

# Lord Howe Island Act 1953 No 39

[1953-39]



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—

- **See also**  
[Public Sector Employment Legislation Amendment Bill 2006](#)

### Authorisation

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# Lord Howe Island Act 1953 No 39



New South Wales

An Act to make provision for the care, control and management of Lord Howe Island; to constitute a Lord Howe Island Board and an Island Committee and to define their respective powers, authorities, duties and functions; to make provision relating to the tenure of land upon the said Island; to validate certain matters; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the *Lord Howe Island Act 1953*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 2 (Repealed)

### 3 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

**Board** means the Lord Howe Island Board.

**Crown lands** means lands of the Island which are vested in the Crown and not permanently dedicated to any public purpose.

**Island** means the island known as Lord Howe Island and all adjacent islands and coral reefs situated within one marine league measured from low-water mark on the coast of Lord Howe Island together with the islands known as Ball's Pyramid, Wheatsheaf Island, Observatory Rock and South-East Rock and the unnamed islands in the vicinity thereof.

**Islander** means, subject to subsection (2), a person who:

- (a) resided on the Island immediately before the commencement of Schedule 1 (2) (c) to the *Lord Howe Island (Amendment) Act 1981*, and was an Islander within the meaning of this Act as in force immediately before that commencement,
- (b) has resided on the Island continuously since that commencement and for the

period of 5 years that immediately preceded that commencement,

- (c) resides on the Island and has so resided continuously during the immediately preceding period of 10 years, or
- (d) is, on the recommendation of the Board made in special circumstances, declared by the Minister, by order published in the Gazette and for the time being in force, to have retained or acquired the status of an Islander.

**Member** means member of the Board.

**Prescribed** means prescribed by this Act or by the regulations.

**Regulations** means regulations made under this Act.

**Reside** and **residence** mean a residing by the person referred to in the context continuously and in good faith on the land indicated by the context as his or her usual home, without any other habitual residence.

**Vacant Crown lands** means Crown lands not reserved or dedicated or held under any lease from the Crown.

- (2) In determining for the purposes of this Act whether a person resided or resides on the Island at any time or resided continuously on the Island during any period, an absence from the Island:
  - (a) to attend a school, college, university or other educational institution,
  - (b) at any time when a school, college, university or other educational institution attended by that person is closed for a holiday or during a vacation,
  - (c) during any period not exceeding 10 years or during periods totalling not more than 10 years, for the purpose of gaining experience in a trade, profession or other gainful employment,

by a person who, immediately before the commencement of the person's first such absence, resided on the Island shall be deemed not to interrupt residence on the Island.

## **Part 2 Lord Howe Island Board**

### **Division 1 Constitution of the Board**

#### **4 Lord Howe Island Board**

- (1) There is constituted a corporation under the name of the "Lord Howe Island Board".
- (2) The Board is charged with the responsibility of administering the affairs of the Island.

- (3) The Board is to consist of 7 members, of whom:
  - (a) four are to be Islanders, and
  - (b) one is to be a person appointed to represent the interests of business and tourism, and
  - (c) one is to be a person appointed to represent the interests of conservation, and
  - (d) one is to be an officer of the Department of Environment and Conservation.
- (4) The members referred to in subsection (3) (a) are to be appointed by the Minister following an election conducted in accordance with Division 3.
- (5) The members referred to in subsection (3) (b), (c) and (d) are to be appointed by the Minister, and are not to be Islanders.
- (6) For the purposes of any Act, the Board is taken to be a statutory body representing the Crown.
- (7) Schedule 1A has effect with respect to the constitution and procedure of the Board.

## **5 Board's charter**

- (1) The Board has the following charter:
  - (a) to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the Island community and to ensure that those services and facilities are managed efficiently and effectively,
  - (b) to exercise community leadership,
  - (c) to exercise its powers, authorities, duties and functions in a manner that is consistent with and actively promotes the principles of multiculturalism,
  - (d) to promote and to provide and plan for the needs of children,
  - (e) to manage, protect, restore, enhance and conserve the Island's environment in a manner that is consistent with and promotes the principles of ecologically sustainable development set out in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
  - (f) to manage, protect, restore, enhance and conserve:
    - (i) vacant Crown lands, and
    - (ii) lands reserved or dedicated under section 19 or 19A (including, in particular, the Lord Howe Island Permanent Park Preserve),



in a manner that recognises the World Heritage values in respect of which the Island is inscribed on the World Heritage List referred to in the United Nations *Convention Concerning the Protection of the World Cultural and Natural Heritage*,

- (g) subject to paragraphs (e) and (f), to promote the Island as a tourist destination,
  - (h) to have regard to the long term and cumulative effects of its decisions,
  - (i) to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible,
  - (j) to facilitate the involvement of members of the Board, members of the public, users of facilities and services and the Board's staff in the development, improvement and co-ordination of the Board's powers, authorities, duties and functions,
  - (k) to raise funds for Island community purposes by the fair imposition of charges and fees, by income earned from investments and, when appropriate, by borrowings and grants,
  - (l) to keep the Island community and the State government (and through it, the wider community) informed about its activities,
  - (m) to ensure that, in the exercise of its regulatory powers, authorities, duties and functions, it acts consistently and without bias, particularly where an activity of the Board is affected,
  - (n) to be a responsible employer.
- (2) The Board, in the exercise of its powers, authorities, duties and functions, must pursue its charter but nothing in the charter or this section gives rise to, or can be taken into account in, any civil cause of action.

## **6 Employment of staff**

- (1) The Board's staff are (subject to this section) to be employed under Chapter 2 of the [Public Sector Employment and Management Act 2002](#).
- (2) The Board may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department or public authority. For the purposes of this Act, a person whose services are made use of under this subsection is a member of the Board's staff.
- (3) The Board may engage consultants for the purposes of getting expert advice.

## **Division 2**

### **7-9 (Repealed)**

## **Division 3 Elections**

### **9A Elections**

The Electoral Commissioner for New South Wales shall:

- (a) as soon as practicable after the commencement of this Division—conduct an election for the purpose of determining the Islanders to be appointed to the Board pursuant to section 4 (3) (a),
- (b) not later than 3 years after that election and in every third year thereafter—conduct an election for the same purpose, and
- (c) as the occasion requires—conduct an election for the purpose of determining the Islander to be appointed to fill a vacancy in the office of a member of the Board.

### **9B Electors**

A person enrolled on the State electoral roll for the electorate in which the Island is situated is entitled to be enrolled as an elector for an election under this Division if the person is resident on the Island and the person's address on that electoral roll is an address on the Island.

### **9C Elections**

The enrolment of electors, the nomination of persons as candidates at an election under this Division, the time for holding such an election, the appointment of electoral officers, the system of election, the method of voting, the conduct of the election, the declaration of the poll and all matters associated with the election shall be as prescribed.

## **Part 3 Powers, authorities, duties and functions of the Board**

### **10 Ministerial control**

In the exercise and discharge of its powers, authorities, duties and functions the Board shall be subject in all respects (except in so far as it makes a report or recommendation) to the direction and control of the Minister.

### **11 General functions of Board**

- (1) The Board shall be charged with the care, control and management of the Island and of the affairs and trade of the Island.

It may adopt any measures and may examine and explore proposals and devise initiate and execute schemes for the improvement of the conditions and for the welfare of the Island and of the residents thereof.

- (2) The Board may arrange or provide for the gathering, collection and sale of any produce of the Island.

- (3) The Board shall, subject to any other Act in force relating to the protection or conservation of fisheries, fauna or flora, take all practicable measures to protect and conserve the fisheries, fauna and flora of the Island.
- (4)
  - (a) The Board shall, subject to any other Act in force relating to the prevention, control or suppression of fire, take all practicable measures to protect the Island from fire.
  - (b) For the purposes of this subsection the Board shall have and may exercise the powers, authorities and functions conferred upon councils under the *Rural Fires Act 1997*.

