

# Western Lands Act 1901 No 70

[1901-70]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### 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](#), Sch 1 [2] (not commenced)
- **See also**  
[Miscellaneous Acts \(Local Court\) Amendment Bill 2007](#)  
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2007](#)

### 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 is the *Western Lands Act 1901*.

### 2 Objects of Act

The objects of this Act are as follows:

- (a) to establish an appropriate system of land tenure for the Western Division,
- (b) to regulate the manner in which land in the Western Division may be dealt with,
- (c) to provide for the establishment of a formal access network, by means of roads and rights of way, in the Western Division,
- (d) to establish the rights and responsibilities of lessees and other persons with respect to the use of land in the Western Division,
- (e) to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development referred to in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
- (f) to promote the social, economic and environmental interests of the Western Division,
- (g) to make other provision for the effective integration of land administration and natural resource management in the Western Division.

### 2A Application of *Crown Lands Act 1989*

- (1) The provisions of the *Crown Lands Act 1989* specified in Schedule 2 (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 2.
- (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 3 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.

**Department** means the Department of Land and Water Conservation.

**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.

### **3B 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 practicable after the period of 5 years from the date of assent to the [Western Lands Amendment Act 2002](#).
- (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.

## **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 Disqualification from office**

Neither the Commissioner nor an Assistant Commissioner shall, directly or indirectly, be interested in any land (other than freehold 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**

The Commissioner may delegate to:

- (a) any officer of the Department, or
- (b) any public or local authority,

the exercise or performance of any of the Commissioner's powers, authorities, duties or functions, other than this power of delegation.

### **8B Western Lands Advisory Council**

- (1) There is to be a Western Lands Advisory Council.
- (2) The Western Lands Advisory Council is to have 14 members appointed by the Minister, and of whom:
  - (a) four are to be appointed to represent lessees in the Western Division:
    - (i) 2 being nominees of the Western Division Council of the NSW Farmers' Association, and
    - (ii) one being the nominee of The Pastoralists' Association of West Darling, and
    - (iii) one being a person who is independent of each of the associations referred to in subparagraphs (i) and (ii), and
  - (b) two are to be appointed to represent the interests of local councils, each being a nominee of the Western Division Group of the Shires Association of NSW, and
  - (c) two are to be appointed to represent the interests of Aboriginal people, of whom one is to be appointed on the nomination of the New South Wales Aboriginal Land Council, and
  - (d) one is to be appointed on the nomination of the Nature Conservation Council of

New South Wales to represent the interests of environment protection groups, and

- (e) one is to be appointed to represent the interests of catchment management boards, and
  - (f) one is to be appointed to represent the interests of the Minister for the Environment, and
  - (g) one is to be appointed to represent the interests of the Minister for Agriculture, and
  - (h) one is to be the Commissioner, and
  - (i) one is to be appointed as an independent chairperson for the Council.
- (3) Each of the members referred to in subsection (2) (a)-(e) must be a person who, in the Minister's opinion, has a current or recent connection with, or has a relevant interest in, the Western Division.
  - (4) If a candidate to represent the interests of any person or body is not duly nominated as referred to in subsection (2), the Minister may appoint any person to represent those interests without the need for nomination.
  - (5) The regulations may make provision with respect to qualifications for appointment as a member of the Western Lands Advisory Council.
  - (6) Schedule 5 has effect with respect to the constitution and procedure of the Western Lands Advisory Council.

### **8C Functions of Western Lands Advisory Council**

- (1) The principal functions of the Western Lands Advisory Council are as follows:
  - (a) to advise the Minister on matters relevant to the objects of this Act,
  - (b) to advise the Minister on matters affecting the administration of the Western Division,
  - (c) to consult with persons and bodies having an interest in any matter affecting the administration of the Western Division.
- (2) The Western Lands Advisory Council has such other functions as are conferred or imposed on it by or under this or any other Act or law.
- (3) For the purpose of exercising its functions, the Western Lands Advisory Council may consult with, and receive submissions from, other persons and bodies.

### **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.

(8) This section does not apply to matters arising under Part 6.

## **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 Sector Management Act 1988](#).

## **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**

The Minister may delegate to:

(a) any officer of the Department, or

(b) any public or local authority,

the exercise or performance of any of the Minister's powers, authorities, duties or functions, other than this power of delegation.



## **Parts 3, 4**

### **13-17D (Repealed)**

## **Part 5 Conditions of leases**

### **18 General conditions of lease**

Each lease must contain:

- (a) the covenants, reservations and exemptions set out in Schedule 1, or
- (b) such of those covenants, reservations and exemptions as the Minister considers applicable to the lease.

