

# **CROWN LANDS ACT 1989 No. 6**

NEW SOUTH WALES



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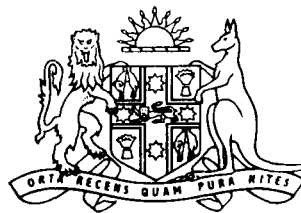
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## **CROWN LANDS ACT 1989 No. 6**



### **Act No. 6, 1989**

An Act to provide for the administration and management of Crown land in the Eastern and Central Division of the State and to repeal the Crown Lands Consolidation Act 1913, the Closer Settlement Acts and certain other Acts. [Assented to 21 March 1989]

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See also Crown Lands (Continued Tenures) Act 1989; Western Lands (Crown Lands) Amendment Act 1989; Miscellaneous Acts (Crown Lands) Amendment Act 1989.

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**The Legislature of New South Wales enacts:**

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Crown Lands Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act—

“Crown land” means land that is vested in the Crown or was acquired under the Closer Settlement Acts as in force before their repeal, not in either case being—

- (a) land dedicated for a public purpose; or
- (b) land that has been sold or lawfully contracted to be sold and in respect of which the purchase price or other consideration for the sale has been received by the Crown;

“Crown Lands Acts” means—

- (a) the Acts repealed by section 2 of the Crown Lands Act of 1884 (except Act 22 Victoria No. 17 and Act 23 Victoria No. 4);
- (b) the Acts repealed by the Crown Lands Consolidation Act 1913;
- (c) the Acts repealed by this Act;
- (d) the provisions of the Prickly-pear Act 1924 referred to in clause 5 (1) of Schedule 1 to the Prickly Pear Act 1987;
- (e) the provisions of the Crown Lands (Amendment) Act 1932 repealed by the Miscellaneous Acts (Crown Lands) Amendment Act 1989;
- (f) the Crown Lands (Continued Tenures) Act 1989; and
- (g) this Act;

“Department” means the Department of Lands;

“holding” means—

- (a) an incomplete purchase, a perpetual lease, a term lease, a yearly lease, a special lease or a permissive occupancy under the Crown Lands (Continued Tenures) Act 1989; or
- (b) a lease or licence under this Act;

“irrigation area” means an irrigation area constituted under the Murrumbidgee Irrigation Act 1910 or the Irrigation Act 1912;

“local land board”, in applying a provision in which the expression occurs, means the local land board constituted under section 20 for the land district in which is situated the land in relation to which the provision applies;

“mineral” means—

- (a) in relation to land not in an irrigation area, any substance prescribed as a mineral for the purposes of this Act; or
- (b) in relation to land in an irrigation area, mineral within the meaning of the Mining Act 1973 or the Coal Mining Act 1973;

“Ministerial Corporation” means the Lands Administration Ministerial Corporation constituted by section 13;

“public purpose”, in relation to a provision of this Act, means any purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose for the purposes of that provision;

“regulations” includes regulations under the Crown Lands (Continued Tenures) Act 1989;

“Secretary” means the Secretary of the Department of Lands;

“the Register” means the Register kept under the Real Property Act 1900.

(2) Crown land does not cease to be Crown land just because of the creation in respect of it of a folio of the Register in the name of “The State of New South Wales”.

(3) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, in relation to a duty, a reference to the performance of the duty.

#### **Divisions of the State**

4. (1) For the purposes of this Act, the State shall consist of 2 Divisions:

- (a) the Eastern and Central Division; and
- (b) the Western Division.

(2) Subject to any regulations made under subsection (3), the Eastern and Central Division is—

- (a) that part of the State not within the boundaries of the Western Division, as defined by the Crown Lands Consolidation Act 1913 immediately before its repeal; and
- (b) the coastal waters of the State within the meaning of Part 10 of the Interpretation Act 1987 and the seabed and subsoil beneath, and the airspace above, those waters.

(3) The boundary between the Eastern and Central Division and the Western Division may be altered or redefined by regulation.

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(4) A proposed alteration or redefinition may not be given effect under subsection (3) unless—

- (a) a notice describing the proposal has been published as prescribed; and
- (b) the notice states that written objections and submissions relating to the proposal may be lodged with the Department not later than 28 days after publication of the notice.

**Application of Act**

5. (1) This Act applies to and in respect of—

- (a) the Eastern and Central Division of the State;
- (b) irrigation areas not within the boundaries of the Eastern and Central Division;
- (c) incomplete purchases of land formerly comprised in leases under the Western Lands Act 1901;
- (d) purchases of land formerly comprised in incomplete purchases referred to in paragraph (c); and
- (e) holdings created under the Crown Lands Acts and situated in the Western Division.

(2) In addition, this Act applies to and in respect of land in the Western Division to the extent set out in section 2A of the Western Lands Act 1901.

(3) In the application of the provisions of this Act to and in respect of purchases of land or land purchased in the Western Division, a reference to “the Crown Lands Acts” or “this Act” includes a reference to the Western Lands Act 1901.

**Crown land to be dealt with subject to this Act etc.**

6. Crown land shall not be occupied, used, sold, leased, licensed, dedicated or reserved or otherwise dealt with unless the occupation, use, sale, lease, licence, reservation or dedication or other dealing is authorised by this Act or the Crown Lands (Continued Tenures) Act 1989.

**Relationship with other Acts**

7. This Act shall not be construed so as to affect the operation of a provision of any other Act which—

- (a) makes special provision for any particular kind of Crown land; or
- (b) authorises Crown land to be disposed of or dealt with in any manner inconsistent with this Act.

**Land districts**

8. (1) The Eastern and Central Division of the State is divided into land districts, as established and defined under the Crown Lands Consolidation Act 1913 immediately before its repeal.

(2) The Minister may, by notification in the Gazette, alter or abolish existing land districts or establish and define new land districts.

**Cities, towns and villages**

9. The Minister may, by notification in the Gazette—

- (a) declare Crown land to be set apart as sites for cities, towns or villages; or
- (b) correct or alter the design, plan or boundaries of any city, town or village set apart under the Crown Lands Acts.

**Objects of Act**

10. The objects of this Act are to ensure that Crown land is managed for the benefit of the people of New South Wales and in particular to provide for—

- (a) a proper assessment of Crown land;
- (b) the management of Crown land having regard to the principles of Crown land management contained in this Act;
- (c) the proper development and conservation of Crown land having regard to those principles;
- (d) the regulation of the conditions under which Crown land is permitted to be occupied, used, sold, leased, licensed or otherwise dealt with;
- (e) the reservation or dedication of Crown land for public purposes and the management and use of the reserved or dedicated land; and
- (f) the collection, recording and dissemination of information in relation to Crown land.

**Principles of Crown land management**

11. For the purposes of this Act, the principles of Crown land management are—

- (a) that environmental protection principles be observed in relation to the management and administration of Crown land;
- (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible;
- (c) that public use and enjoyment of appropriate Crown land be encouraged;
- (d) that, where appropriate, multiple use of Crown land be encouraged;
- (e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity; and
- (f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

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**PART 2—ADMINISTRATION****Division 1—Minister****Responsibility of Minister**

12. (1) The Minister is responsible for achieving the objects of this Act.
- (2) The Minister may establish advisory committees to give information and make recommendations with respect to—
- (a) the development and revision of guidelines for land management; and
  - (b) such other matters as may be referred to them by the Minister.

**Constitution of the Ministerial Corporation**

13. (1) There is constituted by this Act a corporation with the corporate name of Lands Administration Ministerial Corporation.
- (2) The affairs of the Ministerial Corporation shall be managed by the Minister.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, shall be taken to have been done by the Ministerial Corporation.
- (4) The Ministerial Corporation is, for the purposes of any Act, a statutory body representing the Crown.
- (5) Section 50 (1) (d) of the Interpretation Act 1987 (which authorises certain dealings with property) does not apply to the Ministerial Corporation.

**Seal etc. of the Ministerial Corporation**

14. The regulations may make provisions for or with respect to—
- (a) the custody and use of the seal of the Ministerial Corporation; and
  - (b) the keeping of records concerning the acts, decisions and proceedings of the Ministerial Corporation.

**Functions of the Ministerial Corporation**

15. (1) The Ministerial Corporation has the functions conferred or imposed on it by or under this or any other Act.
- (2) The Ministerial Corporation may—
- (a) enter into a contract, agreement or joint venture with any person, corporation or statutory body for the development of, or the construction or undertaking of works on, Crown land or the provision of services for Crown land;



- (b) enter into a contract or agreement with any person, corporation or statutory body for the person, corporation or body to act as agent for the sale or lease of Crown land;
  - (c) enter into a contract, agreement or joint venture with any person, corporation or statutory body for the provision of services or information—
    - (i) to the person, corporation or body; or
    - (ii) to the Minister or the Department; and
  - (d) for the attainment of the objects of this Act or the exercise of functions under this Act—
    - (i) purchase, take on lease or licence, charter or otherwise acquire any vehicle, aircraft, vessel, plant, machinery or other thing; or
    - (ii) adapt or manufacture any machinery or equipment.
- (3) For the purpose of securing a loan for—
- (a) the development of Crown land;
  - (b) the construction or undertaking of works on Crown land; or
  - (c) the provision of services for Crown land,
- the Ministerial Corporation shall be taken to be the owner of the land.

#### **Staff of the Ministerial Corporation**

16. The Ministerial Corporation may—

- (a) use the services of any staff or facilities of the Department; or
- (b) arrange for the use of the services of any staff or facilities of any other government department or of an administrative office or public authority.

#### **Financial year**

17. The financial year of the Ministerial Corporation is the year commencing on 1 July.

#### **Agency arrangements**

18. (1) The Minister may enter into an arrangement with another Minister, or with an authority constituted by or under an Act, for the exercise by the Minister or by his or her delegate, as agent of that other Minister or the authority, of a function of that other Minister or the authority.

(2) The Ministerial Corporation may, itself or by its delegate, act as agent of a Minister administering an Act, or as agent of an authority constituted by or under an Act, in the exercise of a function of that Minister or authority.

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(3) A document executed by—

- (a) the Minister, or a delegate of the Minister, as agent; or
- (b) the Ministerial Corporation, or its delegate, as agent,

has effect as if it had been executed by the principal.

(4) If the Minister notifies in the Gazette that the provisions of Division 5 of Part 7 (protection of public land) apply to any land administered by the Minister or the Ministerial Corporation as agent, those provisions apply in the same way as they apply to public land.

### **Division 2—Local land boards**

#### **Appointment of Chairpersons and Senior Chairperson**

19. (1) The Governor may appoint Chairpersons of Local Land Boards.

(2) A Chairperson, other than a Chairperson appointed under subsection (3), shall be appointed under and subject to the Public Sector Management Act 1988.

(3) Without affecting the generality of subsection (1), the Governor may, if the holder of any office prescribed for the purposes of this subsection is entitled to hold that office and the office of Chairperson of Local Land Boards, appoint the holder of the prescribed office as a Chairperson of Local Land Boards.

(4) The Minister shall, if there are 2 or more Chairpersons, appoint one of those persons as Senior Chairperson of Local Land Boards.

(5) If the Senior Chairperson, or the only Chairperson, informs the Minister that, unless an appointment is made under this subsection, there would be no Chairperson available for a sitting of a local land board, the Minister may appoint a person to act as Chairperson at that sitting.

#### **Constitution of local land boards**

20. (1) There shall be a local land board for every land district.

(2) A local land board shall consist of—

- (a) one member, being a Chairperson of Local Land Boards appointed under section 19, who shall be Chairperson of the board; and
- (b) 2 members appointed by the Minister.

(3) A person may be a member of one or more local land boards.

(4) Schedule 1 has effect with respect to the members (other than the Chairperson) and the appointment of those members.

**Local land board sittings**

21. (1) If there are 2 or more Chairpersons, the Senior Chairperson is responsible for assigning, and may assign, to a particular Chairperson (including himself or herself) the function of chairing a particular local land board sitting.

(2) If a member of a local land board is unable to sit, a member of another local land board may sit in the member's place by arrangement with the Senior Chairperson (or the Chairperson if there is no Senior Chairperson) and, under such an arrangement, has the functions of the absent member.

(3) A local land board may—

- (a) subject to any direction of the Minister, hold its sittings inside or outside the land district for which it was constituted; and
- (b) at the request of the Minister, deal with matters arising outside the land district for which it was constituted.

**Jurisdiction of local land boards**

22. (1) The Minister may refer—

- (a) any matter arising out of the administration of this Act, or of any other Act dealing with the administration of Crown land; or
- (b) any other prescribed matter,

to a local land board or a Chairperson sitting alone for inquiry and report.

(2) A local land board or Chairperson has power to hear and determine all references, appeals and other matters coming before the board or Chairperson under this or any other Act.

(3) If a matter is referred to a Chairperson sitting alone, the Chairperson has all the powers of a local land board for the purpose of dealing with the matter (but may deal with the matter not sitting in open court).

**Minister may return decisions for further consideration**

23. (1) If no appeal or reference has been made to the Land and Environment Court in respect of a decision made by a local land board or Chairperson and the Minister is of the opinion that further consideration of the decision is necessary or advisable, the Minister may return it for that purpose.

(2) The local land board or Chairperson may, with or without taking further evidence, uphold, reverse, alter or amend the previous decision.

(3) The Minister shall not return a decision more than once.

**Powers and procedures of local land boards**

24. Schedule 2 has effect with respect to the powers and procedures of local land boards.

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**Division 3—Appeals and references to the Land and Environment Court****Interpretation**

**25. (1)** In this Division—

“decision” includes adjudication, determination, award, report and recommendation.

(2) This Division does not apply to a decision made in respect of a matter referred by the Minister to a local land board or a Chairperson for inquiry and report under section 22 (1).

**Appeals to Court against local land board decisions**

**26. (1)** Any party to proceedings before a local land board may appeal to the Land and Environment Court against the decision of the board.

(2) An appeal shall be made within 28 days after the decision appealed against has been made or within such further time as the Court may either generally or in any particular case allow.

(3) An appeal is made by giving written notice in the prescribed manner and depositing, as prescribed, security for the costs of the appeal.

(4) A notice of appeal shall state the grounds of appeal.

(5) This section is to be read subject to the provisions of any other Act relating to appeals against decisions of local land boards (other than the provisions of the Land and Environment Court Act 1979).

**Reference of matters to the Court by a local land board**

**27. (1)** A local land board, instead of giving a decision in a case, may, after taking evidence, refer the case and the evidence for decision by the Land and Environment Court.

(2) The Court has power to deal with the case in all respects as if it had been brought before it in the first instance.

**Reference of matters to the Court by the Minister**

**28. (1)** The Minister may refer to the Land and Environment Court any decision of a local land board if it appears that—

- (a) the rights, interests or revenues of the Crown may have been or may be injuriously affected;
- (b) the board has failed or neglected duly to discharge a duty according to law;
- (c) the board has exceeded a power; or
- (d) a rehearing or further consideration is warranted.

(2) If it appears that the Crown should appeal against a decision of a local land board, the Minister may, within 28 days after the decision has been made or within such further period as the Court may allow, refer the decision to the Court instead of lodging an appeal.

(3) A reference shall be made by giving notice in writing of the reference to the registrar of the Court.

(4) The Court shall deal with a reference as if it were an appeal by the Crown, and the rights and liabilities of the Crown in respect of the reference are the same as they would be if the reference were an appeal by the Crown.

(5) This section shall not be construed so as to affect any other remedy which the Crown or any person has in relation to a decision of a local land board.

#### **Powers of the Court**

29. The Land and Environment Court has power to—

- (a) hear and determine all appeals made to it under this Act or the Crown Lands (Continued Tenures) Act 1989 and any matters referred to it by the Minister or by a local land board; and
- (b) make any order or decision which the nature of the case may require.

### **PART 3—LAND ASSESSMENT**

#### **Programme for land assessment**

30. (1) The Minister shall cause to be instituted a programme for the assessment of Crown land.

(2) The assessment shall consist of—

- (a) the preparation of an inventory of Crown land;
- (b) an assessment of the capabilities of the land; and
- (c) the identification of suitable uses for the land and, where practicable, the preferred use or uses.

#### **Inventory**

31. (1) The inventory of Crown land shall contain particulars of such physical characteristics of the land and such other matters affecting the land as the Minister considers necessary to assess the capabilities of the land.

(2) The inventory shall be maintained to reflect changes in the particulars contained in it.

(3) Information contained in the inventory may be made available to members of the public.

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**Assessment of the capabilities of land**

32. (1) The particulars relating to land as contained in the inventory shall be assessed by the Department to determine the land's capabilities, having regard to prescribed land evaluation criteria.

(2) For the purposes of this section, assessment of the capabilities of land includes assessment of the land's use for community or public purposes, environmental protection, nature conservation, water conservation, forestry, recreation, tourism, grazing, agriculture, residential purposes, commerce, industry or mining.

**Identification of uses**

33. (1) In identifying suitable uses for land and, where practicable, the preferred use or uses, regard shall be had to—

- (a) the particulars relating to the land as contained in the inventory;
- (b) the assessment of the land's capabilities;
- (c) the principles of Crown land management and any current policies relating to the land approved by the Minister; and
- (d) the views of any government department, administrative office or public authority which has expressed an interest in the land.

(2) The Minister may from time to time cause an identified preferred use to be reviewed and either confirmed or varied having regard to any changes in the particulars contained in the inventory or the capabilities of or policies relating to the land.

**PART 4—SALE, LEASE ETC. OF CROWN LAND****Division 1—General****Powers of Minister**

34. (1) The Minister may, in such manner and subject to such terms and conditions as the Minister determines—

- (a) sell, lease, exchange or otherwise dispose of or deal with Crown land; or
- (b) grant easements or rights-of-way over, or licences or permits in respect of, Crown land,

on behalf of the Crown.

(2) In exercising a function under subsection (1) in relation to land in an irrigation area, the Minister shall have regard to the views of the Water Administration Ministerial Corporation.

(3) The Minister may not, under subsection (1)—

- (a) sell or exchange Crown land;
- (b) lease Crown land for a term exceeding 5 years; or

- (c) lease Crown land for a term that, by the exercise of an option, could exceed 5 years,

unless the relevant date for the sale, exchange or lease is at least 14 days after notice of intention to sell, exchange or lease the land has been published in a newspaper circulating in the locality in which the land is situated or in a newspaper circulating generally in the State.

- (4) For the purposes of subsection (3) the relevant date—

- (a) for a sale or exchange by private treaty is the date on which the Minister enters into a contract to sell or exchange the land;
- (b) for a sale by auction is the date of the auction;
- (c) for a sale by tender is the closing date for tenders;
- (d) for a sale by ballot is the closing date for nominations for the ballot; and
- (e) for a lease is the date on which the lease is granted.

- (5) If, under subsection (1), Crown land—

- (a) is offered for sale by auction and is not sold at the auction;
- (b) is offered for sale by tender and no tender is received or accepted; or
- (c) is offered for sale by ballot and no nomination of the ballot is received or accepted,

subsection (3) does not apply to a sale of the land by private treaty.

- (6) This section does not authorise the sale of Crown land which is reserved for a public purpose.

- (7) In relation to the granting of licences, a reference in this Part to Crown land includes a reference to—

- (a) land within a travelling stock reserve under pastures protection board control which was held under annual lease, occupation licence or preferential occupation licence at the commencement of this section; and
- (b) land within any other reserves for public purposes under the control of trustees or other authorities.

#### **Assessment of land**

**35. (1)** The powers of the Minister under this Part may not be exercised in respect of Crown land unless the Minister is satisfied that the land has been assessed under Part 3.

