

LORD HOWE ISLAND ACT.

Act No. 39, 1953.

Elizabeth II, No. 39, 1953. An Act to make provision for the care, control and management of Lord Howe Island; to constitute a Lord Howe Island Board and an Island Committee and to define their respective powers, authorities, duties and functions; to make provision relating to the tenure of land upon the said Island; to validate certain matters; and for purposes connected therewith. [Assented to, 16th December, 1953.]

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

PART I.

PRELIMINARY.

Short title and commencement. 1. (1) This Act may be cited as the "Lord Howe Island Act, 1953".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts. 2. This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—LORD HOWE ISLAND BOARD AND THE ISLAND COMMITTEE.

PART III.—POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE BOARD.

PART IV.—LAND TENURE.

PART V.—GENERAL.

3.

3. In this Act, unless the context or subject matter otherwise indicates or requires—

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Definitions.

“Board” means the Lord Howe Island Board.

“Committee” means the Island Committee.

“Crown lands” means lands of the Island which are vested in Her Majesty and not permanently dedicated to any public purpose.

“Island” means the island known as Lord Howe Island and all adjacent islands and coral reefs situated within one marine league measured from low-water mark on the coast of Lord Howe Island.

“Islander” means a person whose name immediately before the commencement of this Act was shown in the records of the Chief Secretary’s Department as that of the holder of a permissive occupancy of part of the Island from the Board of Control appointed by the Executive Council by a minute dated the fourth day of February, one thousand nine hundred and thirteen (whether during the tenure of office of the members thereof first appointed or of any members appointed by any later minute of the Executive Council) or the issue of such person; or a spouse or widow or widower of such person or of such issue.

“Member” means member of the Board.

“Prescribed” means prescribed by this Act or by the regulations.

“Regulations” means regulations made under this Act.

“Vacant Crown lands” means Crown lands not reserved or dedicated or held under any lease from the Crown.

PART II.

LORD HOWE ISLAND BOARD AND THE ISLAND COMMITTEE.

DIVISION 1.—*Lord Howe Island Board.*

Lord Howe
Island
Board.

4. (1) There shall be constituted a Board which shall carry into effect the objects and purposes of this Act. The Board shall administer the affairs of the Island and shall have and may exercise and perform the powers, authorities, duties and functions conferred or imposed on the Board by or under this Act.

(2) The Board shall consist of five members who shall be appointed by the Governor.

(3) Of the members so appointed—

(a) one shall be the person who for the time being occupies the position of Under Secretary, Chief Secretary's Department;

(b) one shall be appointed upon the nomination of the Colonial Secretary;

(c) one shall be the member of the Legislative Assembly who represents the Electoral District within which Lord Howe Island is situated;

(d) one shall be a person appointed upon the nomination of the Secretary for Lands who shall be an officer of the Department of Lands;

(e) one shall be a member of the Committee.

The person referred to in paragraph (a) of this subsection shall be chairman of the Board.

(4) (a) The member of the Committee to be appointed in pursuance of paragraph (e) of subsection three of this section upon the constitution of the Board shall be the member of the Committee nominated by the Colonial Secretary.

Such member shall hold office until such time as the first election under and in accordance with the provisions of section seven of this Act is held.

(b) (i) As from the date of the first election and of each succeeding election under and in accordance with the provisions of section seven of this Act the member

member of the Committee to be appointed in pursuance of paragraph (e) of subsection three of this section shall be the person who has polled the highest number of votes at such first election or succeeding election, as the case may be, and in the event of two or more persons polling the highest number of votes at any such election shall be such one of such persons as may be nominated by the Colonial Secretary.

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(ii) Where at any election under and in accordance with the provisions of section seven of this Act no more than four persons have nominated for election the member of the Committee to be appointed in pursuance of paragraph (e) of subsection three of this section shall be the member nominated by the Colonial Secretary.

(c) Where a vacancy occurs in the office of the member of the Board to whom this subsection applies the vacant office shall be filled by the appointment of another member of the Committee nominated by the Colonial Secretary.

(5) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of any member, and a member shall not, in his capacity as a member, be subject to the provisions of any such Act during his term of office.

(6) The Board shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall, for the purposes and subject to the provisions of this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.

(7) The corporate name of the Board shall be the "Lord Howe Island Board".

(8) For the purposes of any Act the Board shall be deemed to be a statutory body representing the Crown.

(9) (a) No remuneration shall be payable to members of the Board.

