



New South Wales

Crown Lands Legislation Amendment (Budget) Act 2004 No 63

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New South Wales

Crown Lands Legislation Amendment (Budget) Act 2004 No 63

Act No 63, 2004

An Act to amend certain Crown Lands and other legislation with respect to rents and other matters; and for other purposes. [Assented to 6 July 2004]

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

This Act is the *Crown Lands Legislation Amendment (Budget) Act 2004*.

2 Commencement

This Act commences, or is taken to have commenced, on 1 July 2004.

3 Amendment of Crown Lands Act 1989 No 6

The *Crown Lands Act 1989* is amended as set out in Schedule 1.

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

The *Crown Lands (Continued Tenures) Act 1989* is amended as set out in Schedule 2.

5 Amendment of Hay Irrigation Act 1902 No 57

The *Hay Irrigation Act 1902* is amended as set out in Schedule 3.

6 Other amendments

The Act and instrument specified in Schedule 4 are amended as set out in that Schedule.

Schedule 1 Amendment of Crown Lands Act 1989

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Commonwealth lease means a lease to which Part 8 of Schedule 2 to the *Crown Lands (Continued Tenures) Act 1989* applies.

Consumer Price Index means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Consumer Price Index number, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index.

[2] Section 3 (4)

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[3] Section 136 Withdrawal from lease or licence for public purposes

Omit section 136 (7) and (8). Insert instead:

- (7) If part of a rent base apportioned under subsection (6) to a lease is less than the minimum rent base, that part of the rent base is increased to the minimum rent base.
- (8) For the purposes of the *Crown Lands (Continued Tenures) Act 1989*, a part of a rent base apportioned under subsection (6) to a lease (or, if subsection (7) applies, the minimum rent base) is taken:
- (a) if section 4D of that Act applies in respect of the lease, to be the annual rent of the lease as at the last due date occurring before 1 July 2004, and
 - (b) if clause 5 of Schedule 5 to that Act applies in respect of the lease, to be the annual rent of the lease as at the date of commencement of that clause.

[4] Section 136 (10)

Insert after section 136 (9):

(10) In this section:

minimum rent base means, if Division 2A of Part 7 applies to the lease \$350 or, if that Division does not apply in respect of the lease, \$100.

[5] Part 7, Divisions 2A and 2B

Insert after Division 2:

Division 2A Minimum rents

141A Minimum rent

- (1) The annual rent of a holding or an enclosure permit is not in any case to be less than the minimum rent as at the date the rent is due and payable.
- (2) If the annual rent of a holding or an enclosure permit on a due date is less than the minimum rent as at that due date, the annual rent is increased to the minimum rent.
- (3) For the purpose of this Division, the *minimum rent* of a holding or an enclosure permit at each due date is determined in accordance with the following formula:

$$M = B \times \frac{C}{D}$$

where:

M represents the minimum rent.

B represents the minimum rent base.

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date for the rent.

D represents the Consumer Price Index number for the last quarter for which such a number was published before the rent base adjustment date.

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- (4) In this section:

holding does not include an incomplete purchase under the *Crown Lands (Continued Tenures) Act 1989*.

minimum rent base means \$350 or such higher amount as the regulations may from time to time prescribe.

rent base adjustment date means 1 July 2004 or, if the minimum rent base is prescribed by the regulations, the date prescribed by the regulations as the rent base adjustment date.

Note. For holdings and permits in force before 1 July 2004, the minimum rent provisions above are phased-in. See Part 4 of Schedule 8.

141B General provisions applicable to CPI adjustment

- (1) This section applies to the adjustment of an amount by reference to the Consumer Price Index under section 141A.
- (2) If section 141A requires regard to be had to a Consumer Price Index number published before a due date, regard may be had to the last Index number so published before a notice or invoice of the annual rent payable by the holder is sent to the holder of the holding or enclosure permit concerned.
- (3) If the Australian Statistician publishes a Consumer Price Index number in respect of a particular quarter after the notice or invoice is sent:
 - (a) except as provided by paragraph (b)—the publication of the later Index number is to be disregarded, or
 - (b) if the Minister so directs—regard is to be had to the later and not to the earlier number.
- (4) If the Australian Statistician publishes a Consumer Price Index number in respect of a particular quarter in substitution for a Consumer Price Index number previously published in respect of that quarter:
 - (a) except as provided by paragraph (b)—the publication of the later Index number is to be disregarded, or
 - (b) if the Minister so directs—regard is to be had to the later and not to the earlier number.

- (5) If the reference base for the Consumer Price Index is changed, regard is to be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (6) An adjustment under section 141A is to be made to the nearest whole dollar.

141C Operation of Division

- (1) The operation of this Division in respect of the rent of a holding or enclosure permit is not a redetermination of the rent for the purposes of this Act or any of the Crown Lands Acts.
- (2) This Division has effect despite any condition to which a holding or enclosure permit is subject.

141D Division does not apply in respect of Western Division

- (1) Subject to this section, this Division does not apply in respect of the following:
 - (a) holdings situated in the Western Division,
 - (b) enclosure permits in the Western Division granted under this Act.
- (2) The regulations may apply the provisions of this Division, with or without modification, in respect of holdings or enclosure permits referred to in subsection (1).
- (3) If the regulations apply the provisions of this Division in respect of holdings or enclosure permits referred to in subsection (1), the regulations may modify the application of section 136 or Division 2B in respect of the holdings or enclosure permits.

141E Commonwealth leases

In this Division, a reference to a *holding* includes a reference to a Commonwealth lease.

Division 2B Minimum rent—Western Division

141F Minimum rent—Western Division

- (1) Subject to this section, this Division applies in respect of the following:
 - (a) holdings situated in the Western Division (except a lease the rent of which is not subject to redetermination),
 - (b) enclosure permits in the Western Division granted under this Act.
- (2) The annual rent of a holding or an enclosure permit to which this Division applies is not in any case to be less than the amount prescribed by the regulations for the purposes of this section as at the date the rent is due and payable.
- (3) If the annual rent of a holding or an enclosure permit to which this Division applies is, on a due date, less than the amount prescribed as referred to in subsection (2), the annual rent is increased to that prescribed amount.
- (4) The application of this Division is subject to any regulations under Division 2A.
- (5) In this section:

holding does not include an incomplete purchase under the *Crown Lands (Continued Tenures) Act 1989*.

Note. See clauses 4 and 5 of Schedule 5 to the *Crown Lands (Continued Tenures) Act 1989* in relation to minimum rents for leases of land situated in the Western Division, if the rent is not subject to redetermination.

141G Operation of Division

- (1) The operation of this Division in respect of the rent of a holding or an enclosure permit is not a redetermination of the rent for the purposes of this Act or any of the Crown Lands Acts.
- (2) This Division has effect despite any condition to which a holding or an enclosure permit is subject.

[6] Section 146 Minimum rents

Omit the section.

[7] Section 180A

Insert after section 180:

180A Fees for services

A fee may be charged, of such amount as may be approved by the Minister from time to time, for services provided by the Department in connection with Crown lands.

