

## LAND SALES (AMENDMENT) BILL, 1980

### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

Schedule 1 (3) to the Bill amends the Land Sales Act, 1964, ("the Principal Act") by inserting therein sections 1F-1M, the object being—

- (a) by section 1F—to remove a deposit paid for the purchase of land from the control of the vendor of the land and to enable such a deposit, by agreement between the vendor and the purchaser, to be invested pending its disposal;
- (b) by section 1G—to specify the circumstances in which, and the person to whom, a stakeholder may pay out the amount of a deposit for the sale of land;
- (c) by section 1H—to prohibit the making of certain representations, statements, promises and forecasts for the purpose of inducing a person to purchase land;
- (d) by section 1I—to require the prescribed written notice to be given of representations made in connection with the sale of land;
- (e) by section 1J—with minor exceptions, to prohibit the sale of subdivided land before registration of the plan of subdivision of the land;
- (f) by section 1K—to control advertising of the sale of subdivided land before registration of the plan of subdivision of the land;
- (g) by section 1L—to ensure that certain rights of a purchaser of land are preserved; and
- (h) by section 1M—to prevent persons from contracting out of the foregoing provisions.

Schedule 1 (5) to the Bill increases the penalty for offences against the Principal Act from \$1,000 or imprisonment for 6 months, or both, to \$5,000 in the case of an offence by a corporation and \$2,000 or imprisonment for 12 months, or both, in the case of any other person.

Schedule 2 to the Bill inserts a new Part IIIA in the Principal Act with the object of applying to offers for sale of undivided shares in land the provisions of the Companies Act, 1961, with respect to prospectuses and the licensing provisions of the Securities Industry Act, 1975.

Schedule 3 to the Bill amends Part III of the Principal Act relating to the purchase of land under an instalment contract, the object being—

- (a) to extend the operation of the Part to all instalment contracts instead of its being limited to contracts in respect of land in a subdivision of 5 or more lots; and
- (b) to prevent evasion of the provisions of the Part by the device of a collateral agreement.

Schedule 4 to the Bill contains savings and transitional provisions.

**LAND SALES (AMENDMENT) BILL, 1980**

No. , 1980.

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**A BILL FOR**

**An Act to amend the Land Sales Act, 1964, in order to prohibit  
or control certain practices in relation to the sale of land.**

[MR CRABTREE—26 *September*, 1979.]

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*Land Sales (Amendment).*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5    **1.** This Act may be cited as the “Land Sales (Amendment) Short title.  
Act, 1980”.

**2.** (1) Except as provided in subsections (2), (3) and (4), <sup>Commence-</sup>  
this Act shall commence on the date of assent to this Act. <sup>ment.</sup>

      (2) Schedule 2 shall commence on a day to be appointed  
10 by the Governor in respect thereof and notified by proclamation  
published in the Gazette.

      (3) Schedule 3 shall commence on a day to be appointed  
by the Governor in respect thereof and notified by proclamation  
published in the Gazette.

15    (4) Section 4 shall, in its application to Schedule 2 or 3,  
commence on the day on which the Schedule commences.

**3.** This Act contains the following Schedules :—

**Schedules.**

SCHEDULE 1.—AMENDMENTS TO THE LAND SALES ACT,  
1964, RELATING TO SALES OF LAND GENERALLY.

20    SCHEDULE 2.—AMENDMENTS TO THE LAND SALES ACT,  
1964, RELATING TO DEALINGS IN UNDIVIDED SHARES IN  
LAND.

SCHEDULE 3.—AMENDMENTS TO THE LAND SALES ACT,  
1964, RELATING TO SALES UNDER INSTALMENT  
25    CONTRACTS.

SCHEDULE 4.—SAVINGS AND TRANSITIONAL PROVISIONS.

*Land Sales (Amendment).*

4. The Land Sales Act, 1964, is amended in the manner set forth in Schedules 1-3. Amendment of Act No. 12, 1964.

5. Schedule 4 has effect. Savings and transitional provisions.

SCHEDULE 1. Sec. 4.

5 AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO SALES OF LAND GENERALLY.

(1) Section 1A, matter relating to Part II—

Omit "1E", insert instead "1M".

(2) Section 1B—

10 Omit the section, insert instead :—

1B. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation: Pt. II.

15 "deposit", in relation to the purchase of land, means an amount of money paid by or on behalf of a purchaser, or prospective purchaser, of the land before the time has arrived for completion of a contract for the sale of the land to that purchaser or prospective purchaser (whether or not, at the time of the payment, such a contract has been entered into) being an amount which, if such a contract were so completed, would form part of the purchase money;

20 "land" has the same meaning as it has in the Conveyancing Act, 1919, except that it does not include a vested or contingent estate or interest in a lease;

25 "regulations" means regulations made under this Act.