- (2) Subsection (1) does not apply if—

- (a) the Minister is satisfied that it is in the public interest to exercise the powers without assessing the land under Part 3 and the Minister, in exercising the powers, has had due regard to the principles of Crown land management; or

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- (b) the powers are to be exercised in respect of the grant of—
  - (i) an enclosure permit; or
  - (ii) a licence which does not authorise the erection of a structure other than fencing or the removal of material.

**Division 2—Sales of Crown land****Conditions which may be included in contracts of sale**

**36. (1)** The Minister may include in a contract of sale of Crown land such conditions as the Minister determines including, but without being limited to—

- (a) a condition for or with respect to the erection of a building on the land by the purchaser within a specified period;
- (b) a condition for or with respect to an option or right for the Minister to repurchase the land on behalf of the Crown; or
- (c) both of the conditions referred to in paragraphs (a) and (b).

**(2)** Without affecting the generality of subsection (1), conditions relating to the option or right of repurchase may—

- (a) confer the option or right if the purchaser has failed to comply with a condition;
- (b) confer the option or right if the purchaser wishes to sell or otherwise dispose of the land before the expiration of a specified period;
- (c) require the purchaser to pay to the Minister an amount determined in a specified manner if the Minister does not exercise the option or right; and
- (d) provide for the determination of the repurchase price.

**(3)** A condition included in a contract of sale of land does not merge in the transfer of title to the land on completion of the sale.

**(4)** The Registrar-General shall, at the request of the Minister, make in the Register a recording to signify—

- (a) that land specified in the request is held subject to a condition; or
- (b) that such a recording has ceased to have effect.

**(5)** The Minister shall not make a request under subsection (4) (a) except for the purpose of ensuring compliance with the conditions in the contract of sale under which the land was sold, but the Registrar-General is not concerned to inquire whether any such request has been made for the purpose.

**Imposition of conditions on sale of certain land**

**37. (1)** In this section, a reference to a purchaser, in relation to land, is a reference to a purchaser of the land from the Crown.



(2) The Registrar-General shall, at the request of the Minister, make a recording in the Register to signify—

- (a) that Crown land specified in the request, being land of which the State of New South Wales is then the registered proprietor, is, on a sale to a purchaser, to be held subject to conditions specified or referred to in the request; or
- (b) that such a recording has ceased to have effect.

(3) The conditions may include any conditions the Minister is authorised by section 36 to include in a contract for the sale of land.

(4) If a recording under subsection (2) (a) has been made in respect of any land (being a recording that has not ceased to have effect) and the Minister subsequently enters into a contract for the sale of the land, each condition to which the recording relates has effect as a condition of the contract for the sale of the land.

(5) A condition which has effect as a condition of a contract of sale of land does not merge in the transfer of title to the land on completion of the sale.

#### **Restrictions on transfer of certain land**

38. The Registrar-General shall, at the request of the Minister, make a recording in the Register to signify—

- (a) that Crown land specified in the request, being land of which the State of New South Wales is then the registered proprietor, is held subject to the restriction that, unless a specified condition has been complied with, the land may not be transferred without the consent of the Minister; or
- (b) that such a recording has ceased to have effect.

#### **Effect of recording in Register**

39. If a recording under section 36 (4) (a), 37 (2) (a) or 38 (a) has been made in respect of any land, the Registrar-General may not register under the Real Property Act 1900 a transfer of the land to or by a person other than the Minister if—

- (a) the recording still has effect in respect of the land; and
- (b) the consent of the Minister to the transfer has not been given.

#### **Securing payment by way of mortgage etc.**

40. The Ministerial Corporation may on behalf of the Crown take a mortgage from a purchaser of land from the Crown in respect of any part of the purchase price of the land or other money due to the Crown.

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**Division 3—Leases of Crown land****Term**

41. The term of a lease of Crown land (including any option for the grant of a further term) granted by the Minister is not to exceed 100 years.

**Certain dealings to be leases**

42. A disposition of Crown land by the Minister on behalf of the Crown, expressed to be a lease, is a lease even if exclusive possession of the land is not conferred on any person.

**Application of Conveyancing Act 1919**

43. The Minister may, in granting a lease of Crown land, include in the lease a condition excluding the operation of any specified provisions of the Conveyancing Act 1919 in respect of the lease.

**Transfer restrictions**

44. (1) The Registrar-General shall, at the request of the Minister, make a recording in the Register to signify—

- (a) that a lease specified in the request is held subject to the restriction that the lease may not be—
  - (i) transferred or sub-leased; or
  - (ii) dealt with in any other specified manner,without the consent of the Minister; or
- (b) that such a recording has ceased to have effect.

(2) If a recording under subsection (1) has been made in respect of a lease, the Registrar-General may not register under the Real Property Act 1900 any dealing referred to in the recording if—

- (a) the recording still has effect in respect of the lease; and
- (b) the consent of the Minister to the dealing has not been given.

**Division 4—Licences****Purposes of licences**

45. A licence may authorise the use or occupation of Crown land for such purposes as the Minister thinks fit.

**Certain dealings to be licences**

46. A disposition of Crown land by the Minister on behalf of the Crown, expressed to be a licence, is a licence even if exclusive possession of the land is conferred on a person.

**Revocation of licences**

47. A licence is revocable at will by the Minister or on such notice as may be specified in the licence.

**Licences not transferable**

48. A licence is not transferable.

**Licences for removal of certain minerals**

49. (1) A licence to remove gravel, sand, stone, shells or other substances, being minerals within the meaning of the Mining Act 1973, may not be granted except with the approval of the Minister administering that Act.

(2) The Minister administering the Mining Act 1973 may waive compliance with the requirements of this section in such circumstances or cases, and to such extent, as the Minister thinks fit.

(3) A licence to remove gravel, sand, loam, stone, clay, shells or other prescribed material (not being minerals within the meaning of the Mining Act 1973) may be granted over Crown land even if it is held under a lease granted under this Act or referred to in the Crown Lands (Continued Tenures) Act 1989.

**Rent, royalty, fees etc.**

50. (1) A licence may be granted subject to the payment of such rent, royalty, fees or other amount as the Minister may determine in respect of the licence.

(2) The conditions attached to a licence may include such provisions for the determination or redetermination of any rent, royalty, fee or other amounts as the Minister thinks fit.

**Division 5—Easements****Definitions**

51. In this Division—

“easement” includes an easement in favour of—

- (a) the Crown in right of the State or the Commonwealth; or
- (b) any public or local authority constituted by an Act or a Commonwealth Act,  
without a dominant tenement;

“holder”, in relation to—

- (a) any prescribed land (other than land referred to in paragraph (b)), means the person who is registered in an official record as the holder of the land and, if the person appears to be a mortgagee, includes the person who, according to that record, appears to be the mortgagor; and

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- (b) any prescribed land which has been brought under the provisions of the Real Property Act 1900 (other than land of which The State of New South Wales is the registered proprietor) means any person recorded in the folio of the Register relating to the land as the holder of a lease from the Crown over the land or as a mortgagee of such a lease;

“prescribed land” means Crown land or land dedicated for a public purpose, except—

- (a) land subject to the provisions of the Real Property Act 1900 (other than land of which The State of New South Wales is the registered proprietor);
- (b) land comprised in a lease in perpetuity; and
- (c) land reserved as, or as part of, a state recreation area under section 47B of the National Parks and Wildlife Act 1974.

**Creation of easements**

52. (1) The Minister may—

- (a) if prescribed land is subject to the provisions of the Real Property Act 1900—create an easement over the land in the way provided in that Act or in section 88B of the Conveyancing Act 1919; and
- (b) if prescribed land is not subject to the provisions of the Real Property Act 1900—create an easement over the land—
  - (i) in the way provided in section 88B of the Conveyancing Act 1919; or
  - (ii) by notification in the Gazette.

(2) The Minister may create the easement on such terms, and subject to such conditions as the Minister thinks fit, including terms and conditions relating to the payment of compensation to the Crown.

(3) The benefit of an easement created under this section may be annexed to land even if, at the time the easement is created, the land is vested in the Crown.

(4) An easement created under this section is not extinguished because the land having the benefit of the easement or the burden of the easement becomes, or both become, vested in the Crown.

(5) Sections 88A and 181A of the Conveyancing Act 1919 apply to a notification or instrument purporting to create an easement under this section.

(6) Section 89 of the Conveyancing Act 1919 applies to an easement created under this section.

**Release of easements**

**53. (1)** The Minister may, at any time that land having the benefit of an easement created under this Act or an Act repealed by this Act or by an Act so repealed is vested in the Crown—

- (a) if the land is subject to the provisions of the Real Property Act 1900—release, in accordance with that Act, the easement benefiting the land; or
- (b) if the land is not subject to the provisions of the Real Property Act 1900—release the easement benefiting the land by notification in the Gazette.

**(2)** Nothing in this Division affects any right of any other person to release an easement created under this Division.

**Effective date of creation or release of easements**

**54.** The creation or release of an easement by notification in the Gazette under this Division takes effect on the date of publication of the notification or on a later date specified in the notification.

**Consent of holders required**

**55. (1)** The Minister shall not create or release an easement under this Division unless the Minister is satisfied—

- (a) in the case of the creation of an easement over prescribed land—that the holder (if any) for the time being of the land has consented to the creation of the easement; or
- (b) in the case of the release of an easement over prescribed land—that the holder (if any) for the time being of the land having the benefit of the easement has consented to the release of the easement.

**(2)** If the Minister purports to create or release an easement under this Division, it shall be conclusively presumed that this section has been complied with in relation to the creation or release.

**Creation of easements for public access**

**56. (1)** There shall be an easement called an easement for public access.

**(2)** An easement for public access may be created for the benefit of the Crown without a dominant tenement.

**(3)** An easement for public access may be created—

- (a) over Crown land proposed to be sold under this Act—by the Minister at any time before the sale;
- (b) over land held under lease from the Crown—by the Minister with the consent of the lessee; or
- (c) over freehold land—by the owner.

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(4) An easement for public access may be created—

- (a) if the land is subject to the provisions of the Real Property Act 1900—in the way provided in that Act or in section 88B of the Conveyancing Act 1919; or
- (b) if the land is not subject to the provisions of the Real Property Act 1900—in the way provided in section 88B of the Conveyancing Act 1919.

(5) An easement for public access may be defined by reference to a natural or physical feature as it exists from time to time.

**Rights of public to use easements for public access**

57. (1) An easement for public access confers on the public a right to enter the subject land and to carry on any activity other than a prescribed activity.

(2) A person shall not carry on a prescribed activity on land the subject of an easement for public access.

Maximum penalty—subsection (2): 5 penalty units.

**Rights of owners or lessees of affected land**

58. (1) An owner or lessee whose land is affected by an easement for public access—

- (a) may erect a fence or gate on the land the subject of the easement if it does not unduly hinder public entry to the land; and
- (b) may not erect any structure, other than a fence or gate or a structure of a prescribed type, on the land the subject of the easement without the written consent of the Minister.

(2) Section 158 (removal of unauthorised structures) applies in respect of structures erected on land the subject of an easement for public access in the same way as it applies in respect of structures erected on public land.

(3) An owner or lessee who suffers damage caused by a person using an easement for public access contrary to this Act or the regulations may recover damages from the person.

(4) In this section—

“structure” includes any ditch, canal or other excavation.

**Recording of particulars in the Register**

59. If an easement is created or released under this Division in respect of land subject to the provisions of the Real Property Act 1900, the Registrar-General may record such particulars of the creation or release as the Registrar-General considers necessary in any folio of the Register relating to land which, in the Registrar-General's opinion, is affected by the creation or release of the easement.

**Division 6—Enclosure of roads and watercourses****Definitions**

**60.** In this Division—

“enclosure permit” means a permit to enclose a road or watercourse or part of a road or watercourse;

“land” includes land comprised in a holding (other than a permissive occupancy under the Crown Lands (Continued Tenures) Act 1989 or a licence under this Act) and freehold land;

“road” means a road vested in the Crown and any other land vested in the Crown and indicated on official maps or plans as being reserved for a road or defined or left as a road—

- (a) in a subdivision of Crown land;
- (b) in the measurement or granting of Crown land; or
- (c) as a consequence of an approval by the Minister.

**Enclosure of roads or watercourses on application**

**61. (1)** The Minister may, on application being made by a holder of land, grant to the holder a permit to enclose wholly or in part any road or watercourse by which the land is traversed or bounded, subject to payment of such annual rent as may be determined by the Minister.

**(2)** An enclosure permit may be granted subject to—

- (a) conditions relating to the payment of rent;
- (b) conditions requiring the erection of gates or the provision of some other means of access or both (so as not to interfere unnecessarily with any traffic); and
- (c) such other conditions as the Minister determines.

**Enclosure of additional roads or watercourses**

**62. (1)** An enclosure permit, and the conditions to which the permit is subject, may be varied by the Minister if the holder desires to enclose, or has enclosed, any additional road or watercourse.

**(2)** On making a variation, the Minister shall determine the annual rent payable in respect of the additional road or watercourse.

**Unauthorised enclosure of roads or watercourses**

**63. (1)** A holder of land is liable to pay an annual rent determined by the Minister for a road or watercourse by which the land is traversed or bounded if—

- (a) the road or watercourse is enclosed as if it were part of the land held; and

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- (b) the enclosure was effected (whether before or after the commencement of this section) without the permission of the Minister.

(2) If the road or watercourse is additional to any road or watercourse the subject of an enclosure permit granted in respect of the same land, the Minister may determine the annual rent payable in respect of the additional road or watercourse.

(3) A determination of rent under this section in respect of a road or watercourse has effect as an enclosure permit granted to the holder of the land.

(4) The Minister may impose conditions in respect of a road or watercourse enclosed as referred to in this section in the same way as the Minister may impose conditions in respect of a road or watercourse enclosed on the application of a holder.

(5) This section does not affect the Minister's power to take action under section 158 (removal of unauthorised structures) in respect of any enclosure of a road or watercourse or any structure on a road or watercourse.

**Transfer of land with which enclosure permit held**

64. (1) If an enclosure permit has been granted to a holder of land in respect of a road or watercourse and the land is subsequently transferred—

- (a) the permit remains in force; and
- (b) the holder for the time being of the land is liable for payment of rent (including arrears of rent and interest) in respect of the enclosure.

(2) The transferee shall, in the prescribed manner and within the prescribed time, notify the Department of the date of the transfer and the transferee's name and address.

Maximum penalty—subsection (2): 5 penalty units.

**Subdivision of land with which road or watercourse is enclosed**

65. (1) This section applies where—

- (a) an enclosure permit has been granted to a holder of land in respect of a road or watercourse; and
- (b) the land is subsequently subdivided and transferred in such a way that parts of the road or watercourse traverse or bound parts of the land held by different holders.

(2) If this section applies—

- (a) an enclosure permit shall be taken to have been granted to each different holder in respect of the parts of the road or watercourse;



- (b) the holder of each enclosure permit shall pay rent at the same rate per hectare as applied to the original enclosure permit before the subdivision (subject to any prescribed minimum rent); and
- (c) the Minister may impose conditions in respect of each enclosure permit in the same way as the Minister may impose conditions in respect of a road or watercourse enclosed on the application of a holder.

**Cancellation of enclosure permit etc.**

**66. (1)** The Minister may—

- (a) cancel an enclosure permit or direct that section 63 does not apply to an enclosure, or both; and
- (b) order any fence, gate or other structure on any road or watercourse to be removed by the former holder of the enclosure permit within a stated period.

(2) A person to whom an order under subsection (1) (b) is applicable shall, on being served with the order, comply with the order.

Maximum penalty—subsection (2): 5 penalty units.

**Cancellation or variation of enclosure permit on acquisition of adjacent land, closing of road etc.**

**67. (1)** An enclosure permit authorising the enclosure of a road or watercourse as if it were part of any land shall be cancelled or varied by the Minister on—

- (a) the acquisition by the Crown or any public authority of the land;
- (b) if the land is comprised in a holding—the determination or forfeiture of the holding;
- (c) the road being closed or being dedicated as a public road; or
- (d) the road or watercourse ceasing to be enclosed.

(2) A cancellation or variation takes effect from such date, whether before or after the decision to cancel or vary, as may be determined by the Minister.

(3) If a permit is varied, the rental shall be at the same rate per hectare as it was before the variation (subject to any prescribed minimum rent).

(4) If a forfeiture of a holding is reversed, the Minister may also reverse any cancellation or variation of a permit to enclose a road or watercourse as if it were part of the holding.

(5) A reversal of a cancellation or variation relates back to the date of the cancellation or variation.

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**Amalgamation of permits**

68. (1) On application by the holder of 2 or more enclosure permits, the Minister may, subject to such conditions as the Minister considers necessary, authorise the amalgamation of the permits.

(2) On the amalgamation of permits, the permits have effect as one permit for the purposes of this Division.

(3) The annual rent in respect of amalgamated permits is—

- (a) the sum of the separate rents of the permits; or
- (b) if one or more of the permits is held at a minimum rent, such amount (not in excess of the sum of the separate rents of the permits) as the Minister may determine.

**Application for direction to erect gates etc.**

69. (1) Any person may apply for a direction by a local land board under section 70.

(2) The Minister, the applicant and any permit holder who may be affected by a direction is entitled to be heard or represented before the local land board hearing the application.

**Minister or local land board may direct erection of gates etc.**

70. (1) After an enclosure permit has been granted, the Minister may, or a local land board on application may, direct—

- (a) that such gates or other means of access, or both, as the Minister or the local land board considers necessary be erected, provided, made or replaced so as not to interfere unnecessarily with any traffic on the road; or
- (b) that any fence, gate or other structure (or part of or thing attached to a fence, gate or other structure) by which the road or watercourse is enclosed be removed or replaced as specified in the direction.

(2) Notice of the terms of a direction shall be served on the holder of the permit.

(3) Unless it is sooner revoked—

- (a) a direction to which there is no objection takes effect as from the expiration of 28 days from the date of service of the notice; and
- (b) a direction to which there is an objection takes effect, or if varied takes effect as varied, as from the date of the Minister's or board's decision on the objection.

(4) A person shall not fail to comply with an effective direction given to the person under this section.

Maximum penalty—subsection (4): 5 penalty units.

**Objections to Minister's direction**

71. (1) The holder of an enclosure permit may, within 28 days after service of a notice of a direction given by the Minister under section 70, lodge with the Minister a written objection to the direction.

(2) The Minister shall refer any objection to a local land board for inquiry and report under section 22 (1).

(3) The objector and any person nominated by the Minister are entitled to be heard or represented before the local land board inquiry.

(4) The local land board shall make a recommendation to the Minister as to whether the direction should be confirmed, varied or revoked.

(5) After considering the local land board's recommendation, the Minister may either confirm, vary or revoke the direction.

(6) An objection to a direction may not be lodged under this section if—

- (a) the matter has already been considered by a local land board;
- (b) the direction is in accordance with the local land board's recommendation; and
- (c) prior notice of the local land board hearing was given to the holder of the permit.

**Cultivation of enclosed roads**

72. (1) The Minister may, in relation to an enclosure permit for a road—

- (a) dispense with any requirement to erect gates or provide other means of access in connection with the closure of the road; and
- (b) authorise, as a term of the permit, the cultivation of the land enclosed,

for such period and on such conditions as the Minister may specify.

(2) The Minister may give a dispensation and authority under subsection (1) only if satisfied that—

- (a) the provision of public access to the enclosed road is not justified during a particular period; and
- (b) suspension of public access to the road would facilitate the cultivation of adjoining land by the holder of the enclosure permit.

(3) On the giving of a dispensation and authority the road is freed from any rights of the public or any person to the use of the road, as a road, for the duration of the dispensation and authority.