[8] Schedule 8 Savings, transitional and other provisions

Insert at the end of clause 25 (1):

Crown Lands Legislation Amendment (Budget) Act 2004

[9] Schedule 8, Part 4

Insert after Part 3:

Part 4 Provisions consequent on Crown Lands Legislation Amendment (Budget) Act 2004

38 Definitions

(1) In this Part:

amending Act means the *Crown Lands Legislation Amendment (Budget) Act 2004*.

continued tenures lease means a perpetual lease, special lease, term lease or Commonwealth lease under the *Crown Lands (Continued Tenures) Act 1989*.

cultivation enclosure permit means an enclosure permit in relation to which the Minister has authorised the cultivation of the land enclosed.

holding does not include an incomplete purchase under the *Crown Lands (Continued Tenures) Act 1989*.

(2) In this Part, a reference to a *holding* includes a reference to a Commonwealth lease.

39 Application of amendments

- (1) The amendments made to this Act by the amending Act extend to holdings and enclosure permits that were in force immediately before 1 July 2004, subject to this Part.
- (2) Subject to this Part, Divisions 2A and 2B of Part 7, as inserted by the amending Act, apply to the rent of a holding or an enclosure permit in respect of any due date that occurs on or after 1 July 2004 (whether or not the rent was paid in advance before 1 July 2004).

40 Phasing-in of increase in minimum rents—holdings and cultivation enclosure permits

- (1) This clause applies in respect of a holding (except a continued tenures lease the rent of which was not, immediately before 1 July 2004, subject to redetermination), or a cultivation enclosure permit, to which Division 2A of Part 7 (as inserted by the amending Act) applies that was in force immediately before 1 July 2004.
- (2) For the purposes of Division 2A of Part 7:
 - (a) the minimum rent of a holding or a cultivation enclosure permit to which this clause applies is taken, in respect of any due date occurring on or after 1 July 2004 and before 1 July 2005, to be \$170, and
 - (b) the minimum rent of a holding or a cultivation enclosure permit to which this clause applies is taken, in respect of any due date occurring on or after 1 July 2005 and before 1 July 2006, to be \$270.
- (3) For avoidance of doubt, in respect of a due date occurring on or after 1 July 2006, the minimum rent is to be determined as provided by Division 2A of Part 7.

41 Phasing-in of increase in minimum rents—other enclosure permits

- (1) This clause applies in respect of an enclosure permit (other than a cultivation enclosure permit) to which Division 2A of Part 7 (as inserted by the amending Act) applies that was in force immediately before 1 July 2004.

- (2) For the purposes of Division 2A of Part 7:
 - (a) the minimum rent of an enclosure permit to which this clause applies is taken, in respect of any due date occurring on or after 1 July 2004 and before 1 July 2005, to be \$150, and
 - (b) the minimum rent of an enclosure permit to which this clause applies is taken, in respect of any due date occurring on or after 1 July 2005 and before 1 July 2006, to be \$250.
- (3) For avoidance of doubt, in respect of a due date occurring on or after 1 July 2006, the minimum rent is to be determined as provided by Division 2A of Part 7.

42 Phasing-in of increase in minimum rents—continued tenures leases not subject to redetermination

- (1) This clause applies in respect of a continued tenures lease in force immediately before 1 July 2004 if the rent under the lease was not, immediately before 1 July 2004, subject to redetermination and Division 2A of Part 7 (as inserted by the amending Act) applies in respect of the lease.
- (2) For the purposes of Division 2A of Part 7:
 - (a) the minimum rent of a lease to which this clause applies is taken, in respect of any due date occurring on or after 1 July 2004 and before 1 July 2005, to be \$250, and
 - (b) the minimum rent of a lease to which this clause applies is taken, in respect of any due date occurring on or after 1 July 2005 and before 1 July 2006, to be \$350.
- (3) For avoidance of doubt, in respect of a due date occurring on or after 1 July 2006, the minimum rent is to be determined as provided by Division 2A of Part 7.

43 Due date for payment of additional amounts

- (1) If any additional amount of rent is payable in respect of a holding or enclosure permit as a consequence of the amendments made to this Act by the amending Act, that additional amount does not become due and payable until the

date notified to the holder of the holding or enclosure permit by the Minister as being the due date in respect of such additional amount.

Note. Accordingly, interest does not become payable in respect of such additional amounts under section 148 until the holder is notified of the additional amount payable.

- (2) Subclause (1) ceases to have effect on 1 July 2005.

44 No compensation for operation of amendments

- (1) No compensation is payable by or on behalf of the Crown because of the enactment or operation of the amendments made to this Act by the amending Act, or as a consequence of that enactment or operation.
- (2) The operation of those amendments is not to be regarded as a breach of contract.
- (3) In this clause:

compensation includes damages or any other form of monetary compensation.

the Crown means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer of the Department.

Schedule 2 Amendment of Crown Lands (Continued Tenures) Act 1989

(Section 4)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

minimum annual instalment has the meaning given by Part 1B.

minimum half-yearly instalment has the meaning given by Part 1B.

[2] Section 3 (4)

Insert after section 3 (3):

(4) Notes included in this Act do not form part of this Act.

[3] Parts 1A and 1B

Insert after Part 1:

Part 1A Rents

4A Application of Part

(1) This Part applies in respect of any lease, other than a lease of land situated in the Western Division.

Note. See, however, Division 2B of Part 7 of the Principal Act, which applies a minimum rent to certain leases of land situated in the Western Division.

(2) The regulations may apply the provisions of this Part, with or without modification, in respect of leases of land situated in the Western Division.

(3) This Part, and any regulations made under subsection (2), have effect despite anything to the contrary in this Act and despite any condition to which a lease is subject.

4B Definitions

In this Part:

lease means a perpetual lease, special lease, term lease or Commonwealth lease.

minimum rent has the same meaning as in Division 2A of Part 7 of the Principal Act.

Note. This Part provides, among other things, for the CPI adjustment of the rent payable under a lease. The rent of a permissive occupancy is not subject to CPI adjustment under this Part. Note, however, that a minimum rent does apply in respect of permissive occupancies under Division 2A of Part 7 of the Principal Act.

4C Adjustment of annual rent in line with Consumer Price Index—rent subject to redetermination

- (1) The annual rent of a lease (except a lease the rent of which is not subject to redetermination) at a due date that is the effective date of a redetermination of the rent of the lease, or that is the next due date after a mid-term redetermination of the rent of the lease, is:
 - (a) the rent as so redetermined, or
 - (b) if the minimum rent at that due date exceeds the rent as so redetermined, the minimum rent.
- (2) The annual rent of a lease referred to in subsection (1) at any other due date is:
 - (a) the CPI adjusted rent at that due date, or
 - (b) if the minimum rent at that due date exceeds the CPI adjusted rent, the minimum rent.