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES OF LAND GENERALLY—*continued.*

(2) In this Part—

- 5 (a) a reference to the sale of land includes a refer-  
ence to the grant of an option to purchase land;
- (b) a reference to a contract for the sale of land  
includes a reference to an option to purchase  
land;
- 10 (c) a reference to entering into a contract for the  
sale of land includes a reference to granting an  
option to purchase land;
- (d) a reference to the time for completion of a  
contract for the sale of land includes a reference  
15 to the time after which an option for the purchase  
of land may not be exercised;
- (e) a reference to the vendor under a contract for  
the sale of land includes a reference to the  
grantor of an option to purchase land; and
- 20 (f) a reference to the purchaser under a contract for  
the sale of land includes a reference to the  
grantee of an option to purchase land,

not being an option that, pursuant to section 2, is an  
instalment contract as defined in that section.

25 (3) For the purposes of this Part—

- (a) the time at which a contract for the sale and  
purchase of land is entered into is the earliest  
time at which the vendor is not precluded by  
section 54A of the Conveyancing Act, 1919, from  
bringing an action or proceedings upon the  
contract, whether or not, at that time, the  
30 purchaser is not so precluded; and

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 (b) a contract is completed when the performance  
for which the parties contracted has been  
completed.

(3) Sections 1F–1M—

After section 1E, insert :—

10 1F. (1) This section does not apply to or in respect of— Payment  
of deposit.

15 (a) a contract for the sale of land entered into before  
a day to be appointed by the Governor for the  
purposes of this section and notified by  
proclamation published in the Gazette (whether  
or not it is an instalment contract as defined in  
section 2); or

(b) an instalment contract, as so defined, entered  
into on or after the day so appointed and  
notified,

20 but applies to any other contract for the sale of land.

(2) A person who receives a deposit for the  
purchase of land is guilty of an offence under this Act if  
he is the vendor of the land or, where he is not the vendor  
of the land, unless—

25 (a) he is a solicitor to whom section 52 of the Legal  
Practitioners Act, 1898, applies or he is a  
partner, servant or agent of such a solicitor; or

30 (b) he is licensed under the Auctioneers and Agents  
Act, 1941, as an auctioneer, stock and station  
agent or real estate agent or he is—

(i) the partner of such a licensee;

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 (ii) an employee of such a licensee who receives the deposit in the course of his employment with that licensee; or

10 (iii) an agent of such a licensee having the apparent control or charge for the time being of the office or business of that licensee.

(3) Subject to subsection (4), a person who receives a deposit for the purchase of land before a contract for the sale of the land is entered into holds it as agent of the person who paid it.

15 (4) Where a contract to purchase land is entered into, any deposit paid at any time for the purchase of the land is held as stakeholder by the person who received or receives it.

20 (5) Subsections (3) and (4) apply to and in respect of receipt of a deposit for the purchase of land whether or not receipt of the deposit constitutes an offence under this Act.

25 (6) For the purposes of this section, receipt of money does not constitute receipt of a deposit for the purchase of land if it is received—

(a) on completion of a contract to purchase the land; or

(b) on payment out under section 1G.

30 (7) Where a person is guilty of an offence under this Act by reason of his receiving a deposit for the purchase of land—

(a) the person who paid the deposit does not, by paying the deposit, aid, abet, counsel or procure the commission of the offence; and



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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 (b) where a contract is entered into for the sale of  
the land for the purchase of which the deposit  
was paid, the purchaser under the contract may  
(whether or not a person has been convicted of  
the offence) at any time before completion of  
10 the contract elect to treat it as having been  
discharged by a breach on the part of the vendor  
and may enforce and pursue such rights and  
remedies as he would have had if a breach  
entitling him so to treat the contract had  
occurred.

15 (8) Subsection (7) does not operate to prevent a  
purchaser from seeking and obtaining an order for specific  
performance of a contract by the vendor subject to  
performance of the contract by the purchaser.

20 (9) Where a person is convicted of the offence  
referred to in subsection (2), the court may, on the  
application of a party to the proceedings, order the repay-  
ment of the deposit to which the offence relates.

25 1G. (1) Where a deposit for the purchase of land is held by a person as stakeholder under a contract to which section 1F applies, his liability in respect of the amount of the deposit is not discharged unless he pays that amount—

Disposal of deposit by stakeholder.

- (a) in accordance with subsection (2);
- (b) into court where he is required or authorised to do so; or
- 30 (c) in accordance with the order of a court or of a tribunal authorised to make such an order.

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 (2) A payment is made in accordance with this subsection if it is made—

(a) in accordance with a written direction signed by the vendor and the purchaser;

(b) to the vendor in accordance with a written direction signed by the purchaser;

10 (c) to the purchaser in accordance with a written direction signed by the vendor; or

(d) in accordance with a written direction signed by the purchaser accompanied by—

15 (i) a copy of a conviction of the vendor of the offence referred to in section 1F (2), 1H (1), 1I (2) or 1J (2); or

20 (ii) a copy of an order relating to the vendor made under section 556A of the Crimes Act, 1900, in respect of an offence so referred to,

and a statutory declaration by the purchaser to the effect that he was the purchaser under a contract for the sale of the land in relation to which the offence so referred to was committed.