### **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 to bring, 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 Management Act 1989* or the *Rural Lands Protection Act 1998*:

- (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 Dealings in leased land**

- (1) Land held under a lease:
  - (a) in the case of land under the *Real Property Act 1900*, may not be transferred, and



(b) in the case of any other land, may not be conveyed,  
except with the consent of the Minister.

(2) A conveyance effected in contravention of subsection (1) (b) is void for all purposes.

(3) In the case of land:

(a) that has an area of not more than 4,050 square metres, and

(b) that is the subject of a lease for residential, business, motel, community or other such purposes,

the Minister may, by notice published in the Gazette, declare that consent to the transfer or conveyance of the land is not required under this section.

(4) If any land to which such a notice relates is land under the [Real Property Act 1900](#), the Registrar-General must make an appropriate recording in respect of that land in the Register kept under that Act.

(5) Subsections (1) and (2) do not apply to:

(a) any transfer of a sublease or mortgage, or

(b) any conveyance effected for the purpose of creating, assigning or extinguishing a sublease, mortgage or easement, or

(c) any land the subject of a notice referred to in subsection (3).

(6) The following provisions apply to the subleasing of land held under a lease (the **head lease**):

(a) the sublease must specify the purpose for which the land may be used under the sublease, being a purpose that is consistent with the purpose for which the land may be used under the head lease,

(b) the head lessee must notify the Commissioner of the granting of the sublease within 28 days after it is granted,

(c) the head lessee must take all reasonable steps to ensure that the sublessee complies with the requirements of this Act and the conditions of the head lease with respect to the land.

(7) Land held under a lease under this Act may not be transferred or conveyed for the purpose of creating a forestry right (within the meaning of section 87A of the [Conveyancing Act 1919](#)) that consists in whole or in part of a carbon sequestration right otherwise than in accordance with Part 9D of this Act.

**18GA, 18H (Repealed)**

### **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 or relating to the use of land for the purposes of carbon sequestration within the meaning of section 87A of the *Conveyancing Act 1919*) 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 Rent payable under leases**

### **Division 1 Preliminary**

#### **19 Definitions**

In this Part:

***financial year*** means the year commencing 1 July.

***intensive agriculture*** includes irrigated farming, feedlot farming, aquaculture, pisciculture and any other activity declared by the regulations to be intensive agriculture.

**rehabilitation** means any activity that results in an improvement in the condition and functioning of the natural environment.

**rural holding** means the aggregate of all lands:

- (a) that are held by the same person under one or more rural leases, and
- (b) that, in the opinion of the Commissioner, comprise a single holding, regardless of whether or not the lands are contiguous with each other.

**rural lease** means any lease of a kind declared under section 27D to be a rural lease for the purposes of this Part.

**scaling factor**, for any financial year, means the scaling factor determined by the regulations for that year or, if no such factor is determined, the scaling factor determined by the regulations for the previous financial year.

**urban lease** means any lease of a kind declared under section 27D to be an urban lease for the purposes of this Part, and includes any lease that is not declared under that section to be either a rural lease or an urban lease.

## Division 2 Rural holdings

### 20 Annual rent

- (1) Annual rent is to be calculated for a rural holding as follows:

$$\text{Annual rent} = \text{Base rent} + \text{Cultivation charge} + \text{Intensive agriculture charge} - \text{Rehabilitation rebate}$$

- (2) If the regulations prescribe a minimum annual rent that is greater than the rent so calculated, the annual rent is to be the minimum rent so prescribed.

### 21 Calculation of base rent

Base rent referred to in section 20 (1) is to be calculated for a rural holding as follows:

$$\text{Base rent} = S \times [(\mathbf{A}_1 \times \mathbf{k}_1) + (\mathbf{A}_2 \times \mathbf{k}_2) + (\mathbf{A}_3 \times \mathbf{k}_3) + (\mathbf{A}_4 \times \mathbf{k}_4) + (\mathbf{A}_5 \times \mathbf{k}_5) + (\mathbf{A}_6 \times \mathbf{k}_6) + (\mathbf{A}_7 \times \mathbf{k}_7)]$$

where:

**S** represents the scaling factor for the financial year to which the rent relates.

**A<sub>1</sub>** represents 1,000 hectares or (for a rural holding of less than 1,000 hectares) the number of hectares in the holding, and **k<sub>1</sub>** represents an amount of money per hectare prescribed by the regulations for the first 1,000 hectares of a rural holding.

**A<sub>2</sub>** represents 4,000 hectares or (for a rural holding of less than 5,000 hectares) the number of hectares in the holding in excess of 1,000, and **k<sub>2</sub>** represents an amount of money per hectare prescribed by the regulations for the second to the fifth 1,000 hectares (inclusive) of a rural holding.

**A<sub>3</sub>** represents 5,000 hectares or (for a rural holding of less than 10,000 hectares) the number of hectares in the holding in excess of 5,000, and **k<sub>3</sub>** represents an amount of money per hectare prescribed by the regulations for the sixth to the tenth 1,000 hectares (inclusive) of a rural holding.

