

# Rural Lands Protection Act 1998 No 143

[1998-143]



New South Wales

## Status Information

### Currency of version

Historical version for 1 January 2013 to 14 November 2013 (accessed 8 February 2025 at 23:51)

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—

- **Does not include amendments by**  
Sec 249 (2) of this Act (sec 249 (2) repeals sec 249 and Sch 8 on 2.1.2014)  
Sch 8 to this Act (the amendments are not commenced — see sec 249)  
[Rural Lands Protection Amendment Act 2008 No 112](#), Sch 4 [1] [2] and [4]-[8] (amended by [Rural Lands Protection Amendment Act 2009 No 105](#)) (not commenced)  
[Game and Feral Animal Control Amendment Act 2013 No 75](#) (not commenced)
- **Proposed repeal**  
The Act is to be repealed on the commencement of sec 210 (a) of the [Local Land Services Act 2013 No 51](#) (to commence on 1.1.2014).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 23 October 2013

# Rural Lands Protection Act 1998 No 143



New South Wales

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# Rural Lands Protection Act 1998 No 143



New South Wales

An Act to provide for the protection of rural lands; to provide for the establishment of the State Policy Council of Livestock Health and Pest Authorities and the constitution of livestock health and pest authorities and the State Management Council of Livestock Health and Pest Authorities and for the functions of those bodies; to regulate travelling stock reserves, stock watering places and the transportation of stock by vehicle; to provide for the control of certain pests; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Rural Lands Protection Act 1998*.

### 2 Commencement

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

### 2A Objects of Act

The objects of this Act are as follows:

- (a) to establish livestock health and pest districts,
- (b) to constitute livestock health and pest authorities and the State Management Council of Livestock Health and Pest Authorities and to establish the State Policy Council of Livestock Health and Pest Authorities,
- (c) to confer functions on livestock health and pest authorities and the State Council including, but not limited to, functions relating to animal health and production, pest control, drought and natural disaster relief schemes,
- (d) to provide for the funding of livestock health and pest authorities by a system of rates,
- (e) to provide for the funding of the State Council by a system of contributions from livestock health and pest authorities,
- (f) to provide for the sustainable management of travelling stock reserves and stock

watering places,

- (g) to deal with certain unattended and trespassing stock,
- (h) to regulate the movement of stock,
- (i) to provide for the control of pests, including by way of pest control orders and eradication orders.

### **3 Definitions**

Expressions used in this Act that are defined in the Dictionary have the meanings set out in the Dictionary.

**Note—**

Expressions used in this Act (or in a particular provision of this Act) that are defined in the [Interpretation Act 1987](#) have the meanings set out in that Act.

### **4 Notes**

Notes included in this Act do not form part of this Act.

## **Part 2 Livestock health and pest districts**

### **5 Livestock health and pest districts**

- (1) The Governor may, by proclamation, constitute livestock health and pest districts having boundaries and names determined by the Governor.
- (2) The Governor may, by proclamation:
  - (a) alter the boundaries of any district, or
  - (b) dissolve the whole or any part of a district, or
  - (c) amalgamate part or all of one district with part or all of one or more other districts to constitute a single district having the boundaries and name determined by the Governor, or
  - (d) alter the name of any district.
- (3) The Governor may, by proclamation, vest any property, and assign any rights and obligations, of an authority for a district referred to in subsection (2) (a), (b) or (c) in another authority or authorities.
- (4) A proclamation under this section takes effect on the day it is published in the Gazette or on a later day specified in the proclamation.

### **6 Division of districts**

- (1) The Minister may, by order published in the Gazette, divide a district into two or more



divisions (and specify the boundaries of those divisions) as the Minister considers appropriate.

- (2) An order under this section takes effect on the day it is published in the Gazette or on a later day specified in the order.

**Note—**

The Minister may amend or repeal an order made under this section. See section 43 of the [Interpretation Act 1987](#).

**7 (Repealed)**

**8 When is a holding within a district?**

- (1) For the purposes of this Act:
  - (a) a holding located partly in 2 or more districts is to be regarded as being wholly within the district in which the greater part lies, and
  - (b) a holding located partly in 2 or more divisions is to be regarded as being wholly within the division in which the greater part lies.
- (2) For the purposes of this section, if the parts of a holding are equal in size, the part on which the principal residence (if any) is located is to be regarded as being the greater part. If there is no principal residence any dispute as to which part of such a holding is to be treated as the greater part is to be decided by the Minister.

**9 (Repealed)**

**Part 3 Functional responsibilities**

**10 State Council accountable to Minister**

The State Council is, in the exercise of its functions, subject to the control and direction of the Minister.

**11 State Council accountable to Policy Council for implementation of general policies**

- (1) The State Council is responsible for the implementation by the authorities of the general policies for the protection of rural lands and the operation of authorities that are determined from time to time by the Policy Council.
- (2) An authority must give the State Council any information about the operations of the authority that the State Council requests.

**12 Authorities accountable to State Council**

- (1) An authority is responsible for the operation of the authority in accordance with any guidelines, and specific orders under section 27, of the State Council.

- (2) An authority is, in the exercise of its functions, subject to the control and direction of the State Council.

### **13 Memorandum of understanding**

- (1) The State Council must enter into a memorandum of understanding with the Director-General regarding the exercise of any function relating to animal health, and may enter into such a memorandum of understanding relating to any other function, conferred or imposed by or under this Act or by the memorandum of understanding on the Director-General, the State Council and the authorities, respectively.
- (2) Without limiting the matters for which the memorandum of understanding may make provision, it is to make provision with respect to indemnification by the State of the State Council and authorities and their members, directors and employees against costs incurred in respect of such legal proceedings relating to their functions as may be agreed between the State Council and the Director-General.
- (3) The memorandum of understanding must be entered into within a reasonable period after the commencement of this section.
- (4) The memorandum of understanding may be amended or replaced from time to time.
- (5) The functions of the Director-General, of the State Council, and of each authority, must as far as practicable be exercised in conformity with the memorandum of understanding. However, a failure to comply with this subsection does not itself invalidate anything done or omitted to be done by the Director-General, the State Council or an authority.

## **Part 4 Policy Council**

### **14 State Policy Council of Livestock Health and Pest Authorities**

- (1) The State Policy Council of Livestock Health and Pest Authorities (the ***Policy Council***) is established by this Act.
- (2) The Policy Council does not, for any purpose, represent the Crown.
- (3) The Policy Council is, in the exercise of its functions, subject to the control and direction of the Minister.

### **15 Members of Policy Council**

- (1) The Policy Council consists of the following members:
  - (a) 2 members for each district, appointed by the authority of the district from among its directors,
  - (b) such other members as are appointed by the Minister.

- (2) The Minister may give directions as to the manner in which and the time within which appointments are to be made by authorities for the purposes of subsection (1) (a).
- (3) If an authority fails to make an appointment in the manner and within the time directed by the Minister, the Minister may appoint a person as a member on behalf of the authority and the person is taken to have been appointed by the authority.
- (4) If an authority fails to make an appointment or appointments under this section, the Policy Council is nevertheless properly constituted.

## **16 Functions of Policy Council**

- (1) The Policy Council has such functions as are conferred or imposed on it by or under this or any other Act.
- (2) Without limiting subsection (1), the Policy Council has the following functions:
  - (a) the determination of general policies to be implemented by authorities for the protection of rural lands,
  - (b) the determination of primary policies to guide the State Council in carrying out its functions,
  - (c) the selection on merit, and appointment, of members of the State Council,
  - (d) the provision of advice on any specified matter referred to it by the Minister, the State Council or an authority,
  - (e) carrying out such other functions relating to the administration of this Act as may be conferred or imposed on it by the Minister.
- (3) The Policy Council cannot employ any staff.

## **17 Provisions relating to constitution and procedure of Policy Council**

- (1) The constitution and procedure of the Policy Council are, subject to this Act and the regulations, to be determined by the Policy Council.
- (2) Schedule 1A has effect with respect to the constitution and procedure of the Policy Council.

## **18 Report to Minister and authorities**

The Policy Council must, as soon as practicable after the end of each financial year (but within such period as may be specified in the regulations), report to the Minister and the authorities (in the manner specified in the regulations, if any) on the activities and performance of the Policy Council during the previous financial year.

## **Part 5 State Council**

### **Division 1 Constitution of State Council**

#### **19 Constitution of State Council**

- (1) There is constituted by this Act a corporation under the corporate name of State Management Council of Livestock Health and Pest Authorities (the **State Council**).
- (2) The State Council does not, for any purpose, represent the Crown.

#### **20 Members of State Council**

- (1) The State Council consists of the following persons:
  - (a) 6 persons appointed by the Policy Council, after a process of selection on merit, from among the directors of boards of authorities,
  - (b) 2 persons appointed by the Policy Council, after a process of selection on merit, on the basis of each person having expertise, experience or qualifications in one or more of the following areas:
    - (i) law,
    - (ii) business,
    - (iii) financial management,
    - (iv) corporate governance,
    - (v) any other area of expertise that the Policy Council determines to be relevant to the operation of the State Council,
  - (c) one person appointed by the Minister, on the nomination of the Director-General, being a person with experience in animal health and pest management.
- (2) The Minister may give directions as to the manner in which and the time within which appointments are to be made by the Policy Council for the purposes of this section.
- (3) If the Policy Council fails to make an appointment or appointments under this section, the State Council is nevertheless properly constituted.

#### **21 Provisions relating to constitution and procedure of State Council**

- (1) The constitution and procedure of the State Council are, subject to this Act and the regulations, to be determined by the State Council.
- (2) Schedule 1 has effect with respect to the constitution and procedure of the State Council.

## **Division 2 Functions of State Council**

### **22 Functions of State Council**

- (1) The State Council has such functions as are conferred or imposed on it by or under this or any other Act.
- (2) Without limiting subsection (1), the State Council has the following functions:
  - (a) the supervision of the governance of authorities,
  - (b) the preparation and adoption of a strategic plan and strategic policies for the protection of rural lands having regard to the advice of the Policy Council,
  - (c) the co-ordination of the implementation by authorities of the following:
    - (i) general policies for the protection of rural lands determined by the Policy Council,
    - (ii) strategic policies for the protection of rural lands determined by the State Council,
  - (d) the monitoring and supervision of the implementation by authorities of the following policies in districts where those policies have been the subject of a guideline issued under section 23:
    - (i) general policies for the protection of rural lands determined by the Policy Council,
    - (ii) strategic policies for the protection of rural lands determined by the State Council,
  - (e) public education about, and promotion of, the functions, role and activities of authorities,
  - (f) the provision of administrative services to the Policy Council,
  - (g) the provision of advice and assistance about, and the monitoring of the implementation by authorities of, function management plans,
  - (h) consultation with authorities about, and entering into arrangements on behalf of authorities for or with respect to, services provided by authorities on behalf of public authorities,
  - (i) engagement in negotiations with public authorities in relation to the exercise of functions of the authorities that affect those public authorities,
  - (j) ensuring, as far as practicable, that authorities carry out the financial obligations imposed on them by or under this or any other Act,

- (k) production and dissemination of information on the functions, policies and procedures of authorities,
- (l) provision of training for staff and directors of authorities concerning the administration and operation of authorities and functions carried out by the staff and directors,
- (m) carrying out such other functions relating to the administration of this Act as may be conferred or imposed on it by the Minister.

(3) The State Council cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the State Council to exercise its functions.

### **23 Guidelines**

- (1) The State Council may issue guidelines to authorities that are not inconsistent with this Act or any other law with respect to:
  - (a) the exercise of any function of an authority, and
  - (b) financial reports of authorities and the auditing of those reports, and
  - (c) the implementation of general policies for the protection of rural lands determined by the Policy Council, and
  - (d) the implementation of strategic policies for the protection of rural lands determined by the State Council, and
  - (e) the determination of relevant areas of expertise for the purposes of section 39 (3) (b) (v).
- (2) The Policy Council may request the State Council to issue a guideline under subsection (1) (c) regarding the implementation of a general policy for the protection of rural lands determined by the Policy Council.
- (3) The State Council must issue the guideline unless the State Council has:
  - (a) consulted with the Policy Council, and
  - (b) had regard to the views of the Policy Council, and
  - (c) resolved that it disagrees with the policy determined by the Policy Council.
- (4) Any such guidelines may adopt a standard or other document as in force from time to time.
- (5) Without limiting subsection (1), the State Council may issue guidelines in respect of

the preparation, contents, submission and adoption of function management plans.

#### **24 Delegation**

The State Council may delegate any of its functions (other than this power of delegation) to an authority or any other person.

#### **25 Operating plans, budgets and reports**

- (1) The State Council must, at least 2 months (or such other period as may be specified in the regulations) before the commencement of each financial year, provide an annual operating plan and budget for the operations of the State Council (in the manner specified in the regulations, if any) for that following financial year to the Minister and the Policy Council.
- (2) The State Council must, as soon as practicable after the end of each financial year (but within such period as may be specified in the regulations), report to the Minister and the Policy Council (in the manner specified in the regulations, if any) on the performance of the State Council in respect of the strategic plan and annual operating plan during the previous financial year.

#### **26-26B (Repealed)**

### **Division 3 Authorities to comply with State Council's orders**

#### **27 State Council may order an authority to take specified action**

- (1) The State Council may, by notice in writing, order an authority to take action specified in the notice with respect to the carrying out of any function of the authority.
- (2) The State Council may make such an order if:
  - (a) an authority fails to comply with any obligation imposed on it in respect of the function by or under this or any other Act or the memorandum of understanding, or
  - (b) an authority fails to exercise a function in conformity with any relevant guideline, or
  - (c) an authority fails to exercise a function in conformity with any relevant function management plan, or
  - (d) the State Council considers it necessary to make such an order to ensure that the authority complies with such an obligation or acts in conformity with the guideline or plan in the future.
- (3) The notice may require the authority to comply with the order within such reasonable period as is specified in the notice.

## **28 Notice to warn authority of consequence of failure to comply with order**

A notice under section 27 is to warn the authority that a failure to comply with the order (or to comply with it within the period, if any, specified in the notice) may result in action being taken by the State Council under section 29 or appointment of an administrator under Part 14, or both.