25 (3) The vendor under a contract for the sale of land is guilty of an offence under this Act if, otherwise than—

(a) at the time of completion of the contract;

30 (b) at the time of the earlier discharge of the contract by agreement of the parties; or

(c) at a time later than the time referred to in paragraph (a) or (b),

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 he requests or requires the purchaser under the contract to give, or the stakeholder of a deposit for the purchase of the land to comply with, a direction that is, or that upon signature by the vendor would be, a direction referred to in subsection (2) (a) or (b).

10 (4) Notwithstanding anything in any Act, a stakeholder may, until money he holds pursuant to a contract for the sale of land is paid out in accordance with this section, invest the money as may be agreed upon between the parties to the contract—

15 (a) by depositing it in an interest bearing account with the Rural Bank of New South Wales or a bank within the meaning of the Banking Act 1959 of the Parliament of the Commonwealth; or

20 (b) by depositing it with, or by subscription to the withdrawable share capital of, a permanent building society registered under the Permanent Building Societies Act, 1967, or a society specified in the Second Schedule to the Co-operation Act, 1923.

25 1H. (1) A person is guilty of an offence under this Act if, with the intention of inducing another person (in this section referred to as “the prospective purchaser”) to purchase any land, he— Offences relating to the sale of land.

(a) knowingly makes or publishes a false representation or a wilfully false promise;

30 (b) makes or publishes a statement that he or a named person will purchase from the prospective purchaser the land, or a part thereof, or other land or a chattel, at a price which will result in a profit to the prospective purchaser;

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

- 5 (c) makes or publishes a statement that he or a  
named person will obtain for the prospective  
purchaser a profit on the sale of the land or a  
part thereof by the prospective purchaser;
- 10 (d) makes or publishes a statement, promise or fore-  
cast which he knows to be misleading or  
deceptive;
- (e) recklessly makes or publishes a statement,  
promise or forecast which is misleading or  
deceptive;
- (f) fraudulently conceals a material fact; or
- 15 (g) makes or publishes a statement, promise or fore-  
cast with respect to the provision of any amenities  
or services which, if they were to be provided,  
would be provided by the State or by a public  
authority unless he has been informed in writing  
20 by the State or by the public authority, as the  
case may require, that the amenities or services  
will be provided.

25 (2) For the purposes of subsection (1), but with-  
out affecting its generality, a representation, promise, state-  
ment or forecast shall be deemed to be false, misleading or  
deceptive if it is of such a nature as would reasonably  
tend to lead to a belief in the existence of a state of affairs  
that does not in fact exist, whether or not the representa-  
tion, promise, statement or forecast indicates that the state  
30 of affairs does exist.

(3) For the purposes of this section, it is not  
necessary for the prospective purchaser to be identified or  
identifiable.

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

11. (1) This section does not apply to or in respect of—

Certain  
notice  
to be  
given.

- 5 (a) land being sold at an auction conducted by a person who is the holder of an auctioneer's license under the Auctioneers and Agents Act, 1941; or
- 10 (b) land being sold after being unsold at such an auction but only where it is being so sold—
- (i) on the same day as the auction; and
  - (ii) to a person who made a bid at the auction.

15 (2) Where land is being sold and, on or after a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette—

- 20 (a) a deposit for the purchase of the land is paid before a contract for the sale of the land is entered into;
- (b) a contract for the sale of the land is entered into and a notice referred to in section 1D (2) (f) is required to be tendered; or
- 25 (c) a contract for the sale of the land is entered into but a notice referred to in section 1D (2) (f) is not required to be tendered,

30 the person who, in the case referred to in paragraph (a), receives the deposit or, in the case referred to in paragraph (b) or (c), is the vendor, is guilty of an offence under this Act unless, at the prescribed time, the prospective or actual purchaser, as the case may be, was given a notice in or to the effect of the prescribed form containing the particulars required by this Act or the regulations to be inserted therein with respect to representations relating to the land.

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 (3) For the purposes of subsection (2), the prescribed time is—

(a) in the case referred to in subsection (2) (a)—  
a time that is not later than the time at which  
the deposit is paid;

10 (b) in the case referred to in subsection (2) (b)—  
a time that is not later than the time at which  
the notice is required by section 1D (2) to be  
tendered; or

15 (c) in the case referred to in subsection (2) (c)—  
a time that is not later than a time that is at least  
2 business days before the contract is entered  
into.

(4) In the case referred to in subsection (2) (b) a  
notice under subsection (2) is sufficiently given if it is  
tendered with the notice referred to in section 1D (2) (f).

20 (5) A notice that includes—

(a) any handwriting that is not clear and legible;  
or

(b) any printing that is of a size smaller than that  
known as 10 point Times,

25 is not a notice for the purposes of subsection (2).