## **12 Powers, authorities, duties and functions of Board**

- (1) The Board may:
  - (a) provide, construct, improve, maintain, protect, repair, drain and cleanse roads upon the Island,
  - (b) do all things necessary from time to time for the promotion and preservation of public health, safety and convenience upon the Island,
  - (c) control and regulate the erection and use of buildings and structures upon the Island,
  - (d) provide, control and manage upon the Island grounds for public health, recreation, convenience, enjoyment or other public purpose of the like nature including parks, children's playgrounds, sports grounds and gardens,
  - (e) construct, extend, protect, maintain, control and manage upon the Island works of water supply or sewerage or drainage and any works incidental thereto and works in connection therewith or separate therefrom for the supply of electricity, and make and levy rates and charges for the maintenance and management thereof or for the payment of instalments of capital debts and interest thereon,
  - (f) construct, maintain, control, manage and lease wharves and anchorages,
  - (g) provide public buildings and offices, residences for officers and employees of the Board, and shops, offices and other buildings for lease to the public,
  - (h) exercise and discharge any powers, authorities, duties and functions which the Board may be authorised or required to exercise and discharge by the regulations.
- (2) For the purpose of enabling the Board to exercise and discharge any powers, authorities, duties and functions conferred or imposed upon it by this Act the Governor may grant to the Board any vacant Crown lands and impose in such grant such terms

and conditions as the Governor may deem desirable.

### **12A Advances by Board on mortgage**

- (1) The Board may, on the application of an Islander, advance moneys to the Islander:
  - (a) for the whole or part of the consideration for the transfer of a lease under this Act to the Islander pursuant to section 23, or
  - (b) for the effecting of improvements on land the subject of a lease under section 21 held by the Islander,on the security of a mortgage of that lease in favour of the Board.
- (2) The Treasurer may from time to time make moneys available to the Board for advances under this section.

### **13 Powers of Board as to tourists and licensing business**

- (1) The Board may:
  - (a) control and regulate the tourist trade to and upon the Island,
  - (b) require persons carrying on such businesses or trades as the Board may determine to be licensed. Any such licence shall be subject to the payment of such fee and may include such terms and conditions as may be prescribed or as the Board may determine.
- (2) In relation to persons associated with tourist accommodation or other commercial undertakings, the Board's power under subsection (1) (b) to require persons to be licensed is subject to the regulations.

### **14 Power to delegate**

- (1) The Board may with the approval of the Minister authorise any officer, employee or person to exercise or perform on behalf of the Board any power, authority, duty or function of the Board other than a power, authority, duty or function relating to:
  - (a) the granting of leases,
  - (b) any other matter which may be prescribed.
- (2)
  - (a) Any such authority may, if the Board so resolves, be unlimited as to the period during which it may be exercised, or may be exercisable only during such period as may be specified in the resolution.
  - (b) The exercise of any such authority shall be subject to such limitations and conditions as may be specified by the Board by resolution, or as may be

prescribed.

- (3) Any officer, employee or person when acting in the exercise of any such authority and within its scope, shall be deemed to be the Board.
- (4) Any authority conferred by the Board under this section may be withdrawn by the Board by subsequent resolution, either wholly or in part.
- (5) No act of any officer, employee or person done within the scope of any such authority during the period in which such authority was in force shall be invalidated by reason of a withdrawal of the authority.

#### **14A Personal liability**

A matter or thing done or omitted to be done by:

- (a) the Board or a committee of the Board, or
- (b) a member of the Board, a member of a committee of the Board, a member of staff of the Board or any person acting under the direction of the Board or a committee of the Board,

does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the member or a person so acting personally to any action, liability, claim or demand.

#### **15 Charges and fees**

Where the Board:

- (a) supplies any service, product or commodity,
- (b) gives any permission,
- (c) receives any application for its approval,

the Board may make, demand, levy and recover such charges and fees as may be prescribed or where no charge or fee is prescribed such charges and fees as may be fixed by the Board subject to the maximum (if any) prescribed.

### **Part 3A Environmental planning and assessment**

#### **15A Application of EPA Act**

- (1) Parts 4, 4A and 5A and Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979* apply to the Island as if a reference to the consent authority were a reference to the Board.
- (2) For the purposes of that Act:

- (a) the Island is taken to be a region within the meaning of that Act, and
- (b) the Board is taken to be the council of an area situated in that region.

#### **15B Application of Act No 80, 1974**

Part 5 of the *National Parks and Wildlife Act 1974* applies to and in respect of land dedicated under section 19A as if it were a national park except that:

- (a) a reference in that Part to the Minister administering that Act shall be construed as a reference to the Minister administering this Act, and
- (b) a plan of management for that land in force under that Part shall be carried out and given effect to by the Board instead of as provided by section 81 (1) of that Act.

### **Part 4 Land tenure**

#### **Division 1 Vesting of Island in Crown**

##### **16 Island vested in the Crown**

The Island is hereby vested in the Crown freed and discharged from any estate of any person (other than any estate conferred by or arising out of any lease entered into between the Governor-General of the Commonwealth and the Governor of the State of New South Wales) and any reservation affecting the Island immediately before the commencement of this Act is hereby revoked.

##### **17 No compensation payable**

No compensation shall be payable to any person in respect of the vesting of the Island in the Crown under section 16.

#### **Division 2 How Crown lands may be dealt with**

##### **18 Crown lands not to be dealt with except under this Act**

Crown lands shall not be dealt with except under and subject to the provisions of this Act.

##### **19 Reservation or dedication of Crown lands for public purposes**

- (1) The Minister on the recommendation of the Board may by notification in the Gazette reserve or dedicate Crown lands in such manner as may seem best for the public interest for any purpose declared by the Minister by notification in the Gazette to be a public purpose under this section.
- (2) The Minister on a like recommendation and by a like notification may modify, alter or revoke any reservation or dedication under this section.

### **19A Lord Howe Island Permanent Park Preserve**

- (1) The land from time to time described in Schedule 1 is hereby permanently dedicated as the “Lord Howe Island Permanent Park Preserve” for the public purpose of preserving native flora and fauna.
- (2) The Governor may, by notification published in the Gazette, amend Schedule 1 to enlarge the area of land described therein.
- (3) The dedication effected by subsection (1), and any notification published under subsection (2), may not be revoked except by an Act.
- (4) Land dedicated under subsection (1) may not be leased.

### **19B Enforcement of plan of management**

- (1) A person who uses any part of land the subject of a dedication in force under section 19A in a manner that contravenes the plan of management for the land is liable to a penalty not exceeding 50 penalty units.
- (2) Where a penalty is imposed on a person under subsection (1) for erecting, or causing to be erected, a building, work or structure, the Board may, by notice in writing specifying a reasonable time for compliance therewith, order that person to demolish the building, work or structure and to remove the materials from the dedicated land.
- (3) The provisions of section 678 (1), (2), (3), (4), (5), (6) and (8) of the [Local Government Act 1993](#), apply to land in respect of which an order of the Board is in force under subsection (2) as if:
  - (a) a reference in those provisions to a council were a reference to the Board, and
  - (b) a reference in those provisions to an order were a reference to an order under subsection (2).

### **20 Appointment of trustees**

- (1) The Minister may by notification in the Gazette appoint:
  - (a) the Board, or
  - (b) on the recommendation of the Board persons, not being in any case less than three nor more than seven in number,trustees to be charged with the care, control and management of lands reserved or dedicated under section 19 or 19A.
- (2)
  - (a) A person who holds a particular office or position may be appointed as a trustee under this section by virtue of holding that office or position.

