

LAND.

No. 65 of 1980.

AN ACT to amend the Land Act 1933-1977.

[Assented to 26 November 1980.]

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 *Land Amendment Act 1980*.

Short title
and
citation.

(2) In this Act the Land Act 1933-1977 is referred to as the principal Act.

Reprinted
as approved
17 May 1973
and
amended by
Act No. 73
of 1977.

(3) The principal Act as amended by this Act may be cited as the Land Act 1933-1980.

Commence-
ment.

2. This Act shall come into operation on such day or days as is or are respectively fixed by proclamation.

Section 41
amended.

3. Section 41 of the principal Act is amended in subsection (4) by deleting "the fee of four dollars" and substituting the following—

“ such fee is as is prescribed ” .

Section 42A
repealed and
substituted.

4. Section 42A of the principal Act is repealed and the following section is substituted—

Power of
Minister to
refund
purchase
money or
portion
thereof in
certain
circum-
stances.

“ 42A. Where the purchase money for land comprising a lot is forfeited pursuant to section twenty-three or forty-two of this Act because the purchaser has failed to comply with a condition of the sale or has failed to pay an instalment of purchase money as prescribed the Minister may—

- (a) refund to the purchaser up to ninety per cent of the purchase money so forfeited; or
- (b) if he is satisfied that such failure by the purchaser was due to circumstances that could not be foreseen by him or to circumstances beyond his control, refund to the purchaser the whole of the purchase money so forfeited. ” .

Section 142
amended.

5. Section 142 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting "a fee of four dollars" where it first occurs and substituting the following—

“ such fee as is prescribed ” ;
and

(ii) by deleting “a fee calculated at four dollars for the first lease or license and two dollars” and substituting the following—

“ the prescribed fee for the first lease or license and one half of that fee ”; and

(b) in subsection (2) by inserting after “upon application” the following—

“ and payment of the prescribed fee ” .

6. Section 144 of the principal Act is amended in subsection (3) by deleting “a fee of two dollars” and substituting the following—

Section 144 amended.

“ such fee as is prescribed ” .

7. Section 145 of the principal Act is amended in subsection (4) by deleting “A fee of fifty cents” and substituting the following—

Section 145 amended.

“ The prescribed fee ” .

8. Section 164 of the principal Act is repealed and the following section is substituted—

Section 164 repealed and substituted.

“ 164. (1) In this section and in section one hundred and sixty-four A of this Act—

Offences on public lands.

“public lands” means any Crown lands or lands reserved for or dedicated to any public purpose;

“structure” includes—

(a) any building; and

(b) any post, pile, stake, pipe, chain, wire, or any other thing, that is fixed to the soil or to anything fixed to the soil.

(2) A person shall not without lawful authority—

- (a) reside on any public lands;
- (b) erect any structure on, over or under any public lands;
- (c) clear, cultivate, or enclose any public lands;
- (d) remove, or cause to be removed, from any public lands any thing of whatever kind, whether growing on or in, or being in, on or under or forming part of, any public lands;
- (e) deposit or cause to be deposited, or leave or cause to be left, on any public lands any rubbish, litter, refuse, disused vehicle, noxious waste, or other similar matter except in a place or receptacle provided for the purpose; or
- (f) bore or sink any well for water or construct or excavate any dam or other means of water catchment or storage on any public lands.

Penalty: One thousand dollars.

(3) Where a continuing state of affairs is created by a wrongful act referred to in paragraph (a), (c), (d), (e), or (f) of subsection (2) of this section, and that state of affairs continues after conviction and after the court considers that the same could reasonably have been discontinued, the person is guilty of a further offence and is liable to a further fine not exceeding twenty dollars in respect of each day on which that further offence so continues.

(4) In addition to any penalty imposed for an offence arising under this section, a person guilty of the offence is liable to pay such sum by way of compensation or reimbursement for the rehabilitation or reinstatement of any public lands as the court before which the person is convicted may order.

(5) Any sum ordered to be paid under subsection (4) of this section shall be paid by the offender to the clerk of the court to be paid by him to the Minister for Lands.

(6) Where an order is made under subsection (4) of this section the amount ordered to be paid may be recovered in accordance with the provisions of subsection (6) of section one hundred and fifty-five of the Justices Act 1902 as if the order were an order referred to in that subsection.

(7) Nothing in this section affects any other provision of this or any other Act, so far as that provision would, but for this section, have effect in relation to lands reserved for any public purpose pursuant to section twenty-nine of this Act, or of any by-laws applying to such a reserve, but a person is not liable to be punished twice for an act or omission that constitutes an offence both under this section and any other such provision.