Note. As at 1 July 2004, the minimum rent under Division 2A of Part 7 of the Principal Act is \$350. That amount is subject to CPI adjustment under that Act and may also be increased by the regulations under that Act.

See also Part 4 of Schedule 8 to the Principal Act, which provides for the phasing-in of minimum rents from 1 July 2004 to 1 July 2006.

- (3) The *CPI adjusted rent* is to be determined in accordance with the following formula:

$$R = A \times \frac{C}{D}$$

where:

R represents the CPI adjusted rent.

A represents the determined rent, being the annual rent as at the last due date before 1 July 2004, or as at the effective date of the last redetermination of rent to take effect on or before the due date, whichever is later.

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date for the rent.

D represents the Consumer Price Index number for the last quarter for which such a number was published before the last due date before 1 July 2004, or as at the effective date of the last redetermination of rent to take effect on or before the due date, whichever is later.

- (4) Despite subsections (1) and (2), if a mid-term redetermination of rent is made, the rent as so redetermined may be charged, on a pro rata basis, in respect of the period commencing on the date the redetermination takes effect and ending on the next due date in respect of the rent, and the annual rent payable may be adjusted by the Minister as appropriate (even if the rent in respect of that period has already been paid in advance).
- (5) The operation of this section in respect of the rent of a lease is not of itself a redetermination of the rent for the purposes of this Act. Accordingly, clause 11 of Schedule 5 does not apply.
- (6) For avoidance of doubt, the rent of a lease is not to be regarded as being subject to redetermination merely because the holder of the lease has the option, under clause 10 of Schedule 5, of applying to the Minister for a redetermination of the rent. However, it does become subject to redetermination if such an application is made.

Note. See section 4F.

- (7) In this section:

mid-term redetermination of rent is a redetermination of rent that takes effect on any date other than the due date for the rent.

Note. See sections 4E and 4F in relation to effective dates of redetermination of rent. Redeterminations of rent are made in respect of rent review dates, which coincide with due dates for the rent. However, if a redetermination of rent is made more than 6 months after a rent review date, it takes effect on the date it is made (not the rent review date or due date for the rent). This is a mid-term redetermination of rent.

4D Adjustment of annual rent in line with Consumer Price Index—rent not subject to redetermination

- (1) The annual rent of a lease the rent of which is not subject to redetermination is:
- (a) the CPI adjusted rent at the due date, or
 - (b) if the minimum rent at that due date exceeds the CPI adjusted rent, the minimum rent.

Note. As at 1 July 2004, the minimum rent under Division 2A of Part 7 of the Principal Act is \$350. That amount is subject to CPI adjustment under that Act and may also be increased by the regulations under that Act.

See also Part 4 of Schedule 8 to the Principal Act, which provides for the phasing-in of minimum rents from 1 July 2004 to 1 July 2006.

- (2) The *CPI adjusted rent* is to be determined in accordance with the following formula:

$$R = B \times \frac{C}{D}$$

where:

R represents the CPI adjusted rent.

B represents the rent base, being the annual rent as at the last due date occurring before 1 July 2004.

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date for which the CPI adjusted rent is being calculated.

D represents the Consumer Price Index number for the last quarter for which such a number was published before 1 July 2004.

- (3) The operation of this section in respect of the rent of a lease is not a redetermination of rent for the purposes of this Act. Accordingly, clause 11 of Schedule 5 does not apply.

4E Redetermination of rents

- (1) This section applies from 1 July 2004 in respect of a lease the rent of which was, immediately before 1 July 2004, subject to redetermination by the Minister under this Act, except the following leases:
- (a) a lease in respect of which the rent may be redetermined by the Minister at any time,

- (b) a lease in respect of which the rent may be redetermined by the Minister at intervals of less than 3 years.

Note. The leases to which this section applies are more fully described in clauses 6, 8 and 9 of Schedule 5. Before 1 July 2004, the rents of the leases to which this section applies were redetermined at the intervals set out in those clauses.

In addition, this section applies to Commonwealth leases that were subject to redetermination before 1 July 2004.

- (2) The Minister is to redetermine the rent payable in respect of a lease to which this section applies as provided by this section.
- (3) A redetermination of the rent of a lease is to be made in respect of each rent review date.
- (4) The rent review dates in respect of a lease are as follows:
 - (a) if the effective date of the last redetermination of the rent of the lease was not more than 3 years before 1 July 2004:
 - (i) the first rent review date is the first due date in respect of the rent occurring on or after 1 July 2004 that is not less than 3 years after the effective date of that redetermination, or such later due date as may be determined by the Minister, and
 - (ii) thereafter, rent review dates fall on the third anniversary of the previous rent review date,
 - (b) if paragraph (a) does not apply:
 - (i) the first rent review date is the first due date in respect of the rent occurring on or after 1 July 2004, or such later due date as may be determined by the Minister, and
 - (ii) thereafter, rent review dates fall on the third anniversary of the previous rent review date.
- (5) A redetermination of rent in respect of the first rent review date for a lease under this section:
 - (a) may be made at any time before the first rent review date or within 6 months after the first rent review date, and, if so made, takes effect on the first rent review date, and
 - (b) may be made more than 6 months after the first rent review date but, if so made, takes effect from the date of the redetermination.

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- (6) A redetermination of rent in respect of any other rent review date for a lease under this section:
 - (a) may be made within 6 months before or after a rent review date and, if so made, takes effect on the rent review date, and
 - (b) may be made more than 6 months after a rent review date but, if so made, takes effect from the date of the redetermination.
 - (7) Any redetermination of rent or adjustment of rent following a redetermination does not become due and payable, for the purpose of calculating interest, until the date notified to the holder of the lease by the Minister as being the due date in respect of the rent or adjustment.
 - (8) For avoidance of doubt, this section does not affect the operation of clauses 11 and 12 of Schedule 5.

4F Redetermination of rent following application for redetermination

- (1) This section applies in respect of a lease if an application is made under clause 10 of Schedule 5 for a redetermination of the rent of the lease.
- (2) The Minister is to redetermine the rent payable in respect of a lease to which this section applies as provided by this section.
- (3) A redetermination of rent is to be made, as provided by this section, in respect of each rent review date.
- (4) If the application for redetermination was made before 1 July 2004, rent review dates for the lease are as follows:
 - (a) if the effective date of the last redetermination of the rent was not more than 3 years before 1 July 2004:
 - (i) the first rent review date is the first due date in respect of the rent occurring on or after 1 July 2004 that is not less than 3 years after the effective date of that redetermination, or such later due date as may be determined by the Minister, and
 - (ii) thereafter, rent review dates fall on the third anniversary of the previous rent review date,

- (b) if paragraph (a) does not apply:
 - (i) the first rent review date is the first due date in respect of the rent occurring on or after 1 July 2004, or such later due date as may be determined by the Minister, and
 - (ii) thereafter, rent review dates fall on the third anniversary of the previous rent review date.
- (5) If the application for redetermination is made on or after 1 July 2004:
 - (a) the first rent review date is the first due date in respect of the rent after the application is made, and
 - (b) thereafter, each third anniversary of the previous rent review date is a rent review date.
- (6) A redetermination of rent in respect of the first rent review date for a lease under this section:
 - (a) may be made at any time before the first rent review date or within 6 months after the first rent review date, and, if so made, takes effect on the first rent review date, and
 - (b) may be made more than 6 months after the first rent review date but, if so made, takes effect from the date of the redetermination.
- (7) A redetermination of rent in respect of any other rent review date for a lease under this section:
 - (a) may be made within 6 months before or after a rent review date and, if so made, takes effect on the rent review date, and
 - (b) may be made more than 6 months after a rent review date but, if so made, takes effect from the date of the redetermination.
- (8) Any redetermination of rent or adjustment of rent following a redetermination does not become due and payable, for the purpose of calculating interest, until the date notified to the holder of the lease by the Minister as being the due date in respect of the rent or adjustment.
- (9) For avoidance of doubt, this section does not affect the operation of clauses 11 and 12 of Schedule 5.