**A<sub>4</sub>** represents 10,000 hectares or (for a rural holding of less than 20,000 hectares) the number of hectares in the holding in excess of 10,000, and **k<sub>4</sub>** represents an amount of money per hectare prescribed by the regulations for the eleventh to the twentieth 1,000 hectares (inclusive) of a rural holding.

**A<sub>5</sub>** represents 10,000 hectares or (for a rural holding of less than 30,000 hectares) the number of hectares in the holding in excess of 20,000, and **k<sub>5</sub>** represents an amount of money per hectare prescribed by the regulations for the twenty-first to the thirtieth 1,000 hectares (inclusive) of a rural holding.

**A<sub>6</sub>** represents 20,000 hectares or (for a rural holding of less than 50,000 hectares) the number of hectares in the holding in excess of 30,000, and **k<sub>6</sub>** represents an amount of money per hectare prescribed by the regulations for the thirty-first to the fiftieth 1,000 hectares (inclusive) of a rural holding.

**A<sub>7</sub>** represents the number of hectares in a rural holding in excess of 50,000, and **k<sub>7</sub>** represents an amount of money per hectare prescribed by the regulations for each hectare in the holding after the fifty-thousandth.

## 22 Calculation of cultivation charge

The cultivation charge referred to in section 20 (1) is to be calculated for a rural holding as follows:

$$\text{Cultivation charge} = S \times [(TC \times k_8) + (PC \times k_9)]$$

where:

**S** represents the scaling factor for the financial year to which the rent relates.

**TC** represents the number of hectares in the holding on which cultivation is permitted under this Act for a limited period of time pursuant to a consent under section 18DA, and **k<sub>8</sub>** represents an amount of money per hectare prescribed by the regulations for such land.

**PC** represents the number of hectares in the holding on which cultivation is permitted

under this Act indefinitely:

(a) pursuant to a lease for the purpose of agriculture, grazing and agriculture combined or mixed farming or any similar purpose or purposes, or

(b) pursuant to a consent under section 18DA,

and **k<sub>9</sub>** represents an amount of money per hectare prescribed by the regulations for such land.

### 23 Calculation of intensive agriculture charge

The intensive agriculture charge referred to in section 20 (1) is to be calculated for a rural holding as follows:

$$\text{Intensive agriculture charge} = S \times (IA \times k_{10})$$

where:

**S** represents the scaling factor for the financial year to which the rent relates.

**IA** represents the number of hectares in the holding which are, in the opinion of the Commissioner, being used for or in connection with intensive agriculture, and **k<sub>10</sub>** represents an amount of money per hectare prescribed by the regulations for such land.

### 24 Calculation of rehabilitation rebate

The rehabilitation rebate referred to in section 20 (1) is to be calculated for a rural holding as follows:

$$\text{Rehabilitation rebate} = S \times [(TR \times k_{11}) + (PR \times k_{12})]$$

where:

**S** represents the scaling factor for the financial year to which the rent relates.

**TR** represents the number of hectares in the holding on which, in the opinion of the Commissioner, managed rehabilitation is being carried out on a temporary basis (that is, for a period of 10 years or less), and **k<sub>11</sub>** represents an amount of money per hectare prescribed by the regulations for such land.

**PR** represents the number of hectares in the holding on which, in the opinion of the Commissioner, managed rehabilitation is being carried out on a permanent basis (that is, for a period of more than 10 years), and **k<sub>12</sub>** represents an amount of money per hectare prescribed by the regulations for such land.

## **25 Assessment of annual rent**

- (1) As soon as practicable after 1 April in each year, the Commissioner must cause an assessment to be made of the annual rent payable for each rural holding for the financial year commencing next 1 July.
- (2) In making such an assessment, the Commissioner is to have regard to the circumstances of each rural holding as at 1 April in that year.
- (3) The Commissioner must cause written notice of the assessment for each rural holding to be served on the owner of the holding as soon as practicable after the assessment is made.
- (4) For the purposes of section 36C, the due date for payment of the annual rent for a rural holding is 1 July of the financial year for which the rent is payable.

## **26 Review of assessment by local land board**

- (1) If the owner of a rural holding is dissatisfied with any of the following decisions of the Commissioner with respect to an assessment of annual rent for specified land:
  - (a) a decision that the land is or is not a single holding,
  - (b) a decision that cultivation is or is not permitted under this Act on the whole or any part of the land,
  - (c) a decision that the whole or any part of the land is or is not being used for or in connection with intensive agriculture,
  - (d) a decision that managed rehabilitation is or is not being carried out on the whole or any part of the land,

the owner may apply to the local land board for a review of the decision.