(6) Where, in the case referred to in subsection (2)

30 (a), an agent appointed to sell the land on behalf of the  
vendor is guilty of the offence referred to in subsection  
(2), the vendor of the land is (whether or not the agent  
has been convicted of the offence) guilty of the same  
offence unless he proves that, having taken all reasonable

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 precautions against the possibility of his agent committing  
the offence, he had reasonable grounds to believe, and did  
believe, that the offence would not be committed.

10 (7) Where a notice under subsection (2) is not  
duly given to a person to whom it is, by that subsection,  
required to be given to avoid commission of the offence  
referred to in that subsection and that person enters into,  
or has entered into, a contract to purchase the land to  
which the notice, if it had been given, would have related—

15 (a) he does not, by entering into the contract, aid,  
abet, counsel or procure the commission of that  
offence; and

20 (b) he may (whether or not a person has been  
convicted of that offence) at any time before  
completion of the contract elect to treat it as  
having been discharged by a breach on the part  
of the vendor and may enforce and pursue such  
rights and remedies as he would have had if a  
breach entitling him so to treat the contract had  
occurred.

25 (8) Subsection (7) does not operate to prevent a  
purchaser from seeking and obtaining an order for specific  
performance of a contract by the vendor subject to  
performance of the contract by the purchaser.

30 (9) Where a person is convicted of the offence  
referred to in subsection (2) by reason of his failure to  
give a notice under that subsection, the court may, on the  
application of a party to the proceedings, order the repay-  
ment of any deposit paid for the purchase of the land to  
which the notice, if it had been given, would have related.

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

- 1J. (1) In this section, “prescribed land” means—
- 5 (a) land that is a lot or portion illustrated in a current  
plan as defined in section 327AA (1) of the Local  
Government Act, 1919;
- 10 (b) land that, by the operation of section 327AA (4)  
of that Act, may be disposed of without  
contravening section 327AA (2) of that Act; or
- 15 (c) land that is part of a subdivision of land into not  
more than 2 parcels and has been exempted by  
the Registrar-General from the operation of this  
section subject, if the Registrar-General imposes  
conditions when granting the exemption, to  
compliance with those conditions.

Sale of  
certain  
land pro-  
hibited.

(2) On and from a day to be appointed by the  
Governor for the purposes of this section and notified by  
proclamation published in the Gazette, a person is guilty  
20 of an offence under this Act if, as vendor, he enters into a  
contract for the sale of land unless the land is—

- (a) prescribed land; or
- 25 (b) land under the provisions of the Real Property  
Act, 1900, that is proposed to be a lot within the  
meaning of the Strata Titles Act, 1973.

(3) Where a vendor of land is guilty of the offence  
referred to in subsection (2) by reason of his entering into  
a contract for the sale of the land, the purchaser under the  
contract—

- 30 (a) does not, by entering into the contract, aid, abet,  
counsel or procure the commission of that  
offence; and



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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 (b) may (whether or not the vendor has been  
convicted of that offence) at any time before  
completion of the contract elect to treat it as  
having been discharged by a breach on the part  
of the vendor and may enforce and pursue such  
10 rights and remedies as he would have had if a  
breach entitling him so to treat the contract had  
occurred.

15 (4) Where, on or after the day appointed and  
notified under subsection (2), a contract is entered into  
for the sale of land under the provisions of the Real  
Property Act, 1900, that is proposed to be a lot within  
the meaning of the Strata Titles Act, 1973, and a strata  
20 plan that includes the proposed lot has not, before the  
expiration of the period of 4 months that next succeeds  
the day on which the contract is entered into, been regis-  
tered under section 41 of the Strata Titles Act, 1973, the  
purchaser under the contract may, at any time before  
25 completion of the contract, elect to treat it as having been  
discharged by a breach on the part of the vendor and may  
enforce and pursue such rights and remedies as he would  
have had if a breach entitling him so to treat the contract  
had occurred.

(5) Subsections (3) and (4) do not operate to  
prevent a purchaser from seeking and obtaining an order  
for specific performance of a contract by the vendor subject  
30 to performance of the contract by the purchaser.

(6) Where a person is convicted of the offence  
referred to in subsection (2) by reason of his entering into  
a contract for the sale of land, the court may, on the  
application of a party to the proceedings, order the repay-  
35 ment of any deposit paid for the purchase of the land.

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 1k. (1) A person who has a pecuniary or other interest in having particular land made available for purchase is guilty of an offence under this Act if— Certain advertisements published.

10 (a) he publishes, or causes to be published, a written advertisement that could reasonably give rise to a belief that the land or any part thereof is, or will be, available for purchase; and

15 (b) at the time of the publication of the advertisement, that person or another person would be guilty of the offence referred to in section 1J (2) if he entered into a contract to sell the land or any part thereof,

unless the advertisement complies with subsection (3).