(b)

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(b) Each member shall be entitled to receive such travelling and other expenses as the Governor may from time to time determine.

(10) (a) At any meeting of the Board three members shall form a quorum and any meeting at which a quorum is present shall have all the powers, authorities, duties and functions conferred or imposed upon the Board.

(b) The Board shall annually elect one of its members to be vice-chairman.

(c) At any meeting of the Board the chairman or in his absence the vice-chairman shall preside.

If both the chairman and the vice-chairman are absent the members present shall elect one of their number to preside at the meeting.

(11) The procedure for the calling of meetings of the Board, and the conduct of business at such meetings, shall be as determined by the Board.

(12) No matter or thing done, and no contract entered into by the Board and no matter or thing done by any member or by any other person whomsoever acting under the direction of the Board shall, if the matter or thing was done or the contract was entered into bona fide for the purposes of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.

**Disqualifi-
cations.**

5. A member shall be deemed to have vacated his office if he—

- (a) becomes bankrupt, compounds with his creditors, or makes an assignment of his estate for their benefit;
- (b) absents himself from three consecutive meetings of the Board except upon leave granted by the Board;
- (c) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act, 1898-1952;
- (d) resigns his office by writing under his hand addressed to the Governor.

6.

6. The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint such officers and employees as may be necessary for the administration of this Act.

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Employment
of
officers.

DIVISION 2.—*The Island Committee.*

7. (1) There shall be an Island Committee. The first Island Committee shall consist of the persons who immediately before the commencement of this Act held office as members of the Lord Howe Island Advisory Committee.

The
Island
Committee.

Such members shall hold office until their successors are elected in pursuance of the provisions of this Division but shall be eligible for election.

(2) As from the date of the first election under this Division the Island Committee shall consist of four Islanders elected under and in accordance with this Division, who shall hold office until their successors are elected but shall be eligible for re-election.

Elections under this Division shall be held in every third year.

(3) In the event of any vacancy occurring in the office of an elected member an election shall be held to fill the vacancy.

Any person so elected shall hold office for the unexpired term of the vacant office but shall be eligible for re-election.

(4) The chairman shall be elected by the Committee from among its members and shall have a casting as well as a deliberative vote.

(5) For the purposes of this Division a person over the age of twenty-one years who—

(a) is the holder of any tenure of land upon the Island; or

(b) has been in residence on the Island for a period of not less than one year immediately prior to his application for enrolment;

shall be entitled to be enrolled as an elector.

8.

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Electoral provisions.

8. (1) Within a reasonable time before each triennial election the Board shall cause a roll of electors to be prepared.

(2) The nomination of persons as members of the Committee, the time for holding elections, the appointment of electoral officers, the method of voting and the conduct of the elections shall be as prescribed.

Powers and functions of the Committee.

9. (1) The Committee may—

(a) make recommendations to the Board in respect of matters referred to it by the Board and in respect of any matters relating to the Island and its affairs;

(b) exercise or perform on behalf of the Board any power, authority, duty or function which it has been authorised to exercise or perform pursuant to section fourteen of this Act.

(2) (a) The procedure for the calling of meetings of the Committee and the conduct of business at such meetings shall be as determined by the Committee.

(b) At any meeting of the Committee any three members shall form a quorum and any meeting at which a quorum is present shall have all the powers authorities duties and functions conferred or imposed upon the Committee.

(3) (a) No remuneration shall be payable to the members of the Committee.

(b) Each member of the Committee shall be entitled to receive such travelling and other expenses as the Board may from time to time determine.

PART III.

POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE BOARD.

Ministerial control.

10. In the exercise and discharge of its powers, authorities, duties and functions the Board shall be subject in all respects to the direction and control of the Minister.

General functions of the Board.

11. (1) The Board shall be charged with the care, control and management of the Island and of the affairs and trade of the Island. It

It may adopt any measures and may examine and explore proposals and devise initiate and execute schemes for the improvement of the conditions and for the welfare of the Island and of the residents thereof. No. 39, 1953.

(2) The Board shall arrange or provide for the gathering, collection and sale of *Kentia* palm seed and may arrange or provide for the gathering, collection and sale of any other produce of the Island.

(3) The Board shall, subject to any other Act in force relating to the protection or conservation of fisheries, fauna or flora, take all practicable measures to protect and conserve the fisheries, fauna and flora of the Island.

(4) (a) The Board shall, subject to any other Act in force relating to the prevention, control or suppression of fire, take all practicable measures to protect the Island from fire.