(4) Conditions imposed under subsection (1) may include a condition requiring the holder to provide, to the satisfaction of the Minister and for the duration of the dispensation and authority, alternative public access through adjacent land of the holder.

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(5) The rights of the public or any person to use access provided under subsection (4) are the same as those applicable to the closed road to which the access is alternative.

(6) The Minister may not exercise the powers under subsection (1) unless 21 days' notice inviting objections to the proposal has been given in a local newspaper and the Minister has considered any objections received.

(7) The Minister may cancel a dispensation and authority on being satisfied that the conditions have not been complied with or on giving 6 months' (or such shorter period as may be prescribed) notice to the holder of the enclosure permit.

(8) The Minister may, when a dispensation and authority are given or at any time while a dispensation and authority are in force, redetermine the rent of the enclosure permit.

(9) An authority under this section to cultivate land does not authorise the carrying on of any activity prohibited under any other Act.

**Dividing fences**

73. For the purposes of any law relating to dividing fences, the holder of a permit to enclose a road or watercourse shall be taken to be the owner or lessee, as the case may require, of the land enclosed.

**Public Gates Act 1901**

74. If—

- (a) under this Division, the Minister directs a gate to be erected;
- (b) a gate is erected in accordance with the direction; and
- (c) the Minister has, in the direction, specified that the gate, when erected, is to be a public gate under the Public Gates Act 1901,

the gate is a public gate under that Act.

**Division 7—Vesting of land in councils****Definitions**

75. In this Division—

“area” has the same meaning as it has in the Local Government Act 1919;

“council” has the same meaning as it has in the Local Government Act 1919;

“prescribed land” means land that is within a reserve or is Crown land not within a reserve and, in either case, is not—

- (a) land reserved or dedicated under the National Parks and Wildlife Act 1974 or declared to be a protected archaeological area, a wildlife refuge or a wildlife management area under that Act; or

- (b) land in respect of which any Act (other than this Act) provides that the land is to be used for a purpose referred to in that other Act or is not to be used for any purpose other than a purpose referred to in that other Act;

“reserve” has the same meaning as it has in Part 5.

**Vesting of certain land in councils**

**76. (1)** Subject to section 35 (which relates to assessment of land under Part 3), the Minister may, by notification in the *Gazette*, vest any prescribed land in a council for an estate in fee simple if the Minister is of the opinion that—

- (a) the land—
  - (i) is a public reserve within the meaning of the Local Government Act 1919 or is suitable for use as such a public reserve; or
  - (ii) is used, or is suitable for use, for any other purpose for which land may be acquired by a council under the Local Government Act 1919; and
- (b) it is proper that, having regard to the purpose (if any) for which the land is used, the land should be vested in the council.

**(2)** Land shall not be vested under this section in a council unless—

- (a) the council agrees; and
- (b) the land is wholly within the area of the council.

**(3)** The land vested may be limited to—

- (a) the surface of the land; or
- (b) the surface of the land and a stated depth below.

**(4)** A notification under subsection (1) shall include a reservation of all minerals in the land and such other reservations and exceptions as the Minister considers to be expedient in the public interest.

**(5)** A vesting of land under this section takes effect subject to the reservations and exceptions contained in the notification by which the vesting is effected.

**(6)** The Minister may, in a notification under subsection (1), declare the vested land to be a public reserve for the purposes of the Local Government Act 1919.

**(7)** If land comprising the whole of a reserve is vested in a council under this section and there were trustees of the reserve holding office immediately before the vesting, the provisions of section 125 (1) and (3), as modified by any agreement under subsection (8), have effect as if—

- (a) the reserve had been added under Part 5 to another reserve;

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- (b) a reference in section 125 (3) to the former trustee were a reference to the trustees so holding office; and
- (c) a reference in section 125 (3) to the new trustee were a reference to the council.

(8) Before a reserve referred to in subsection (7) is vested in a council under this section, the Minister and the council may agree to except specified assets, debts and liabilities from the operation of section 125 (3).

(9) A notification under subsection (1) takes effect on and from the date of publication or a later date specified in the notification.

**Effect of vesting**

77. (1) On land being vested in a council by a notification under section 76—

- (a) the land shall be taken to have been acquired under the Local Government Act 1919 by the council subject to the operation of section 518 (2) and (5) of that Act;
- (b) any dedication or reservation is revoked to the extent to which it affects the land;
- (c) a provision for forfeiture or reverter in respect of any breach or non-performance of a condition, trust or proviso—
  - (i) contained in a Crown grant; or
  - (ii) contained or referred to in a folio of the Register created in respect of the land,shall be taken to have been released by the Crown to the extent to which it affects the land;
- (d) if a person was trustee of all or any part of the land immediately before the notification took effect, the person ceases to be such a trustee; and
- (e) any by-laws that, immediately before the notification took effect, applied to all or any of the land are repealed in so far as they applied to the land.

(2) If, by the operation of section 125, a lease of, or a licence in respect of, land vested in a council under section 76 is taken to have been granted by the council, the lease or licence continues in force and shall be taken to have been granted—

- (a) if the council granted the lease or licence in its capacity as trustee of the reserve—by the council otherwise than in that capacity; or
- (b) in any other case—by the council,

despite any condition of the lease or licence and despite section 109, any Act or any other law.

(3) The revocation of a dedication or reservation in respect of any land under subsection (1) does not effect a revocation of a Crown grant or certificate of title issued, or a folio of the Register created, in respect of that land.

## **PART 5—DEDICATION AND RESERVATION OF LAND**

### **Division 1—Preliminary**

#### **Definitions**

78. In this Part and in Schedules 3, 4 and 5—

“area” has the same meaning as in the Local Government Act 1919;

“council” has the same meaning as in the Local Government Act 1919;

“ex officio member” means a person who is a member merely by being the holder of a particular office;

“member” means a member of a trust board;

“reserve” means land which is dedicated or reserved under this Act or which immediately before the commencement of this section was a reserve within the meaning of Part 3B of the Crown Lands Consolidation Act 1913, not in either case being—

(a) a common within the meaning of the Commons Regulation Act 1898;

(b) land within the meaning of the Trustees of Schools of Arts Enabling Act 1902; or

(c) land, or land of a class, in respect of which an order under section 79 is in force;

“reserve trust” means a corporation constituted under Division 4 and appointed as trustee of a reserve;

“trust board” means a trust board appointed under section 93.

#### **Order declaring land not to be reserve**

79. (1) If the Minister, by order published in the Gazette, so declares, land, or land of a class, specified or described in the order is not subject to the provisions of this Part.

(2) The Minister may not make an order under subsection (1) unless at least 14 days have elapsed after notice of intention to make the order has been published in a newspaper circulating in the locality in which the land is situated or in a newspaper circulating generally in the State.

### **Division 2—Dedications**

#### **Power of Minister to dedicate land**

80. (1) The Minister may, by notification in the Gazette, dedicate Crown land for a public purpose.

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- (2) The dedication takes effect on publication of the notification.

**Addition to dedicated land**

**81. (1)** The Minister may, by notification in the Gazette, add Crown land to any land dedicated under this Act.

- (2) On publication of the notification in the Gazette—

- (a) the added land becomes part of the dedicated land;
- (b) the added land becomes subject to the same dedication and trusts as the dedicated land;
- (c) any rules, regulations or by-laws applicable to the dedicated land become applicable to the added land; and
- (d) a reserve trust which is trustee of the dedicated land becomes trustee of the added land.

**Tabling of proposed dedication or addition in Parliament**

**82.** An abstract of a proposed dedication of land, or proposed addition to dedicated land, under this Act shall be laid before both Houses of Parliament at least 10 sitting days before the dedication or addition is made.

**Effect of dedication on reservations**

**83. (1)** Land may be dedicated or added to a dedication of land under this Act even if it is already reserved.

- (2) On publication of a notification of a dedication or addition of land under this Act, any reservation under this Act applying to the land is, to the extent that it applies to the land, revoked.

**Revocation of dedication**

**84. (1)** The Minister may, by notification in the Gazette, revoke a dedication made before or after the commencement of this section, but only if—

- (a) subsection (2) has been complied with; and
- (b) the proposed revocation has not been disallowed under subsection (3).

- (2) This subsection is complied with if—

- (a) notice of the proposed revocation is published in the Gazette; and
- (b) a copy of the notice is laid before each House of Parliament within 10 sitting days after its publication.

(3) Either House of Parliament may pass a resolution disallowing the proposed revocation if notice of the resolution is given within 14 sitting days of the House after the copy of the notice published in the Gazette is laid before it.



(4) On publication of the notification in the Gazette, the land affected vests in the Crown and becomes Crown land within the meaning of this Act.

**Requirement for assessment**

85. Land shall not be dedicated unless the Minister is satisfied that the land has been assessed under Part 3.

**Scope of revocation power**

86. A dedication of land may be revoked even if—

- (a) after dedication, a Crown grant has issued or a folio of the Register has been or is created; or
- (b) before dedication, the land had been alienated by the Crown and subsequently resumed, purchased or otherwise acquired by the Crown.

**Division 3—Reservations**

**Power of Minister to reserve land**

87. (1) The Minister may, by notification in the Gazette, reserve any Crown land from sale, lease or licence or for future public requirements or other public purpose.

(2) The reservation takes effect on publication of the notification.

**Addition to reserved land**

88. (1) The Minister may, by notification in the Gazette, add Crown land to any land reserved under this Act.

(2) On publication of the notification in the Gazette—

- (a) the added land becomes part of the reserved land;
- (b) the added land becomes subject to the same reservation and trusts as the reserved land;
- (c) any rules, regulations or by-laws applicable to the reserved land become applicable to the added land; and
- (d) a reserve trust which is trustee of the reserved land becomes trustee of the added land.

**Effect of other reservations**

89. (1) Land may be reserved or added to a reservation even if it is already reserved under this Act.

(2) On publication of a notification of reservation or addition to a reservation, any other reservation under this Act applying to the land is, unless the notification expressly provides otherwise, revoked to the extent that it applies to the land.

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(3) The revocation of a reservation does not affect any other reservation which includes all or part of the same land.

**Revocation of reservation**

90. (1) The Minister may, by notification in the Gazette, revoke the whole or part of a reservation of land under this Act.

(2) The Minister may not publish a notification under subsection (1) unless at least 14 days have elapsed after notice of intention to publish the notification has been published in a newspaper circulating in the locality in which the land is situated or in a newspaper circulating generally in the State.

(3) The revocation takes effect on publication of the notification in the Gazette.

**Requirement for assessment**

91. (1) Land shall not be reserved unless the Minister is satisfied that the land has been assessed under Part 3.

(2) No assessment is required if the reservation is from sale or for future public requirements.

**Division 4—Formation of reserve trusts****Reserve trusts**

92. (1) The Minister may, by notification in the Gazette, establish and name a reserve trust and appoint it as trustee of a specified reserve.

(2) A reserve trust established under subsection (1) is constituted by this Act as a corporation having as its corporate name the name assigned to the trust in the notification of its establishment.

(3) The Minister may, by notification in the Gazette, dissolve a reserve trust or alter the corporate name of a reserve trust.

(4) A reserve trust has the functions conferred on it by or under this Act.

(5) A reserve trust is charged with the care, control and management of the reserve of which it is appointed trustee.

(6) The affairs of a reserve trust shall be managed—

- (a) by a trust board with members appointed under section 93;
- (b) by a corporation appointed under section 95; or
- (c) if an administrator is appointed under section 117—by the administrator.

**Membership of trust board**

93. Apart from ex officio members, a trust board shall consist of at least 3, but not more than 7, members (none of them being a corporation) appointed by the Minister by notification in the Gazette.

**Matters affecting members of a trust board**

94. (1) Schedule 3 has effect with respect to the members of a trust board.

(2) Schedule 4 has effect with respect to pecuniary interests of members of a trust board.

(3) Schedule 5 has effect with respect to the procedure at meetings of a trust board.

**Appointment of corporation to manage reserve trust**

95. (1) The Minister may, by notification in the Gazette, appoint—

- (a) a council;
- (b) a corporation constituted by or under an Act providing for the holding, managing of or dealing with church property; or
- (c) any other corporation,

to manage the affairs of a reserve trust.

(2) A corporation so appointed has power to accept the appointment and to exercise all the functions of a manager of a reserve trust despite the provisions of the Act by or under which the corporation is constituted.

(3) A council may not be appointed to manage a reserve trust if the reserve is wholly or partly within the area of another council, except with the consent of the other council.

(4) A document is sufficiently executed by a reserve trust managed by a corporation if it is executed under the seal of the corporation instead of the seal of the trust.

**Vacation of office by corporate manager**

96. (1) A corporation which is the manager of a reserve trust vacates the office if—

- (a) it resigns its office by writing under its seal addressed to the Minister;  
or
- (b) it is removed from office by the Minister.

(2) The Minister may, by notification in the Gazette, remove such a corporation from office at any time.

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**Address for service of documents on reserve trust**

97. (1) The Minister may, by order published in the Gazette, specify an address as the address for service of documents on a specified reserve trust.

(2) The address specified is the address for service of documents personally or by post on the reserve trust.

**Application of Local Government Act where a council manages a reserve trust**

98. (1) If a council is the manager of a reserve trust and the reserve is a public reserve, the trust has all the functions of a council under the Local Government Act 1919 in relation to public reserves.

(2) This Act prevails to the extent of any inconsistency with the Local Government Act 1919 in relation to the public reserve and this section does not authorise a failure to comply with any provision of this Act.

(3) In this section, "public reserve" has the same meaning as it has in the Local Government Act 1919.

**Division 5—Trust property****Operation of Division**

99. (1) This Division does not affect the provisions of any other Act relating to a particular reserve or reserve trust.

(2) The functions of a reserve trust or the Minister under this Division are not affected by anything contained in any Crown grant issued for the reserve.

**Estate of trust**

100. (1) For the purposes only of this Part and a by-law under this Part, a reserve trust that, but for this section, would not have an estate in fee simple in the reserve has such an estate.

(2) The reserve trust is not capable of alienating, charging, granting leases of or licences in respect of, or in any way disposing of the whole or any part of the reserve, except in accordance with this Part.

(3) Revocation of the dedication or reservation of the whole or part of a reserve divests the reserve trust of any estate in the land affected by the revocation.

**Purchase etc. of other land**

101. (1) A reserve trust may, with the approval of the Minister—

- (a) purchase or take a lease of any land (whether or not adjoining the reserve) required by the trust for use in connection with the reserve;

- (b) expend trust money for or in connection with the improvement of land (with the consent of the owner) if the trust believes it will provide or improve access to, or facilities or amenities for visitors to, the reserve;
- (c) make donations out of trust money to a group, organisation or body for any purpose which, in the opinion of the Minister, will be of benefit to the reserve or the community generally.

(2) A reserve trust may expend trust money in using or improving land purchased or taken on lease by the trust.

(3) If a reserve trust purchases land or takes land on lease, any rules, regulations or by-laws applicable to the reserve become applicable to the land.

**Consent of Minister to sale, lease, licence or mortgage**

**102. (1)** A reserve trust may not sell, lease or mortgage land, or grant a licence (except a temporary licence) in respect of land, comprising the whole or any part of the reserve unless—

- (a) the trust has decided that it is desirable to do so on the terms and conditions specified in the decision;
- (b) in the case of a proposed sale, the trust has caused a notice to be published in a newspaper circulating in the locality of the land setting out the date and the terms and conditions of the trust's decision, the location of the land and other prescribed particulars;
- (c) the trust has (in the case of a proposed sale, not earlier than 14 days after the publication of the newspaper notice) applied to the Minister in writing for consent, giving full details of the proposal; and
- (d) the Minister has consented in writing to the proposal.

(2) The Minister may not give a consent under subsection (1) (d) to—

- (a) a sale;
- (b) a lease for a term exceeding 5 years; or
- (c) a lease for a term that, by the exercise of an option, could exceed 5 years.

unless at least 14 days have elapsed since notice of intention to give the consent has been published in the locality in which the land is situated or in a newspaper circulating generally in the State.

(3) The Minister's consent may relate to the whole or part only of the land with which the application is concerned

(4) If the application for consent proposes a sale, lease or licence, the Minister's consent—

- (a) may be general, authorising the proposal subject to such conditions, restrictions, reservations and covenants, and in such manner and within such time, as the Minister thinks desirable, or

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(b) may be specific, approving of a particular contract of sale, lease or licence.

(5) If the application for consent relates to a mortgage, the Minister's consent can only be given to the specific terms of the mortgage.

(6) In giving consent, the Minister may—

- (a) vary the terms and conditions to which the sale, lease, licence or mortgage is to be subject; and
- (b) impose such other terms and conditions as the Minister thinks desirable.

(7) The Minister may, at any time, wholly or partly withdraw the consent or vary its terms, but only if to do so would not prejudice the rights of third parties.

**Sale, lease, licence or mortgage in accordance with consent**

103. (1) A reserve trust may sell, lease, grant a licence in respect of or mortgage the reserve in accordance with the terms of the Minister's consent.

(2) If the Minister's consent to a sale, lease or licence is general, the sale, lease or licence must not proceed unless the price agreed on, the rent reserved or the charge for the licence has been submitted to and approved by the Minister.

(3) A mortgage under this Division may contain a power of sale.

(4) A lease or licence must not be granted under this Division for any purpose for which an authority, permit, lease or licence may be granted under the Fisheries and Oyster Farms Act 1935.

**Effect of conveyance of reserve land**

104. (1) Land sold and conveyed under this Division vests in the purchaser free from all trusts to which it was subject while vested in the reserve trust by or on behalf of which it was conveyed.

(2) When land is sold and conveyed under this Division, any dedication or reservation is revoked to the extent to which it affected the land before its conveyance.

**Execution of conveyances etc.**

105. (1) If a reserve trust proposes to exercise its functions under this Division, the Minister may appoint a person to execute conveyances and instruments and do all such other things as may be necessary for the due exercise of those functions.

(2) The receipt of the appointed person is a sufficient discharge to any purchaser, lessee, licensee or mortgagee paying money in good faith in respect of a sale, lease, licence or mortgage under this Division.

(3) A transfer, mortgage or lease of land under the Real Property Act 1900 which is signed by the appointed person has the same effect as if signed by the registered proprietor of the land.

(4) A purchaser, lessee, licensee or mortgagee dealing in good faith with the appointed person is not prejudiced or affected by any omission or irregularity in respect of the requirements of this Division.

(5) If—

(a) a signed document purports to appoint a person for the purposes of this section; and

(b) the signature purports to be that of the Minister,

it shall be presumed, unless the contrary is proved, that the document was signed by the Minister.

#### **Proceeds**

**106. (1)** The net amount received as the proceeds—

(a) from a sale, lease or licence (including a temporary licence) made or granted under this Division by a reserve trust; or

(b) from a mortgagee making a secured loan to a reserve trust,

shall be applied in accordance with the directions (if any) given by the Minister.

(2) The directions which the Minister may give include the following:

(a) a direction that the proceeds be applied by the reserve trust for the purchase of other land;

(b) a direction that the proceeds be paid to another reserve trust to be applied towards the care, control and management of the other trust's reserve;

(c) a direction that the proceeds be paid to the Consolidated Fund or to the Public Reserves Management Fund constituted under the Public Reserves Management Fund Act 1987.

(3) In the absence of a direction, the proceeds shall be applied for the general purposes of the reserve trust and may be invested or applied by the trust accordingly.

#### **Disposal of certain income of reserve trust**

**107. (1)** The Minister may direct a reserve trust to set aside a specified portion of its income and revenue for the payment of interest on, or the gradual extinction of, any debt.

