

PROPERTY LAW.

No. 35 of 1973.

AN ACT to amend the Property Law Act, 1969-1971.

[Assented to 18th October, 1973.]

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 *Property Law Act Amendment Act, 1973*.

Short title
and
citation.

(2) In this Act the Property Law Act, 1969-1971, is referred to as the principal Act.

Act No. 32
of 1969 as
amended by
Acts Nos. 12
of 1970, 19
of 1971, and
25 of 1971.

(3) The principal Act as amended by this Act may be cited as the Property Law Act, 1969-1973.

Amendment
to section 3.
(Arrange-
ment.)

2. The reference in section 3 of the principal Act to PART VII is amended—

- (a) by substituting “83E” for “83”; and
- (b) by adding at the end of the reference a passage as follows—

Division 1.—General (ss. 69-83).

Division 2.—Options in Leases (ss. 83A-83E).

Amendment
to Part VII.
(Leases and
Tenancies.)

3. Part VII of the principal Act is amended—

- (a) by adding immediately below the heading to the Part a sub-heading as follows:—

Division 1.—General. ;

- (b) by substituting for the word “The”, in line one of section 69, the passage “Subject to subsection (1) of section 83B of this Act, the”; and
- (c) by adding at the end of the Part a Division as follows—

Division 2.—Options in Leases.

83A. In this Division—

- (a) a reference to an option contained in a lease is a reference to a right on the part of the lessee to require the lessor—

- (i) to sell, or offer to sell, to the lessee the reversion expectant on the lease; or
- (ii) to grant, or offer to grant, to the lessee a renewal or extension of the lease, or a further lease, of the demised premises or a part thereof,

whether the right is conferred by the lease or by an agreement collateral to the lease; and

Interpreta-
tion.

- (b) a reference to a breach by a lessee of his obligations under a lease containing an option is a reference to a breach of those obligations by act or omission in so far as the act or omission would constitute a breach of those obligations if there were no option contained in the lease.

83B. (1) In respect of leases of land under the Transfer of Land Act, 1893, this Division shall be read and construed subject to section 68 of that Act.

Construction and application of Division.

(2) This Division applies to and in respect of leases granted only after the coming into operation of the Property Law Act Amendment Act, 1973, and options contained therein.

(3) This Division has effect notwithstanding any stipulation to the contrary.

83C. (1) In this Division "prescribed notice" means a notice in writing that—

Breach of certain obligations not to preclude lessee from exercising option except in certain circumstances.

- (a) specifies an act or omission; and
- (b) states that, subject to any order of the Court under section 83D of this Act, a lessor giving the notice proposes to treat that act or omission as having precluded a lessee on whom the notice is served from exercising an option contained in the lease.

(2) Where an act or omission that constituted a breach by a lessee of his obligations under a lease containing an option would, but for this section, have had the effect of precluding the lessee from exercising the option, the act or

omission shall be deemed not to have had that effect where the lessee purports to exercise the option unless, during the period of fourteen days next succeeding the purported exercise of the option, the lessor serves on the lessee prescribed notice of the act or omission and—

- (a) an order for relief against the effect of the breach in relation to the purported exercise of the option is not sought from the Court before the expiration of the period of one month next succeeding service of the notice; or
- (b) where such relief is so sought—
 - (i) the proceedings in which the relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting relief; or
 - (ii) where relief is granted upon terms to be complied with by the lessee before compliance by the lessor with the order granting relief, the lessee fails to comply with those terms within the time stipulated by the Court for the purpose.

Court may grant relief from breach of certain obligations.

83D. (1) Relief referred to in section 83C of this Act may be sought—

- (a) in proceedings instituted in the Court for the purpose; or
- (b) in proceedings in the Court in which—
 - (i) the existence of an alleged breach by the lessee of his obligations under the lease; or

- (ii) the effect of the breach from which relief is sought,

is in issue.

(2) The Court may, in proceedings in which relief referred to in section 83C of this Act is sought—

- (a) make such orders (including orders affecting an assignee of the reversion) as it thinks fit for the purpose of granting the relief sought; or
- (b) refuse to grant the relief sought.

(3) The Court may, in proceedings referred to in subsection two of this section, take into consideration—

- (a) the nature of the breach complained of;
- (b) the extent to which, at the date of the institution of the proceedings, the lessor was prejudiced by the breach;
- (c) the conduct of the lessor and the lessee, including conduct after the giving of the prescribed notice;
- (d) the rights of persons other than the lessor and the lessee;
- (e) the operation of section 83E of this Act; and
- (f) any other circumstances considered by the Court to be relevant.

(4) The Court—

- (a) may make an order under subsection (2) of this section on such terms as to costs, damages, compensation or penalty, or on such other terms, as the Court thinks fit; and

- (b) may make any consequential or ancillary order it considers necessary to give effect to an order made under that subsection.

83E. (1) Subject to any order of the Court and to this section—

(a) where—

- (i) an option is contained in a lease;
- (ii) the lessee exercises, or purports to exercise, the option; and
- (iii) the lease would, but for this paragraph, expire within the period of fourteen days after the exercise, or purported exercise, of the option,

the lease shall be deemed to continue in force until the expiration of that period;

(b) where—

- (i) a prescribed notice is duly served on a lessee; and
- (ii) the lease in respect of which the notice is served would, but for this paragraph, expire within the period of one month referred to in paragraph (a) of subsection (2) of section 83C of this Act,

the lease shall be deemed to continue in force until the expiration of that period; and

- (c) where, in relation to a lease continued in force under paragraph (b) of this subsection, relief referred to in section 83C

Lease to continue in force until issue decided.

of this Act is sought by a lessee, the lease shall, subject to subsections (2) and (3) of this section, be deemed to continue in force until—

- (i) the proceedings in which the relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting the relief; or
- (ii) effect is given to orders made by the Court in granting that relief in so far as they affect the lessor or relate to an assurance to the lessee.

(2) Paragraph (c) of subsection (1) of this section—

- (a) does not apply to or in respect of a lease that, but for that paragraph, would continue in force for a period longer than the period for which it is, by the operation of that paragraph, continued in force; and
- (b) does not, where a lessee fails to comply with terms imposed upon him pursuant to paragraph (a) of subsection (4) of section 83D of this Act, operate to continue the lease in force beyond the time of that failure by the lessee.

(3) Where, under subsection (1) of this section, a lease continues in force after the day on which, but for that subsection, it would expire, the lease so continues in force subject to the provisions, stipulations, covenants, conditions and agreements in the lease

(other than those relating to the term and the option contained in the lease) but without prejudice to any rights or remedies of the lessor or lessee in relation to the lease.

(4) Subject to subsection (5) of this section, where, pursuant to an option contained in a lease continued in force under subsection (1) of this section, the lease is renewed or a new lease is granted, the period during which the lease was so continued in force shall be deemed to be part of the term for which the lease was renewed or the new lease granted, and any lease granted pursuant to an exercise of the option shall be expressed to have commenced when the lease containing the option would, but for subsection (1) of this section, have expired.

(5) Subsection (4) of this section does not apply to or in respect of a lease that stipulates for the commencement of any lease granted pursuant to an exercise of the option contained therein on a day that is later than the day on which the lease so granted would, but for this subsection, commence under subsection (4) of this section. .