- (b) Where any such appointment is made, then in ascertaining the number of trustees for the purposes of subsection (1), the person so appointed shall not be counted.
- (c) A person appointed to be a trustee by virtue of holding a particular office or position shall cease to hold office as trustee on the day upon which the person ceases to hold that office or position.

(3)

- (a) The number ascertained by dividing the total number of trustees by two and adding one to the quotient (any fractional remainder being disregarded) shall be the number of trustees necessary to form a quorum at any meeting of the trustees.
- (b) Any duly convened meeting of the trustees at which a quorum is present shall be competent to transact any business of the trustees.
- (c) A decision of the majority of trustees present at a meeting shall be the decision of the trustees.

## **20A Leases to Commonwealth**

The Minister may lease vacant Crown lands to the Commonwealth at such rent and on such terms and subject to such conditions, reservations and provisions as are agreed upon.

## **21 Leases in perpetuity for residence**

- (1) Subject to this section the Minister may lease areas not exceeding in any case 2 hectares of vacant Crown lands for the purpose of residence.
- (2) A lease under this section shall be in or to the effect of the prescribed form, and may only be granted to an Islander of or above the age of 18 years or 2 or more such Islanders as joint tenants or tenants in common.
- (3) The title to a lease under this section shall be a lease in perpetuity.
- (4) An application for a lease under this section shall be made to the Board in the manner and in or to the effect of the prescribed form.
- (5) The Board shall report to the Minister as to whether there is any objection in the public interest or otherwise to the granting of the application either as to the whole or any part of the land the subject of the application and generally as to the merits thereof. If the Board deems it expedient to recommend the granting of the application either as to the whole or any part of the land the subject of the application it shall also report as to what conditions (if any) should attach to the lease.
- (6) After receipt of such report the Minister may grant a lease either as to the whole or



any part of the land the subject of the application if the Board so recommends, or the Minister may at his or her discretion refuse the application.

- (7) Subject to this subsection and subsections (7A) and (7B), a condition of residence on the lease shall attach thereto in perpetuity, and shall be performed by the holder or sublessee thereof for the time being, and residence shall commence within six months after the granting of the application or such further period as the Minister on the recommendation of the Board may approve. Where the holder or the owner (subject to mortgage) or sublessee of the lease has been or shall be prevented by sickness of himself or herself or family or other adverse circumstance from performing such condition, the Board may, upon application as prescribed, and on sufficient reason being shown, suspend such condition for such period and subject to such conditions as the Board may approve.
- (7A) The Minister may, in special circumstances, for such time and on such terms and conditions as the Minister thinks fit, suspend the condition of residence on a lease held or owned (subject to mortgage) by, or subleased to, an Islander who already (whether jointly or not) holds or owns (subject to mortgage) or subleases not more than one other lease.
- (7B) Where a lease is held or owned (subject to mortgage) by, or is subleased to, 2 or more persons jointly, subsections (7) and (7A) extend to authorising suspension of the condition of residence in respect of any of the joint holders, owners or sublessees in the same way as it does in respect of a sole holder, owner or sublessee.
- (8) The Minister may annex to any such lease such conditions reservations and provisions as the Minister may think fit. Any such condition reservation or provision annexed to such lease may on application by the lessee in the prescribed manner and on the recommendation of the Board be varied modified or revoked by the Minister.
- (9)-(11) (Repealed)

## **21A (Repealed)**

## **22 Special leases**

- (1) Subject to this section the Minister may lease Crown lands for cultivation or grazing or cultivation and grazing or for such other purpose as the Minister on the recommendation of the Board may approve.
- (2) The term of a lease under this section may be fixed for any period not exceeding ten years, but such term may, on the recommendation of the Board, be extended by the Minister for such period as the Board may recommend.
- (3) A lease may only be granted under this section to the holder of a lease under section 21.

- (4) An application for a lease under this section shall be made to the Board in the manner and in or to the effect of the prescribed form.
- (5) The Board shall report to the Minister as to whether there is any objection in the public interest or otherwise to the granting of the application either as to the whole or any part of the land the subject of the application and generally as to the merits thereof. If the Board deems it expedient to recommend the granting of the application either as to the whole or any part of the land the subject of the application it shall also report as to what conditions (if any) should attach to the lease and shall proceed to determine the rent of the land.
- (6) After receipt of such report the Minister may grant a lease either as to the whole or any part of the land the subject of the application if the Board so recommends, or the Minister may at his or her discretion refuse the application.
- (7) The Minister may annex to any such lease such conditions reservations and provisions as the Minister may think fit. Any such condition reservation or provision annexed to such lease or the purpose for which the lease has been granted may on application by the lessee in the prescribed manner and on the recommendation of the Board be varied modified or revoked by the Minister.
- (8) The Minister may, on the recommendation of the Board, withdraw from any lease under this section any land required for home sites or public purposes.
- (9) A lessee from whose lease land has been withdrawn under subsection (8) is entitled to compensation, as determined by the Valuer-General, for the loss of that land from the lease and for the loss of the improvements on that land.
- (10) The compensation payable under subsection (9), in so far as it relates to the loss of land, is to be calculated having regard to the unexpired period of the lease or, if the unexpired portion of the lease is less than 5 years, as if the unexpired portion of the lease were 5 years.
- (11) Without limiting any other ground on which the Minister may refuse to renew a lease under this section, the Minister may, on the recommendation of the Board, refuse to renew such a lease if the land concerned is required for home sites or public purposes.
- (12) A lessee in respect of whose lease the Minister:
  - (a) has refused to grant a renewal, and
  - (b) has notified the lessee that the reason for the refusal is that the land concerned is required for home sites or public purposes,is entitled to compensation, as determined by the Valuer-General, for the loss of his or her expectation that the lease would be renewed.

- (13) The compensation payable under subsection (12) is to be calculated on the basis that the period for which the lease would have been renewed, but for the refusal, would have been 5 years.
- (14) The regulations may make provision, not inconsistent with subsection (13), for or with respect to the making and notification of determinations under subsections (9) and (12).
- (15) A person who is dissatisfied with the Valuer-General's determination of compensation under subsection (9) or (12) may appeal to the Land and Environment Court against the determination.
- (16) An appeal under subsection (15) must be lodged within 90 days after notice of the determination is served on the person concerned.

## **22A Surrenders**

- (1) The holder of a lease under this Act may lodge in the prescribed manner an instrument of surrender, in or to the effect of the prescribed form, as to the whole or a part of the land comprised in the lease.
- (2) Subject to paragraph (c) of subsection (4A) of section 23, the surrender shall take effect on the day of its acceptance by the Minister, on the recommendation of the Board.
- (3) The Board may determine, demand and recover the costs, including costs of any necessary survey, in connection with the surrender.

## **22B Annual rents**

- (1) Subject to the regulations, the annual rent for a lease granted under section 21 or 22 is to be as determined from time to time by the Board.
- (2) A new determination under this section with respect to a lease the subject of an existing determination takes effect:
  - (a) on the third anniversary of the date on which the existing determination took effect, or
  - (b) on such later date as may be specified in the new determination.
- (3) Subsection (2) (b) does not permit a determination to specify a date that is earlier than the date on which the determination is made.
- (4) The annual rent for a lease is payable in advance.

