

Western Lands Act 1901 No 70

[1901-70]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Western Lands Act of 1901
- **Does not include amendments by**
[Western Lands Amendment Act 2002 No 68](#) (not commenced — to commence on 1.12.2002 (Sch 1 [2], Sch 2 and Sch 4 [14] excepted))
[Surveying Act 2002 No 83](#) (not commenced)
- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2002](#)

Authorisation

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Western Lands Act 1901 No 70



New South Wales

An Act to vest the management and control of that portion of New South Wales known as the Western Division in a Western Lands Commissioner; to grant extension of leases in the said division and tenant-right in certain improvements; and for all purposes necessary and incidental thereto.

Part 1 Preliminary

1 Name of Act

This Act shall come into force on the first day of January, one thousand nine hundred and two, and may be cited as the *Western Lands Act 1901*.

2 Repeal of Acts

The *Crown Lands Act of 1884* and all Acts amending same, in so far as they relate to homestead selections and grants, pastoral, homestead, settlement, residential, special, artesian well, improvement, and scrub leases, leases of inferior lands, and occupation licences and vacant lands in the Western Division, are hereby repealed, except where exempted from such repeal under the provisions of this Act; but such repeal shall not of itself:

- (1) abate, prejudice, or affect any proceeding, civil, or criminal, pending in any court or before arbitrators or any other authority at the commencement of this Act,
- (2) affect any application, grant, lease, licence, reservation, dedication, proclamation, appointment, or notification lawfully made before the commencement of this Act, or
- (3) prejudice or affect any proceeding, matter, or thing lawfully done or contracted to be done, or commenced or contracted to be done under the authority of any enactment or regulation hereby repealed, or
- (4) apply to the disposition or dealing with any lands or interests therein not brought under the provisions of this Act: Provided that all vacant lands and lands the subject of annual lease or occupation licence in the Western Division shall not (whether brought under this Act or not) be leased except under the provisions of this Act.
- (5) (Repealed)

And provided always that, notwithstanding such repeal:

- (a) all offences, penalties, and forfeitures committed or incurred before the commencement of this Act may be respectively tried, punished, enforced, and dealt with as if this Act had not been passed,
- (b) all rights accrued and obligations incurred or imposed under or by virtue of any of the said repealed enactments shall, subject to any express provisions of this Act in relation thereto, remain unaffected by such repeal.

2A Application of [Crown Lands Act 1989](#)

- (1) The provisions of the [Crown Lands Act 1989](#) specified in Schedule B (and any regulations under that Act having effect for the purposes of those provisions) apply to and in respect of land in the Western Division in the same way as they apply to and in respect of land in the Eastern and Central Division.
- (2) Those provisions so apply with the modifications, and subject to the restrictions, specified in Schedule B.
- (3) In the application of any such provision to and in respect of land in the Western Division, if the expression “Crown Lands Acts” or “this Act” occurs in the provision it is to be read as including the expression “and the [Western Lands Act 1901](#)”.
- (4) Except as provided by this Act or the Crown Lands Acts, the [Crown Lands Act 1989](#) does not apply to land in the Western Division.

2B Savings, transitional and other provisions

Schedule C has effect.

3 Definitions

- (1) In this Act, unless the context necessarily requires a different meaning, the expression:

Approved form means a form approved by the Minister under section 3A for the purposes of the provision of this Act in relation to which the expression is used.

Assistant Commissioner means an Assistant Western Lands Commissioner holding office as such under Part 2 of the [Public Sector Management Act 1988](#).

Commissioner means the Western Lands Commissioner holding office as such under Part 2 of the [Public Sector Management Act 1988](#).

Crown Lands Acts has the same meaning as in the [Crown Lands Act 1989](#).

Crown lands means Crown lands within the meaning of the Crown Lands Acts, and includes land held under occupation licence or annual lease.

Eastern and Central Division has the same meaning as in the [Crown Lands Act 1989](#).

Holding has the same meaning as in the [Crown Lands Act 1989](#).

Lessee includes a purchaser who has paid the purchase money but has not registered a transfer.

Local Land Board means the local land board of the administrative district in question and includes the Land and Environment Court in any case where an appeal or reference shall have been made.

Mineral means any mineral within the meaning of the [Mining Act 1992](#).

Pastoral holding means pastoral holding as defined by the Crown Lands Acts, and the terms **occupation licence**, **preferential occupation licence**, **scrub lease**, **improvement lease**, **homestead lease**, **settlement lease**, **special lease**, **artesian well lease**, **residential lease**, and **lease of inferior lands**, **homestead selections**, and **homestead grants**, shall in this Act have the same meanings as they have in such Acts.

Western Division means the Western Division as defined by the [Crown Lands Consolidation Act 1913](#) immediately before its repeal (subject to any regulations made under section 4 (3) of the [Crown Lands Act 1989](#) that affect the boundary between the Western Division and the Eastern and Central Division).

- (2) Crown land shall not cease to be Crown land by reason only of the creation in respect of it of a folio of the Register kept under the [Real Property Act 1900](#) in the name of "The State of New South Wales".

3A Minister may approve forms

The Minister may approve forms for the purposes of this Act.

Part 2 Administration

4 Western Lands Commissioner and Assistant Commissioners

- (1) (Repealed)
- (2) The Commissioner shall, subject to the direction and control of the Minister, be charged with the administration of this Act, and shall exercise and perform the powers, authorities, duties and functions conferred and imposed upon the Commissioner by this Act.
- (3) An Assistant Commissioner is to exercise and perform such of the powers, authorities, duties and functions of the Commissioner as the Commissioner directs, either generally or in any special case.

(4)-(6) (Repealed)

5 Disabilities of Commissioner and Assistant Commissioners

Neither the Commissioner nor an Assistant Commissioner shall, directly or indirectly, be interested in any land in the Western Division or in any matter which may arise in connection therewith under this Act, and any contravention of this enactment shall render void as well the office of the Commissioner or of the Assistant Commissioner, as the case may be, as any adjudication or determination in which such Commissioner or Assistant Commissioner takes part and in which either is personally interested.

6-8 (Repealed)

8A Delegation by Commissioner

- (1) The Commissioner may delegate to an officer of the Department of Lands the exercise of any of the Commissioner's functions, other than this power of delegation.
- (2) A delegation under this section:
 - (a) shall be in writing,
 - (b) may be general or limited, and
 - (c) may be revoked, wholly or partly, by the Commissioner.
- (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.
- (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Commissioner.
- (5) A delegation under this section does not prevent the exercise of a function by the Commissioner.
- (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.
- (7) In this section:
 - (a) a reference to a function includes a reference to a power, authority and duty, and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

9 Power to establish administrative districts

- (1) The Minister may within the Western Division by notification in the Gazette establish and define the boundaries of administrative districts, and may, in like manner, alter,

modify, or cancel the same.

(2) There shall be a local land board for every administrative district or for several administrative districts.

(2A) The Governor may appoint as Chairperson of Local Land Boards:

- (a) an officer within the meaning of the *Public Sector Management Act 1988*, or
- (b) a person who holds such other office, or has such qualifications, as may be prescribed.

(2B) The person appointed is Chairperson of the local land boards for all administrative districts.

(2C) If the Minister is satisfied that the Chairperson:

- (a) will be absent at a time when a local land board is to sit, or
- (b) for any reason, will be unable to act, or should not act, at a particular sitting of a local land board,

the Minister may appoint a person to act as Chairperson at the sitting.

(3)

(a) The members of a local land board shall be three in number and shall comprise:

- (i) the Chairperson appointed under subsection (2A), and
- (ii) two other persons appointed by the Minister for such term not exceeding 5 years as is specified in the instrument of appointment (hereinafter referred to as the **appointed members**).

(b) The Chairperson shall preside at all meetings of the local land board.

(c) The Chairperson and one appointed member shall constitute a quorum, and shall be competent to transact any business of the local land board, and shall have and may exercise all the powers and authorities by this Act conferred upon the local land board.

(d) The Chairperson shall have an original vote on any question before the local land board, and shall have a casting vote on any question on which the votes are equal.

(e) The local land board may retire for the purpose of reaching its decision.

A decision of the local land board shall be reduced to writing and shall be given by the Chairperson in open court.

The local land board instead of giving any decision in any case within its

jurisdiction may after taking evidence refer such case with the evidence for decision by the Land and Environment Court, which shall have power to deal with the case so referred in all respects as if it had been brought before it in the first instance.

- (3A) Subject to subsection (3C), when a local land board reaches a decision, each member shall give a written statement of the reasons assigned by the member in support of the member's opinion or a written statement supporting the reasons assigned by another member, but two or all of the members may give a joint statement of reasons.
- (3B) The decision of a local land board given under subsection (3) (e) shall be accompanied by each statement required to be given under subsection (3A).
- (3C) Subsection (3A) does not apply in relation to any prescribed class of decisions or to the Chairperson when acting on behalf of a local land board.
- (4) An appointed member shall be entitled to receive such expenses and, if the Minister so approves, such fees and allowances for attending meetings and transacting business of the board as the Minister may from time to time determine in respect of that member.

An appointed member who sits or acts in any way as a member of a local land board in any case in which the member is or has been directly or indirectly interested shall be liable to a penalty not exceeding 10 penalty units.

In case of the illness or absence of an appointed member the Minister may appoint a person to be the deputy of such appointed member. Such deputy while so acting, shall exercise and perform all the powers, authorities, duties and functions of the appointed member whose deputy the person is.

The resignation or bankruptcy of an appointed member, or the member's absence from three consecutive meetings of the local land board without leave of the Minister, shall cause a vacancy in the member's office. The Minister may appoint a person to supply such vacancy or any vacancy caused by the removal of an appointed member from the member's office.

(5)

- (a) The local land board so constituted shall have power to hear and determine all matters coming before it in pursuance of the provisions of this Act.

For the purposes of the Crown Lands Acts in so far as holdings under those Acts within the Western Division are concerned the local land board for the administrative district within which any such holding or the greater part thereof is situated shall be deemed to be a local land board constituted under those Acts.

The local land board shall sit in open court at any convenient place within or outside the Western Division, and such board may, and is hereby empowered to, exercise all of the powers conferred upon local land boards constituted under the *Crown Lands Act 1989* in so far as such powers relate to the summoning, attendance and examination of witnesses, and to the conduct of proceedings generally before such board.

- (b) The Chairperson shall have power on behalf of the local land board to deal with such matters as may from time to time be prescribed, and while so doing may sit in open court or in chambers at any convenient place as aforesaid; but shall not deal with matters involving:
- (i) the determination of the capital value or rent of any land, or the value of any improvements, unless an agreement between the parties has been arrived at, or
 - (ii) (Repealed)

The Chairperson while acting in pursuance of the provisions of this paragraph shall have all the powers of the local land board.

- (c) The local land board or Chairperson shall forward that board's or the Chairperson's determination on any matter to the Commissioner.

(6)

- (a) Any party to any proceeding before a local land board or the Chairperson shall have the same right of appeal, and the Minister shall have the same right of reference to the Land and Environment Court as is provided for under the provisions of the *Crown Lands Act 1989* and the Court shall have power to hear and determine all such appeals and references.
- (b) Where the Minister considers that further consideration of any decision by a local land board or the Chairperson is necessary or desirable, the Minister may return it to the local land board or the Chairperson, as the case may be, for such purpose, and the local land board or the Chairperson, as the case may be, may, with or without taking further evidence, uphold, reverse, alter or amend that board's or the Chairperson's previous decision as that board or the Chairperson may consider just.

- (7) In this section, **decision** includes a decision of a local land board as to an adjudication, determination, award, report or recommendation.

10 Board, when authorised, may deal with matters outside its district

It shall be lawful for the Minister from time to time to direct any local land board to deal with any matter, question or inquiry that has arisen or shall arise under this Act or any

other Act without regard to the administrative district in which the land forming the subject of such matter, question or inquiry may be situated. And the said local land board shall have as full power and jurisdiction to deal with the matter as if the land aforesaid were situated within such board's proper administrative district.

10A Minister may refer to boards for reports

Where it appears necessary or advisable for the due administration of the Crown Lands Acts or this Act, that any inquiry or recommendation as to any case or matter should be made by a local land board, it shall be lawful for the Minister to refer such case or matter to the local land board; and the local land board shall proceed accordingly, and make a report to the Minister.

10B (Repealed)

10C Minister may deal with matters by agreement

- (1) In this section, **determine** includes redetermine, assess, inquire into, report upon, recommend and any other prescribed act or proceeding.
- (2) Where:
 - (a) by or under this Act, it is provided that a local land board shall determine any matter, and
 - (b) the applicant or lessee who would be affected by the determination, if made, agrees in writing to the Minister's dispensing with that determination or determining that matter in a specified manner,the Minister may, without the holding of a hearing, dispense with that determination or determine that matter in the specified manner, as the case may be.
- (3) Where, in the opinion of the Minister, any person other than an applicant or a lessee would be directly affected by a determination by a local land board of any matter, if made, the Minister shall not take any action under subsection (2) in relation to the determination unless that person agrees in writing to that action being taken.
- (4) Where the Minister dispenses with a determination as referred to in subsection (2) in relation to a matter:
 - (a) the local land board shall be deemed to have no jurisdiction in the matter, and
 - (b) any requirement to refer matters to the local land board shall, in so far as it would, but for this subsection, apply to the matter, be deemed to be repealed.
- (5) Where the Minister determines a matter under subsection (2), the local land board shall be deemed to have no jurisdiction in the matter and the Minister's determination shall have the same effect as if it were a determination of the local land board.