(b) For the purposes of this subsection the Board shall have and may exercise the powers, authorities and functions conferred upon councils under the Bush Fires Act, 1949.

12. (1) The Board may—

- (a) provide, construct, improve, maintain, protect, repair, drain and cleanse roads upon the Island;
- (b) do all things necessary from time to time for the promotion and preservation of public health, safety and convenience upon the Island;
- (c) control and regulate the erection and use of buildings and structures upon the Island;
- (d) provide, control and manage upon the Island grounds for public health, recreation, convenience, enjoyment or other public purpose of the like nature including parks, children's playgrounds, sports grounds and gardens;
- (e) construct, extend, protect, maintain, control and manage upon the Island works of water supply or sewerage or drainage and any works incidental thereto and works in connection therewith or separate therefrom for the supply of

Powers, authorities, duties and functions of Board.

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of electricity, and make and levy rates and charges for the maintenance and management thereof or for the payment of instalments of capital debts and interest thereon;

- (f) construct, maintain, control, manage and lease wharves and anchorages;
- (g) provide public buildings and offices, residences for officers and employees of the Board, and shops, offices and other buildings for lease to the public;
- (h) exercise and discharge any powers, authorities, duties and functions which the Board may be authorised or required to exercise and discharge by the regulations.

(2) For the purpose of enabling the Board to exercise and discharge any powers, authorities, duties and functions conferred or imposed upon it by this Act the Governor may grant to the Board any vacant Crown lands and impose in such grant such terms and conditions as he may deem desirable.

13. The Board may—

Powers of Board as to tourists and licensing businesses.

- (a) control and regulate the tourist trade to and upon the Island;
- (b) require persons carrying on such businesses or trades as the Board may determine to be licensed. Any such license shall be subject to the payment of such fee and may include such terms and conditions as may be prescribed or as the Board may determine.

Power to delegate.

14. (1) The Board may with the approval of the Minister authorise the Committee or any officer, employee or person to exercise or perform on behalf of the Board any power, authority, duty or function of the Board other than a power, authority, duty or function relating to—

- (a) the granting of leases,
- (b) any other matter which may be prescribed.

(2) (a) Any such authority may, if the Board so resolves, be unlimited as to the period during which it may be exercised, or may be exercisable only during such period as may be specified in the resolution.

(b)

(b) The exercise of any such authority shall be subject to such limitations and conditions as may be specified by the Board by resolution, or as may be prescribed. No. 39, 1953.

(3) The Committee or any officer, employee or person when acting in the exercise of any such authority and within its scope, shall be deemed to be the Board.

(4) Any authority conferred by the Board under this section may be withdrawn by the Board by subsequent resolution, either wholly or in part.

(5) No act of the Committee or of any officer, employee or person done within the scope of any such authority during the period in which such authority was in force shall be invalidated by reason of a withdrawal of the authority.

15. Where the Board—

- (a) supplies any service, product or commodity;
- (b) gives any permission;
- (c) receives any application for its approval,

the Board may make, demand, levy and recover such charges and fees as may be prescribed or where no charge or fee is prescribed such charges and fees as may be fixed by the Board subject to the maximum (if any) prescribed.

Charges
and fees.

PART IV.

LAND TENURE.

DIVISION 1.—*Vesting of Island in Her Majesty.*

16. The Island is hereby vested in Her Majesty freed and discharged from any estate of any person (other than any estate conferred by or arising out of any lease entered into between the Governor-General of the Commonwealth and the Governor of the State of New South Wales) and any reservation affecting the Island immediately before the commencement of this Act is hereby revoked. Island
vested in
the Crown.

17.

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No compensation payable.

17. No compensation shall be payable to any person in respect of the vesting of the Island in Her Majesty under section sixteen of this Act.

DIVISION 2.—*How Crown lands may be dealt with.*

Crown lands not to be dealt with except under this Act.

18. Crown lands shall not be dealt with except under and subject to the provisions of this Act.

Reservation or dedication of Crown lands for public purposes.

19. (1) The Secretary for Lands on the recommendation of the Board may by notification in the Gazette reserve or dedicate Crown lands in such manner as may seem best for the public interest for any purpose declared by the Secretary for Lands by notification in the Gazette to be a public purpose under this section.

(2) The Secretary for Lands on a like recommendation and by a like notification may modify, alter or revoke any reservation or dedication under this section.

Appointment of trustees.

