wilful non-disclosure of material facts, the Trust may terminate the agreement and re-enter the cottage.

(2.) Any person who by knowingly making a false statement or declaration, or by wilful non-disclosure of material facts, obtains or attempts to obtain the approval of the

Trust to his obtaining a cottage under this Act, commits an offence.

Penalty : Fifty pounds.

(3.) The provisions of subclause (2) shall be without prejudice to the liability of the offender to be prosecuted and punished under any other penal enactment, but so that he be not prosecuted or punished twice for the same offence.

20. If a life tenant or purchaser whose agreement has been forfeited or cancelled neglects or refuses to give up possession of the cottage occupied by him to the Trust, the Trust may apply by summons to the Local Court nearest where the said cottage is situated for possession of the same, and such application shall be as nearly as practicable in the form of summons for recovery of possession of land under the provisions of the Local Courts Act, 1904-1921, and Rules, and the forms prescribed under the Local Court Rules may be altered to suit the circumstances of the case.

Power of Trust on default by life tenants and purchasers.

21. (1.) Any person who applies for a cottage under this Act and whose application is approved by the Trust, and who, when making his application, requests the Trust to erect a cottage for him on a piece of land of which he is the holder of an unencumbered estate in fee simple in possession, may, with the approval of the Trust, and subject to the approval of the Minister, transfer the same to the Trust for the purpose of making such land available to the Trust to erect a cottage thereon.

Persons applying for cottages to be erected on their own land may transfer land to the Trust.

(2.) Such person shall have the right, if the Trust approves the application and accepts the transfer, to the cottage erected on such land in preference to any other applicant, for a period of one month following the completion of the erection of the cottage ; provided that such person shall, within the said period of one month, execute the necessary documents required by the Trust before he shall be permitted to enter into occupation of the cottage.

(3.) If any applicant whose application has been approved fails within one month after notification, in writing, that the cottage is ready for occupation has been sent to him, to complete the necessary documents that may be required before the Trust will allow him to enter into possession of the cottage, the Trust may cancel the approval in respect of such application, and, in case of an applicant who has transferred land to the Trust under the provisions

of the preceding clause, such land shall be forfeited to the Trust.

(4.) The decision of the Trust in regard to any application for a cottage shall be absolutely final.

Trust may deal with applications to buy or lease surplus lands.

22. The Trust may receive and deal with applications from any persons who desire to purchase or take on lease any of the lands of the Trust which the Trust is authorised to sell or lease under the provisions of section five (e) of this Act.

Certificate of Trust as to payments on account.

23. The certificate of the Trust as to the amount or proportion of the payments made by the purchaser towards the capital cost of a cottage shall be final, and shall be accepted as conclusive evidence of the fact in any court of law.

Trust may extend time for payments of purchase money and make compromises.

24. The Trust may in a case of hardship extend the due date for payment of any moneys payable by a purchaser upon such terms and conditions as the Trust may think fit, and may, in the case of a breach or non-observance by a life tenant or by a purchaser of the terms of his agreement, compound and agree with such life tenant or purchaser in regard to such breach on such terms and conditions as the Trust may think fit.

Trust to present annual report to the Minister.

25. In every year the Trust shall furnish to the Minister a report in writing setting out the financial transactions of the Trust for the preceding financial year, and an annual report of its operations.

Protection of the Trust and its officers.

26. (1.) No matter or thing done and no agreement entered into by the Trust or any member thereof, and no matter or thing done by any officer of the public service or other person acting under the authority or direction of the Trust shall, if the matter or thing was done, or the agreement was entered into *bona fide* for the purpose of this Act, subject the Trust or any member thereof, or any such officer or person, to any personal liability in respect thereof.

(2.) An action shall not be brought against the Trust or any member thereof, or any officer or person acting under the direction or authority of the Trust, for anything done or intended or omitted to be done under this Act, until the expiration of one month after notice in writing has been served on the Trust or person to be sued, clearly

stating the cause of action and the name and place of abode of the intended plaintiff and of his solicitor or agent.

(3.) On the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served.

(4.) Unless such notice is proved, the court shall find for the defendant.

(5.) Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards.

(6.) The Trust, or any person to whom such notice of action is given, may tender amends to the plaintiff, his solicitor or agent, at any time within one month after service of the notice, and, in case the same is not accepted, may plead such tender.

27. This Act shall be deemed to have come into operation on the twenty-eighth day of June, one thousand nine hundred and thirty.

Retrospective
clause.