



New South Wales

Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997 No 67

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New South Wales

Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997 No 67

Act No 67, 1997

An Act to amend the *Crown Lands (Continued Tenures) Act 1989*, the *Hay Irrigation Act 1902* and the *Wentworth Irrigation Act 1890* in relation to the removal of certain restrictions on the transfer of land; and for other purposes.
[Assented to 10 July 1997]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997*.

2 Commencement

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

3 Amendment of Crown Lands (Continued Tenures) Act 1989 No 7

The *Crown Lands (Continued Tenures) Act 1989* is amended as set out in Schedule 1.

4 Amendment of Hay Irrigation Act 1902 No 57

The *Hay Irrigation Act 1902* is amended as set out in Schedule 2.

5 Amendment of Wentworth Irrigation Act 1890 54 Vic No 7

The *Wentworth Irrigation Act 1890* is amended as set out in Schedule 3.

Schedule 1 Amendment of Crown Lands (Continued Tenures) Act 1989

(Section 3)

[1] Section 19

Insert after section 18:

19 Savings and transitional provisions

Schedule 8 has effect.

[2] Schedule 2 Provisions applicable to continued tenures etc

Omit clause 8 of Part 1.

[3] Schedule 2, Part 2

Omit clause 7.

[4] Schedule 3 Transfer restrictions

Omit “(other than an incomplete purchase in a special land district)” from clause 2 (2) (b) of Part 1.

[5] Schedule 3, Part 1

Omit “(other than land in a special land district)” from clause 2 (2) (c).

[6] Schedule 3, Part 1

Omit clause 5 (5) (b).

[7] Schedule 3, Part 1

Omit “(other than land in a special land district)” from clause 8 (1).

[8] Schedule 3, Part 1

Insert after clause 8 (2):

- (2A) Such a certificate may also be issued by the Minister if
 - (a) the land was formerly comprised in an irrigation farm purchase or in an incomplete purchase under this Act of land comprised in an irrigation farm lease, and
 - (b) the land does not exceed 2 hectares in area.
- (2B) Such a certificate may also be issued by the Minister if
 - (a) the land was formerly comprised in a non-irrigable purchase or in an incomplete purchase under this Act of land comprised in a non-irrigable lease, and
 - (b) the land is, in the opinion of the Minister, primarily suitable for residential, commercial, industrial or business purposes, and
 - (c) the land is declared by the Minister, by notification published in the Gazette, to be non-farming land.

[9] Schedule 3, Part 1

Omit clause 10.

[10] Schedule 3, Part 2

Omit “(other than land in a special land district)” from clause 2 (2) (b).

[11] Schedule 4 Subdivision of holdings

Omit “clause 10” from clause 6. Insert instead “clause 8”.

[12] Schedule 7 Purchase of land held under lease

Omit clause 7 of Part 2.

[13] Schedule 8

Insert after Schedule 7:

Schedule 8 Savings and transitional provisions

(Section 19)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:

Schedule 1 to the *Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997*

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which such a provision 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.

Part 2 Provisions consequent on enactment of Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997

2 Definition

In this Part:

amending Act means the *Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997*.

3 Applications for removal of certain restrictions on transfer

An application for a certificate from the Minister made under clause 10 of Part 1 of Schedule 3 that was not determined before the repeal of that clause by Schedule 1 [9] to the amending Act is taken to be an application made under clause 8 of Part 1 of Schedule 3 as amended by Schedule 1 [7] and [8] to the amending Act.

Schedule 2 Amendment of Hay Irrigation Act 1902

(Section 4)

[1] Section 17A Restrictions as to assigns of holdings

Omit the section.

[2] Part 3 (sections 20–28)

Insert after section 19C:

Part 3 Transfer restrictions

20 Application of Part

This Part applies to the following land:

- (a) a lease from the Ministerial Corporation of land within the Area,
- (b) land within the Area in course of purchase in fee simple from the Ministerial Corporation,
- (c) land within the Area, the fee simple of which was transferred from the Ministerial Corporation before the commencement of this Part.

21 Consent to transfer

- (1) Land to which this Part applies may not be transferred, leased, subleased, assigned or otherwise dealt with without the written consent of the Ministerial Corporation.
- (2) Subsection (1) does not apply to:
 - (a) a mortgage or discharge of mortgage, or
 - (b) a lease of land the fee simple of which has been transferred from the Ministerial Corporation, or
 - (c) a transfer to a Minister on behalf of the Crown or to a public authority.