## **23 Transfers and subleases**

- (1)

- (a) A lease under this Part may be transferred in the prescribed form and manner as to the whole or a part of the land comprised in the lease or may be sublet at any time, but the consideration for the transfer shall not exceed the fair market value of the interest of the transferor in the unimproved land the subject of the lease, the fair market value of the improvements on the land at the commencement of the lease and of any improvements subsequently effected thereon with the approval of the Board and, in the case only of a lease of land used for commercial purposes, a sum for the goodwill of the business conducted thereon, being goodwill transferred to the transferee in connection with the transfer of the lease or accruing to the transferee in consequence thereof. Such fair market values and, as the case may require, such sum for goodwill shall be as determined by the Valuer-General.
- (b) Notwithstanding anything in paragraph (a), a lease shall not be transferred, by way of mortgage or discharge of mortgage, as to part only of the land comprised in the lease.
- (1A) A lease may be transferred or subleased to 2 or more persons as joint tenants or tenants in common but, for the purposes of any transfer or sublease to 2 or more persons who are not all Islanders, a reference in this Part (however expressed) to a person other than an Islander applies in respect of each transferee or sublessee who is not an Islander.
- (2) Application for consent to transfer, except:
- (a) by way of discharge of mortgage, or
- (b) to the Board by way of mortgage as security for an advance under section 12A,
- or to sublet a lease under this Act shall be made in the prescribed form and manner, and such transfer or subletting shall not be effected, or if effected shall not be valid, unless the consent thereto of the Minister and, in the case of a transfer (not being a transfer by way of mortgage) or subletting to a person other than an Islander, the approval of the Governor, has been obtained.
- (3) The Minister may consent to the transfer (not being a transfer referred to in paragraph (a) or (b) of subsection (2)) or subletting if the Board so recommends, or the Minister may at his or her discretion refuse consent.
- (4) The Board shall have an absolute discretion to recommend the granting or refusal of any application for consent under this section, but shall not recommend the granting of consent to a transfer or subletting to any person other than an Islander unless satisfied that there is no Islander who desires and is in a position to take a transfer or sublease, as the case may be, of the lease.
- (4A)

- (a) Where, in the case of an application for consent to transfer a lease as to the whole of the land comprised in the lease to a person other than an Islander, the Board is prepared to recommend, in accordance with subsection (4), the granting of the application but as to part only of the land so comprised, the Board may, by notice served on the applicant, state that it is prepared so to recommend if the applicant within three months lodges with the Board an instrument of surrender of such part of the land comprised in the lease as is specified in the notice, being the part as to which the Board is not prepared so to recommend.
- (b) If the applicant within three months lodges with the Board such an instrument of surrender the application may be dealt with as if the applicant had originally applied for consent to the transfer as to the land that would be comprised in the lease after the surrender takes effect.
- (c) An instrument of surrender pursuant to this subsection shall not take effect until the day upon which the transfer takes effect.

(4B)

- (a) Where, in accordance with this section, a lease (in this subsection referred to as **the original lease**) is transferred to any person as to part only of the land comprised in the original lease, and the residue of the land comprised in the original lease is retained by the transferor:
  - (i) where the original lease was a lease under section 21, separate leases in or to the effect of the prescribed form shall be issued in respect of the part so transferred and the residue so retained, and the original lease shall be delivered up for cancellation,
  - (ii) where the original lease was a lease under section 22, the lease of the part so transferred and the residue so retained shall be each held for the balance of the term for which the original lease was held before the transfer,
  - (iii) the lease of the part so transferred and the residue so retained shall, as from the transfer, be each held in all respects as a separate lease, but shall, subject to subsection (8) of section 21, or subsection (7) of section 22, as the case may require, and to section 25, be subject to such conditions, reservations or provisions as applied in respect of the original lease immediately before the transfer, and
  - (iv) the Board may determine, demand and recover from the transferor the costs of any necessary survey in connection with the transfer.
- (b) The Minister on the recommendation of the Board may, when giving consent to an application to transfer a lease as to part of the land comprised in the lease, exclude from any of the lands comprised in the original lease any areas required

for providing roads of access to the part so transferred or the residue so retained or both.

Any such exclusion shall not take effect until the day on which the transfer takes effect, on which day the areas so excluded shall be deemed to have been surrendered.

- (5) If any lease under this Act is mortgaged and the mortgagee enters into possession of the same under his or her mortgage, the mortgagee may hold the same for such period as the Minister on the recommendation of the Board may permit.

But the mortgagee shall not, notwithstanding the terms of his or her mortgage, so enter into possession of the mortgaged land more than once, except by permission of the Minister on the recommendation of the Board; such mortgagee shall not foreclose the mortgage except with the consent of the Minister on the recommendation of the Board. Such consent shall be applied for and may be given or refused, as in the case of a transfer.

- (6) Such mortgagee shall not transfer the lease except in accordance with this section or by way of discharge of mortgage.
- (7) If within such period the mortgagee does not obtain the consent of the Minister to a foreclosure, or does not transfer the lease in accordance with this section, the same shall be liable to forfeiture, and on notification by the Minister in the Gazette may be forfeited, and thereupon shall revert to the Crown.

- (7A) Where the Board is the mortgagee of any lease under this Act, the provisions of subsections (2), (3), (4), (5), (6) and (7) shall not have effect in respect of the lease mortgaged, and the following provisions shall have effect:

- (a) If the Board as mortgagee enters into possession of the lease under the mortgage, the Board shall not foreclose the mortgage except with the consent of the Minister.
- (b) The Board as mortgagee:
- (i) shall not transfer the lease except with the consent of the Minister or by way of discharge of mortgage, or sublet the lease except with that consent, and
  - (ii) shall not apply for consent to transfer or sublet to any person other than an Islander unless satisfied that there is no Islander residing on the Island who desires and is in a position to take a transfer or sublease, as the case may be, of the lease.
- (c) Such transfer or subletting shall not be effected, or if effected shall not be valid, unless the consent thereto of the Minister and, in the case of a transfer (not being a transfer by way of mortgage) or subletting to a person other than an Islander, the approval of the Governor, has been obtained.

- (d) Where the Board as mortgagee applies for consent under this subsection, the Minister may give consent, or the Minister may at his or her discretion refuse consent.
- (8) A foreclosure or transfer in contravention of this section shall be void and any agreement or contract for the sale of such lease made without the permission of the Minister shall render such lease liable to forfeiture if such agreement or contract be not submitted for the approval of the Minister within three months from the date of execution thereof.
- (9) The fact that the mortgagee or some person by his or her 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.
- (10)
- (a) If a lease under this Act devolves under a will or intestacy upon any person, such person may hold the lease for such period after the death of the testator or intestate as the Minister on the recommendation of the Board may permit.
- (b) Within any such period such person may, upon application and upon the recommendation of the Board obtain a certificate from the Minister that the person is entitled to hold the lease; or such person may, subject to this section, sell and transfer the lease.
- (c) If by the provisions of the will or by law, such person has power to sell the lease, 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 lease 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.
- (d) If such person does not within any such period obtain the certificate of the Minister as aforesaid, nor transfer the lease as aforesaid, the same together with any moneys paid to the Crown in respect thereof shall be liable to forfeiture.
- (11) Where, under the will, or upon the intestacy, of a lineal ancestor, a lease under section 21 devolves beneficially upon a person who is not an Islander, that person shall, for the purposes of subsections (2), (4), (4A) and (7A) and of section 25, be deemed to be an Islander if application is, not later than the expiration of the period of 2 years, or such longer period as the Minister may in a particular case approve, that next succeeds the death of the lessee, made for his or her registration as holder of the lease.
- (12) Where, under the will, or upon the intestacy, of a lineal ancestor a lease under section 21 devolves beneficially upon an Islander who is already a lessee under that

section, the Minister may, on the recommendation of the Board, by order suspend the condition of residence to which the lease is subject for such period, and subject to such conditions as to the transfer of the lease to a child or children of the beneficiary, and such other conditions, as the Minister thinks fit.