20. (1) The Secretary for Lands may by notification in the Gazette appoint—

- (a) the Board, or
- (b) on the recommendation of the Board persons, not being in any case less than three nor more than seven in number,

trustees to be charged with the care, control and management of lands reserved or dedicated under section nineteen of this Act.

(2) (a) A person who holds a particular office or position may be appointed as a trustee under this section by virtue of his holding that office or position.

(b) Where any such appointment is made, then in ascertaining the number of trustees for the purposes of subsection one of this section, the person so appointed shall not be counted.

(c) A person appointed to be a trustee by virtue of his holding a particular office or position shall cease to hold office as trustee on the day upon which he ceases to hold that office or position.

(3) (a) The number ascertained by dividing the total number of trustees by two and adding one to the quotient

quotient (any fractional remainder being disregarded) shall be the number of trustees necessary to form a quorum at any meeting of the trustees. ^[No. 39, 1953.]

(b) Any duly convened meeting of the trustees at which a quorum is present shall be competent to transact any business of the trustees.

(c) A decision of the majority of trustees present at a meeting shall be the decision of the trustees.

21. (1) Subject to this section the Secretary for Lands may lease areas not exceeding in any case five acres of vacant Crown lands for the purpose of residence. ^{Leases in perpetuity for residence.}

(2) A lease under this section shall be in the prescribed form, and may only be granted to an Islander.

(3) The title to a lease under this section shall be a lease in perpetuity.

(4) An application for a lease under this section shall be made to the Board in the manner and in or to the effect of the form prescribed.

(5) The Board shall report to the Secretary for Lands as to whether there is any objection in the public interest or otherwise to the granting of the application either as to the whole or any part of the land the subject of the application and generally as to the merits thereof. If the Board deems it expedient to recommend the granting of the application either as to the whole or any part of the land the subject of the application it shall also report as to what conditions (if any) should attach to the lease.

(6) After receipt of such report the Secretary for Lands may grant a lease either as to the whole or any part of the land the subject of the application if the Board so recommends, or he may at his discretion refuse the application.

(7) A condition of residence on the lease shall attach thereto in perpetuity, and shall be performed by the holder or sublessee thereof for the time being, and residence shall commence within six months after the granting of the application or such further period as the Secretary for Lands on the recommendation of the Board may

No. 39, 1953. may approve. Where the holder or the owner (subject to mortgage) or sublessee of the lease has been or shall be prevented by sickness of himself or family or other adverse circumstance from performing such condition, the Board may, upon application as prescribed, and on sufficient reason being shown, suspend such condition for such period and subject to such conditions as the Board may approve.

(8) The Secretary for Lands may annex to any such lease such conditions reservations and provisions as he may think fit. Any such condition reservation or provision annexed to such lease may on application by the lessee in the prescribed manner and on the recommendation of the Board be varied modified or revoked by the Secretary for Lands.

(9) The annual rent of the lease to be paid annually in advance shall be one pound per acre or part of an acre.

Special
leases.

22. (1) Subject to this section the Secretary for Lands may lease Crown lands for cultivation or grazing or cultivation and grazing or for such other purpose as the Secretary for Lands on the recommendation of the Board may approve.

(2) The term of a lease under this section may be fixed for any period not exceeding ten years, but such term may, on the recommendation of the Board, be extended by the Secretary for Lands for such period as the Board may recommend.

(3) A lease may only be granted under this section to the holder of a lease under section twenty-one of this Act.

(4) An application for a lease under this section shall be made to the Board in the manner and in or to the effect of the form prescribed.

(5) The Board shall report to the Secretary for Lands as to whether there is any objection in the public interest or otherwise to the granting of the application
either

either as to the whole or any part of the land the subject of the application and generally as to the merits thereof. **No. 39, 1953.**
If the Board deems it expedient to recommend the granting of the application either as to the whole or any part of the land the subject of the application it shall also report as to what conditions (if any) should attach to the lease and shall proceed to determine the rent of the land having regard to its productivity and the proposed use thereof.

(6) After receipt of such report the Secretary for Lands may grant a lease either as to the whole or any part of the land the subject of the application if the Board so recommends, or he may at his discretion refuse the application.

(7) The Secretary for Lands may annex to any such lease such conditions reservations and provisions as he may think fit. Any such condition reservation or provision annexed to such lease or the purpose for which the lease has been granted may on application by the lessee in the prescribed manner and on the recommendation of the Board be varied modified or revoked by the Secretary for Lands.