(2) The trust shall comply with such a direction and invest the portion as the Minister directs.

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(3) A reserve trust may invest any funds not immediately required for the exercise of its functions if it does so as authorised by the Trustee Act 1925.

**Temporary licences**

108. (1) A reserve trust may, in respect of the whole or any part of a reserve, grant temporary licences for grazing or any other prescribed purpose.

(2) A temporary licence may be granted subject to conditions and is also subject to such conditions as may be prescribed.

(3) A temporary licence may not be granted for any purpose for which an authority, permit, lease or licence may be granted under the Fisheries and Oyster Farms Act 1935.

(4) A temporary licence ceases to have effect on the expiration of the prescribed period after it is granted unless it is revoked sooner or is granted for a shorter period.

**Termination of certain leases and licences**

109. (1) A lease or licence granted by a reserve trust terminates if the status of the whole or any part of the land the subject of the grant is affected unless the notification by which its status is affected otherwise provides.

(2) The status of the land is affected only if—

- (a) in the case of land dedicated or reserved under this Act—the dedication or reservation is revoked;
- (b) in the case of land set apart for any public purpose (but not dedicated or reserved under this Act)—the land ceases to be set apart or is dedicated or reserved under this Act.

(3) Before taking any action that would affect the status of part only of the land which is the subject of the lease or licence, the reserve trust and the lessee or licensee may agree that the lease or licence is to continue in force as if never granted in respect of that part.

(4) If such an agreement is made, the lease or licence—

- (a) does not terminate; and
- (b) continues in force in accordance with the agreement from the time the part's status is affected.

(5) No compensation is payable in respect of the termination of a lease or licence by this section.

**Saving of certain leases and licences**

110. (1) This section applies to the land comprised in a lease or licence granted by a reserve trust if the land—



(a) ceases to be a reserve; and

(b) is added to a reserve of which a reserve trust is trustee.

(2) The lease or licence affecting land to which this section applies continues in force—

(a) as if the land had not ceased to be a reserve; and

(b) as if the lease or licence had been granted by the reserve trust for the reserve to which the land is added.

(3) Neither section 109 (termination of certain leases and licences) nor any term or condition of the lease or licence prevents it from continuing in force.

#### **Dissolution of trust—disposal of property**

111. (1) If a reserve trust is dissolved, any real or personal property vested in the trust (except the reserve land) may be disposed of by the Minister in such manner as the Minister considers appropriate.

(2) For that purpose, land purchased by the trust may be dealt with by the Minister as if it were Crown land.

(3) The Minister may execute conveyances and instruments and do all such other things as may be necessary for the effectual exercise of the Minister's functions under this section.

(4) The proceeds of disposal of the property shall be dealt with in accordance with the Minister's directions.

### **Division 6—Plans of management**

#### **Preparation of plan of management**

112. (1) The Minister may cause a plan of management to be prepared for a reserve.

(2) A reserve trust may, and if the Minister so directs shall, prepare a plan of management for the reserve.

(3) If the Minister directs a reserve trust to prepare a plan of management, the reserve trust shall—

(a) prepare it within the time directed by the Minister; and

(b) forward a copy of it to the Minister.

(4) A plan of management prepared by a reserve trust shall include provision for such matters as the Minister requires.

#### **Referral of plans**

113. (1) If a plan of management for a reserve is prepared, the Minister—

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- (a) shall refer a copy of it to the reserve trust for consideration (unless it was prepared by the reserve trust);
- (b) may refer a copy of it to any other person for consideration; and
- (c) shall place a copy of it on public display for not less than 28 days.

(2) Any person may make representations concerning the plan to the Minister within the time allowed by the Minister.

(3) The Minister shall consider any such representations before adopting the plan.

**Adoption of plan**

**114. (1)** The Minister may adopt a plan of management for a reserve without alteration or with such alterations as the Minister thinks fit.

(2) If a plan of management is adopted—

- (a) the reserve trust shall carry out and give effect to it; and
- (b) no operations may be undertaken on or in relation to the reserve unless they are in accordance with the plan.

**Alteration or cancellation of plan**

**115. (1)** The Minister may from time to time alter a plan of management adopted under this Division or may cancel the plan.

(2) If a plan of management is cancelled, a new plan of management may be adopted, at the same time or later, in accordance with this Division.

(3) The Minister shall cause or direct a proposed alteration of a plan to be prepared and the alteration shall be prepared, referred and adopted as if it were a plan of management.

(4) The plan as altered becomes the plan adopted for the purposes of this Division.

**Plan of management for submerged land**

**116. (1)** If land usually submerged by water is wholly or partly the subject of a plan of management, the Minister shall refer the plan to the Minister administering the Fisheries and Oyster Farms Act 1935 before adopting it.

(2) The plan may not be adopted, altered or cancelled, in so far as it relates to the submerged land, except with the concurrence in writing of the Minister administering that Act.

**Division 7—Administrator of trust****Appointment of administrator**

**117. If—**

- (a) a trust board has no members; or
  - (b) a corporation vacates office as manager of a reserve trust,
- the Minister may, by notification in the Gazette, appoint an administrator of the trust.

**Functions of administrator**

**118.** The affairs of the reserve trust shall be managed by the administrator.

**Vacancies—administrator**

**119.** The Minister may by notification in the Gazette—

- (a) remove an administrator from office; or
- (b) fill a vacancy in the office of administrator.

**Remuneration of administrator**

**120. (1)** If the Minister so directs, an administrator is entitled to be paid such remuneration as the Minister directs.

**(2)** The office of administrator is not, for the purposes of any Act, an office or place of profit under the Crown.

**Division 8—Miscellaneous****Liability of reserve trust, members etc.**

**121. (1)** No matter or thing done by—

- (a) a reserve trust managed by a trust board or by an administrator;
- (b) a member of a trust board, or an administrator in the course of managing the affairs of a reserve trust; or
- (c) a person acting under the direction of a trust board, or of an administrator, in the course of managing the affairs of a reserve trust.

shall, if done in good faith for the purposes of executing this or any other Act, subject a member, an administrator or a person so acting personally to any action, liability, claim or demand.

**(2)** If a reserve trust is managed by a corporation, the corporation is jointly and severally liable with the reserve trust for any liability of the reserve trust.

**Reports etc. by reserve trust**

**122. (1)** A reserve trust shall—

- (a) furnish reports to the Minister at such times, concerning such matters, and specifying such information, as may be prescribed; and
- (b) keep such records (including accounting records) as may be prescribed.

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(2) The Minister may grant an exemption from the requirements of subsection (1) and the exemption—

- (a) may relate to a particular reserve trust or a class of reserve trusts;
- (b) may be unconditional or subject to conditions; and
- (c) shall operate for a specified period, or until further notice, as may be stated by the Minister when granting the exemption.

(3) A reserve trust shall, at the request of the Minister—

- (a) give the Minister such information as the Minister requires in relation to the operations of the trust; and
- (b) forward to the Minister specified records (including accounting records), or copies of or extracts from specified records, kept by the trust.

**Inspection etc. of reserve trust**

123. (1) The Minister may appoint a person to inquire into, or carry out an audit of, any of the affairs of a reserve trust.

(2) The person appointed may, for the purposes of the inquiry or audit—

- (a) inspect and take copies of or extracts from any records (including accounting records) of the trust; or
- (b) require any person concerned in the management of the trust to give information and answer questions relating to the affairs of the trust.

(3) The power of the appointed person to inspect the records of a reserve trust includes the power to inspect any records of a lessee or licensee which the trust has power to inspect under the lease or licence.

(4) A person shall not—

- (a) refuse or fail without lawful excuse to allow the appointed person access to records to which the person is entitled;
- (b) refuse or fail without lawful excuse to give information or answer questions, as required by the appointed person; or
- (c) wilfully obstruct or delay the appointed person in the exercise of a function under this section.

Maximum penalty—subsection (4): 5 penalty units.

**Removal of persons**

124. (1) A member of the trust board for a reserve trust, an administrator of the affairs of a reserve trust or a ranger or other officer appointed by a reserve trust, may remove a person from the reserve or a public place (within the meaning of the Summary Offences Act 1988) if—

- (a) the person is found contravening a by-law applicable to the reserve;
- or

- (b) the person, by disorderly conduct in the reserve or public place, causes annoyance or inconvenience to persons in the reserve or going to or coming from the reserve.

(2) For the purpose of removing a person from a reserve, whether under this section or under a by-law, the assistance of a member of the Police Force may be called in.

**Transitional provisions—additions to reserves**

**125.** (1) If the whole of a reserve is added to another reserve under this Part, the transitional provisions of this section operate from the time the reserve is added.

(2) For the purposes of this section—

- (a) the reserve trust for the added reserve is called the former trustee;
- (b) the reserve trust for the other reserve is called the new trustee; and
- (c) the transitional provisions affect the former trustee only in relation to matters and things connected with the added reserve.

(3) The transitional provisions are as follows:

- (a) all the property of the former trustee becomes the property of the new trustee, including land purchased by the former trustee;
- (b) all money and liquidated and unliquidated claims payable to or recoverable by the former trustee are payable to or recoverable by the new trustee;
- (c) all proceedings pending at the suit of or against the former trustee become proceedings pending at the suit of or against the new trustee;
- (d) the new trustee may pursue the same remedies for the recovery of any such money and claims and for the prosecution of any such proceedings as the former trustee might have done;
- (e) all contracts, agreements, arrangements and undertakings entered into with, and all securities lawfully given to or by, the former trustee have effect as contracts, agreements, arrangements and undertakings entered into with, and securities given to or by, the new trustee;
- (f) the new trustee may enforce and realise any security or charge in favour of the former trustee and may exercise any functions conferred on the former trustee as if the security or charge were in favour of the new trustee;
- (g) all debts, moneys and claims, liquidated and unliquidated, that were due and payable by or recoverable against the former trustee are payable by and recoverable against the new trustee;
- (h) all liquidated and unliquidated claims for which the former trustee would have been liable are liquidated and unliquidated claims for which the new trustee is liable;

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- (i) all other acts, matters and things done or omitted by, or done or suffered in relation to, the former trustee have the same force and effect as they would have if they had been done or omitted by, or done or suffered in relation to, the new trustee;
- (j) an attornment to the new trustee by a lessee from the former trustee is not required.

(4) If part only of a reserve is added, the former trustee and the new trustee shall, as soon as practicable after notification of the addition, arrange and agree on a division of the assets, debts and liabilities of the former trustee so that those appropriate to the added part and the remaining part may be determined.

(5) If agreement is not reached, the matter may be determined by the Minister.

**Provisions applicable to certain showgrounds etc.**

126. (1) This section applies to land, or land of a class, which the Minister has, by order published in the Gazette, declared to be land to which this section applies.

- (2) The only land which can be the subject of such an order is land—
  - (a) which has been reserved, dedicated or held for a showground or set apart, dedicated, reserved or held for any public purpose under any Act;
  - (b) of which there are trustees, whether or not appointed under an Act; and
  - (c) which is not, or is not part of, a reserve.

(3) Division 5 (except as provided by subsection (4) and sections 109 and 110) applies to and in respect of land to which this section applies, and to the trustees of the land, as if the land were a reserve but does so without affecting any other power of the trustees to sell, lease or mortgage the land or grant a licence in respect of the land.

(4) If the Minister's order (or another order of the Minister published in the Gazette) so provides, Division 5 does not apply to the land and the trustees of the land to the extent specified in the order.

**Provisions applicable to other reserved etc. land**

127. (1) If the Minister so declares by order published in the Gazette and for the time being in force, this Part (or this Part with stated modifications) applies to land described in the order which—

- (a) has been set apart, reserved, dedicated or held for a public park or for any other public purpose; and
  - (b) is not, or is not part of, a reserve,
- as if the land so described were a reserve.

(2) Subsection (1) has effect despite the provisions of any other Act, or a notice or other document, that provides for the appointment of trustees.

**By-laws**

**128. (1)** The Governor may make by-laws for or with respect to—

- (a) the care, control and management of a reserve;
- (b) the regulation of the use and enjoyment of a reserve;
- (c) the regulation of meetings of a trust board and the conduct of business at those meetings;
- (d) the custody and use of the seal of a reserve trust;
- (e) the securing of decency and order on a reserve;
- (f) the removal of trespassers and other persons causing annoyance or inconvenience on a reserve;
- (g) the regulation or prevention of the taking of intoxicants on to, and their consumption on, a reserve;
- (h) the regulation and control of the taking of animals on to a reserve or the permitting or suffering of animals to be on a reserve;
- (i) the regulation, control or prohibition of parking, camping or residing on a reserve, the making of charges for parking, camping or residing on a reserve, and the collecting and receiving of those charges;
- (j) the preservation or protection of, or prevention of damage to, trees, shrubs, ferns, creepers, vines, palms, plants, flowers, herbage or other vegetative cover on a reserve;
- (k) the protection or removal of all dead timber, logs and stumps on a reserve, whether standing or fallen;
- (l) the preservation, protection or removal of any rocks, soil, sand, stone or other similar substances on or under or comprising part of a reserve;
- (m) the preservation or protection of any animals, birds and other fauna on a reserve, whether native or introduced;
- (n) the payment of charges or entrance fees by persons, clubs or associations using or entering a reserve or improvements on a reserve, or any specified part or parts of the reserve or improvements, and the collecting and receiving of those charges and fees;
- (o) the reservation of any portion of a reserve for such separate or exclusive uses as the by-laws may prescribe;
- (p) the closing of a reserve or any part of a reserve and the conditions to be observed with regard to that closure;
- (q) the regulation, control or prohibition of private trading on a reserve;
- (r) the appointment and removal of rangers in respect of a reserve and the defining of their functions;

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- (s) the prescription of all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) A by-law may create an offence punishable by a maximum penalty not exceeding 5 penalty units.
- (3) A penalty recovered for a breach of a by-law shall be paid to the reserve trust of the reserve affected by the breach, for the purposes of the reserve trust.
- (4) By-laws made for the purposes of subsection (1) (i) have effect despite section 100 or any other Act.
- (5) By-laws may not be made with respect to a matter if power is conferred on a reserve trust, the Governor or the Minister to make rules, regulations, by-laws or ordinances with respect to that matter under any other Act.
- (6) A reserve trust shall ensure that a copy of the by-laws applicable to the reserve is displayed in a conspicuous place in the reserve.
- (7) In this section—
  - “animals” and “fauna” do not include fish within the meaning of the Fisheries and Oyster Farms Act 1935;
  - “reserve” includes land purchased or leased by the reserve trust.

**PART 6—FORFEITURE OF HOLDINGS****Minister may forfeit holdings**

- 129.** (1) The Minister may declare a holding to be forfeited if—
- (a) the holder fails to comply with a provision of this or any other Act applying to, or a condition attaching to, the holding;
  - (b) the holder fails to make any payment due under this Act or the Crown Lands (Continued Tenures) Act 1989, the regulations or a condition attaching to the holding within 3 months of the due date;
  - (c) the holder gives up or parts with possession of the whole or any part of the holding except as authorised by or under this Act or the Crown Lands (Continued Tenures) Act 1989, the regulations or a condition attached to the holding; or
  - (d) the holding has otherwise become liable to forfeiture under this Act or the Crown Lands (Continued Tenures) Act 1989.
- (2) This section does not apply to a failure to pay money if the payment of the money is secured by a mortgage.
- (3) The acceptance of money by the Crown in respect of a forfeited holding does not operate as a waiver of the forfeiture.



**Notification of forfeiture****130. Forfeiture of a holding takes effect—**

- (a) if the holding is under the Real Property Act 1900—on the Minister causing a notification of the forfeiture to be entered in the Register; or
- (b) if the holding is not under the Real Property Act 1900—on notification of the forfeiture in the Gazette.

**Operation of forfeiture**

**131. (1)** On forfeiture of a holding the land in the holding vests in the Crown and all money paid to the Crown in respect of the holding is forfeited.

(2) Forfeiture of a holding does not operate to release the holder from any obligation to comply with a condition or provision which, by its nature, is required to be complied with after the holding is forfeited.

**Reversal of forfeiture**

**132. (1)** The Minister may, conditionally or unconditionally, reverse a forfeiture of a holding.

**(2)** Reversal of the forfeiture of a holding shall be effected—

- (a) if the holding is under the Real Property Act 1900—on the Minister causing a notification of the reversal to be entered in the Register; or
- (b) if the holding is not under the Real Property Act 1900—on notification of the reversal in the Gazette.

**(3)** On reversal of a forfeiture, the forfeiture shall be deemed never to have taken effect.

**Definition**

**133. In this Part—**

“holding” includes the land formerly comprised in an incomplete purchase in an irrigation area.

**PART 7—MISCELLANEOUS****Division 1—Acquisition etc. of land****Power of Minister to accept gifts of land**

**134. (1)** The Minister may acquire any land by gift or devise and may agree to the conditions of the gift or devise.

(2) The rule of law against remoteness of vesting does not apply to any condition to which the Minister has agreed.

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(3) Subject to subsection (5), land acquired under this section or, where the land is or is to be divided into separate parts, each part of the land shall—

- (a) be dedicated under section 80 or reserved under section 87; and
- (b) be subject to the provisions of this Act—
  - (i) applicable to land dedicated under section 80 or reserved under section 87, as the case may be; or
  - (ii) if the dedication or reservation of the land is revoked under this Act—applicable to land formerly dedicated under section 80 or formerly reserved under section 87, as the case may be.

(4) For the purposes of subsection (3) (a), land, or a part of land, acquired under this section is Crown land.

(5) Land acquired under this section may not be dealt with in breach of a condition to which the Minister has agreed.

(6) If a condition to which the Minister has agreed so provides—

- (a) any part or parts of land acquired under this section may be used by any person in accordance with that condition to the exclusion or partial exclusion of the public; and
- (b) the rights and powers of the Minister or of any other person under this Act may not be exercised in respect of land acquired under this section or may not be exercised in respect of the land to the extent specified in the condition.

(7) Despite anything in this or any other Act or any rule of law—

- (a) the Minister may transfer land acquired under this section, or grant a lease, permit, licence or easement of or in respect of the land, in accordance with a condition to which the Minister has agreed; and
- (b) the land may be transferred, or the lease, permit, licence or easement may be granted, without consideration, if the condition so provides, or for such consideration as is provided for in the condition.

(8) If a condition of a gift or devise of land to which the Minister has agreed so provides, the Minister may pay the cost or part of the cost of the transfer of the land to the Minister and of any subsequent dealing with the land.

(9) A condition of a gift or devise of land has no effect for the purposes of this section unless it is expressed in writing in the agreement under which, or the instrument by which, the land is given or devised.

**Acquisition of land**

**135. (1)** The Minister may, by lease, exchange, purchase, resumption or appropriation, acquire land for any public purpose.

(2) A resumption or appropriation (including an appropriation of public land) shall be effected by the Governor under the Public Works Act 1912.

(3) A resumption or appropriation shall be taken to be for an authorised work with the Minister as Constructing Authority.

(4) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of the expenditure on any works constructed under this Act, but section 38 of that Act applies to the expenditure.

(5) For the purposes of this section, Schedule 6 has effect.

**Withdrawal from lease or licence for public purposes**

**136. (1)** The Minister may, by notification in the Gazette, withdraw from any lease or licence under this Act or the Crown Lands (Continued Tenures) Act 1989 any land required for a public purpose.

(2) A withdrawal does not operate to extinguish any debt to the Crown relating to the land withdrawn, except to the extent to which the Minister directs.

(3) The Minister may, by notification in the Gazette, revoke or modify any withdrawal.

(4) Subject to the conditions attaching to, or the provisions applying to, a lease or licence, compensation is payable for land withdrawn under this section.