Part 1B Minimum instalments—purchases of land

4G Application of Part

- (1) This Part applies in respect of any purchase of land under this Act, including an incomplete purchase.
- (2) Subject to subsection (3), this Part does not apply in respect of a purchase of land situated in the Western Division.
- (3) The regulations may apply the provisions of this Part, with or without modification, in respect of land situated in the Western Division.
- (4) This Part, and any regulations made under subsection (3), have effect despite anything to the contrary in this Act and despite any condition to which a purchase (or incomplete purchase) is subject.

4H Minimum annual instalments

- (1) An annual instalment of the purchase price of land under this Act is not in any case to be less than the minimum annual instalment payable at the due date.
- (2) If an annual instalment of the purchase price of land (whether with or without interest added) is less than the minimum annual instalment at the due date, the annual instalment is increased to the minimum annual instalment.
- (3) For the purpose of this Act, the *minimum annual instalment* at each due date is determined in accordance with the following formula:

$$M = B \times \frac{C}{D}$$

where:

M represents the minimum annual instalment.

B represents the annual instalment base.

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date for the annual instalment.

D represents the Consumer Price Index number for the last quarter for which such a number was published before the annual instalment base adjustment date.

- (4) In this section:

annual instalment base means \$350 or such higher amount as the regulations may from time to time prescribe.

annual instalment base adjustment date means 1 July 2004 or, if the annual instalment base is prescribed by the regulations, the date prescribed by the regulations as the annual instalment base adjustment date.

4I Minimum half-yearly instalments

- (1) A half-yearly instalment of the purchase price of land under this Act is not in any case to be less than the minimum half-yearly instalment payable at the due date.
- (2) If a half-yearly instalment of the purchase price of land (whether with or without interest added) is less than the minimum half-yearly instalment, the half-yearly instalment is increased to the minimum half-yearly instalment.
- (3) For the purpose of this Act, the *minimum half-yearly instalment* at each due date is determined in accordance with the following formula:

$$M = B \times \frac{C}{D}$$

where:

M represents the minimum half-yearly instalment.

B represents the half-yearly instalment base.

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date for the half-yearly instalment.

D represents the Consumer Price Index number for the last quarter for which such a number was published before the half-yearly instalment base adjustment date.

- (4) In this section:

half-yearly instalment base means \$175 or such higher amount as the regulations may from time to time prescribe.

half-yearly instalment base adjustment date means 1 July 2004 or, if the half-yearly instalment base is prescribed by the regulations, the date prescribed by the regulations as the half-yearly instalment base adjustment date.

4J Adjustment of final instalment

If the balance of purchase money and interest owing in respect of a purchase is at any time less than the amount of a minimum annual instalment or, in the case of instalments paid half-yearly, the minimum half-yearly instalment, the balance only is payable.

[4] Part 3

Insert before section 18:

Part 3 Miscellaneous

17 General provisions applicable to CPI adjustments

- (1) This section applies in respect of a provision of this Act that provides for the adjustment of an amount by reference to the Consumer Price Index (a *CPI adjustment provision*).
- (2) If a CPI adjustment provision requires regard to be had to a Consumer Price Index number published before a due date in respect of rent or an instalment, regard may be had to the last Index number so published before a notice or invoice of the rent or instalment payable by the person liable to pay the rent or instalment is sent to the person concerned.
- (3) If the Australian Statistician publishes a Consumer Price Index number in respect of a particular quarter after the notice or invoice is sent:
 - (a) except as provided by paragraph (b)—the publication of the later Index number is to be disregarded, or
 - (b) if the Minister so directs—regard is to be had to the later and not to the earlier number.
- (4) If the Australian Statistician publishes a Consumer Price Index number in respect of a particular quarter in substitution for a Consumer Price Index number previously published in respect of that quarter:

- (a) except as provided by paragraph (b)—the publication of the later Index number is to be disregarded, or
 - (b) if the Minister so directs—regard is to be had to the later and not to the earlier number.
- (5) If the reference base for the Consumer Price Index is changed, regard is to be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (6) An adjustment under a CPI adjustment provision is to be made to the nearest whole dollar.

[5] Schedule 2 Provisions applicable to continued tenures etc

Omit clause 3 (5) from Part 1. Insert instead:

- (5) If the purchase price (whether with or without interest added) of an incomplete purchase is, immediately before the commencement of this clause, payable by annual instalments of less than \$100, the annual instalments are increased to \$100 as from that commencement.

Note. See Part 1B of this Act in relation to minimum instalments on certain purchases after 1 July 2004.

[6] Schedule 2, Part 1, clause 4 (6)

Omit the subclause. Insert instead:

- (6) If the purchase price (whether with or without interest added) of an incomplete purchase in a special land district is, immediately before the commencement of this clause, payable by half-yearly instalments of less than \$50, the half-yearly instalments are increased to \$50 as from that commencement.

Note. See Part 1B of this Act in relation to minimum half-yearly instalments on certain purchases after 1 July 2004.

[7] Schedule 2, Part 2, clause 4A

Insert after clause 4:

4A Purchase of perpetual leases—special arrangements

Schedule 7A has effect.

[8] Schedule 4 Subdivision of holdings

Insert after clause 4 (6):

- (7) This clause does not apply in respect of the determination of the annual rent of a portion of a subdivided lease if Part 1A of this Act applies in respect of the rent of the lease.

[9] Schedule 4, clause 4A

Insert after clause 4:

4A Apportionment of money payable—Part 1A leases

- (1) This clause applies in respect of the determination of the annual rent of a portion of a subdivided lease if Part 1A of this Act applies in respect of the rent of the lease.
- (2) If a subdivided lease is subject to redetermination, the Minister may determine the rent in respect of each portion of the subdivided lease.
- (3) If a subdivided lease is not subject to redetermination, the Minister may apportion the rent and rent base for the subdivided lease to the portions of the leases as the Minister considers appropriate.
- (4) A part of a rent base apportioned to a portion of a lease under this clause is taken, for the purpose of section 4D, to have been the annual rent of the portion of the lease as at the last due date occurring before 1 July 2004. The annual rent of the portion of the lease is to be determined accordingly.