## **29 Action that may be taken for failure to comply with order**

- (1) The State Council may itself take the action necessary to carry out a function in accordance with an order it has made to an authority if:
  - (a) the authority fails to comply with the order within the period for compliance (if any) specified in the notice, or
  - (b) no period for compliance is specified in the notice—the authority fails to comply with the order within a reasonable period after the order is made.
- (2) The State Council may take any action necessary to give effect to an order.
- (3) Any action taken by the State Council to give effect to an order made to an authority is to have effect as if it were taken by the authority.
- (4) The State Council may, by notice given to an authority, require the authority to pay to it an amount to reimburse the State Council within a period specified in the notice for any costs incurred by the State Council in taking action under this section.
- (5) Any amount that remains unpaid at the end of the period specified may be recovered by the State Council from the authority concerned as a debt in a court of competent jurisdiction.

### **Note—**

The State Council may also request the Minister to appoint an administrator if an authority fails to comply with an order. See Division 2 of Part 14.

## **Division 4 Finance**

### **30 State Council's fund**

- (1) The State Council is to establish and maintain a fund into which is to be paid all money received by the State Council by or under this or any other Act.
- (2) Money may, subject to this Act, be paid from the State Council's fund for any purpose allowed under this or any other Act.

### **31 Authorities to contribute to State Council's fund**

- (1) Each authority must, within such period and in such manner as is determined by the State Council, pay a contribution each financial year to the State Council for the



purpose of enabling the State Council to carry out its functions.

- (2) The contribution to be made by each authority is to be calculated in the following manner or, if regulations are made for the purposes of this subsection, as prescribed by the regulations:
  - (a) the State Council must, at least 2 months (or such other period as may be specified in the regulations) before the commencement of each financial year, determine the amount of money that it requires authorities to contribute to the State Council's fund to enable it to carry out its functions during that following financial year,
  - (b) the State Council is to notify the Policy Council of the amount so determined,
  - (c) the Policy Council is to determine the portion of the total amount that is to be paid to the State Council's fund by each authority.

### **32 Investment**

The State Council may invest money in its fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the State Council to invest the money—in accordance with the *Trustee Act 1925* or in any other manner approved by the Minister with the concurrence of the Treasurer.

### **33 Financial year of State Council**

The financial year of the State Council is the year commencing on 1 July.

**Note—**

A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

### **34 Audit of financial statements**

The State Council must submit the financial statements relating to its accounts for a financial year and the opinion furnished by the Auditor-General under section 41C of the *Public Finance and Audit Act 1983* to the Minister within 6 weeks after the Auditor-General submits them to the State Council.

Maximum penalty: 20 penalty units.

### **35 Performance audit of State Council's activities**

- (1) The Minister may request the Auditor-General to conduct a performance audit of all or any particular activities of the State Council under Division 2A of Part 3 of the *Public Finance and Audit Act 1983*.

- (2) The Auditor-General must conduct such a performance audit of all or any particular activities of the State Council if requested to do so by the Minister.
- (3) The cost of conducting a performance audit is payable by the State Council.

**Note—**

The Auditor-General may surcharge members and employees of the State Council for improper expenditure. See Part 15.

## **Division 5 Miscellaneous**

### **36 Annual reports**

- (1), (2) (Repealed)
- (3) A report for a year under the *Annual Reports (Statutory Bodies) Act 1984* in respect of the State Council is to include details of any report for an authority submitted to it for the year under section 57A.
- (4) Despite sections 8 and 10 of the *Annual Reports (Statutory Bodies) Act 1984*, the State Council is to prepare the report of its operations for each financial year, and is to submit its annual report to the Minister and the Treasurer, within the period of 8 months after the end of the financial year.

**Note—**

Sections 8 and 10 of the *Annual Reports (Statutory Bodies) Act 1984* provide that statutory bodies (within the meaning of that Act) are to prepare reports of their operations for each financial year, and are to submit annual reports to the appropriate Minister (and, if required, the Treasurer), within the period of 4 months after the end of the financial year. This provision extends that period to 8 months in relation to the State Council.

### **36A State Council report relating to auditing of authorities**

The State Council is to prepare a report as to whether the auditing of authorities' financial reports for each financial year has been satisfactorily carried out, and is to submit the report to the Minister and the Treasurer, within the period of 8 months after the end of the financial year.

## **Part 6 Livestock health and pest authorities**

### **Division 1 Constitution of livestock health and pest authorities**

#### **37 Authority to be constituted for each district**

- (1) A livestock health and pest authority is constituted by this Act for each district.
- (2) An authority does not, for any purpose, represent the Crown.
- (3) An authority is a body corporate.

**Note—**

Part 8 of the *Interpretation Act 1987* applies to statutory bodies. It contains provisions stating the general attributes of statutory incorporation (for example, perpetual succession, the requirement for a seal, the taking of proceedings), it provides for judicial notice to be taken of a statutory corporation's seal, it creates a presumption of regularity for acts and proceedings of a statutory corporation and contains other provisions.

**38 Corporate name of authority**

- (1) The corporate name of an authority is the name of the district for which the authority is constituted, but with the word “authority” substituted for the word “district”.
- (2) An authority for a district is to publish notice of any alteration of its corporate name in a newspaper circulating generally in the district.

**Note—**

The name of a district, and therefore the corporate name of an authority, can be altered under section 5 (2).

**39 Boards of authorities**

- (1) There is to be a board for each authority, called the “[*Name of authority*] Board”.
- (2) The affairs of an authority are to be controlled by the board of the authority. Any act, matter or thing done in the name of, or on behalf of, an authority by the board of the authority is taken to have been done by the authority.
- (3) The board of an authority is to consist of:
  - (a) 6 elected directors or, if in relation to a particular board the Minister specifies a different number of elected directors under subsection (4)—the number of elected directors specified, and
  - (b) 2 directors appointed by the authority, after a process of selection on merit, on the basis of the appointed director having expertise, experience or qualifications in one or more of the following areas:
    - (i) law,
    - (ii) business,
    - (iii) financial management,
    - (iv) corporate governance,
    - (v) any other area of expertise determined to be relevant by a guideline issued under section 23.
- (4) The Minister may, by order published in the Gazette, direct that the number of elected directors of a particular board is to be the number specified in the order.

- (5) If a district is divided into divisions, such number of elected directors as is specified by the Minister by order published in the Gazette must be elected (or appointed) in accordance with Schedule 2 for each division.
- (6) Schedule 1 has effect with respect to the constitution and procedure of boards of authorities.
- (7) Schedule 2 has effect with respect to the election and appointment of directors of boards of authorities.

#### **40 Dissolution of authorities**

- (1) An authority is dissolved if:
  - (a) the district for which it is constituted becomes wholly comprised within another district, or
  - (b) all parts of the district for which it is constituted are wholly distributed among other districts, or
  - (c) the district for which it is constituted is amalgamated into one or more other districts, or
  - (d) the district for which it is constituted is divided into 2 or more other districts, or
  - (e) the district for which it is constituted is dissolved.
- (2) On the day a proclamation dissolving a district takes effect, the board of the authority of the district ceases to exist and the directors of the board cease to hold office.

#### **41 (Repealed)**

### **Division 2 Functions of authorities**

#### **42 Functions generally**

- (1) An authority has the functions conferred or imposed on it by or under this or any other Act.
- (2) Without limiting subsection (1), an authority has the following functions:
  - (a) any function with respect to animal health or the protection of rural lands referred to in this Act or the regulations that is not specifically conferred or imposed on another person or body,
  - (b) the administration within its district of drought or other disaster relief schemes,
  - (c) the provision of any service on behalf of or to a public authority by arrangement with the public authority,

(d) the doing of anything necessary, or supplemental or incidental to, the exercise of its functions.

(3) The Minister may (with the concurrence of the State Council) delegate to an authority any functions of the Minister under the *Stock Diseases Act 1923*, the *Stock (Chemical Residues) Act 1975* or any other Act prescribed by the regulations for the purposes of this section.

(4) An authority cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable an authority to exercise its functions.

(5), (6) (Repealed)

**43 Animal health functions**

(1) Without limiting section 42, an authority has the following functions in relation to animal health:

(a) the facilitation of the provision of the following types of programs (including by providing resources for such programs):

- (i) animal disease prevention, management, control and eradication programs,
- (ii) chemical residue prevention, management and control programs,

(b) the delivery of advisory services (including by providing resources for such services) related to the following:

- (i) animal disease prevention, management, control and eradication,
- (ii) chemical residue prevention, management and control,

(c) the provision of resources for conducting animal disease surveillance programs,

(d) the collection, collation, interpretation and reporting of animal disease surveillance information,

(e) the maintenance of records relating to, and making reports on, the disease status and chemical residue status of stock and land,

(f) the provision of animal health services (including advisory services and services related to animal production) with respect to stock and any other animal that has a disease that may affect stock in the authority's district,

(g) the implementation of emergency animal disease preparedness and response programs.

**Note—**

Functions relating to animal health are also dealt with under the memorandum of understanding entered into under section 13.

- (2) Nothing in subsection (1) (f) confers a function on an authority to provide animal health services of a kind that would ordinarily be provided by a private veterinary practitioner.

**43A (Repealed)**

**Division 3 Function management plans**

**44 Authorities to prepare draft function management plans**

- (1) An authority must, within the periods specified by the State Council, prepare the following:
  - (a) a draft function management plan for its functions in respect of all travelling stock reserves under its care, control and management,
  - (b) a draft function management plan for its animal health functions.
- (2) An authority must prepare a draft function management plan for any of its other functions if it is requested to do so by the State Council.

**45 Contents of draft plans in respect of travelling stock reserves**

- (1) A draft function management plan for an authority's functions with respect to travelling stock reserves is to contain a scheme of management practices to be followed with respect to the reserves.
- (2) Without limiting any other matters to which regard may be had in preparing the draft, regard is to be had to the following objectives:
  - (a) the management of travelling stock reserves for the benefit of travelling stock,
  - (b) the adoption of appropriate stocking practices,
  - (c) the conservation of wildlife (including the conservation of critical habitat and threatened species, populations and ecological communities and their habitat),
  - (d) the protection of the reserves against soil erosion and diminution of water quality.

**46 Public exhibition and consultation requirements for draft plans in respect of travelling stock reserves**

- (1) An authority is to give public notice of a draft function management plan for functions with respect to travelling stock reserves prepared by it in a newspaper circulating generally in its district and is to place the draft on public exhibition for a period of not

less than 28 days.

- (2) The public notice must also specify a period of not less than 42 days after the date on which the draft is placed on public exhibition during which submissions on the draft may be made to the authority.
- (3) The authority may (but is not required to) permit a submission to be made after the day specified for the close of submissions.
- (4) Any person may request the authority to supply the person with a copy of the draft and may make a submission on the draft to the authority.
- (5) The authority may provide a copy of a draft for taking away (either free of charge or on payment of reasonable charges, as the authority chooses).

#### **47 Submission and adoption of draft plans**

- (1) An authority is to submit each draft function management plan that it prepares to the State Council.
- (2) A draft function management plan for functions with respect to travelling stock reserves may be submitted only after the authority has considered all submissions concerning the draft received before the day specified for the close of submissions and has made any alterations to the draft it considers appropriate.
- (3) The State Council is to consult with the Director-General of National Parks and Wildlife, the Director-General of Land and Water Conservation, the Director of NSW Fisheries and any other person or body prescribed by the regulations with respect to any draft function management plan for functions with respect to travelling stock reserves submitted to it.
- (4) The State Council may either agree to the implementation of a draft plan submitted to it without alteration or refer it back to the authority for further consideration.
- (5) If the State Council agrees to the implementation of a draft function management plan for a function of an authority, the draft is the function management plan for the authority for the function concerned.

#### **48 Alteration or revocation of function management plans**

- (1) The State Council may request an authority to amend any of its function management plans or to revoke any such plan and substitute a new plan.
- (2) Except as provided by subsection (3), this Division applies to the amendment of a function management plan in the same way as it applies to the preparation and adoption of a draft function management plan.
- (3) If the State Council is of the opinion that a proposed amendment to a function

management plan is minor in nature, the State Council may authorise the authority not to comply with sections 46 and 47 in respect of the amendment.

#### **49 Function to be exercised in accordance with relevant function management plan**

- (1) Any function of the authority for which there is a function management plan must as far as practicable be exercised in accordance with the function management plan.
- (2) The exercise of that function is not invalid because of a contravention of any such plan. However, this subsection does not prevent the State Council from exercising its powers under section 27 in respect of the function.
- (3) In the event of an inconsistency between a function management plan and a memorandum of understanding entered into under section 13 (1) (or an instrument issued under such a memorandum of understanding), the memorandum of understanding (or instrument) prevails to the extent of the inconsistency.

### **Division 4 Financial provisions**

#### **50 Authority's fund**

- (1) An authority is to establish and maintain a fund into which is to be paid all money received by the authority by or under this or any other Act.
- (2) Money may be paid from the authority's fund for any purpose allowed by or under this or any other Act.
- (3) However:
  - (a) money that has been received by imposition of a special purpose rate may not be used otherwise than for the purpose for which the rate was levied, and
  - (b) money that is subject to the provisions of this or any other Act (being provisions that state that the money may be used only for a specific purpose) may be used only for that purpose, and
  - (c) money that has been received from a Government or a public authority by way of a specific purpose advance or grant may not (except with the consent of the Government or public authority) be used otherwise than for that specific purpose, and
  - (d) money that is held on trust must be applied for the purposes of or in accordance with the trusts relating to it.
- (4) An authority is to keep a separate record of money of the kind referred to in subsection (3).
- (5) Money in the authority's fund may not be held otherwise than in an account with a



bank, building society or credit union or in an investment in which such money is, by or under this or any other Act, authorised to be invested.

### **51 Alternative use of money raised by special purpose rates**

Despite section 50 (3), money received by an authority by imposition of a special purpose rate that is surplus to the purpose for which the rate was imposed may be used by the authority for any other purpose approved by the Minister.

### **52 Investment**

An authority may invest money in its fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the authority to invest the money—in any manner approved by the Minister with the concurrence of the Treasurer.

### **53 Financial year of authority**

- (1) The financial year of an authority is the year commencing on 1 July.
- (2) Despite subsection (1), the Minister, on the recommendation of the State Council, may, by order published in the Gazette, determine a different financial year for all authorities.

