

Passed by both Houses



New South Wales

Crown Lands Legislation Amendment Bill 2005

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Crown Lands Legislation Amendment Bill 2005

Act No , 2005

An Act to amend the *Crown Lands Act 1989* and other legislation to make further provision with respect to the administration and management of Crown land; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crown Lands Legislation Amendment Act 2005*.

2 Commencement

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

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 other legislation

Each Act and Regulation specified in Schedule 3 is 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):

authorised inspector means a person appointed under section 168B.

government agency means any public authority, and includes:

- (a) a government department or State owned corporation, and
- (b) a rural lands protection board,

but does not include a local council or a reserve trust within the meaning of Part 5.

travelling stock reserve has the same meaning as in the *Rural Lands Protection Act 1998*.

[2] Section 3 (1), definition of "Department"

Omit the definition. Insert instead:

Department means the Department of Lands.

[3] Section 3 (1), definition of "holding"

Omit "a yearly lease,".

[4] Section 34 Powers of Minister in relation to Crown land

Omit section 34 (7).

[5] Section 34A

Insert after section 34:

34A Special provisions relating to Minister's powers over Crown reserves

- (1) Despite any other provision of this Act, the Minister may grant a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve for the purposes of any facility or infrastructure or for any other purpose the Minister thinks fit. Any such lease, licence, permit, easement or right-of-way is referred to in this section as a *relevant interest*.
- (2) The following provisions apply in relation to the granting of a relevant interest:
 - (a) the Minister is to consult the following persons or bodies before granting the relevant interest:

- (i) the person or body managing the affairs of the reserve trust (if any) appointed under Part 5 as trustee of the Crown reserve that is the subject of the relevant interest,
 - (ii) if the Crown reserve is being used or occupied by, or is being administered by, a government agency—the Minister to whom that agency is responsible,
 - (b) if the Crown reserve is to be used or occupied under the relevant interest for any purpose other than the declared purpose (as defined in section 112A) of the reserve—the Minister is to specify, by notice published in the Gazette, the purposes for which the Crown reserve is to be used or occupied under the relevant interest,
 - (c) the Minister is not to grant the relevant interest unless the Minister:
 - (i) is satisfied that it is in the public interest to grant the instrument, and
 - (ii) has had due regard to the principles of Crown land management.
- (3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned.
- (4) The proceeds from a relevant interest are to be applied as directed by the Minister.
- (5) Without limiting subsection (4), any such direction by the Minister may include any of the following:
 - (a) a direction that the proceeds (or part of the proceeds) be paid to the Consolidated Fund or to the Public Reserves Management Fund constituted under the *Public Reserves Management Fund Act 1987*,
 - (b) in the case of a relevant interest granted in respect of a Crown reserve for which a reserve trust has been appointed as trustee under Part 5—a direction that the proceeds (or part of the proceeds) be paid to the reserve trust or to another reserve trust,
 - (c) in the case of a relevant interest granted in respect of a travelling stock reserve under the care, control and management of a rural lands protection board—a direction that the proceeds (or part of the proceeds) be paid to that rural lands protection board,

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- (d) in the case of a Crown reserve referred to in subsection (2) (a) (ii)—a direction that the proceeds (or part of the proceeds) be paid to the relevant government agency.
- (6) The provisions of:
- (a) Division 3 apply in relation to a lease granted under this section, and
 - (b) Division 4 apply in relation to a licence granted under this section, and
 - (c) Division 5 apply in relation to an easement granted under this section as though the easement was granted or created under that Division, and
 - (d) Division 6 apply in relation to a permit granted under this section as though the permit was granted under that Division.

Accordingly, in relation to the granting of a relevant instrument, a reference in Divisions 3–6 to Crown land includes a reference to a Crown reserve.

- (7) In this section:
- Crown reserve** means land that is, or is part of, a reserve within the meaning of Part 5, and includes:
- (a) land within a travelling stock reserve, or
 - (b) land within any other reserves for public purposes under the control of trustees or other authorities.

[6] Section 39 Effect of recording in Register

Insert at the end of the section:

Note. Section 183A applies in relation to a condition that is subject to a recording referred to in this section.

[7] Section 45

Omit the section. Insert instead:

45 Licences

- (1) Without limiting section 34B, a licence may authorise the use or occupation of Crown land for such purposes as the Minister thinks fit.
- (2) A licence may be granted for such term as the Minister thinks fit.

- (3) Subject to section 49, the Minister may grant a licence for any purpose over Crown land that is the subject of a lease granted under this Part or the *Crown Lands (Continued Tenures) Act 1989*, but only with the consent of the lessee.

[8] Section 47 Revocation of licences

Insert at the end of the section:

- (2) Compensation is not payable on the revocation of a licence even if the licence is revoked before the expiration of its term.

[9] Section 48

Omit the section. Insert instead:

48 Restrictions on transfer of licences

- (1) A licence may be transferred only if:
- (a) the conditions of the licence permit the licence to be transferred, and
 - (b) the licence specifies a parcel of land that benefits from the licence (*the benefited land*), and
 - (c) the licence is transferred to the owner or holder of the benefited land.
- (2) If the licence is, at any time, held by a person who is not the owner or holder of the benefited land, the Minister may revoke the licence without notice. Compensation is not payable on the revocation of the licence.

[10] Section 48A

Insert after section 48:

48A Sublicences

- (1) The holder of a licence may, with the consent of the Minister, grant a sublicence but only if the conditions of the licence permit the granting of the sublicence.
- (2) A sublicence is subject to such conditions as the Minister thinks fit to impose.
- (3) A sublicence is not transferable.

[11] **Part 4A**

Insert after Part 4:

Part 4A Restrictions and covenants imposed on land

77A Restrictions and covenants relating to protection of the environment and other significant values

- (1) The Minister may, in connection with the sale of Crown land under Part 4 or the grant of an application to purchase land that is the subject of a holding within the meaning of the *Crown Lands (Continued Tenures) Act 1989*, impose on the land, on behalf of the Crown, such restrictions on use or public positive covenants as the Minister considers appropriate for any 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.

Note. See also section 183A which applies in relation to a restriction on use or public positive covenant imposed as referred to in this section.
- (3) Without limiting subsection (1), any such restriction or public positive covenant extends to:
 - (a) any separate lots created by a subsequent subdivision of the land to which the restriction or covenant relates, and
 - (b) any separate titles created as a result of a separate dealing (as referred to in section 77B) in relation to the land.
- (4) In relation to a restriction or covenant imposed as referred to in this section, the Minister may, on behalf of the Crown, exercise the functions of a prescribed authority under sections 88D and 88E of the *Conveyancing Act 1919*.
- (5) 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. A reference in this subsection to a

purchaser includes a reference to a mortgagee (or a person claiming through a mortgagee) or any other person claiming through the purchaser.

- (6) This section does not limit the Minister's power under Division 2 of Part 4 to include conditions in a contract of sale of Crown land.