- (2) The making of an application for such a review does not stay the owner's obligation to pay the annual rent to which the application relates.
- (3) Subject to section 27, the decision of the local land board has effect as if it were the decision of the Commissioner.

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

- (1) Either the owner of a rural holding or the Commissioner may appeal to the Land and Environment Court against a decision of the local land board under section 26.
- (2) The making of an appeal does not stay the owner's obligation to pay the annual rent to which the appeal relates.

### **27A Ministerial guidelines**

- (1) The Minister may, by order published in the Gazette, establish guidelines with respect to the assessment of annual rents for rural holdings.
- (2) Before establishing any such guidelines, the Minister must consult with the Western Lands Advisory Council.
- (3) In determining for the purposes of this Part:
  - (a) whether land is or is not a single rural holding, or
  - (b) whether cultivation is or is not permitted under this Act on the whole or any part of a rural holding, or
  - (c) whether the whole or any part of a rural holding is or is not being used for or in connection with intensive agriculture, or
  - (d) whether managed rehabilitation is or is not being carried out on the whole or any part of a rural holding, or
  - (e) any other matter relevant to the assessment of annual rent for a rural holding,regard must be had to any guidelines in force under this section.

## **Division 3 Urban leases**

### **27B Annual rent**

- (1) Annual rent is to be calculated for an urban lease as follows:

$$\text{Annual rent} = LV \times p$$

where:

**LV** represents the land value (within the meaning of the [Valuation of Land Act 1916](#)) of the land comprised in the urban lease.

**p** represents a percentage prescribed by the regulations with respect to the class of land to which the urban lease belongs.

- (2) If the regulations prescribe a minimum annual rent that is greater than the rent so calculated, the annual rent is the minimum rent so prescribed.
- (3) The regulations may prescribe different classes of urban lease for the purposes of this section and different percentages in relation to each class of urban lease so prescribed.



### **27C Assessment of annual rent**

- (1) As soon as practicable after 1 April in each year, the Commissioner must cause an assessment to be made of the annual rent payable for each urban lease for the financial year commencing next 1 July.
- (2) In making such an assessment, the Commissioner is to have regard to the land value of each urban lease as at 1 April in that year.
- (3) The Commissioner must cause written notice of the assessment for each urban lease to be served on the holder of the lease as soon as practicable after the assessment is made.
- (4) For the purposes of section 36C, the due date for payment of the annual rent for an urban lease is 1 July of the financial year for which the rent is payable.

## **Division 4 Miscellaneous**

### **27D Classification of leases as rural or urban leases**

The Minister may, by order published in the Gazette, declare that a lease of a specified kind is either a rural lease or an urban lease for the purposes of this Part.

### **27E Concessional rent**

- (1) The Minister:
  - (a) may waive, reduce or remit the whole or any part of the annual rent that would otherwise be payable by a lessee under this Part, and
  - (b) may postpone payment, for up to 10 years, of the whole or any part of the annual rent payable by a lessee under this Part,in respect of such classes of lessees or classes of lands as are prescribed by the regulations.
- (2) The total amount of rent waived or remitted by the Minister in each rental year (but not rent reduced or postponed in relation to debt management) are to be published:
  - (a) in the Department's annual report under the [Annual Reports \(Departments\) Act 1985](#) for the financial year concerned, and
  - (b) in the Treasurer's budget papers for the following financial year.

## **Part 7 Disposal of Crown lands available for lease**

### **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
  - (e1) the use of land for the purposes of carbon sequestration within the meaning of section 87A of the *Conveyancing Act 1919* (including for plantation purposes), or for any such purpose combined with any one or more of the other purposes referred to in this subsection, 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.
- (1A) If the Minister makes an order under subsection (1) (f) with respect to a particular lease purpose, the Minister must also make an order under section 27D declaring that a lease for that purpose is either a rural lease or an urban lease for the purposes of Part 6.
- (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) (Repealed)
- (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,the lease is liable to be forfeited.
- (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) This section applies to any of the following leases (other than a lease that has become liable to forfeiture):

- (a) a lease for residential, business, motel, community or other such purposes, but not for grazing or pastoral purposes (either alone or in combination with other purposes),
- (b) a lease for agricultural or mixed farming purposes, being a lease that was originally granted for those purposes, where:
  - (i) the lease was granted before 23 December 1996, or
  - (ii) the lease was granted on or after 23 December 1996, and the granting of the lease is a past act, or
  - (iii) the lease was granted on or after 23 December 1996 in respect of land in respect of which an earlier lease for grazing or pastoral purposes had previously been granted, where the granting of the earlier lease is a past act, or
  - (iv) the lease was granted on or after 23 December 1996 in respect of land that had been the subject of a previous exclusive possession act,
- (c) a lease for agricultural or mixed farming purposes, being a lease that was originally granted for grazing or pastoral purposes, but was subsequently altered, pursuant to section 18J, to a lease for agricultural or mixed farming purposes, where:
  - (i) the alteration occurred before 23 December 1996, or
  - (ii) the alteration occurred on or after 23 December 1996, and is a past act, or
  - (iii) the alteration occurred on or after 23 December 1996, and the land the subject of the lease had previously been the subject of an earlier lease for grazing or pastoral purposes, where the granting of the earlier lease is a past act, or
  - (iv) the alteration occurred on or after 23 December 1996, and the land the subject of the lease had been the subject of a previous exclusive possession act,