### **54 (Repealed)**

### **55 Performance audit of authority's activities**

- (1) The Minister may request the Auditor-General to conduct a performance audit of all or any particular activities of an authority under Division 2A of Part 3 of the *Public Finance and Audit Act 1983*.
- (2) The request may be made on the Minister's own initiative or at the request of the State Council.
- (3) The Auditor-General must conduct such a performance audit of all or any particular activities of an authority if requested to do so by the Minister.
- (4) The Minister is to advise the authority and the State Council of the outcome of the performance audit as soon as practicable after receiving the Auditor-General's report on it and is to forward a copy of the report to the authority and the State Council.
- (5) The State Council is to advise the authority and the Minister in writing of the things done or proposed to be done by the State Council in response to the report as soon as practicable (or within such period as the Minister directs) after it receives the copy of the report.

- (6) The cost of conducting a performance audit is payable by the authority concerned.

**Note—**

The Auditor-General may surcharge directors and employees of an authority for improper expenditure. See Part 15.

## **Division 4A Accounting records, financial reports and auditing**

### **55A Accounting records**

- (1) An authority must keep such accounting records as are necessary to correctly record and explain its financial transactions and its financial position.
- (2) In particular, an authority must keep its accounting records in a manner and form that facilitate:
- (a) the preparation of financial reports that present fairly its financial position and the results of its operations, and
  - (b) the convenient and proper auditing of those reports.

### **55B Preparation of financial reports**

- (1) An authority must prepare a financial report for each financial year, and must refer the report for audit as soon as practicable (having regard to the requirements of section 55D (1)) after the end of that financial year.

**Note—**

Under section 55D (1), an authority's financial report for a year must be prepared and submitted to its auditor within the period of 3 months after the end of that financial year.

- (2) An authority's financial report must include:
- (a) a general purpose financial report, which is to include the following:
    - (i) a balance sheet as at the end of the year,
    - (ii) an income statement for the year,
    - (iii) a cash flow statement for the year,
    - (iv) a statement on changes in equity for the year,
    - (v) such notes as are proper and necessary to explain the statements or other documents referred to in subparagraphs (i)-(iv), and
  - (b) any other matter prescribed by the regulations, and
  - (c) any other matter required to be included in the report by the guidelines issued by the State Council.

- (3) The general purpose financial report must be prepared in accordance with this Act and the regulations and the requirements of:
  - (a) the *Australian Accounting Standards* issued by the Australian Accounting Standards Board, as in force for the time being, subject to the regulations, and
  - (b) such other standards as may be prescribed by the regulations or adopted by the guidelines.

#### **55C Auditing of financial reports**

- (1) An authority's auditor must audit the authority's financial report as soon as practicable (having regard to the requirements of section 55D (2)) after the report is referred for audit.
- (2) An authority's financial report must be audited in accordance with the requirements of:
  - (a) the *AUASB Standards and Pronouncements* issued by the Auditing and Assurance Standards Board, as in force for the time being, subject to the regulations, and
  - (b) such other standards as may be prescribed by the regulations or adopted by the guidelines.
- (3) The regulations may prescribe, and the guidelines may set out, matters that an auditor must consider and provide comment on in auditing an authority's financial report.

#### **55D Time for preparation and auditing of financial reports**

- (1) An authority must prepare its financial report for a financial year and (subject to this section) submit the report to its auditor within the period of 3 months after the end of that financial year.
- (2) An auditor for an authority must (subject to this section) audit the authority's financial report for a financial year within the period of 6 weeks after the report has been submitted to the auditor.
- (3) An authority may, at any time within the period of 3 months after the end of the financial year, apply to the State Council for an extension of the period referred to in subsection (1).
- (4) An auditor may, at any time within the period of 6 weeks after an authority's financial report has been submitted to the auditor, apply to the State Council for an extension of the period referred to in subsection (2) in relation to that report.
- (5) An application under subsection (3) or (4) must include detailed reasons and other relevant information in support of the application.

- (6) Before deciding whether or not to grant an extension, the State Council may require the authority or auditor to give reasons, additional to those set out in the application, as to why the extension should be granted.
- (7) The State Council may grant an extension of such period as, in the opinion of the State Council, is necessary in the particular circumstances of the case.
- (8) An authority must notify its auditor of any application for an extension made under this section and of the outcome of the application.
- (9) An auditor must notify the relevant authority of any application for an extension made under this section and of the outcome of the application.
- (10) The State Council must notify both the authority and auditor concerned of any extension granted under this section.
- (11) If the State Council extends a period referred to in subsection (1) or (2), the authority or auditor must comply with the subsection within the extended period.

#### **55E Auditor's reports**

- (1) An authority's auditor must prepare the following reports:
  - (a) a report on the general purpose financial report prepared in accordance with the *AUASB Standards and Pronouncements* issued by the Auditing and Assurance Standards Board, as in force for the time being, subject to the regulations,
  - (b) a report on the conduct of the audit.
- (2) The report on the authority's financial report must include:
  - (a) a statement as to whether, in the opinion of the auditor, the authority's accounting records have been kept in accordance with the requirements imposed by or under this Act, and
  - (b) a statement as to whether, in the opinion of the auditor, the authority's financial report:
    - (i) has been prepared in accordance with the requirements imposed by or under this Act, and
    - (ii) is consistent with the authority's accounting records, and
    - (iii) presents fairly the authority's financial position and the results of its operations, and
  - (c) a statement setting out particulars of any material deficiency in the accounting records or financial reports that has come to light in the course of the audit.

- (3) The report on the conduct of the audit:
  - (a) must contain a statement as to whether, in the opinion of the auditor, any information relevant to the conduct of the audit has been unobtainable by the auditor, and
  - (b) may contain such statements, comments and recommendations as to the conduct of the audit of the authority's financial report as the auditor considers appropriate to include in the report.
- (4) As soon as practicable after completing the audit, the auditor must send a copy of the auditor's reports to the State Council and to the authority.
- (5) The authority must, within the period of 2 weeks after receiving the auditor's reports, send a copy of the auditor's reports, together with a copy of the authority's audited financial report, to the State Council.

#### **55F Interim reports**

- (1) An authority's auditor may, at any time during the audit of an authority's financial report, report to the State Council on any matter relating to that report or to the conduct of the audit.
- (2) The auditor must give the authority a copy of any report made to the State Council under this section.

### **Division 4B Auditors**

#### **55G Appointment of auditors**

- (1) An authority must appoint a person as its auditor.
- (2) An authority's auditor may be:
  - (a) an individual who is a registered company auditor, or
  - (b) a partnership whose members or employees include a registered company auditor, or
  - (c) a corporation whose employees include a registered company auditor.
- (3) If the authority's auditor is a partnership, any member or employee of the partnership may act as the authority's auditor as long as he or she is a registered company auditor.
- (4) If the authority's auditor is a corporation, any employee of the corporation may act as the authority's auditor as long as he or she is a registered company auditor.
- (5) An appointment or reappointment of an auditor is to be made in accordance with any

restrictions or procedures set out in the guidelines.

- (6) An auditor may not be appointed or reappointed unless the appointment or reappointment has been approved by the State Council.
- (7) In this section, **registered company auditor** has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth and includes the Auditor-General.

#### **55H Disqualified persons**

- (1) A person may not be appointed as an authority's auditor:
  - (a) in the case of an individual, if he or she is a disqualified person, or
  - (b) in the case of a partnership, if any member or employee of the partnership is a disqualified person, or
  - (c) in the case of a corporation, if the corporation or any employee of the corporation is a disqualified person.
- (2) In this section, **disqualified person** means a person:
  - (a) who is a director of the authority, or
  - (b) who is a member of staff of the Livestock Health and Pest Authorities Division of the Government Service, or
  - (c) who is in debt to the authority otherwise than for rates or charges owed by the person as a ratepayer, or
  - (d) who has a contractual arrangement with the authority that (if the person were the authority's auditor) might reasonably be seen to give rise to a conflict between the person's duties as an auditor and the person's interests under the arrangement.

#### **55I Auditor's term of office**

- (1) An authority's auditor holds office for 4 years and, if otherwise qualified, is eligible for reappointment subject to this section.
- (2) The office of auditor becomes vacant if the auditor:
  - (a) dies, or
  - (b) completes a term of office and is not reappointed, or
  - (c) ceases to be qualified to hold office as an auditor or becomes a disqualified person within the meaning of section 55H, or
  - (d) resigns office by notice in writing addressed to the authority, or

- (e) becomes a mentally incapacitated person, or
  - (f) 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
  - (g) 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, or
  - (h) is removed by the authority in accordance with this section.
- (3) The authority may remove an auditor from office only with the consent of the State Council.
  - (4) Without limiting subsection (3), the authority, with the consent of the State Council, may remove an auditor from office for a failure by the auditor to comply with a requirement placed on the auditor by Division 4A.
  - (5) If the office of auditor becomes vacant, the authority must, in accordance with sections 55G and 55H, appoint a qualified person to fill the vacancy.

**55J Auditor may exercise general power of inspecting accounting records**

- (1) An authority's auditor, for the purpose of forming an opinion as to whether the requirements of this Act and the regulations are being complied with:
  - (a) may inspect the authority's accounting records and other records necessary in order to carry out the auditor's functions at any time, and
  - (b) must inspect those records at such periods as may be prescribed by the regulations or set out in the guidelines.
- (2) The auditor may report to the authority or to the State Council on the results of the inspection.
- (3) Such a report may deal with such matters concerning the authority's accounting and other records as, in the auditor's opinion, should be dealt with by the report.
- (4) The auditor must give the authority a copy of any report made under this section to the State Council.

**55K Powers of auditor**

- (1) When exercising the functions conferred on an authority's auditor by this Part, an authority's auditor is entitled at all reasonable times to full and free access to the authority's accounting records and other records necessary in order to carry out the auditor's functions and may direct a director of the authority or a member of staff of

the Livestock Health and Pest Authorities Division of the Government Service:

- (a) to produce to the auditor any document relating to those records that is in that person's custody or under that person's control, or
- (b) to grant to the auditor such authorities as may be necessary to enable the auditor to gain access to any document relating to those records that is in the custody or control of any authorised deposit-taking institution, or
- (c) to answer any question,

being a document or question that, in the opinion of the auditor, is relevant to the carrying out of the auditor's functions.

- (2) An auditor may make copies of or take extracts from any document to which the auditor gains access under this section.

### **55L Role of Auditor-General**

- (1) The Auditor-General is authorised to audit an authority's financial report for a financial year:
  - (a) if the authority fails to appoint an auditor, or
  - (b) during any other vacancy in the office of auditor.

- (2) The Auditor-General:

- (a) may, at any time, and
- (b) must, if requested to do so by the Minister on the recommendation of the State Council,

conduct a special inspection and audit of an authority's financial reports and accounting records.

- (3) The costs certified by the Auditor-General as having been incurred by the Auditor-General in auditing an authority's financial report, or conducting a special inspection and audit of an authority's financial reports and accounting records, in accordance with this section must be paid by the authority.

## **Division 5 Miscellaneous**

### **56 What information is publicly available?**

- (1) In this section:

***publicly available document*** means any of the following documents:

- (a) any annual report prepared by the authority under section 57A,



- (b) any financial report of an authority and any accompanying auditor's reports as referred to in Division 4A,
  - (c) any report on a performance audit under section 55,
  - (d) minutes of board meetings (other than minutes for any meeting or part of a meeting that is closed to the public) and any other matters that the authority resolves should be made public,
  - (e) the authority's function management plans,
  - (f) any roll required to be established and maintained by an authority under clause 11 of Schedule 2.
- (2) Any person is entitled to inspect the current version of a publicly available document free of charge.
  - (3) Any person is entitled to inspect free of charge:
    - (a) a document that was replaced by a current publicly available document, and
    - (b) if a publicly available document is produced annually—the corresponding document produced for the previous year.
  - (4) The documents may be inspected at the principal office of the authority during ordinary office hours.
  - (5) The authority may provide a copy of any document for taking away (either free of charge or on payment of reasonable charges, as the authority chooses).
  - (6) The authority may allow inspection of versions of the documents other than the current and immediately preceding versions if those other versions are reasonably accessible.
  - (7) This section does not prevent the authority from allowing inspection free of charge of any other of its documents.
  - (8) This section does not apply to a document that is made or produced before the commencement of this section.

**56A Director-General may direct authority staff during emergency disease outbreaks**

- (1) During an emergency animal disease outbreak period, the Director-General may direct members of the animal health staff of an authority to take such actions as the Director-General considers appropriate.
- (2) A member of the animal health staff of the authority is to comply with any such direction.

(3) In this section:

**emergency animal disease outbreak period** means a period:

- (a) that commences on the date that an order under section 76 of the *Animal Diseases (Emergency Outbreaks) Act 1991* comes into force, and
- (b) ends on the date that the Director-General determines, by notice in writing given to the State Council and each authority, for the purposes of this paragraph.

**member of the animal health staff**, of an authority, means a member of staff of the authority who is:

- (a) a veterinarian, or
- (b) an inspector within the meaning of the *Stock Diseases Act 1923*.

## **57 Fees for services**

An authority may charge and recover a reasonable fee for any service it provides under this or any other Act or the regulations.

### **57A Annual reports**

An authority must prepare a report in accordance with the guidelines in each financial year concerning its activities during the previous year and submit it to the State Council.

## **Part 6A Honesty and conduct**

### **Division 1 Honesty, care and diligence**

#### **57B Conduct of Policy Council and State Council members and directors of boards of authorities**

- (1) Every Policy Council and State Council member, and every director of a board of an authority, must:
  - (a) act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act, and
  - (b) act for a proper purpose in carrying out his or her functions under this or any other Act, and
  - (c) not use his or her office or position for personal advantage, and
  - (d) not use his or her office or position to the detriment of the member's Council or the director's authority (respectively).
- (2) Although this section places certain duties on Policy Council and State Council members, and directors of boards of authorities, nothing in this section gives rise to,

or can be taken into account in, any civil cause of action.