(5) The provisions of the Public Works Act 1912 relating to payment of compensation for resumed land apply, with such modifications as may be prescribed, to the payment of compensation under this section.

(6) On the withdrawal of land from a lease or licence, the Minister may—

(a) if the rent payable in respect of the lease or licence is subject to periodic redetermination—redetermine the rent and adjust (in proportion to the land withdrawn) any other money payable in respect of the lease or licence; or

(b) if the rent is not subject to periodic redetermination—proportionately adjust—

(i) the rent and any other money payable in respect of the lease or licence; and

(ii) if the withdrawal is from a lease—any rent base for the lease.

(7) If a part of a rent base apportioned under subsection (6) to a lease is less than \$100, that part of the rent base is increased to \$100.

(8) A part of a rent base apportioned under subsection (6) to a lease (or such a part of a rent base as increased under subsection (7)) shall be taken, for the purposes of clause 5 of Schedule 5 to the Crown Lands (Continued Tenures) Act 1989 (adjustment of certain rents in line with Consumer Price Index), to have been the annual rent of the lease as the commencement of that clause.

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- (9) The provisions of Division 3 relating to—
- (a) the redetermination of the rent of leases; and
  - (b) objections and appeals against redeterminations of rent,
- apply to the redetermination of the rent of a lease under this section as if the conditions of the lease provided for the redetermination.

**Surrender of land**

137. (1) The holder of any land or of any lease from the Crown under this Act or the Crown Lands (Continued Tenures) Act 1989 may, with the consent of the Minister, surrender the whole or a part of the land or lease to the Crown.

(2) A surrender does not operate to extinguish any debt to the Crown relating to the land or lease surrendered, except to the extent to which the Minister directs.

(3) On surrender, the land or the land leased (to the extent to which it is not Crown land) becomes Crown land.

(4) With the agreement of the lessee, the Minister may adjust the rent of a lease on surrender of part of the land leased.

**Certain land may be declared to be Crown land**

138. (1) If any land was or is, before or after the commencement of this section—

- (a) appropriated or resumed for any public purpose and vested in a Minister of the Crown on behalf of the Crown by or under the authority of an Act;
- (b) acquired by or on behalf of the Crown by gift or otherwise; or
- (c) appropriated or resumed and vested in a public authority, or otherwise acquired by or vested in a public authority, by or under the authority of an Act,

the Minister may, by notification in the Gazette, declare that the land may be dealt with as if it were Crown land.

(2) The declaration may be limited to the surface of the land or to the surface and to such depth below the surface as is stated in the notification.

(3) A declaration may not be made in respect of land vested in or acquired by or on behalf of a public authority without the consent of the public authority.

(4) A declaration—

- (a) may contain provisions relating to the discontinuation or continuation of any interests affecting the land; and
- (b) has effect according to its tenor.

(5) In this section—

“public authority” means—

- (a) the Water Administration Ministerial Corporation;
- (b) a council as defined in the Local Government Act 1919;
- (c) a pastures protection board constituted or continued by or under the Pastures Protection Act 1934;
- (d) a reserve trust established under Part 5; or
- (e) a public body declared by the Minister, by order published in the Gazette, to be a public authority for the purposes of this section.

#### **Division 2—Alteration of conditions etc.**

##### **Alteration of conditions or purposes and suspension etc. of conditions**

**139.** (1) On application by, or with the consent of, the holder, the Minister may direct that—

- (a) the conditions attaching to a holding or land; or
- (b) the purpose of a holding,

be altered, modified, added to or revoked.

(2) On application by the holder, the Minister may exempt (either permanently or temporarily and to such extent as may be specified) the holder from complying with a condition attaching to a holding or land.

(3) An exemption may be conditional or unconditional.

##### **Removal of conditions etc.**

**140.** The Minister may direct that any covenant, condition, reservation or provision attaching or applying to a holding or land shall cease to attach or apply to the holding or land.

##### **Recording of directions**

**141.** The Registrar-General shall make such recordings in the Register as are necessary to give effect to a direction under this Division of which the Registrar-General is notified.

#### **Division 3—Determination of rent**

##### **Objections and appeals against determinations or redeterminations of rent**

**142.** (1) This Division applies to—

- (a) a lease or licence the conditions of which provide for the redetermination of the rent by the Minister (unless those conditions provide that this section is not to apply to the lease or licence);
  - (b) a redetermination of the rent of a lease or licence under section 136
- (6) (a); and

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- (c) a determination or redetermination of rent under section 61, 62, 63 or 72 (enclosure permits).
- (2) The Minister shall give notice of a determination or redetermination of the rent of a lease, licence or enclosure permit to the holder.
- (3) The notice must indicate that the holder may object to the determined or redetermined rent.
- (4) The Minister shall consider any objection lodged and by written notice inform the objector—
  - (a) whether the determined or redetermined rent is to stand or be varied; and
  - (b) of the name of the tribunal to which, under subsection (5), the objector may appeal if dissatisfied with the Minister's decision.
- (5) An appeal against the Minister's decision lies—
  - (a) to the local land board if the determined or redetermined annual rent does not exceed \$10,000 or such greater amount as may be prescribed; or
  - (b) in any other case, to the Land and Environment Court.
- (6) On such an appeal, the local land board or the Court may affirm the Minister's determination or redetermination or substitute its own.
- (7) A redetermination of rent of a lease or licence takes effect in accordance with the conditions of the lease or licence even if an objection or an appeal has been lodged.
- (8) A determination or redetermination of rent by the Minister under section 61, 62, 63 or 72 (enclosure permits) takes effect from the date of the determination even if an objection or an appeal has been lodged.
- (9) On completion of the objection and appeal process, any necessary adjustments may be made.

**Determination or redetermination of rent—principles**

**143.** In redetermining the rent of a lease or licence (the conditions of which provide for the redetermination of the rent) or determining or redetermining rent for the purposes of section 61, 62, 63 or 72 (enclosure permits), the Minister, the local land board and the Land and Environment Court shall apply the following principles:

- (a) the rent shall be the market rent for the land comprised in the lease, licence or enclosure permit having regard to any restrictions, conditions or terms to which it is subject;
- (b) any improvements on the land which were made by the holder, or are owned or in the course of being purchased from the Crown by the holder, shall be disregarded;

- (c) regard may be had to any additional value which, because of the lease, licence or enclosure permit, has accrued, or may reasonably be expected to accrue, to other land held by the holder;
- (d) regard may be had to the duration of the time for which the rent determined will be payable.

#### **Division 4—Payments**

##### **Liability of incoming holder to pay arrears**

**144. (1)** For the purposes of this section—

- (a) “holding” means a holding of a prescribed class; and
- (b) an amount due for payment in respect of a holding includes any amount that would, but for a deferment, postponement or funding granted or directed under the Crown Lands Acts, be due for payment in respect of the holding.

**(2)** A person who is the holder of a holding is liable to pay in respect of the holding any amount that, when the person became the holder, was due and unpaid under—

- (a) the Crown Lands Acts;
- (b) the regulations under those Acts; or
- (c) a condition attached to the holding.

**(3)** If a person who is a holder pays, in respect of a holding, any amount (other than an amount that is attributable to rent or to interest charged under section 148) that before the person became the holder of the holding, was due and unpaid under—

- (a) the Crown Lands Acts;
- (b) the regulations under those Acts; or
- (c) a condition attached to the holding,

the person may recover the amount as a debt owed by the person who was the holder of the holding when the amount became due.

**(4)** If a person who is a holder pays, in respect of a holding, any amount—

- (a) that is attributable to rent or to interest charged under section 148; and
- (b) that, before the person became the holder of the holding, was due and unpaid under the Crown Lands Acts, the regulations under those Acts or a condition attached to the holding,

the person may recover an amount calculated under subsection (5) as a debt owed by the person who was the holder of the holding during the period in respect of which the amount paid was due.

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(5) The amount recoverable from a person under subsection (4) is the remainder after deducting from the amount paid any part of it that, calculated on a daily basis, would be attributable to a period when the person was not the holder.

(6) For the purposes of, but without limiting, subsections (3), (4) and (5), a person—

- (a) is a holder during a period determined under subsection (7); and
- (b) is not a holder during a period determined under subsection (8).

(7) The period determined under this subsection—

- (a) begins when the person acquires a right to be registered or recorded as the holder of an estate or interest in the holding; and
- (b) ends when the person is registered or recorded as the holder of the estate or interest.

(8) The period determined under this subsection—

- (a) begins when another person acquires a right to be registered or recorded as the holder of an estate or interest in the holding; and
- (b) ends when the other person is registered or recorded as the holder of the estate or interest.

(9) Nothing in this section affects any agreement or any rule of law or equity with respect to the ultimate liability for payment of any amount due in respect of a holding.

**Certificate as to amount due**

145. (1) The Minister or a prescribed authority or person may, in respect of any holding of a prescribed class, issue a certificate as to the amounts payable to the Crown under the Crown Lands Acts, the regulations under those Acts or any condition attached to the holding.

(2) A certificate under this section is admissible in any legal proceedings as evidence of the matters certified.

**Minimum rents**

146. The annual rent of a holding (except a lease the rent of which is not subject to redetermination) or of an enclosure permit shall not in any case be less than the prescribed amount as at the time that the rent is due and payable.

**Recovery of money**

147. (1) Money payable under the Crown Lands Acts is a debt due to the Crown and is recoverable by the Minister as such a debt.



(2) A certificate of the Minister that a stated amount of money is payable under the Crown Lands Acts by a named person is, in any proceedings instituted against the person for the recovery of that money, evidence of the matters stated.

**Interest on arrears**

148. (1) Interest accrues day by day on any amount payable to the Crown under the Crown Lands Acts and unpaid 3 months after the due date.

(2) The interest shall be calculated as from the due date at the rate applying under an Act repealed by this Act or at the rate prescribed for the purpose of this subsection (whichever is applicable) during the period in which the amount was outstanding.

(3) This section does not apply to an amount that has become payable to the Crown in respect of an incomplete purchase because the purchase has been transferred.

**Forfeiture etc. not to extinguish debts**

149. The forfeiture, termination or expiration of a holding or the cancellation or variation of an enclosure permit does not operate to extinguish any debt to the Crown in respect of the holding or permit unless the Minister otherwise approves.

**Postponement, waiver etc. of payments**

150. (1) If the Minister so directs—

- (a) payment of the whole or part of any amount payable to the Crown under the Crown Lands Acts is postponed or is waived;
- (b) the whole or part of any debt to the Crown under the Crown Lands Acts is extinguished;
- (c) the whole or part of any amount paid to the Crown under the Crown Lands Acts shall be refunded;
- (d) the instalments payable to the Crown in respect of a purchase of land or in respect of any other debt payable to the Crown are varied or interest only may be paid instead of instalments;
- (e) any interest is, or any fees, deposits, costs or other amounts payable to the Crown under the Crown Lands Acts are, varied; or
- (f) the whole or part of any amount payable to the Crown under the Crown Lands Acts shall be funded and made payable as a separate debt.

(2) A direction in respect of an amount may be unconditional or may be subject to conditions, including conditions—

- (a) requiring payment of interest on the amount at a rate not exceeding the prescribed rate; or

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- (b) requiring payment of the amount in some other manner than that required under the Crown Lands Acts.
- (3) The Minister may amend or revoke a direction.

**Rebates of rent**

151. The Minister may, on such conditions as the Minister thinks fit, grant a rebate of rent in respect of a prescribed class of holder or in respect of a holding which is used for a prescribed purpose.

**Alteration of due dates for payments**

152. (1) The Minister may, if satisfied that it is expedient for administrative purposes to do so, direct that any amounts payable at recurring times under the Crown Lands Acts be payable at such altered times (recurring at the same intervals) as are specified in the direction.

(2) A direction may be given in respect of amounts whether or not they have become payable.

(3) If it is necessary to pay a proportionate part of an amount because a time of payment has been altered, it is payable at a time directed by the Minister.

(4) Notice of a direction shall be given to the holder for the time being of the holding or enclosure permit in respect of which the amount is payable.

(5) A direction—

- (a) may be given in respect of all holdings or enclosure permits, any class of holding or enclosure permit or a particular holding or enclosure permit;
- (b) on notice being given as required, has effect according to its tenor;
- (c) may be given from time to time; and
- (d) may be amended or revoked by the Minister.

**Division 5—Protection of public land****Definitions**

153. In a provision of this Division—

“authorised person” means—

- (a) a member of the Police Force;
- (b) a person holding an office, position or rank prescribed for the purposes of this definition; or
- (c) a person authorised by the Minister for the purposes of the provision;

“erection”, in relation to a structure, includes any work carried out in creating the structure;

“public land” means Crown land or land within a reserve as defined in Part 5 or any other land granted, dedicated or reserved for a public purpose;

“structure” includes—

- (a) any building;
- (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;
- (c) any roadwork, pathway or paving;
- (d) any works for the reclamation of land that are or are liable to be, or would, but for the reclamation, be or be liable to be, covered wholly or partly by water; and
- (e) any excavation works, drain, canal, sump or foundation, whether lined or unlined;

“vacant public land” means public land which is not held under lease or licence from the Crown or from the trustees of the land.

### **Operation of Division**

**154. (1)** Nothing in this Division affects any other law applying to public land, but a person is not liable to be punished twice for an act or omission that constitutes an offence under both this Division and any other law.

**(2)** Regulations or by-laws applying to public land 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 Division.

**(3)** Nothing in this section authorises the making of regulations or by-laws that could not be made if this section were not in force.

### **Offences on public land**

**155. (1)** A person shall not, without lawful authority—

- (a) reside on public land;
- (b) erect a structure on public land;
- (c) depasture stock on public land;
- (d) drive stock on public land;
- (e) clear, dig up or cultivate public land;
- (f) enclose public land (other than a road or watercourse to which section 63 applies);
- (g) fail to pay any rent due and payable in respect of the enclosure of public land that is a road or watercourse;

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- (h) remove from public land, or cut, dig up, disturb, displace, stack, heap or in any other way interfere with, any tree, timber, turf, stone, clay, shells, earth, sand, gravel or any other thing, whether growing on or in, or being in, on or under or forming part of, public land; or
- (i) deposit or leave on public land—
  - (i) any rubbish, litter, refuse, dead animal, filth or other similar matter; or
  - (ii) any matter of a prescribed class or description, whether or not of a kind referred to in subparagraph (i),except in a place or receptacle provided for the purpose.

Maximum penalty: 20 penalty units.

(2) A person shall not cause to be done anything that is prohibited by subsection (1) (b)–(f), (h) or (i).

Maximum penalty: 20 penalty units.

(3) In proceedings for an offence 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.

**Unauthorised use of structures or land**

**156. (1) The Minister—**

- (a) may cause a notice to be served on a person prohibiting the person, without lawful authority, from making use of any structure erected on public land or from carrying on any prescribed activity on public land; or
- (b) may cause a notice to be displayed in a conspicuous place on or near public land prohibiting persons generally, without lawful authority, from making use of any structure or carrying on any prescribed activity on the land.

(2) A person on whom a notice is served shall not, without lawful authority, make use of the structure or carry on the activity to which the notice relates after the expiration of a period specified in the notice.

Maximum penalty: 20 penalty units.

(3) A person shall not, without lawful authority, make use of a structure or carry on a prescribed activity on public land if that use or activity is prohibited by a notice displayed in a conspicuous place on or near the land.

Maximum penalty: 20 penalty units.

(4) In proceedings for an offence 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.

**Compensation**

**157. (1)** In addition to any penalty imposed for an offence arising under section 155 or 156, a person convicted of the offence is liable to pay such amount by way of compensation (including an amount in substitution for rent that might otherwise have been payable) as the court before which the person is convicted may order.

**(2)** Any amount ordered to be paid shall be paid by the offender to the clerk of the court for payment to the Secretary.

**(3)** An order under this section operates as a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the Justices Act 1902.

**(4)** An order made by a court under section 75B of the Justices Act 1902 or section 556A of the Crimes Act 1900 in any proceedings for an offence referred to in subsection (1) operates for the purposes of that subsection as a conviction for the offence.

**Removal of unauthorised structures**

**158. (1)** For the purposes of this section, a structure is on public land without lawful authority if it is—

(a) a structure the erection of which was not, at the time of its erection, authorised by or under the provisions of this or any other Act (other than Part 11 or 12A of the Local Government Act 1919 or the Environmental Planning and Assessment Act 1979), not being a structure referred to in paragraph (b); or

(b) a structure—

(i) the erection or use of which was authorised by or under the provisions of this or any other Act (other than Part 11 or 12A of the Local Government Act 1919 or the Environmental Planning and Assessment Act 1979);

(ii) that is or was required, by or under those provisions, to be removed at or within a specified time; and

(iii) that has not been so removed.

**(2)** The Minister may cause any structure that is on public land without lawful authority to be removed, together with the contents of the structure.

**(3)** The Minister may cause to be displayed or published a notice requiring any person—

(a) who claims to have authority to erect, maintain or use a structure erected on any public land, or any part of the structure; or

(b) who claims any interest in the structure,

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to deliver to the Minister a statement in writing signed by the person stating by what authority the person erected or is entitled to maintain or use the structure or part or by what authority the person claims any interest in the structure.

(4) The notice shall be—

- (a) displayed on or adjacent to the structure; or
- (b) published in a local newspaper or such other newspaper (if any) as the Minister may determine.

(5) A person who, within 1 month after display or publication of the notice, fails to deliver the statement to the Minister has no claim against the Minister or any other person removing the structure or contents.

(6) The Minister may cause anything removed under this section—

- (a) to be destroyed, sold or stored;
- (b) to be returned to a person considered by the Minister to be its owner; or
- (c) if it is stored under paragraph (a) and not returned under paragraph (b)—to be destroyed or sold.

(7) The Minister may, on condition that it be removed, sell anything that the Minister may cause to be removed under this section.

(8) The Minister may recover as a debt due to the Crown the expenses incurred in the removal, destruction, sale or storage of the structure, part or contents—

- (a) if the structure or part was erected without lawful authority—from the person who erected the structure or caused it to be erected;
- (b) whether the structure or part was erected with or without lawful authority—from the person who has made use of the structure—
  - (i) if a notice was served on the person under section 156 (1) in respect of the structure—after the expiration of the period specified in the notice; or
  - (ii) if a notice was displayed or published under this section in respect of the structure and it is proved that the person knew, or ought reasonably to have known, of the notice—after the expiration of a period of 1 month after which it was displayed or published;
- (c) if the structure is a structure referred to in subsection (1) (b)—from the person who was required, by or under the provisions referred to in subsection (1) (b), to remove the structure; or
- (d) if the expenses are recoverable under paragraphs (a), (b) and (c) from more than one of those persons—from both or all of them jointly and each of them severally.

**Removal of trespassers from public land**

**159. (1)** If an authorised person lays before a justice an information in writing alleging that a person—

- (a) is in unlawful occupation of public land; or
- (b) is unlawfully using public land,

the justice may issue a summons for the appearance of the person before a Local Court.

**(2)** Unlawful occupation or use includes occupation or use purporting to be under a forfeited or expired holding.

**(3)** On appearance of a person in answer to a summons (or on proof of service of a summons on the person or at the person's last known place of residence or business), the Local Court shall hear and inquire into the subject-matter of the information.

**(4)** On being satisfied as to truth of an information, the Local Court shall issue a warrant addressed to any authorised person requiring and authorising the person to—

- (a) dispossess and remove the person in unlawful occupation of, or unlawfully using, the land;
- (b) remove any buildings or goods from the land; and
- (c) take possession of the land on behalf of the Crown.