77B Imposition of covenants relating to subdivision or separate dealings

- (1) The Minister may, in connection with the sale of Crown land under Part 4 or the grant of an application to purchase land that is the subject of a holding under the *Crown Lands (Continued Tenures) Act 1989*, impose on the land, on behalf of the Crown, such covenants as the Minister considers appropriate for the purpose of preventing or restricting:

- (a) the subdivision of the land, or
- (b) any dealing in relation to the land (referred to in this section as a *separate dealing*) that would result in the separate ownership of multiple lots previously contained in a single holding or of any subsequent grouping of those lots.

- (2) Any such 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 covenant. For that purpose, a subdivision or separate dealing is taken to be a use of the land.

Note. See also section 183A which applies in relation to a covenant imposed as referred to in this section.

- (3) Without limiting the operation of subsection (1), a covenant imposed as referred to in this section extends to any subsequent dealings in relation to the land (including any subsequent separate dealings of the land or any subsequent subdivision of the separate lots created by a subdivision approved by the Minister).
- (4) The Registrar-General must not, except with the consent of the Minister, register:
- (a) a plan of subdivision that is the subject of a covenant (imposed as referred to in this section) for the purpose of preventing or restricting the subdivision, or
 - (b) a separate dealing in relation to land that is the subject of a covenant (imposed as referred to in this section) for the purpose of preventing or restricting the separate dealing.
- (5) A consent authority (within the meaning of the *Environmental Planning and Assessment Act 1979*) must not grant consent under

Part 4 of that Act to the subdivision of land that is the subject of a covenant (imposed as referred to in this section) preventing or restricting subdivision except with the consent of the Minister.

- (6) The Minister may, in relation to land that is the subject of a covenant imposed as referred to in this section:
- (a) consent to the subdivision of, or separate dealing in relation to, the land, and
 - (b) consent to the registration of a plan of subdivision or separate dealing in relation to the land.
- Note.** See clauses 9 (2) and 10 (2) of Schedule 7A to the *Crown Lands (Continued Tenures) Act 1989* which require the Minister to obtain the concurrence of relevant Ministers in certain circumstances.
- (7) If any such consent is given, the covenant concerned is to be varied accordingly.
- (8) In relation to a covenant imposed as referred to in this section, the Minister may, on behalf of the Crown, exercise the functions of a prescribed authority under sections 88D and 88E of the *Conveyancing Act 1919*.
- (9) 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 covenant takes effect and, accordingly, does not prevent the enforcement of the covenant. A reference in this subsection to a purchaser includes a reference to a mortgagee (or a person claiming through a mortgagee) or any other person claiming through the purchaser.
- (10) This section does not limit the Minister's power under Division 2 of Part 4 to include conditions in a contract of sale of Crown land.

[12] Section 92 Reserve trusts

Omit section 92 (6). Insert instead:

- (6) The affairs of a reserve trust are to be managed:
- (a) by the Minister, or
 - (b) if a trust board is appointed under section 93—by the trust board, or
 - (c) if a corporation is appointed under section 95—by the corporation, or
 - (d) if an administrator is appointed under section 117—by the administrator.
- (6A) In this Division, a reference to a *reserve trust manager* is a reference to any such trust board, corporation or administrator.

(6B) More than one reserve trust manager may be appointed to manage the affairs of a reserve trust in different respects, or in relation to different parts of the reserve, as determined by, and in accordance with the arrangements (if any) determined by, the Minister.

(6C) If more than one reserve trust manager is appointed in relation to a reserve trust in accordance with subsection (6B), each reserve trust manager has the function of managing the reserve trust only to the extent to which it has been appointed and is, for the purposes of this or any other Act or law, taken to be the reserve trust manager to that extent only.

[13] Section 95 Appointment of corporation to manage reserve trust

Insert “(including the Ministerial Corporation)” after “corporation” in section 95 (1) (c).

[14] Section 95 (2A) and (2B)

Insert after section 95 (2):

(2A) A corporation may be appointed as the manager of a reserve trust for such term as may be specified in the notification of appointment or by any subsequent notification.

(2B) The term of office of a corporation that has been appointed as the manager of a reserve trust may be extended by the Minister from time to time by a further notification in the Gazette.

[15] Section 96 Vacation of office by corporate manager

Insert at the end of section 96 (1) (b):

, or

(c) it completes a term of office and is not re-appointed.

[16] Section 96 (3)

Insert after section 96 (2):

(3) If a corporation, whether appointed before or after the commencement of this subsection, is removed from office by the Minister as the manager of a reserve trust, no compensation is payable to the corporation because of the corporation ceasing to hold office.

[17] Section 96A

Insert after section 96:

96A Performance management for reserve trust managers

- (1) The Minister may, in such manner as the Minister considers appropriate, require reserve trust managers to report to the Minister on their performance in managing reserves and on such other matters as the Minister considers appropriate.
- (2) Any such requirement may specify:
 - (a) the intervals at which reserve trust managers are to report to the Minister, and
 - (b) the performance management criteria against which the performance of reserve trust managers is to be assessed by the Minister.

[18] Section 97A

Insert after section 97:

97A Delegation of functions by reserve trust managers

A reserve trust manager may, with the approval of the Minister, delegate any of its functions as reserve trust manager to any other person or body.

[19] Section 98A

Insert after section 98:

98A Responsibility for certain reserves

- (1) This section applies to a reserve that is a public reserve within the meaning of the *Local Government Act 1993* (other than a public reserve referred to in section 48 (1) (b) of that Act).
- (2) The Minister may, by notification in the Gazette, declare that any reserve to which this section applies is for the time being under the care, control and management of the Minister.
- (3) Accordingly, the council does not have control of the reserve as provided by section 48 of the *Local Government Act 1993*.

- (4) If the Minister, by later notification in the Gazette, revokes a notification under subsection (2) in relation to a reserve, section 48 of the *Local Government Act 1993* is taken to apply in relation to the reserve.
- (5) A reference in this section to a reserve includes a reference to any part of a reserve.

[20] Section 102A

Insert after section 102:

102A Minister's consent not required for certain leases, licences or easements

- (1) This section applies to a reserve trust managed by a council that has been appointed under section 95.
- (2) Despite any other provision of this Part, a reserve trust to which this section applies is not required to obtain the Minister's consent under section 102 to grant a lease or licence in respect of land comprising the whole or any part of the reserve for which the reserve trust has been appointed as trustee, or to grant an easement in connection with any such lease or licence (a *related easement*), if:
 - (a) the reserve trust has been authorised by the Minister, by notice in writing, to grant the lease, licence or related easement without the Minister's consent, and
 - (b) the lease, licence or related easement is granted in accordance with the Minister's authorisation, and
 - (c) the reserve trust complies with the requirements of the Minister's authorisation and the provisions of this section.
- (3) The Minister's authorisation:
 - (a) may relate to any specified reserve (or class of reserves) for which the reserve trust has been appointed as trustee or generally to all reserves for which it has been appointed as trustee, and
 - (b) may specify the circumstances in which a lease, licence or related easement may be granted by the reserve trust without the Minister's consent, and
 - (c) may apply generally in relation to the reserve trust or may be limited in its application by reference to specified exceptions or factors, and
 - (d) is subject to such terms and conditions as the Minister considers appropriate.