20 (2) For the purposes of subsection (1), a person does not have an interest in having land made available for purchase if his only such interest is in being remunerated for printing or publishing an advertisement referred to in that subsection, whether or not with other matter.

(3) An advertisement complies with this subsection if it specifies prominently—

25 (a) that a plan of subdivision of the land to which it relates has not been registered by the Registrar-General; and

30 (b) that the vendor of the land would be liable to be convicted of an offence if he entered into a contract to sell any of the land before a plan of subdivision of the land had been registered by the Registrar-General.

*Land Sales (Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO SALES OF LAND GENERALLY—*continued.*

5 1L. Nothing in this Part operates to make a contract illegal. Certain contracts not illegal.

1M. To the extent to which, but for this section, an oral or written agreement or stipulation would modify or exclude the operation of this Part, the agreement or stipulation is void. Contracting out prohibited.

10 (4) Section 15—

Omit “Every”, insert instead “Except in the case of an instalment contract entered into in contravention of section 1J (2), an”.

(5) (a) Section 24—

15 Omit “Any person guilty of an offence under this Act shall be liable to a penalty not exceeding one thousand dollars or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.”.

20 (b) Section 24 (2)—

At the end of section 24, insert :—

(2) A person guilty of an offence under this Act is liable—

25 (a) where the offence is committed by a body corporate—to a penalty not exceeding \$5,000; or

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*Land Sales (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
SALES OF LAND GENERALLY—*continued.*

5 (b) in any other case—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both that penalty and imprisonment.

(6) (a) Section 27 (a)—

Omit “Part III”, insert instead “this Act”.

10 (b) Section 27 (b)—

Omit “any contract”, insert instead “any instalment contract”.

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SCHEDULE 2.

Sec. 4.

15 AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
DEALINGS IN UNDIVIDED SHARES IN LAND.

(1) Section 1A, matter relating to Part IIIA—

After the matter relating to Part III, insert :—

PART IIIA.—DEALINGS IN UNDIVIDED SHARES IN  
LAND—*ss. 23A–23D.*

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*Land Sales (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
DEALINGS IN UNDIVIDED SHARES IN LAND—*continued.*

(2) Part IIIA—

5       After Part III, insert : —

PART IIIA.

DEALINGS IN UNDIVIDED SHARES IN LAND.

23A. (1) In this Part, except in so far as the context  
or subject-matter otherwise indicates or requires—

Interpre-  
tation:  
Pt. IIIA.

10       “corporation” has the same meaning as it has in the  
Companies Act, 1961;

“director” has the same meaning as it has in the  
Companies Act, 1961;

15       “land” has the same meaning as it has in the  
Conveyancing Act, 1919, and extends to land  
situated outside New South Wales.

(2) In this Part—

20       (a) a reference to an undivided share in land includes  
a reference to an option to purchase an undivided  
share in land;

(b) a reference to an offer for purchase includes a  
reference to an invitation to make an offer to  
purchase; and

25       (c) a reference to making an offer includes a  
reference to issuing an invitation to make an offer.

(3) For the purposes of this Part, a reference in  
this Part and in the Companies Act, 1961, to an offer to the  
public includes a reference to an offer to a member of the

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*Land Sales (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
DEALINGS IN UNDIVIDED SHARES IN LAND—*continued.*

5 public or to a section of the public whether the section of  
the public is selected from among the clients of the person  
making the offer or in any other manner and whether the  
offer is made—

(a) in going from place to place, by appointment or  
otherwise;

10 (b) by telephone; or

(c) in any other manner.

(4) For the purposes of this Part, but subject to  
subsection (5), a person who offers an undivided share in  
land for purchase is an associate of another person if—

15 (a) both the offeror and that other person are cor-  
porations that, within the meaning of section 6  
(5) of the Companies Act, 1961, are deemed  
to be related to each other;

20 (b) that other person is accustomed or under an  
obligation, whether formal or informal, to act in  
relation to any interest in the land in accordance  
with the directions, instructions or wishes of the  
offeror;

25 (c) the offeror is accustomed, or under an obligation,  
whether formal or informal, to act in relation to  
any interest in the land in accordance with the  
directions, instructions or wishes of that other  
person;

30 (d) the offeror is a corporation in accordance with the  
directions, instructions or wishes of which, or of  
the directors of which, that other person is  
accustomed or under an obligation, whether  
formal or informal, to act in relation to any  
interest in the land; or

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*Land Sales (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
DEALINGS IN UNDIVIDED SHARES IN LAND—*continued.*

5 (e) the offeror is a corporation that is, or the directors  
of which are, accustomed or under an obligation,  
whether formal or informal, to act in relation to  
any interest in the land in accordance with the  
directions, instructions or wishes of that other  
person.

10 (5) For the purposes of subsection (4), a person  
is not to be regarded as being accustomed to act in  
accordance with the directions or instructions or wishes of  
another person by reason only that he acts on advice given  
by that other person in a professional capacity.