## **Division 2 Codes of conduct**

### **57C Codes of conduct**

- (1) The State Council may issue a code of conduct to be observed by all directors of boards of authorities.
- (2) Without limiting what may be included in the code, the code may relate to any conduct (whether by way of act or omission) of a director in carrying out his or her functions that is likely to bring the authority into disrepute.
- (3) In particular, the code may contain provisions for or with respect to the following conduct:
  - (a) conduct that contravenes all or specified provisions of this Act or the regulations in all or specified circumstances,
  - (b) improper or unethical conduct,
  - (c) abuse of power and other misconduct,
  - (d) action causing, comprising or involving any of the following:
    - (i) intimidation, harassment or verbal abuse,
    - (ii) discrimination, disadvantage or adverse treatment in relation to employment,
    - (iii) prejudice in the provision of a service to the community,
  - (e) conduct of a director causing, comprising or involving any of the following:
    - (i) directing or influencing, or attempting to direct or influence, a member of the staff of the authority in the exercise of the functions of the staff member,
    - (ii) an act of disorder committed by the director at a meeting of the board of an authority or a committee of the board.
- (4) A director of a board of an authority must not contravene the code.
- (5) Nothing in this section or such a code gives rise to, or can be taken into account in, any civil cause of action, and nothing in this section affects rights or liabilities arising apart from this section.

## **Division 3 Contravention of code of conduct**

### **57D Formal censure for contravention of code of conduct**

- (1) An authority may, by resolution at a board meeting, formally censure a director of the

board of the authority for a contravention of the code of conduct.

- (2) A formal censure resolution may be passed only if the board is satisfied that the director has contravened the code on one or more occasions.
- (3) The board must specify in the formal censure motion the grounds on which it is satisfied that the director should be censured.

**57E Process for initiating suspension or other action**

- (1) An authority may, by written notice given to the State Council, state the authority's belief that grounds may exist that warrant the suspension of a director of the board of the authority for a contravention of the code of conduct.
- (2) The State Council, on receipt of the notice, may request that the authority make a report in relation to the alleged contravention.
- (3) The authority must make the report to the State Council requested under subsection (2) before the date specified in the State Council's request or before a later date allowed by the State Council.
- (4) The State Council may:
  - (a) conduct an investigation into any or all of the matters raised by or connected with such a notice or report, or
  - (b) authorise another person (***an investigator***) to conduct such an investigation and to prepare a report into those matters.
- (5) If the State Council has conducted an investigation or considered an investigator's report into the matters concerned and is satisfied that grounds exist that warrant action being taken in relation to the director, the State Council may do any one or more of the following:
  - (a) by order in writing suspend the director from office for a period not exceeding 3 months,
  - (b) direct the director to take specified remedial or other action,
  - (c) recommend to the Minister that the director be removed from office under clause 6 (2) of Schedule 1.
- (6) A copy of the order referred to in subsection (5) (a) must be served on the director.
- (7) A copy of the direction referred to in subsection (5) (b) must be served on the director.
- (8) A director, while suspended from office under this section:
  - (a) is not entitled to exercise any functions of the office, and

(b) is not entitled to any fee or other remuneration to which he or she would otherwise be entitled as the holder of the office.

(9) The period of suspension under an order made by the State Council commences on the date 7 days after the service of the order on the director or the date specified in the order for the commencement of the period of suspension, whichever is the later.

(10) If the director fails to take the specified remedial or other action referred to in subsection (5) (b), the State Council may recommend to the Minister that the director be removed from office under clause 6 (2) of Schedule 1.

#### **57F Other proceedings or actions not affected**

Nothing in this Division affects or limits any proceedings or other action that may be taken in respect of a director of a board of an authority.

## **Part 7 Rates**

### **Division 1 Preliminary**

#### **58 Definitions**

In this Part:

***notional carrying capacity***, in relation to land within a district, means the number of stock that the authority for the district has assessed in accordance with Division 4 could be maintained on the land.

***occupier*** of land means the person entitled to immediate possession of the land but, if the person so entitled does not reside on the land, does not include the resident manager or other person in charge of the land.

#### **59 Treatment of certain holdings as single holdings**

An authority must, if requested to do so by a person who is the occupier of 2 or more holdings within its district that are not contiguous, treat the holdings as a single holding for the purposes of determining liability to pay a rate under this Part.

### **Division 2 Rates**

#### **60 What is rateable land?**

For the purposes of this Act, land within a district is rateable land if it is the whole or any part of a holding that is within the district and either:

(a) the land has an area that is not less than the area prescribed by the regulations in relation to the district for the purposes of this paragraph, or

(b) if the regulations provide for land to be rateable land in any other specified

circumstances—those circumstances exist in respect of the land.

**Note—**

See section 8 for when a holding is within a district.

**61 What are the types of rate?**

(1) The following types of rate can be made by an authority:

- (a) a general rate,
- (b) an animal health rate,
- (c) special purpose rates.

(2) An animal health rate may be levied in respect of rateable land comprising a holding for which an annual return has not been lodged in accordance with section 76.

**62 When are rates to be made and levied?**

(1) An authority must make and levy a general rate for each year on all rateable land in its district.

(2) An authority must make and levy an animal health rate for each year.

(3) An authority may make and levy one or more special purpose rates for any year on any land in its district when the authority considers it necessary to do so.

(3A) A rate does not have effect until it is approved by the Minister.

(4) A rate is to be made in accordance with the regulations.

(5) The regulations may:

- (a), (b) (Repealed)
- (c) specify the purposes for which any special purpose rate or animal health rate may be levied,
- (d) exempt rateable land on which less than a specified number of stock are kept from liability for any animal health rate.

**63 How is a rate levied?**

(1) A rate is levied on the land specified in a rate notice by giving the notice to any occupier of the land liable to pay the rate.

**Note—**

Section 240 (Service and giving of notice and other documents) sets out the ways in which notice may be given.

- (2) A rate notice is to be in the approved form and is to specify the amount of each rate levied.
- (3) A rate is due and payable on the day (being a day not less than 28 days and not more than 42 days after notice of the rate is given) specified in the notice.
- (4) An authority may accept payment of a rate by instalments or in accordance with an agreement made with the person liable to pay the rate.
- (5) For the purposes of subsection (1), if there are 2 or more occupiers of land, a rate notice duly given to any one of the occupiers is taken to have been given to the other occupiers of the land.
- (6) An occupier (other than the owner) of land who is given a rate notice must give any owner (other than the Crown) of the land oral or written advice of the rate levied within 14 days after being given the rate notice.

Maximum penalty: 10 penalty units.

### **Division 3 Liability for rates**

#### **64 Occupiers are liable to pay rates**

- (1) The occupier of land on which a rate is levied by an authority is liable to pay the rate to the authority, except as provided by this Part.
- (2) If there are 2 or more occupiers of the land, they are jointly and severally liable to pay the rate. However, as between themselves they are liable only for that part of the rate that is proportionate to the occupier's interest in the land.
- (3) An occupier who pays to the authority more than the occupier's proportionate part of the rate may recover the excess by way of contribution from the other occupier or occupiers.

#### **65 Liability of owner (other than Crown) to pay rates not paid by occupier**

- (1) An owner (other than the Crown) of the land in respect of which any rate is levied by the authority is liable for payment to the authority of the whole or any part of the rate that is unpaid 12 months after the day on which it became due and payable by an occupier and any interest or any other charges payable in respect of the rate.
- (2) An authority cannot recover any unpaid rate, interest or charges from an owner under subsection (1) unless it gives the owner 28 days' notice of the amount of the rate that is unpaid and of any interest or charges payable in respect of the rate.
- (3) An owner who pays the whole or part of an unpaid rate or any interest or charges payable in respect of the rate may recover the amount paid from the occupier who was given the rate notice.

- (4) Nothing in subsection (2) affects any occupier's liability for payment of a rate.
- (5) If there are 2 or more owners of land, they are jointly and severally liable to pay the unpaid rate. However, as between themselves they are liable only for that part of the rate that is proportionate to the owner's interest in the land.
- (6) An owner who pays to the authority more than the owner's proportionate part of the unpaid rate may recover the excess by way of contribution from the other owner or owners.

## **66 Liability when occupier or owner of land changes**

- (1) The liability of a person to pay to an authority a rate in respect of land that is unpaid on the day the person ceases to be the occupier or owner of the land continues until the day on which notice of the change in occupancy or ownership is given by the person in accordance with section 81.

### **Note—**

The liability of a person who ceased to be the occupier or owner of the land (***the former occupier or former owner***) to pay any owner or subsequent occupier who has paid to an authority any unpaid rate that should have been paid by the former occupier or former owner does not cease on the giving of the notice, and the owner or subsequent occupier who paid the unpaid rate to the authority may recover the amount from the former occupier or former owner (see section 68).

- (1A) The giving of a notice as referred to in subsection (1) does not affect any liability of the owner of the land other than the Crown (if the notice is of change of occupancy) or the new owner of the land other than the Crown (if the notice is of change of ownership) for the whole or any part of a rate that is unpaid or for any interest or any other charges in respect of the rate under section 65.

### **Note—**

If any unpaid rate, interest or charge is paid to an authority by the owner or new owner, he or she may recover the amount from the former occupier or former owner (see section 68).

- (2) A person who pays to an authority any rate levied in respect of land after the person ceases to occupy or own the land and before the person gives notice of the change in occupancy or ownership of the land may recover the amount from any successive occupier or owner of the land who is liable to pay that rate.
- (3) A person who becomes the occupier of land that is the subject of a lease, licence or purchase from the Crown is not liable for any rate levied in respect of the land that is unpaid on the day the person becomes the occupier of the land.

## **67 Apportionment of rates**

- (1) This section applies to a rate levied in respect of land for a year if the occupancy or ownership of the land (whether in whole or in part) is subsequently changed during that year to a different occupier or owner.



- (2) The rate is payable as between the former and subsequent occupier or owner of land proportionately to the part of the year during which the occupier or owner occupied the land and to the part of the land occupied or owned.

#### **68 Recovery of rates paid when not occupier or owner**

An occupier or owner of land who pays to an authority any rate that accrued during the occupancy or ownership of the land by some other person is entitled to recover from that other person as a debt such proportion of the rate as accrued while that other person was the occupier or owner of the land.

### **Division 4 Assessment of notional carrying capacity of land**

#### **69 Assessment of notional carrying capacity**

- (1) An authority must assess the notional carrying capacity of each holding in its district in accordance with the regulations.
- (2) The authority may assess the notional carrying capacity of a holding at any time but must assess it within 5 years (or such other period as may be prescribed by the regulations) of its last assessment.
- (3) The authority is to give any occupier of the holding notice of its assessment as soon as practicable after it is made (but not later than on the first occasion following the assessment on which a rate notice with respect to the land is given).
- (4) For the purposes of subsection (3), if there are 2 or more occupiers of a holding, a notice of assessment duly given to any one of the occupiers is taken to have been given to the other occupiers of the holding.
- (5) An occupier (other than the owner) of a holding who is given a notice of assessment must give each other occupier and each owner oral or written advice of the assessment within 14 days after being given the notice of assessment.

Maximum penalty: 10 penalty units.

#### **70 Application for review of assessment**

- (1) An owner or occupier of a holding who is dissatisfied with an authority's assessment of the notional carrying capacity of the holding may apply in writing to the authority for a review of the assessment.
- (2) An application for review of an assessment must be made not later than 28 days after notice of the assessment is given to the occupier.
- (3) The authority may, within 28 days of receipt of an application for review of an assessment, require the applicant to provide the authority with such additional information as the authority may reasonably require to review the assessment.

- (4) The authority is not required to deal with an application for review of an assessment if the applicant fails to provide additional information to the authority when required to do so.

## **71 Review of assessment**

- (1) The authority is to review the assessment within the period of 40 days after:
  - (a) it receives the application, or
  - (b) if it has required the applicant to provide additional information, receipt of the information.
- (2) On reviewing an assessment, the authority concerned may:
  - (a) confirm the assessment, or
  - (b) vary the assessment.
- (3) The authority is to give the applicant for review of the assessment notice of its decision on review of the assessment as soon as practicable after the review.
- (4) An applicant who is given notice of the authority's decision on review of an assessment must give each other occupier or owner of the land oral or written advice of the decision within 14 days after being given notice of it.

Maximum penalty: 10 penalty units.

- (5) The authority is taken (for the purposes only of an appeal) to have decided to confirm the assessment if the authority has not reviewed the assessment within the period of 40 days after:
  - (a) the making of the application for review, or
  - (b) if it has required the applicant to provide additional information, receipt of the information.

## **Division 5 Appeals against assessment of notional carrying capacity and rates**

### **72 Appeals against assessment**

- (1) If an occupier or owner of a holding is dissatisfied with the decision of an authority on review of an assessment of the notional carrying capacity of a holding, the occupier or owner may, not later than 30 days after being given notice of the decision, appeal against the authority's assessment to the appropriate local land board.
- (2) An appeal is to be determined on the information provided or available to the authority in making the assessment and any additional information provided under

section 70. However, the local land board may also take into account any relevant information contained in an annual return under section 76 that has been duly lodged by the applicant.

- (3) Before hearing an appeal against an assessment of the notional carrying capacity of a holding, the local land board must be satisfied that the appellant has paid all rates that the appellant is liable to pay under this Act, other than any rates based on the assessment of the notional carrying capacity that is the subject of the appeal.

### **73 Appeals against rates**

- (1) An occupier or owner of land may appeal against the validity of any rate levied on land to the appropriate local land board.
- (2) An appeal may be made on the ground that the land or part of it is not rateable or is not subject to a particular rate.
- (3) An appeal is to be lodged within 30 days after the occupier of the land is given the rate notice.
- (4) The local land board is not to hear an appeal under this section in respect of a rate levied in respect of a year unless the appellant has produced to the local land board a certificate issued by the authority (or such other evidence as is acceptable to the local land board) confirming that all rates due and payable in any preceding year in relation to the land have been paid.

#### **Note—**

Section 240 (Service and giving of notices and other documents) sets out various ways in which a rate notice may be given.

### **74 Hearing of appeals**

- (1) After hearing the appeal against an assessment of the notional carrying capacity of a holding, the local land board must decide the appeal by:
  - (a) confirming the assessment, or
  - (b) varying the assessment by altering the assessment.
- (2) After hearing the appeal against a rate levied on land, the local land board must decide the appeal either:
  - (a) by confirming the rate as levied, or
  - (b) by varying the rate.
- (3) The decision of a local land board on the hearing of the appeal is final.