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- (4) Without limiting subsection (3), the Minister may, in authorising a reserve trust to grant leases, licences or related easements without the Minister's consent:
- (a) specify the purposes, and the terms and conditions, of any such lease, licence or easement, and
 - (b) limit the term of any such lease, licence or easement, and
 - (c) require the reserve trust to follow certain procedures in relation to the granting of any such lease, licence or easement, including procedures for public notice and consultation, procedures for tendering and procedures for dealing with objections to the proposed lease, licence or easement, and
 - (d) require the reserve trust to provide the Minister with such information as may be required by the Minister before or after any such lease, licence or easement is granted, and
 - (e) require the reserve trust to submit any proposal for such a lease, licence or easement to the Minister before it is granted, and
 - (f) require the reserve trust to indemnify the Crown against any liability or claim for compensation that may arise as a result of the granting of any such lease, licence or easement.
- (5) A reserve trust must, within 14 days of granting a lease, licence or related easement in accordance with the Minister's authorisation under this section, notify the Minister of the grant and the terms of the lease, licence or easement.
- (6) The Minister may, in making any decision in relation to an authorisation under this section, take into account such matters as the Minister thinks appropriate, including the performance of the council in managing:
- (a) the affairs of the reserve trust or any other reserve trust that the council is managing or has previously managed, or
 - (b) any public land within the meaning of the *Local Government Act 1993*.
- (7) The Minister may, for the purposes of this section, request any information about a council, including information about a council's performance, from the Minister administering the *Local Government Act 1993* and that Minister is authorised to provide any such information.

- (8) Nothing in this section authorises a reserve trust to sell or mortgage land, or to grant a lease, licence or related easement for a term exceeding 21 years, without the consent of the Minister under section 102.
- (9) An authorisation by the Minister under this section may be varied or revoked by the Minister at any time by notice in writing given to the reserve trust concerned.
- (10) Any lease, licence or easement granted by a reserve trust:
 - (a) without the Minister's consent under section 102, or
 - (b) otherwise than in accordance with the Minister's authorisation under this section,has no effect except in such cases as the Minister may determine.
- (11) For the purposes of the *Residential Parks Act 1998*, a lease or licence granted by a reserve trust as provided by this section is taken to be a lease or licence to which the Minister has given consent.

[21] Section 112A

Insert before section 112:

112A Definitions

In this Division:

additional purpose, in relation to a reserve, means any purpose that is additional to:

- (a) the declared purpose of the reserve, or
- (b) any purpose authorised by the Minister under section 121A in relation to the reserve.

declared purpose, in relation to land comprising a reserve, means the public purpose for which the land has been dedicated or reserved under this Part, and includes any purpose or use permitted under, or in connection with, the declared purpose.

[22] Section 112 Preparation of draft plan of management

Insert “, including a draft plan that would, if adopted, authorise the reserve to be used for an additional purpose” after “reserve” in section 112 (1).

[23] Section 112 (5)–(10)

Insert after section 112 (4):

- (5) Without limiting subsection (4), the Minister may, in directing a reserve trust to prepare a draft plan of management, direct the reserve trust to consider including an additional purpose as part of the draft plan.
- (6) If, in relation to a draft plan of management prepared by a reserve trust, the reserve trust proposes that the reserve is to be used for an additional purpose, the reserve trust is to advise the Minister of the proposal.
- (7) Without limiting subsection (4), the Minister may, in the case of a draft plan of management that would, if adopted, authorise the reserve to be used for an additional purpose, require the draft plan to specify or deal with the following matters:
 - (a) the condition of the reserve (including the condition of any buildings or other improvements on the reserve),
 - (b) the existing use of the reserve (including the existing use of any buildings or other improvements on the reserve),
 - (c) the nature and scale of the proposed additional purpose,
 - (d) the nature, scale and term of any lease, licence or other arrangement that is intended to be granted or entered into in relation to the additional purpose,
 - (e) any submissions made in relation to the draft plan as a result of the consultation process and public exhibition requirements under section 113.
- (8) In the case of a reserve that is being used or occupied by, or is being administered by, a government agency, the Minister may not cause, or direct, to be prepared a draft plan of management that would, if adopted, authorise the reserve to be used for an additional purpose unless the Minister has consulted with the Minister to whom that agency is responsible.
- (9) Failure to comply with subsection (8) does not affect the validity of the draft plan if adopted by the Minister under section 114.
- (10) The Minister may, at any stage in the preparation of a draft plan of management referred to in subsection (5) or (6), direct the reserve trust to cease the preparation of the draft plan.

[24] Section 113 Referral and exhibition of draft plans

Insert after section 113 (3):

- (4) In the case of a draft plan of management that would, if adopted, authorise a reserve to be used for an additional purpose, the Minister may, in addition to any of the other requirements of this section, require the reserve trust, by notice in writing:
 - (a) to consult on the draft plan with such persons or bodies as may be specified in the notice, and
 - (b) to exhibit the draft plan in accordance with the notice.

[25] Section 114 Adoption of plan of management

Insert after section 114 (1):

- (1A) In the case of a plan of management that authorises a reserve to be used for an additional purpose, the Minister may, without limiting subsection (1), adopt the plan subject to the reserve trust complying with such conditions as the Minister thinks fit to impose.
- (1B) Without limiting the conditions that the Minister may impose under subsection (1A), the Minister may impose a condition requiring the reserve trust to indemnify the Crown against any liability or claim for compensation that may arise as a result of the reserve being used for the additional purpose specified in the plan.
- (1C) In determining whether to adopt a plan of management that authorises a reserve to be used for an additional purpose, the Minister is to have regard to the following:
 - (a) the declared purpose of the reserve,
 - (b) the compatibility of the proposed additional purpose with the declared purpose,
 - (c) the principles of Crown land management,
 - (d) the public interest.

[26] Section 114 (3)

Insert after section 114 (2):

- (3) If a plan of management is adopted authorising a reserve to be used for an additional purpose specified in the plan, the reserve may be used for the additional purpose specified in the plan.

[27] Section 117 Appointment of administrator

Omit section 117 (1). Insert instead:

- (1) The Minister may, by notification in the Gazette, appoint an administrator to manage the affairs of a reserve trust.

[28] Section 118 Functions of administrator

Omit the section.

[29] Section 121 Liability of reserve trust, members and other persons

Omit section 121 (2). Insert instead:

- (2) If a reserve trust is managed by a corporation, the corporation is jointly and severally liable with the reserve trust:
 - (a) for any liability of the reserve trust, or
 - (b) if the corporation is managing the affairs of the reserve trust with another person or body in accordance with section 92 (6B), for the liability of the reserve trust to the extent only that the liability relates to the functions of the corporation as the manager of the reserve trust.