- (13) Where a child to whom a condition under subsection (12) as to a transfer to the child of a lease relates is not an Islander at the time for compliance with the condition the child shall, for the purpose of compliance with the condition, be deemed to be an Islander if application is made for consent to a transfer to the child, but registration of such a transfer shall be refused if it is lodged for registration after the expiration of the period of 6 months that next succeeds the expiration of the period for which the condition of residence was suspended under subsection (12).

### **23A 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.

### **24 Appeal to Land and Environment Court**

Any determination or redetermination by the Board of rent or of fair market values or of sum for goodwill under section 22B, 23 or 25 may be the subject of an appeal or reference by a person aggrieved or by the Minister to the Land and Environment Court and that Court shall have jurisdiction to hear and determine any such appeal or reference.

An appeal is to be made within the time prescribed and in accordance with the rules of that Court.

Any such reference shall be made within the time prescribed and in accordance with the rules of that Court.

## **Division 3 Redetermination of rent upon transfer of a lease to a person other than an Islander**

### **25 Redetermination of rent upon certain transfers**

- (1) Upon the transfer of a lease under this Act to any person other than an Islander the rent of such lease shall be as redetermined by the Board.
- (2) Such redetermination shall be made as at the date of such transfer.



- (3) The rent as so redetermined shall operate in respect of the lease on and from the date on which the annual rent is next payable after the transfer.
- (4) Where the lease is a lease in perpetuity under section 21 the rent as so determined shall remain in force for a period of 3 years. Subsequent determinations shall be made at intervals of 3 years and each such determination shall be made as at the date of expiration of the period of the last preceding determination and shall remain in force for a period of 3 years from that date: Provided that if at any time the lease is transferred to an Islander the annual rent shall, subject to the regulations, be redetermined by the Board with effect on and from the date on which the annual rent is next payable after the transfer until the expiration of the period of the last preceding determination.

## **Division 4 Deferring or waiver of rent**

### **26 Rent may be deferred or waived**

Upon application the Minister, upon the recommendation of the Board, may defer or waive the payment of any rent due or to become due under any lease. Any such deferment or waiver shall be subject to such terms and conditions as the Minister may upon a like recommendation impose.

## **Division 5 Forfeiture of leases**

### **27 Forfeiture**

- (1) Every lease under this Act shall be liable to be forfeited if any rent be not paid as required by this Act or upon breach of any condition annexed to the lease by or under this Act, or if it should appear to the satisfaction of the Minister after report by the Board that the land comprised in the lease is not used and occupied bona fide for the purpose for which the lease was granted, or where in pursuance of any other provision of this Act the lease becomes liable to forfeiture.
- (2) Whenever in pursuance of the provisions of this Act a lease becomes liable to be forfeited, such forfeiture may be declared by the Minister by notification in the Gazette.
- (3) No forfeiture of any lease under this Act shall take effect until the expiration of thirty clear days after notification of such forfeiture in the Gazette.
- (4) The forfeiture of a lease under section 21 shall operate as a forfeiture of any lease under section 22 held by the same lessee in the same interest.
- (5) The acceptance by or on behalf of the Crown of any rent or other payment in respect of a lease under this Act shall not be held to operate as a waiver by the Crown of any forfeiture accruing by reason of the breach of any condition annexed by or under this Act to the lease.

- (6) In any case in which it appears to the Minister after report by the Board that there are good and sufficient reasons for the waiver of any forfeiture, the Minister may, notwithstanding anything contained in the conditions annexed to the lease by or under this Act, declare that such forfeiture is waived either absolutely or subject to the compliance with such conditions as aforesaid within such time or extension thereof as the Minister may see fit to determine; or upon such other conditions to be attached to the lease, as the Minister may, after the Board has made a recommendation in the matter, see fit to impose; and the forfeiture shall thereupon be waived accordingly.
- (7) Subject to the following provisions of this subsection, the Minister, on the recommendation of the Board, shall have power to reverse whether provisionally or otherwise, any forfeiture declared under this section:
- (a) A provisional reversal of a forfeiture shall suspend the operation of the forfeiture, as from the date when such forfeiture shall have been declared. In any case, where such provisional reversal shall afterwards be revoked, such revocation shall have the same effect as if the provisional reversal so revoked had never been made.
- (b) Any absolute reversal of a forfeiture shall relate back to the date when forfeiture shall have been declared, and shall have the same effect as if the forfeiture so reversed had never been declared.
- (c) Any reversal of a forfeiture shall, as soon as practicable, be notified in the Gazette; but the date of such reversal shall be the date of the approval thereof of the Minister.

## Division 6 Improvements

### 28 Definitions of “improvements” and “capital value”

For the purpose of the provisions in this Division contained:

The expression **improvements** shall mean improvements of a permanent fixed and substantial character, and necessary for the profitable occupation of the land, and fencing—where of the description aforesaid—shall be deemed to be an improvement common to the land on either side of such fencing, and

The expression **capital value of improvements** shall mean their capital value determined so as to be:

- (a) their value at the date of the 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.
- (d) (Repealed)

## **29 Payment for improvements etc**

- (1) Where Crown lands containing improvements which are the subject of tenant-right become the subject of a lease under this Act the incoming tenant shall pay the capital value of such improvements to the person having tenant-right therein.
- (2) The amount of the capital value payable by an incoming tenant shall be as determined by the Board: Provided that where the incoming tenant has agreed with the person having tenant-right in the improvements as to payment for such improvements, no determination by the Board shall be necessary.
- (3) Where the incoming tenant has agreed with the person having tenant-right in the improvements as to payment for such improvements, such payment shall be made within the time and in accordance with the terms agreed upon.
- (4) Where the incoming tenant has not agreed with the person having tenant-right in the improvements as to payment for such improvements, such payment shall be made within three months after the determination of the Board (in which case no interest shall be charged) or at the option of the incoming tenant by not more than four equal yearly instalments, together with interest at the rate of four per centum per annum.

## **30 Tenant-right in improvements**

- (1) Upon the expiration by effluxion of time of the term of a lease under section 22 the last holder shall have tenant-right in improvements which at the date of commencement of the lease were upon the land theretofore held under the expired lease and in improvements subsequently effected on such land with the approval of the Board.
- (2) Upon the forfeiture of any lease under this Act, the Minister, on the recommendation of the Board, may by notification in the Gazette grant to the last holder thereof tenant-right in improvements which were on the land at the date of commencement of the lease and in improvements subsequently effected on such land with the approval of the Board.
- (3) Where, under this section, a person has tenant-right in improvements, such tenant-right shall accrue upon the determination of the lease and shall entitle the person in whom for the time being the tenant-right is vested to receive the capital value of the improvements from any persons who take leases of the land containing the improvements, and the following provisions as to tenant-right shall apply in all cases:
  - (a) the improvements shall be the property of the person claiming to have tenant-right in respect thereof,
  - (b) the capital value of the improvements, or so much thereof as for the time being remains unpaid, shall be and remain a charge upon the land containing such improvements while in the hands of the lessee, until payment thereof,

- (c) the holder of the lease of the land containing the improvements shall be liable to pay any instalments of the capital value thereof which shall accrue during his or her holding, and
- (d) the tenant-right shall lapse after the expiration of twelve years from the date of its first accruing, and thereafter the improvements shall be the property of the Crown, but such lapsing shall not affect any agreement, determination or order for payment previously made.