(3) In this section:

public authority means:

- (a) a council within the meaning of the *Local Government Act 1993*, or
- (b) a public body declared by the Minister, by order published in the Gazette, to be a public authority for the purposes of this section.

22 Invalidation of certain dealings

A transfer, lease, sublease, assignment or other dealing in contravention of this Part is not valid for any purpose.

23 Application for consent

An application for consent is to be made as prescribed by the regulations.

24 Dealing with applications

- (1) The Ministerial Corporation has discretion to give or refuse consent to a dealing with land to which this Part applies.
- (2) The Ministerial Corporation may not consent to a dealing unless and until the Ministerial Corporation is satisfied that:
 - (a) the whole of any money due to the Minister or the Ministerial Corporation in respect of the land the subject of the dealing, or such portion of that sum as may be required to be paid by the Minister or the Ministerial Corporation, has been paid, and
 - (b) the proposed transferee or assignee:
 - (i) has signed an agreement that all money (if any) remaining owing to the Minister or Ministerial Corporation in respect of the land is to be paid by that person and that the person will execute such security for the payment of all money owing to the Minister as the Minister may require or to the Ministerial Corporation as the Ministerial Corporation may require, and
 - (ii) has executed such security.

-
- (3) The Ministerial Corporation may not consent to a dealing if, in the Ministerial Corporation's opinion, the dealing will result in any one person holding an area of land that is substantially in excess of a home maintenance area.
- (4) Subsection (3) does not prevent the Ministerial Corporation consenting to a dealing if
- (a) the dealing is required by a court order, or
 - (b) the parcel of land involved is a small holding, or
 - (c) the land is land referred to in subsection (5) and the Ministerial Corporation is of the opinion that the dealing would be in the best interests of land utilisation even though it would result in the proposed transferee holding substantially more than a home maintenance area, or
 - (d) the land is of a class prescribed by the regulations or is to be used for a purpose prescribed by the regulations.
- (5) The land referred to in this subsection is land that, in the opinion of the Ministerial Corporation:
- (a) has, as its best practicable use, and is required for, the exploitation of its timber or its reforestation for the production of commercial timber, or
 - (b) is required in order to establish, maintain, expand or develop an industry, or
 - (c) is required for any special purpose approved by the Ministerial Corporation, or
 - (d) is of inferior character, or is rough or undeveloped, or has poor access or other disadvantage, and the dealing is the best practicable way of ensuring its development, or
 - (e) cannot reasonably be disposed of otherwise than by the proposed dealing.

- (6) In determining whether an area of land is or is not substantially in excess of a home maintenance area, the Ministerial Corporation must not take into account any land held under a lease then having less than 5 years to run (unless the lease confers a right to purchase the freehold).
- (7) In this section:
home maintenance area means an area which, when used for the purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and circumstances of an average family.

25 Restrictions on exercise of mortgagee's powers

- (1) A mortgagee who exercises a power to enter into possession of mortgaged land may hold the land for 3 years or such longer period as the Ministerial Corporation approves.
- (2) A mortgagee may not, without the Ministerial Corporation's consent:
- (a) enter into possession of the same mortgaged land more than once, or
 - (b) obtain an order for foreclosure.
- (3) A dealing with land by a mortgagee as such is subject to any other provision of this Part.
- (4) If a mortgagee who has entered into possession of mortgaged land does not, during the period for which the mortgagee is entitled to hold the land, transfer the land or obtain an order for foreclosure:
- (a) the estate or interest of the mortgagee and any other person in the land may be forfeited to the Crown, or
 - (b) if the land is land from which the Ministerial Corporation may, under this Part, remove restrictions on a transfer or other dealing, the Ministerial Corporation may certify that this Part has ceased to apply to the land.

- (5) If the Ministerial Corporation gives a certificate under subsection (4) (b):
 - (a) the mortgagee becomes liable to pay to the Crown any amount that would have been payable had the holder of the land applied for a certificate under this Part dispensing with the Ministerial Corporation's consent to a transfer of the land, and
 - (b) the amount is payable not later than 3 months after demand for the payment is made.

26 Devolution under a will or on intestacy

- (1) A person on whom land to which this Part applies devolves under a will or on intestacy may hold the land for 3 years, or such longer period as the Ministerial Corporation approves, after the death of the testator or intestate.
- (2) If the person does not, within that period, sell the land or obtain the Ministerial Corporation's consent to hold the land:
 - (a) the estate or interest of that and any other person in the land may be forfeited to the Crown, or
 - (b) if the land is land from which the Ministerial Corporation may, under this Part, remove the transfer restrictions, the Ministerial Corporation may certify that this Part has ceased to apply to the land.
- (3) If the Ministerial Corporation gives a certificate under subsection (2) (b):
 - (a) the holder of the land is liable to pay to the Crown any amount that would have been payable had the holder applied for a certificate dispensing with the Ministerial Corporation's consent to a transfer of the land, and
 - (b) that amount is payable not later than 3 months after demand for the payment is made.
- (4) Any dealing with the land under this section is subject to the other provisions of this Part.