## **Division 6 Recovery of rates**

### **75 Measures to facilitate the recovery of rates**

- (1) The lodgment of an appeal against the validity of the rate under section 73 does not prevent proceedings being taken for the recovery of the rate.
- (2) The fact that an appeal has been lodged against the validity of a rate under section 73 does not prevent the State Council from exercising a power conferred by section 79.

**Note—**

An authority may sell land in respect of which the payment of rates is overdue—see Schedule 5.

## **Division 7 Annual returns**

### **76 Annual returns of land and stock**

- (1) An annual return for a holding in a district must be lodged in accordance with the regulations by any person prescribed by the regulations as the person responsible for the lodgment of such a return.

Maximum penalty: 20 penalty units.

- (2) The annual return is to give details of the matters prescribed by the regulations.

### **77 Change of occupier after lodgment of return**

An annual return for a holding that is lodged in accordance with section 76 remains the annual return for that holding for the year it concerns irrespective of any changes occurring in that year in respect of the ownership or occupation of the land or the stock kept on the holding.

### **78 Duty to supply information in respect of land or stock**

An authority may, subject to the regulations, require any person who lodges an annual return or any owner or occupier of the holding to which an annual return relates to provide any specified information relating to matters covered by the return for the purpose of:

- (a) verifying or updating the authority's records, or
- (b) inquiring into the accuracy of information contained in the return.

**Note—**

It is an offence in some circumstances to fail to provide information when required to do so under this Act see section 210 (Offences relating to the provision of information in relation to certain matters).

## **Division 8 Miscellaneous**

### **79 Irregularities concerning rates**

- (1) The State Council may, with the approval of the Minister, extend the period for a rate to be fixed or rate notice to be given if for any reason the rate is not fixed, or rate notice is not given, within the period prescribed by or under this Act.
- (2) The State Council may, with the approval of the Minister, authorise an authority to do any things that are necessary to cure an irregularity and to validate a rate if any irregularity in fixing or levying a rate affects, or may be considered to affect, the validity of any rate.

### **80 Rebates, waiver, refund or writing off of rates**

- (1) An authority may, with the approval of the State Council, do any one or more of the following:
  - (a) grant a rebate of a rate,
  - (b) waive payment of a rate or part of a rate,
  - (c) refund to an occupier or owner a rate or part of a rate,
  - (d) write off any amount of rates waived or refunded under this section.
- (2) Action under this section may be taken in a particular case or class of cases.

### **81 Notice to be given of changes in occupancy or ownership of rateable land**

- (1) A person must, within one month after ceasing to be or becoming the occupier or owner of rateable land within a district, give notice in the approved form to the authority for the district.

Maximum penalty: 10 penalty units.

- (2) A person is taken to have satisfied the requirements of this section in relation to a change of ownership if notice of the change is lodged with the Registrar-General in accordance with section 39 of the [Real Property Act 1900](#) or section 184E of the [Conveyancing Act 1919](#) within one month after the change of ownership.

### **82 Notification of change of address**

- (1) The occupier of rateable land within a district must notify the authority for the district of any change in the occupier's postal address within one month after the change occurs.

Maximum penalty: 10 penalty units.

- (2) The owner of stock kept on rateable land within a district must notify the authority for

the district of any change in the owner's postal address within one month after the change occurs.

Maximum penalty: 10 penalty units.

- (3) A person who becomes the occupier of rateable land within a district must notify the authority for the district of the occupier's postal address within one month after becoming the occupier of the land.

Maximum penalty: 10 penalty units.

### **83 Tenure bond to be paid by certain holders of Crown land**

- (1) The government agency or other public authority that grants a person short tenure of Crown land in a district is to notify the authority for the district as soon as practicable after the grant.
- (2) A person who takes Crown land in a district on a short tenure must provide to the authority for the district a tenure bond within 14 days of taking the land on short tenure.

Maximum penalty: 20 penalty units.

- (3) The tenure bond is to be in the form approved, and for such reasonable amount as is determined, by the authority.
- (4) At the end of the short tenure of land, an amount equal to any unpaid rates, charges, interest or any other amount owed to the authority in respect of the land by the holder of the short tenure is forfeited to the authority from any tenure bond provided under this section.
- (5) The authority must refund the balance (if any) of the tenure bond to the person who provided it.
- (6) Except as provided by subsection (4), nothing in this section:
- (a) affects the liability of any person to pay rates under this Act, or
  - (b) affects an authority's right to recover rates under this Act.
- (7) The regulations may make provision for or with respect to the forfeiture to an authority of any tenure bond provided to the authority under this section.
- (8) In this section:

**short tenure**, in relation to land, means a lease of the land from the Crown for a term not exceeding 3 years or a licence of the land from the Crown.

**tenure bond** means a bond deposited or paid in such a way as to secure an authority against any failure of the person depositing or paying the bond to pay rates, charges

or any other amount in respect of the land payable by the person to the authority under this Act.

## Part 8 Travelling stock reserves and public roads

### Note—

This Part provides:

- (a) for the management, and regulation of the use by travelling stock and persons, of travelling stock reserves that are fully controlled by authorities, and
- (b) for regulation of the use by travelling stock and persons of travelling stock reserves that are not fully controlled but are managed by authorities and of public roads.

## Division 1 Preliminary

### 84 Definitions

(1) In this Part:

**appropriate permit** means a stock permit or reserve use permit that authorises the holder to engage in the activity or conduct concerned.

**closure order** means an order under section 93.

**controlled travelling stock reserve** means:

- (a) a travelling stock reserve the care, control and management of which is vested in an authority under this Part, or
- (b) a travelling stock reserve that is a stock watering place for which an authority is the controlling authority under Part 9.

**managed travelling stock reserve** means a travelling stock reserve other than a controlled travelling stock reserve or any travelling stock reserve (or travelling stock reserves of a class) prescribed by the regulations for the purposes of this definition.

**permit** means a stock permit or reserve use permit.

**responsible authority** means:

- (a) in relation to a controlled travelling stock reserve—the authority vested with the care, control and management of the reserve under this Part or that is the controlling authority under Part 9, or
- (b) in relation to a public road (or part of a public road)—the authority for the district in which the public road (or part of a public road) concerned is located, or
- (c) in relation to a managed travelling stock reserve—the authority for the district in which the reserve is situated.

**timber** has the same meaning as it has in the [Forestry Act 2012](#).

**travelling stock** means stock that are being moved by being walked, and includes travelling stock that are grazing.

**travelling stock reserve** means:

- (a) any route or camping place reserved for travelling stock route or camping place under the [Crown Lands Act 1989](#), or
  - (b) any reserve for travelling stock, water reserve, reserve for access or crossing (where the reserve is for the purpose of providing travelling stock with access to or a crossing of water, whether expressly notified for that purpose or not), or
  - (c) any stock watering place.
- (2) If the boundaries of a district within which a controlled travelling stock reserve is situated change so that the whole or part of the reserve is situated in another district, the responsible authority for that reserve (or part of the reserve) is taken to be the authority for the other district.

## Division 2 Controlled travelling stock reserves

### 85 Vesting care, control and management of certain travelling stock reserves in authorities

- (1) The Minister administering the [Crown Lands Act 1989](#) may, by order published in the Gazette, vest in an authority the care, control and management of any travelling stock reserve to which this section applies.
- (2) This section applies to a travelling stock reserve other than a stock watering place or one that comprises land within:
  - (a) a State forest, or
  - (b) the Western Division that is subject to a lease from the Crown.

#### Note—

Section 18 and paragraph (l) of Schedule A to the [Western Lands Act 1901](#) provide for such leases to contain covenants giving unrestricted rights to proclaim travelling stock reserves and to withdraw land from such reserves.

- (3) An order under this section relating to that part of a travelling stock reserve that is subject to a lease or a licence granted under the Crown Lands Acts does not have effect until the lease or licence is terminated.

### 86 Withdrawal of care, control and management from authority

- (1) The Minister administering the [Crown Lands Act 1989](#) may, by order published in the



Gazette, withdraw the care, control and management of a travelling stock reserve from an authority.

- (2) An order may be made only on the recommendation of the Minister administering this section.
- (3) The Minister administering this section is to take into consideration any views of the authority concerned and the State Council in deciding whether or not to recommend that an order be made.
- (4) Before recommending that an order be made, the Minister administering this section may refer the matter to the appropriate local land board.
- (5) As soon as practicable after the matter is referred to it, the local land board must inquire into the matter and submit a report of its findings in writing to the Minister administering this section.
- (6) The Minister administering this section is not bound to accept the report and no person is entitled to appeal against such a report or have it referred to the Land and Environment Court.

#### **87 Withdrawal of land required for public purpose from travelling stock reserve**

- (1) The Minister administering the [Crown Lands Act 1989](#) may, by order published in the Gazette, withdraw from a travelling stock reserve under the care, control and management of an authority any land that is required as a site for a town or village or for any public purpose, other than the purpose of settlement under the Crown Lands Acts.
- (2) An order may be made only on the recommendation of the Minister administering this section.
- (3) The Minister administering this section is to take into consideration any views of the State Council in deciding whether or not to recommend that an order be made.

#### **88 Compensation for improvements made before withdrawal**

- (1) The Minister administering the [Crown Lands Act 1989](#) is liable to pay compensation to a responsible authority for any improvements made to land comprising any part of a travelling stock reserve that is withdrawn from the care, control and management of the authority.
- (2) The compensation must not exceed the current value of the improvements.
- (3) If the Minister administering the [Crown Lands Act 1989](#) and the responsible authority are unable to agree on the amount of compensation, either of them may refer the matter to the appropriate local land board for determination.

- (4) The local land board to which the matter is referred must determine the amount of compensation payable.
- (5) The local land board's determination is binding on the Minister and the responsible authority.

## **Division 3 Timber on controlled travelling stock reserves**

### **89 Removal or destruction of timber**

- (1) A responsible authority must not remove, fell or destroy timber from an area of more than one hectare of land within a controlled travelling stock reserve unless it has given the Forestry Corporation at least 3 months' notice in writing of its intention to do so.

**Note—**

For the effect of compliance with this section, see section 38 (4) (e) of the [Forestry Act 2012](#).

- (2) A responsible authority must consult the Director-General of National Parks and Wildlife before it decides whether or not to fell timber on or remove timber felled on a controlled travelling stock reserve that adjoins a national park or a nature reserve.
- (3) The responsible authority may remove timber only after giving due consideration to any representations made by the Director-General of National Parks and Wildlife.

### **90 Use of felled timber**

- (1) A responsible authority may sell timber felled on a controlled travelling stock reserve or may use the timber for the purpose of improving any travelling stock reserve within its district or carrying out any work in the district necessary for the exercise of its functions but must not use the timber for any other purpose.
- (2) The responsible authority may sell timber felled in a controlled travelling stock reserve with the consent of the Forestry Corporation, despite anything in the [Forestry Act 2012](#) to the contrary.

### **91 Licences to remove timber**

- (1) The Forestry Corporation must obtain the consent of the responsible authority before it issues any licence under the [Forestry Act 2012](#) to any person other than the authority to cut or remove timber that is located in a controlled travelling stock reserve.
- (2) A licence may include such conditions or restrictions as the Forestry Corporation and the responsible authority agree on.
- (3) If the Forestry Corporation and the responsible authority are in dispute as to the conditions or restrictions to be included in a licence, either of them may refer the

dispute to the Minister administering the *Forestry Act 2012* for determination.

- (4) The Minister's determination of the dispute is binding on the Forestry Corporation and the responsible authority.

## 92 Relationship to other Acts

Nothing in this Part authorises or permits a responsible authority to take any action in respect of a controlled travelling stock reserve that is contrary to the *Native Vegetation Act 2003*.

## Division 4 Closure of controlled travelling stock reserves

### 93 Closure orders

- (1) A responsible authority may make an order (a **closure order**):
- (a) closing a controlled travelling stock reserve (or specified part of a reserve), or
  - (b) suspending an entitlement or authority conferred by or under section 97 to use a controlled travelling stock reserve (or specified part of a reserve) for any recreational activity, or
  - (c) suspending the operation of any stock permit or permit issued under the *Stock Diseases Act 1923* or reserve use permit in relation to the reserve (or part of any such reserve) except to the extent specified in the order.
- (2) A responsible authority may make an order under subsection (1) (a):
- (a) for the purpose of taking appropriate measures for the following:
    - (i) the conservation of the soil or vegetation,
    - (ii) the prevention or mitigation of soil erosion,
    - (iii) the regeneration or planting of trees or pasture, or
  - (b) to enable the authority to exercise any of its other functions in relation to the reserve.
- (3) A responsible authority may make an order under subsection (1) (b) or (c) if use of the reserve for the purposes of the activity concerned or as authorised by the permit could result in:
- (a) damage to the reserve or part of the reserve or to any structure or other thing located on the reserve or part of the reserve, or
  - (b) nuisance or annoyance to any members of the public.

#### **94 Notice of closure**

- (1) An authority that makes a closure order must publish or notify the order in a newspaper circulating generally in the authority's district.
- (2) A closure order takes effect on the day on which it is so published or notified or, if a later day is specified in the order, on that later day.
- (3) A closure order (unless sooner repealed or amended) remains in force for the period specified in the order.

### **Division 5 Use of travelling stock reserves and public roads**

#### **95 Unauthorised uses of travelling stock reserves**

A person must not, without lawful authority:

- (a) enter or remain on a travelling stock reserve, or
- (b) occupy or make use of any travelling stock reserve for any purpose, or
- (c) engage in any activity that damages, or is likely to damage, a travelling stock reserve.

Maximum penalty: 50 penalty units.

#### **96 Unauthorised use of public roads**

- (1) A person who owns or has charge of stock must ensure that the stock do not walk or graze on a public road.

Maximum penalty: 50 penalty units.

- (2) A person is not guilty of an offence under this section if the stock are being walked or grazed under the authority of a stock permit or an order made or permit issued under the [Stock Diseases Act 1923](#) or in any other circumstances prescribed by the regulations for the purposes of this subsection.

#### **97 Authorised use of travelling stock reserves for recreational activities**

- (1) A person is authorised to use a travelling stock reserve (whether controlled or managed) or part of any such reserve on any day between sunrise and sunset for any recreational activity prescribed by the regulations, subject to this Act and any conditions prescribed by the regulations.
- (2) The Crown is to indemnify a responsible authority in respect of:
  - (a) the death of or injury to any person, or
  - (b) damage to, or the destruction of, property other than that of the authority,

arising out of the use of a travelling stock reserve for the purpose of a recreational activity in accordance with this section.

