

SALE OF LAND.

No. 70 of 1974.

AN ACT to amend the Sale of Land Act, 1970-1973.

[Assented to 9th December, 1974.]

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

1. (1) This Act may be cited as the *Sale of Land Act Amendment Act, 1974*. Short title and citation.

(2) In this Act the Sale of Land Act, 1970-1973 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Sale of Land Act, 1970-1974.

2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

Section 3
amended.

3. Section 3 of the principal Act is amended by adding after the passage "PART IV.—OFFENCES IN RELATION TO SALE OF LAND, ss. 16-19." the following passage—"PART IVA.—DEALINGS IN UNDIVIDED SHARES IN LAND, ss. 19A-19D."

Section 19A
added.

4. The principal Act is amended by adding after section 19 the following heading and section—

PART IVA.—DEALINGS IN UNDIVIDED SHARES
IN LAND.

Interpre-
tation, etc.

19A. (1) In this Part—

"offeror" includes invitor;

"option to purchase" includes a gratuitous option to purchase; and

"Registrar" means the Registrar of Companies under the Companies Act, 1961 and includes any Deputy or Assistant Registrar of Companies under that Act.

(2) For the purposes of this Part—

(a) an undivided share in land includes any interest or right, whether legal or equitable, in an undivided share in land and includes an option to purchase such an interest or right;

(b) a reference to an interest in land is a reference to any interest in the land of whatever kind, legal or equitable, and whether represented by undivided shares or otherwise;

(c) "offer to the public for purchase", or "offer to the public options to purchase" or "invite the public to purchase" includes—

(i) offer to any section of the public for purchase, offer to any section of the public options to purchase, or invite any section of the public to purchase, whether the section of the public is selected as clients of the person

making the offer or invitation, as the case requires, or in any other manner;

- (ii) going from place to place, whether by appointment or otherwise, offering for purchase to the public or any member of the public, offering options to purchase to the public or any member of the public, or inviting the public or any member of the public to purchase, as the case requires; and
 - (iii) by telephone, offering to any member of the public for purchase, offering options to purchase to any member of the public, or inviting any member of the public to purchase, as the case requires; and
- (d) another person is an associate of an offeror where—
- (i) if the offeror and that other person are both corporations, the corporations would, within the meaning of subsection (5) of section 6 of the Companies Act, 1961, be deemed to be related to each other;
 - (ii) the offeror is a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to any interest in the land;
 - (iii) the offeror is a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to any interest in the land;

- (iv) the offeror is a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to any interest in the land; or
- (v) the offeror is a body corporate that is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to any interest in the land,

but a person shall not be regarded as a person in accordance with whose directions or by whose instructions another person is accustomed to act by reason only that that other person acts on advice given by the firstmentioned person in a professional capacity.

(3) Without limiting the generality of paragraph (c) of subsection (1) of section 19B, a person shall, for the purposes of this Part, be regarded at any particular time as carrying on the business of selling undivided shares in land if within the immediately preceding period of twelve months, the total number of transactions entered into as vendor by that person and his associates or any one or more of them for the sale of undivided shares in land exceeded three, except where the purchasers in each of those transactions are identical. .

Section 19B
added.

5. The principal Act is amended by adding the following new section—

Certain
offers to
the public
prohibited.

19B. (1) A person shall not directly or indirectly offer to the public for purchase, offer to the public options to purchase, or invite

the public to purchase any undivided share in land unless—

- (a) there is in force in relation to the undivided share a deed that is an approved deed under and for the purposes of Division 5 of Part IV of the Companies Act, 1961;
- (b) the offer or invitation relates to a specified building (whether then in existence or proposed to be erected) and any purchaser of the undivided share will have the right to the exclusive occupation or use of that building or a specified part of that building;
- (c) neither the offeror nor any of his associates is carrying on the business of selling or dealing in undivided shares in land; or
- (d) the Minister has, pursuant to section 19C, exempted the offer or invitation from the provisions of this Part.

