

CROWN LANDS (CONTINUED TENURES) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Crown Lands Bill 1988.

The objects of this Bill are—

- (a) to provide for the continuation, and administration, of tenures in force under—
 - (i) the Crown Lands Consolidation Act 1913, the Closer Settlement Acts and the Returned Soldiers Settlement Act 1916 (which are to be repealed by the proposed Crown Lands Act 1988); and
 - (ii) the Prickly-pear Act 1924 as continued by the Prickly Pear Act 1987 (the provisions relating to tenures are to be repealed by proclamation);
- (b) to provide for the continuation, and administration, of certain conditional purchases in force under the Western Lands Act 1901; and
- (c) to prescribe the terms on which certain continued leasehold tenures may be purchased from the Crown.

Under the proposed Act—

- (a) all continued purchase tenures and purchases of continued leasehold tenures are grouped as “incomplete purchases”;
 - (b) all continued leasehold tenures which are leases in perpetuity (other than special leases) are grouped as “perpetual leases”;
 - (c) all continued leasehold tenures held for a defined term of years (other than special leases) are grouped as “term leases”;
 - (d) all continued leasehold tenures held from year to year are grouped as “yearly leases”; and
 - (e) continued special leases, permissive occupancies, quarry licences and leases to the Commonwealth are dealt with separately.
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PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 defines certain terms used in the proposed Act.

Clause 4 provides that the proposed Act is to apply to land in the Eastern and Central Division of the State, land in irrigation areas and holdings and land in the Western Division which were formerly dealt with under the Crown Lands Consolidation Act 1913 and the Closer Settlement Acts.

PART 2—PROVISIONS APPLICABLE TO CONTINUED TENURES ETC.

Clause 5 continues in force—

- (a) any tenures which were in force under a provision of an Act repealed by the Crown Lands Act 1988 (the Principal Act) or under provisions of the Prickly-pear Act 1924 which are to be repealed; and
- (b) any conditional purchases which were in force under the Western Lands Act 1901 before the commencement of the proposed clause.

Clause 6 applies the provisions of Part 1 of Schedule 2 to incomplete purchases and land formerly comprised in incomplete purchases.

Clause 7 applies the provisions of Part 2 of Schedule 2 to perpetual leases.

Clause 8 applies the provisions of Part 3 of Schedule 2 to term leases.

Clause 9 applies the provisions of Part 4 of Schedule 2 to yearly leases.

Clause 10 applies the provisions of Part 5 of Schedule 2 to special leases.

Clause 11 applies the provisions of Part 6 of Schedule 2 to permissive occupancies.

Clause 12 applies the provisions of Part 7 of Schedule 2 to quarry licences.

Clause 13 applies the provisions of Part 8 of Schedule 2 to leases to the Commonwealth.

Clause 14 provides that certain transfer restrictions apply to certain freehold land acquired by way of exchange under the repealed Acts.

Clause 15 provides that certain transfer restrictions apply to certain land held with closer settlement "build-up" holdings.

Clause 16 authorises the Minister, on application by or with the consent of the holder or holders, to prepare a scheme for the redesign of an irrigation area holding or irrigation area holdings. A scheme for redesign may provide for a combination of such things as addition of land to holdings, subdivision of holdings, amalgamation of holdings and transfer of land between holders.

Clause 17 allows the Minister to adjust the purchase price, rent etc. of a holding if the irrigable area of the holding is increased by the construction of additional works or the provision of additional facilities.

Clause 18 empowers the Governor to make regulations for the purposes of the proposed Act.

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SCHEDULE 1—CONTINUED TENURES

Parts 1, 2, 3 and 4 of the Schedule contain lists of the tenures defined as “incomplete purchases”, “perpetual leases”, “term leases” and “yearly leases” for the purposes of the proposed Act.

SCHEDULE 2—PROVISIONS APPLICABLE TO CONTINUED TENURES ETC.

Part 1—Incomplete purchases etc.

Clause 1 excludes from the application of the Part a purchase made after its commencement.

Clause 2 provides that certain references to provisions of the repealed Acts on certificates of title are to be taken to be references to corresponding provisions of the proposed Act or of the Principal Act.

Clause 3 preserves the provisions for payment of the purchase money etc. for incomplete purchases subject to—

- (a) annual rates of interest being increased to 8 per cent;
- (b) annual instalments of purchase price that are currently less than \$100 being increased to \$100; and
- (c) payment in full for certain conditional purchases taken up before 10 August 1875.