- (5) Section 24 applies to an application under subsection (2) for the Ministerial Corporation's consent to hold land in the same way as it applies to an application for consent to a dealing.

27 Removal of restrictions

- (1) A holder of land to which this Part applies may apply to the Ministerial Corporation for the issue of a certificate that the land may be transferred, leased, subleased, assigned or otherwise dealt with without the consent of the Ministerial Corporation.
- (2) Such a certificate may be issued by the Ministerial Corporation if the fee simple of the land has been transferred from the Ministerial Corporation and:
- (a) the land does not exceed 2 hectares in area, or
 - (b) an amount equivalent to 3 per cent of the land value of the land (as shown in a current notice of valuation issued by the Valuer-General under section 28) is paid to the Crown.
- (3) The Ministerial Corporation is to deduct from the amount referred to in subsection (2) any fee paid by the applicant to the Valuer-General in respect of the notice of valuation.
- (4) If the Ministerial Corporation issues a certificate under this section in respect of any land, the Ministerial Corporation's consent is not required to any subsequent transfer, lease, sublease or assignment of, or other dealing with, the land.
- (5) The effect of the issue of a certificate is to be recorded by the Registrar-General in the Register kept under the *Real Property Act 1900*.
- (6) In this section:
holder includes a mortgagee in possession.

28 Valuation of land

- (1) In this section:
holder includes a mortgagee in possession.
land value has the same meaning as it has in the *Valuation of Land Act 1916*.
- (2) On application, the Valuer-General:
 - (a) is to determine (as at the date on which the application is made) the land value of any land to which this Part applies, and
 - (b) is to issue to the applicant (and, if the applicant is not the holder, to the holder) a notice of the valuation.
- (3) The provisions of Parts 3 (Notices and objections) and 4 (Appeals to the Land and Environment Court) of the *Valuation of Land Act 1916* apply to a valuation under this section in the same way as they apply to a valuation under that Act.
- (4) A reference in Part 3 of the *Valuation of Land Act 1916* to the owner of a freehold estate includes, for the purposes of this section, a reference to a holder of land to which this Part applies.
- (5) A notice of valuation remains current for a period of 1 year from the date of issue or for such other period as may be prescribed by the regulations.
- (6) If an objection is lodged, the period referred to in subsection (5) commences from the date on which the objection is finally dealt with.
- (7) Except as provided by this section, the *Valuation of Land Act 1916* (section 79 excepted) does not apply to a valuation under this section.
- (8) A determination of land value under this section may be used for the purposes of this Part only.
- (9) An applicant for a determination of land value under this section is to pay to the Valuer-General such fees as may be determined by the Valuer-General.

[3] Part 4, heading

Insert “Part 4 Miscellaneous” before section 29.

[4] Section 28A

Insert before section 29:

28A Savings and transitional provisions

The Fourth Schedule has effect.

[5] Fourth Schedule

Insert after the Third Schedule:

Fourth Schedule Savings and transitional provisions

(Section 28A)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of
Schedule 2 to the Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which such a provision 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.

**Part 2 Provisions consequent on enactment of
Crown Lands and Irrigation Legislation
Amendment (Transfer Restrictions) Act 1997**

2 Definition

In this Part:

amending Act means the *Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997*.

3 Applications for removal of transfer restrictions

An application for consent made under section 17A that was not determined before the repeal of that section by Schedule 2 [1] to the amending Act is taken to be an application made under Part 3 as inserted by Schedule 2 [2] to the amending Act.

Schedule 3 Amendment of Wentworth Irrigation Act 1890

(Section 5)

[1] Preamble

Omit “the Schedule”. Insert instead “Schedule 1”.

[2] Section 22A Restrictions as to assigns of holdings

Omit the section.

[3] Part 3 (sections 23–31)

Insert after section 22D:

Part 3 Transfer restrictions

23 Application of Part

This Part applies to the following land:

- (a) a lease from the Ministerial Corporation of land within the Area,
- (b) land within the Area in course of purchase in fee simple from the Ministerial Corporation,
- (c) land within the Area, the fee simple of which was transferred from the Ministerial Corporation before the commencement of this Part.