(6) Where the Minister:

- (a) dispenses with a determination as referred to in subsection (2) in relation to a matter, or
- (b) determines a matter under subsection (2),

and the Minister would, but for this subsection, be prohibited from doing a thing in relation to the matter, except after receiving a recommendation or report from a local land board, the Minister may do the thing notwithstanding that no such report or recommendation is received.

- (7) Where the Minister has determined a matter under subsection (2) with the agreement of a person or persons whose agreement is necessary to enable the Minister to make the determination, the Minister may, if that person agrees or those persons agree in writing to the Minister's reversing the determination or to the Minister's altering or amending the determination in a specified manner, reverse, alter or amend in accordance with the agreement the determination so made and, thereupon, the provisions of subsections (5) and (6) cease to apply to the determination so made but apply to the determination as reversed, altered or amended in accordance with this subsection.

11 Appointment of staff

Such staff as may be necessary to enable the Commissioner to exercise the Commissioner's functions shall be employed under the [Public Service Act 1979](#).

12 Right to enter on Crown lands

The Minister, the Commissioner, or an Assistant Commissioner, or any person authorised by the Minister, the Commissioner or an Assistant Commissioner, may at any time enter upon any Crown lands within the Western Division for the purpose of giving effect to the provisions of this Act or the Crown Lands Acts.

12A Delegation by Minister

- (1) Subject to this section the Minister may by instrument in writing delegate to the holder of any office under the Minister's administration the exercise or performance of the powers (other than this power of delegation), authorities, duties and functions conferred or imposed upon the Minister by or under this Act or the regulations thereunder and may in like manner revoke wholly or in part any such delegation or any such delegation made by a predecessor in office.
- (2) Any power, authority, duty or function, the exercise or performance of which has been delegated under this section to the holder of an office, may while the delegation remains unrevoked be exercised or performed from time to time in accordance with the terms of the delegation by the person for the time being holding or acting in that

office, whether or not the Minister who made the delegation holds office at the time of that exercise or performance.

(3) A delegation made under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated or as to time or circumstances as may be specified in the instrument of delegation.

(4), (5) (Repealed)

(6) Notwithstanding any delegation made under this section the Minister may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

(7) (Repealed)

Part 3 Land may be brought under this Act

13 Land may be brought under this Act

Any registered holder under the Crown Lands Acts of a homestead grant or occupation licence of land in the Western Division may apply, or in the event of any such holdings being mortgaged, then any owner of the equity of redemption in the same may also apply, as prescribed to bring the holding as aforesaid under the provisions of this Act. If no such application is made such holding shall be dealt with as if this Act had not been passed; and where in the said Crown Lands Acts the words "Local Land Board" occur such words shall be deemed to refer to the local land board for the administrative district within which such holding or the greater part thereof is situated.

Part 4

14-17D (Repealed)

Part 5 Conditions of leases

18 Duration of lease

Every lease shall contain the covenants, reservations, and exemptions set out in Schedule A, or such of the same as the Minister may deem applicable, and shall be subject to any modifications or additions contained in the notification rendering the lands available for lease in the case of new leases, and as may be determined by the Minister in the case of extended leases or those granted in lieu of leases surrendered under the provisions of this Act, and no lease shall convey any authority to carry on mining operations thereon. Every such lease shall contain a provision to the satisfaction of the Minister for the destruction of rabbits, and any lease shall, in the discretion of the Minister, be liable to forfeiture for breach of any of the covenants therein contained or annexed by law thereto:

Whenever in pursuance of the provisions of this Act any holding or any right, title or interest to or in any land, becomes liable to be forfeited, such forfeiture may be

declared by the Minister by notification in the Gazette.

Where in respect of any lease in force at the commencement of the *Western Lands (Amendment) Act 1937*, or granted or issued after such commencement, it is provided that any lease may be cancelled or cancelled and forfeited or declared to have lapsed, such cancellation or cancellation and forfeiture or lapsing may be declared by the Minister by notification in the Gazette.

No forfeiture, cancellation or lapsing shall operate to extinguish any debt to the Crown unless the Minister otherwise approves. The Minister may so approve in respect of the whole or any part of such debt irrespective of whether the forfeiture, cancellation or lapsing was declared before or after the commencement of the *Western Lands (Amendment) Act 1963*.

The Minister may waive or reverse, whether provisionally or otherwise, and on such conditions as the Minister may think fit, any such forfeiture, cancellation, or lapsing. Any reversal shall be notified in the Gazette.

18A Condition of fencing

All leases, whether granted or issued before or after the passing of the *Western Lands (Amendment) Act of 1905*, shall be subject to a condition that the boundaries of the lands leased shall be fenced within such period and with such class of fencing as may be determined by the Commissioner not being a rabbit-proof fence: Provided that the Commissioner may exempt any boundary or part of a boundary from fencing, and may allow a variation or modification of the character of the fencing, or extend the period for erection of the same, or may authorise the erection or use of any fence which, although not on a boundary, will, in the opinion of the Commissioner, serve all the purposes of a boundary fence, and any such fence, as well as any fence erected before the passing of the *Western Lands (Amendment) Act of 1905*, provided that it is in the opinion of the Commissioner of a sufficiently useful and substantial kind, shall be deemed to be a boundary fence.

18B Contribution towards fencing

When a boundary of any land under lease has been fenced, the person who has erected or become the owner of such fence shall be entitled to claim from the holder of any lands, including freeholds adjoining the said fence, and in respect of so much of the said fence as forms, or in the opinion of the local land boards should form and be used as a common boundary, a contribution of one-half the value of such fencing at the date of such claim, and may also claim an annual contribution of one-half the cost of the maintenance and repair of such fencing. After the amount of such contribution has been determined as hereinafter provided, the person entitled to payment may sue for such amount and recover the same in any court of competent jurisdiction: Provided that no holder of an occupation licence or of any lease having less than five years to run shall be liable as a contributory under this section towards the value of such fencing as aforesaid; and the

side of a reserved, intended, proclaimed or other road shall not be held to form or be a common boundary line within the meaning of this Act, unless the local land board otherwise determine.

18C Local land board's decision as to fencing

The local land board shall determine all disputes and claims whatsoever as to fencing. The provisions of subsection (6) of section 9 shall extend to appeals and references to the Land and Environment Court in respect of any such determination and to the return of any such determination to the local land board.

18CC Minister may sue for money

It shall be lawful for the Minister for Natural Resources to bring under that name, and as nominal plaintiff on behalf of the Crown, any action or suit for the recovery of arrears of rent or of any other sums which under this Act may be due to the Crown. And no such action or suit shall be prejudiced or abate or require amendment merely because after the commencement thereof the Minister who brought the same may have gone out of office or because another Minister may have been appointed or the office may for the time being be vacant: Provided that costs may be given for or against such plaintiff in the same way as in any ordinary action or suit.

18D Provisions governing leases

- (1) The following provisions shall govern all leases granted or issued either before or after the passing of the *Western Lands (Amendment) Act of 1905* and the holders of such leases, namely:
 - (i) No lease other than a special lease for that purpose shall confer any right to remove material from the leased land or to prevent the entry and removal of material by authorised persons.
 - (ii) A lessee may take from land under the lease such timber and other material for building and other purposes on the land or on any contiguous land held in the same interest as may reasonably be required by the lessee.
 - (iii) No lessee shall prevent any persons duly authorised in that behalf from cutting or removing timber or material or from searching for any mineral within the land under lease.
 - (iv) A lessee shall take such measures as the Commissioner may direct to protect the land under lease and, without affecting the generality of the foregoing, the Commissioner may direct the lessee:
 - (a) to prevent the use by stock of any part of the land for such periods as the Commissioner considers necessary and to erect fencing for that purpose,
 - (b) to prevent the overstocking of the land,

- (c) to prevent any part of the land being used for such agricultural practices of such types and for such periods as the Commissioner considers necessary,
 - (d) to foster and cultivate edible shrubs and plants on the land,
 - (e) to preserve trees, scrub and vegetative cover on the land, and
 - (f) to take such measures to protect the land (including measures to prevent soil erosion or other damage to the land) as the Commissioner of the Soil Conservation Service may recommend.
- (v) A lessee shall not overstock or permit or allow to be overstocked the said land, and the decision of the Commissioner as to what constitutes overstocking shall be final.
- (vi) (Repealed)
- (vii) A lessee shall not erect a building on the land under lease (not being land in an area within the meaning of the *Local Government Act 1993*) except with the prior approval of the Commissioner and in accordance with any condition to which the approval is subject.
- (viii) A lessee shall, if the Commissioner so directs, erect gates on public roads on the land under lease.
- (ix) A lessee shall carry out such repairs to improvements on the land under lease as the Commissioner may direct.
- (x) A lessee shall furnish such returns and statements as the Commissioner may from time to time require on any matter connected with the land under lease or any other land (whether within or outside the Western Division) in which the lessee has an interest.
- (2) To the extent that the provisions of this section are inconsistent with those of a conservation agreement entered into under the *National Parks and Wildlife Act 1974*, this section does not apply to a lease relating to land subject to that agreement.

18DA Cultivation of certain land

- (1) This section applies to:
- (a) a lease expressed to be granted or issued for the purpose of grazing, and
 - (b) any other lease not being a lease expressed to be granted or issued for the purpose of agriculture, grazing and agriculture combined or mixed farming or for any similar purpose or purposes,
- whether granted or issued before or after the day appointed and notified under

section 2 (3) of the *Western Lands (Leases and Productivity Schemes) Amendment Act 1979*.

(1A) This section also applies to any other class of land in the Western Division prescribed for the purposes of this section.

(2) In this section:

cultivate, in relation to land:

- (a) includes the preparation of the land for cultivation and the further cultivation of the land if it has previously been cultivated, and
- (b) does not include clearing native vegetation, or clearing protected land, within the meaning of the *Native Vegetation Conservation Act 1997* or the carrying on in relation to the land of an activity prescribed as not being cultivation for the purposes of this section.

occupier means the person who, under the Crown Lands Acts, the *Commons Regulation Act 1898* or the *Pastures Protection Act 1934*:

- (a) is the holder of a permissive occupancy, a licence, a conditional lease or any other prescribed tenure, or
 - (b) has the care, control and management of land prescribed for the purposes of this section as referred to in subsection (1A).
- (3) Except in such circumstances as may be prescribed, the lessee of land the subject of a lease to which this section applies, or the occupier of any other land to which this section applies, shall not cultivate any part of the leased or occupied land unless:
- (a) the Commissioner has consented in writing to the cultivation of that part, and
 - (b) the consent is in force, and
 - (c) any condition to which the consent is subject under subsection (6) is complied with.
- (4) Application for consent under this section shall be made to the Commissioner in a form approved by the Commissioner and shall be accompanied by the prescribed fee.
- (5) The Commissioner shall not give consent under this section without having first referred the application for consent to the Commissioner of the Soil Conservation Service appointed under the *Soil Conservation Act 1938*, for consideration and advice.
- (6) The Commissioner may give consent under this section unconditionally or subject to such conditions as the Commissioner may specify in the instrument of consent or may refuse consent.

- (7) (Repealed)
- (8) Without limiting the generality of subsection (6), the conditions referred to in that subsection may include a condition for the payment of an annual fee, being a fee determined having regard to the value of the lessee or occupier of the use, for the purpose of cultivation, of the land to which the consent relates.
- (8A) The Commissioner may, on the ground that any condition to which a consent under this section is subject has been contravened or on any other ground:
- (a) suspend the consent, or
 - (b) after affording the lessee or occupier an opportunity to be heard—revoke the consent.
- (8B) The Commissioner may terminate the suspension of a consent under this section.
- (9) A consent under this section remains in force for such period as the Commissioner may specify in the instrument of consent unless it is sooner revoked or surrendered.
- (10) A person may appeal to the Land and Environment Court against:
- (a) the refusal of the Commissioner to give a consent under this section to the person,
 - (b) any condition to which a consent given to the person under this section is subject, or
 - (c) the suspension or revocation of a consent given under this section to the person or the person's predecessor in title.
- (11) For the purpose only of enabling an appeal to be made under subsection (10), a failure by the Commissioner to determine an application for a consent under this section within 6 months after the application is received by the Commissioner constitutes a refusal by the Commissioner to give the consent.
- (12) A lease to which this section applies shall be liable to forfeiture if any part of the land the subject of the lease is cultivated in contravention of this section or any conditions imposed under this section.
- (13) No act, matter or thing which a lessee, under or in conformity with a consent under this section, does upon or in relation to the land the subject of the lease shall render the lease liable to forfeiture under this Act merely by reason of the fact that the doing of the act, matter or thing constitutes a breach or non-performance of any covenant, condition or provision applicable to the lease.