Clause 4 contains supplementary provisions applicable to payments on incomplete purchases in irrigation areas.

Clause 5 provides that, on the transfer of an incomplete purchase to another person, the balance of purchase money and any other money owing to the Crown will be required to be paid within 3 months. There would be exceptions such as transmission on the death of the holder.

Clause 6 provides for the holder of an incomplete purchase to have an estate in fee simple in the land, subject to any recordings on the title and the conditions and provisions set out in the proposed Act, the Principal Act and, if the purchase is in the Western Division, the Western Lands Act 1901.

Clause 7 continues, in respect of certain irrigation area holdings, conditions relating to the area of the holdings which may be used to plant orchards, vineyards etc.

Clause 8 prohibits the acquisition of certain purchases in irrigation areas by corporations or trustees.

Part 2—Perpetual leases

Clause 1 provides that certain references to provisions of the repealed Acts on certificates of title for perpetual leases shall be taken to be references to corresponding provisions of the proposed Act or of the Principal Act.

Clause 2 applies the provisions of Schedule 5 (payment of rent and other amounts) to perpetual leases.

Clause 3 applies the provisions of Schedule 6 (conditions etc.) to perpetual leases.

Clause 4 provides for the purchase under Schedule 7 of land held under perpetual lease (except certain land in the Western Division).

Clause 5 enables the Minister, on application, to add vacant Crown land to a perpetual lease.

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Clause 6 continues, in respect of certain irrigation area leases, conditions relating to the area of the leases which may be used to plant orchards, vineyards etc.

Clause 7 prohibits the acquisition of certain leases in irrigation areas by corporations or trustees.

Part 3—Term leases

Clause 1 provides that certain references to provisions of the repealed Acts on certificates of title for term leases are to be taken to be references to corresponding provisions of the proposed Act or of the Principal Act.

Clause 2 applies the provisions of Schedule 5 (payment of rent and other amounts) to term leases.

Clause 3 applies the provisions of Schedule 6 (conditions etc.) to term leases.

Clause 4 confers a right on the holder of a term lease, with the consent of the Minister, to remain in occupation as a monthly tenant after the expiration of the lease.

Clause 5 states that the land held under term lease may be purchased under Part 1 of Schedule 7.

Part 4—Yearly leases

Clause 1 provides that a yearly lease expires on 31 December next after the commencement of the proposed clause and, for each succeeding year for which the lease is renewed, on 31 December in that year.

Clause 2 applies the provisions of Schedule 5 (payment of rent and other amounts) to yearly leases.

Clause 3 provides that a yearly lease may not be transferred without the consent of the Minister.

Clause 4 provides that yearly leases shall be used for grazing and be subject to prescribed conditions.

Clause 5 empowers the Minister to cancel a yearly lease on giving 3 months' notice.

Part 5—Special leases

Clause 1 provides that certain references to provisions of the repealed Acts on certificates of title for special leases are to be taken to be references to corresponding provisions of the proposed Act or of the Principal Act.

Clause 2 applies the provisions of Schedule 5 (payment of rent and other amounts) to special leases.

Clause 3 continues the conditions applying to special leases (subject to the Minister making any determinations required under the conditions, instead of the local land board).

Clause 4 allows the holder of a special lease for a term of years to apply to purchase the land leased, or to apply for a new lease, under the provisions of the Principal Act.

Clause 5 states that the land held under a special lease in perpetuity or under certain other special leases may be purchased under Part 1 of Schedule 7.

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Part 6—Permissive occupancies

Clause 1 preserves the provisions for payment of the rent and other money payable in respect of permissive occupancies.

Clause 2 provides for the redetermination by the Minister of the rent of a permissive occupancy at any time. The provisions of Schedule 5 regarding objections to, and appeals against, redeterminations are applied to a redetermination of rent by the Minister.

Clause 3 empowers the Minister to review royalties and security deposits from time to time.

Clause 4 continues the conditions applying to permissive occupancies (subject to the Minister making any determinations required under the conditions, instead of the local land board).

Clause 5 provides that a permissive occupancy is terminable at will by the Minister.

Part 7—Quarry licences

Clause 1 preserves the provisions for payment of licence fees, royalties and other amounts payable in respect of quarry licences.

Clause 2 continues the conditions applying to quarry licences.

Clause 3 provides that a quarry licence is terminable at will by the Minister.

Part 8—Commonwealth leases

Clause 1 defines the leases to which the Part is to apply.