where **previous exclusive possession act** and **past act** have the meanings given to them by sections 23B and 228, respectively, of the [Native Title Act 1993](#) of the Commonwealth.

(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 4 then applies.

**28C, 28D (Repealed)**

**Part 8**

**29-31A (Repealed)**

**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 18FA or 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) A person who holds land under a lease as trustee, executor or administrator may surrender the lease under this section as if a power to that effect were included in the Act or instrument pursuant to which he or she so acts.
- (2A)-(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 (Repealed)**

### **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) (Repealed)
- (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 (Repealed)**

#### **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 betterment 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, conservation, environmental protection or monitoring 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 9C Public roads and rights of way**

### **Division 1 Public roads**

#### **35Q Minister may dedicate public roads**

- (1) The Minister may, by notice published in the Gazette, withdraw from lease, for the purpose of its being dedicated as a public road, any land that, in the Minister's opinion, is being used by the public as a road.
- (2) Having withdrawn land from lease by means of a notice referred to in subsection (1), the Minister may, pursuant to section 12 of the [Roads Act 1993](#), dedicate that land as a public road.
- (3) No compensation is payable to any person with respect to any loss or damage arising from the operation of this section.
- (4) This section applies to land comprised in a lease granted or issued before the commencement of this section, but does not apply to a lease granted or issued after that commencement.

### **Division 2 Rights of way**

#### **35R Definitions**

In this Division:

**beneficiary**, in relation to a special easement, means:

- (a) any lessee of land benefited by the easement, or
- (b) any other person or body in whose favour the easement has been created as referred to in section 88A of the [Conveyancing Act 1919](#).

**special easement** means an easement created under section 35S.

### **35S Minister may create easements for right of way**

- (1) The Minister may, by instrument lodged with the Registrar-General, create the following easements over land within the Western Division that, in the Minister's opinion, is being used as a road or track:
  - (a) an easement in the nature of a right of way,
  - (b) such other easements as are appropriate to the construction and maintenance of a right of way.
- (2) Such an instrument:
  - (a) may not be lodged with respect to freehold land, and
  - (b) may only be made with respect to land held under a lease on the application of the lessee or lessees of the land, and
  - (c) must specify the beneficiary of the easement or the land to which the benefit of the easement is appurtenant.
- (3) An instrument lodged under subsection (1) is to be made by reference to a plan that is registered or recorded under Division 3 of Part 23 of the [Conveyancing Act 1919](#).
- (4) On receiving an instrument lodged under subsection (1), the Registrar-General may record such particulars of the creation of the special easement as the Registrar-General considers necessary in any folio of the Register relating to land which, in the Registrar-General's opinion, is affected by the creation of the easement.
- (5) No duty is payable under the [Duties Act 1997](#) in respect of an instrument lodged under subsection (1).
- (6) Sections 88A and 181A of the [Conveyancing Act 1919](#) apply to an instrument lodged under subsection (1).
- (7) An easement referred to in section 88A of the [Conveyancing Act 1919](#) may be created not only in favour of a public authority referred to in that section but also in favour of such other persons or bodies as may be specified in that regard by the plan referred to in subsection (3), in which case any reference in that section to a public authority extends to any person or body so specified.

- (8) As soon as practicable after a special easement is created, the Minister must cause notice of that fact to be given to:
- (a) each beneficiary of the easement, and
  - (b) each lessee of land over which the easement is in force.
- (9) Section 89 of the *Conveyancing Act 1919* does not apply to a special easement.
- (10) Neither the creation of a special easement in respect of any land held under a lease, nor a lessee's request for the creation of a special easement in respect of any such land, is to be regarded:
- (a) as a breach of any contractual provision prohibiting, restricting or regulating the lessee's right to deal with the land, or
  - (b) as giving rise to any remedy by a party to any legal instrument, or as causing or permitting the termination of any legal instrument, because of the creation of the easement or the making of the request.
- (11) This section applies to land held under a lease granted or issued before the commencement of this section, but does not apply to land held under a lease granted or issued after that commencement.
- (12) In this section and in section 35T, **the Register** means the Register kept under the *Real Property Act 1900*.