- (3) Subsection (2) does not apply to the death of or personal injury to a director or employee of an authority if the death or injury arises in connection with the exercise by the authority of its functions.

#### **98 Certain occupiers of land to have a right of access over travelling stock reserves**

- (1) An occupier of land is entitled to a right of way over a travelling stock reserve (whether controlled or managed) to and from the road nearest to the land if no other access to and from the land by means of an established road or track is available.
- (2) A right of way is subject to such conditions as to its exercise (including any conditions as to its position, construction or improvement) as may be imposed by the responsible authority in a particular case.
- (3) The responsible authority is to give notice to the occupier of land of any condition imposed by it on a right of way of the occupier.
- (4) The occupier may, with the approval of the responsible authority, and must if directed to do so by the responsible authority by notice in writing, construct or make improvements to the occupier's right of way over the reserve.
- (5) Any construction or improvements are to be made at the expense of the occupier.

#### **99 Appeal about right of way conditions**

- (1) An occupier of land may appeal to the appropriate local land board against a decision of a responsible authority to impose a condition or direct the making of any improvement under section 98.
- (2) The appeal must be made within 28 days of receipt of notice of the decision or direction.
- (3) On hearing the appeal, the local land board may:
  - (a) revoke the decision or direction, or
  - (b) confirm the decision or direction.
- (4) A decision of the local land board on appeal is final and is to be given effect as if it were a decision of the responsible authority concerned.

#### **100 Reserve use permit**

- (1) A responsible authority may issue a permit (a **reserve use permit**) authorising a person or group of persons to engage in any activity in, or to occupy or make use of, a travelling stock reserve in the authority's district for the purpose of establishing and

maintaining an apiary or for any other purpose.

- (1A) A reserve use permit must specify the days, or times of day, or both, that the activity, or occupation or use, is authorised.
- (2) Despite subsection (1), a reserve use permit cannot be issued to authorise engagement in any activity prohibited by this Act or to authorise occupation or use of a travelling stock reserve:
  - (a) by travelling stock or for any stock for grazing purposes, or
  - (b) for any recreational activity prescribed by the regulations under section 97, or
  - (c) for any purpose prescribed by the regulations for the purposes of this section.
- (3) A reserve use permit is to be in the approved form.

#### **101 Stock permits authorising certain uses of travelling stock reserves and public roads**

- (1) An authorised officer of a responsible authority may issue a permit (a **stock permit**) to any person authorising the person to do anything (or omit to do anything) on or in relation to any public road or travelling stock reserve in the authority's district (whether controlled or managed) specified in the permit in respect of stock owned or in the charge of the person and that would otherwise contravene a provision of this Division.
- (2) Without limiting subsection (1), an authorised officer may issue a stock permit authorising a person to do any one or more of the following:
  - (a) enter a controlled travelling stock reserve with stock,
  - (b) remain on a controlled travelling stock reserve with stock,
  - (c) walk stock on a public road or travelling stock reserve,
  - (d) graze stock on a public road or controlled travelling stock reserve.
- (3) A stock permit cannot be issued authorising a person to graze stock (other than travelling stock) on a public road without the concurrence of:
  - (a) in the case of a public road that is not a Crown road—the local authority in which the road is vested, or
  - (b) in the case of a Crown road—the Minister administering the [Crown Lands Act 1989](#).

**Note—**

Under section 40 of the [National Parks and Wildlife Act 1974](#) the concurrence of the Minister is required before the issue of a permit to graze over a travelling stock reserve within the boundaries of a national park

or historic site.

- (4) A stock permit is to be in the approved form.
- (5) Nothing in this section authorises or permits an authorised officer to issue a stock permit authorising a person to do (or omit to do) anything on or in relation to a freeway or tollway within the meaning of the *Roads Act 1993*.

## **102 Applications for stock permits and reserve use permits**

- (1) An application for a permit is to be made to the responsible authority in the manner prescribed by the regulations.
- (2) A permit must not be issued unless:
  - (a) in relation to a reserve use permit (as referred to in section 100 (1))—the fee (if any) determined by the authority has been paid or arrangements have been made for payment of the fee after issue of the permit, or
  - (b) in relation to a stock permit that solely authorises a person to walk stock on a public road or travelling stock reserve (as referred to in section 101 (2) (c))—the fee (if any) determined by the authority has been paid or arrangements have been made for payment of the fee after issue of the permit, or
  - (c) in relation to a stock permit that solely authorises a person to graze stock on a public road (as referred to in section 101 (2) (d))—the fee (if any) prescribed by the regulations in respect of the permit, or such lesser amount as may be determined by the authority in accordance with subsection (2A), has been paid or arrangements have been made for payment of the fee or the lesser amount after issue of the permit, or
  - (d) in relation to a stock permit that solely authorises a person to graze stock on a controlled travelling stock reserve (as referred to in section 101 (2) (d))—the following fee (if any) or amount has been paid or arrangements have been made for payment of the fee or amount after issue of the permit:
    - (i) the fee determined by an auction, public tender or other means approved by the State Council for the permit,
    - (ii) the fee (if any) prescribed by the regulations in respect of the permit, or such lesser amount as may be determined by the authority in accordance with subsection (2A), or
  - (e) in relation to any other stock permit—the fee (if any) prescribed by the regulations in respect of the permit, or such lesser amount as may be determined by the authority in accordance with subsection (2A), has been paid or arrangements have been made for payment of the fee or the lesser amount after issue of the permit.

- (2A) For the purposes of subsection (2), any lesser amount determined by the authority must be determined by reference to:
- (a) a class of persons, public roads, travelling stock reserves or activities, or
  - (b) situations that come within circumstances described in the determination.
- (2B) An authority must display in a conspicuous place in its office the fees prescribed by the regulations or determined by the authority as payable for applications for permits.
- (3) An application under this section is taken (for the purposes only of any appeal) to have been refused if it has not been determined within the period of 14 days after the making of the application.
- (4) If an authority has determined that the fee for a stock permit that solely authorises a person to graze stock on a controlled travelling stock reserve is to be determined by an auction, public tender or other means approved by the State Council (as referred to in subsection (2) (d) (i)) and such an auction, public tender or determination by other means occurs, the authority may not accept the fee or lesser amount (as referred to in subsection (2) (d) (ii)) for the permit.

### **103 Duration of stock permits and reserve use permits**

A permit, unless sooner cancelled or suspended, remains in force for the period specified in the permit.

### **104 Cancellation or suspension of stock permits and reserve use permits**

- (1) A permit may be cancelled or suspended by a responsible authority at any time by notice in writing given to the permit holder.
- (2) The notice is to state the ground for cancellation or suspension of the permit.
- (3) Without limiting the grounds on which the responsible authority may cancel or suspend a permit, the authority may suspend or cancel a permit on any of the following grounds:
- (a) the holder of the permit has been convicted of an offence against this Act or the regulations,
  - (b) the holder of the permit has contravened a condition to which the permit is subject,
  - (c) cancellation or suspension is necessary for the protection of any stock or of a public road or travelling stock reserve.

### **105 Classes of stock permits and reserve use permits**

- (1) The regulations may prescribe different classes of permits and describe the authority



conferred on a person by issue of a particular class of permit.

(2) The regulations may prescribe the conditions to which a class of permit is subject.

#### **106 Conditions of stock permits and reserve use permits**

(1) A permit is subject to such conditions as are prescribed by the regulations or specified in the permit.

(2) The responsible authority may by notice in writing to the holder of a permit:

(a) revoke or vary any conditions attached to the permit that it has specified, or

(b) attach new conditions to the permit.

(3) A holder of a permit who contravenes any condition of the permit is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **107 Movement and grazing of stock authorised by stock permits must comply with Act and regulations**

The holder of a stock permit must ensure that stock that the holder owns or of which the holder has charge are not moved over, or grazed on, a public road or travelling stock reserve in contravention of any provision of this Act or the regulations.

Maximum penalty: 20 penalty units.

##### **Note—**

See also section 208 (Court may order payment of additional penalty in certain cases).

#### **108 Stock permits controlled for adjoining districts**

If a boundary of 2 districts is a public road or a travelling stock reserve, and the walking or grazing of stock on the road or reserve is authorised for one of the districts, the walking or grazing of stock is taken to be authorised for so much of the other district as comprises the road or reserve.

#### **109 Appeals concerning the issue, cancellation or suspension of permits**

(1) An applicant for a permit may appeal to the local land board against a decision of a responsible authority to refuse to issue a permit.

(2) The holder of a permit may appeal to the local land board against a decision of a responsible authority to cancel or suspend the permit.

(3) The appeal must be made within 28 days of the refusal or receipt of the notice of cancellation or suspension.

- (4) A decision of a responsible authority to refuse to issue a permit or to cancel or suspend a permit is effective and operates (subject to any final determination on appeal) from the date of the decision.
- (5) On hearing the appeal, the local land board may:
  - (a) revoke the decision to refuse to issue the permit and issue the permit (whether or not subject to conditions), or
  - (b) confirm the decision to refuse to issue, or
  - (c) revoke the decision to cancel or suspend the permit, or
  - (d) confirm the decision to cancel or suspend the permit.
- (6) A decision of the local land board on appeal is final and is to be given effect as if it were a decision of the authority concerned.

### **110 Compensation**

A local land board that revokes the decision of a responsible authority to cancel or suspend a permit may, on application of the holder of the permit, order the responsible authority to pay compensation to the holder for any loss arising out of the cancellation or suspension.

**Note—**

A party to proceedings before a local land board under this section may appeal to the Land and Environment Court against its decision. See section 26 of the [Crown Lands Act 1989](#).

## **Division 6 Fencing of boundaries of controlled travelling stock reserves**

### **111 Definitions**

In this Division:

**fencing notice** means a notice given under section 114.

**fencing work** means the erection, replacement, repair, alteration or maintenance of a fence.

### **112 Application of Division**

This Division does not apply to the following:

- (a) the holder of a yearly lease,
- (b) a lessee under a lease from the Crown (other than a yearly lease) if the lease has at the relevant date less than 5 years to run,

(c) a licensee under a licence from the Crown.

### **113 Exclusion of *Dividing Fences Act 1991***

The *Dividing Fences Act 1991* does not apply to or in respect of so much of any controlled travelling stock reserve that adjoins land owned by a person other than an authority or that is separated from a controlled travelling stock reserve only by a road or watercourse.

### **114 Owner of land adjoining travelling stock reserve may be required to carry out fencing work**

(1) An authority may, by notice in writing given to the owner of any land adjoining a controlled travelling stock reserve in its district, or separated from such a reserve only by a road or watercourse, require the owner to carry out fencing work on the common boundary of the land and the reserve or of the land and the road or watercourse by the date specified in the notice.

#### **Note—**

Section 240 (Service and giving of notices and other documents) sets out various ways in which a fencing notice may be given.

- (2) A fencing notice may be given only if the authority considers it is necessary for the fencing work to be carried out for the proper protection or improvement of the controlled travelling stock reserve.
- (3) The fencing notice may specify the standard that the fencing work is required to meet.
- (4) The owner to whom a fencing notice is given must comply with the notice.
- (5) The authority that gave the fencing notice may carry out the fencing work required by the notice if the owner fails to comply with the notice.

### **115 Fencing notice to specify contributions payable**

- (1) A fencing notice is to specify whether the owner of the land is to bear the whole or a specified portion of the cost of the fencing work required by the notice and the contribution payable by the authority.
- (2) An owner must not be required to bear more than half the cost of the fencing work except with the concurrence of the State Council.

### **116 Costs of fencing work**

An owner of land who carries out fencing work required by a fencing notice is entitled to recover from the authority that gave the notice the authority's contribution to the cost of the fencing work.

### **117 Compliance notice—fencing**

- (1) An authority that carries out fencing work required by a fencing notice because the owner to whom it was given fails to comply with the notice may, by notice in writing given to the owner, require the owner to pay to the authority:
  - (a) a contribution not exceeding half the cost of the fencing work carried out by the authority, or
  - (b) if the fencing notice specifies that the owner is liable for a greater portion of the cost of the fencing work, a contribution equivalent to that portion of the cost.
- (2) The notice under subsection (1) is to specify the period within which the contribution or amount is payable.
- (3) Schedule 4 has effect.

**Note—**

See Division 1 of Part 13 and Schedule 5 on recovery of unpaid contributions.

### **118 Application to local land board**

- (1) If the owner of land to whom a fencing notice has been given and an authority are in dispute with respect to fencing work required by the notice, either of them may apply to the appropriate local land board to determine the matter.
- (2) On receiving an application under this section, the local land board must hear and determine the application.

### **119 Jurisdiction of land board not to be ousted in certain cases**

- (1) The jurisdiction of the local land board before which proceedings are brought under section 118 cannot be ousted on the ground that the defendant or respondent in the proceedings does not reside within the land district for which the local land board is constituted.
- (2) However, the local land board before which the proceedings are brought may transfer the application to a local land board that may more appropriately hear the application.
- (3) On receiving an application transferred to it under this section, a local land board must hear and determine the application.

### **120 Local land board may allow time for payment**

- (1) In proceedings under this Division before a local land board for the determination of any contribution, or amount of money, the local land board may allow time for payment of the money concerned.
- (2) The local land board may:

- (a) determine that the money be paid in instalments, and
  - (b) fix the amounts of the instalments and the dates by which they are payable, and
  - (c) order interest at a rate not exceeding that prescribed by the regulations to be paid on that money.
- (3) If a local land board exercises the power conferred by subsection (2), the money concerned becomes payable by instalments, on the dates together with interest as fixed under that subsection.

### **121 Right to refer matters to Land and Environment Court**

A local land board and the Minister administering this section have the same rights and powers to refer matters to the Land and Environment Court as the local land board and the Minister administering the [Crown Lands Act 1989](#) have under sections 27 and 28 of that Act.

### **122 Powers of State Council with respect to fences**

- (1) The State Council may refer to the appropriate local land board any question as to:
- (a) any matter requiring the State Council's approval or concurrence under this Division, or
  - (b) any other matter that the State Council considers necessary or appropriate to be inquired into for the purposes of this Division.
- (2) On receiving a reference, the local land board concerned must:
- (a) inquire into the question referred, and
  - (b) as soon as practicable after the inquiry is completed—report its findings to the State Council in writing.