### **31 Right to payment for improvements not to be lost by subsequent forfeiture of the land**

Where a lessee of land containing improvements which are the subject of tenant-right under this Act pays to the person having tenant-right part of the capital value of the improvements, and the lease becomes forfeited, such share of the capital value of the improvements as is represented by the amount paid up to the time of the forfeiture, shall (subject to this Act) vest in the Crown, and the remaining share of the improvements, or in the case of no such payments having been made, then the whole of the improvements shall continue to belong to the person having tenant-right, and shall be subject to tenant-right as defined by this Act: Provided that if after the forfeiture the land becomes the subject of a lease under this Act, a determination or redetermination, as the case may be, shall thereupon be made of such share of the capital value of the improvements as is vested in the person having tenant-right.

## **Division 6A Permissive occupancies**

### **31A Permissive occupancies**

- (1) The Minister on the recommendation of the Board may grant permissions to occupy vacant Crown lands or Crown lands the subject of a reservation under this Act, whether above or below or beyond high water mark, for such purposes and upon such terms and conditions as the Minister may impose on the recommendation of the Board.
- (2) A permission to occupy such Crown lands or a permissive occupancy of Crown lands granted or purporting to have been granted before the commencement of the *Lord Howe Island (Amendment) Act 1967*, and whether or not a tenancy was created or purported to have been created thereby, shall be deemed to have been validly granted and to have and always to have had force and effect subject to the terms and conditions thereof.
- (3) A permission to occupy Crown lands or a permissive occupancy of Crown lands referred to in subsection (2) or a permission to occupy Crown lands granted under subsection (1) shall be terminable at will by the Minister on the recommendation of the Board.

## **Division 7 Trespass on Crown lands or dedicated lands**

### **32 Trespass on Crown lands or dedicated lands**

(1) Any person who shall be found occupying or using any vacant Crown land or land reserved or dedicated for any public purpose under this Act, either by:

- (a) dwelling thereon—or
- (b) erecting any building or other structure thereon—or
- (c) clearing digging up enclosing or cultivating any part thereof—or
- (d) depasturing stock thereon—or

who shall cause to be cut or removed any timber or products thereon—or obtain or cause to be obtained any stone clay shells earth gravel or similar material therefrom—or who shall remove or cause to be stripped or removed the bark of any tree thereon—or ringbark or otherwise destroy any tree thereon—without lawful authority shall be liable on conviction to a penalty not exceeding 50 penalty units.

(2) Any person duly authorised by the Board in that behalf may impound any stock trespassing on such lands, and may recover damages for damage caused by the stock trespassing.

(3) Any person duly authorised by the Board in that behalf may dispossess and remove any person from any Crown lands in respect of which such lastmentioned person is in illegal occupation or use and require such lastmentioned person to demolish any building or structure erected thereon and remove the materials thereof to some convenient place within the time specified in such requirement.

If within the time so specified such lastmentioned person fails to comply with such requirement the person duly authorised by the Board as aforesaid may do all such acts matters and things as such lastmentioned person was required to do, and the expenses of doing such acts, matters and things shall be borne by and may be recovered as a debt from such lastmentioned person by the Board in any court of competent jurisdiction.

## **Division 8 Timber**

### **33 Timber to be property of Crown**

(1) All timber on the Island shall remain the property of the Crown notwithstanding that the land on which the timber is growing becomes the subject of a lease or reservation or dedication under this Act.

(2) No person shall remove, cut, ringbark or otherwise destroy any such timber as is growing on land which becomes the subject of any lease under this Act, unless, being

the holder of the lease, the person is authorised to do so by the Board or by the conditions of the lease.

A person who contravenes the provisions of this subsection shall be liable on conviction to a penalty not exceeding 50 penalty units.

## **Part 5 General**

### **34 Lord Howe Island Account**

- (1) There shall be established and kept in the Treasury an account in special deposits account to be called the "Lord Howe Island Account".

Subject to section 34A, there shall be paid to the credit of the Lord Howe Island Account:

- (a) (Repealed)
- (b) all moneys received by way of rent, licences, fees, dues or charges prescribed by or under this Act or the regulations,
- (c) all other moneys received by the Board in the conduct of the affairs of the Island,
- (d) all other moneys paid into the Lord Howe Island Account under the authority of this or any other Act.

- (2) Subject to section 34A, there shall be paid out of the Lord Howe Island Account:

- (a) (Repealed)
- (b) all administrative and other expenses incurred in giving effect to any of the provisions of this Act or the regulations,
- (c) all payments authorised by this or any other Act to be paid thereout.

### **34A Lord Howe Island Mortgages Account**

- (1) There shall be established and kept in the Treasury an account in special deposits account to be called the "Lord Howe Island Mortgages Account".

There shall be paid to the credit of the Lord Howe Island Mortgages Account:

- (a) all moneys made available to the Board by the Treasurer for advances under section 12A,
- (b) all moneys received by way of repayments of those advances and interest thereon.

- (2) There shall be paid out of the Lord Howe Island Mortgages Account:

- (a) all moneys advanced under section 12A,

- (b) such moneys as are required by the Treasurer to be repaid to the Treasurer from time to time.

### **35 Financial year**

(1)-(7) (Repealed)

(8) The financial year of the Board is the year ending on 30th June.

### **36 (Repealed)**

#### **36A Annual report**

- (1) The Board shall, as soon as practicable but not later than 6 months after the end of each financial year of the Board, prepare and submit to the Minister a report on the operations of the Board during that financial year.
- (2) The Board shall include in its report under this section particulars of any transfers or sublettings of leases under this Act to persons other than Islanders.
- (3) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after the receipt by the Minister of the report.

#### **36B-36H (Repealed)**

### **37 Validation**

Every act, matter or thing done by the Board of Control appointed by the Executive Council by a minute dated the fourth day of February, one thousand nine hundred and thirteen (whether during the tenure of office of the members thereof first appointed, or of any members appointed by any later minute of the Executive Council) bona fide in the exercise or performance or purported exercise or performance of the powers, authorities, duties and functions conferred or imposed upon them by any such minute is hereby validated.

#### **37A Proceedings for offences**

A penalty imposed by this Act or the regulations may be recovered in a summary manner before a Local Court.

#### **37B Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations

for the offence if dealt with under this section.

- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, **authorised officer** means a member of staff of the Board who is authorised by the Board to exercise powers, authorities, duties and functions under this section, and includes a police officer.

### **38 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of the power conferred by subsection (1), the Governor may make regulations:
  - (a) for or with respect to:
    - (i) any power, authority, duty or function conferred or imposed upon the Board by or under this Act,
    - (ia) the procedures to be followed by the Board at its meetings and in the conduct of its business,



- (ii) the introduction into the Island and the use and sale thereon of intoxicating liquor,
  - (iii) (Repealed)
  - (iv) the licensing, control and regulation of tourist accommodation and other commercial undertakings on the Island and the licensing of, and the terms and conditions to be observed by, persons associated with them,
  - (b) prescribing the forms of licences and of renewals and transfers of licences and of applications for the same,
  - (c) prescribing the fees to be paid for licences granted under this Act,
  - (c1) for or with respect to the making of applications under this Act,
  - (d) applying any or all of the provisions of the *Crown Lands Consolidation Act 1913* as amended by subsequent Acts, with such modifications and adaptations as may be necessary to matters arising under the provisions of Part 4,
  - (e) prohibiting the introduction of any species of fauna or flora to the Island or prescribing conditions in relation to the introduction of any species of fauna or flora,
  - (f) prohibiting the cutting or removal from any land on the Island of bush, timber, trees, flora or vegetative material or prescribing conditions under which such bush, timber, trees, flora or vegetative material may be cut or removed from any land on the Island,
  - (g) for or with respect to:
    - (i) the prohibition, regulation or control of the use of motor vehicles on the Island,
    - (ii) the prohibition, regulation or control of the removal from the Island of flora or fauna or coral or any other prescribed substance forming part of the Island,
    - (iii) prohibiting damage to, or the destruction of, flora or fauna or coral or any prescribed substance forming part of the Island, or
    - (iv) the destruction of plants declared by the regulations to be noxious, and
  - (h) (Repealed)
- (2A) Without prejudice to the generality of the power conferred by subsection (1), the Governor may make regulations, not inconsistent with this Act, that are applicable to or in relation to land the subject of a dedication in force under section 19A, being regulations for and with respect to:
- (a) the regulation of the use and enjoyment of the land,