### **35T Minister may extinguish special easements**

- (1) On the application of:
- (a) each beneficiary of a special easement, and
  - (b) in the case of a special easement over land held under a lease, each lessee of the land,
- the Minister may, by instrument lodged with the Registrar-General, release the easement.
- (2) On receiving an instrument lodged under subsection (1), the Registrar-General may record such particulars of the release of the special easement as the Registrar-General considers necessary in any folio of the Register relating to land which, in the Registrar-General's opinion, is affected by the release of the easement.
- (3) No duty is payable under the *Duties Act 1997* in respect of an instrument lodged under subsection (1).
- (4) As soon as practicable after a special easement is released under this section, the Minister must cause notice of that fact to be given to:

- (a) each former beneficiary of the easement, and
- (b) each lessee of land over which the easement was formerly in force.

### **35U Mediation of disputes as to easements**

- (1) If there is a dispute between two or more lessees of land over a proposal to create or release a special easement, either of them may apply to a local land board for mediation of the dispute.
- (2) Attendance at, and participation in, proceedings on the application are voluntary.
- (3) The local land board is to use its best endeavours to bring the parties to the proceedings to a resolution of the dispute.
- (4) Each party to the proceedings is to bear his or her own costs with respect to the proceedings.
- (5) Testimony given, and documents tendered, in the proceedings are not admissible as evidence in any other proceedings before any court or tribunal.
- (6) A local land board, and parties to proceedings before a local land board, have the same protections and immunities in relation to proceedings brought before the local land board under this section as a Local Court, and parties to proceedings before a Local Court, have in relation to civil proceedings brought before the Local Court.

## **Part 9D Carbon sequestration and related forestry rights**

### **35V Definitions**

In this Part:

**carbon sequestration right** and **forestry right** have the same meanings as in section 87A of the [Conveyancing Act 1919](#).

**Note—**

A forestry right is defined in section 87A of the [Conveyancing Act 1919](#) to include a carbon sequestration right in relation to land (carbon sequestration being the process by which a tree or forest absorbs carbon dioxide from the atmosphere). This Part applies to a forestry right only to the extent that it consists in whole or in part of a carbon sequestration right.

A forestry right is, for all purposes, taken to be a profit à prendre (see section 88AB of the [Conveyancing Act 1919](#)).

### **35W Application of Part**

This Part applies only in relation to the granting or creation of a forestry right to the extent that it consists in whole or in part of a carbon sequestration right.

### **35X Granting and creation of forestry rights in respect of land held under lease**

- (1) The Minister may:
  - (a) on application made in the approved form, and
  - (b) on such terms and conditions as the Minister determines,grant a forestry right in respect of land held under a lease, but only with the consent of the lessee of that land.
- (2) In the case of land that is the subject of a lease in perpetuity, the Minister may, on such terms and conditions as the Minister determines, consent to the lessee granting a forestry right in respect of the land the subject of the lease.
- (3) The lessee of any land that is the subject of a lease in perpetuity may, with the consent of the Minister under subsection (2), grant a forestry right in respect of the land on such terms and conditions as the Minister determines.
- (4) A forestry right referred to in this section:
  - (a) is, in the case of land that is subject to the provisions of the *Real Property Act 1900*, created in the way provided in that Act or in section 88B of the *Conveyancing Act 1919*, or
  - (b) is, in the case of land that is not subject to the provisions of the *Real Property Act 1900*, created:
    - (i) in the way provided in section 88B of the *Conveyancing Act 1919*, or
    - (ii) if the Minister so consents, by instrument registered in the General Register of Deeds, or
    - (iii) by notification in the Gazette (except in the case of a forestry right granted by a perpetual lessee).
- (5) Without limiting the terms and conditions that may be determined by the Minister under this section, any such terms and conditions may restrict any dealings in the forestry right.
- (6) Before granting a forestry right in respect of land that is Crown-timber land within the meaning of the *Forestry Act 1916* (or before consenting to the granting of any such forestry right), the Minister must consult the Minister administering the *Forestry Act 1916*.

**Note—**

In the case of Crown-timber land that is a State forest or timber reserve, it is the Forestry Commission that may grant a forestry right in respect of the land.

- (7) Without limiting the operation of Division 4 of Part 6 of the *Conveyancing Act 1919*,

restrictions on the use of land and covenants may, in accordance with that Division, be imposed on land that is the subject of a forestry right granted under this section.

## **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 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) (Repealed)

- (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.

(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-45 (Repealed)**

## **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) (Repealed)
  - (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 Appeal to Land and Environment Court against forfeiture of leases**

- (1) A lessee may appeal to the Land and Environment Court against any declaration of forfeiture made under section 129 of the *Crown Lands Act 1989* (as adopted by Schedule 2).
- (2) Subject to any order of the Land and Environment Court, the making of the appeal does not stay the effect of the declaration.