24 Consent to transfer

- (1) Land to which this Part applies may not be transferred, leased, subleased, assigned or otherwise dealt with without the written consent of the Ministerial Corporation.
- (2) Subsection (1) does not apply to:
 - (a) a mortgage or discharge of mortgage, or
 - (b) a lease of land the fee simple of which has been transferred from the Ministerial Corporation, or
 - (c) a transfer to a Minister on behalf of the Crown or to a public authority.

(3) In this section:

public authority means:

- (a) a council within the meaning of the *Local Government Act 1993*, or
- (b) a public body declared by the Minister, by order published in the Gazette, to be a public authority for the purposes of this section.

25 Invalidation of certain dealings

A transfer, lease, sublease, assignment or other dealing in contravention of this Part is not valid for any purpose.

26 Application for consent

An application for consent is to be made as prescribed by the regulations.

27 Dealing with applications

- (1) The Ministerial Corporation has discretion to give or refuse consent to a dealing with land to which this Part applies.
- (2) The Ministerial Corporation may not consent to a dealing unless and until the Ministerial Corporation is satisfied that:
 - (a) the whole of any money due to the Minister or the Ministerial Corporation in respect of the land the subject of the dealing, or such portion of that sum as may be required to be paid by the Minister or the Ministerial Corporation, has been paid, and
 - (b) the proposed transferee or assignee:
 - (i) has signed an agreement that all money (if any) remaining owing to the Minister or Ministerial Corporation in respect of the land is to be paid by that person and that the person will execute such security for the payment of all money owing to the Minister as the Minister may require or to the Ministerial Corporation as the Ministerial Corporation may require, and
 - (ii) has executed such security.

- (3) The Ministerial Corporation may not consent to a dealing if, in the Ministerial Corporation's opinion, the dealing will result in any one person holding an area of land that is substantially in excess of a home maintenance area.
- (4) Subsection (3) does not prevent the Ministerial Corporation consenting to a dealing if
 - (a) the dealing is required by a court order, or
 - (b) the parcel of land involved is a small holding, or
 - (c) the land is land referred to in subsection (5) and the Ministerial Corporation is of the opinion that the dealing would be in the best interests of land utilisation even though it would result in the proposed transferee holding substantially more than a home maintenance area, or
 - (d) the land is of a class prescribed by the regulations or is to be used for a purpose prescribed by the regulations.
- (5) The land referred to in this subsection is land that, in the opinion of the Ministerial Corporation:
 - (a) has, as its best practicable use, and is required for, the exploitation of its timber or its reafforestation for the production of commercial timber, or
 - (b) is required in order to establish, maintain, expand or develop an industry, or
 - (c) is required for any special purpose approved by the Ministerial Corporation, or
 - (d) is of inferior character, or is rough or undeveloped, or has poor access or other disadvantage, and the dealing is the best practicable way of ensuring its development, or
 - (e) cannot reasonably be disposed of otherwise than by the proposed dealing.
- (6) In determining whether an area of land is or is not substantially in excess of a home maintenance area, the Ministerial Corporation must not take into account any

land held under a lease then having less than 5 years to run (unless the lease confers a right to purchase the freehold).

(7) In this section:

home maintenance area means an area which, when used for the purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and circumstances of an average family.

28 Restrictions on exercise of mortgagee's powers

- (1) A mortgagee who exercises a power to enter into possession of mortgaged land may hold the land for 3 years or such longer period as the Ministerial Corporation approves.
- (2) A mortgagee may not, without the Ministerial Corporation's consent:
 - (a) enter into possession of the same mortgaged land more than once, or
 - (b) obtain an order for foreclosure.
- (3) A dealing with land by a mortgagee as such is subject to any other provision of this Part.
- (4) If a mortgagee who has entered into possession of mortgaged land does not, during the period for which the mortgagee is entitled to hold the land, transfer the land or obtain an order for foreclosure:
 - (a) the estate or interest of the mortgagee and any other person in the land may be forfeited to the Crown, or
 - (b) if the land is land from which the Ministerial Corporation may, under this Part, remove restrictions on a transfer or other dealing, the Ministerial Corporation may certify that this Part has ceased to apply to the land.
- (5) If the Ministerial Corporation gives a certificate under subsection (4) (b):
 - (a) the mortgagee becomes liable to pay to the Crown any amount that would have been payable had the

- holder of the land applied for a certificate under this Part dispensing with the Ministerial Corporation's consent to a transfer of the land, and
- (b) the amount is payable not later than 3 months after demand for the payment is made.