18DB Condition relating to clearing native vegetation and protected land

- (1) This section applies to any lease granted or issued for any purpose under this Act

(whether before or after the commencement of this section) unless the land leased has an area of 0.5 hectares or less.

- (2) In this section, **clearing, native vegetation** and **protected land** have the same meanings as in the [Native Vegetation Conservation Act 1997](#).
- (3) It is a condition of any lease to which this section applies that any native vegetation on the land the subject of the lease, and any part of that land that is protected land, must not be cleared except in accordance with the [Native Vegetation Conservation Act 1997](#).
- (4) However, such a condition does not apply in relation to any clearing that is carried out for the purpose of obtaining timber for use on the leased land for building, fencing or firewood.

18E Subsisting leases: extension

- (1) The holder of a lease may apply in the approved form and prescribed manner to have such lease extended to a lease in perpetuity.

The application shall be accompanied by the prescribed fee.

If a certificate of title has issued in respect of the lease it shall be forwarded with the application.

- (1A) The Minister may, in the Minister's absolute discretion, refuse to grant any such application.

No other provision of this Act shall be construed so as to prejudice or affect the generality of this subsection.

- (2) The Minister on the recommendation of the local land board may grant the application as to the whole or part of the land in the lease.

The following provisions shall apply in respect of every such application:

- (a) an application under this section shall not be entertained where the granting of the same appears to be contrary to the public interest or to be otherwise undesirable,
- (b) (Repealed)
- (c) an application shall not be granted in respect of such part of the land comprised in the lease as is:
 - (i) reserved from sale, lease or licence under any Act—unless the Minister so approves,
 - (ii) within a State forest or timber or forest reserve—unless the Forestry

Commission so approves,

(iii) within an area over which, by virtue of the provisions of the *Mining Act 1992* or any instrument under that Act, an authority or claim, or a particular authority or claim, under that Act cannot be granted or registered—unless the Director-General of the Department of Mineral Resources so approves,

(d), (e) (Repealed)

(f) an application may be withdrawn with the consent of the Minister and upon payment of the costs incurred in dealing with the application.

(3) (Repealed)

(4) Where an application under subsection (1) has been granted as to part only of the land comprised in the lease:

(a) separate leases shall be created under section 28A for such part and for the residue of the land comprised in the lease, and any person having an interest in the original lease shall be deemed to have an equivalent interest whether by way of mortgage or otherwise in the new leases,

(b) the new leases shall commence on the date upon which the application under subsection (1) is granted and the term of the lease for such residue shall be the balance of the term of the lease subsisting at that date,

(c) the lease for the residue of the land shall, subject to this section, be held subject to the conditions appertaining to the lease at the date of the said application,

(d) the cost of any necessary survey shall be paid by the holder in the manner and at the time prescribed and upon default of payment the leases shall become liable to forfeiture.

(e) (Repealed)

(4A) If, immediately before the commencement of the *Western Lands (Crown Lands) Amendment Act 1989*:

(a) the survey costs payable by a holder under subsection (4) (d) were wholly or partly unpaid, and

(b) the annual rate of interest payable on the unpaid amount was less than 8 per cent,

the annual rate of interest payable is increased to 8 per cent from that commencement.

(4B) The Minister may adjust the instalments by which survey costs referred to in

subsection (4A) are payable so that the total amount owing (including interest at 8 per cent) is paid over the same or a longer period.

- (5) A lease in perpetuity granted in pursuance of this section shall, in addition to the conditions appertaining to the lease at the date of the application under subsection (1), be subject to such terms and conditions of improvement and maintenance thereof including water supply and the destruction of rabbits, wild dogs and other noxious animals as the Minister after report by the local land board may consider necessary to reasonably increase the carrying capacity of the land, and may impose when granting the application.
- (6) All leases held in the same interest shall be included in one application.
- (7)-(13) (Repealed)

18F (Repealed)

18FA Subdivision of leases

- (1) The holder of a lease under this Act may, with the Minister's approval, subdivide land comprised in the lease.
- (2) An application for approval is to be made in the form approved by the Minister.
- (3) The applicant is required to meet all reasonable costs incurred in dealing with the application.
- (4) The Minister may, in the Minister's absolute discretion, refuse the application or approve the subdivision either conditionally or unconditionally.
- (5) A condition of approval also has effect as a condition attaching to any lease resulting from the subdivision that is a lease to which the condition relates.
- (6) The Minister may make such consequential alterations to the conditions or purpose of the lease for a subdivided portion as the Minister considers necessary as a result of the subdivision.
- (7) The Minister may exclude from a subdivision any areas required for roads of access to the subdivided portions.
- (8) Excluded areas are, on approval being given to the subdivision, surrendered to the Crown free from any right to compensation.
- (9) The Minister may apportion rent or other money due to the Crown to the subdivided portions in such manner as the Minister considers appropriate.
- (10) The approval of the Minister for a subdivision does not affect the requirements of any other written law that apply to the subdivision.

- (11) This section applies to leases whether granted or issued before or after the commencement of this section.

18G Transfers

- (1) Except as otherwise provided in this Act, no transfer, conveyance, assignment or mortgage of, or other such dealing with, a lease applied for after the commencement of the *Western Lands (Amendment) Act 1934*, or any portion thereof, and no transfer, conveyance, assignment of or other dealing (not being a mortgage) with a lease extended to a lease in perpetuity (whether before or after the commencement of the *Western Lands (Amendment) Act 1949*), or any portion thereof, or a lease issued under the provisions of section 17CCC (as in force immediately before the commencement of Schedule 4 to the *Western Lands (Amendment) Act 1985*), or any portion thereof, shall be effected unless the consent thereto of the Minister has been first obtained.

Application for such consent shall be made to the Minister in the approved form and shall be accompanied by the prescribed fee.

A transfer by way of discharge of mortgage may be effected without such consent.

- (1A) The Minister has discretion to grant or refuse consent under subsection (1).
- (1B) If a consent to a dealing is given under subsection (1) after the insertion of this subsection by the *Western Lands (Amendment) Act 1989*, the consent lapses if the dealing is not registered:
- (a) within the period of 6 months that next succeeds the date of the consent, or
 - (b) within such further period as may be allowed on an application being made under subsection (1C).
- (1C) An application for further time may:
- (a) within the period allowed under subsection (1B) (a), or
 - (b) after that, within a period subsequently allowed under this subsection, be allowed on application being made in the approved form, accompanied by the prescribed fee.
- (1D) The Minister may allow such further period for registering the dealing (not exceeding 6 months) as the Minister thinks fit.
- (1E) In relation to a lease of land having an area of not more than 4,050 square metres granted for residential purposes or any other prescribed purposes, a consent under subsection (1) is not required if the Minister:
- (a) on application being made in the approved form accompanied by the prescribed

fee, and

(b) on being satisfied that the land is being used for the purpose for which the lease was granted,

certifies that the consent is not required.

- (1F) If the Minister has given a certificate under subsection (1E) in respect of land under the *Real Property Act 1900*, the Registrar-General shall record the issue of the certificate in the Register if it is lodged with a dealing to which it applies.
- (2) Where at the commencement of the lease the land comprised within the lease contains improvements which are not the property of the Crown, no transfer (except a transfer by way of discharge of mortgage), conveyance, assignment or mortgage of, or other such dealing with, a lease applied for after the commencement of the *Western Lands (Amendment) Act 1934*, or of any portion thereof, shall be effected unless or until a certificate from the owner of the improvements or the person having tenant right therein, as the case may be, to the effect that such owner or person has received the value of the improvements, or that arrangements to the satisfaction of such owner or person have been made for payment of such value is lodged with the Commissioner: Provided that where the Minister is of the opinion that the circumstances so warrant, the Minister may dispense with such certificate and, in any such case, the transfer, conveyance, assignment, mortgage or other dealing may be effected without lodgment of such certificate.
- (3) Where at the commencement of a lease applied for after the commencement of the *Western Lands (Amendment) Act 1934*, the land comprised within the lease does not contain such improvements, or where the whole of the value of such improvements has been paid to the owner thereof or to the person having tenant right therein a mortgage may be effected without the consent of the Minister.
- (4) No transfer, conveyance, assignment, mortgage or other such dealing in contravention of this section shall be valid for any purpose whatsoever.
- (4A) Any lease applied for after the commencement of the *Western Lands (Amendment) Act 1934*, or extended to a lease in perpetuity, whether before or after the commencement of the *Western Lands (Amendment) Act 1949*, or issued in pursuance of section 17CCC (as in force immediately before the commencement of Schedule 4 to the *Western Lands (Amendment) Act 1985*) shall be subject to the condition that the holder of the lease shall not sublet the lease or any part thereof, or grant any grazing rights over the lease or any part thereof, or agist stock on the lease or any part thereof, without having first obtained the written consent of the Minister, and if any stock not owned by the holder are found depasturing on the lease or any part thereof without the said consent, it shall be prima facie evidence of a breach of the provisions of this subsection.

- (4B) The Minister has discretion to grant or refuse consent under subsection (4A).
- (5) A transfer of any lease under this Act, or of any holding into which any such lease has been, or may be, converted whether granted or confirmed as the case may be before or after the commencement of the *Western Lands (Amendment) Act 1934* shall, unless the land comprised in the lease or holding has been brought under the provisions of the *Real Property Act 1900*, be made in the approved form and prescribed manner.

18GA Protection of persons registering transfers

Any provision in any other Act whereby a person acquiring title to land whether by devolution or otherwise, or the Registrar-General, Crown Solicitor, or other person registering or certifying title is protected against notice of any matter or fact or excused from the need to enquire into any matter or fact (including satisfaction of condition, exercise of power or want of authority) shall extend and be deemed to have always extended to a person acquiring title to any land or holding under this Act, or the Minister, in the course of registering any transfer, transmission or devolution of any land or holding under this Act, as the case may require.

18H Mortgages and devolutions

- (1) Where a lease applied for after the commencement of the *Western Lands (Amendment) Act 1934*, or a lease extended to a lease in perpetuity (whether before or after such commencement) is mortgaged, and the mortgagee enters into possession of the lease under the mortgage, the mortgagee may hold the lease for a period of three years after the date of entering into possession as aforesaid, or for such further period as the Minister may permit.

The mortgagee shall not foreclose the mortgage or transfer the lease, except by way of discharge of mortgage, without the consent of the Minister.

If within such period the mortgagee does not foreclose the mortgage, or does not transfer the lease, the lease shall be liable to be forfeited.

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

- (2) Where a lease applied for after the commencement of the *Western Lands (Amendment) Act 1934*, or a lease extended to a lease in perpetuity (whether before or after such commencement), devolves under a will or intestacy upon a person, whether or not as an executor or administrator, the person may hold the lease for a period of three years after the death of the testator or intestate, or for such further period as the Minister may permit.

Within any such period the person may subject to this Act transfer the lease, or,

except in the case of the executor or administrator, make application to the Minister for a certificate that the person is entitled to remain the holder of the lease upon the expiration of such period. The Minister shall have discretion to grant or refuse any such application.

If the person, not being the executor or administrator, does not within such period obtain the certificate of the Minister as aforesaid or, whether or not the person is the executor or administrator, does not transfer the lease the same shall be liable to be forfeited.

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

The provisions of this subsection shall extend to any lease as aforesaid transferred by way of discharge of mortgage to the legal personal representative of a deceased person.

18I Survey fee

- (1) A survey fee in accordance with the prescribed scale shall be paid by the lessee in respect of every lease applied for after the commencement of the *Western Lands (Amendment) Act 1934* and before the commencement of the *Western Lands (Crown Lands) Amendment Act 1989* and shall be so paid within such periods and by such amounts (together with interest at the rate of four per cent per annum) as may be determined by the Minister.
- (1A) If, immediately before the commencement of the *Western Lands (Crown Lands) Amendment Act 1989*, the survey fee payable under subsection (1) was wholly or partly unpaid, the annual rate of interest payable on the unpaid amount is increased to 8 per cent from that commencement.
- (1B) The Minister may adjust the instalments by which a survey fee referred to in subsection (1A) is payable so that the total amount owing (including interest at 8 per cent) is paid over the same or a longer period.
- (1C) The survey fee prescribed under subsection (1), together with interest at the annual rate of 8 per cent, is payable by the lessee in respect of a lease applied for after the commencement of the *Western Lands (Crown Lands) Amendment Act 1989* and is so payable by such instalments as are determined by the Minister.
- (2) The Minister may waive payment of the whole or any part of any such survey fee.