[30] Section 121A

Insert before section 121:

121A Minister may authorise reserve to be used for additional purpose

- (1) In this section, *declared purpose* has the same meaning as in section 112A.
- (2) The Minister may, by order published in the Gazette, authorise a reserve specified in the order to be used for a purpose that is additional to the declared purpose of the reserve.
- (3) The Minister may not authorise a reserve to be used for any such additional purpose unless the Minister is satisfied that:
 - (a) the additional purpose is compatible with the declared purpose of the reserve, and
 - (b) the use of the reserve for the additional purpose is consistent with the principles of Crown land management, and
 - (c) it is in the public interest for the reserve to be used for the additional purpose.
- (4) The Minister is to consult the following persons or bodies before making an order under this section in relation to a reserve:

- (a) the person or body managing the affairs of the reserve trust (if any) appointed as trustee for the reserve,
 - (b) if the reserve is being used or occupied by, or is being administered by, a government agency—the Minister to whom that agency is responsible.
- (5) Failure to comply with subsection (4) does not affect the validity of the order.
- (6) An order under this section may relate to any number of reserves or to a specified group of reserves.

[31] Section 122 Reports etc by reserve trust

Insert “by the regulations or as may be required by the Minister by notice in writing to the reserve trust” after “prescribed” wherever occurring in section 122 (1).

[32] Section 122A

Insert after section 122:

122A Financial year of reserve trust

The financial year of a reserve trust is the year commencing on 1 July unless otherwise specified by the Minister.

[33] Section 138 Certain land may be declared to be Crown land

Omit paragraph (c) of the definition of *public authority* in section 138 (5).

Insert instead:

- (c) a rural lands protection board,

[34] Part 7, Division 1A

Insert after Division 1:

Division 1A Transfer or vesting of certain land to or in Crown

138A Definitions

In this Division:

institution has the same meaning as in the *Trustees of Schools of Arts Enabling Act 1902*.

private trust land means any land (other than public trust land) reserved, dedicated or granted under any Act or instrument, or otherwise held, for the purposes of an institution.

public trust land means any land reserved, dedicated or granted under any Act or instrument, or otherwise held, for the purposes of an institution and which:

- (a) is Crown land (or land otherwise vested in the Crown), or
- (b) was Crown land (or land otherwise vested in the Crown) before being reserved, dedicated, granted or held for the purposes of an institution.

trustees of private trust land or public trust land means the majority of the trustees for the time being of that land.

138B Transfer of private trust land to Crown by agreement with trustees

- (1) The Minister and the trustees of private trust land may enter into an agreement for the land to be transferred to the Crown.
- (2) Any such agreement may specify a purpose for which the land is to be used after it is transferred to the Crown.
- (3) The trustees may enter into any such agreement to transfer private trust land, and the agreement has effect, despite the terms and provisions of any Act, deed, reservation, dedication, grant or other instrument relating to the land.
- (4) The Minister is to comply as far as practicable with the agreement.

138C Vesting of public trust land in Crown by agreement with trustees

- (1) The Minister and the trustees of public trust land may enter into an agreement for the land to be vested in the Crown.
- (2) Any such agreement may specify a purpose for which the land is to be used after it is vested in the Crown.
- (3) The trustees may enter into any such agreement for the vesting of public trust land in the Crown, and the agreement has effect, despite the terms and provisions of any Act, deed, reservation, dedication, grant or other instrument relating to the land.
- (4) The Minister is to comply as far as practicable with the agreement.
- (5) If an agreement is entered into under this section, the Minister may, by notification in the Gazette, vest the land in the Crown.
- (6) If the notification specifies a public purpose for which the land is to be reserved (being a public purpose for the purposes of section 87), the land is, on publication of the notification, taken to be reserved under Part 5 for that purpose.

138D Revocation of reservation or dedication of public trust land

- (1) The Minister may, by notification in the Gazette:
 - (a) revoke the reservation or dedication of any public trust land, and
 - (b) vest the land in the Crown.
- (2) If the notification specifies a public purpose for which the land is to be reserved (being a public purpose for the purposes of section 87), the land is, on publication of the notification, taken to be reserved under Part 5 for that purpose.

138E Consultation in relation to transfer or vesting of land

- (1) The Minister may, before any private trust land is transferred to, or any public trust land is vested in, the Crown under this Division:
 - (a) cause an advertisement of the proposed transfer or vesting to be published in a newspaper circulating in the area in which the land is situated, and
 - (b) cause a notice of the proposed transfer or vesting to be placed in or on the land, and
 - (c) refer the matter to a local land board for a report.
- (2) Any such advertisement or notice may invite submissions on the proposed transfer or vesting to be made to the Minister within such time as is specified in the advertisement or notice.
- (3) The Minister is to take into account any submissions received on the proposed transfer or vesting, and any local land board report on the matter, before deciding to proceed with the proposed transfer or vesting.

138F Effect of transfer or vesting of land

- (1) Any land that is transferred to, or vested in, the Crown under this Division:
 - (a) becomes Crown land, and
 - (b) is freed and discharged from any trusts, estates, interests, reservations, dedications, conditions, restrictions and provisions affecting the land.
- (2) Subsection (1) (b) is subject to sections 138B (4) and 138C (4).
- (3) Any land that is vested in the Crown under this Division is vested without the need for any further conveyance, transfer, assignment, assurance or declaration.

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- (4) If any land that is transferred to, or vested in, the Crown under this Division is reserved for a public purpose, the reservation does not operate to reserve the land for the purposes of an institution under the *Trustees of Schools of Arts Enabling Act 1902*.
- (5) On the transfer or vesting of any private trust land or public trust land to or in the Crown under this Division, the following provisions have effect:
- (a) any assets, rights or liabilities in relation to the land, or in relation to the trustees of the land in their capacity as trustees, become the assets, rights or liabilities of the Crown,
 - (b) all proceedings relating to those assets, rights and liabilities that were commenced by or against the trustees before the transfer or vesting are taken to be proceedings pending by or against the Crown,
 - (c) any act, matter or thing done or omitted to be done in relation to those assets, rights and liabilities by, to or in respect of the trustees before the transfer or vesting is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted to be done by, to or in respect of the Crown.
- (6) In this section:
- assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.
- liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).
- rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

138G Provisions relating to assessment of transferred or vested land

- (1) Any private trust land or public trust land may be assessed under Part 3 before the land is transferred to, or vested in, the Crown under this Division even though the land is not Crown land at the time when the assessment is carried out.
- (2) An assessment under Part 3 is not required in relation to the reservation of any land transferred to or vested in the Crown under this Division if the Minister is satisfied that the public purpose (if any) for which the land is to be reserved is the same,

or substantially the same, as the purpose for which the land was reserved, dedicated, granted or held, or otherwise used, before being transferred or vested under this Division.

[35] Section 140 Removal of conditions etc

Insert at the end of the section:

- (2) This section is subject to clauses 9 (2) and 10 (2) of Schedule 7A to the *Crown Lands (Continued Tenures) Act 1989*.

[36] Section 141B General provisions applicable to CPI adjustment

Omit the section.