15 23B. (1) For the purposes of the Companies Act, 1961, and the Securities Industry Act, 1975, but subject to this  
Part— Dealings in undivided shares in land.

20 (a) an undivided share in land is an interest in a  
common enterprise within the meaning of the  
definition of "Interest" in section 76 of the  
Companies Act, 1961; and

(b) the conveyance or transfer of an undivided share  
in land is the issue of an interest within the  
meaning of that definition.

25 (2) Notwithstanding subsection (1), an offer of  
an undivided share in land for purchase is not an offer of an  
interest within the meaning of the definition of "Interest" in  
section 76 of the Companies Act, 1961, for purchase if—

30 (a) the offer relates to a specified building (whether  
then in existence or proposed to be erected) and  
any purchaser of the undivided share will, upon  
the conveyance or transfer to him of the

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*Land Sales (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
DEALINGS IN UNDIVIDED SHARES IN LAND—*continued.*

- 5 undivided share, have the right to the exclusive  
occupation or use of the building or a specified  
part of the building at all times while he is the  
owner of the undivided share;
- 10 (b) neither the offeror nor any of his associates is  
carrying on the business of selling or dealing in  
undivided shares in land;
- (c) the offer complies with subsection (4); or
- (d) the Minister has, pursuant to section 23D,  
exempted the making of the offer from the  
operation of this Part.
- 15 (3) Without limiting the generality of subsection  
(2) (b) or the provisions of the Securities Industry Act,  
1975, a person is, for the purposes of this Part and that  
Act, at any particular time carrying on the business of  
20 selling or dealing in undivided shares in land if, within the  
period of 12 months that last preceded that time, the total  
number of transactions entered into by that person or any  
of his associates (whether or not jointly with another such  
associate or another person) as vendor for the sale of, or  
25 as grantor of an option to purchase, an undivided share in  
land to different purchasers together exceed 3.
- (4) An offer of an undivided share in land for  
purchase complies with this subsection if—
- 30 (a) at the time it was made, it related to the total  
interest of the offeror and his associates in the  
land;



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*Land Sales (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
DEALINGS IN UNDIVIDED SHARES IN LAND—*continued.*

5 (b) the offeror and his associates propose to sell that total interest in one transaction, or grant an option to purchase that total interest in one transaction, as the case may require; and

10 (c) the offer was first made after the commencement of this Part and, since it was made, neither the offeror nor any of his associates has in any one transaction, or in any number of simultaneously executed transactions that can fairly be regarded as one transaction, sold, or granted options to purchase, anything less than that total interest.

15 23c. (1) Where a contract for the sale of an undivided share in land is entered into as a result of an offer or invitation relating to that undivided share made in contra-  
vention of any of the provisions of the Companies Act, 1961, or the Securities Industry Act, 1975, as applied by  
20 section 23B, or by the exercise of an option granted as a result of an offer or invitation so made, the purchaser under the contract may, not later than 3 years after the contract is entered into, recover as a debt in a court of competent jurisdiction any money paid by him under the contract  
25 unless the vendor satisfies the court—

(a) that the offer or invitation did not contribute to the making of the contract; or

(b) that the offer or invitation complied with section 23B (4).

30 (2) A judgment or order given or made pursuant to subsection (1) for the recovery of money paid under a contract operates to terminate the contract.

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*Land Sales (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
DEALINGS IN UNDIVIDED SHARES IN LAND—*continued.*

5 23D. (1) Where, before the commencement of this **Exemptions.**  
Part, a person had offered an undivided share in land  
to the public for purchase and the Minister is satisfied—

10 (a) that, immediately before that commencement,  
that person had legal obligations or other com-  
mitments in respect of the land the subject of  
the offer by reason of which it would be unreason-  
able for this Part to apply to the making of  
further offers in relation to the land; or

15 (b) that it would be contrary to the interests of  
persons who entered into contracts for the  
purchase of undivided shares in land before that  
commencement that this Part should apply to the  
making of further offers in relation to the land,

20 the Minister may, by notice published in the Gazette, exempt  
from the operation of this Part the making of further  
offers in relation to the land.

25 (2) Where the owner of an undivided share in  
land satisfies the Minister that it would be unreasonable  
for the provisions of this Part to apply to the making of an  
offer by him with respect to the whole or a part of that  
undivided share, the Minister may, by instrument in  
writing, exempt from the operation of the provisions of  
this Part the making of such an offer.

(3) An exemption under subsection (1) or (2)—

30 (a) is subject to any conditions specified in the  
instrument of exemption;

(b) may be revoked by the Minister in the same way  
as it was granted; and

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*Land Sales (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING TO  
DEALINGS IN UNDIVIDED SHARES IN LAND—*continued.*

5 (c) determines upon any breach of a condition referred to in paragraph (a).

(4) Section 23C does not apply to or in respect of a contract for the sale of an undivided share in land entered into during the currency of an exemption under subsection (1) or (2) that relates to the land.