Clause 2 provides that conditions of leases to the Commonwealth which require redetermination or reappraisal of rent by a local land board shall be read as providing for the redetermination by the Minister.

Clause 3 provides for objections to, and appeals against, redeterminations etc. of rent.

SCHEDULE 3—TRANSFER RESTRICTIONS

Part 1—General restrictions

Clause 1 specifies the land to which the Part is to apply.

Clause 2 provides that land may not be transferred, leased etc. without the consent of the Minister.

Clause 3 invalidates any transfer etc. in contravention of the Part.

Clause 4 provides for applications for consent.

Clause 5 requires the Minister to apply (except in certain prescribed circumstances) "home maintenance area" principles in deciding whether or not to consent to a transfer.

Clause 6 contains special provisions applicable to cases where a mortgagee enters into possession of land under a mortgage.

Clause 7 contains special provisions applicable to cases where land devolves under a will or intestacy.

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Clause 8 provides that the restrictions on transfer may be removed from freehold land (other than land in an irrigation area) on payment of an amount equal to 3 per cent of the land value or, in the case of building blocks with dwellings erected (whether freehold or not), without payment of such an amount.

Clause 9 provides for the determination of land values by the Valuer-General.

Clause 10 provides that the restrictions on transfer may be removed from certain land in irrigation areas (generally being land used for residential, commercial or other non-farming purposes).

Part 2—Restrictions applicable to certain land (week-end leases, auction and tender purchases and town land leases and purchases)

Clause 1 specifies the land to which the Part is to apply.

Clause 2 provides that land may not be transferred without the consent of the Minister.

Clause 3 invalidates any transfer etc. in contravention of the Part.

Clause 4 provides for applications for consent.

Clause 5 states that the Minister has discretion to give or refuse consent. The Minister may also, instead of giving consent, issue a certificate that the land may be transferred without consent.

Clause 6 provides that the restrictions on transfer may be removed from residential holdings.

Part 3—Restrictions applicable to land held with closer settlement build-up holdings

Clause 1 provides that certain references to provisions of repealed Acts on certificates of title for certain land held with closer settlement holdings are to be taken to be references to this Part.

Clause 2 prohibits the transfer of land separately from the holding with which it is held without the consent of the Minister.

SCHEDULE 4—SUBDIVISION OF HOLDINGS

Clause 1 specifies the land to which the Schedule applies.

Clause 2 provides that holdings may not be subdivided without the Minister's approval. Provision is also made for dealing with applications for approval and the conditions to which approvals are subject.

Clause 3 authorises the Minister to exclude from a subdivision any areas required for roads of access, channels or drainage.

Clause 4 provides for the apportionment of any purchase price, instalments of purchase money, rent or other money payable in respect of the subdivided holding.

Clause 5 provides for each portion of a subdivided holding to be held as a separate holding.

Clause 6 provides for the removal of the restrictions on subdivision in respect of certain freehold land in irrigation areas (generally being land used for non-farming purposes).

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SCHEDULE 5—RENT ETC.

Clause 1 defines terms used in the Schedule.

Clause 2 preserves the provisions for payment of rent and other money payable in respect of leases subject to—

- (a) rent or other money payable half-yearly being paid annually in future;
- (b) the annual rate of interest on money payable by instalments being increased to 8 per cent; and
- (c) the Minister having power to vary the amounts, and the manner of payment, of instalments in certain circumstances.

Clause 3 contains supplementary provisions applicable to payment of rent etc. on leases in irrigation areas.

Clause 4 provides that, if the annual rent of a lease (not subject to periodic redetermination) as at the commencement of the proposed clause is less than \$100, the annual rent is to be increased to \$100.

Clause 5 provides that rent which is not subject to redetermination may be adjusted each due date having regard to movements in the Consumer Price Index.

Clause 6 provides for the redetermination by the Minister of the rent of certain leases at 5 yearly intervals.

Clause 7 allows the Minister to redetermine the rent of yearly leases.

Clause 8 provides for the redetermination by the Minister at not more than 5 yearly intervals of the rent of certain special leases.

Clause 9 provides for the redetermination by the Minister of the rent of certain irrigation area leases at 5 yearly intervals.

Clause 10 allows a holder of a lease, the rent of which is not subject to redetermination, to apply to the Minister for redetermination of the rent. Following such a redetermination, the rent is again redetermined at 5 yearly intervals.