[10] Schedule 5 Rent etc

Omit clause 5 (2)–(5). Insert instead:

- (2) This clause does not apply in respect of the rent of a lease if Part 1A applies in respect of the rent of the lease.

Note. From 1 July 2004, most rental adjustments are made under Part 1A, not the above provision. As at 1 July 2004, Part 1A does not apply in respect of certain leases of land situated in the Western Division. Accordingly, this clause continues to apply in respect of such leases. Note that the regulations may apply Part 1A in respect of such leases.

[11] Schedule 5, clause 6 (8)

Insert after clause 6 (7):

- (8) This clause does not apply in respect of the redetermination of the rent of a lease if Part 1A applies in respect of the redetermination of the rent of the lease.

[12] Schedule 5, clause 8 (10)

Insert after clause 8 (9):

- (10) This clause does not apply in respect of the redetermination of the rent of a lease if Part 1A applies in respect of the redetermination of the rent of the lease.

[13] Schedule 5, clause 9 (9)

Insert after clause 9 (8):

- (9) This clause does not apply in respect of the redetermination of the rent of a lease if Part 1A applies in respect of the redetermination of the rent of the lease.

[14] Schedule 5, clause 10 (6)

Insert after clause 10 (5):

- (6) Subclauses (3)–(5) do not apply in respect of the redetermination of the rent of a lease if Part 1A applies in respect of the redetermination of the rent of the lease.

[15] Schedule 5, clause 12 (1) (a)

Omit the paragraph. Insert instead:

- (a) the rent is to be the market rent for the land comprised in the lease having regard to any restrictions, conditions or terms to which it is subject, subject to subclause (3),

[16] Schedule 5, clause 12 (2)

Omit the subclause.

[17] Schedule 5, clause 12 (3)

Insert “, being a lease of land situated in the Western Division,” after “town land lease”.

[18] Schedule 5, clause 12 (4)

Omit “subclauses (2) and (3)”. Insert instead “subclause (3)”.

[19] Schedule 5, clause 12 (6) and (7)

Omit clause 12 (6). Insert instead:

(6) Subject to Divisions 2A and 2B of Part 7 of the Principal Act, a redetermination of the rent of a lease in a special land district that is situated in the Western Division is subject to any reduction under the *Irrigation Areas (Reduction of Rents) Act 1974*.

(7) The regulations may modify the application of this clause in respect of leases of land situated in the Western Division. In particular, the regulations may provide that subclause (3) or (6) do not apply in respect of such a lease.

[20] Schedule 5, clause 13 (1)

Insert “, being a lease of land situated in the Western Division,” after “special land district”.

[21] Schedule 5, clause 13 (5)

Omit “by clause 12”. Insert instead “by this Act”.

[22] Schedule 5, clause 13 (6) (a)

Omit “subject to section 146 of the Principal Act (minimum rents)”.

Insert instead “subject to Divisions 2A and 2B of Part 7 of the Principal Act”.

[23] Schedule 5, clause 13 (8)

Insert after clause 13 (7):

(8) The regulations may modify the application of this clause in respect of leases of land situated in the Western Division. In particular, the regulations may provide that this clause does not apply in respect of such a lease.

[24] Schedule 7 Purchase of land held under lease

Insert before Part 1:

Note.

See also Schedule 7A in relation to the purchase of land held under a perpetual lease.

[25] Schedule 7, Part 1, clause 11

Omit clause 11 (3)–(5).

[26] Schedule 7, Part 1, clause 12 (6)

Insert after clause 12 (5):

- (6) This clause does not apply in respect of a lease if Part 1A of this Act applies in respect of the rent of the lease.

[27] Schedule 7, Part 1, clause 12A

Insert after clause 12:

12A Adjustment of rent where part of land subject to lease is purchased

- (1) This clause applies in respect of a lease if Part 1A of this Act applies in respect of the rent of the lease.
- (2) If part only of the land comprised in a lease (other than a special lease) is purchased, and the lease is subject to redetermination, the Minister may determine the rent in respect of the remaining part of the lease.
- (3) If part only of the land comprised in a lease (other than a special lease) is purchased, and the lease is not subject to redetermination, the Minister may proportionately adjust the rent and rent base for the lease.
- (4) A part of a rent base apportioned under this clause is taken, for the purpose of section 4D, to have been the annual rent of the lease as at the last due date occurring before 1 July 2004. The annual rent of the remaining part of the lease is to be determined accordingly.

[28] Schedule 7, Part 1, clause 15 Payment of purchase price by instalments

Insert after clause 15 (2):

- (3) Subclause (2) does not apply in respect of any instalment of a purchase to which Part 1B of this Act applies.
- (4) This clause does not apply in respect of the purchase price of land if the application for purchase is an application to which clause 15A applies.

[29] Schedule 7, Part 1, clause 15A

Insert after clause 15:

15A Payment of purchase price in full

- (1) This clause applies in respect of a purchase of land if the application for purchase is made on or after 1 July 2004.
- (2) The purchase price of land in respect of an application for purchase to which this clause applies is to be paid in full within such time as the Minister may require.
- (3) This clause does not apply in respect of an application for a purchase of land situated in the Western Division, subject to subclause (4).
- (4) The regulations may apply this clause, with or without modifications, in respect of an application to purchase land situated in the Western Division.

[30] Schedule 7, Part 2, clause 11

Insert “, 15A” after “Clauses 15”.

[31] Schedule 7A

Insert after Schedule 7:

**Schedule 7A Purchase of perpetual leases—
special arrangements**

(Clause 4A of Part 2 of Schedule 2)

Part 1 Preliminary

1 Application of Schedule

- (1) This Schedule applies to a perpetual lease the rent of which is not, as at 1 July 2004, subject to redetermination.
- (2) This Schedule supplements Schedule 7 in relation to the purchase of land subject to a lease referred to in subclause (1). However, in the event of any inconsistency between this Schedule and Schedule 7, this Schedule prevails.
- (3) Subject to subclause (4), this Schedule does not apply to a perpetual lease of land situated in the Western Division.
- (4) The regulations may apply this Schedule, with or without modifications, in respect of a perpetual lease of land situated in the Western Division.
- (5) For avoidance of doubt, the rent of a lease is not to be regarded as being subject to redetermination merely because the holder of the lease had the option, at or before 1 July 2004, of applying to the Minister for a redetermination of rent under clause 10 of Schedule 5. However, such a lease is to be regarded as being subject to redetermination if such an application was granted before 1 July 2004.

Part 2 Special arrangements for purchase

2 Lease holders to be given notice of special arrangements

- (1) The Minister may, by notice in writing given to the holder of a lease to which this Schedule applies, invite the holder of the lease to apply to purchase the land comprised in the lease.