#### **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 1

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 (within the meaning of the *Noxious Weeds Act 1993*) as directed by the Director-General of the Department of Agriculture, by the Minister administering that Act or by an authorised officer within the meaning of that Act.
- (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 2 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, and section 34A except in relation to land that is the subject of a lease granted under the [Western Lands Act 1901](#) or the [Wentworth Irrigation Act 1890](#).

Division 2 (sales of Crown Land)—the whole Division, except that it is to be read as including the following provision:

#### **40A Land use to be consistent with ecologically sustainable development**

The Minister is not to sell land within the Western Division unless satisfied that the use of the land for the purposes for which the purchaser proposes to purchase the land is ecologically sustainable.

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](#) and the Division is taken to include the following provision:

#### **50A Licences may be granted over land subject to Western Lands lease**

- (1) The Minister may grant a licence for any purpose over land the subject of a lease granted under the [Western Lands Act 1901](#), but only with the consent of the lessee of that land.
- (2) Despite subsection (1), the consent of the lessee is not required in respect of a licence to remove gravel, sand or any other material that is not a mineral within the meaning of the [Mining Act 1992](#).

Division 5 (Easements)—the whole Division, except paragraphs (a) and (b) of the definition of **prescribed land** in section 51.

Division 5A (Carbon sequestration and related forestry rights)—the whole Division except in relation to

land that is the subject of a lease 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 4A Restrictions and covenants imposed on land**

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

## **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 leases granted under the [Western Lands Act 1901](#) and licences granted under the [Crown Lands Act 1989](#).

## **Part 7 Miscellaneous**

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

Division 1A (transfer or vesting of certain land to or in Crown)—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 2A (minimum rents)—the whole Division, but only in respect of licences and enclosure permits granted under the [Crown Lands Act 1989](#) and only to the extent (if any) that the regulations under that Division apply that Division in respect of those licences and enclosure permits.

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

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 3A (redetermination and adjustment of rents for licences and enclosure permits)—the whole Division, but only in respect of licences and enclosure permits granted under the [Crown Lands Act 1989](#) and only to the extent (if any) that the regulations under that Division apply that Division in respect of those licences and enclosure permits.

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

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

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, 185 and 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 3 Savings, transitional and other provisions**

(Section 2B)

### **Part 1 Preliminary**

#### **1AAA Savings and transitional regulations**

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

[Western Lands Amendment Act 2002](#)

- (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 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.

## Part 2 Provisions consequent on enactment of *Western Lands Amendment Act 2002*

### 4 Definitions

In this Part:

**the 2002 amending Act** means the *Western Lands Amendment Act 2002*.

**the amended Schedule**, followed by a number, means the corresponding Schedule to this Act, as amended by the 2002 amending Act.

### 5 Conditions under section 18

The substitution of section 18 by the 2002 amending Act does not limit or otherwise affect the conditions of any lease granted before the substitution of that section.

### 6 Transfers under section 18G

Nothing in the *Crown Lands Act 1989* (as applied by the amended Schedule 2) affects any

dealing for which a consent had been given under section 18G before the substitution of that section by the 2002 amending Act.

#### **7 Forfeitures under section 50**

If notice of the proposed forfeiture of a lease had been served on a lessee under section 50 before the repeal of that section by the 2002 amending Act:

- (a) that section continues to apply, and
  - (b) the provisions of Part 6 of the *Crown Lands Act 1989* (as applied by the amended Schedule 2) do not apply,
- to the forfeiture of the lease.

#### **8 Application of Schedule 1**

The amended Schedule 1 applies to leases granted before its amendment by the 2002 amending Act in the same way as it applies to leases granted after its amendment.

#### **9 Application of Schedule 2**

- (1) The amended Schedule 2 applies to matters arising before its amendment by the 2002 amending Act in the same way as it applies to matters arising after its amendment.
- (2) However, in its application to a lease granted before the commencement of the *Western Lands (Amendment) Act 1989*, the powers of forfeiture conferred by section 129 of the *Crown Lands Act 1989* (as applied by the amended Schedule 2) are exercisable only in accordance with the terms of the lease.

#### **10 Continuation of former rents**

- (1) This clause applies to any lease for which a rental period had begun, but not ended, on the commencement of Schedule 2 to the 2002 amending Act.
- (2) If the annual rent payable for a rural holding or urban lease under the new Part 6 (as inserted by Schedule 2 to the 2002 amending Act) is greater than the sum of the rents payable for the relevant lease or leases under the old Part 6 (as in force immediately before the commencement of that Schedule), the annual rent for that lease or those leases for the remainder of the current rental period is the sum of the rents payable under the old Part 6.
- (3) For the purposes of this clause, **current rental period** means the rental period under section 19C (as in force immediately before the commencement of Schedule 2 to the 2002 amending Act) and, if that period expires after that commencement otherwise than on 30 June in any year, includes the further period up to the end of the following 30 June.