## **Division 7 Miscellaneous**

### **123 Responsible authority not liable for use of pesticides or chemicals on reserves**

- (1) A responsible authority is not liable to pay damages in respect of any pesticide or chemical related injury attributable to the application by the authority of a pesticide or chemical to a controlled travelling stock reserve if the authority has given notice in accordance with the regulations that the pesticide or chemical was about to be applied or had been applied to the reserve.
- (2) This section has effect in relation to a controlled travelling stock reserve (or part of such a reserve) to which a pesticide or chemical has been applied whether or not an appropriate permit is in force that authorises its holder to use the reserve (or part of the reserve) for a particular purpose.

(3) In this section:

***pesticide or chemical related injury*** means death of, or injury or illness suffered by, a person, or deaths of, or injuries or diseases suffered by, stock or bees, that are attributable to the application of a pesticide or chemical.

#### **124 Responsible authority not liable for injury attributable to diseased travelling stock**

(1) A responsible authority is not liable to pay damages in respect of any disease related injury that is attributable to diseased travelling stock that have been walked or grazed on a travelling stock reserve or public road if the authority has given notice in accordance with the regulations that the stock have been walked over or grazed on the reserve.

(2) This section has effect in relation to a travelling stock reserve (or part of such a reserve) or public road on which diseased stock have been walked or grazed whether or not an appropriate permit is in force that authorises the holder to use the reserve (or part of the reserve) or public road for the purpose of walking or grazing stock.

(3) In this section:

***disease related injury*** means death of, or injury or illness suffered by, a person, or deaths of, or injuries or diseases suffered by, stock or bees, that are attributable to diseased stock.

#### **125 When may a responsible authority impound bees or beehives placed or kept on a controlled travelling stock reserve?**

(1) A responsible authority may impound any bees or beehives placed, or being kept, on a controlled travelling stock reserve if the bees or beehives have been placed, or are being kept, otherwise than in accordance with a reserve use permit issued by the authority.

(2) The bees or beehives are to be impounded in such manner as may be prescribed by the regulations.

(3) The responsible authority may decline to release any bees or beehives impounded by it to a person who claims to own them unless the person pays to the authority the impounding fee prescribed by the regulations.

(4) Nothing in this section limits or affects any power with respect to bees or beehives conferred on an inspector under section 15A, 17, 18A or 24 of the [Apiaries Act 1985](#).

#### **126 Orders for mustering of stock**

(1) The person in charge of any stock that are on any part of a public road or a travelling stock reserve must, if requested to do so by a prescribed officer:

(a) muster the stock at a specified place in the vicinity of that part of the road or

reserve, and

- (b) allow the prescribed officer to inspect the stock, and
- (c) assist in counting the stock, and
- (d) provide the prescribed officer with such other assistance as the prescribed officer may reasonably require, and
- (e) except as provided by subsection (2), produce for inspection by the prescribed officer an appropriate permit in respect of the stock.

Maximum penalty: 10 penalty units.

- (2) The person in charge of stock is not required to produce an appropriate permit for inspection if the person claims that the stock are being conveyed under the authority of an order made or a permit issued under the *Stock Diseases Act 1923*.
- (3) A person in charge of stock who claims that stock are being conveyed as referred to in subsection (2) must, if requested to do so by the prescribed officer, produce that order or permit for inspection by the officer within 48 hours after the request is made.

Maximum penalty: 10 penalty units.

- (4) In this section, **prescribed officer** means any of the following:
  - (a) an authorised officer,
  - (b) a police officer,
  - (c) an inspector appointed under the *Stock Diseases Act 1923*,
  - (d) any other person prescribed by the regulations for the purposes of this paragraph.

**127 Power of responsible authority to recover compensation in respect of damage caused to or on controlled travelling stock reserve**

- (1) A responsible authority may recover from a person who:
  - (a) damages a controlled travelling stock reserve, or
  - (b) damages or destroys any structure or work located on a controlled travelling stock reserve,

an amount equal to its expenses in rectifying the damage or replacing the destroyed structure or work.
- (2) This section has effect irrespective of whether the damage or destruction was perpetrated without intention, recklessness or negligence.

- (3) The recovery from a person of an amount under this section does not affect the liability of the person to be dealt with for an offence by or under this Act or under any other law arising out of the same matter.

### **128 Exemption power—authorities**

- (1) An authority may, in accordance with any guidelines given by the State Council, exempt a person or a class of persons in writing from the operation of this Part or a specified provision of this Part.
- (2) The exemption may be limited in duration or may be subject to such factors or circumstances as may be specified in the exemption.
- (3) The authority may cancel the exemption in writing at any time.
- (4) An authority is to give notice in accordance with the regulations of any exemption given (or of any cancellation of an exemption made) by the authority under this section.

## **Part 9 Stock watering places**

### **129 Declaration of stock watering places**

The Minister administering the *Crown Lands Act 1989* may, by order published in the Gazette, declare any of the following to be a stock watering place:

- (a) any Crown land, or land acquired under section 135 of the *Crown Lands Act 1989* for a stock watering place,
- (b) any land acquired for the purpose by a local authority.

### **130 Declaration of stock watering place as town water supply**

The Minister administering this section may, by order published in the Gazette, declare a stock watering place to be a town water supply.

### **131 Which bodies are to be controlling authorities of stock watering places?**

- (1) The controlling authority of a stock watering place that has been declared to be a town water supply under section 130 is:
  - (a) if the stock watering place is located within a local government area—the local authority, or
  - (b) if the stock watering place is not located within a local government area—a person or body nominated by the Minister.
- (2) The controlling authority of a stock watering place that has not been declared to be a town water supply is:



- (a) the body specified by the regulations as the controlling authority of the stock watering place, or
- (b) if no body is so specified—the authority for the district within which the stock watering place is located.

### **132 Controlling authority may construct water storage works**

- (1) The controlling authority of a stock watering place may:
  - (a) construct water storage works at the watering place, and
  - (b) carry out improvements to any water storage works.
- (2) The controlling authority of a stock watering place is responsible, subject to any provision to the contrary of a lease granted under section 134, for maintaining and, where necessary, repairing any water storage works constructed by it.
- (3) The cost of:
  - (a) constructing a water storage work at a stock watering place that is not under the control of a local authority, or
  - (b) carrying out improvements, maintenance or repairs to any water storage work,is, subject to any provision to the contrary of a lease granted under section 134, payable by the relevant controlling authority.
- (4) The controlling authority of a stock watering place must obtain the approval of the Minister before constructing a water storage work or carrying out any improvements, maintenance or repairs to a water storage work the cost of which exceeds \$20,000 (or such other amount as may be prescribed by the regulations).
- (5) In this section:  
**water storage works** means tanks, dams, reservoirs, pumps (including windmills) and other works for storing water or for providing water.

### **133 Compensation for improvements on former stock watering place**

- (1) The Minister administering the [Crown Lands Act 1989](#) is liable to pay compensation for improvements made by a local authority or an authority, as the controlling authority of a stock watering place, if the land on which the improvements are made is Crown land, or land acquired under section 135 of the [Crown Lands Act 1989](#) for a stock watering place, that ceases to be, or to form part of, the stock watering place as a consequence of the revocation or variation of the order declaring the stock watering place.
- (2) The compensation must not exceed the current value of the improvements.

- (3) If the Minister administering the *Crown Lands Act 1989* and the local authority or the authority concerned are unable to reach an agreement as to the amount of compensation payable under this section, either of them may apply to the appropriate local land board to determine the matter.
- (4) The local land board to which application is made under this section must determine the amount of compensation payable.

#### **134 Leases of stock watering places**

- (1) The controlling authority of a stock watering place may, following auction, public tender or other means approved by the State Council, grant a lease of the watering place.
- (2) The controlling authority must not grant a lease of a stock watering place for a period (including any period for which the lease could be extended or renewed by the exercise of an option) exceeding the period prescribed by the regulations.
- (3) A lease of a stock watering place may, with the approval of the controlling authority of that place, be transferred to another person.

#### **135 Controlling authority and lessee to supply water to certain persons and stock**

The controlling authority, or lessee, of a stock watering place must:

- (a) supply water (if available) to any person or stock of a class prescribed by the regulations, or
- (b) allow stock to depasture at the stock watering place in the circumstances, and in accordance with any conditions, prescribed by the regulations.

#### **136 Offence to damage stock watering place**

- (1) A person must not intentionally or recklessly pollute or, without lawful authority, interfere with any water that flows into, or that is used as, the source of supply for any stock watering place.

Maximum penalty: 100 penalty units.

- (2) If any person pollutes or, without lawful authority, interferes with any water that flows into, or that is used as, the source of supply for a stock watering place, the relevant controlling authority may recover from the person an amount equal to the cost of cleaning up or removing the pollution or interference as a debt due in a court of competent jurisdiction.
- (3) Proceedings may be brought under subsection (2) irrespective of whether proceedings could be or have been brought for an offence under subsection (1) arising out of the same matter.

## Part 10 Impounding of unattended and trespassing stock and abandoned articles

### Note—

The *Impounding Act 1993* empowers persons appointed by authorities (which are impounding authorities for the purposes of that Act) to impound and deal with animals (including pigs and deer) and articles in public places and places owned or under the control of authorities within the districts of the authorities if, in the case of animals, they are unattended or trespassing or, in the case of articles, they have been abandoned or left unattended. It also enables occupiers of private land to impound and deal with animals trespassing on their land, provides for the release of impounded animals and articles that are claimed by their owners and, if they are disposed of by sale, provides for the disposal of the proceeds for sale.

This Part includes some provisions that complement or supplement the provisions of the *Impounding Act 1993*.

### 137 Definitions

(1) In this Part:

**stock** includes pig and deer.

(2) If an expression is defined in the *Impounding Act 1993* and is also used in this Part, the expression as used in this Part has, unless the contrary intention appears, the same meaning as in that Act.

### Note—

Expressions used include:

**impounding authority**, which is defined to include an authority.

**unattended** which is defined, in relation to an animal, to include abandoned or straying.

### 138 Unattended stock

Stock are not unattended for the purposes of sections 9 (2) (d) and 32 (3) (d) of the *Impounding Act 1993* if the stock are unattended on a road or travelling stock reserve:

- (a) in accordance with the authority conferred by (and any conditions of) a stock permit, or
- (b) in any other circumstances prescribed by the regulations for the purposes of this paragraph.

### 139 Offence of causing or permitting stock to be on a public road, travelling stock reserve or public land without authority

- (1) If stock (whether attended or unattended) are on a public road, travelling stock reserve or other public land except in accordance with the authority conferred by (and in accordance with any conditions of) a stock permit or by or under any law the owner of the stock, and the person in charge of the stock (if not the owner), are each guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against this section, if the defendant proves that the defendant had taken all reasonable steps to prevent the contravention.
- (3) An impounding officer may impound any stock the impounding officer suspects to be on a public road, travelling stock reserve or other public land in contravention of this section in the same way that the impounding officer may impound an animal under section 9 of the *Impounding Act 1993*.

#### **140 Release of impounded stock**

A person must not, without the authority of an impounding authority:

- (a) release, or
- (b) incite or assist any person to release,

any animal impounded, or seized or detained in a district for the purpose of being impounded.

Maximum penalty: 50 penalty units.

### **Part 10A Transportation of stock by vehicle**

#### **140A Definitions**

In this Part:

**Accreditation Committee** means the Stock Transportation Accreditation Committee constituted by section 140H.

**authorised officer** means an authorised officer who is:

- (a) a police officer, or
- (b) an authorised officer who is authorised to exercise functions conferred on authorised officers by this Part.

**stock** means the following:

- (a) cattle,
- (b) sheep,
- (c) any other kind of animal declared by the regulations to be stock for the purposes of this Part.

**stock transportation particulars**—see section 140B.

**Note—**

**Vehicle** is defined in the Dictionary to this Act to include any means of road, rail, waterborne or airborne

transport.

**transported stock statement** means a document that contains stock transportation particulars and that is in a form approved for the purposes of this Part under section 140J.

#### **140B Stock transportation particulars**

(1) For the purposes of this Part, the following are stock transportation particulars in relation to stock:

- (a) the date the transportation of the stock commenced or is to commence,
- (b) the address at which the stock were or are to be loaded to commence the transportation,
- (c) details of the type and number of stock being or to be transported,
- (d) if the stock are being or are to be transported for the owner or owners of the stock—the name and address of the owner of the stock (or, if there is more than one owner, of at least one of the owners),
- (e) if the stock are being or are to be transported for a person other than the owner or owners of the stock who is an employee of the owner or owners or is otherwise responsible for the stock—the name and address of that person,
- (f) the name and address of the person to whom the stock are being or are to be transported,
- (g) the address to which the stock are being or are to be transported (if different from the address referred to in paragraph (f)),
- (h) any other particulars prescribed by the regulations.

(2) In this section:

**address** of a corporation means the registered office or sole or principal place of business of the corporation.

#### **140C Restrictions on the transport of stock by vehicle on a road**

(1) An owner of stock that are to be transported by a vehicle on a road must:

- (a) duly complete a transported stock statement in relation to the stock, and
- (b) if a person other than an owner is to transport the stock, make a copy of the statement,

before the commencement of the transportation.

Maximum penalty: 20 penalty units.

**Note—**

Section 140E requires records of transported stock statements to be retained.

- (2) If the owner of stock causes another person to transport the stock by vehicle on a road, the owner must provide the person in charge of the vehicle at the commencement of the transportation with a transported stock statement in relation to the stock before the commencement of the transportation.

Maximum penalty: 20 penalty units.

- (3) The person who is in charge of a vehicle in which stock are being transported on a road must:
- (a) be in possession of a transported stock statement in relation to the stock, and
  - (b) ensure that the stock correspond with the description of the stock specified in the document.

Maximum penalty: 20 penalty units.