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- (2) The notice (referred to in this Schedule as a *special purchase notice*) is to advise the holder of the lease of the effect of this Schedule with regard to the purchase price of the land and redetermination of rent.
 - (3) A special purchase notice is to be in such form as the Minister approves.

3 Purchase price of land

- (1) The purchase price of the land comprised in a lease to which this Schedule applies is the special purchase price, or the purchase price that would apply under Schedule 7 but for this Schedule, whichever is the lower.
- (2) The *special purchase price* is 3 per cent of the land value of the land (within the meaning of the *Valuation of Land Act 1916*) as at the date the application to purchase the land is made under Schedule 7.
- (3) For the purpose of determining the special purchase price, if the land value of the land is entered in the Register of Land Values kept under the *Valuation of Land Act 1916* as at the date of an application to purchase the land, the land value at that date is taken to be the value so entered in the Register.
- (4) This clause does not apply in respect of an application for purchase made before 1 July 2004.

Part 3 Redetermination of rent

4 Annual rent of land becomes subject to redetermination if not purchased

- (1) The rent of a lease to which this Schedule applies becomes subject to redetermination at the end of the period of 2 years (the *2-year period*) after a special purchase notice is given to the holder of the lease, subject to this clause.
- (2) If an application is made by the holder of the lease, or a transferee, to purchase the whole of the land comprised in the lease before the end of the 2-year period, and the application is not determined by the end of that period, the Minister may, despite clause 5, defer or waive the redetermination of the rent for such period as the Minister considers appropriate.

- (3) If an application is made by the holder of the lease, or a transferee, to purchase the whole of the land comprised in the lease before the end of the 2-year period, and the application is refused by the Minister under Schedule 7, the rent of the lease, following redetermination to market rent by the Minister, is to be discounted, as the Minister considers appropriate, so that the holder of the lease is not required to pay such part of that market rent as exceeds the base amount.
- (4) If an application is made by the holder of the lease, or a transferee, to purchase the whole of the land comprised in the lease before the end of the 2-year period, and the application as to part of the land is refused by the Minister under Schedule 7, the rent of that part of the lease, following redetermination to market rent by the Minister, is to be discounted, as the Minister considers appropriate, so that the holder of the lease is not required to pay such part of that market rent as exceeds the base amount.
- (5) For the purposes of this clause, the *base amount* is the amount of rent that the Minister determines the holder would have been required to pay on a due date for rent in respect of the lease, or part of the lease, if the annual rent of the lease or part had not become subject to redetermination and had been determined in accordance with section 4D.

5 Provisions applicable to redeterminations

- (1) If the rent of a lease becomes subject to redetermination under this Schedule, the Minister is to redetermine the rent payable in respect of the lease as provided by this clause.
- (2) A redetermination of rent is to be made, as provided by this clause, in respect of each rent review date.
- (3) Rent review dates for the lease are as follows:
 - (a) the first rent review date is the first due date in respect of the rent occurring on or after the end of the 2-year period (referred to in clause 4), or such later due date as may be determined by the Minister,
 - (b) thereafter, rent review dates fall on each third anniversary of the previous rent review date.
- (4) A redetermination of rent in respect of the first rent review date for a lease under this clause:

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- (a) may be made at any time before the first rent review date or within 6 months after the first rent review date, and, if so made, takes effect on the first rent review date, and
 - (b) may be made more than 6 months after the first rent review date but, if so made, takes effect from the date of the redetermination.
 - (5) A redetermination of rent in respect of any other rent review date for a lease under this clause:
 - (a) may be made within 6 months before or after a rent review date and, if so made, takes effect on the rent review date, and
 - (b) may be made more than 6 months after a rent review date but, if so made, takes effect from the date of the redetermination.
 - (6) Any redetermination of rent or adjustment of rent following a redetermination does not become due and payable, for the purpose of calculating interest, until the date notified to the holder of the lease by the Minister as being the due date in respect of the rent or adjustment.
 - (7) For avoidance of doubt, this clause does not affect the operation of clauses 11 and 12 of Schedule 5 in respect of a lease.

Part 4 Restrictions and covenants imposed on land

6 Restrictions and covenants relating to protection of the environment and other significant values

- (1) The Minister may, in connection with the grant of an application to purchase land that is the subject of a lease to which this Schedule applies, impose on the land, on behalf of the Crown, such restrictions on use or public positive covenants as the Minister considers appropriate for one or more of the following purposes:
 - (a) protecting the environment,
 - (b) protecting or managing natural resources,

- (c) protecting cultural, heritage or other significant values of the land or any item or work on the land.
- (2) Any such restriction or public positive covenant is to be imposed in accordance with section 88D or 88E of the *Conveyancing Act 1919* (as appropriate), and that Act applies in respect of the restriction or public positive covenant.
- (3) In relation to a restriction or covenant imposed as referred to in this clause, the Minister may, on behalf of the Crown, exercise the functions of a prescribed authority under that Act.
- (4) Section 88D (9) of the *Conveyancing Act 1919* does not apply in respect of any interest in the land acquired by the purchaser of the land before the restriction or public positive covenant takes effect and, accordingly, does not prevent the enforcement of the restriction or covenant.

7 Imposition of covenants relating to subdivision

- (1) The Minister may, in connection with the grant of an application to purchase land that is the subject of a lease to which this Schedule applies, impose on the land, on behalf of the Crown, such covenants as the Minister considers appropriate for the purpose of preventing or restricting subdivision of the land.
- (2) Such a covenant is to be imposed as a restriction on the use of the land in accordance with section 88D or 88E of the *Conveyancing Act 1919* (as appropriate), and that Act applies in relation to the restriction. For that purpose, a subdivision of the land is taken to be a use of the land.
- (3) The Registrar-General must not register, under Division 3 of Part 23 of the *Conveyancing Act 1919*, a plan of subdivision in respect of land that is the subject of a restriction on use imposed as referred to in this clause except with the consent of the Minister.
- (4) A consent authority must not grant consent under Part 4 of the *Environmental Planning and Assessment Act 1979* to the subdivision of land that is the subject of a restriction on use imposed as referred to in this clause except with the consent of the Minister.
- (5) The Minister may, at the Minister's absolute discretion, consent to the subdivision of land that is the subject of a

restriction on use imposed as referred to in this clause or to the registration of a plan of subdivision in respect of the land.

- (6) In relation to a restriction on use imposed as referred to in this clause, the Minister may, on behalf of the Crown, exercise the functions of a prescribed authority under the *Conveyancing Act 1919*.
- (7) Section 88D (9) of the *Conveyancing Act 1919* does not apply in respect of any interest in the land acquired by the purchaser of the land before the restriction on use takes effect and, accordingly, does not prevent the enforcement of the restriction.
- (8) In this clause:
consent authority has the meaning given by the *Environmental Planning and Assessment Act 1979*.

8 Application of Environmental Planning and Assessment Act 1979

- (1) For the purposes of section 28 of the *Environmental Planning and Assessment Act 1979*:
 - (a) a restriction on use or public positive covenant imposed by the Minister on behalf of the Crown in accordance with this Schedule is taken to be a regulatory instrument, and
 - (b) the Minister is responsible for the administration of such a regulatory instrument.