[37] Section 142 Objections and appeals against determinations or redeterminations of rent

Insert at the end of section 142 (1) (a):

- , and
(a1) a redetermination of rent under Division 3A, and

[38] Section 142 (8A)

Insert after section 142 (8):

- (8A) A redetermination of rent under Division 3A takes effect from the date of the redetermination even if an objection or appeal has been lodged.

[39] Section 143 Determination or redetermination of rent—principles

Insert at the end of the section:

- (2) Despite subsection (1), if the Independent Pricing and Regulatory Tribunal makes a recommendation in relation to the rent of any such lease, licence or enclosure permit (or class of any such lease, licence or enclosure permit), the Minister may:
- (a) in redetermining the rent of any lease or licence that is the subject of the recommendation, or
 - (b) in determining or redetermining the rent of any enclosure permit that is the subject of the recommendation,
- apply the recommendation.
- (3) If the recommendation of the Independent Pricing and Regulatory Tribunal is applied by the Minister in determining or redetermining the rent concerned, the local land board and the

Land and Environment Court are, despite subsection (1), to apply the recommendation in determining any appeal against the Minister's decision.

- (4) This section also applies in relation to the redetermination under Division 3A of the rent of a licence or enclosure permit.

[40] Part 7, Division 3A

Insert after Division 3:

Division 3A Redetermination and adjustment of rents for licences and enclosure permits

143A Application of Division

- (1) This Division applies to any licence under this Act, or enclosure permit within the meaning of Division 6 of Part 4, that is subject to the payment of any rent.
- (2) The rent of any such licence or enclosure permit is subject to redetermination by the Minister in accordance with this Division despite:
- (a) any term or condition to which the licence or permit is subject, or
- (b) any other provision of this Act.

143B Minister may redetermine rents for licences and enclosure permits

- (1) The Minister may, as provided by this section, redetermine the rent payable in respect of a licence or enclosure permit to which this Division applies.
- (2) A redetermination of the rent of a licence or enclosure permit is to be made in respect of each rent review date.
- (3) The rent review dates for a licence or enclosure permit are as follows:
- (a) if the effective date of the last redetermination of the rent of the licence or enclosure permit was not more than 3 years before the commencement of this section:
- (i) the first rent review date is the first due date in respect of the rent occurring on or after the commencement of this section 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 or if there has been no redetermination of the rent of the licence or enclosure permit:
 - (i) in the case of a licence or enclosure permit in force before the commencement of this section:
 - (A) the first rent review date is the first due date in respect of the rent occurring on or after the commencement of this section (or such later due date as may be determined by the Minister), and
 - (B) thereafter, rent review dates fall on the third anniversary of the previous rent review date, or
 - (ii) in the case of a licence or enclosure permit that commences on or after the commencement of this section:
 - (A) the first rent review date is the first due date in respect of the rent occurring not less than 3 years after the commencement of the licence or enclosure permit (or such other due date as may be determined by the Minister), and
 - (B) thereafter, rent review dates fall on the third anniversary of the previous rent review date.
- (4) A redetermination of rent in respect of the first rent review date for a licence or enclosure permit 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.
- (5) A redetermination of rent in respect of any other rent review date for a licence or enclosure permit 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

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- (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) Despite subsections (2) and (3), the Minister may redetermine the rent of a licence or enclosure permit to which this Division applies on an annual basis, or at such other intervals as the Minister determines, starting from such date as the Minister thinks fit.

143C Adjustment of rent in line with Consumer Price Index

- (1) In this section:
- existing licence or permit* means a licence or enclosure permit in force immediately before the commencement of 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.
- minimum rent* has the same meaning as in Division 2A.
- new licence or permit* means a licence or enclosure permit that commences after the commencement of this section.
- (2) The rent of a licence or enclosure permit at a due date that is the effective date of a redetermination of the rent of the licence or permit, or that is the next due date after a mid-term redetermination of the rent of the licence or permit, 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.
- (3) The rent of a licence or enclosure permit at any other due date is:
- (a) the CPI adjusted rent at that due date or, if the Minister so determines, the rent as redetermined under subsection (2), or
- (b) if the minimum rent at that due date exceeds the CPI adjusted rent, the minimum rent.
- (4) 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:

- (a) in the case of an existing licence or permit—the rent as at the last due date before the commencement of this section, or as at the effective date of the last redetermination of rent to take effect on or before the due date, whichever is later, or
- (b) in the case of a new licence or permit—the rent set as at the commencement of the licence or permit, 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:

- (a) in the case of an existing licence or permit—was published before the last due date before the commencement of this section, or as at the effective date of the last redetermination of rent to take effect on or before the due date, whichever is later, or
 - (b) in the case of a new licence or permit—was published before the commencement of the licence or permit, or as at the effective date of the last redetermination of rent to take effect on or before the due date, whichever is later.
- (5) Despite subsections (2) and (3), 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 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).
- (6) The operation of this section in respect of the rent of a licence or enclosure permit is not a redetermination of the rent for the purposes of this Act.

143D Division does not apply in respect of Western Division

- (1) Subject to this section, this Division does not apply in respect of licences or enclosure permits situated in the Western Division.
- (2) The regulations may apply the provisions of this Division, with or without modification, in respect of licences or enclosure permits situated in the Western Division.
- (3) If the regulations apply the provisions of this Division in respect of licences or enclosure permits situated in the Western Division,

the regulations may modify the application of any other provision of this Act in respect of those licences or enclosure permits.

[41] Section 148 Interest on arrears

Omit “3 months after the due date” from section 148 (1).

Insert instead “28 days (or such other period as may be prescribed by the regulations) after the due date”.

[42] Part 7, Division 5A

Insert after Division 5:

Division 5A Powers to enter and inspect land and to obtain information

168A Definitions

In this Division:

Crown Lands Acts includes the *Hay Irrigation Act 1902*.

Crown tenure means any of the following:

- (a) a holding,
- (b) an enclosure permit,
- (c) a Commonwealth lease,
- (d) a lease under the *Hay Irrigation Act 1902*,
- (e) any lease or licence granted in respect of a reserve within the meaning of Part 5.

landholder means any person who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of private land or land that is the subject of, or is comprised in, a Crown tenure.

private land means any land (other than Crown land) that:

- (a) is subject to a restriction on use (including a restriction relating to subdivision or separate dealing) or public positive covenant imposed, or taken to have been imposed, by the Minister under Part 4A whether before or after the commencement of this Division, or
- (b) is held subject to a recorded condition (whether recorded before or after the commencement of this Division).

recorded condition means a condition to which a recording under section 36 (4) (a), 37 (2) (a) or 38 (a) relates.

168B Appointment of authorised inspectors

- (1) The Minister may appoint any member of staff of the Department or of any other government agency, or of a local council, as an authorised inspector for the purposes of this Division.
- (2) The authority of an authorised inspector may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (3) An authorised inspector cannot exercise the functions of an authorised inspector under this Division unless the inspector is in possession of an identification card issued by the Director-General.
- (4) In the course of exercising the functions of an authorised inspector under this Division, the inspector must, if requested to do so by any person who is subject to the exercise of the function, produce the inspector's identification card to the person.