(8) The annual rent of the lease, to be paid annually in advance, shall be as determined by the Board.

(9) The Secretary for Lands on the recommendation of the Board may withdraw from any lease under this section any lands required for home sites or public purposes subject to the payment to the lessee of compensation as determined by the Board for improvements on the area so withdrawn.

23. (1) A lease under this Part of this Act may be transferred in the prescribed form and manner or may be sublet at any time, but the consideration for the transfer shall not exceed the fair market value of the improvements on the land at the commencement of the lease and of any improvements subsequently effected thereon with the approval of the Board. Such fair market value shall be as determined by the Board.

Transfers
and sub-
leases.

(2)

Lord Howe Island Act.

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(2) Application for consent to transfer (except by way of release of mortgage) or to sublet a lease under this Act shall be made in the prescribed form and manner, and such transfer or subletting shall not be effected, or if effected shall not be valid, unless the consent thereto of the Secretary for Lands and, in the case of a transfer or subletting to a person other than an Islander, the approval of the Governor, has been obtained.

(3) The Secretary for Lands may consent to the transfer or subletting if the Board so recommends, or he may at his discretion refuse his consent.

(4) The Board shall have an absolute discretion to recommend the granting or refusal of any application for consent under this section, but shall not recommend the granting of consent to a transfer or subletting to any person other than an Islander unless satisfied that there is no Islander residing on the Island who desires and is in a position to take a transfer or sublease, as the case may be, of the lease.

(5) If any lease under this Act is mortgaged and the mortgagee enters into possession of the same under his mortgage, he may hold the same for such period as the Secretary for Lands on the recommendation of the Board may permit.

But the mortgagee shall not, notwithstanding the terms of his mortgage, so enter into possession of the mortgaged land more than once, except by permission of the Secretary for Lands on the recommendation of the Board; such mortgagee shall not foreclose the mortgage except with the consent of the Secretary for Lands on the recommendation of the Board. Such consent shall be applied for and may be given or refused, as in the case of a transfer.

(6) Such mortgagee shall not transfer the land except in accordance with this section or by way of discharge of mortgage.

(7) If within such period the mortgagee does not obtain the consent of the Minister to a foreclosure, or does not transfer the lease in accordance with this section,

section, the same shall be liable to forfeiture, and on notification by the Secretary for Lands in the Gazette may be forfeited, and thereupon shall revert to the Crown.

No. 39, 1953.

(8) A foreclosure or transfer in contravention of this section shall be void and any agreement or contract for the sale of such lease made without the permission of the Secretary for Lands shall render such lease liable to forfeiture if such agreement or contract be not submitted for the approval of the Secretary for Lands within three months from the date of execution thereof.

(9) The fact that the mortgagee or some person by his authority occupies or uses any part of the mortgaged land shall be prima facie evidence that the mortgagee has entered into possession of the land under the mortgage.

(10) (a) If a lease under this Act devolves under a will or intestacy upon any person, such person may hold the lease for such period after the death of the testator or intestate as the Secretary for Lands on the recommendation of the Board may permit.

(b) Within any such period such person may, upon application and upon the recommendation of the Board obtain a certificate from the Secretary for Lands that he is entitled to hold the lease; or such person may, subject to this section, sell and transfer the lease.

(c) If by the provisions of the will or by law, such person has power to sell the lease, the sale may be effected under such power; in any other case the sale may be effected with the consent of all persons beneficially entitled to the lease or by order of the Supreme Court in its equitable jurisdiction, which may be obtained in the manner prescribed by rules of court, or until such rules are made, by summons at chambers.

(d) If such person does not within any such period obtain the certificate of the Secretary for Lands as aforesaid, nor transfer the lease as aforesaid, the same together with any moneys paid to the Crown in respect thereof shall be liable to forfeiture.

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Appeal to
Land and
Valuation
Court.

24. Any determination or redetermination by the Board of rent or of fair market value of improvements under section twenty-two twenty-three or twenty-five of this Act may be the subject of an appeal or reference to the Land and Valuation Court and that Court shall have jurisdiction to hear and determine any such appeal or reference.

Any such appeal shall be made within the time and in the manner and in or to the effect of the form and shall be accompanied by the deposit prescribed.

Any such reference shall be made within the time and in the manner prescribed.

DIVISION 3.—Redetermination of rent upon transfer of a lease to a person other than an Islander.

Redeter-
mination
of rent
upon
certain
transfers.