Note. Section 28 of the *Environmental Planning and Assessment Act 1979* allows an environmental planning instrument to suspend the operation of a regulatory instrument for the purpose of enabling development to be carried out. Such a suspension cannot be given effect to without the concurrence in writing of the Minister responsible for the administration of the regulatory instrument.

- (2) A provision of an environmental planning instrument made under section 28 of the *Environmental Planning and Assessment Act 1979* and in force immediately before 1 July 2004, or such later date as may be prescribed by the regulations, does not affect the operation of a restriction or covenant imposed by the Minister in accordance with this Schedule, unless subsequently amended to affect the operation of such a restriction or covenant.

- (3) The Minister is to consult with the Minister administering the *Environmental Planning and Assessment Act 1979* before making a regulation referred to in subclause (2).

Part 5 Miscellaneous

9 Consultation

- (1) If an application is made to purchase land comprised in a lease to which this Schedule applies, and the lease is a Crown-lease, a settlement lease or a prickly-pear lease, the Minister is to consult with each of the relevant Ministers before making any of the following decisions:
- (a) a decision to grant or refuse the application,
 - (b) a decision to impose restrictions or public positive covenants on the land the subject of the application,
 - (c) a decision to release, vary, rescind or revoke any such restriction or covenant,
 - (d) a decision to grant concurrence under section 28 (4) of the *Environmental Planning and Assessment Act 1979* in relation to a provision of an environmental planning instrument that affects the operation of a restriction or covenant imposed by the Minister in accordance with this Schedule.
- (2) The Minister must also consult with each relevant Minister before consenting to the subdivision of land that is the subject of a restriction relating to subdivision imposed by the Minister as referred to in this Schedule.
- (3) For the purposes of this clause, each of the following Ministers is a **relevant Minister**:
- (a) the Minister administering the *National Parks and Wildlife Act 1974*,
 - (b) the Minister administering the *Threatened Species Conservation Act 1995*,
 - (c) the Minister administering the *Wilderness Act 1987*.

[32] Schedule 8 Savings and transitional provisions

Insert at the end of clause 1 (1):

Schedule 2 to the *Crown Lands Legislation Amendment (Budget) Act 2004*

[33] Schedule 8, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of Crown Lands Legislation Amendment (Budget) Act 2004

Note.

See also Part 4 of Schedule 8 to the Principal Act.

7 Definitions

In this Part:

amending Act means the *Crown Lands Legislation Amendment (Budget) Act 2004*.

lease means a perpetual lease, special lease, term lease or Commonwealth lease.

8 Application of minimum rents and CPI adjustments

- (1) Part 1A of this Act, as inserted by the amending Act, applies to the rent of a lease in respect of any due date that occurs on or after 1 July 2004 (whether or not the rent was paid in advance before that date).
- (2) This clause is subject to Part 4 of Schedule 8 to the Principal Act.

Note. Part 4 of Schedule 8 to the Principal Act provides for the phasing-in of minimum rent provisions.

9 Application of changes to purchase and instalment provisions

The amendments made to this Act by the amending Act extend to purchases commenced or incomplete purchases that had effect immediately before 1 July 2004, subject to this Part.

10 Phasing-in of increase in minimum annual instalments

- (1) This clause applies if the purchase price (whether with or without interest added) of an incomplete purchase is, immediately before 1 July 2004, payable by annual instalments and Part 1B of this Act (as inserted by the amending Act) applies in respect of the instalments.
- (2) For the purposes of Part 1B:
 - (a) the minimum annual instalment is taken, in respect of any due date occurring on or after 1 July 2004 and before 1 July 2005, to be \$200, and
 - (b) the minimum annual instalment is taken, in respect of any due date occurring on or after 1 July 2005 and before 1 July 2006, to be \$300.
- (3) For avoidance of doubt, in respect of a due date occurring on or after 1 July 2006, the minimum annual instalment is to be determined as provided by Part 1B.

11 Phasing-in of increase in minimum half-yearly instalments

- (1) This clause applies if the purchase price (whether with or without interest added) of an incomplete purchase is, immediately before 1 July 2004, payable by half-yearly instalments and Part 1B of this Act (as inserted by the amending Act) applies in respect of the instalments.
- (2) For the purposes of Part 1B:
 - (a) the minimum half-yearly instalment is taken, in respect of any due date occurring on or after 1 July 2004 and before 1 July 2005, to be \$100, and
 - (b) the minimum half-yearly instalment is taken, in respect of any due date occurring on or after 1 July 2005 and before 1 July 2006, to be \$150.
- (3) For avoidance of doubt, in respect of a due date occurring on or after 1 July 2006, the minimum half-yearly instalment is to be determined as provided by Part 1B.

12 Due date for payment of additional amounts

- (1) If any additional amount of rent or of an instalment is payable in respect of a lease or incomplete purchase as a consequence of the amendments made to this Act by the amending Act, that

additional amount does not become due and payable until the date notified to the holder of the lease or purchaser (as appropriate), by the Minister as being the due date in respect of such additional amount.

Note. Accordingly, interest does not become payable in respect of such additional amounts under section 148 of the Principal Act until the holder is notified of the additional amount payable.

- (2) Subclause (1) ceases to have effect on 1 July 2005.

13 No compensation for operation of amendments

- (1) No compensation is payable by or on behalf of the Crown because of the enactment or operation of the amendments made to this Act by the amending Act, or as a consequence of that enactment or operation.
- (2) The operation of those amendments is not to be regarded as a breach of contract.
- (3) In this clause:

compensation includes damages or any other form of monetary compensation.

the Crown means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer of the Department.

Schedule 3 Amendment of Hay Irrigation Act 1902

(Section 5)

[1] Section 5 Definitions

Insert in alphabetical order:

Consumer Price Index means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Consumer Price Index number, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index.

[2] Section 5 (2)

Insert at the end of section 5:

- (2) Notes included in this Act do not form part of this Act.

[3] Sections 18 and 18A

Insert after section 17:

18 Rent payable annually and in advance

- (1) If the rent of a lease of any land vested in the Ministerial Corporation by this Act is payable on the basis of any period other than a period of 12 months, the rent is, as from a date fixed by the Minister, payable annually.
- (2) The rent of a lease is payable in advance.

18A Minimum rent

- (1) The annual rent of a lease of any land vested in the Ministerial Corporation by this Act is not in any case to be less than the minimum rent as at the date the rent is due and payable.
- (2) If the annual rent of a lease on a due date is less than the minimum rent as at that due date, the annual rent is increased to the minimum rent.
- (3) The minimum rent of the lease is to be calculated in accordance with Division 2A of Part 7 of the *Crown Lands Act 1989*, as if the lease were a holding under that Act.

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- (4) This section has effect despite any condition to which a lease is subject.