168C Powers of entry and inspection in relation to land

- (1) An authorised inspector may:
 - (a) enter any land that is the subject of a Crown tenure for the purpose of determining whether the landholder is complying with:
 - (i) the terms and conditions of the tenure, or
 - (ii) any of the requirements of the Crown Lands Acts that apply in relation to the land, and
 - (b) enter any private land, at any reasonable time, for the purpose of:
 - (i) monitoring or reviewing the effectiveness of the measures imposed by the restriction on use or covenant, or by the recorded condition, to or in respect of which the land is subject, or
 - (ii) determining whether the landholder is complying with the restriction on use or covenant, or the recorded condition, to or in respect of which the land is subject, and
 - (c) enter any other land owned or occupied by a landholder for the purpose of gaining access to land that is the subject of a Crown tenure, or is private land, owned or occupied by that landholder.

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- (2) An authorised inspector may enter land under subsection (1) only if:
- (a) the landholder consents, or
 - (b) the Director-General has authorised the entry onto the land.
- (3) An authorised inspector may, while on any land that the inspector has entered under subsection (1) (a) or (b):
- (a) conduct such investigations, make such inquiries, examinations and inspections, and take such samples and recordings (including photographs), as the inspector considers necessary, and
 - (b) require the landholder or any other person to produce to the inspector any records or documents that may relate to any of the purposes for which the inspector may enter land, and
 - (c) require the landholder or any other person to provide such reasonable assistance and facilities as may be requested by the inspector to exercise the inspector's functions under this section.
- (4) A person may accompany an authorised inspector and take all reasonable steps to assist an inspector in the exercise of the inspector's functions under this section if the inspector is of the opinion that the person is capable of providing assistance to the inspector in the exercise of those functions.
- (5) An authorised inspector is not entitled to enter any part of premises used only for residential purposes except with the consent of the landholder.
- (6) A person who, without reasonable excuse:
- (a) obstructs an authorised inspector in the exercise of the inspector's functions under this section, or
 - (b) fails or refuses to comply with a requirement made by an authorised inspector under this section,
- is guilty of an offence.
Maximum penalty: 100 penalty units.
- (7) For the purposes of subsection (6), **obstruct** includes delay, threaten or hinder.

168D Power to obtain information

- (1) In this section:
relevant information means any information about:
 - (a) a possible contravention of the Crown Lands Acts or the regulations under any of the Crown Lands Acts, or
 - (b) any other matter relating to a purpose for which an authorised inspector may enter land under section 168C (1) (a) or (b).
- (2) The Director-General may, by notice in writing served on a person, require the person:
 - (a) to give to an authorised inspector, orally or in writing signed by the person (or, if the person is a corporation, by a competent officer) and within the time and in the manner specified in the notice, any relevant information of which the person has knowledge, or
 - (b) to produce to an authorised inspector, in accordance with the notice, any document containing relevant information.
- (3) An authorised inspector may inspect a document produced in response to such a notice and may make copies of, or take extracts or notes from, the document.
- (4) A person must not, without reasonable excuse:
 - (a) fail to comply with such a notice to the extent that the person is capable of complying with it, or
 - (b) in purported compliance with such a notice, give information or an answer to a question, or produce a document, knowing that it is false or misleading in a material particular.Maximum penalty: 100 penalty units.
- (5) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.
- (6) Any information or document obtained from a natural person under this section is not admissible against the person in criminal proceedings other than proceedings for an offence under this section.

168E Arrangements with other government agencies

- (1) The Director-General may enter into an arrangement with the head of any government agency, or with a local council, for a

member of staff of the government agency or council to exercise the powers of an authorised inspector under this Division.

- (2) A member of staff of a government agency or local council who exercises any such powers in accordance with such an arrangement is taken to be an authorised inspector for the purposes of this Act.

[43] Section 178 Certificate evidence as to authorised persons and inspectors

Insert at the end of the section:

- (2) A certificate signed by the Director-General and certifying that a named person is, or was at a stated time or during a stated period, an authorised inspector is, in any legal proceedings, admissible as evidence of the matters certified.

[44] Section 180B

Insert after section 180A:

180B GST may be added to certain amounts

- (1) If GST is payable in respect of any sale, rent or other matter under the Crown Lands Acts (including any fee charged under section 180A), the amount payable under the Crown Lands Acts in respect of the sale, rent or other matter may be increased to cover the cost of GST payable.
- (2) In this section, *Crown Lands Acts* includes the *Hay Irrigation Act 1902*.

[45] Section 181A

Insert after section 181:

181A General provisions applicable to CPI adjustment

- (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, regard may be had to the last Index number so published before a notice or invoice of the rent payable by the person liable to pay the rent 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 Index 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 Index 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.

[46] Section 183A

Insert after section 183:

183A Application of Environmental Planning and Assessment Act 1979

- (1) In this section:
prescribed instrument means:
 - (a) a condition to which a recording under section 36 (4) (a), 37 (2) (a) or 38 (a) relates, or
 - (b) a restriction on use or public positive covenant imposed in accordance with Part 4A.
- (2) For the purposes of section 28 of the *Environmental Planning and Assessment Act 1979*:
 - (a) a prescribed instrument 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.

- (3) In relation to any particular prescribed instrument, a provision of an environmental planning instrument made under section 28 of the *Environmental Planning and Assessment Act 1979* and in force:
- (a) immediately before the commencement of this section, or
- (b) immediately before the prescribed instrument takes effect, does not affect the operation of the prescribed instrument unless the provision is subsequently amended to expressly affect the operation of the prescribed instrument.

[47] Section 184A

Insert after section 184:

184A Compensation not payable

- (1) No compensation is payable by or on behalf of the Crown because of the enactment or operation of the amendments made to the Crown Lands Acts, or to any other Act, by any of the following Acts, or as a consequence of that enactment or operation:
- (a) the *Crown Lands Legislation Amendment (Budget) Act 2004*,
- (b) the *Crown Lands Legislation Amendment Act 2005*.
- (2) The operation of those amendments is not to be regarded as a breach of contract.
- (3) In this section:
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.

[48] Schedule 8 Savings, transitional and other provisions

Insert at the end of clause 25 (1):

Crown Lands Legislation Amendment Act 2005

[49] Schedule 8, clause 44

Omit the clause.

[50] Schedule 8, Part 5

Insert after Part 4:

**Part 5 Provisions consequent on Crown Lands
Legislation Amendment Act 2005**

45 Definition

In this Part:

amending Act means the *Crown Lands Legislation Amendment Act 2005*.

46 Application of Part 4A

Part 4A (as inserted by the amending Act) extends to an application to purchase land that is the subject of a holding under the *Crown Lands (Continued Tenures) Act 1989* that was made, but not approved by the Minister, before the commencement of that Part.