25. (1) Upon the transfer of a lease under this Act to any person other than an Islander the rent of such lease shall be as redetermined by the Board.

(2) Such redetermination shall be made as at the date of such transfer.

(3) The rent as so redetermined shall operate in respect of the lease on and from the date on which the annual rent is next payable after the transfer.

DIVISION 4.—Deferring or waiver of rent.

Rent
may be
deferred
or
waived.

26. Upon application the Secretary for Lands, upon the recommendation of the Board, may defer or waive the payment of any rent due or to become due under any lease. Any such deferral or waiver shall be subject to such terms and conditions as the Secretary for Lands may upon a like recommendation impose.

DIVISION 5.—Forfeiture of leases.

Forfeiture.

27. (1) Every lease under this Act shall be liable to be forfeited if any rent be not paid as required by this Act or upon breach of any condition annexed to the lease by or under this Act, or if it should appear to the satisfaction of the Secretary for Lands after report by the Board that the land comprised in the lease is not used and occupied bona fide for the purpose for which the lease

lease was granted, or where in pursuance of any other provision of this Act the lease becomes liable to forfeiture. No. 39, 1953.

(2) Whenever in pursuance of the provisions of this Act a lease becomes liable to be forfeited, such forfeiture may be declared by the Secretary for Lands by notification in the Gazette.

(3) No forfeiture of any lease under this Act shall take effect until the expiration of thirty clear days after notification of such forfeiture in the Gazette.

(4) The forfeiture of a lease under section twenty-one of this Act shall operate as a forfeiture of any lease under section twenty-two of this Act held by the same lessee in the same interest.

(5) The acceptance by or on behalf of the Crown of any rent or other payment in respect of a lease under this Act shall not be held to operate as a waiver by the Crown of any forfeiture accruing by reason of the breach of any condition annexed by or under this Act to the lease.

(6) In any case in which it appears to the Secretary for Lands after report by the Board that there are good and sufficient reasons for the waiver of any forfeiture, the Secretary for Lands may, notwithstanding anything contained in the conditions annexed to the lease by or under this Act, declare that such forfeiture is waived either absolutely or subject to compliance with such conditions as aforesaid within such time or extension thereof as he may see fit to determine; or upon such other conditions to be attached to the lease, as he may, after the Board has made a recommendation in the matter, see fit to impose; and the forfeiture shall thereupon be waived accordingly.

(7) Subject to the following provisions of this subsection, the Secretary for Lands, on the recommendation of the Board, shall have power to reverse whether provisionally or otherwise, any forfeiture declared under this section:—

(a) A provisional reversal of a forfeiture shall suspend the operation of the forfeiture, as from the

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the date when such forfeiture shall have been declared. In any case, where such provisional reversal shall afterwards be revoked, such revocation shall have the same effect as if the provisional reversal so revoked had never been made.

- (b) Any absolute reversal of a forfeiture shall relate back to the date when forfeiture shall have been declared, and shall have the same effect as if the forfeiture so reversed had never been declared.
- (c) Any reversal of a forfeiture shall, as soon as practicable, be notified in the Gazette; but the date of such reversal shall be the date of the approval thereof of the Secretary for Lands.

DIVISION 6.—*Improvements.*

Definitions
of "improvements" and
"capital
value".

28. For the purpose of the provisions in this Division contained—

The expression "improvements" shall mean improvements of a permanent fixed and substantial character, and necessary for the profitable occupation of the land; and fencing—where of the description aforesaid—shall be deemed to be an improvement common to the land on either side of such fencing; and

The expression "capital value of improvements" shall mean their capital value determined so as to be—

- (a) their value at the date of the commencement of the title of the incoming tenant—and
- (b) their value to such tenant—and
- (c) exclusive of any value which may be due to the inherent capabilities of the land—and
- (d) not in excess of the cost of making the improvements.

29.

29. (1) Where Crown lands containing improvements which are the subject of tenant-right become the subject of a lease under this Act the incoming tenant shall pay the capital value of such improvements to the person having tenant-right therein.

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 Payment for
 improve-
 ments, etc.

(2) The amount of the capital value payable by an incoming tenant shall be as determined by the Board: Provided that where the incoming tenant has agreed with the person having tenant-right in the improvements as to payment for such improvements, no determination by the Board shall be necessary.

(3) Where the incoming tenant has agreed with the person having tenant-right in the improvements as to payment for such improvements, such payment shall be made within the time and in accordance with the terms agreed upon.