18J Conditions attaching to leases: alteration by consent

Any covenant, condition, purpose or provision of a lease granted or brought under this Act whether before or after the commencement of the *Western Lands (Amendment) Act 1934*, may with the consent of the lessee be varied modified or revoked or added to by the Minister to such extent and on such terms (including terms relating to the rent or other money payable under the lease) as the Minister may deem desirable.

18JJ Minimum ages

- (1) Any person who is under the age of 18 years shall not be competent to apply for, or acquire from the Crown, any lease or conditional purchase under this Act.
- (2) Any person who is under the age of 18 years shall not be competent to hold a lease or conditional purchase under this Act.
- (3) Nothing in this section shall be taken to prevent the devolution or holding of a lease or conditional purchase under this Act devolving under the will or intestacy of a deceased holder.

18K Creation of folio of Register not to affect conditions etc

- (1) Except in so far as a contrary intention appears:
 - (a) any covenants, conditions, terms, reservations, exceptions, exemptions or provisions attaching or applying to land by virtue of this Act or an instrument made under this Act, and
 - (b) any provisions of this Act or an instrument made under this Act applying to land, shall:
 - (c) not cease to attach or apply to the land by reason only of the creation of a folio of the Register kept under the *Real Property Act 1900* in respect of the land, and
 - (d) to the extent that they are applicable, attach or apply not only to the land as a whole, but also to each and every part of the land.
- (2) The provisions of subsection (1) apply in addition to and not in derogation of any other provisions of this Act.

18L Removal of conditions etc

- (1) The Minister may:
 - (a) before the creation of a folio of the Register kept under the *Real Property Act 1900* in respect of a lease under this Act, direct in writing that any covenant, condition, term, reservation, exception, exemption or provision attaching or applying to the lease shall cease to attach to apply to the lease upon the creation of the folio, and

- (b) after the creation of a folio of the Register kept under the *Real Property Act 1900* in respect of a lease under this Act, direct in writing that any covenant, condition, term, reservation, exception, exemption or provision attaching or applying to the lease shall cease to attach or apply to the lease as from the date of the direction.

(2) The Registrar-General shall give effect to a direction given under subsection (1).

Part 6 Determination of rentals

19, 19A (Repealed)

19B Transitional provision for leases granted before 1989 amending Act

(1) This section applies to a lease that, immediately before the commencement of this section, was:

- (a) a lease in perpetuity, or
- (b) a lease for a term extending past that commencement.

(2) If a redetermination of the rent of a lease to which this section applies:

- (a) was due before the commencement of this section, and
- (b) was still pending immediately before that commencement,

the redetermination shall be made under this Act as in force immediately before that commencement and this section applies in relation to the lease as if the pending redetermination had been made on the date on which it was due.

(3) The first redetermination after the commencement of this section of the rent of a lease to which this section applies (not being a redetermination referred to in subsection (2)) shall be as determined by the local land board under this Part:

- (a) as if the lease had been granted to take effect immediately after the end of the period for which it had last been redetermined before the commencement of this section, and
- (b) unless the lease is a lease in perpetuity—as if it were for a term the same as so much of its original term as was unexpired at the end of that period.

(4) In this section:

commencement, in relation to this section, means the insertion of this section by the *Western Lands (Amendment) Act 1989*.

19C Rent rates

(1) For each rental period, the rent of a lease of land held for grazing that is granted after the commencement of this section or extended after that commencement to a lease

in perpetuity shall be as determined for the period by the local land board in accordance with subsection (2).

- (2) In determining the rent of a lease of land held for grazing, the local land board shall (after taking into account a period that last preceded the determination by at least 10 years) have regard to the productive capacity of the land, assuming fair average seasons, prices and conditions, but the rent shall not be determined at a rate that is:

- (a) more than 50 cents for each sheep, or
- (b) less than 5 cents for each sheep,

on the fair average carrying capacity of the land, when reasonably improved, as estimated by the local land board on a sheep carrying basis.

- (3) For each rental period, the rent of a lease that is granted after the commencement of this section or extended after that commencement to a lease in perpetuity and is a lease of land held for:

- (a) agriculture, or
- (b) agriculture and grazing combined, or
- (c) mixed farming,

or for a similar purpose shall be as determined for the period by the local land board in accordance with subsection (4).

- (4) The rent for a rental period of a lease of land held for a purpose referred to in subsection (3) shall be 2.5 per cent, or such other percentage as may be prescribed, of the capital value of the land as assessed for the period by the local land board:

- (a) according to the capabilities and situation of the land, and
- (b) irrespective of any improvements on the land,

but including any enhanced value in the land arising from, or created by, improvements on the land.

- (5) If there is a successful bid at auction, or a successful tender, of an amount of rent for a lease under section 28A, the rent of the lease shall be:

- (a) for the first rental period for the lease—the amount of the rent bid or tendered, and
- (b) for each succeeding rental period—the rent as determined by the local land board, having regard to the purpose of the lease.

- (6) For each rental period, the rent of a lease that is not required to be determined under

subsection (1), (3) or (5) (b) shall be the rent as determined for the period by the local land board, having regard to the purpose of the lease.

(7) In this section:

commencement, in relation to this section, means the insertion of this section by the [Western Lands \(Amendment\) Act 1989](#).

rental period, in relation to a lease, means:

(a) each period of 5 years during the term of the lease that succeeds:

- (i) in the case of a lease extended to a lease in perpetuity—the beginning of the extension, or
- (ii) in any other case—the beginning of the term of the lease, or

(b) the unexpired term of the lease if:

- (i) it is not a lease in perpetuity and, at the end of a 5 year period referred to in paragraph (a), the unexpired term is shorter than 5 years, or
- (ii) the term of the lease is shorter than 5 years.

19D Rent after change of purpose

- (1) If, under section 18J, the purpose of a lease is changed after the insertion of this section by the [Western Lands \(Amendment\) Act 1989](#), the rental periods under section 19C for the lease are, except for the first, the same as they would have been if there had not been a change of purpose.
- (2) The first rental period under section 19C after the change is the unexpired part of the period for which the rent had last been determined before the change.
- (3) This section has effect despite any other provision of this Part except section 19E.

19E Minimum rent

- (1) The rent of a lease shall not be less than the amount that, at the time the rent is payable, is prescribed as the minimum rent of the lease.
- (2) Subsection (1) has effect despite any other provision of this Part.

20 Concessional rent

- (1) The Minister may, on such conditions as the Minister thinks fit, grant a rebate of the rent payable by a prescribed class of lessee under a lease for a prescribed purpose.
- (2) The Minister may, on such conditions as the Minister thinks fit, extend over a period not exceeding 10 years the payment of rent or other money due to the Crown under

this Act.

(3) The Minister may discontinue a rebate granted under subsection (1).

21 Increased rentals in certain cases

If any public works shall be executed by or on behalf of the Government on or in the vicinity of any lease or licence and by reason thereof the value of such lease or licence shall in the opinion of the Minister be enhanced a redetermination of the rent of such lease or the fee payable on such licence shall be made by the local land board, and the amount of increase, if any, so determined and the date from which such increased rent shall be payable shall be notified in the Government Gazette and the rent or fee so increased shall thereafter be payable yearly in respect of the lease or licence:

Provided that where the rent is subject to redetermination under the provisions of this Act, the rent so increased under this section shall thereafter be payable yearly until the end of the period of the lease then current.

22 Time at which rent is payable

The rent of a lease is payable in advance on each anniversary of the date of commencement of the lease or at such other time as may be prescribed.

Part 7 Disposal of Crown lands available for lease

23-28 (Repealed)

28A Granting of leases after 1989 amending Act

- (1) The Minister may, in such manner as the Minister determines, dispose of Crown land by way of a lease for:
 - (a) grazing, or
 - (b) agriculture, or
 - (c) agriculture and grazing combined, or
 - (d) mixed farming, or
 - (e) a purpose similar to a purpose referred to in paragraphs (a)-(d), or
 - (f) any other purpose declared by the Minister, by order published in the Gazette and for the time being in force, to be a purpose for which a lease may be granted under this section.
- (2) A disposal of Crown land under this section may be effected on such terms and conditions determined by the Minister as are not inconsistent with this section or with section 18E.

- (3) A lease granted under this section may be:
 - (a) a lease in perpetuity, or
 - (b) a lease for a term not exceeding 40 years.
- (4) The rent of a lease to be granted under this section may not be determined at auction or by tender if it is a lease for a purpose referred to in subsection (1) (a)–(e).
- (5) Any money consideration (other than rent) for a lease disposed of under this section at auction or by tender is payable on such terms and conditions as are determined by the Minister.
- (6) If tenders are invited for a lease under this section, they shall be considered by a tender board consisting of the Commissioner as Chairperson and 2 persons nominated by the Minister.
- (7) The tender board shall report to the Minister on the tenders considered by it and the Minister may, but need not, accept any tender, whether or not it is the highest tender.
- (8) An application for a lease made before the commencement of this section and not finally dealt with before that commencement shall be dealt with as an application made under this section for the granting of the lease.
- (9) In this section:

commencement, in relation to this section, means the insertion of this section by the [Western Lands \(Amendment\) Act 1989](#).

28B Extension of term of lease

- (1) This section applies to a lease, other than a lease in perpetuity, granted under section 28A before or after the insertion of this section by the [Western Lands \(Amendment\) Act 1989](#).
- (2) The term of a lease to which this section applies may be extended from time to time:
 - (a) for a term not exceeding 40 years, and
 - (b) on such terms and conditions (not affecting the amount of rent) as the Minister thinks fit.
- (3) An extension under subsection (2) may be for the whole, or a specified part, of the land leased.
- (4) The rent during the extended term:
 - (a) for each separate period of 5 years, or
 - (b) if the unexpired term of the lease is less than 5 years—for the unexpired term,

shall be determined under section 19C.

- (5) If application is made for extension of the term of a lease for which a certificate of title has issued, the certificate of title must be lodged with the application.

28BA Forfeiture of lease

- (1) If, in relation to a lease granted under section 28A before or after the insertion of this section by the *Western Lands (Amendment) Act 1989*, the Minister determines:
 - (a) that the land comprised in the lease is not used or occupied in good faith for the purpose for which the lease is in force, or
 - (b) that a condition of the lease has not been complied with,section 50 applies in relation to the determination in the same way as it applies in relation to a determination referred to in that section.
- (2) Except to the extent, if any, that the Minister otherwise directs, forfeiture of a lease to which this section applies includes forfeiture of any improvements made and rent paid.

28BB Purchase of land held under certain leases

- (1) In this section:

lease means a lease which:

 - (a) is for residence, business purposes, motel purposes or similar purposes but is not for grazing, agriculture, farming or any other purpose, and
 - (b) is not liable to forfeiture.
- (2) The holder of a lease may apply to purchase:
 - (a) the whole or a part of the land comprised in the lease, or
 - (b) as 1 purchase, the whole or a part of the land comprised in 2 or more adjoining leases,and Schedule D then applies.

28C, 28D (Repealed)

Part 8 Improvements

29 Improvements to become property of the Crown

- (1) Upon the expiration, forfeiture, surrender or other determination of any lease granted or extended under the provisions of this Act, whether before or after the commencement of the *Western Lands (Amendment) Act 1934*, all improvements

thereon shall, except as otherwise provided in this Act, become the property of the Crown.

- (2) The Minister may at any time conditionally or unconditionally assure or grant tenant right in any improvements or in any additions to or extensions of any improvements, irrespective of whether such improvements additions or extensions may have been effected before or after the commencement of the *Western Lands (Amendment) Act 1934*.
- (3) Where the holder of a lease pays to the owner of any improvements thereon, or to the person having tenant right in such improvements part of the value of such improvements, and the lease becomes forfeited, such share of the value as is represented by the amount paid to such owner or person up to the time of the forfeiture shall vest in the Crown; and the remaining share of the value or, in the case where no such payment has been made then the improvements, shall vest in such owner or person, and shall be subject to tenant right as defined in section 30.

If, after forfeiture, the land becomes the subject of a lease under this Act, a determination shall thereupon be made of such share of the value of the improvements as is vested in the Crown, and in such owner or person.

29A, 29B (Repealed)

30 Tenant right: its nature

- (1) Tenant right shall accrue upon the determination of the lease, and, subject to this section, shall have the same effect as expressed in sections 223 and 224 of the *Crown Lands Consolidation Act 1913* immediately before their repeal in respect of tenant right in improvements created or granted under that Act:

Provided that:

- (a) (Repealed)
 - (b) upon the forfeiture of any lease, tenant right shall not, except to the extent provided in subsection (3) of section 29, accrue unless the Minister otherwise directs.
- (2) Where the improvements are not the property of the Crown, the value determined by the local land board in accordance with section 31 or so much thereof as for the time being remains unpaid, shall be and remain a charge upon the land containing such improvements.

Such charge shall have priority over all mortgages, charges or other encumbrances thereon (whether made before or after the date of such determination) other than debts due to the Crown.

Such value or so much thereof as for the time being remains unpaid shall be a debt

due to the owner of the improvements, or the person having tenant right therein, as the case may be, and such debt shall be recoverable in any court of competent jurisdiction.