- (b) the securing of order and decency on the land including the removal of trespassers from the land and the removal from the land of persons causing annoyance or inconvenience thereon,
- (c) the regulation, control or prohibition of the taking of animals on the land and public or other roads traversing the land and the permitting or suffering of animals to be on the land or any such roads,
- (d) the regulation, control or prohibition of mooring adjacent to, or parking or camping on, the land, the making of charges for any such mooring, parking or camping and the collection and receipt of those charges,
- (e) the preservation or protection of, or prevention of damage to, trees, shrubs, ferns, creepers, vines, palms, plants, flowers, herbage or other vegetative cover on the land,
- (f) the conditions under which trees or timber may be cut or removed from the land and the amount and payment of royalties, fees and charges in respect thereof,
- (g) the preservation or protection of any rocks, soil, sand, stone or other similar substance on or comprising part of the land, or the removal of any such substance from the land and the amount and payment of royalties, fees and charges in respect thereof,
- (h) the preservation or protection of any animal or bird, within the meaning of the *National Parks and Wildlife Act 1974*, on the land,
- (i) the preservation or protection of, or prevention of damage to, any relic within the meaning of the *National Parks and Wildlife Act 1974*, that is on the land,
- (j) the regulation, control or prohibition of the use on the land of any such relic for commercial purposes,
- (k) the making of charges or payment of entrance fees for persons, clubs or associations or for vehicles using or entering the land or any specified part of the land or any public or other road traversing or bounding the land or such a part thereof, and the collection, receipt or waiver of those charges or fees,
- (l) the reservation of a part of the land for such separate or exclusive use as is prescribed by the regulations,
- (m) the regulation, control or prohibition of the entry of any person or class of persons on the land or a specified part thereof and the conditions to be observed with regard thereto,
- (n) the use of roads, tracks, trails and other ways on the land and the circumstances under which they shall be open or may be closed to public traffic or use,

- (o) the powers and duties of any officer of the Board in relation to the land,
  - (p) the regulation or prohibition of the use of vehicles on the land, the conditions under which they may be used on the land and the regulation of the speed of any vehicle permitted on the land,
  - (q) the protection of signs and other management facilities placed on the land in accordance with the plan of management,
  - (r) the regulation, control or prohibition of exotic plants on the land,
  - (s) the collection of scientific specimens, the preservation or protection of marine life (other than fish within the meaning of the *Fisheries Management Act 1994*) and the pursuit of research on the land,
  - (t) the regulation, control or prohibition of the use of firearms or other weapons on the land and the carrying of firearms or other weapons while on the land,
  - (u) the management and maintenance of pounds on the land,
  - (v) the procedure for the impounding of animals on the land and for their subsequent disposal, sale or destruction,
  - (w) the damage fees, driving charges, sustenance charges, deterrent fees and pound fees chargeable in respect of the impounding of animals on the land, and
  - (x) the fees chargeable in respect of the sale or offering for sale and in respect of the destruction of animals impounded on the land.
- (3) The regulations may provide for the payment of a charge by tourists to the Island. Such charge shall be at such rate as may be prescribed. The regulations may make provisions for and with respect to the levying and collection of the charge by persons for and on behalf of the Board and the remission of the proceeds to the Board.
- (4)
- (a) The regulations may authorise or require the Board to exercise and discharge such powers, authorities, duties and functions as may be specified therein.
  - (b) Regulations under this subsection (b) may adopt any of the provisions of the *Local Government Act 1993*, or the regulations made under that Act, with such modifications and adaptations as the Governor deems necessary or desirable.
- (4A) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person, body or committee,

or may do any combination of those things.

(5) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

(6) (Repealed)

### **39 Savings and transitional provisions**

Schedule 2 has effect.

### **40 Review of Act**

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Lord Howe Island Amendment Act 2004*.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1**

(Section 19A)

### **Part 1**

All that piece or parcel of land situated at Lord Howe Island: Commencing at the easternmost corner of Portion 117 and bounded thence by part of the southeastern boundary of that portion to the northernmost corner of Portion 119; thence generally by the eastern boundaries and part of the southeastern boundary of the said Portion 119 to the northernmost corner of Portion 124; thence by the northeastern boundaries of Portions 124, 123 and 131 to the easternmost corner of the said Portion 131; thence by the southeastern boundary of Portion 131 and its prolongation southwesterly to the southernmost corner of Portion 129; thence by the generally southeastern boundaries of Portion 128 to the southernmost corner of the said Portion 128; thence by part of the southernmost southwestern boundary of the said Portion 128 to a point east of and distant 50 metres from mean high water mark of the South Pacific Ocean; thence by a line 50 metres east of and parallel to that mean high water mark and extending southwesterly for a distance of about 1 400 metres; thence by a line westerly 50 metres to the mean high water mark; thence by that mean high water mark generally southwesterly, northeasterly and northwesterly around all the bays and headlands including King Point, Red Point, Sugarloaf Point, Cut Grass Point, East Point, Edmanoch Point (Boat Harbour Point), Rocky Point and Mutton Bird Point to a point on the mean high water mark of Ross or Blinkenthorpe Bay due east of the aforesaid easternmost corner of Portion 117, thence by a line extending westerly to the point of commencement.

## Part 2

All that piece or parcel of land situated at Lord Howe Island: Commencing at the southernmost corner of Portion 74 and bounded thence by the generally northwestern boundaries and the northernmost northeastern boundary of the said Portion 74; thence by northeastern and northwestern boundaries of Portion 73 to the northernmost corner of the said Portion 73; thence by the northern end of road separating Portion 73 from Portion 66; thence by generally southwestern, northeastern and northwestern boundaries of the said Portion 66 to the most easterly northern corner of Portion 66; thence by the northeasterly prolongation of the easternmost northwestern boundary of the said Portion 66 to the mean high water mark of the South Pacific Ocean at Neds Beach; thence by that mean high water mark generally northerly, westerly, southerly and easterly around all the bays and headlands including Old Gulch, Phillip Bluff (Fishy Point), New Gulch, Phillip Point (North Head), North Bay, Dawsons Point and part Hunter Bay to a point at the western end of Old Settlement Beach; thence by a line being the southeasterly prolongation of the southernmost southwestern boundary of Portion 74 extending northwesterly to the point of commencement.

## Part 3

All those pieces or parcels of land situated at Lord Howe Island being the following named islands: Flat Rock, North Rock, Tenth of June, Roach Island, South Island, Sugarloaf, Noddy, Soldiers Cap, Blackburn Island, Gower Island, Sail Rock, Mutton Bird Island and unnamed island north of the most northerly point of Lord Howe Island lying between that point and Soldiers Cap.

## Part 4

All those pieces or parcels of land situate at the islands known as Ball's Pyramid, Wheatsheaf Island, Observatory Rock, South-East Rock and the unnamed islands in the vicinity thereof.

