

Protection for Purchasers of Land

Terms of Reference

In 1968, the Committee was asked to consider the law applicable to a defaulting purchaser under a terms contract for the sale of land and to report upon the need for reform. In the same year the reference was widened to include consideration of the *Vendor and Purchaser Act 1878 (WA)*, the *Sale of Land (Vendor's Obligations) Act 1940 (WA)*, and the *Purchasers' Protection Act 1933–1948 (WA)* and to assess the viability of consolidation of these Acts into a single statute.

Background of Reference

The reference was the result of a move to clarify the obligations of, and provide some statutory guarantees for, vendors and purchasers of land. The Committee was of the opinion that aspects of the law were unjust since minor oversights by a purchaser of land might result in the vendor being able to deprive the purchaser of the benefit of the bargain, or any increase in the value of the property resulting from a rising market or improvements made by the purchaser.

Nature and Extent of Consultation

The Committee studied comparable legislation from Queensland, Victoria, New South Wales and New Zealand and received oral submissions from members of the real estate profession and officers of the Land Titles Office. The Committee further engaged in discussions with representatives of the Law Society of Western Australia and other members of the legal profession.

The Committee issued a working paper in October 1968. Responses to the working paper were received from judges, legal professionals, the Law Society of New South Wales, the Law Institute of Victoria and the Chairman of the Property and Equity Law Reform Committee of New Zealand. The Committee delivered its final report in September 1969.¹

Recommendations

A summary of the Committee's recommendations includes:

- That legislation be enacted to ensure that in a terms contract the purchaser be given a right to notice before the vendor can act against the purchaser on his or her default.
- That the *Vendor and Purchaser Act 1878 (WA)*, the *Sale of Land (Vendor's Obligations) Act 1940 (WA)* and the *Purchasers' Protection Act 1933–1948 (WA)* be repealed and that new legislation be enacted, incorporating such provisions of these three Acts as are necessary, and containing provisions to give effect to the primary recommendation (above).

A comprehensive discussion of the Committee's recommendations may be found at pages 4–9 of the final report.

Legislative or Other Action Undertaken

The *Sale of Land Act 1970 (WA)*² gave effect to the Committee's recommendations.

¹ The report was published under its original title: Law Reform Commission of Western Australia, *Protection to Defaulting Purchasers*, Project No 1 (1969).

² Western Australia, *Government Gazette* 21 January 1971, 149. See also Western Australia, *Parliamentary Debates*, Legislative Council (in committee), 12 November 1970, 2092 – 2107 (Mr IG Medcalf); Western Australia, *Parliamentary Debates*, Legislative Assembly, 18 November 1970, 2351 (Mr C Court, Minister for Industrial Development and the North West).