(4) Where the incoming tenant has not agreed with the person having tenant-right in the improvements as to payment for such improvements, such payment shall be made within three months after the determination of the Board (in which case no interest shall be charged) or at the option of the incoming tenant by not more than four equal yearly instalments, together with interest at the rate of four per centum per annum.

30. (1) Upon the expiration by effluxion of time of the term of a lease under section twenty-two of this Act under this Act the last holder shall have tenant-right in improvements which at the date of commencement of the lease were upon the land theretofore held under the expired lease and in improvements subsequently affected on such land with the approval of the Board.

Tenant-
 right in
 improve-
 ments.

(2) Upon the forfeiture of any lease under this Act, the Secretary for Lands, on the recommendation of the Board, may by notification in the Gazette grant to the last holder thereof tenant-right in improvements which were on the land at the date of commencement of the lease and in improvements subsequently effected on such land with the approval of the Board.

(3) Where, under this section, a person has tenant-right in improvements, such tenant-right shall accrue upon the determination of the lease and shall entitle

No. 39, 1953. entitle the person in whom for the time being the tenant-right is vested to receive the capital value of the improvements from any persons who take leases of the land containing the improvements, and the following provisions as to tenant-right shall apply in all cases—

- (a) the improvements shall be the property of the person claiming to have tenant-right in respect thereof;
- (b) the capital value of the improvements, or so much thereof as for the time being remains unpaid, shall be and remain a charge upon the land containing such improvements while in the hands of the lessee, until payment thereof;
- (c) the holder of the lease of the land containing the improvements shall be liable to pay any instalments of the capital value thereof which shall accrue during his holding; and
- (d) the tenant-right shall lapse after the expiration of twelve years from the date of its first accruing, and thereafter the improvements shall be the property of the Crown, but such lapsing shall not affect any agreement, determination or order for payment previously made.

Right to
payment
for improve-
ments not
to be
lost by
subsequent
forfeiture
of the
land.

31. Where a lessee of land containing improvements which are the subject of tenant-right under this Act pays to the person having tenant-right part of the capital value of the improvements, and the lease becomes forfeited, such share of the capital value of the improvements as is represented by the amount paid up to the time of the forfeiture, shall (subject to this Act) vest in the Crown, and the remaining share of the improvements, or in the case of no such payments having been made, then the whole of the improvements shall continue to belong to the person having tenant-right, and shall be subject to tenant-right as defined by this Act: Provided that if after the forfeiture the land becomes the subject of a lease under this Act, a determination or redetermination, as the case may be, shall thereupon be made of such share of the capital value of the improvements as is vested in the person having tenant-right.

DIVISION

DIVISION 7.—*Trespass on Crown lands or dedicated lands.* **No. 39, 1953.**

32. (1) Any person who shall be found occupying or using any vacant Crown land or land reserved or dedicated for any public purpose under this Act, either by—

Trespass on
Crown lands
or dedicated
lands.

(a) residing thereon—or

(b) erecting any building or other structure thereon
—or

(c) clearing digging up enclosing or cultivating
any part thereof—or

(d) depasturing stock thereon—or

who shall cause to be cut or removed any timber or products thereon—or obtain or cause to be obtained any stone clay shells earth gravel or similar material therefrom—or who shall remove or cause to be stripped or removed the bark of any tree thereon shall be liable on conviction to a penalty not exceeding twenty pounds and in the case of a continuing offence to a further daily penalty not exceeding five pounds.

(2) Any person duly authorised by the Board in that behalf may impound any stock trespassing on such lands, and may sue the owners of such stock for trespass.

(3) Any person duly authorised by the Board in that behalf may dispossess and remove any person from any Crown lands in respect of which such lastmentioned person is in illegal occupation or use and require such lastmentioned person to demolish any building or structure erected thereon and remove the materials thereof to some convenient place within the time specified in such requirement.

If within the time so specified such lastmentioned person fails to comply with such requirement the person duly authorised by the Board as aforesaid may do all such acts matters and things as such lastmentioned person was required to do, and the expenses of doing such acts, matters and things shall be borne by and may be recovered as a debt from such lastmentioned person by the Board in any court of competent jurisdiction.

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DIVISION 8.—*Timber.*Timber to
be property
of the
Crown.

33. All timber on the Island shall remain the property of Her Majesty notwithstanding that the land on which the timber is growing becomes the subject of a lease or reservation or dedication under this Act, and no person shall remove, cut, ringbark or otherwise destroy any such timber unless authorised to do so by the Board or by the conditions of any lease held by such person under this Act.