## Schedule 1A Provisions relating to members and procedure of Board

(Section 4 (7))

### Part 1 General

#### 1 Definitions

In this Schedule:

**appointed member** means a member referred to in section 4 (3) (b), (c) or (d).

**Chairperson** means the Chairperson of the Board.

**Deputy Chairperson** means the Deputy Chairperson of the Board.

**elected member** means a member referred to in section 4 (3) (a).

**member** means any member of the Board.

## **Part 2 Members**

### **2 Chairperson of Board**

- (1) The Minister may, from time to time, appoint one of the members to be the Chairperson of the Board.
- (2) Subject to this Schedule, the Chairperson holds office as such during his or her current term of office as a member.
- (3) The Chairperson of the Board is taken to have vacated office as Chairperson if the person:
  - (a) resigns that office by instrument in writing addressed to the Minister, or
  - (b) ceases to be a member of the Board, or
  - (c) is removed from that office by the Minister under subclause (4).
- (4) The Minister may remove the Chairperson from office as Chairperson of the Board.

### **3 Deputy Chairperson**

- (1) The Board is to appoint one of its members (not being the Chairperson) to be Deputy Chairperson of the Board.
- (2) Subject to this Schedule, the Deputy Chairperson holds office for one year from the date on which he or she takes office.
- (3) The Deputy Chairperson is taken to have vacated office as Deputy Chairperson if the person:
  - (a) resigns that office by instrument in writing addressed to the Board, or
  - (b) ceases to be a member of the Board, or
  - (c) is removed from that office by the Board under subclause (4).
- (4) The Board may remove the Deputy Chairperson from office as Deputy Chairperson of the Board.

### **4 Terms of office**

- (1) Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) Subject to this Schedule, an elected member holds office until his or her successor is appointed but is eligible (if otherwise qualified) for re-appointment.

## 5 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## 6 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) in the case of an elected member, ceases to be an Islander, or
  - (e) in the case of an appointed member, becomes an Islander, or
  - (f) in the case of the appointed member referred to in section 4 (3) (d), ceases to be an officer of the Department of Environment and Conservation, or
  - (g) is removed from office by the Minister under this clause, or
  - (h) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (j) becomes a mentally incapacitated person, or
  - (k) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove or suspend an elected member in respect of whom a report under section 74C of the *Independent Commission Against Corruption Act 1988* recommends that consideration be given to the member's suspension from office with a view to his or her dismissal for serious corrupt conduct (as defined in section 124A (11) of the *Environmental Planning and Assessment Act 1979*).
- (3) The Minister may remove an appointed member from office at any time for any or no reason and without notice.
- (4) While an elected member is suspended under subsection (2), the member does not

have, and may not exercise, any of the functions of a member.

#### **7 Filling of vacancy in office of member**

- (1) If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) If the office of an elected member becomes vacant, a person is to be appointed to fill the vacancy following an election referred to in section 9A (c).
- (3) Despite subclause (2), if less than 6 months remains before the next election is due under section 9A (b), the Minister is to fill the vacancy in the office of an elected member by appointing to the office such Islander as the Minister considers appropriate.
- (4) A member who is appointed to office under this clause holds office for the unexpired portion of his or her predecessor's term of office.

#### **8 Disclosure of pecuniary and other conflicts of interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest, or any other interest, in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and that is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a register of interests kept for the purpose and that register must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.



- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest, or any other interest, in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.
- (8) If a meeting of the Board cannot be held for the purpose of making a decision or determination under this Act because, as a result of the operation of subclause (4), the Board is without a quorum, the decision or determination is to be made instead by the Minister after consultation with such Islanders as he or she considers appropriate.
- (9) If a meeting of the Board cannot be held for the purpose of making a recommendation to the Minister with respect to a decision or determination to be made by the Minister under this Act because, as a result of the operation of subclause (4), the Board is without a quorum, the Minister may make the decision or determination, after consultation with such Islanders as he or she considers appropriate, without the need for such a recommendation.
- (10) Immediately after it becomes apparent to the Chairperson that a meeting of the Board cannot be held as referred to in subclause (8) or (9), the Chairperson must cause notice of that fact to be given to the Minister.

## **9 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

- (3) The office of a member is, for the purposes of any Act, taken not to be an office or place of profit under the Crown.

#### **10 No compensation for removal from office or failure to re-appoint**

A member who is removed from office or not re-appointed at the end of his or her term of office is not entitled to be paid any compensation by reason of ceasing to hold office.

### **Part 3 Procedure**

#### **11 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

#### **12 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being.

#### **13 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both, another member elected as chairperson for that meeting by the members present) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **14 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

#### **15 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1), or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **Schedule 2 Savings and transitional provisions**

(Section 39)

### **Part 1 Preliminary**

#### **1A Savings and transitional regulations**

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

*Lord Howe Island Amendment Act 2004*

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

(3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

### **Part 2 Provisions consequent on enactment of [Lord Howe Island \(Amendment\) Act 1981](#)**

#### **1 Provision consequent on enactment of [Lord Howe Island \(Amendment\) Act 1981](#)**

(1) If, before 1 January 1982, a lease under section 21 devolved beneficially under the will, or on the intestacy, of a lineal ancestor on an Islander who was already a lessee

under that section and the Minister, otherwise than pursuant to section 21 (7), suspended, or purported to suspend, the condition of residence applicable to the lease:

- (a) the suspension is taken to have been effected, and the conditions to which the suspension was made subject are taken to have been imposed, by order made by the Minister, and
- (b) the suspension and conditions have, and are taken always to have had, the same effect as they would have had if section 23 (12), as amended by the amending Act, had been in force at the time of the suspension.

(2) This clause is taken to have commenced on 1 January 1982 (the date of commencement of the amending Act).

(3) Subclause (1) re-enacts (with minor modifications) clause 10 of Schedule 8 to the amending Act. Subclause (1) is a transferred provision to which section 30A of the [Interpretation Act 1987](#) applies.

(4) In this clause:

**amending Act** means the [Lord Howe Island \(Amendment\) Act 1981](#).

### **Part 3 Provisions consequent on enactment of [Lord Howe Island Amendment Act 2004](#)**

#### **2 Definition**

In this Part:

**2004 amending Act** means the [Lord Howe Island Amendment Act 2004](#).

#### **3 Revocation of lease conditions with respect to *Kentia* palms**

The Minister may, without the need for any application by the lessee, revoke any condition of a lease that has the effect of reserving to the Crown any palm trees or palm tree products.

#### **4 Constitution of Board**

(1) The substitution of section 4 by the 2004 amending Act does not affect:

- (a) the existence or identity of the Board, or
- (b) the office of any member of the Board who held office as such immediately before the substitution of that section.

(2) In particular:

- (a) the 3 elected members referred to in former section 4 (3) (a) are taken to hold 3 of

- the positions referred to in new section 4 (3) (a), and
- (b) the member referred to in former section 4 (3) (b) is taken to be the member referred to in new section 4 (3) (d), and
  - (c) the member referred to in former section 4 (3) (c) is taken to be the member referred to in new section 4 (3) (c), and
  - (d) the chairperson referred to in former section 4 (3A) is taken to hold office as Chairperson under clause 2 of Schedule 1A, and
  - (e) each of the persons holding office pursuant to this subclause continue in office, subject to Schedule 1A, for the residue of the terms for which they were appointed under former section 4.
- (3) The Minister is to fill the vacancy in new section 4 (3) (b) (arising from the increase in number of Board members) in accordance with Part 2 of Schedule 1A.
- (4) The Minister is to fill the new vacancy for an elected member referred to in new section 4 (3) (a) (arising from the increase in number of Board members) by appointing to that office:
- (a) from among the unsuccessful candidates at the most recent election under Division 3 of Part 2 who are still eligible for election and available for appointment, that candidate who had the most votes at that election, or
  - (b) if no such candidate is still eligible for election and available for appointment, such Islander as the Minister considers appropriate.

## **5 Determinations of rent**

A determination of annual rent under section 21A or 22, as in force immediately before the commencement of section 22B, is taken to be an existing determination for the purposes of section 22B.