Penalty: Imprisonment for twelve months or one thousand dollars.

(2) Proceedings for any offence against this section may be taken by the Registrar or, with the written consent of the Minister, by any person.

(3) Notwithstanding the provisions of any other Act, proceedings for any offence against this section may be brought within the period of three years after the commission of the alleged offence or, with the consent of the Minister, at any later time.

(4) A person shall not be relieved from any liability to a purchaser of, or the holder of an option to purchase, an undivided share in land by reason of any contravention of this section.

(5) It is a defence to a complaint for an offence against this section for the defendant to show—

- (a) that at the time the offer or invitation was made it related to the total interest of the offeror and his associates, if any, in the land;
- (b) that the offeror and his associates, if any, proposed to sell that total interest in one transaction or grant an option to purchase that total interest in one transaction, as the case requires; and
- (c) that since the offer or invitation was first made after the coming into operation of the Sale of Land Act Amendment Act, 1974, neither the offeror nor any of his associates has, in any one transaction or in any number of simultaneously executed transactions which can fairly be regarded as one transaction, sold or granted options to purchase anything less than that total interest.

Section 19C
added.

6. The principal Act is amended by adding the following new section—

Transitional
provision.

19C. (1) Where—

- (a) prior to the coming into operation of the Sale of Land Act Amendment Act, 1974 but not later than the tenth day of September, 1974, a person had offered to the public for purchase, offered to the public options to purchase, or invited the public to purchase any undivided share or shares in land; and
- (b) the Minister is satisfied that—
 - (i) immediately prior to the coming into operation of the Sale of Land Act Amendment Act, 1974, that person had legal obligations

or other commitments in respect of the land the subject of the offer or invitation by reason of which it would be unreasonable for the restrictions of this Part to apply to the making of further offers or invitations in relation to the land; or

- (ii) it would be contrary to the interests of persons who entered into contracts for the purchase of, or obtained options to purchase, undivided shares in the land prior to the coming into operation of the Sale of Land Act Amendment Act, 1974 that the provisions of this Part should apply so as to restrict the making of further offers or invitations by the offeror in relation to the land,

the Minister may, by notice published in the *Government Gazette* within twelve months after the coming into operation of the Sale of Land Act Amendment Act, 1974, exempt the offeror from the restrictions of this Part and in that event section 19D does not apply to any contract entered into, or any option granted, while that exemption remains in force.

(2) Where a person who was the owner of an undivided share in land on the tenth day of September, 1974, satisfies the Minister that it would be unreasonable for the provisions of this Part to apply so as to restrict him from making offers or invitations relating to the whole or any part of that undivided share, the Minister may exempt that person from the restrictions of this Part in relation to the whole or any part of that undivided share, and in that event section 19D does not apply to any contract entered into or any option granted by that person in relation to that undivided share or any part thereof while that exemption remains in force.

(3) Any exemption granted by the Minister pursuant to subsection (1) or subsection (2) of this section—

- (a) shall be granted subject to such conditions, if any, as the Minister determines and specifies in the instrument of exemption; and
- (b) may be revoked by the Minister at any time and shall, in any event, determine forthwith upon any breach of those conditions. .

Section 19D
added.

7. The principal Act is amended by adding the following new section—

Rescission.

19D. Where a contract for the sale of an undivided share in land is made but prior to the making of the contract an offer or invitation relating to the land was made in contravention of section 19B the purchaser under the contract—

- (a) by notice in writing served on the vendor under the contract within three years after the making of the contract, may rescind the contract; and
- (b) thereupon, may recover in a court of competent jurisdiction all moneys paid under the contract,

unless the vendor shows to the satisfaction of the court that—

- (c) the offer or invitation did not contribute to the making of the contract; or
- (d) the defence referred to in subsection (5) of section 19B would be available to him in any proceedings under that section concerning the offer or invitation. .