31 Determination of value of improvements

- (1) The value of all improvements upon any land leased under this Act after the commencement of the *Western Lands (Amendment) Act 1934* shall be determined by the local land board.

The value of the improvements shall be:

- (a) their value at the date of commencement of the title of the incoming tenant, and
- (b) their value to such tenant, and
- (c) exclusive of any value which may be due to the inherent capabilities of the land.

- (2) If:

- (a) the improvements are the property of the Crown, and
- (b) the title of the incoming tenant commenced before the commencement of the *Western Lands (Crown Lands) Amendment Act 1989*,

the amount unpaid immediately before that commencement under this subsection as then in force shall, unless an adjustment is made under subsection (2A), be paid by the incoming tenant to the Treasurer by the same instalments (together with interest on the unpaid amount at the annual rate of 8 per cent) as were applicable immediately before that commencement.

- (2A) The Minister may adjust the instalments payable under subsection (2) so that the total amount owing (including interest at 8 per cent) is paid over the same or a longer period.

- (2B) If:

- (a) the improvements are the property of the Crown, and
- (b) the title of the incoming tenant commences on or after the commencement of the *Western Lands (Crown Lands) Amendment Act 1989*,

the value determined under subsection (1) (together with interest at the annual rate of 8 per cent) shall be paid by the incoming tenant to the Treasurer by such instalments as are determined by the local land board.

- (3) Where the improvements are not the property of the Crown, the value so determined shall be paid by the incoming tenant to the owner of the improvements or the person having tenant right therein within three months after such determination; or at the

option of the incoming tenant, by payment to such owner or person, as the case may be, within one month after such determination of a sum representing not less than twenty per centum of such value, and by payment of the balance of such value by not more than six equal yearly instalments together with interest at the rate of four per centum per annum.

- (3A) On and from the commencement of the *Western Lands (Crown Lands) Amendment Act 1989*, the annual rate of interest payable on any amount payable under subsection (3) by an incoming tenant whose title commences on or after that commencement is 8 per cent.
- (4) Where the incoming tenant or any successor in title to such tenant fails to make any payment for or in respect of any improvements, which are or are not the property of the Crown, within the period allowed by this Act for making such payment, the lease of the land containing such improvements shall be liable to be forfeited.
- (5) Notwithstanding any of the foregoing provisions of this section, where any land leased under this Act upon which the Water Administration Ministerial Corporation has put down a successful bore becomes forfeited to the Crown and the land surrounding the bore is again leased, the incoming tenant shall pay to the Water Administration Ministerial Corporation any amount which may still be outstanding in respect of such bore, but if the amount outstanding exceeds the original amount of the charge for the bore then the amount to be paid by the incoming tenant shall be the amount of such original charge.

The amount to be paid to the Water Administration Ministerial Corporation in pursuance of this subsection shall be paid to it in such manner, at such time or times, with such interest or without interest, as the Water Administration Ministerial Corporation may determine and shall until paid be and remain a charge on the land in favour of the Water Administration Ministerial Corporation and shall be recoverable by it in any court of competent jurisdiction from the owner or occupier of the land for the time being.

For the purposes of this subsection **successful bore** means a bore which on completion has been tested by the Water Administration Ministerial Corporation and found to yield a supply of water of at least 909 litres per hour, and of a quality suitable for drinking by stock, or a bore capable of use yielding any less supply of water of the same quality in which the casing has been allowed to remain at the request of the settler for whom the bore was sunk.

31A Removal of improvements

Where Crown land containing improvements which are not the property of the Crown becomes the subject of any lease in pursuance of this Act the local land board, before the value of such improvements has been determined, may grant permission to the owner thereof or the person having tenant right therein to remove such of the improvements as

are of a removable nature and may fix the period within which such improvements may be removed; and thereupon such owner or person, as the case may be, shall have full power either personally or through agents to enter upon the land within such period and to do all things necessary to effect such removal.

Part 9 Surrender of lease

32, 33 (Repealed)

33A Surrender

(1) The Minister may:

- (a) accept a surrender of the whole or any part of a lease under this Act, and
- (b) under section 28A, grant a new lease, or new leases, of the surrendered land on such terms and conditions as the Minister thinks fit.

(1A) If only part of a lease is surrendered, the Minister may, with the consent of the lessee, adjust the rent of the part of the lease not surrendered.

(2) The Minister may also accept a surrender from an owner of any freehold lands within the Western Division without compensation or may, in exchange for such lands, transfer to that owner an estate in fee simple in an area of Crown land which shall be, as nearly as practicable, of equal value to the surrendered land.

The value of the surrendered land and the value of the Crown land to be exchanged therefor shall be determined by the local land board as at the date of such surrender and irrespective of any improvements on such land.

If the Crown land to be exchanged be of greater value, the difference in value shall be paid by such owner before any transfer is executed.

The value of any improvements on such Crown land which are not the property of such owner shall be determined by the local land board in the manner provided in this Act, and such value shall also be paid by such owner before any transfer is executed.

Such owner shall pay all costs and fees incurred in respect of any such surrender and exchange.

When any such freehold has been surrendered the owner of such freehold at date of surrender shall be entitled to tenant-right in all improvements upon the land so surrendered.

Any freehold land so surrendered shall become Crown lands subject to the provisions of this Act and may, at the discretion of the Minister be:

- (a) included in the lease as from a date to be appointed by the Minister; and the rent for the unexpired portion of the period of the lease then current shall be increased

in proportion to the area so included in the lease,

(b) reserved from sale or from sale and lease for any public purpose, or

(c) otherwise disposed of.

(2A) A transfer of land by the Minister under the authority of subsection (2), where the transfer takes place on or after the commencement of Schedule 1 to the *Miscellaneous Acts (Crown Land Titles) Amendment Act 1980*, does not include the transfer of any minerals contained in the land.

(2B) Land transferred by the Minister under the authority of subsection (2) may be subject to such reservations and exceptions as the Minister deems expedient in the public interest.

(3) (Repealed)

34, 35 (Repealed)

Part 9A General

35A Permission to enclose roads

Permission to enclose any road may be granted by the local land board upon such terms and conditions including payment of rent, as it may determine. Where such road forms part of an occupation licence or annual lease, the granting of such permission shall have the effect of withdrawing the area of land comprised in such road from such licence or lease.

35B Termination of annual lease or licence

Thirty days after the notification of the granting of a lease, or upon the sale of lands held under occupation licence or preferential occupation licence or annual lease, the holder's right of occupation or lease of the area sold or leased shall cease, but the holder is entitled to a refund of so much of the licence fee or rent paid in advance, and to such reduction in future rent, calculated from the date of such withdrawal, as is proportionate to the area withdrawn.

35C Forfeited or surrendered lands may be added

(1) The Minister may, by notice in the Gazette, add any forfeited homestead grant, conditional purchase, or any lease or lands surrendered under the provisions of the Crown Lands Acts or Western Lands Acts, or any land comprised in a reserve from lease or licence which has been revoked or any other vacant Crown lands, to any adjoining or adjacent lease, licence, purchase, homestead grant, upon such conditions and at such rent, licence fee, or purchase money, as may be determined by the Minister; or such forfeited or surrendered lands or such revoked reserves may be leased under the provisions of this Act.

- (2) Any such forfeited or surrendered lands or any such revoked reserves shall not be added to a lease, licence, purchase or homestead grant except:
- (a) with the consent of the holder of the lease, licence, purchase or homestead grant, and
 - (b) on the payment by that holder of such costs as may be prescribed.

35D-35J (Repealed)

35K Transfers under legal process etc

- (1) Any sale, transfer or other disposition under this Act of the estate, right, title or interest of the holder of any lease under this Act by an official assignee or other lawful authority upon the bankruptcy of such holder, or by the sheriff, or by a registrar of the District Court, or any other person by virtue of or under the authority of any writ of execution or other process of any court or by the trustees of any deed of assignment for the benefit of creditors, or by any person under any decree or order of any court shall pass to a purchaser or to any other person only such estate, right, title or interest as such holder was entitled to at the date of sequestration, writ, process, decree, order or assignment, respectively, and subject to all conditions remaining to be performed at such date.

Upon any such sale, transfer or disposition of the estate or interest of such holder, the lease may be transferred to the purchaser.

- (2) Any mortgagee who has under the powers of the mortgage submitted a lease under this Act, in respect of which the condition of residence remains unfulfilled, for sale by public auction, and any execution creditor who has seized under process of any court any such lease, if the mortgagor's or debtor's interest in the land is not then sold to a bona fide purchaser, may, in the prescribed manner, go into possession of the land and the condition of residence shall for a period of twelve months after the commencement of such possession or for such further period as may be approved by the Minister be deemed to be performed, if a deputy of such mortgagee or execution creditor, to be approved by the Commissioner, resides upon the land.

The mortgagee or execution creditor shall, within such period or further period as aforesaid, sell the mortgagor's or debtor's interest in the land to a bona fide purchaser, who thereafter shall be subject to all conditions which affected the original holder, and in default of such sale the lease shall be liable to be forfeited:

Provided however that:

- (a) any mortgagee or execution creditor before proceeding under this subsection shall register at the office of the Commissioner the total amount of the mortgagee's mortgage or the creditor's judgment debt and other particulars as prescribed, and thereafter any person may before such forfeiture as aforesaid apply to the

Commissioner to purchase the said lease for the amount of such debt; and the Commissioner may grant such application, and upon payment to the mortgagee or execution creditor of the amount then due the applicant shall become the holder of the lease of such land free of such debt, but subject to all conditions attaching to such land which remain to be performed,

- (b) any mortgagee or execution creditor shall not take proceedings under this subsection unless the mortgagor has been in default for one year, or in the case of such creditor until one year after judgment has been signed.

35L Amendment of applications etc

Where it is deemed necessary in the interests of justice, the Commissioner or an Assistant Commissioner or local land board may permit any error, uncertainty, misdescription, defect or omission in, of, or from any notice, application, declaration, consent, particulars or other proceedings before the Commissioner, Assistant Commissioner or board to be amended or supplied, or may, where any declaration, consent, or other document has not been lodged with an application, permit the omission, if not wilful, to be supplied.

Any exercise of the powers conferred by this section shall be evidenced by the initials of the Commissioner or Assistant Commissioner.

35M Surrenders by trustees, executors, and administrators

- (1) A surrender under any of the provisions of this Act may be effected by a trustee in respect of land which the trustee holds as a trustee as if a power to that effect were contained in the will or other instrument creating the trust, or by an executor or an administrator in respect of land held by the executor or administrator as executor or administrator as the case may be:

Provided that any land assured to a person as trustee, executor, or administrator upon conversion or subdivision or by way of exchange or lease under this Act shall be held by the person, subject to the same trusts as the land surrendered by the person.

- (2) Every surrender made by a trustee, executor or administrator before the commencement of the *Western Lands (Amendment) Act 1937* shall be as valid as if subsection (1) had been in operation when the surrender was made.

35MA Notices

- (1) If by or under this Act a notice, order or other document is required to be given to or served on any person, the notice, order or other document may be given or served:
- (a) in the case of a person other than a corporation:
- (i) by delivering it to the person, or
 - (ii) by posting it to the address, if any, specified by the person for the giving of

notices or service of documents under this Act, or if no such address is specified, to the person's usual or last known place of residence or last known place of business, or

(b) in the case of a corporation:

- (i) by leaving it at the registered office of the corporation with a person apparently not less than 16 years of age and apparently in the service of the corporation, or
- (ii) by posting it to the address, if any, specified by the corporation for the giving of notices or service of documents under this Act or, if no such address is specified, to the last known place of business of the corporation.

(2) A notice, order or other document sent by post in accordance with subsection (1) shall be taken to have been given or served at the time at which it would be delivered in the ordinary course of post.

Part 9B Productivity schemes

35N Agreements relating to productivity schemes

- (1) The Minister may enter into an agreement with the owner or lessee of land in the Western Division for the purpose of carrying into effect any scheme with respect to the productivity of land in the Western Division.
- (2) The covenants, conditions and provisions of any agreement referred to in subsection (1) may include covenants, conditions and provisions relating to any one or more of the following:
 - (a) the total number of livestock or the number of livestock of specified classes which may, from time to time, be carried on the land the subject of the agreement,
 - (b) the methods and practices of land utilisation to be adopted on that land,
 - (c) the assistance to be provided by the Minister towards the execution of any works or measures required to be undertaken upon that land.
- (3) An agreement referred to in subsection (1) may be executed on behalf of the Minister by the Commissioner.
- (4) No act, matter or thing which a lessee, under or in conformity with an agreement referred to in subsection (1), does upon or in relation to the land the subject of the lease shall render the lease liable to forfeiture under this Act merely by reason of the fact that the doing of the act, matter or thing constitutes a breach or non-performance of any covenant, condition or provision applicable to the lease.