47 Saving of existing restrictions on use and covenants

- (1) Any restriction on use (including a restriction relating to subdivision or separate dealing) or public positive covenant imposed by the Minister in accordance with Part 4 of Schedule 7A to the *Crown Lands (Continued Tenures) Act 1989* (and in force immediately before the repeal of that Part by the amending Act), referred to in this clause as an *existing instrument*, is taken to be a restriction on use or public positive covenant imposed by the Minister in accordance with Part 4A of this Act (as inserted by the amending Act).
- (2) Anything done for the purposes of, or in connection with, the recording or implementation of an existing instrument before the commencement of Part 4A of this Act that would have been validly done had the amendments made by the amending Act been in force when it was done is validated.

48 Performance management in relation to reserve trust managers

Section 96A (as inserted by the amending Act) extends to reserve trust managers appointed before the commencement of that section.

49 Determination or redetermination of rents

The amendments made to section 143 by the amending Act apply in relation to determinations or redeterminations of rent by the Minister whether before or after the commencement of those amendments.

50 GST payable on certain amounts

Section 180B (as inserted by the amending Act) extends to matters arising before the commencement of that section if GST is payable in respect of the matter and anything done with respect to the addition of GST that would have been validly done had that section been in force when it was done is validated.

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

(Section 4)

[1] Section 3 Definitions

Omit the definition of *Department* from section 3 (1). Insert instead:

Department means the Department of Lands.

[2] Section 4A Application of Part

Insert after section 4A (1):

- (1A) Section 4C also applies in respect of a permissive occupancy, other than a permissive occupancy situated in the Western Division.

[3] Section 4A (2)

Insert “The regulations may also apply the provisions of section 4C, with or without modification, in respect of permissive occupancies situated in the Western Division.” after “the Western Division.”

[4] Section 4A (3)

Insert “or permissive occupancy” after “lease”.

[5] Section 4B Definitions

Omit the note at the end of the section.

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

Omit section 4C (1). Insert instead:

- (1) The annual rent of a lease (except a lease the rent of which is not subject to redetermination) or permissive occupancy at a due date that is the effective date of a redetermination of the rent of the lease or permissive occupancy, or that is the next due date after a mid-term redetermination of the rent of the lease or permissive occupancy, 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.

[7] Section 4C (2) and (5)

Insert “or permissive occupancy” after “lease” wherever occurring.

[8] Schedule 5 Rent etc

Insert after clause 12 (1):

- (1A) Despite subclause (1), if the Independent Pricing and Regulatory Tribunal makes a recommendation in relation to the rent of a lease (or any class of lease), the Minister may, in redetermining the rent of any lease that is the subject of the recommendation, apply the recommendation.
- (1B) If the recommendation of the Independent Pricing and Regulatory Tribunal is applied by the Minister in redetermining the rent concerned, the local land board and the Land and Environment Court are, despite subclause (1), to apply the recommendation in determining any appeal against the Minister's decision.

[9] Schedule 7 Purchase of land held under lease

Insert after clause 5 (4) of Part 1:

- (4A) Despite subclause (4), if the Minister, in connection with the grant of an application to purchase land, imposes a restriction on use or public positive covenant in accordance with Part 4A of the Principal Act, the land remains vested in the Crown, or otherwise held on behalf of the Crown, until such time as the restriction on use or public positive covenant has been recorded on the relevant folio of the Register.

[10] Schedule 7, Part 2, clause 3 (4A)

Insert after clause 3 (4):

- (4A) Despite subclause (4), if the Minister, in connection with the grant of an application to purchase land, imposes a restriction on use or public positive covenant in accordance with Part 4A of the Principal Act, the land remains vested in the Crown, or otherwise held on behalf of the Crown, until such time as the restriction on use or public positive covenant has been recorded on the relevant folio of the Register.

[11] Schedule 7A Purchase of perpetual leases—special arrangements

Omit Part 4.

[12] Schedule 7A, clause 9 Consultation and concurrence requirements in relation to certain leases

Insert “in accordance with Part 4A of the Principal Act” after “covenants” in clause 9 (1) (b).

[13] Schedule 7A, clause 9 (2)

Omit the subclause. Insert instead:

- (2) If, in relation to the purchase of land comprised in a lease to which this Schedule applies, a covenant preventing or restricting subdivision is imposed by the Minister in accordance with section 77B of the Principal Act, the Minister is required to obtain the concurrence of each relevant Minister before:
 - (a) consenting to the subdivision of the land, or
 - (b) releasing, varying, rescinding or revoking any such covenant, or
 - (c) granting 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 any such covenant.

[14] Schedule 7A, clause 10

Insert after clause 9:

10 Concurrence requirements in relation to national parks, wilderness areas and other prescribed land

- (1) This clause applies to any lease to which this Schedule applies that:
 - (a) adjoins or abuts, or is within 100 metres of, land reserved or dedicated under the *National Parks and Wildlife Act 1974*, or
 - (b) is within, or comprises or contains, or is part of, or adjoins or abuts, or is within 100 metres of:
 - (i) a wilderness area within the meaning of the *Wilderness Act 1987*, or
 - (ii) land that is for the time being identified as wilderness under that Act, or
 - (c) comprises or contains land prescribed by the regulations.
- (2) In relation to land comprised in a lease to which this clause applies, the Minister is required to obtain the concurrence of each relevant Minister (as referred to in clause 9) before:
 - (a) releasing, varying, rescinding or revoking a covenant that has been imposed on the land, or
 - (b) approving any act, matter or thing that would, but for the approval, contravene any such covenant, or

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- (c) granting 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 covenant that has been imposed on the land.

- (3) In this clause:
covenant means a restriction on use or public positive covenant imposed in accordance with Part 4A of the Principal Act.

[15] Schedule 8 Savings and transitional provisions

Insert at the end of clause 1 (1):

Crown Lands Legislation Amendment Act 2005

[16] Schedule 8, Part 4, clause 9

Omit the clause. Insert instead:

9 Application of changes to purchase and instalment provisions

- (1) Schedule 7A, as inserted by the amending Act, extends to an application to purchase that was made, but not approved by the Minister, before 1 July 2004.
- (2) Part 1B of this Act, as inserted by the amending Act, extends to an incomplete purchase that had effect immediately before 1 July 2004.
- (3) This clause, as substituted by the *Crown Lands Legislation Amendment Act 2005*, is taken to have commenced on 1 July 2004.

[17] Schedule 8, clause 13

Omit the clause.

[18] Schedule 8, Part 5

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
Crown Lands Legislation Amendment Act
2005**

14 Definition

In this Part:

amending Act means the *Crown Lands Legislation Amendment Act 2005*.

15 Determination or redetermination of rents

The amendments made to clause 12 of Schedule 5 by the amending Act apply in relation to determinations or redeterminations of rent by the Minister whether before or after the commencement of those amendments.

16 Applications to purchase land held under lease

The amendments made to Schedules 7 and 7A by the amending Act extend to applications to purchase land that were made, but not approved by the Minister, before the commencement of those amendments.

Schedule 3 Amendment of other legislation

(Section 5)

3.1 Crown Lands Regulation 2000

Clause 44 Rebates of rent

Insert after clause 44 (b):

- (c) an owner or occupier of residential property that is accessible only by water and whose holding contains a structure that is used for the purposes of obtaining access to the property and is not used for any commercial purpose,
- (d) a local council whose holding is used to provide facilities, without charge, for the benefit of the general community.