**(5)** A Local Court, for any reason it thinks fit, may order that the execution of a warrant be delayed for a specified time.

**(6)** In proceedings under this section a Local Court may make such orders as to the payment of costs as to the Court seem just and reasonable.

**Vehicles on vacant public land**

**160. (1)** In this section—

“vehicle” includes—

- (a) a motor car, motor carriage, motor cycle or other apparatus propelled on land, snow or ice wholly or partly by volatile spirit, steam, gas, oil or electricity;
- (b) a boat or other object that, while floating on water or submerged, whether wholly or partly, under water, is wholly or partly used for the conveyance of persons or things;
- (c) an apparatus that, while propelled in the air by human or mechanical power or by the wind, is wholly or partly used for the conveyance of persons or things;
- (d) an apparatus propelled on land, snow or ice by human or animal power or by the wind; and

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(e) a trailer or caravan, whether or not it is in the course of being towed.

(2) A reference in this section to the Minister includes, if the reference is in relation to land in respect of which a reserve trust has been appointed, a reference to the reserve trust.

(3) The Minister may give such directions as to the bringing of vehicles into, and the use and parking or mooring of vehicles in, any vacant public land as the Minister thinks fit, and any such direction—

- (a) may be limited as to time, place or subject-matter; and
- (b) may be varied or revoked by the Minister.

(4) A direction given under subsection (3) has effect only while there is erected or displayed on or near, or marked on, the land to which the direction relates a sign that is notice of the direction.

(5) The direction appearing on a sign that is—

- (a) erected or displayed on or near; or
- (b) marked on,

any vacant public land with the authority of the Minister has effect as a direction, for the time being in force, given under subsection (3) in relation to the land, and the sign is, for the purposes of subsection (4), notice of that direction.

(6) A person shall not contravene a direction having effect under this section.

Maximum penalty: 5 penalty units.

(7) A person shall not interfere with, alter or remove any sign erected or displayed with the authority of the Minister on or near, or marked with that authority on, vacant public land.

Maximum penalty: 5 penalty units.

(8) Nothing in this section affects any other provision of this or any other Act, or of any by-law, so far as the provision has effect in relation to vehicles on vacant public land.

(9) An allegation, in an information in respect of an offence under this section—

- (a) that a sign was erected, displayed or marked with the authority of the Minister or the Minister's delegate; or
- (b) that a sign was interfered with, altered or removed without the authority of the Minister or the Minister's delegate,

is evidence of the truth of the allegation.



**Liability of vehicle owner for certain offences**

**161. (1)** If an offence against section 160 (6) occurs in relation to a vehicle, the person who at the time of the offence is the owner of the vehicle is, by virtue of this section, guilty of an offence against the subsection as if the person were the actual offender unless—

- (a) the offence is dealt with under section 162 and the person satisfies an authorised person described in the notice served under that section that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used; or
- (b) the court is satisfied that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used.

(2) Nothing in this section affects the liability of the actual offender but if a penalty has been imposed on or recovered from any person in relation to the offence no further penalty may be imposed on or recovered from any other person for the offence.

(3) An owner of a vehicle is not, under subsection (1), guilty of an offence if—

- (a) the offence is dealt with under section 162 and the owner—
  - (i) within 21 days after service on the owner of a notice under that section alleging that the owner has been guilty of the offence, supplies by statutory declaration to an authorised person described in the notice the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence; or
  - (ii) satisfies that authorised person that the owner did not know and could not with reasonable diligence have found out that name and address; or
- (b) the owner—
  - (i) within 21 days after service on the owner of a summons in respect of the offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence; or
  - (ii) satisfies the court that the owner did not know and could not with reasonable diligence have found out that name and address.

(4) If a statutory declaration under subsection (3) is produced in any proceedings against the person named in the declaration that relate to the offence in respect of which it was supplied it is evidence that that person was in charge of the vehicle at all relevant times relating to the offence.

(5) A statutory declaration which relates to more than one offence is not a statutory declaration for the purposes of subsection (3).

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(6) In this section—

“owner”, in relation to a vehicle, includes—

- (a) each person who is the owner or joint owner or part owner of the vehicle and any person who has the use of the vehicle under a hire-purchase agreement but not the lessor under any such agreement;
- (b) the person in whose name the vehicle is registered unless the person has sold or otherwise disposed of the vehicle and has complied with the provisions of the regulations under the Motor Traffic Act 1909 applicable to the person in regard to the sale or disposal;
- (c) in the case of a vehicle to which a trader's plate is affixed, the person to whom the trader's plate is on issue; and
- (d) a person who, by a regulation under section 3 (1) (q11) or (q12) of the Motor Traffic Act 1909 is to be treated as being, for the purposes of section 18A of that Act, the owner of the vehicle;

“registered” means registered under the Motor Traffic Act 1909;

“trader's plate” means a trader's plate issued under the Motor Traffic Act 1909 for use as prescribed by the regulations under that Act.

**Penalty notices for certain offences**

**162. (1)** An authorised person may serve a penalty notice on anyone who appears to the authorised person to have committed an offence under this Act prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice—

- (a) may be served personally or by post; or
- (b) if it relates to an offence of which the owner of a vehicle is guilty under section 161, may be served by leaving it on, or attaching it to, the vehicle addressed to “the owner” (without stating the name or address of the owner).

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(6) The regulations may—

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence;
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

**Removal of abandoned vehicles from public land**

**163. (1)** An authorised person may, on behalf of the Minister, take possession of an abandoned vehicle that is on public land and cause it to be removed.

(2) If—

- (a) the value of an abandoned vehicle exceeds the prescribed amount; and
- (b) the authorised person does not believe that the vehicle is a danger or obstruction to traffic,

it may not be removed before the expiration of 3 business days after an appropriate notice has been left with a member of the Police Force at a police station.

(3) If the value of an abandoned vehicle exceeds the prescribed amount, it may be removed only to a place approved by the Minister.

(4) If—

- (a) an abandoned vehicle is in the possession of the Minister; and
- (b) the Minister has been given the name of a person, and an address, that appear to be those of the owner of the vehicle,

the Minister shall serve on the person by post a notice requesting the person to claim and remove the vehicle.

(5) If an abandoned vehicle in the possession of the Minister—

- (a) has a value that exceeds the prescribed amount and the period prescribed by subsection (6) has elapsed; or
- (b) has a value that does not exceed the prescribed amount and the period prescribed by subsection (7) has elapsed,

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an authorised person may cause the vehicle to be destroyed or otherwise disposed of as directed by the Minister.

(6) The period after which an abandoned vehicle of a value that exceeds the prescribed amount may be destroyed or otherwise disposed of is whichever of the following periods expires last:

- (a) 1 month after an appropriate notice has been left at a police station with a member of the Police Force;
- (b) 14 days after publication of an appropriate notice in a newspaper circulating in the locality in which possession of the vehicle was taken;
- (c) if a notice has been served requiring the owner to claim and remove the vehicle—14 days after the posting of the notice.

(7) The period after which an abandoned vehicle of a value that does not exceed the prescribed amount may be destroyed or otherwise disposed of is whichever of the following periods expires later:

- (a) 3 business days after an appropriate notice has been left at a police station with a member of the Police Force;
- (b) if a notice has been served requiring the owner to claim and remove the vehicle—14 days after the posting of the notice.

(8) If an appropriate notice is left at a police station, the officer in charge of the police station shall—

- (a) forthwith cause inquiries to be made as to the ownership of the vehicle to which the notice relates; and
- (b) not more than 3 business days after the notice is left, send to the Secretary a written statement of the result of the inquiries which may consist of the name and address of the person in whose name the vehicle is registered.

(9) If an abandoned vehicle is in the possession of the Minister, it shall be released by the person in charge of the place where it is kept if an applicant for its release—

- (a) satisfies the person in charge that the applicant is the owner of the vehicle or is authorised by the owner to remove the vehicle;
- (b) pays to the person in charge the reasonable expenses incurred in taking possession of the vehicle on behalf of the Minister, removing it, keeping it and releasing it; and
- (c) signs a receipt for the vehicle on a form presented by the person in charge.

(10) A purchaser in good faith and for value of a vehicle disposed of under this section by way of sale takes title to the vehicle—

- (a) free from any encumbrances affecting it; and
- (b) to the exclusion of any person who had a claim to it,

immediately before the sale.

(11) Nothing done in good faith for the purpose of executing this section subjects—

- (a) the Minister;
- (b) an authorised person; or
- (c) any other person engaged in the execution of this Act or the Western Lands Act 1901,

personally to any action, liability, claim or demand.

(12) In this section—

“abandoned vehicle” means a vehicle—

- (a) that is believed by an authorised person on reasonable grounds to have been abandoned; or
- (b) that, after removal under this section to the possession of the Minister, has not been claimed and taken by the owner under this section;

“appropriate notice” means a notice that—

- (a) relates to a vehicle and is addressed to the officer in charge of the police station at which the notice is left;
- (b) contains a description of the vehicle, including particulars of any registration label and number-plate attached to the vehicle and any reasonably conspicuous identification number stamped on, or otherwise affixed to, the engine or body;
- (c) states the location of the vehicle; and
- (d) states that the Minister intends to exercise his or her powers under this section;

“business day” means any day except—

- (a) a Saturday or Sunday; or
- (b) any other day the whole or a part of which is a public holiday or bank holiday throughout New South Wales;

“value”, in relation to a vehicle, means its value as assessed on reasonable grounds by an authorised person who has examined the vehicle;

“vehicle” includes—

- (a) a motor vehicle within the meaning of the Motor Traffic Act 1909;
- (b) the remains of a vehicle; and
- (c) any goods or other things in or on a vehicle.

#### **Removal of abandoned goods from public land**

**164. (1)** An authorised person may, on behalf of the Minister, take possession of abandoned goods that are on public land and cause them to be removed.

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(2) If the value of the abandoned goods exceeds the prescribed amount or if the Minister so directs, they may be removed only to a place approved by the Minister.

(3) If—

- (a) abandoned goods are in the possession of the Minister; and
- (b) the Minister has been given the name of a person, and an address, that appear to be those of the owner of the goods,

the Minister shall serve on the person by post a notice requesting the person to claim and remove the goods.

(4) An authorised person may cause abandoned goods in the possession of the Minister to be destroyed or otherwise disposed of as directed by the Minister but—

- (a) if the value of the goods exceeds the prescribed amount or the Minister so directs—only after the period prescribed by subsection (5) has elapsed; or
- (b) if, in any other case, a notice has been served requesting the owner to claim and remove the goods—only if at least 14 days have elapsed since the posting of the notice.

(5) The period after which abandoned goods may be destroyed or otherwise disposed of as provided by subsection (4) (a) is whichever of the following periods expires last:

- (a) 14 days after a notice in the prescribed form has been placed on the goods;
- (b) 14 days after publication of such a notice in a newspaper circulating in the locality in which possession of the goods was taken;
- (c) if a notice has been served requesting the owner to claim and remove the goods—14 days after the posting of the notice.

(6) If abandoned goods are in the possession of the Minister, they shall be released by the person in charge of the place where they are kept if an applicant for their release—

- (a) satisfies the person in charge that the applicant is the owner of the goods or is authorised by the owner to remove the goods;
- (b) pays to the person in charge the reasonable expenses incurred in taking possession of the goods on behalf of the Minister, removing them, keeping them and releasing them; and
- (c) signs a receipt for the goods on a form presented by the person in charge.

(7) A purchaser in good faith and for value of goods disposed of under this section by way of sale takes title to the goods—

- (a) free from any encumbrances affecting them; and
- (b) to the exclusion of any person who had a prior claim,

immediately before the sale.

**(8)** Nothing done in good faith for the purpose of executing this section subjects—

- (a) the Minister;
- (b) an authorised person; or
- (c) any other person engaged in the execution of this Act or the Western Lands Act 1901,

personally to any action, liability, claim or demand.

**(9)** In this section—

“abandoned goods” means goods—

- (a) that are believed by an authorised person on reasonable grounds to have been abandoned; or
- (b) that, after removal under this section to the possession of the Minister, have not been claimed and taken by the owner under this section;

“goods” does not include a vehicle within the meaning of section 163 or any goods or other things in or on such a vehicle;

“value”, in relation to goods, means their value as assessed on reasonable grounds by an authorised person who has examined the goods.

#### **Disposition of certain money**

**165. (1)** After deducting the reasonable expenses of taking possession, removing, keeping and disposing of a vehicle or goods under section 163 or 164, the balance of any money received by the Minister as a result of the disposal shall be disbursed under this section.

**(2)** The balance shall be paid to any person who—

- (a) applies for the payment not later than 12 months after disposal of the vehicle or goods; and
- (b) satisfies the Minister that the person was, at the time of the disposal, the owner of the vehicle or goods.

**(3)** If the balance is not paid to a person under subsection (2), it shall, at the direction of the Minister, be paid to the Treasurer for credit of the Consolidated Fund.

**(4)** The Minister is not liable in respect of any money paid to the Treasurer at the Minister’s direction.

**(5)** Money paid to the Treasurer under this section following disposal of a vehicle or goods shall be paid by the Treasurer to any person who—

- (a) applies for the payment; and
- (b) satisfies the Treasurer that the person was, at the time of the disposal, the owner of the vehicle or goods.

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**Impounding of animals**

**166. (1)** For the purposes of—

- (a) the Impounding Act 1898 (sections 44, 45 and 46 excepted); and
- (b) Part 18 of the Local Government Act 1919 (sections 438 and 439 excepted),

the Minister is the occupant of vacant public land.

(2) An authorised person may exercise any power conferred on the Minister by the operation of this section.

(3) An authorised person may, on behalf of the Minister, take proceedings for the trespass committed on the vacant public land by animals impounded by virtue of this section.

(4) For the purposes of subsection (3), the Minister shall be taken to be in exclusive possession of vacant public land.

(5) This section—

- (a) does not prevent an information being laid for an offence against section 155; or
- (b) affect any proceedings for such an offence.

**Requirement to state name and address**

**167. (1)** In this section—

“motor vehicle” means a motor car, motor carriage, motor cycle or other apparatus propelled wholly or partly by volatile spirit, steam, gas, oil or electricity.

(2) An authorised person may require a person whom the authorised person suspects on reasonable grounds to be offending against this Act, the regulations or the by-laws to state his or her full name and place of residence.

(3) An authorised person may require the driver of a motor vehicle on vacant public land to produce his or her driver’s licence and to state his or her full name and place of residence.

(4) A person shall not—

- (a) fail or refuse to comply with a requirement under this section; or
- (b) in purported compliance with such a requirement, state a name that is not the person’s name or a place of abode that is not the person’s place of abode.

Maximum penalty—subsection (4): 5 penalty units.

**Obstruction of authorised persons**

**168. (1)** A person shall not obstruct entry to public land by an authorised person who produces evidence of authority to enter the land.

Maximum penalty: 10 penalty units.



- (2) It is a defence to a prosecution under this section if it is proved that—
- (a) the authorised person did not have reasonable cause to enter the land; and
  - (b) the defendant had a right to obstruct entry to the land.

#### **Division 6—Legal and evidentiary provisions**

##### **Title to land**

**169.** A person who has acquired land from the Crown by way of purchase or exchange (other than a person who has acquired land under a lease from the Crown by way of exchange) under this Act has an estate fee simple in the land.

##### **Limitation on acquisition of title by possession against the Crown**

- 170.** (1) Title to any land of the Crown which has been—
- (a) set out as a road under an Act or in connection with the alienation of land of the Crown;
  - (b) left between Crown grants for use as a road or driftway;
  - (c) dedicated under the Crown Lands Acts or any other Act for a public purpose; or
  - (d) reserved in a Crown grant or recorded in a folio of the Register as being reserved to the Crown,

may not, on the basis of adverse possession, be asserted or established against the Crown or any persons holding the land in trust for a public purpose.

(2) Title to any land of the Crown reserved under the Crown Lands Acts or any other Act for a public purpose (not being land referred to in subsection (1)) may not, on the basis of adverse possession, be asserted or established against the Crown or any persons holding the land in trust for that public purpose.

(3) Title to any other Crown land may not, on the basis of adverse possession, be asserted or established against the Crown.

(4) This section does not affect the operation of section 46B of the Real Property Act 1900.

- (5) This section does not affect the title to any land—
- (a) which has, in any proceedings to which the Crown has been a party, been held not to be land of the Crown—
    - (i) before the date of assent to the Crown Lands (Amendment) Act 1931 in the case of land referred to in subsection (1);
    - (ii) before the date of assent to the Crown Lands (Amendment) Act 1977 in the case of land referred to in subsection (2); or

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- (iii) before the date of commencement of Schedule 4 (11) to the Crown Lands (Miscellaneous Provisions) Amendment Act 1982 in the case of land referred to in subsection (3); or
- (b) which the Crown was debarred from recovering by the operation of the Crown Suits Act 1769 or the Limitation Act 1969—
  - (i) at the date of assent to the Crown Lands (Amendment) Act 1931 in the case of land referred to in subsection (1);
  - (ii) at the date of assent to the Crown Lands (Amendment) Act 1977 in the case of land referred to in subsection (2); or
  - (iii) at the date of commencement of Schedule 4 (11) to the Crown Lands (Miscellaneous Provisions) Amendment Act 1982 in the case of land referred to in subsection (3).

**Exclusion of minerals, other reservations, exceptions etc.**

**171. (1)** A sale, lease or other disposal of land by the Crown under this Act or the Crown Lands (Continued Tenures) Act 1989 does not include the sale, lease or disposal of any minerals contained in the land, being minerals within the definition of “mineral” in section 3 (1) at the time when the land is contracted to be sold, the lease is commenced or the disposal takes place.

**(2)** On creating a folio of the Register under this Act or the Crown Lands (Continued Tenures) Act 1989, the Registrar-General shall record any qualification required by the Minister and notified to the Registrar-General.

**(3)** A sale, lease or other disposal of land under this Act or the Crown Lands (Continued Tenures) Act 1989 is subject to any qualification approved by the Minister.

**(4)** In this section—

“qualification” means—

- (a) a reservation or exception considered by the Minister to be in the public interest; or
- (b) without affecting any liability under the Mine Subsidence Compensation Act 1961—a condition having the effect of protecting the Crown and any mining lessee against any other liability that could arise from a subsidence as a result of mining operations.

**Land with boundaries to lakes, roads etc.**

**172. (1)** In this section—

“alienated” (except in subsection (7)) means sold, leased or otherwise disposed of under the Crown Lands Acts or any other Act relating to the alienation of land of the Crown;

“bank” means the limit of the bed of a lake or river;

“bed” means the whole of the soil of a lake or river including that portion—

- (a) which is alternately covered and left bare with an increase or diminution in the supply of water; and
- (b) which is adequate to contain the lake or river at its average or mean stage without reference to extraordinary freshets in time of flood or to extreme droughts;

“lake” includes a permanent or temporary lagoon or similar collection of water not contained in an artificial work;

“river” includes any stream of water, whether perennial or intermittent, flowing in a natural channel, and any affluent, confluent, branch or other stream into or from which the river flows.

(2) The boundary of any land which is alienated by the Crown and which is described or alienated—

- (a) as bounded by, by reference to, or by the margin or bank, of a non-tidal lake; or
- (b) by metes expressed or shown to run to a lake or to the margin or bank of a lake,

shall be taken to be the bank of the lake at the time of the Crown survey for the purposes of the alienation.

(3) Title to land comprising the bed of a non-tidal lake does not pass, and never has passed, by any alienation of land adjoining the lake—

- (a) as bounded by, by reference to, or by the margin or bank of, the lake; or
- (b) by metes expressed or shown to run to the lake or to the margin or bank of the lake,

and no person is, by being the owner of land so alienated, entitled to any rights of access over, or to the use of, any part of the bed.