Clause 11 contains provisions for appeals to the local land board against redeterminations of an annual rent exceeding \$10,000 and to the Land and Environment Court in other cases.

Clause 12 sets out principles to be applied by the Minister, the local land board and the Court in redetermining rent.

Clause 13 preserves a reduction of rent for certain leases that were granted before 1 January 1933 and were subsisting on 1 January 1948.

SCHEDULE 6—CONDITIONS ETC.

Clause 1 defines "lease" as meaning a perpetual lease or a term lease.

Clause 2 preserves the conditions attaching to leases and requires the holder to comply with the conditions.

SCHEDULE 7—PURCHASE OF LAND HELD UNDER LEASE

Part 1—Purchase of land not in an irrigation area

Clause 1 provides that the holder of a perpetual lease, a term lease, a special lease in perpetuity or a special lease granted over an expired conditional lease may apply to the Minister to purchase the whole or a part of the land comprised in the lease.

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Clause 2 prescribes the circumstances in which the Minister may or shall grant or refuse an application to purchase.

Clause 3 allows the Minister to exclude areas required for roadways or other public purposes, or create an easement for public access, on granting an application and provides for an appeal from the Minister's decision to the local land board.

Clause 4 authorises the Minister in certain cases to limit the purchase to a stated depth.

Clause 5 specifies the title of, and the conditions to apply to, the land while it is an incomplete purchase.

Clause 6 applies the provisions of Schedule 4 (restrictions on subdivision) to an incomplete purchase.

Clause 7 with some exceptions continues any transfer restrictions applying to the land before the purchase.

Clause 8 applies to incomplete purchases under the Part the provisions relating to payment, on transfer of a holding, of all amounts owing to the Crown.

Clause 9 sets out the provisions for determination of the purchase price on purchase of the land comprised in a lease. Generally, these are a continuation of existing provisions but, where there is no existing fixed price, the price is determined by the Minister.

Clause 10 provides for appeals to the local land board against determinations of purchase prices not exceeding \$150,000 and to the Land and Environment Court in other cases.

Clause 11 provides for the adjustment (in line with any movements in the Consumer Price Index up to the date of the application to purchase) of those purchase prices which are determined as at a date before the application is made.

Clause 12 enables the adjustment of the rent of a lease (other than a special lease) where part only is purchased.

Clause 13 enables the adjustment of the rent, purpose and conditions of a special lease where part only is purchased.

Clause 14 provides for the recovery of the costs of any surveys.

Clause 15 prescribes the manner of payment of the purchase price. Payment is by 33 equal annual instalments subject to interest at an annual rate of 8 per cent and to a minimum instalment of \$100.

Clause 16 provides for payment of other amounts due on purchase, such as stamp duty and outstanding rent etc.

Clause 17 retains, in respect of the land purchased, the rights of any mortgagee of the leasehold land.

Clause 18 provides that the purchase of the land does not affect easements.

Part 2—Purchase of land in an irrigation area

Clause 1 provides that the holder of a perpetual lease in an irrigation area may apply to the Minister to purchase the land comprised in the lease.

Clause 2 provides for the granting by the Minister of an application.

Clause 3 specifies the title of, and the conditions to apply to, the land while it is an incomplete purchase.

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Clause 4 applies the provisions of Schedule 4 (restrictions on subdivision) to an incomplete purchase and to land formerly comprised in an incomplete purchase.

Clause 5 continues any transfer restrictions applying to the land before the purchase.

Clause 6 continues, in respect of certain incomplete purchases, conditions relating to the area which may be used to plant orchards, vineyards etc.

Clause 7 prohibits the acquisition of certain purchases of land in irrigation areas by corporations or trustees.

Clause 8 applies to incomplete purchases under the Part the provisions relating to payment, on transfer of a holding, of all amounts owing to the Crown.

Clause 9 sets out the provisions for determination of the purchase price on purchase of the land comprised in a lease. Generally, these are a continuation of existing provisions. If there is an existing fixed price, the price is to be adjusted in line with any movements in the Consumer Price Index up to the date of the application to purchase.

Clause 10 provides for appeals to the local land board against determinations of purchase prices not exceeding \$150,000 and to the Land and Environment Court in other cases.

Clause 11 applies to incomplete purchases under this Part the provisions of Part 1 relating to payment of purchase price and other money.

Clause 12 applies to incomplete purchases under this Part the provisions of Part 1 relating to retention of rights of mortgagees.

Clause 13 provides that the purchase of the land does not affect easements.