3.2 Hay Irrigation Act 1902 No 57

Section 19D

Insert after section 19C:

19D Application of Part 4A of the Crown Lands Act 1989

- (1) Part 4A of the *Crown Lands Act 1989* applies to and in respect of the sale of land by the Ministerial Corporation under section 19A of this Act in the same way as that Part applies to the sale of Crown land by the Minister administering the *Crown Lands Act 1989* under Part 4 of that Act.
- (2) Accordingly, a reference in Part 4A of the *Crown Lands Act 1989*:
 - (a) to Crown land is taken to include a reference to land within the Area, and
 - (b) to the Minister is, in relation to land within the Area, taken to include a reference to the Ministerial Corporation.

3.3 Local Government Act 1993 No 30

[1] Section 48 Responsibility for certain public reserves

Omit "A council" from section 48 (1).

Insert instead "Except as provided by section 98A of the *Crown Lands Act 1989*, a council".

[2] Section 54B

Insert after section 54A:

54B Transfer of private trust land under Trustees of Schools of Arts Enabling Act 1902

- (1) In this section:
 - assets* means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.
 - institution* has the same meaning as in the *Trustees of Schools of Arts Enabling Act 1902*.
 - liabilities* means any liabilities, debts or obligations (whether present or future and whether vested or contingent).
 - private trust land* means any land reserved, dedicated or granted under any Act or instrument, or otherwise held, for the purposes of an institution, but does not include any such land if it is Crown land (or land otherwise vested in the Crown) or was Crown land (or land otherwise vested in the Crown) before being reserved, dedicated, granted or held for the purposes of an institution.
 - rights* means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).
 - trustees* of private trust land means the majority of the trustees for the time being of that land.
- (2) A council and the trustees of private trust land may enter into an agreement for the land to be transferred to the council.
- (3) Any such agreement may contain provisions relating to the purposes for which the land is to be used after it is transferred.
- (4) The trustees may enter into any such agreement to transfer private trust land, and the agreement has effect, despite the terms and provisions of any Act, deed, reservation, dedication, grant or other instrument relating to the land.
- (5) Land that is transferred to a council under such an agreement is:
 - (a) freed and discharged from any trusts, estates, interests, reservations dedications, conditions, restrictions and provisions affecting the land, and
 - (b) to be used and managed by the council as community land.
- (6) Subsection (5) (a) is subject to any agreement entered into by the council under this section for the transfer of the land.

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- (7) In preparing a draft plan of management in relation to any land transferred to it under this section, the council must, in addition to the other requirements under Division 2:
- (a) advise the Minister that it is preparing the draft plan, and
 - (b) take into account the purposes for which the land was reserved, dedicated, granted or held as an institution, and
 - (c) comply as far as practicable with the agreement entered into between the trustees of the private trust land concerned and the council, and
 - (d) before giving public notice of the draft plan in accordance with section 38, consult with such persons or bodies as the council considers appropriate or as the Minister directs.
- (8) On the transfer of any private trust land to a council under this section, the following provisions have effect:
- (a) any assets, rights or liabilities in relation to the land, or in relation to the trustees of the land in their capacity as trustees, become the assets, rights or liabilities of the council,
 - (b) all proceedings relating to those assets, rights and liabilities that were commenced by or against the trustees before the transfer are taken to be proceedings pending by or against the council,
 - (c) any act, matter or thing done or omitted to be done in relation to those assets, rights and liabilities by, to or in respect of the trustees before the transfer is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted to be done by, to or in respect of the council.

3.4 National Parks and Wildlife Act 1974 No 80

[1] Section 5 Definitions

Omit “Division 7” from the definition of *conservation agreement* in section 5 (1).

Insert instead “Division 12”.

[2] Section 69KA

Insert after section 69K:

69KA 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 conservation agreement 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) In relation to any particular conservation agreement, a provision of an environmental planning instrument made under section 28 of the *Environmental Planning and Assessment Act 1979* and in force:
 - (a) immediately before the commencement of this section, or
 - (b) immediately before the conservation agreement takes effect,

does not affect the operation of the conservation agreement unless the provision is subsequently amended to expressly affect the operation of the conservation agreement.

3.5 Nature Conservation Trust Act 2001 No 10

Section 38A

Insert after section 38:

38A 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 Trust agreement 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) In relation to any particular Trust agreement, a provision of an environmental planning instrument made under section 28 of the *Environmental Planning and Assessment Act 1979* and in force:
- (a) immediately before the commencement of this section, or
 - (b) immediately before the Trust agreement takes effect,
- does not affect the operation of the Trust agreement unless the provision is subsequently amended to expressly affect the operation of the Trust agreement.

3.6 Public Reserves Management Fund Act 1987 No 179

Section 5 Payments into Public Reserves Management Fund

Insert after section 5 (e):

- (e1) any money directed by the Minister to be paid into the Fund pursuant to a direction under section 34A (5) of the *Crown Lands Act 1989*,

3.7 Real Property Act 1900 No 25

Section 13K Conversions, purchases, extensions of term, subdivisions etc

Insert after section 13K (2):

- (2A) If, in connection with the sale of Crown land under Part 4 of the *Crown Lands Act 1989* or the grant of an application to purchase land that is the subject of a holding within the meaning of the *Crown Lands (Continued Tenures) Act 1989*, the Minister administering the *Crown Lands Act 1989* imposes a restriction on use or public positive covenant under Part 4A of that Act, the Registrar-General is to record the restriction on use or covenant in the relevant folio of the Register before taking any action to give effect to the sale or purchase.

3.8 Western Lands Act 1901 No 70

[1] Schedule 2 Applicable provisions of the Crown Lands Act 1989

Insert “, and section 34A except in relation to land that is the subject of a lease granted under the *Western Lands Act 1901* or the *Wentworth Irrigation Act 1890*” after “easements” in the matter relating to Part 4.

[2] Schedule 2

Insert after the matter relating to Part 4:

Part 4A Restrictions and covenants imposed on land

The whole Part is to apply except in relation to land that is the subject of a lease granted under the *Western Lands Act 1901* or the *Wentworth Irrigation Act 1890*.

[3] Schedule 2

Insert after the matter relating to Division 1 of Part 7:

Division 1A (transfer or vesting of certain land to or in Crown)—the whole Division.

[4] Schedule 2

Insert after the matter relating to Division 3 of Part 7:

Division 3A (redetermination and adjustment of rents for licences and enclosure permits)—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.

[5] Schedule 2

Insert after the matter relating to Division 5 of Part 7:

Division 5A (powers to enter and inspect land and to obtain information)—the whole Division except in relation to land that is the subject of a lease granted under the *Western Lands Act 1901* or the *Wentworth Irrigation Act 1890*.

[6] Schedule 2

Omit “sections 184–186” from the matter relating to Division 7 of Part 7.

Insert instead “sections 184, 185 and 186”.