(4) The doctrine of accretion does not apply, and never has applied, to a non-tidal lake.

(5) A person is not, by being the owner of land sold, leased or otherwise disposed of under this Act or the Crown Land (Continued Tenures) Act 1989—

- (a) as bounded by, by reference to, or by the margin or bank of, a river; or
- (b) by metes expressed or shown to run to a river or to the margin or bank of a river,

entitled to any rights of access over, or to the use of, any part of the bed of the river.

(6) Subsection (5) does not apply to the owner of land sold under the Crown Lands (Continued Tenures) Act 1989 if the land—

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- (a) was, at the time of the sale, held as a conditional lease, homestead selection, homestead farm, week-end lease, conditional purchase lease, settlement purchase lease, closer settlement lease or group purchase lease under the Crown Lands Acts; and
  - (b) was held as that holding before the bed of the adjoining river was reserved from sale or lease under the Crown Lands Acts.
- (7) If, before the commencement of this section—
- (a) the bed of a river was reserved from sale or lease under the Crown Lands Acts; and
  - (b) land adjoining the river was subsequently alienated (including alienation under any form of tenure under the Crown Lands Acts or any other Act relating to the alienation of land of the Crown)—
    - (i) as bounded by, by reference to, or by the margin or bank of the river; or
    - (ii) by metes expressed or shown to run to the river or to the margin or bank of the river,
- a person is not, by being the owner of the land, entitled to any rights of access over, or to the use of, any part of the bed of the river.
- (8) If any land is or was alienated by the Crown with a boundary adjoining, or as bounded by, a road created by the Crown, no part of the road passes, or shall be taken ever to have passed, with the land.
- (9) Nothing in this section affects any rights acquired under the Water Act 1912.

**Evidence of land being measured**

173. (1) A measurement of Crown land is not effective until the plan of the measurement has been approved by an officer authorised by the Minister.

(2) The signature of an authorised officer on a plan is evidence that the plan has been approved by the officer.

**Ownership of improvements on forfeiture etc.**

174. (1) On forfeiture, surrender or other determination of a holding all improvements on the land become, subject to this section and any provision or condition of the holding, the property of the Crown and no compensation is payable for those improvements.

(2) On application made within 1 month of the forfeiture, surrender or determination the Minister may permit the former holder to remove from the land any improvements effected or owned by the holder or the holder's predecessors in title.

(3) On removal of improvements under this section the Crown ceases to have (and shall be taken never to have had) any right to the improvements.

**Proceedings for offences**

**175.** Proceedings for an offence against this Act, the Crown Lands (Continued Tenures) Act 1989 or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Offences by corporations**

**176. (1)** If a corporation contravenes, whether by act or omission, any provision of this Act, the Crown Lands (Continued Tenures) Act 1989 or a regulation, each person who is—

- (a) a director of the corporation; or
- (b) concerned in the management of the corporation,

shall be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

**(2)** A person may, under subsection (1), be proceeded against and convicted for a contravention of a provision whether or not the corporation has been proceeded against or been convicted for a contravention of the same provision.

**(3)** Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

**Certificate as to status of land etc.**

**177. (1)** A certificate signed by the Minister certifying that, at a stated time or during a stated period—

- (a) specified land was, or was not, Crown land;
- (b) specified land was, or was not, granted, reserved or dedicated for a public purpose;
- (c) specified land was, or was not, a reserve within the meaning of Part 5;
- (d) specified land was, or was not, land in respect of which a notification under section 18 (4) (application of protection of public land provisions to other land) was in force;
- (e) specified land was, or was not, the subject of a holding or a specified class of holding;
- (f) a holding was, or was not, subject to a specified condition; or
- (g) a named person was, or was not, the holder of a holding,

is, in any legal proceedings, admissible as evidence of the matters certified.

**(2)** If the court before which any legal proceedings are brought is satisfied that the proceedings were brought wholly or partly for the purpose of determining title to land, a certificate under subsection (1) is not admissible in the proceedings.

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**Certificate as to authorised persons**

**178.** A certificate—

- (a) signed by the Minister; and
- (b) certifying that a named person is, or was at a stated time or during a stated period, an authorised person for the purposes of a specified provision of this Act,

is, in any legal proceedings, admissible as evidence of the matters certified.

**Removal of recordings in Register**

**179.** If the Minister is satisfied that a covenant, condition, reservation or provision is no longer applicable to a holding or land the Minister may inform the Registrar-General accordingly and the Registrar-General may amend the Register in accordance with that information.

**Division 7—General provisions****Delegation**

**180. (1)** The Minister may delegate to a person the exercise of any of the Minister's functions other than this power of delegation.

**(2)** The Lands Administration Ministerial Corporation may delegate to a person the exercise of any of its functions other than this power of delegation.

**(3)** The Secretary may delegate to the holder of any office under the Minister's administration the exercise of any of the Secretary's functions, including (unless the instrument of delegation to the Secretary otherwise provides) a function delegated to the Secretary under this section.

**(4)** If the exercise of a function is delegated under this section, the function may be exercised whether or not the delegator holds office at the time of the exercise.

**(5)** In this section, a reference to functions is a reference to functions conferred or imposed by or under this Act or the Crown Lands (Continued Tenures) Act 1989.

**Notices**

**181. (1)** If by or under this Act or the Crown Lands (Continued Tenures) Act 1989 a notice, order or other document is required to be given to or served on any person, the notice, order or other document may be given or served—

- (a) in the case of a person other than a corporation—
  - (i) by delivering it to the person; or

- (ii) by posting it to the address, if any, specified by the person for the giving of notices or service of documents under either of those Acts or, if no such address is specified, to the person's usual or last known place of residence or last known place of business; or
- (b) in the case of a corporation—
  - (i) by leaving it at the registered office of the corporation with a person apparently not less than 16 years of age and apparently in the service of the corporation; or
  - (ii) by posting it to the address, if any, specified by the corporation for the giving of notices or service of documents under this Act or, if no such address is specified, to the last known place of business of the corporation.

(2) A notice, order or other document sent by post in accordance with subsection (1) shall be taken to have been given or served at the time at which it would be delivered in the ordinary course of post.

**Minister may require information to be furnished etc.**

**182. (1)** If the Minister has reason to believe that a person is capable of giving information or producing or making available books or documents relating to—

- (a) the value of materials taken from land the subject of a lease or licence (where any rent, royalty or other payment in respect of the lease or licence is based on that value); or
- (b) the income derived from any business or undertaking carried out on land the subject of a lease or licence (where any rent or other payment in respect of the lease or licence is based on that income),

the Minister may cause to be served on the person a written notice requiring the person to act as provided by subsection (2).

(2) The notice may require the person to—

- (a) provide in writing, within the period and in the manner stated in the notice, any information referred to in subsection (1);
- (b) attend before a person named in the notice at a stated time and place and answer questions relating to the value of the materials taken or the income derived from the business or undertaking; or
- (c) produce or make available to a person named in the notice at a stated time and place books or documents in the person's custody or control relating to the value of the materials taken or the income derived from the business or undertaking.

(3) A person is not excused from providing information, answering a question or producing or making available books or documents when required to do so on the ground that—

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- (a) the information provided;
- (b) the answer to the question; or
- (c) the production of, or making available, any books or documents, might tend to incriminate the person or make the person liable to a penalty.

(4) Anything a person is required to do by the operation of subsection (3) is inadmissible in evidence against the person in any proceedings other than proceedings for an offence against section 183.

(5) A person may make copies of, or take extracts from, books or documents produced or made available to the person under this section.

**Failing to furnish information etc.**

**183.** A person shall not—

- (a) refuse or fail to comply with a requirement under section 182 to the extent to which the person is capable of complying with it;
- (b) in purported compliance with such a requirement, furnish information knowing it to be false or misleading in a material particular;
- (c) when attending before a person in compliance with such a requirement, make a statement knowing it to be false or misleading in a material particular; or
- (d) when producing or making available books or documents in compliance with such a requirement, produce or make available books or documents knowing them to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

**Regulations**

**184. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following:

- (a) the functions of officers employed or acting in the administration or execution of this Act;
- (b) the procedure to be followed in or in connection with an inquiry held or to be held under this Act;
- (c) the circumstances in which fees, costs or deposits may be charged or required and the amount of any such fees, costs or deposits;
- (d) authorising the waiver or refund of the whole or any part of any fees, costs, deposits, interest or rent paid or payable under this Act;



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- (e) determining the person to whom a refund of any fee, cost, deposit, interest or rent is payable;
  - (f) prescribing the periods within which, and the manner in which, notices may be given and objections and appeals may be made;
  - (g) the keeping of records and books of account, the furnishing of returns and records and the inspection of, and the taking of extracts from, records or books;
  - (h) the making of searches in connection with holdings, the issue of certificates relating to holdings and the effect of those certificates;
  - (i) proceedings before local land boards, sittings of local land boards and the members and Chairpersons of local land boards;
  - (j) the establishment of land offices and their functions and hours of business;
  - (k) the alteration, abolition, establishment and definition of land districts;
  - (l) applications for land and procedures in respect of conflicting applications;
  - (m) the manner of, and the places and time for, the payment of rent, purchase money or other money;
  - (n) the payment, by an incoming holder, of the value of any improvements on Crown land to the owner of those improvements;
  - (o) the form and lodgment of, and manner of dealing with, applications, dealings, instruments or documents relating to land;
  - (p) the execution of applications, dealings, instruments or documents relating to land;
  - (q) the powers and functions of the Registrar-General in respect of applications, dealings, instruments or documents relating to land.
- (2) A regulation may create an offence punishable by a maximum penalty not exceeding 5 penalty units.

**Repeals**

185. (1) The Acts specified in Schedule 7 are repealed.
- (2) All regulations in force under those Acts are repealed.

**Savings, transitional and other provisions**

186. Schedule 8 has effect.

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**SCHEDULE 1—MEMBERS OF LOCAL LAND BOARDS**

(Sec. 20)

**Age of members**

1. A person of or above the age of 70 years is not eligible to be appointed as a member or to act in the office of a member.

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**Term of office**

2. Subject to this Schedule, a member appointed by the Minister shall hold office for such period (not exceeding 5 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

3. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Casual vacancies**

4. (1) The office of a member becomes vacant if the member—

- (a) dies;
- (b) is absent from 3 consecutive sittings of which reasonable notice has been given to the member except on leave granted by the Minister;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence that if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) reaches the age of 70 years; or
- (h) is removed from office by the Minister under subclause (2).

(2) The Minister may remove a member from office at any time.

(3) Without affecting the generality of subclause (2), the Minister may remove from office a member who contravenes the provisions of clause 5.

**Disclosure of pecuniary interests**

5. (1) A member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, at a sitting of the local land board shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest.

(2) After a member has disclosed the nature of an interest in any matter, the member shall not, unless the Minister or the Chairperson otherwise determines, be present during any deliberation of the local land board or take part in any decision of the board, with respect to the matter.

(3) Even if a member contravenes the provisions of this clause, the contravention does not invalidate any decision of the local land board.

**SCHEDULE 2—POWERS AND PROCEDURES OF LOCAL LAND BOARDS**

(Sec. 24)

**Definition**

1. In this Schedule—

“decision” includes adjudication, determination, award, report and recommendation.

**Quorum**

2. A Chairperson and 1 other member constitute a quorum.

**General powers and procedures**

3. The following provisions apply to or in respect of local land boards:

- (a) a board shall sit as in open court and take evidence on oath;
- (b) a board's procedure shall be the same as that before a Local Court but a board is not bound by the rules of evidence;
- (c) a Chairperson is a justice of the peace as if appointed by the Governor;
- (d) a member of a board has power, by summons, to compel the attendance of witnesses to give evidence, and to produce all deeds and other documents in their possession or under their control, relating to a matter before the board;
- (e) witnesses are entitled to such allowances for attendance and travelling as may be prescribed;
- (f) if a person who has—
  - (i) been summoned to attend as a witness before a board; and
  - (ii) been paid or tendered reasonable expenses for attendance, fails to appear in answer to the summons,
 the Chairperson may, upon proof—
  - (iii) of service of the summons; and
  - (iv) that the person's non-appearance was without just cause or reasonable excuse,
 issue a warrant in the prescribed form to bring the person before the board to give evidence;
- (g) a Chairperson may examine a witness, or allow a witness to be examined, on oath and require the witness to produce any document which relates to the matter before the board and is in the possession or control of the witness;
- (h) a Chairperson may impose a fine not exceeding 10 penalty units on any person who, having been paid or tendered reasonable expenses for attendance, neglects to appear in answer to a summons to appear as a witness before a board;
- (i) a Chairperson may impose a fine not exceeding 10 penalty units on any witness before a board who—
  - (i) refuses to be sworn, or to make a declaration, affirmation or promise instead of an oath;
  - (ii) makes any statement which is false or misleading in a material particular;
  - (iii) refuses to answer a lawful question;
  - (iv) refuses to produce a document in the possession or control of the witness relating to the matter before the board; or
  - (v) refuses to sign a deposition when required to do so;

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**SCHEDULE 2—POWERS AND PROCEDURES OF LOCAL LAND BOARDS—**  
*continued*

- (j) the imposition of a fine under paragraph (h) or (i) has effect as a conviction for the purposes of the Justices Act 1902;
- (k) a Chairperson may cause the depositions of witnesses to be taken down in writing or recorded by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed;
- (l) a Chairperson may require a witness to sign a deposition taken down in, or reduced to, writing;
- (m) a party to a proceeding before a board has the same right to be represented by counsel, attorney or agent, and to enforce the attendance of and examine witnesses, as in summary proceedings before justices;
- (n) if it thinks it necessary in the interests of justice, a board may—
  - (i) permit any error, uncertainty, misdescription, defect or omission in, of or from any notice, application, declaration, consent, complaint, particulars or proceedings to be amended or supplied; or
  - (ii) if any declaration, consent or other document has not been lodged with an application, permit the omission (if not wilful) to be supplied;
- (o) the powers under paragraph (n) may be exercised by a Chairperson if the Chairperson is required or authorised to act alone or on behalf of a board;
- (p) if any party would, in the opinion of the board or the Chairperson, be prejudiced by the exercise of the powers under paragraph (n), the proceedings may at the request of the party be adjourned;
- (q) any exercise of the powers under paragraph (n) shall be evidenced by the initials of the Chairperson;
- (r) the Chairperson shall sign any certificates or other documents given or issued by a board;
- (s) the Chairperson may adjourn the hearing of any matter as the Chairperson sees fit.

**Decisions**

- 4. (1) A Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (2) A decision supported by a majority of the votes cast at a sitting of a local land board at which a quorum is present is the decision of the board.
- (3) A decision shall be reduced to writing and, except where the decision is on a matter referred to the board for inquiry and report to the Minister, shall be given by the Chairperson or another member in open court.
- (4) Except where otherwise prescribed, each member shall give a written statement of the reasons for the member's opinion or a written statement supporting the reasons of another member.
- (5) Two or more members may give a joint statement of reasons.
- (6) A decision given in open court shall be accompanied by any required statements of reasons.

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SCHEDULE 2—POWERS AND PROCEDURES OF LOCAL LAND BOARDS—  
*continued*

**Costs**

5. A local land board may order any party to proceedings before the local land board under this or any other Act to pay the whole or any part of the costs of the proceedings.

**Recovery of money ordered to be paid**

6. Money ordered by a local land board to be paid to a person may be recovered by the person as a debt owed by the person ordered to pay the money.

SCHEDULE 3—PROVISIONS RELATING TO THE MEMBERS OF A TRUST  
BOARD

(Sec. 94)

**Age of member**

1. A person of or above the age of 70 years is not eligible to be appointed as a member or to act in the office of a member.

**Maximum number of members**

2. (1) A person shall not be appointed as a member (whether to fill a vacancy or otherwise) if the appointment would result in the number of members for the time being of the reserve trust exceeding, or being maintained above, 7.

(2) As long as it does not exceed 7, the number of members is not limited to the number appointed when the trust is constituted.

(3) A person who is appointed as an ex officio member shall not be counted for the purposes of this clause.

**Acting members**

3. (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and shall be taken to be a member.

(2) The Minister may remove a person from the office to which he or she was appointed under this clause.

(3) For the purposes of this clause, a vacancy in the office of a member shall be regarded as an absence from office of the member.

**Nominee of ex officio member**

4. (1) An ex officio member may, with the approval of the Minister, appoint a nominee.

(2) The nominee may attend a meeting of the members in the place of the ex officio member.

(3) For the purposes of the meeting the nominee shall be taken to be the ex officio member.

**Term of office**

5. (1) Subject to this Schedule, a member holds office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member.

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**SCHEDULE 3—PROVISIONS RELATING TO THE MEMBERS OF A TRUST BOARD—continued**

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(2) A member is eligible (if otherwise qualified) for re-appointment.

**Vacancy in office of member**

6. (1) The office of a member becomes vacant if the member—

- (a) dies;
- (b) completes a term of office and is not re-appointed;
- (c) resigns the office by instrument in writing addressed to the Minister;
- (d) is removed from office by the Minister under this clause;
- (e) reaches the age of 70 years;
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983, or a protected person within the meaning of the Protected Estates Act 1983;
- (h) except as described in subclause (2), is an ex officio member who ceases to hold the office by reason of which he or she became a member;
- (i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or
- (j) is convicted of an offence under Schedule 4 (pecuniary interests) in relation to any reserve trust, unless the court which convicts the member otherwise orders.

(2) If a person is an ex officio member because he or she holds a local government office and he or she ceases to hold the local government office, he or she continues as a member until—

- (a) 1 month has elapsed; or
- (b) the local government office is filled,

whichever first occurs.

(3) Subclause (2) does not apply if the member ceased to hold the office—

- (a) in circumstances giving rise to an extraordinary vacancy under section 35 of the Local Government Act 1919; or
- (b) because of the removal of the members of a council under section 86 of that Act.

(4) The Minister may, by notification in the Gazette, remove a member from office at any time.

**Filling of vacancy**

7. If the office of a member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

**Ex officio members—special provision**

8. A person who is an ex officio member is not affected by a duty or disability which is imposed on the person as a member—

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**SCHEDULE 3—PROVISIONS RELATING TO THE MEMBERS OF A TRUST BOARD—*continued***

- (a) by a provision of this or any other Act or by a rule of law or equity; and
- (b) as a result of the person both being a member and holding the office or position on which the ex officio appointment is based.

**Definition**

9. In this Schedule—

“local government office” means office under the Local Government Act 1919 as—

- (a) Lord Mayor, mayor or president; or
- (b) member of a city, municipal or shire council.

**SCHEDULE 4—PECUNIARY INTERESTS OF MEMBERS OF A TRUST BOARD**

(Sec. 94)

**Disclosure of pecuniary interests**

1. (1) If—

- (a) a member of a trust board has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the board; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

(2) A disclosure by a member of a trust board at a meeting of the board that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause shall be recorded by the trust board in a book kept for the purpose which shall be open at all reasonable hours to inspection by any person on payment of the prescribed fee.

(4) After a member of a trust board has disclosed the nature of an interest in any matter, the member shall not, unless the Minister or the board otherwise determines—

- (a) be present during any deliberation of the board with respect to the matter; or
- (b) take part in any decision of the board with respect to the matter.

(5) For the purposes of the making of a determination by a trust board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the board for the purpose of making the determination; or

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- (b) take part in the making by the board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the trust board.