35O Advances and payments

The Minister may, out of moneys provided by Parliament:

- (a) pay any costs or expenses incurred:
 - (i) in carrying into effect any scheme with respect to the productivity of land in the Western Division, or
 - (ii) in carrying out any works pursuant to such a scheme, and
- (b) make a loan, upon such security and at such rate of interest and subject to such covenants, conditions and provisions as the Minister may think fit, to any owner or lessee of land who has entered into an agreement referred to in section 35N (1), for the purpose of enabling the owner or lessee to give effect to the agreement.

35P Remedy for default

Where any person with whom the Minister has entered into an agreement referred to in section 35N (1) and who has received money from the Minister pursuant to the agreement:

- (a) uses the money or permits the money to be used for any purpose other than the purpose for which the money was paid to the person, or
- (b) at any time while any money is owed to the Minister pursuant to the agreement, without the consent of the Minister, removes, sells or otherwise disposes of any machinery, plant or other thing purchased pursuant to the agreement or forming part of any works for the carrying out of which the agreement was entered into,

all money paid (other than by way of loan) pursuant to the agreement, whether the money was paid to the person or any other person on the person's behalf, and all money lent pursuant to the agreement and not repaid (together with interest on the money so lent at the rate determined by the agreement until the date of payment to or recovery by the Minister) shall, notwithstanding any term of the agreement to the contrary, immediately become due and payable by the person to the Minister and may be recovered by the Minister from the person as a debt in any court of competent jurisdiction and, where the land to which the agreement relates is the subject of a lease under this Act, the lease shall be liable to forfeiture under this Act.

Part 10 Miscellaneous

36 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following:

- (a) the functions of officers employed or acting in the administration or execution of this Act,
 - (b) the procedure to be followed in or in connection with an inquiry held or to be held under this Act,
 - (c) the circumstances in which fees, costs or deposits may be charged or required and the amount of any such fees, costs or deposits,
 - (d) authorising the waiver or refund of the whole or any part of any fee, cost, deposit, interest or rent paid or payable under this Act,
 - (e) determining the person to whom a refund of any fee, cost, deposit, interest or rent is payable,
 - (f) prescribing the periods within which, and the manner in which, notices may be given and objections and appeals may be made,
 - (g) the keeping of records and books of account, the furnishing of returns and records and the inspection of, and the taking of extracts from, records or books,
 - (h) the making of searches in connection with holdings, the issue of certificates relating to holdings and the effect of those certificates,
 - (i) proceedings before local land boards, sittings of local land boards and the members and Chairpersons of local land boards,
 - (j) the establishment, definition, alteration, modification and cancellation of administrative districts,
 - (k) applications for land and procedures in respect of conflicting applications,
 - (l) the manner of, and the places and times for, the payment of rent, purchase money or other money,
 - (m) the payment, by an incoming holder, of the value of any improvements on Crown land to the owner of those improvements,
 - (n) the form and lodgment of, and manner of dealing with, applications, dealings, instruments or documents relating to land,
 - (o) the execution of applications, dealings, instruments or documents relating to land,
 - (p) the powers and functions of the Registrar-General in respect of applications, dealings, instruments or documents relating to land.
- (2) A regulation may create an offence punishable by a maximum penalty not exceeding 5 penalty units.

- (3) The regulations may confer or impose on the Commissioner, with any necessary modifications, any power, authority, duty or function relating to the health of the public that is, or but for being modified would be, the same as a power, authority, duty or function conferred or imposed on a council by or under the *Local Government Act 1993* in relation to the health of the public in its area.

36A Alteration of due dates for recurring payments

- (1) Where, under this Act or the regulations thereunder or under any instrument under this Act, any sums are made payable at recurring times, the Minister may, if of the opinion that it is expedient for administrative purposes to do so, in writing direct that those sums or any of them, whether or not they have, or any of them has, then become due and payable, shall be payable at such altered times recurring at the same intervals as the Minister may specify in the direction.
- (2) The Minister may determine that, by reason of the alteration of the recurring times, a proportionate part of any such sum shall be payable at such time as the Minister may determine and may, in the direction, direct that that proportionate part shall be due and payable at that time.
- (3) The Minister may extend the time for payment of any such proportionate part.
- (4) A direction under this section:
 - (a) may be given in respect of all holdings, any class of holdings specified in the direction or any particular holding so specified,
 - (b) may be given from time to time as the Minister thinks fit, and
 - (c) shall, upon notice in writing of the direction being given in accordance with subsection (5), have effect according to its tenor notwithstanding the provisions of this Act, the regulations thereunder or the instrument under which the sums are made payable or any previous direction under this section.
- (5) Notice of a direction under this section may be given by sending it by post to the person by whom the sum next payable under the direction would, if that sum were due and payable at the time the notice is so sent, be payable and by addressing it to that person's last known address.

36B Interest on arrears—leases

- (1) Any provisions in any lease issued under this Act before the commencement of section 6 of the *Crown Lands and Closer Settlement (Amendment) Act 1968*, imposing a penalty at a rate per centum on any unpaid amount for late payment of any sum due under this Act or the lease shall, for the purpose of calculating the amount of any penalty accruing due after that commencement, be read and construed as if that rate per centum were omitted from that provision and the applicable rate were substituted

therefor and as if the provision provided that that substituted rate shall not be payable if the amount due is paid within three months after the date it becomes due.

- (2) In subsection (1), **the applicable rate**, in relation to any unpaid amount, means, in respect of so much of the period during which the amount was unpaid as occurred:
- (a) before the commencement of section 6 of the *Crown Lands and Closer Settlement (Amendment) Act 1968*—the rate of four per centum,
 - (b) on or after that commencement and before the commencement of section 3 of the *Crown Lands and Other Acts (Rents and Interest Rates) Amendment Act 1975*—the rate of seven per centum,
 - (c) on or after the commencement of section 3 of the *Crown Lands and Other Acts (Rents and Interest Rates) Amendment Act 1975* and:
 - (i) before the date of payment, or
 - (ii) where a regulation referred to in paragraph (d) is made, before the date that regulation takes effect,whichever date referred to in subparagraph (i) or (ii) first occurs—the rate of ten per centum, or
 - (d) during any period during which a regulation prescribing a rate per centum for the purpose of this paragraph is in force—that rate.
- (3) The Governor may make regulations prescribing rates per centum for the purpose of subsection (2) (d).

36C Interest

- (1) Any sums payable under a lease under this Act issued on or after the commencement of section 6 of the *Crown Lands and Closer Settlement (Amendment) Act 1968*, or under this Act or the regulations thereunder in respect of such a lease shall bear interest at the applicable rate and such interest shall be considered as accruing due day by day:

Provided that if payment of any sum is made within three months of the due date for payment such sum shall not bear interest:

Provided further that the Minister may, if satisfied that the circumstances of the case warrant it:

- (a) direct that the whole or part of such interest shall not be charged, or
- (b) grant an extension of time for the payment of all or any part of such interest, or
- (c) remit the payment of such interest wholly or in part.

No refund shall be made as a consequence of any such direction or remission.

Nothing in this subsection contained shall be construed so as to prevent the enforcement of any forfeiture, or to compel the acceptance of any overdue sums together with interest as aforesaid.

- (2) In subsection (1), **the applicable rate**, in relation to any sum payable under a lease, means, in respect of so much of the period during which the sum was so payable as occurred:
- (a) on or after the commencement of section 6 of the *Crown Lands and Closer Settlement (Amendment) Act 1968* and before the commencement of section 3 of the *Crown Lands and Other Acts (Rents and Interest Rates) Amendment Act 1975*—the rate of seven per centum per annum,
 - (b) on or after the commencement of section 3 of the *Crown Lands and Other Acts (Rents and Interest Rates) Amendment Act 1975* and:
 - (i) before the date of payment, or
 - (ii) where a regulation referred to in paragraph (c) is made, before the date that regulation takes effect,whichever date referred to in subparagraph (i) or (ii) first occurs—the rate of ten per centum per annum, or
 - (c) during any period during which a regulation prescribing a rate of interest for the purpose of this paragraph is in force—that rate.
- (3) The Governor may make regulations prescribing rates of interest for the purpose of subsection (2) (c).

36D Liability of incoming holder to pay arrears

- (1) For the purposes of this section:
- (a) **holding** means a holding of a prescribed class, and
 - (b) the amount due for payment in respect of a holding includes any amount that would, but for a deferment, postponement or funding granted or directed under this Act or the Crown Lands Acts, be due for payment in respect of the holding.
- (2) A person who is the holder of a holding is liable to pay in respect of that holding any amount:
- (a) due for payment under this Act, the Crown Lands Acts, the regulations under those Acts or any condition attaching to the holding, and
 - (b) unpaid when the person became the holder.

- (3) If a person who is a holder pays, in respect of a holding, an amount (other than an amount that is attributable to rent or to interest charged under section 36C or to penalty interest for late payment charged under a condition attached to the holding) that, before the person became the holder of the holding, was due and unpaid under:
- (a) this Act,
 - (b) the Crown Lands Acts,
 - (c) the regulations under this Act or the Crown Lands Acts, or
 - (d) any condition attached to the holding,

the person may recover the amount as a debt owed by the person who was the holder of the holding when the amount became due.

- (4) If a person who is a holder pays, in respect of a holding, any amount:
- (a) that is attributable to rent or to interest charged under section 36C or to penalty interest for late payment charged under a condition attached to that holding, and
 - (b) that, before the person became the holder of the holding, was due and unpaid under this Act, the Crown Lands Acts, the regulations under those Acts or any condition attached to the holding,

the person may recover an amount calculated under subsection (5) as a debt owed by the person who was the holder of that holding during the period in respect of which the amount paid was due.

- (5) The amount recoverable from a person under subsection (4) is the remainder after deducting from the amount paid any part of it that, calculated on a daily basis, would be attributable to a period when the person was not the holder.

- (6) For the purposes of, but without limiting, subsections (3), (4) and (5), a person:

- (a) is a holder during a period determined under subsection (7), and
- (b) is not a holder during a period determined under subsection (8).

- (7) The period determined under this subsection:

- (a) begins when the person acquires a right to be registered or recorded as the holder of an estate or interest in the holding, and
- (b) ends when the person is registered or recorded as the holder of the estate or interest.

- (8) The period determined under this subsection:

- (a) begins when another person acquires a right to be registered or recorded as the

holder of an estate or interest in the holding, and

(b) ends when the other person is registered or recorded as the holder of the estate or interest.

(9) Nothing in this section affects any agreement or any rule of law or equity with respect to the ultimate liability for payment of any amount due in respect of a holding.

(10) This section does not apply to a holding to which section 144 of the *Crown Lands Act 1989* applies.

36E Certificate as to amount due

(1) The Minister or a prescribed authority or person may, in respect of any holding of a prescribed class, issue a certificate as to the amounts payable to the Crown under this Act, the Crown Lands Acts, the regulations under those Acts or any condition attaching to the holding.

(2) A certificate under this section is evidence of the matter that it contains.

(3) This section does not apply to a holding to which section 145 of the *Crown Lands Act 1989* applies.

37-43A (Repealed)

43B Power to withdraw for public purposes

(1) The Minister may, by notification published in the Gazette, withdraw from lease (whether the lease was granted or issued before or after the commencement of this section) any land (not exceeding 80 hectares) required for any purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose within the meaning of this section.

(2) Upon withdrawal of land from a lease under this section, the rent of the lease shall be reduced in proportion to the area withdrawn.

(3) Land withdrawn from a lease under this section may be dealt with in accordance with this Act or the Crown Lands Acts.

(4) Compensation is payable for land withdrawn from a lease under this section, subject to the conditions attaching to the lease or the provisions applying to the lease.

(5) The provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* relating to the payment of compensation for land acquired by compulsory process apply, with such modifications as may be prescribed, to the payment of compensation under this section.

44 Power to withdraw for settlement

- (1) The Governor may withdraw the whole or any part of the land comprised in any lease under this Act in any case in which in the Governor's opinion such land is required for the purpose of settlement, and in connection with such withdrawal shall acquire any freehold portions owned by the lessee and situated within and used in conjunction with such lease or part.

On publication in the Gazette of such withdrawal or acquisition, the land is taken to be Crown lands.

Unless otherwise agreed to, the lessee shall be allowed not less than six months from the date of the publication in the Gazette of the withdrawal within which to remove the lessee's stock and plant from the land so withdrawn or acquired, and shall pay rent at the same rate per hectare as under the lease.

- (1A) Compensation is payable for land withdrawn or acquired under this section, subject to (in the case of a lease) the conditions attaching to the lease or the provisions applying to the lease.
- (1B) The provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* relating to the payment of compensation for land acquired by compulsory process apply, with such modifications as may be prescribed, to the payment of compensation under this section.

(2)

(a) Notwithstanding anything contained in this Act, but subject to the provisions of subsection (3), the total amount paid by the Minister as compensation for the withdrawal or acquisition of any land in pursuance of this section shall be charged upon any lease of such land thereafter granted under this Act, or, where more than one such lease is so granted, upon such leases in such proportions as the Minister may determine.