## **11 Application of section 28BB and Schedule 4**

The provisions of section 28BB and the amended Schedule 4 apply to leases granted before the commencement of their amendment by the 2002 amending Act in the same way as they apply to leases granted after their amendment.

## **Schedule 4 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.
- (3) The Minister may not grant an application in relation to land the subject of a lease for any purpose unless satisfied that the continued use of the land for that purpose is ecologically sustainable.

### **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 registered land surveyor within the meaning of the *Surveying Act 2002* 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, 15 (Repealed)**

### **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.

## **Schedule 5 Provisions with respect to constitution and procedure of Western Lands Advisory Council**

(Section 8B)

### **Part 1 Constitution**

#### **1 Acting chairperson**

- (1) The Minister may, from time to time, appoint a person to act in the office of chairperson during the illness or absence of a chairperson, and the person, while so acting, has all the functions of the chairperson and is taken to be the chairperson.
- (2) The Minister may, at any time, remove a person from an office to which the person

has been appointed under this clause.

- (3) For the purposes of this clause, a vacancy in the office of chairperson is taken to be an absence from office of the chairperson.

## **2 Term of office**

Subject to this Schedule, a member of the Western Lands Advisory Council holds office for 3 years, but is eligible (if otherwise qualified) for re-appointment.

## **3 Remuneration**

A member of the Western Lands Advisory Council 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.

## **4 Vacancy in office of appointed member**

- (1) The office of a member of the Western Lands Advisory Council becomes vacant if the member:
- (a) dies, resigns or is removed from office, or
  - (b) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member, unless:
    - (i) the Council has granted the member leave to be absent from those meetings, or
    - (ii) within 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or
  - (c) 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
  - (d) becomes a mentally incapacitated person, or
  - (e) 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 a member of the Western Lands Advisory Council from office at any time.

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

If the office of a member of the Western Lands Advisory Council becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **6 Disclosure of pecuniary interests**

- (1) A member of the Western Lands Advisory Council who has a direct or indirect pecuniary interest:
  - (a) in a matter that is being considered, or is about to be considered, at a meeting of the Council, or
  - (b) in a thing being done or about to be done by the Council,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 Council.
- (2) A disclosure at such a meeting 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 a specified person,is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date of the disclosure.
- (3) The Western Lands Advisory Council must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose, and that book must be open at all reasonable hours to the inspection, free of charge, of any person.
- (4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister otherwise determines:
  - (a) be present during any deliberation, or take part in any decision, of the Western Lands Advisory Council with respect to that matter, or
  - (b) exercise any functions under this Act with respect to that thing,as the case requires.
- (5) A contravention of this clause does not invalidate any decision of the Western Lands Advisory Council or the exercise of any function under this Act.
- (6) A reference in this clause to a meeting of the Western Lands Advisory Council includes a reference to a meeting of any of its committees.

## **7 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member of the Western Lands Advisory Council and the office of such a member is not, for the purposes of any Act, an office or place of profit under the Crown.
- (2) If by or under any other 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,

that provision does not operate so as to disqualify the person from holding that office and also the office of a member of the Western Lands Advisory Council, or from accepting and retaining any remuneration payable to the person under this Part as such a member.

## **Part 2 Procedure**

### **8 General procedure**

Except as otherwise provided by this Act or the regulations:

- (a) meetings of the Western Lands Advisory Council are to be held at such times and places as are fixed by the chairperson, and
- (b) the procedure for the convening of meetings and for the conduct of business at those meetings is to be as determined by the chairperson.

### **9 Quorum**

A majority of the members of the Western Lands Advisory Council constitutes a quorum.

### **10 Presiding member**

The chairperson (or, in the absence of the chairperson, a member appointed by the members then present) is to preside at a meeting of the Western Lands Advisory Council.

### **11 Decisions**

- (1) At any meeting of the Western Lands Advisory Council, all members present are to strive for consensus in reaching decisions.
- (2) However, a decision by the Western Lands Advisory Council has effect if it is supported by a majority of the votes cast at a meeting at which a quorum is present.



## **12 Record of proceedings**

- (1) The presiding member at a meeting of the Western Lands Advisory Council must cause a record of the proceedings at the meeting to be made.
- (2) Records made for the purposes of this clause may be destroyed after the expiry of the period prescribed by the regulations.

## **13 Authentication of documents**

Any document requiring authentication by the Western Lands Advisory Council is sufficiently authenticated if it is signed by:

- (a) the member who presided at the meeting that dealt with the proceedings with respect to which the document was prepared, or
- (b) in the absence of that member, any other member who was present at that meeting.

## **14 First meeting**

The first meeting of the Western Lands Advisory Council is to be called by the Minister in such manner as the Minister considers appropriate.