10 (5) This section (subsection (4) excepted) expires 12 months after the commencement of this Part.

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SCHEDULE 3.

Sec. 4.

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES UNDER INSTALMENT CONTRACTS.

15 (1) (a) Section 2, definitions of “Instalment contract”, “Land”—

Omit the definition of “Instalment contract”, insert instead :—

“Instalment contract” means—

20 (a) a contract for the sale of land that—

(i) provides for the purchase money (not being purchase money the payment of which is to be secured by a mortgage to the vendor under the

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*Land Sales (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES UNDER INSTALMENT CONTRACTS—*continued.*

- 5 contract) to be paid by 4 or more  
part payments (whether by way of  
preliminary or other deposit or  
otherwise); and
- 10 (ii) is entered into on or after the day  
appointed and notified under  
section 2 (3) of the Land Sales  
(Amendment) Act, 1980;
- 15 (b) a contract for the sale of land (not being  
a contract referred to in paragraph (a))  
entered into on or after the day so appointed  
and notified where the purchaser is a  
party to another agreement having the  
effect that—
- 20 (i) the purchaser is obliged to repay by  
instalments a loan made to him by  
a person other than the vendor  
under the contract; and
- 25 (ii) a failure by the purchaser to dis-  
charge that obligation operates as a  
default by the purchaser under the  
contract for the sale of the land;  
and
- 30 (c) an option to purchase land granted on or  
after the day so appointed and notified  
under which all or part of the consideration  
for the granting of the option (whether or  
not that consideration is to be applied to the  
purchase price) is payable by 4 or more  
part payments (whether by way of  
preliminary or other deposit or otherwise).

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*Land Sales (Amendment).*

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**SCHEDULE 3—continued.**

**AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES UNDER INSTALMENT CONTRACTS—continued.**

- 5           “Land” has the same meaning as it has in the  
          Conveyancing Act, 1919, except that it does not  
          include a lot within the meaning of the Strata  
          Titles Act, 1973, or a vested or contingent estate  
          or interest in a lease.
- 10           (b) Section 2, definition of “Preliminary deposit”—  
          Omit “a lot in a subdivision”, insert instead “land”.
- (c) Section 2, definition of “Preliminary deposit”—  
          Omit “such lot”, insert instead “that land”.
- (d) Section 2, definition of “Subdivision”—  
          Omit the definition.
- 15   (2) Section 3—  
          Omit “lot unless the subdivision in which the lot is  
          comprised”, insert instead “land unless the land”.
- (3) (a) Section 4—  
          Omit “A subdivision”, insert instead “Land”.
- 20           (b) Section 4 (a), (b)—  
          Omit the paragraphs.
- (c) Section 4 (c) (i)—  
          Omit “subdivision”, insert instead “land”.

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*Land Sales (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES UNDER INSTALMENT CONTRACTS—*continued.*

(4) (a) Section 5 (3)—

5 Omit “lots” wherever occurring, insert instead “land”.

(b) Section 5 (4)—

Omit “lots”, insert instead “land”.

(5) Section 6—

Omit “subdivision”, insert instead “land”.

10 (6) (a) Section 7 (1) (a)—

Omit “lots in the subdivision”, insert instead “the land”.

(b) Section 7 (1) (c)—

Omit “comprised in the subdivision”.

15 (c) Section 7 (1) (e)—

Omit “subdivision” wherever occurring, insert instead “land”.

(d) Section 7 (1) (f) (i)—

Omit “lots in the subdivision”, insert instead “land”.

20 (e) Section 7 (1) (f) (iv)—

Omit “lot in a subdivision”, insert instead “land”.

(f) Section 7 (1) (f) (iv)—

Omit “such lot” wherever occurring, insert instead “the land”.

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*Land Sales (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES UNDER INSTALMENT CONTRACTS—*continued.*

- (g) Section 7 (2)—  
5 Omit “a particular lot”, insert instead “particular land”.
- (h) Section 7 (2)—  
Omit “that lot”, insert instead “the land”.
- (7) Section 8—  
Omit “a subdivision”, insert instead “land”.
- 10 (8) (a) Section 9 (1)—  
Omit “a lot in a subdivision”, insert instead “land”.
- (b) Section 9 (2) (a)—  
Omit “such subdivision”, insert instead “the land”.
- (c) Section 9 (2) (a) (i)—  
15 Omit “lot”, insert instead “land”.
- (d) Section 9 (2) (b)—  
Omit “lot”, insert instead “land”.
- (9) (a) Section 10 (1)—  
Omit “a lot”, insert instead “land”.
- 20 (b) Section 10 (1)—  
Omit “subdivision in which the lot is comprised”,  
insert instead “land”.