(8) By-laws applying to such a reserve may contain provisions having the effect of authorising any act or omission that would, but for the by-laws and this subsection, constitute an offence arising under this section, but nothing in this subsection authorises the making of by-laws that could not be made if this section were not in force.

(9) In proceedings for an offence arising under this section, the defendant has the onus of proving lawful authority in relation to the act or omission giving rise to the alleged offence. " .

Sections
164A and
164B
inserted.

9. After section 164 of the principal Act, the following sections are inserted—

Removal of
unauthorized
structures
from public
lands.

“ 164A. (1) For the purposes of this section a structure is on public lands without lawful authority if it is a structure the erection of which was not, at the time of its erection, authorized by this or any other Act.

(2) The Minister may by notice in writing, served in accordance with section one hundred and seventy of this Act, to the person in apparent occupation or control, or both, direct that any structure that is on public lands without lawful authority be removed together with the contents of the structure and a copy of the notice shall be affixed to the structure and published once in the *Gazette* and once in a newspaper circulating in the locality of the structure.

(3) Notwithstanding section one hundred and seventy of this Act, where the name or address of the person in apparent occupation or control of any structure, or either of them, referred to in subsection (2) of this section, is unknown to the Minister, or that person is absent from the State, the notice may be served by affixing it to the structure, and by publishing a copy of it in accordance with subsection (2) of this section and if the name of the person in apparent occupation or control of the structure, or either of them, is unknown, the notice may be addressed to that person by the description of “the person in occupation or control” of the structure, identifying it, to which the notice refers without further name or description.

(4) If there are more persons in apparent occupation or control of a structure than one it is sufficient service if the notice is served on one of them, and is addressed to that one with the addition of the words “and others” or “and another,” as the case requires.

(5) Non-service on the person in apparent control of the structure does not affect the validity of service on the person in apparent occupation of the structure, and non-service on the person in apparent occupation of the structure does not affect the validity of service on the person in apparent control of the structure.

(6) Whenever any person fails to comply with a notice served on him under this section within a period of three months after the service of the notice a court of petty sessions, on complaint by the Minister that he has not so complied with the notice, shall, upon being satisfied—

- (a) that the structure is on public lands without lawful authority;
- (b) that notice has been duly served in accordance with subsections (2) and (3) of this section; and
- (c) that the notice has not been complied with within the period of three months after the service of the notice,

make an order authorizing the Minister to cause or authorize the structure the subject of the notice to be removed, together with the contents thereof and the court may make such order as to the costs of and incidental to the proceedings relating to the order as the court thinks fit, and an order so made is not subject to appeal.

(7) The Minister may, at his option, cause or authorize any structure or any part thereof or the contents thereof, removed in accordance with subsection (6) of this section, to be destroyed or sold or may sell the structure or contents on condition that it or they be removed.

(8) If the structure or part thereof or the contents thereof are not sold by the Minister or if the proceeds of the sale are insufficient to defray the costs and expenses incurred in the removal, destruction, or sale of the structure or part thereof or the contents thereof, the Minister may recover in any court of competent jurisdiction the costs and expenses or the unsatisfied balance of them and the costs of and incidental to the proceedings from the person last known to have been in apparent occupation or control, or both, of the structure.

(9) Any person who removes any structure, whether in pursuance of a notice from the Minister or an order under subsection (6) of this section or not, shall forthwith clean the land to the satisfaction of the Minister, and remove all rubbish therefrom.

(10) In proceedings in which the notice referred to in subsection (2) or (3) of this section has to be proved, the defendant or person against whom it is sought to prove it is to be regarded as having received notice to produce it and, until the contrary is shown, the notice may be effectively proved by the complainant by the production of what purports to be a copy of it, bearing what purports to be a certificate of the person authorized to issue the original that the copy is a true copy of the original, of which it purports to be a copy and until the contrary is shown, service of the notice may be effectively proved by the production of what purports to be a certificate by the person serving it, of the place, time and manner in which the service was effected.

(11) A complaint which it is necessary to make under this section against a person in apparent occupation or control of a structure whose name is unknown to the Minister may be laid against him by the description of "the person in apparent occupation" or "the person

in apparent control” of the structure, identifying it, to which the complaint refers, without further name or description.

164B. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate any of his powers or duties under section one hundred and sixty-four or one hundred and sixty-four A of this Act to any person—

- (a) in whom is vested; or
- (b) under whose control and management is placed,

any land reserved for or dedicated to a public purpose.

(2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the Minister.

(3) A delegation under this section may—

- (a) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;
- (b) be revoked or varied by instrument in writing signed by the Minister.

(4) The Minister may exercise a power or perform a duty notwithstanding that he has delegated its exercise or performance under this section. ”.