**Invitations for tenders**

2. (1) If it is disclosed to the members of a trust board, or they have reason to believe, that a member has or may have a direct or indirect pecuniary interest in a proposed contract with the reserve trust—

- (a) the board shall, by notice published in a newspaper circulating in the district in which the reserve is situated, invite tenders for the proposed contract; and
- (b) shall not enter into the proposed contract unless satisfied that, in all the circumstances of the case, none of the tenders submitted is more advantageous than the proposed contract.

(2) The notice inviting tenders shall—

- (a) set out the nature of the work or services to be performed or the goods to be supplied under the contract; and
- (b) invite persons willing to perform the work or services or supply the goods to submit tenders on or before a specified date (at least 21 days after publication of the notice) to the trust.

(3) This clause does not apply in the case of an emergency.

**Offence**

3. (1) A member who fails to comply with this Schedule is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) It is a defence to a prosecution for such an offence if the defendant satisfies the court that he or she did not know that a contract or proposed contract in which he or she had a pecuniary interest was the subject of consideration at the meeting concerned.

(3) The court before which a member is convicted may, if the court thinks fit in the circumstances of the case, order that the member does not vacate the office of member because of the conviction and the order has effect accordingly.

**Effect of contravention**

4. A contravention of this Schedule does not invalidate any decision of a trust board or the exercise of any function under this Act.

**SCHEDULE 5—PROCEDURE OF A TRUST BOARD**

(Sec. 94)

**General procedure**

1. The procedure for the calling of meetings of a trust board and for the conduct of business at those meetings shall, subject to this Act and the by-laws, be as determined by the board.



**Quorum**

2. The quorum for a meeting of a trust board is the number of members which is one more than half the number of members of the board (any fraction being disregarded), unless a greater number is fixed by a by-law applying to the board.

**Voting**

3. A decision supported by a majority of the votes cast of a meeting of a trust board at which a quorum is present is the decision of the board.

**Minutes**

4. A trust board must cause full and accurate minutes to be kept of the proceedings of each meeting of the board.

**SCHEDULE 6—MODIFICATION OF THE PUBLIC WORKS ACT 1912**

(Sec. 135 (5))

For the purposes of section 135, the Public Works Act 1912 has effect as if it had been amended—

- (a) (i) by omitting from section 53 the words “so seised, possessed or entitled as aforesaid”;
- (ii) by omitting from section 53 the words “as in the preceding section mentioned” and by inserting instead the words “and may claim compensation in respect of the land resumed and agree to, settle and determine with the Constructing Authority the amount of such compensation”;
- (iii) by inserting in section 53 (3) after the word “release” the words “and to claim, agree to, settle and determine with the Constructing Authority the amount of compensation”;
- (iv) by omitting section 53 (5);
- (b) (i) by inserting in section 102 after the word “time” where secondly occurring, the words “as the Constructing Authority allows or, in default of any such allowance of further time, within such time”;
- (ii) by omitting from section 102 the words “and upon the Crown Solicitor”;
- (iii) by inserting at the end of section 102 the following subsection:
  - (2) Upon receipt of such notice of claim, the Constructing Authority shall obtain a report from a solicitor as to the title of land in respect of which the claim has been served upon it by the claimant.
- (c) by omitting from section 103 the words “Crown Solicitor he shall forward the same, together with his report thereon to the Constructing Authority, who” and by inserting instead the words “Constructing Authority it”;
- (d) by omitting section 124 and by inserting instead the following section:

124. (1) For the purpose of ascertaining the compensation to be paid, regard shall in every case be had by the Court not only to the value of the land taken but also to the damage (if any) caused by the severing of the lands taken from other land or by the exercise of any statutory powers of the Constructing Authority otherwise injuriously affecting such other land and the Court shall assess the compensation according to what it finds to have been the value of such land, estate or interest at the time the notification was published in the Gazette and without being bound in any way by the amount of the valuation notified to such claimant and without reference to any alteration in such value arising from the construction of any works upon the land taken.

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(2) Despite subsection (1), the Court, in ascertaining such compensation, shall take into consideration and give effect to, by way of set-off or abatement, any enhancement in the value of the interest of any such owner in any land adjoining the land taken, or severed from the land by the construction of any works on the land taken, but in no case does this subsection operate so as to require any payment to be made by such owner to the Constructing Authority in consideration of such enhancement in value as aforesaid.

(3) Despite subsection (1), in the case of land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel, no compensation shall be allowed or awarded unless—

- (a) the surface of the overlying soil is disturbed;
  - (b) the support of such surface is destroyed or injuriously affected by the construction of such tunnel; or
  - (c) any mines or underground working in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.
- (e) by omitting section 126 (3);
- (f) (i) by omitting from section 135 (1) the words “such conveyances” and by inserting instead the words “conveyances or assurances of lands taken”;
- (ii) by omitting from section 135 (2) the words “incurred on the part as well of the vendor as of the purchaser.”

**SCHEDULE 7—REPEALS**

(Sec. 185)

Closer Settlement Act 1904 No. 37  
 Closer Settlement (Amendment) Act 1906 No. 44  
 Closer Settlement (Amendment) Act 1907 No. 12  
 Closer Settlement (Amendment) Act 1909 No. 21  
 Closer Settlement (Amendment) Act 1912 No. 74  
 Crown Lands Consolidation Act 1913 No. 7  
 Closer Settlement (Amendment) Act 1914 No. 7  
 Returned Soldiers Settlement Act 1916 No. 21  
 Closer Settlement (Amendment) Act 1916 No. 53  
 Closer Settlement (Amendment) Act 1918 No. 48  
 Closer Settlement (Amendment) Act 1919 No. 46  
 Closer Settlement and Returned Soldiers Settlement (Amendment) Act 1927 No. 14  
 Closer Settlement (Amendment) Act 1937 No. 21  
 War Service Land Settlement Act 1941 No. 43  
 Crown Lands (West Bogan Settlers) Improvements Relief Act 1943 No. 33  
 Closer Settlement Amendment (Conversion) Act 1943 No. 38  
 War Service Land Settlement and Closer Settlement Validation Act 1950 No. 14  
 Closer Settlement (Amendment) Act 1977 No. 78  
 Western Lands (Amendment) Act 1977 No. 87  
 Crown Lands (Amendment) Act 1977 No. 97

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**SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

(Sec. 186)

**Existing dedications and reservations**

1. (1) A dedication or reservation in force or taken to be in force under a repealed Act immediately before its repeal has effect as if it had been made under this Act.
- (2) The dedication or reservation—
  - (a) is for the same purpose and on the same terms as the original dedication or reservation; and
  - (b) dates from the date of the original dedication or reservation.
- (3) This clause applies whether or not the original reservation was temporary.

**Existing timber reserves**

2. A timber reserve, forest reserve or reserve for timber in force under a repealed Act immediately before its repeal has effect as if it had been reserved under section 22 of the Forestry Act 1916.

**Existing travelling stock routes, camping places**

3. A route or camping place set apart under section 34 of the Crown Lands Consolidation Act 1913 immediately before its repeal has effect as if it had been reserved for travelling stock route or camping place, as the case requires, under this Act.

**Replacement of trustees by reserve trusts**

4. (1) On the commencement of Part 5, a reserve trust shall be taken to have been constituted under that Part as trustee of a reserve for which a trustee or trustees ("the former trustee or former trustees") held office immediately before that commencement.
- (2) If the former trustees were constituted as a corporation under a repealed Act, the corporate name of the reserve trust shall be the same as the corporate name of the corporation so constituted.
- (3) In any other case, the corporate name of the reserve trust shall be the name which the Minister assigns or, if the Minister does not assign a name, the name which the reserve trust determines.
- (4) The corporate name of a reserve trust may be changed in accordance with Part 5.
- (5) On and from the commencement of Part 5, a reference in any other Act or in any instrument made under an Act to trustees of land shall, if the land is or is to be taken to be a reserve under Part 5 of which a reserve trust is trustee, be construed as a reference to that reserve trust.

**Membership of trust boards**

5. (1) Unless the former trustee is a corporation, each of the former trustees is appointed as a member of the appropriate trust board and the appointment has effect as if it had been made under Part 5 for the unexpired term of the original appointment.
- (2) If the former trustee is a corporation, it is appointed to manage the affairs of the reserve trust.

**Transfer of property etc.**

6. (1) If a reserve trust is constituted under this Schedule, the transitional provisions of section 125 (3) (transitional provisions—additions to reserves) apply to the reserve trust.

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*continued*

- (2) For the purposes of those provisions—
  - (a) the trustee or trustees of the reserve appointed to manage the affairs of the reserve trust are called the former trustee; and
  - (b) the reserve trust is called the new trustee.
- (3) Those provisions apply—
  - (a) with such modifications as may be necessary or as the Minister may direct; and
  - (b) only in relation to an act, matter or thing concerning the former trustee in connection with the care, control and management of the reserve.

**References to Crown Land Agent**

7. On and from the date of assent to this Act, a reference in any other Act, any instrument made under an Act or in any other instrument, to a Crown Land Agent shall be read as a reference to the Manager of the appropriate Local Lands Office.

**Local land boards**

8. (1) On and from the commencement of Division 2 of Part 2, a reference in any other Act, in any instrument made under an Act or in any other instrument to a local land board shall be read as a reference to a local land board under this Act.

(2) If any complaint, reference, case, dispute, inquiry, determination, redetermination or other matter is before a local land board under the provisions of a repealed Act immediately before their repeal—

- (a) the matter shall be completed as if the provisions had not been repealed or shall be discontinued, as the local land board orders; or
- (b) if the Minister so directs, the matter shall be dealt with by a local land board as if it had been referred by the Minister for an inquiry and report under the provisions of this Act or the Crown Lands (Continued Tenures) Act 1989 which the Minister directs are the appropriate corresponding provisions.

(3) For the purposes of subclause (2) (a), the membership of the local land board continues as it would have been but for the repeals, whether or not different members have been appointed under this Act.

**Appeals to Land and Environment Court**

9. (1) A right to appeal or to refer a matter to the Land and Environment Court existing under a repealed Act immediately before its repeal continues and may be exercised as if the repealed Act had continued in force.

(2) An appeal or reference to the Land and Environment Court pending under a repealed Act immediately before its repeal shall proceed and be dealt with as the repealed Act had continued in force.

**Purchases upon reclamation**

10. (1) If the Minister has authorised the reclamation of land under section 68 of the Crown Lands Consolidation Act 1913 and the purchase of the land has not been completed before the repeal of that section—

- (a) the matter shall be dealt with as a sale of the land under Part 4; and

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SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—  
*continued*

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- (b) there shall be taken to exist a contract for the sale of the land under Part 4 on the terms and conditions to which the authorisation to reclaim was subject.

(2) If before the repeal of section 68 of the Crown Lands Consolidation Act 1913 land the subject of an authorisation to reclaim under that section was brought under the Real Property Act 1900 under section 13A of that Act—

- (a) the Minister may issue a certificate to the effect that the reclamation has been satisfactorily completed; and
- (b) if the Minister issues the certificate, the Registrar-General shall remove any recording in the Register of a condition providing for reclamation of the land to be completed to the satisfaction of the Minister or the local land board.

**Tenant-right in improvements**

11. If, immediately before its repeal, section 223 of the Crown Lands Consolidation Act 1913 applied to a tenant-right in improvements, that section continues to apply to the tenant-right in improvements as if it had not been repealed.

**Roads of access**

12. If, immediately before its repeal, section 279 of the Crown Lands Consolidation Act 1913 applied to entitle a person to a road of access, that section continues to apply to and in respect of the road of access as if it had not been repealed.

**Township settlement areas**

13. (1) A notification of a township settlement area under section 38 of the Closer Settlement Act 1904, in force immediately before the repeal of that Act, continues in force after that repeal.

(2) That section continues to apply to and in respect of such a notification as if it had not been repealed.

**Advances under War Service Land Settlement Act 1941**

14. The War Service Land Settlement Act 1941 continues to apply, as if it had not been repealed, to and in respect of—

- (a) the security for any advance made under that Act before its repeal; and
- (b) the transfer of any such advance.

**Pending applications and other matters**

15. (1) If an application was made under a provision of a repealed Act and is pending immediately before the repeal of the provision, the application, if the Minister so directs—

- (a) shall be dealt with as if it had been made under a provision of this Act or the Crown Lands (Continued Tenures) Act 1989 which the Minister directs is the appropriate corresponding provision;
- (b) shall continue to be dealt with under the provisions of the repealed Act as if it had not been repealed; or
- (c) shall lapse.

(2) If the Minister so directs, anything else that had been commenced to be done under a repealed Act but had not been completed immediately before its repeal—

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SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—  
*continued*

- (a) shall be taken to have been done, and shall continue to be done, under a provision of this Act or the Crown Lands (Continued Tenures) Act 1989 which the Minister directs is the appropriate corresponding provision;
- (b) shall continue to be done and may be completed under the repealed Act as if it had not been repealed; or
- (c) ceases to have any effect.

(3) The Minister may also give ancillary directions as to the manner in which such a pending application is to be dealt with or such an incomplete matter is to proceed, including (without being limited to) a direction requiring the payment of any amount appropriate to the provision of this Act or the Crown Lands (Continued Tenures) Act 1989 under which an application is to be dealt with.

(4) The Minister's directions under this clause may relate to a particular application or matter or to applications or matters of a particular class.

**Applications—continuation of certain provisions**

16. (1) For the purpose of enabling an application under a repealed Act to continue to be dealt with under a provision of that Act (in accordance with this Schedule)—

- (a) any delegation by the Minister under a provision of the repealed Act continues in force;
- (b) the power of the Minister to vary or revoke such a delegation, or to make a new delegation under the provision, continues as if the provision had not been repealed; and
- (c) any other provision of the repealed Act necessary or convenient for the determination of the application continues in force as if not repealed.

(2) The Minister may give ancillary directions requiring a reference in such an application to a provision of the repealed Act to be construed as a reference to a specified provision of this Act or the Crown Lands (Continued Tenures) Act 1989.

**Effect of repeals on sales, leases, road permits etc.**

17. (1) The repeal of a repealed Act does not of itself operate to annul, prejudice or affect any grant, sale, purchase, exchange, lease, contract, agreement or other transaction which was made, effected or validated by or under the repealed Act.

(2) Subject to this Act and the Crown Lands (Continued Tenures) Act 1989, any such grant, sale, purchase, exchange, lease, contract, agreement or other transaction remains as valid and has effect as if the repealed Act had not been repealed.

(3) A permission to enclose a road or watercourse granted under—

- (a) section 202 of the Crown Lands Consolidation Act 1913;
- (b) section 46 of the Closer Settlement Act 1904;
- (c) regulation 11 of the Returned Soldiers Settlement Regulations 1916; or
- (d) section 14 of the Crown Lands Act Further Amendment Act (1888),

and in force as at the commencement of this clause has effect as an enclosure permit granted under this Act.

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SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—  
*continued*

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(4) If the provisions of section 109 (3), 183 (1) or 184 (1) (h) of the Crown Lands Consolidation Act 1913 relating to payment of the cost of deferred surveys applied, immediately before their repeal, to a holding, those provisions continue to apply to the holding as if they had not been repealed.

**Saving of appointments**

18. (1) A person holding office under a repealed Act immediately before its repeal shall be taken to have been appointed under this Act to the corresponding office under this Act.

(2) Subclause (1) does not apply to a member of a local land board appointed by the Minister under the Crown Lands Consolidation Act 1913 and, on the repeal of that Act (but except for the purposes of clause 8) such a member ceases to hold office without affecting his or her eligibility (if qualified) for appointment under this Act as a member of a local land board.

(3) A person who ceases to hold office because of the operation of subclause (2) is not entitled to be paid any remuneration or compensation because of ceasing to hold the office.

(4) This clause applies in relation to a member of a special land board constituted under section 138 of the Crown Lands Consolidation Act 1913 in the same way as it applies in relation to a member of a local land board appointed by the Minister.

**General savings**

19. (1) The repeal of a repealed Act does not of itself—

- (a) deprive any act, matter or thing done of any effect which it was declared, explained or otherwise caused to have by the repealed Act;
- (b) render invalid any act, matter or thing which was validated by the repealed Act and which continued to be valid up to its repeal;
- (c) prejudice any tenant-right in improvements, ownership of improvements, right to receive or liability to make payment for improvements, claim to contribution in respect of fencing or right to receive or liability to pay such a contribution;
- (d) prejudice any other obligation as between private persons or as between the Crown and any private person, or any protection obtained for any holding;
- (e) defeat any forfeiture for a contravention of the repealed Act, breach of any conditions contained in the repealed Act or in an instrument issued under the repealed Act; or
- (f) affect the power to declare such a forfeiture or the right of any person to be protected from such a forfeiture.

(2) An act, matter or thing done or omitted under or for the purposes of, and having operation immediately before the repeal of, a repealed Act—

- (a) shall be taken to have been done or omitted, as appropriate, under or for the purposes of any corresponding provision of this Act or the Crown Lands (Continued Tenures) Act 1989;
- (b) in the case of any thing done or omitted by trustees of a reserve shall be taken to have been done or omitted by the reserve trust which replaced the trustees as trustee of the reserve; and

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**SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—**  
*continued*

(c) has continuing operation and effect for that purpose.

**Continuing operation of previous savings**

20. (1) Any savings provision enacted or continued by a repealed Act and in force immediately before its repeal shall be taken to have been enacted by this Act.

(2) Savings provisions enacted by a repealed Act include, but are not limited to, section 261A of the Crown Lands Consolidation Act 1913 (retention of rights of mortgages on conversion or purchase of holdings).

**References to repealed Acts, tenures etc.**

21. (1) A reference in any other Act, in any instrument made under an Act or in any other instrument to the Crown Lands Consolidation Act 1913 shall be read as a reference to the Crown Lands Act 1989.

(2) If the Minister by order published in the Gazette so directs, a reference in any other Act, in any instrument made under an Act or in any other instrument to, or to a provision of, a repealed Act or to any tenure or holding under a repealed Act—

- (a) is to be read as a reference to, or to a specified provision of, or to a specified tenure or holding under, this Act or the Crown Lands (Continued Tenures) Act 1989; or
- (b) is to be read as including a reference to, or to a specified provision of, or a specified tenure or holding under, this Act or the Crown Lands (Continued Tenures) Act 1989.

(3) If a direction is given in respect of a reference referred to in subclause (1), that subclause ceases to have effect in respect of the reference.

**Certain statutory instruments to continue in force**

22. (1) A by-law in force under Part 3B of the Crown Lands Consolidation Act 1913 immediately before its repeal—

- (a) continues in force on and after that repeal as if it were a by-law made under Part 5; and
- (b) may be varied or revoked by a by-law made under Part 5.

(2) A reference to a provision of a repealed Act in such a by-law shall be read as a reference to the corresponding provision of this Act or the Crown Lands (Continued Tenures) Act 1989.

**Conflict of provisions**

23. (1) If more than one provision of this Schedule is capable of applying to a situation so as to give different results, the provisions shall apply as directed by the Minister.

(2) If a doubt arises as to which of the Minister and the Water Administration Ministerial Corporation is required to act under—

- (a) a condition of a lease; or
- (b) a recording in the Register,

the action shall be taken as directed by the Minister.



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SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—  
*continued***Interpretation Act 1987**

24. This Act has effect in addition to and does not derogate from the operation of the Interpretation Act 1987.

**Savings and transitional regulations**

25. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act, the Crown Lands (Continued Tenures) Act 1989, the Western Lands (Crown Lands) Amendment Act 1989 and the Miscellaneous Acts (Crown Lands) Amendment Act 1989.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of commencement of this clause or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
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[Minister's second reading speech made in—  
*Legislative Assembly on 15 November 1988*  
*Legislative Council on 2 March 1989 a.m.*]