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*Land Sales (Amendment).*

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**SCHEDULE 3—continued.**

**AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES UNDER INSTALMENT CONTRACTS—continued.**

(10) (a) Section 11—

5 Omit “subdivision in which the lot is included”, insert  
instead “land”.

(b) Section 11—

Omit “a lot”, insert instead “land”.

(11) (a) Section 13 (1)—

10 Omit “lot” where firstly occurring, insert instead  
“land”.

(b) Section 13 (1)—

Omit “subdivision in which the lot is included”, insert  
instead “land”.

15 (12) (a) Section 14 (1)—

Omit “a lot”, insert instead “land”.

(b) Section 14—

Omit “the lot” wherever occurring, insert instead “the  
land”.

20 (13) Section 16 (1)—

Omit “a lot”, insert instead “land”.

(14) Section 20—

Omit “a lot”, insert instead “land”.



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*Land Sales (Amendment).*

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**SCHEDULE 3—*continued.***

**AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES UNDER INSTALMENT CONTRACTS—*continued.***

- (15) (a) Section 21—  
5 Omit “a lot”, insert instead “land”.
- (b) Section 21—  
Omit “subdivision in which such lot is included”,  
insert instead “land”.
- (16) (a) First Schedule—  
10 Omit “sale of lot number ..... in a plan of  
subdivision which has been registered in the office  
of the Registrar-General as ..... ”, insert instead  
“sale of ..... ”.
- (b) First Schedule—  
15 Omit “quote registered number; if the plan is  
unregistered give description of lot”, insert instead  
“give description of land”.
- (c) First Schedule—  
Omit “the lot”, insert instead “the land”.
- 20 (17) (a) Second Schedule—  
Omit “purchaser of lot number ..... in a plan  
of subdivision which has been registered in the office  
of the Registrar-General as ..... ”, insert  
instead “purchaser of ..... ”.

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*Land Sales (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES UNDER INSTALMENT CONTRACTS—*continued.*

(b) Second Schedule—

- 5 Omit “quote registered number; if the plan is unregistered, give description of lot”, insert instead “give description of land”.

(c) Second Schedule—

Omit “that lot”, insert instead “the land”.

10 (18) (a) Third Schedule—

- 15 Omit “purchaser of a lot number . . . . . in a plan of subdivision which has been registered in the office of the Registrar-General as . . . . . (quote registered number; if the plan is unregistered give description of lot)”, insert instead “purchaser of . . . . . (give description of land)”.

(b) Third Schedule—

Omit “lot” where thirdly occurring, insert instead “land”.

20 (c) Third Schedule—

Omit “the lot” wherever occurring, insert instead “the land”.

(19) (a) Fourth Schedule—

- 25 Omit “in respect of lot number . . . . . in a plan of subdivision which has been registered in the office of the Registrar-General as . . . . . ”, insert instead “in respect of . . . . . ”.

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*Land Sales (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE LAND SALES ACT, 1964, RELATING  
TO SALES UNDER INSTALMENT CONTRACTS—*continued.*

(b) Fourth Schedule—

5 Omit “quote registered number”, insert instead “give description of land”.

(c) Fourth Schedule—

10 Omit “which said plan was approved by the Council of . . . . . (name of city, municipality or shire) on the . . . . . day of . . . . . 19.., as certified by town/shire clerk’s certificate number . . . . . of 19 .. ”.

(20) (a) Fifth Schedule, paragraph 6 (b)—

15 Omit “Subdivisions must be approved by the local council prior to the vendor or his agent accepting any payment from the purchaser of a lot, and a deposit, if paid, must be held by the trustee appointed to protect your interests and the interests of all other purchasers in the subdivision”, insert instead “A  
20 deposit, if paid, must be held by the trustee appointed to protect your interests”.

(b) Fifth Schedule, paragraph 6 (c)—

Omit “in the case of subdivisions effected”, insert instead “where a plan of the land was registered”.

25 (c) Fifth Schedule, paragraph 9—

Omit “trustee for the purchasers”, insert instead “trustee referred to in paragraph 6 (b)”.

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*Land Sales (Amendment).*

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## SCHEDULE 4.

Sec. 5.

## SAVINGS AND TRANSITIONAL PROVISIONS.

## 1. In this Schedule—

5 “appointed day” means the day appointed and notified under section 2 (3);

“Principal Act” means the Land Sales Act, 1964.

2. An order in force under section 6 of the Principal Act immediately before the appointed day shall be deemed to be an order made on that day under that section, as amended by this Act.

10 3. A trust deed in force under the Principal Act immediately before the appointed day shall be deemed to be a trust deed in force under the Principal Act, as amended by this Act.

15 4. A notice given under the Principal Act before the appointed day in the form prescribed by a Schedule to the Principal Act shall be deemed to be a notice given in the form prescribed by the same Schedule to the Principal Act, as amended by this Act.

5. Section 11 of the Principal Act does not apply to or in respect of a payment made, or a contract tendered for execution, less than 2 days after the day appointed and notified under section 11 (2).

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BY AUTHORITY

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