(b) In determining any such proportions, the Minister shall have regard to the qualities and capabilities of the land and to the improvements existing thereon.

(c) The provisions of section 31 shall not apply to any such lease.

- (3) Upon the expiration, forfeiture, surrender or other determination of any such lease, the charge under subsection (2), if not previously vacated, shall be deemed to have been extinguished: Provided that upon any redisposal of the land the Minister shall determine the amount, if any, which shall be charged upon any lease granted in respect of the land, and thereupon such amount shall be charged accordingly.

The amount so determined shall not include the value of any improvements, but the provisions of section 31 shall apply upon any such redisposal.

(4)

- (a) Payment of the amount charged upon any lease pursuant to this section shall be made to the Treasurer within such period, by such instalments and with interest at such rate as the Minister may determine.
- (b) The Treasurer may credit the whole or any part of any moneys so paid, to the Consolidated Fund or to such other fund or account as the Treasurer may elect.
- (c) If any such instalment or interest remains unpaid for a period of six months after the date for payment thereof the lease shall become liable to be forfeited.

(5) Any such charge shall have priority over any other charge, mortgage or encumbrance.

44A-44C (Repealed)

45 Permissive occupancies

For the avoidance of doubt it is declared that section 136K of the *Crown Lands Consolidation Act 1913* and any other provision of that Act relating to a permission to occupy Crown lands or a permissive occupancy of Crown lands apply, and shall be deemed always to have applied, to land in the Western Division.

Part 11 Enforcement provisions

46 Application of Part

- (1) In this Part, **condition**, in relation to a lease, includes:
 - (a) any covenant, term, reservation, exception, exemption or provision attaching or applying to the lease, whether by the terms of the lease or by this Act or otherwise, and
 - (b) without affecting the generality of paragraph (a)—the requirement under section 18DA not to cultivate land without a consent under that section and a condition to which any such consent is subject, and
 - (c) a condition referred to in section 18DB.
- (2) This Part (except section 49) applies to and in respect of a contravention of a condition of a lease notwithstanding that the contravention occurred before the commencement of this Part.

47 Notice to rectify contravention

- (1) Where a lessee contravenes, whether by act or omission, any condition of a lease under this Act, the Commissioner may serve on the lessee a notice in writing requiring the lessee:
 - (a) to comply with the condition, and

(b) to take such measures to rectify the contravention as the Commissioner considers appropriate and as are specified in the notice.

(1A) If an occupier within the meaning of section 18DA contravenes that section whether by act or omission, the Commissioner may serve on the occupier a notice in writing requiring the occupier:

(a) to comply with that section, and

(b) to take such measures to rectify the contravention as the Commissioner considers appropriate and specifies in the notice.

(2) A notice under this section:

(a) shall specify the period within which any measures referred to in subsection (1) (b) are to be taken,

(b) may be served either personally or by post, and

(c) may be varied or revoked by a further notice.

(3) The Commissioner may, in any case in which the Commissioner considers that it is appropriate to do so, serve a copy of a notice under this section on a mortgagee of the lease to which the notice relates.

48 Commissioner may rectify contravention and recover costs

(1) Where the lessee or occupier does not take any of the measures specified in a notice under section 47 within the period required by the notice, the Commissioner may, by the Commissioner's agents or contractors, enter the leased or occupied land and take those measures.

(2) Any costs incurred by the Commissioner in taking any such measures:

(a) may be recovered by the Commissioner from the lessee or occupier as a debt in a court of competent jurisdiction, and

(b) shall be a charge on the leased or occupied land until the costs are paid to or recovered by the Commissioner.

49 Offences

(1) A lessee who contravenes, whether by act or omission, any of the following conditions of a lease is guilty of an offence and liable to a maximum penalty not exceeding the amount of maximum penalty specified opposite the condition:

(a) (Repealed)

(a1) The requirements of section 18DA (3) (cultivating land without consent of Commissioner or contrary to a condition to which consent is subject)—maximum

penalty: 100 penalty units.

- (b) The condition in section 18D (1) (iv) (directions of Commissioner for protection of land)—maximum penalty: 100 penalty units.
 - (c) The condition in section 18D (1) (ix) (repairs to improvements)—maximum penalty: 100 penalty units.
 - (d) The condition in section 18A (fencing)—maximum penalty: 100 penalty units.
 - (e) The condition in section 18D (1) (vii) (erection of building without approval)—maximum penalty: 20 penalty units.
 - (f) The condition in section 18G (4A) (subletting, grazing rights or agistment without consent)—maximum penalty: 10 penalty units.
 - (g) The condition in section 18D (1) (x) (returns etc to be furnished to Commissioner)—maximum penalty: 10 penalty units.
 - (h) The condition in section 18D (1) (viii) (gates to be erected on public roads)—maximum penalty: 10 penalty units.
 - (i) A condition of the lease that is prescribed by the regulations made under this Act for the purpose of this section—maximum penalty: 5 penalty units.
- (2) A lessee who fails to comply with a notice under section 47 in connection with a contravention of any of the following conditions of the lease is guilty of an offence and liable to a penalty not exceeding 100 penalty units:
- (a) The requirements of section 18DA (3) (cultivating land without consent of Commissioner or contrary to a condition to which consent is subject).
 - (b) (Repealed)
 - (c) The use of the land under lease for a purpose that is not a purpose for which the lease was granted or issued.
- (2A) An occupier within the meaning of section 18DA (cultivation of certain land) who:
- (a) contravenes, whether by act or omission, the requirements of section 18DA (3) (cultivating land without consent of Commissioner or contrary to a condition to which consent is subject), or
 - (b) fails to comply with a notice under section 47 in connection with such a contravention,
- is guilty of an offence.
- Maximum penalty: 100 penalty units.

(2B) (Repealed)

- (3) A person who aids, abets, counsels or procures the commission of an offence against this section shall be deemed to have committed that offence and is punishable accordingly.
- (4) Where an act or omission constitutes an offence under separate provisions of this section or under this section and any other Act, the offender is not liable to be punished twice in respect of the offence.

50 Forfeiture of leases

- (1) In this section, **forfeiture** includes cancellation.
- (2) Where:
 - (a) a lessee has contravened, whether by act or omission, a condition of a lease under this Act, and
 - (b) the lease is, because of that contravention, liable to be forfeited under this Act,the Minister may serve on the lessee a notice in writing stating that the lease will be declared to be forfeited in accordance with this Act unless that lessee complies with the condition and takes such measures to rectify the contravention as the Minister considers appropriate and as are specified in the notice.
- (3) A notice under this section:
 - (a) shall specify the period within which any measures referred to in subsection (2) are to be taken,
 - (b) may be served either personally or by post, and
 - (c) may be varied or revoked by a further notice.
- (4) The Minister may, in any case in which the Minister considers that it is appropriate to do so, serve a copy of a notice under this section on a mortgagee of the lease to which the notice relates.
- (5) Nothing in this section prevents a lease being declared forfeited in accordance with this Act without the service of a notice under this section.
- (6) A lessee may appeal to the Land and Environment Court against a determination made by the Minister, in a notice under this section or otherwise, that the lessee has contravened a condition of the lease and that the lease is, because of that contravention, liable to be forfeited under this Act.
- (7) The Land and Environment Court may, where any such appeal is made, provisionally waive any declaration of the forfeiture of a lease pending the determination of the

appeal.

51 Different proceedings may be taken for same contravention

The fact that proceedings have been taken under one of the provisions of this Part for a contravention of a condition of a lease does not preclude different proceedings being taken under this Part or otherwise for the same contravention.

52 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations made under this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Proceedings for an offence against this Act or the regulations made under this Act shall not be instituted without the written consent of the Commissioner or a prescribed officer.
- (3) In any proceedings for an offence against this Act or the regulations made under this Act, a consent to institute the proceedings, purporting to have been signed by the Commissioner or a prescribed officer, shall be evidence of that consent without proof of the signature of the Commissioner or the prescribed officer, as the case may be.
- (4) Proceedings for an offence against this Act or the regulations made under this Act may be instituted within 12 months after the time when the matter giving rise to the proceedings occurred.

Schedule A

COVENANTS, reservations, and exceptions referred to in section 18:

- (a) To pay rent annually in advance. To pay any moneys owing to the Crown under the provisions of the Crown Lands Acts.
- (b) To take, within a specified time, such steps and measures to destroy rabbits, dogs, and other vermin as the Commissioner shall from time to time direct, and to keep the lease free of vermin during the currency of the lease to the satisfaction of the Commissioner.
- (c) To carry out the control of noxious weeds on land as directed by the Director-General of the Department of Conservation and Land Management, the Minister for Agriculture and Rural Affairs or an authorised person under the [Noxious Weeds Act 1993](#).
- (d) (Repealed)
- (e) Not to obstruct or interfere with any reserves, roads, or tracks, or the use thereof by any person.
- (f)–(h) (Repealed)
- (i) To permit the Commissioner and all persons authorised by the Minister or the Commissioner to enter and view the whole or any part of the lease or buildings or other improvements thereon.

- (j) To keep in reasonable repair all improvements on the lease.
- (k) Reservations in favour of the Crown of all minerals, metals, gems, precious stones, coal, and mineral oils, together with all rights necessary for ingress, egress, search, prosecution, and removal and all incidental rights and powers.
- (l) The unrestricted right to proclaim travelling stock, camping or other reserves. The unrestricted right to withdraw any land for the purposes of roads or travelling stock, camping or other reserve.
- (m) The unrestricted right for the Minister, the Commissioner, or any persons duly authorised in that behalf to enter upon and examine such land and the improvements thereon.
- (n) (Repealed)
- (o) A proviso that if rent shall be in arrear for more than three months after due date, or if there has been a breach or non-performance of any of the lessee's covenants or conditions the Minister may cancel the lease.
- (p) Provisions for resumption of lands for mining purposes, townships, or any public purpose under the provisions of the Crown Lands Acts; and for compensation for resumption.
- (q) Reservations in favour of the Crown necessary or proper for giving effect to any Act or regulation for the time being in force.

Schedule B Applicable provisions of the [Crown Lands Act 1989](#)

(Section 2A)

Part 1 Preliminary

Section 6 (Crown land to be dealt with subject to Act)—but not so as to affect the power to grant leases under the [Western Lands Act 1901](#).

Section 9 (cities, towns and villages).

Part 2 Administration

Division 1 (Minister)—the whole Division.

Part 4 Sale, lease etc of Crown Land

Division 1 (general)—only section 34 and only so as to authorise the sale of land for residential, business, motel, community or similar purposes, the disposal of land by way of exchange and the granting of licences and easements.

Division 2 (sales of Crown Land)—the whole Division.

Division 4 (licences)—the whole Division, except that section 49 (3) (licences for removal of certain minerals) is to be read as including a reference to a lease granted under the [Western Lands Act 1901](#).

Division 5 (easements)—the whole Division, except that paragraph (b) of the definition of **prescribed land** in section 51 (definitions) is to be read as follows:

- (b) land comprised in a lease in perpetuity (other than a lease in perpetuity granted under the *Western Lands Act 1901*),

Division 7 (vesting of land in councils)—the whole Division except the words “Subject to section 35” in section 76 (1).

Part 5 Dedication and reservation of land

Division 1 (preliminary)—the whole Division.

Division 2 (dedications)—the whole Division, except section 85 (requirement for assessment).

Division 3 (reservations)—the whole Division, except section 91 (requirement for assessment).

Division 4 (formation of reserve trusts)—the whole Division.

Division 5 (trust property)—the whole Division, but a temporary licence shall not be granted under section 108 (1) for grazing or agriculture except with the consent of the Western Lands Commissioner.

Division 6 (plans of management)—the whole Division.

Division 7 (administrator of trust)—the whole Division.

Division 8 (miscellaneous)—the whole Division, but it shall be read as including the following provision:

128A Consent of Western Lands Commissioner to certain operations

A reserve trust shall not cultivate land in the Western Division, or authorise any other person to do so, except with the written consent of the Western Lands Commissioner.

Part 6 Forfeiture of holdings

The whole Part is to apply but only in respect of licences granted under the *Crown Lands Act 1989*.

Part 7 Miscellaneous

Division 1 (acquisition etc of land)—the whole Division.

Division 2 (alteration of conditions etc)—the whole Division, but only in respect of licences granted under the *Crown Lands Act 1989*.

Division 3 (determination of rent) and Division 4 (payments)—the whole of both Divisions, but only in respect of licences and enclosure permits granted under the *Crown Lands Act 1989*.

Division 5 (protection of public land)—the whole Division.

Division 6 (legal and evidentiary provisions)—the whole Division, with the following modifications:

- (aa) section 171 (exclusion of minerals, other reservations, exceptions etc) is to apply to the sale, lease or other disposal of land by the Crown under the *Western Lands Act 1901*,

- (a) section 174 (ownership of improvements on forfeiture etc) is to apply but without affecting any tenant right accrued to the holder of a lease under the *Western Lands Act 1901*,
- (b) in section 177 (certificate as to status of land etc) a reference to a holding is to be read as including a reference to a lease under the *Western Lands Act 1901*.