PART V.

GENERAL.

Lord Howe
Island
Account.

34. (1) There shall be established and kept in the Treasury an account in special deposits account to be called the "Lord Howe Island Account".

There shall be paid to the credit of the Lord Howe Island Account—

- (a) all moneys received from the sale of *Kentia* palm seed;
- (b) all moneys received by way of rent, licenses, fees, dues or charges prescribed by or under this Act or the regulations;
- (c) all other moneys received by the Board in the conduct of the affairs of the Island;
- (d) all other moneys paid into the Lord Howe Island Account under the authority of this or any other Act.

(2) There shall be paid out of the Lord Howe Island Account—

- (a) all expenses incurred in the gathering, collection and sale of *Kentia* palm seed;
- (b) all administrative and other expenses incurred in giving effect to any of the provisions of this Act or the regulations;
- (c) all payments authorised by this or any other Act to be paid thereout.

35.

35. (1) The Board shall cause to be kept proper books of account, and shall, as soon as practicable after the thirty-first day of December in each year, prepare and transmit to the Minister a statement of accounts exhibiting a true and correct view of the financial position and transactions of the Board, together with a report on the operations of the Board. Such statement and report shall relate to the year ending the said thirty-first day of December. Such report shall include particulars of any transfers or sublettings of leases under this Act to persons other than Islanders. A copy of such statement and report shall be presented to both Houses of Parliament and as soon as possible thereafter to the Committee constituted in pursuance of this Act for the general information of the residents of the Island.

No. 39, 1953.
Accounts.

(2) All funds held by the Lord Howe Island Board of Control holding office immediately before the commencement of this Act, and all buildings, plant, equipment, vehicles, livestock and other property which immediately before such commencement were vested in such Board of Control are hereby vested in the Board.

Funds.

36. The accounts of the Board shall be audited by the Auditor-General, who shall have, in respect thereof, all the powers conferred on the Auditor-General by any law now or hereafter to be in force relating to the audit of public accounts; and the Audit Act, 1902, and Acts amending the same, shall apply to the Board and its members and officers and employees in the same manner as it applies to accounting officers of public departments.

Audit.

37. Every act, matter or thing done by the Board of Control appointed by the Executive Council by a minute dated the fourth day of February, one thousand nine hundred and thirteen (whether during the tenure of office of the members thereof first appointed, or of any members appointed by any later minute of the Executive Council) bona fide in the exercise or performance or purported exercise or performance of the powers, authorities, duties and functions conferred or imposed upon them by any such minute is hereby validated.

Validation.

38. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which
by

Regulations.

Lord Howe Island Act.

No. 39, 1953. by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the power conferred by subsection one of this section, the Governor may make regulations—

- (a) for or with respect to—
 - (i) any power, authority, duty or function conferred or imposed upon the Board by or under this Act;
 - (ii) the introduction into the Island and the use and sale thereon of intoxicating liquor;
 - (iii) the election of persons as members of the Committee;
- (b) prescribing the forms of licenses and of renewals and transfers of licenses and of applications for the same;
- (c) prescribing the fees to be paid for licenses granted under this Act;
- (d) applying any or all of the provisions of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, with such modifications and adaptations as may be necessary to matters arising under the provisions of Part IV of this Act;
- (e) prohibiting the introduction of any species of fauna or flora to the Island or prescribing conditions in relation to the introduction of any species of fauna or flora;
- (f) prohibiting the cutting or removal from any land on the Island of bush, timber, trees, flora or vegetative material or prescribing conditions under which such bush, timber, trees, flora or vegetative material may be cut or removed from any land on the Island.

(3) The regulations may provide for the payment of a charge by tourists to the Island. Such charge shall be at such rate, not exceeding two shillings per day, as may be prescribed. The regulations may make provisions for

for and with respect to the levying and collection of the charge by persons for and on behalf of the Board and the remission of the proceeds to the Board. No. 39, 1953.

(4) (a) The regulations may authorise or require the Board to exercise and discharge such powers, authorities, duties and functions as may be specified therein.

(b) Regulations under this subsection may adopt any of the provisions of the Local Government Act, 1919, as amended by subsequent Acts, and the ordinances thereunder, with such modifications and adaptations as the Governor deems necessary or desirable.

(5) The regulations may prescribe penalties not exceeding in any case fifty pounds for any contravention or breach thereof.

(6) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.