Note. As at 1 July 2004, the minimum rent under Division 2A of Part 7 of the *Crown Lands Act 1989* is \$350. That amount is subject to CPI adjustment under that Act and may also be increased by the regulations under that Act. See also the Fourth Schedule to this Act, which provides for the phasing-in of minimum rents.

[4] Section 19A Power to sell land

Omit “The purchase price for the land,” from section 19A (3).

Insert instead “Subject to section 19AB, the purchase price for the land, in respect of an application for purchase made before 1 July 2004,”.

[5] Section 19A (3A)

Insert after section 19A (3):

- (3A) The purchase price for land, in respect of an application for purchase made on or after 1 July 2004, is to be paid in full within such time as the Ministerial Corporation requires.

[6] Sections 19AB and 19AC

Insert after section 19A:

19AB Minimum half-yearly instalments

- (1) A half-yearly instalment of the purchase price of land under this Act is not in any case to be less than the minimum half-yearly instalment payable at the due date.
- (2) If a half-yearly instalment of the purchase price of land (whether with or without interest added) is less than the minimum half-yearly instalment, the half-yearly instalment is increased to the minimum half-yearly instalment.
- (3) For the purpose of this Act, the *minimum half-yearly instalment* at each due date is determined in accordance with the following formula:

$$M = B \times \frac{C}{D}$$

where:

M represents the minimum half-yearly instalment.

B represents the half-yearly instalment base.

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date for the half-yearly instalment.

D represents the Consumer Price Index number for the last quarter for which such a number was published before the half-yearly instalment base adjustment date.

(4) In this section:

half-yearly instalment base means \$175 or such higher amount as the regulations may from time to time prescribe.

half-yearly instalment base adjustment date means 1 July 2004 or, if the half-yearly instalment base is prescribed by the regulations, the date prescribed by the regulations as the half-yearly instalment base adjustment date.

19AC Adjustment of final instalment

If the balance of purchase money and interest owing in respect of a purchase is at any time less than the amount of the minimum half-yearly instalment, the balance only is payable.

[7] Section 32

Insert after section 31:

32 General provisions applicable to CPI adjustments

- (1) This section applies in respect of a provision of this Act, or a provision of the *Crown Lands Act 1989* as it applies to leases under this Act, that provides for the adjustment of an amount by reference to the Consumer Price Index (a *CPI adjustment provision*).
- (2) If a CPI adjustment provision requires regard to be had to a Consumer Price Index number published before a due date for rent or an instalment, regard may be had to the last Index number so published before a notice or invoice of the rent or instalment payable by the person liable to pay the rent or instalment is sent to the person concerned.
- (3) If the Australian Statistician publishes a Consumer Price Index number in respect of a particular quarter after the notice or invoice is sent:

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- (a) except as provided by paragraph (b)—the publication of the later Index number is to be disregarded, or
 - (b) if the Minister so directs—regard is to be had to the later and not to the earlier number.
- (4) If the Australian Statistician publishes a Consumer Price Index number in respect of a particular quarter in substitution for a Consumer Price Index number previously published in respect of that quarter:
- (a) except as provided by paragraph (b)—the publication of the later Index number is to be disregarded, or
 - (b) if the Minister so directs—regard is to be had to the later and not to the earlier number.
- (5) If the reference base for the Consumer Price Index is changed, regard is to be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (6) An adjustment under a CPI adjustment provision is to be made to the nearest whole dollar.

[8] Fourth Schedule Savings and transitional provisions

Insert at the end of clause 1 (1):

Schedule 3 to the *Crown Lands Legislation Amendment (Budget) Act 2004*

[9] Fourth Schedule, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of Crown Lands Legislation Amendment (Budget) Act 2004

6 Definition

In this Part:

amending Act means the *Crown Lands Legislation Amendment (Budget) Act 2004*.

7 Amendments extend to existing leases and purchases

- (1) The amendments made to this Act by the amending Act extend, subject to this Part, to any lease to which this Act applies that had effect immediately before 1 July 2004.
- (2) The amendments made to this Act by the amending Act extend, subject to this Part, to a purchase commenced before 1 July 2004.

8 Phasing-in of minimum rents

- (1) This clause applies in respect of a lease to which this Act applies that was in force immediately before 1 July 2004.
- (2) For the purposes of section 18A, as inserted by the amending Act, and Division 2A of Part 7 of the *Crown Lands Act 1989*, as it applies under that section:
 - (a) the minimum rent of a lease to which this clause applies is taken, in respect of any due date occurring on or after 1 July 2004 and before 1 July 2005, to be \$170, and
 - (b) the minimum rent of a lease to which this clause applies is taken, in respect of any due date occurring on or after 1 July 2005 and before 1 July 2006, to be \$270.
- (3) For avoidance of doubt, in respect of a due date occurring on or after 1 July 2006, the minimum rent is to be determined as provided by section 18A and the *Crown Lands Act 1989*.

9 Phasing-in of increase in minimum half-yearly instalments

- (1) This clause applies if the purchase price (whether with or without interest added) of land purchases under this Act is, immediately before 1 July 2004, payable by half-yearly instalments.
- (2) For the purposes of section 19AB, as inserted by the amending Act:
 - (a) the minimum half-yearly instalment is taken, in respect of any due date occurring on or after 1 July 2004 and before 1 July 2005, to be \$100, and
 - (b) the minimum half-yearly instalment is taken, in respect of any due date occurring on or after 1 July 2005 and before 1 July 2006, to be \$150.

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- (3) For avoidance of doubt, in respect of a due date occurring on or after 1 July 2006, the minimum half-yearly instalment is to be determined as provided by section 19AB.

10 No compensation for operation of amendments

- (1) No compensation is payable by or on behalf of the Crown because of the enactment or operation of the amendments made to this Act by the amending Act, or as a consequence of that enactment or operation.
- (2) The operation of those amendments is not to be regarded as a breach of contract.
- (3) In this clause:

compensation includes damages or any other form of monetary compensation.

the Crown means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer of the Department of Lands.

Schedule 4 Other amendments

(Section 6)

4.1 Crown Lands Regulation 2000

[1] Clause 42 Minimum rents—Western Division

Omit “section 146 of the Act” from clause 42 (1).

Insert instead “section 141F of the Act”.

[2] Clause 42 (2)

Omit the subclause.

4.2 Western Lands Act 1901 No 70

Schedule 2 Applicable provisions of the Crown Lands Act 1989

Insert in Part 7 after the matter relating to Division 2:

Division 2A (minimum rents)—the whole Division, but only in respect of licences and enclosure permits granted under the *Crown Lands Act 1989* and only to the extent (if any) that the regulations under that Division apply that Division in respect of those licences and enclosure permits.

Division 2B (minimum rent—Western Division)—the whole Division, but only in respect of licences and enclosure permits granted under the *Crown Lands Act 1989* and subject to any regulations under Division 2A of Part 7 of that Act.

[Second reading speech made in—

Legislative Assembly on 22 June 2004

Legislative Council on 29 June 2004]

BY AUTHORITY