Division 7 (general provisions)—the whole Division, except sections 184–186 and with the following modifications:

- (a) the references in section 180 (delegation) to the Secretary are to be read as references to the Western Lands Commissioner,
- (b) the references in section 181 (notices) are to be read as including a reference to the *Western Lands Act 1901* in addition to the other Acts referred to.

Schedules 1–6—the whole of the Schedules.

Schedule C Savings, transitional and other provisions

(Section 2B)

Part 1A Provisions consequent on enactment of *Western Lands (Amendment) Act 1934*

1AA Definition

In this Part, **amending Act** means the *Western Lands (Amendment) Act 1934*.

1AB Construction of certain references

- (1) A reference in any Act, rule, regulation, by-law, order, proclamation, notification or instrument to the Western Land Board of New South Wales, the Western Lands Commissioners or the Commissioners (when used in reference to the Commissioners appointed under this Act) is taken to be a reference to the Commissioner appointed under this Act as amended by the amending Act.
- (2) This clause is taken to have commenced on 24 August 1934 (the date of commencement of the amending Act).
- (3) Subclause (1) re-enacts (with minor modification) section 4 (4) of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

Part 1B Provisions consequent on enactment of *Western Lands (Amendment) Act 1980*

1AC Definition

In this Part, **amending Act** means the *Western Lands (Amendment) Act 1980*.

1AD Construction of references to forms

- (1) A reference in any other Act, or in any by-law, regulation or ordinance or in any other instrument or document, whether of the same or of a different kind or nature, to a form prescribed under this Act, as in force before 26 March 1980 (the date of commencement of the amending Act), is to be construed as a reference to the corresponding form (if any) approved under this Act, as amended by the amending Act.
- (2) This clause is taken to have commenced on 26 March 1980.
- (3) Subclause (1) re-enacts (with minor modification) section 4 (2) of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

Part 1C Provisions consequent on enactment of [Western Lands \(Amendment\) Act 1989](#)

1AE Definition

In this Part, **amending Act** means the *Western Lands (Amendment) Act 1989*.

1AF Redeterminations of rent

- (1) This clause applies to a lease if:
 - (a) before 20 April 1989 (the date of assent to the amending Act), the purpose of the lease was changed under section 18J of this Act and a redetermination of the rent of the lease following the change had not been finalised, or
 - (b) on or after 20 April 1989 and before the next succeeding date for redetermination of the rent of the lease, the purpose of the lease is changed under section 18J of this Act.
- (2) If this clause applies to a lease, a redetermination resulting from the change of purpose is to be made on the basis prescribed by this Act, as in force at the time of the change, for land set apart or held for the new purpose.
- (3) This clause is taken to have commenced on 20 April 1989.
- (4) Subclauses (1) and (2) re-enact (with minor modification) clause 3 of Schedule 7 to the amending Act. Subclauses (1) and (2) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Part 1D Provisions consequent on enactment of [Western Lands](#)

(Crown Lands) Amendment Act 1989

1 Membership of local land board

- (1) Except for the purposes of clause 2, on the commencement of the *Western Lands (Crown Lands) Amendment Act 1989*, a person who, immediately before that commencement, holds office as an appointed member of a local land board ceases to hold office.
- (2) A person who ceases to hold office because of the operation of subclause (1):
 - (a) is not entitled to be paid any remuneration or compensation because of ceasing to hold the office, and
 - (b) is eligible (if qualified) for re-appointment as a member of a local land board.

2 Matters pending before a local land board

- (1) A matter pending before a local land board immediately before the commencement of the *Western Lands (Crown Lands) Amendment Act 1989* shall be completed (whether by being continued or discontinued) by the local land board constituted as it would have been but for the enactment of that Act.
- (2) Subclause (1) has effect even if different members have been appointed under this Act as amended by the *Western Lands (Crown Lands) Amendment Act 1989*.

3 Conversion of leases—section 28BB

- (1) If an application under section 28BB is pending at the commencement of the *Western Lands (Crown Lands) Amendment Act 1989*, the Minister may direct that the application:
 - (a) is to be dealt with under that section as substituted by that Act, or
 - (b) is to be dealt with under that section as if that Act had not been enacted.
- (2) The Minister's direction has effect accordingly and may relate to a particular application or to applications of a particular class.

Schedule D Provisions relating to purchases of certain leased land

(Section 28BB)

1 Application of Schedule

This Schedule applies to an application to purchase land under section 28BB.

2 Transfer and withdrawal of applications

- (1) A transferee of a lease may, with the approval of the Minister and subject to such

conditions as the Minister may determine, adopt an application made by a previous holder.

- (2) An applicant may withdraw an application:
 - (a) before it is granted, or
 - (b) if an appeal is lodged against the determination of the purchase price by the Minister or the local land board—within 28 days after determination of the appeal, on payment of such costs as may be assessed by the Minister.

3 Granting of applications

- (1) The Minister may, at the Minister's absolute discretion (exercised subject to section 25E of the *Forestry Act 1916*) grant or refuse an application as to the whole or a part of the land to which it relates.
- (2) The Minister may not grant an application if the land is reserved from sale.

4 Exclusion for roadways etc

- (1) When granting an application, the Minister may:
 - (a) exclude from the land any areas required for roadways or other public purposes,
 - (b) otherwise modify the boundaries of the land, and
 - (c) create easements for public access over the land,at the discretion of the Minister.
- (2) Any areas excluded from the land for roadways or other public purposes or because of modification of boundaries is surrendered to the Crown.
- (3) A public purpose is any purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose for the purposes of this clause.
- (4) Sections 56–58 of the *Crown Lands Act 1989* (section 56 (3) excepted) apply to and in respect of the creation of an easement under this clause in the same way as they apply to and in respect of the creation of an easement under section 56 of that Act.
- (5) The holder may appeal to the local land board against a decision under this clause to exclude land or create an easement for public access and the local land board may, on hearing the appeal, make any order or decision it considers to be appropriate.
- (6) On hearing:
 - (a) an appeal under subclause (5)—the local land board, or

(b) an appeal from a decision of the local land board—the Land and Environment Court,

may include in its order or decision an order or redetermination referred to in subclause (7), or both.

(7) The local land board, or the Court, may:

(a) make an order requiring the creation of an easement for public access under subclause (1) (c) instead of the exclusion of land under subclause (1) (a), or

(b) redetermine the purchase price (or require the Minister to redetermine the purchase price) having regard to any variation in the area of the land to be purchased.

5 Depth limitations

(1) The Minister may limit the granting of an application to the surface of the land or to the surface and a stated depth below the surface.

(2) Land excluded by such a limitation is surrendered to the Crown.

6 Title and conditions

(1) Clause 6 of Part 1 of Schedule 2 to the *Crown Lands (Continued Tenures) Act 1989* applies to and in respect of a purchase under this Schedule.

(2) A purchase under this Schedule of land comprised in a lease is subject to such of the conditions applying to the lease as the Minister specifies at the time of granting the application to purchase.

(3) The title to a purchase under this Schedule commences from a date determined by the Minister.

(4) The date determined by the Minister shall not be earlier than:

(a) if an appeal is lodged:

(i) the withdrawal of the appeal, or

(ii) 28 days after determination of the appeal (unless the applicant notifies the Minister in writing that the applicant does not wish to withdraw the application), or

(b) if no appeal is lodged—the end of the period for lodgment of the appeal or, if the applicant earlier notifies the Minister in writing that the applicant has waived any right of appeal, the date of the notification.

(5) In any folio of the Register created in respect of land purchased or being purchased

under this Schedule the Registrar-General shall, if the land is affected by a profit à prendre reserved to the Crown under section 25F of the *Forestry Act 1916*, record a statement to the effect that the land is so affected.

- (6) Such a recording has effect as if the reservation of the profit à prendre had been included in an instrument of conveyance or transfer from the Crown.

7 Subdivision

Schedule 4 to the *Crown Lands (Continued Tenures) Act 1989* applies to and in respect of a purchase under this Schedule.

8 Removal of transfer restrictions

On the granting of an application to purchase land comprised in a lease, section 18G ceases to apply to the land.

9 Payment of balance of purchase money etc on transfer

Clause 5 of Part 1 of Schedule 2 to the *Crown Lands (Continued Tenures) Act 1989* applies to and in respect of a purchase under this Schedule.

10 Price

- (1) The purchase price for land comprised in a lease is the market value of the land determined by the Minister as at the date of the application to purchase the land.
- (2) Any improvements on the land which were made by the holder, or are owned or in the course of being purchased from the Crown by the holder, shall be disregarded in determining the market value.
- (3) If it appears to the Minister that the market value of the land has been reduced by any act, default or neglect of the holder, the Minister shall determine the market value as if the reduction in value had not taken place.
- (4) If any areas are to be excluded for roadways or other public purposes or because of modification of boundaries, the purchase price shall be adjusted accordingly.

11 Objections to, and appeals against, determinations

- (1) The Minister shall, on determining a purchase price for land comprised in a lease, give notice of the determination to the lessee.
- (2) The notice shall include information to the effect that the lessee may object to the purchase price determined by the Minister.
- (3) The Minister shall consider any objection lodged and by notice inform the objector:
 - (a) whether the determination of the purchase price is to stand or be varied, and

(b) that the objector, if dissatisfied with the Minister's decision, may appeal as provided by subclause (4).

(4) An appeal against the Minister's decision lies:

(a) to the local land board if the purchase price determined does not exceed \$150,000 or such greater amount as may be prescribed, or

(b) in any other case, to the Land and Environment Court.

(5) The local land board, or the Court, on hearing the appeal, may affirm the Minister's determination or substitute its own.

12 Adjustment of rent where part only of lease purchased

(1) If part only of a lease is purchased, the Minister shall redetermine the annual rent of the remaining part of the lease for the remainder of the current rent redetermination period applicable to the lease.

(2) Clauses 11 and 12 of Schedule 5 to the *Crown Lands (Continued Tenures) Act 1989* apply to a redetermination of rent under this clause in the same way as they apply to a redetermination of rent under that Schedule.

(3) The Minister may make such consequential alterations to the purpose and conditions of a lease as the Minister considers to be necessary on the purchase of part of the land comprised in the lease.

13 Cost of survey

(1) An applicant to purchase land comprised in a lease is liable to pay to the Crown:

(a) if a survey fee has not been paid in respect of the lease—the prescribed survey fee, and

(b) if a survey is necessary as a result of the purchase and the survey is carried out by the Crown—the cost of survey as assessed by the Minister.

(2) The Minister may permit an applicant to have any necessary survey carried out (at the applicant's own expense) by a surveyor registered under the *Surveyors Act 1929* in accordance with any special requirements of the Minister.

(3) If a survey is to be carried out by the Crown, the Minister may require the applicant to pay the estimated cost before survey and refuse the application if the estimated cost is not paid.

14 Payment of purchase price

(1) Subject to the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* and the regulations under those Acts, the purchase price for land comprised in a

lease, together with interest at the annual rate of 8 per cent, is payable by 33 equal annual instalments.

- (2) No instalment payable under this provision shall be less than \$100 or, if another amount is prescribed, that other amount.

15 Payment of other amounts

- (1) On the commencement of title to a purchase under this Schedule the following amounts are payable to the Crown:
- (a) any stamp duty payable under the *Stamp Duties Act 1920* in respect of the purchase,
 - (b) any rent (including rent for Crown improvements) payable on the lease up to the commencement of title to the purchase,
 - (c) any outstanding postponed or funded debts in respect of the lease (whether or not due for payment) together with interest up to the commencement of title to the purchase,
 - (d) the cost of any necessary survey carried out by the Crown,
 - (e) any other amounts determined by the Minister as payable on the commencement of title to the purchase.
- (2) Failing payment of any such amount within 3 months of demand, the purchase may be declared by the Minister to be forfeited and any money paid in connection with the purchase may (by the declaration) be forfeited to the Crown.
- (3) If there are any other debts outstanding in respect of the lease, they continue (subject to this clause and any increased rate of interest required by this Act) to be payable to the Crown in the same manner as they were payable before the commencement of title to the purchase.
- (4) If any amount payable to the Crown after the commencement of title to a purchase is payable in equal annual instalments over a period without the interest added, the Minister may vary the manner of payment so that the amount is payable in equal annual instalments over the same or a longer period with the interest added.

16 Retention of rights of mortgagees

If on the granting of an application to purchase land comprised in a lease the lease is subject to a mortgage, the mortgagee:

- (a) retains the rights, powers and remedies which are expressly or impliedly given to the mortgagee against the mortgagor by the mortgage, and
- (b) has, in respect of the land and to the extent that they are relevant, the same rights,

powers and remedies as the mortgagee had in respect of the lease.

17 Easements

The granting of an application to purchase or the purchase of land comprised in a lease does not affect any easement which is appurtenant to or a burden on the land.

Schedules E-I (Repealed)