29 Devolution under a will or on intestacy

- (1) A person on whom land to which this Part applies devolves under a will or on intestacy may hold the land for 3 years, or such longer period as the Ministerial Corporation approves, after the death of the testator or intestate.
- (2) If the person does not, within that period, sell the land or obtain the Ministerial Corporation's consent to hold the land:
- (a) the estate or interest of that and any other person in the land may be forfeited to the Crown, or
- (b) if the land is land from which the Ministerial Corporation may, under this Part, remove the transfer restrictions, the Ministerial Corporation may certify that this Part has ceased to apply to the land.
- (3) If the Ministerial Corporation gives a certificate under subsection (2) (b):
- (a) the holder of the land is liable to pay to the Crown any amount that would have been payable had the holder applied for a certificate dispensing with the Ministerial Corporation's consent to a transfer of the land, and
- (b) that amount is payable not later than 3 months after demand for the payment is made.
- (4) Any dealing with the land under this section is subject to the other provisions of this Part.
- (5) Section 27 applies to an application under subsection (2) for the Ministerial Corporation's consent to hold land in the same way as it applies to an application for consent to a dealing.

30 Removal of restrictions

- (1) A holder of land to which this Part applies may apply to the Ministerial Corporation for the issue of a certificate that the land may be transferred, leased, subleased, assigned or otherwise dealt with without the consent of the Ministerial Corporation.
- (2) Such a certificate may be issued by the Ministerial corporation if the fee simple in the land has been transferred from the Ministerial Corporation and:
 - (a) the land does not exceed 2 hectares in area, or
 - (b) an amount equivalent to 3 per cent of the land value of the land (as shown in a current notice of valuation issued by the Valuer-General under section 31) is paid to the Crown.
- (3) The Ministerial Corporation is to deduct from the amount referred to in subsection (2) any fee paid by the applicant to the Valuer-General in respect of the notice of valuation.
- (4) If the Ministerial Corporation issues a certificate under this section in respect of any land, the Ministerial Corporation's consent is not required to any subsequent transfer, lease, sublease or assignment of, or other dealing with, the land.
- (5) The effect of the issue of a certificate is to be recorded by the Registrar-General in the Register kept under the *Real Property Act 1900*.
- (6) In this section:
holder includes a mortgagee in possession.

31 Valuation of land

- (1) In this section:
holder includes a mortgagee in possession.
land value has the same meaning as it has in the *Valuation of Land Act 1916*.

- (2) On application, the Valuer-General:
 - (a) is to determine (as at the date on which the application is made) the land value of any land to which this Part applies, and
 - (b) is to issue to the applicant (and, if the applicant is not the holder, to the holder) a notice of the valuation.
- (3) The provisions of Parts 3 (Notices and objections) and 4 (Appeals to the Land and Environment Court) of the *Valuation of Land Act 1916* apply to a valuation under this section in the same way as they apply to a valuation under that Act.
- (4) A reference in Part 3 of the *Valuation of Land Act 1916* to the owner of a freehold estate includes, for the purposes of this section, a reference to a holder of land to which this Part applies.
- (5) A notice of valuation remains current for a period of 1 year from the date of issue or for such other period as may be prescribed by the regulations.
- (6) If an objection is lodged, the period referred to in subsection (5) commences from the date on which the objection is finally dealt with.
- (7) Except as provided by this section, the *Valuation of Land Act 1916* (section 79 excepted) does not apply to a valuation under this section.
- (8) A determination of land value under this section may be used for the purposes of this Part only.
- (9) An applicant for a determination of land value under this section is to pay to the Valuer-General such fees as may be determined by the Valuer-General.

[4] Part 4, heading

Insert "Part 4 Miscellaneous" before section 33.

[5] Section 32

Insert before section 33:

32 Savings and transitional provisions

Schedule 3 has effect.

[6] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings and transitional provisions

(Section 32)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of
Schedule 3 to the Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which such a provision 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.

**Part 2 Provisions consequent on enactment of
Crown Lands and Irrigation Legislation
Amendment (Transfer Restrictions) Act 1997**

2 Definition

In this Part:

amending Act means the *Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997*.

3 Applications for removal of transfer restrictions

An application for consent made under section 22A that was not determined before the repeal of that section by Schedule 3 [2] to the amending Act is taken to be an application made under Part 3 as inserted by Schedule 3 [3] to the amending Act.

[Minister's second reading speech made in—
Legislative Assembly on 17 June 1997
Legislative Council on 27 June 1997]