- (4) A person is not guilty of an offence under this section if the stock concerned are transported or are to be transported under the authority of:
- (a) a stock permit, or
  - (b) an order made or a permit issued under the *Stock Diseases Act 1923*.
- (5) This section does not apply to the transport of stock by vehicle on a road in the following circumstances:
- (a) stock transported into New South Wales from another State or the Australian Capital Territory and transported within New South Wales for up to 30 kilometres before proceeding back into the other State or that Territory as part of an unbroken journey,
  - (b) stock transported across or along a road from one part of a holding to another part that would be contiguous with the first-mentioned part but for being separated by the road,
  - (c) stock transported to or from a place for treatment by a veterinary practitioner (within the meaning of the *Veterinary Practice Act 2003*),
  - (d) stock transported in any other circumstances prescribed by the regulations.

- (6) In this section:

**owner** of stock includes:

- (a) an employee of the owner of the stock, and

- (b) a person other than the owner of the stock who is responsible for the stock, and
- (c) an employee of a person referred to in paragraph (b).

**140D Restriction on the consignment of stock by rail, water or air transport**

- (1) A person must not consign stock that are to be transported by any form of rail, water or air transport to another person (the **consignee**) unless the person has provided the consignee with a duly completed transported stock statement in respect of the stock.

Maximum penalty: 20 penalty units.

- (2) A consignee who is provided with a transported stock statement must (unless the consignee is to be responsible for the stock during the transport) provide a copy of the statement to the person who is to be responsible for the stock during the transport.

Maximum penalty: 20 penalty units.

- (3) A person who is provided by a consignee with a copy of a transported stock statement under subsection (2) must be in possession of the copy until the end of the transport of the stock concerned.

Maximum penalty: 20 penalty units.

- (4) A person is not guilty of an offence under this section if the stock concerned are consigned under the authority of:

- (a) a stock permit, or
- (b) an order made or a permit issued under the [Stock Diseases Act 1923](#).

**140E Records of transported stock statements to be retained**

- (1) An owner of stock who completes a transported stock statement under section 140C (1) in relation to stock that the owner transports by a vehicle must retain the statement for at least 2 years after the day on which the transportation ends.
- (2) An owner of stock who provides another person with a transported stock statement under section 140C (2) or 140D (1) must retain a copy of the statement for at least 2 years after the day on which the transportation ends.
- (3) A person in charge of a vehicle who is provided with a transported stock statement under section 140C (2) must retain the statement for at least 2 years after the day the transportation ends.
- (4) A consignee who is provided with a transported stock statement under section 140D must retain the statement for at least 2 years after the day on which it is provided.

Maximum penalty: 20 penalty units.

#### **140F Powers to stop and search vehicles transporting stock**

- (1) **Vehicle search powers** An authorised officer may exercise any one or more of the vehicle search powers in respect of a vehicle if the authorised officer has reasonable grounds to believe that the vehicle is being used to transport stock.
- (2) **Power to give reasonable directions** An authorised officer who exercises a vehicle search power under this section has the power to give reasonable directions (to facilitate the exercise of the power) to any person:
  - (a) in or on the vehicle concerned, or
  - (b) in the vicinity of the vehicle concerned.
- (3) **Preconditions for exercise of vehicle search power** An authorised officer may give a direction referred to in subsection (2) only if, before giving the direction, the authorised officer:
  - (a) provides evidence to the person that he or she is an authorised officer (unless the authorised officer is a police officer in uniform), and
  - (b) in the case of a police officer in uniform—provides his or her name and place of duty, and
  - (c) informs the person of the reason for the direction, and
  - (d) warns the person that a failure to comply with the direction may be an offence.
- (4) **Offence** A person must (unless the person has a reasonable excuse for not doing so):
  - (a) stop a vehicle the person is in charge of when directed under this section to do so by an authorised officer, or
  - (b) comply with any other direction given under this section by an authorised officer.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

- (5) **Definition** In this section:

**vehicle search power** means any of the following powers:

- (a) a power to stop a vehicle transporting stock for the purposes of determining whether or not:
  - (i) the person in charge of the vehicle is in possession of the transported stock statements required by section 140C, or
  - (ii) the person responsible for the stock is in possession of the transported stock statements required by section 140D (2),



- (b) the power to inspect any of the statements referred to in paragraph (a),
- (c) the power to search a vehicle (whether or not stopped under paragraph (a)) transporting stock for the purposes of determining whether stock being transported appear to be the stock to which transported stock statements in the possession of the person in charge of the vehicle, or who is responsible for the stock, relate and to give reasonable directions to any person in the vehicle for the purpose of facilitating the search,
- (d) the power to take possession of any stock or object found in the course of such a search that the authorised officer conducting the search suspects on reasonable grounds constitutes evidence of an offence under this Act or under any other law.

**140G Person in charge of vehicle transporting stock to give name and other particulars**

- (1) An authorised officer may request the person in charge of a vehicle that the authorised officer has reasonable grounds to believe is being used to transport stock to give the person's name or residential address, or both.
- (2) An authorised officer may make a request referred to in subsection (1) only if, before making the request, the authorised officer:
  - (a) provides evidence to the person that he or she is an authorised officer (unless the authorised officer is a police officer in uniform), and
  - (b) in the case of a police officer in uniform—provides his or her name and place of duty, and
  - (c) informs the person of the reason for the request, and
  - (d) warns the person that a failure to comply with the request may be an offence.
- (3) A person who (without reasonable excuse):
  - (a) fails to comply with a request under this section, or
  - (b) in response to the request, gives a name or address that is false or misleading, is guilty of an offence.

Maximum penalty: 10 penalty units.

**140H Stock Transportation Accreditation Committee**

- (1) There is constituted by this section a Stock Transportation Accreditation Committee.
- (2) The Accreditation Committee consists of 3 members of whom:
  - (a) one is to be a person nominated by the Director-General, and

- (b) one is to be a person nominated by the Commissioner of Police, and
  - (c) one is to be a person nominated by the Livestock and Bulk Carriers Association Incorporated.
- (3) The member referred to in subsection (2) (b) is to be the Chairperson of the Accreditation Committee.
  - (4) The Accreditation Committee has such functions as are conferred or imposed on the Committee by or under this Act.
  - (5) The procedure for the calling of meetings of the Accreditation Committee, and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Committee.
  - (6) Two members constitute a quorum at a meeting of the Committee.
  - (7) A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.
  - (8) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**140I Application for accreditation**

- (1) An application for approval of the form of a consignment note or document as a transported stock statement made to the Accreditation Committee must be:
  - (a) made in such manner and form as the Accreditation Committee may approve, and
  - (b) supported by such information as the Accreditation Committee may require, and
  - (c) accompanied by the application fee (if any) prescribed by the regulations.
- (2) The Accreditation Committee may require an applicant to furnish to the Accreditation Committee, within such time as may be specified, such further particulars as the Accreditation Committee considers necessary to determine the suitability of the proposed form of consignment note or stock transportation document for accreditation.

**140J Approval of form of transported stock statement**

- (1) The Accreditation Committee may, by order in writing, approve as a transported stock statement a form of consignment note or other document for the purposes of this Part on application made to the Committee under section 140I.
- (2) The Director-General may, by order published in the Gazette, approve as a transported stock statement a consignment note or other document for the purposes of this Part.

- (3) An approval may be given subject to the condition that a document be compiled or identified in a manner specified by the Accreditation Committee or Director-General.

## Part 11 Pests

### Note—

This Part provides for the control on public and private land in the State of animals, birds, insects and other members of the animal kingdom that are pests.

## Division 1 Preliminary

### 141 Definitions

In this Part:

**control** of a pest includes the eradication of the pest.

**controlled land**, in relation to a pest control order, means the land to which the order applies.

**eradicate** means fully and continuously suppress and destroy.

**eradication order** means an individual eradication order or general eradication order made under Division 3.

**general destruction obligation** means an obligation referred to in section 143 (2) (a).

**limited destruction obligation** means an obligation referred to in section 143 (2) (b).

**notification obligation** means an obligation referred to in section 143 (2) (c).

**pest** means any member of the animal kingdom declared by a pest control order to be a pest.

**pest control order** means an order made under section 143.

### 142 Part binds Crown

This Part binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its capacities.

## Division 2 Pest control orders

### 143 Minister may make pest control orders

- (1) The Minister may, by order published in the Gazette:
- (a) describe any land to which the order applies (the **controlled land**), and
  - (b) declare any non-human mammal or any bird, insect, amphibian, fish, reptile,

arthropod, insect, mollusc, crustacean or other member of the animal kingdom to be a **pest** on the controlled land, and

- (c) impose or confer any one or more of the obligations or powers described in subsection (2) in relation to that pest on the controlled land.

(2) A pest control order may:

- (a) impose a **general destruction obligation** requiring the occupier of the controlled land to eradicate the pest by any lawful method or by a method specified in the order, or
- (b) impose a **limited destruction obligation** requiring the occupier of the controlled land to eradicate the pest by any lawful method or by a method specified in the order during specified stages of its development or life cycle, or
- (c) impose a **notification obligation** requiring the occupier of land to give the authority for the district in which the controlled land is situated notice of the presence of the pest on the land as soon as practicable after becoming aware of its presence, or
- (d) empower an authority to serve an order in accordance with this Part on any occupier or owner (other than a public authority) of the controlled land in its district requiring the occupier or owner to eradicate the pest by use of a method specified by the authority in the order (an **individual eradication order**), or
- (e) empower an authority to publish an order in accordance with this Part requiring all occupiers of land within its district (or a specified part of its district) to eradicate the pest by use of any method specified by the authority in the order (a **general eradication order**), or
- (f) confer power on any authorised officer or class of authorised officers to take measures to carry out work on the controlled land to eradicate the pest, or
- (g) confer on an authority the power to give approval (whether or not subject to any condition) for any person or class of persons to keep the pest in captivity on the controlled land, or
- (h) confer on an authority a power to approve or order the use (whether or not subject to any condition) of a method of eradication of a pest other than a method (if any) that is specified in the pest control order, or
- (i) prohibit the administration of any substance specified in the pest control order to the pest, or
- (j) require an authority to supply materials that have been provided to it for the eradication of the pest on controlled land within its district free of charge to the

occupier or owner of the land.

- (3) An order may specify a method of eradication to be used in relation to a pest on controlled land that involves application of a substance or thing from the air.
- (4) An order must not specify any method of eradication in relation to a pest that would constitute an act of cruelty committed upon an animal within the meaning of the [Prevention of Cruelty to Animals Act 1979](#).
- (5) The Minister may not make an order declaring any member of the animal kingdom that is protected fauna or a threatened species to be a pest.
- (6) The land to which an order applies may be private land or public land, or both.
- (7) An order may be made so as:
  - (a) to apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) to apply differently according to different factors of a specified kind.
- (8) In this section:

**public authority** means a public authority other than a local authority.

#### **144 When can a pest control order be made?**

- (1) A pest control order may be made by the Minister on the Minister's own initiative after consultation with the State Council or at the request of an authority.
- (2) The Minister must consult with such persons or organisations as may be prescribed by the regulations for the purposes of this subsection before making a pest control order declaring:
  - (a) any member of the animal kingdom that is a native species, or
  - (b) a game animal that is listed in Part 1 of Schedule 3 to the [Game and Feral Animal Control Act 2002](#),to be a pest.
- (3) Without limiting subsection (2), the Minister must consult with the Game Council of New South Wales before making a pest control order declaring a game animal listed in Part 1 of Schedule 3 to the [Game and Feral Animal Control Act 2002](#) to be a pest.

#### **145 Requests by authorities for making of pest control orders**

- (1) An authority may request the Minister to make a pest control order that is to apply to land in its district.

- (2) The request is to be made in the form approved by the Director-General and is to be accompanied by such supporting information as is determined by the Director-General.
- (3) An authority must consult with the Game Council of New South Wales before requesting the Minister to make a pest control order declaring a game animal listed in Part 1 of Schedule 3 to the *Game and Feral Animal Control Act 2002* to be a pest.

#### **146 Public notice of proposal to make order**

- (1) The Minister is to cause notice of a proposal to make a pest control order applying to land to be published in a newspaper circulating generally in the district in which the land is situated or, if the Minister considers it to be appropriate, throughout the whole State.
- (2) The Minister's notice is to indicate when and where a copy of the proposed pest control order is to be placed on public exhibition and that submissions may be made on it.
- (3) The Minister is to cause a copy of the proposed pest control order (and such other information as the Minister considers appropriate) to be placed on public exhibition for a period of not less than 21 days after notice of the proposal is given so that interested persons may make submissions on the proposal.
- (4) The Minister is to take into consideration any submissions received on the proposed pest control order before the Minister makes the pest control order.
- (5) The regulations may make provision for or with respect to the notification and exhibition of proposed pest control orders.

#### **147 Consultation**

The Minister must not make a pest control order that applies to land occupied by a public authority unless the Minister has consulted the public authority about the making of the proposed order.

#### **148 Minister may waive notice and consultation requirements**

- (1) It is not necessary to comply with the requirements of sections 146 and 147 to the extent that the Minister certifies in writing that, in the Minister's opinion, in the special circumstances of the case the public interest requires that the order be made without complying with those requirements.
- (2) The Minister is to give reasons for so certifying in the notice given under section 150.

#### **149 Making of order**

The Minister may make a pest control order in the same terms, or in substantially the

same terms, as the proposed pest control order exhibited in accordance with section 146 or, in the case of an order in respect of which a certificate has been given under section 148 in whatever terms the Minister considers appropriate.

#### **150 Notice of making of order**

The Minister is to cause a notice of the making of a pest control order to be published in a newspaper circulating generally in the district in which the controlled land is situated or, if the Minister considers it to be appropriate, throughout the State.

#### **151 When does a pest control order take effect?**

A pest control order takes effect on the day of its publication in the Gazette or on a later day specified in the order.

#### **152 Duration of pest control order**

- (1) A pest control order has effect (unless sooner revoked) for such period (not exceeding 5 years) as is specified in the order.
- (2) A pest control order made in the circumstances mentioned in section 148 has effect (unless sooner revoked) for 3 months, or such lesser period as is specified in the order.

#### **153 Amendment and revocation of pest control orders**

- (1) The Minister may amend a pest control order by making another pest control order prepared in accordance with this Division.
- (2) The Minister may at any time revoke a pest control order by notice published in the Gazette.

#### **154 Compliance with Division**

- (1) Failure to comply with section 146 or 147 does not affect the validity of a pest control order.
- (2) The Minister is taken to have observed the rules of procedural fairness if a pest control order is made in accordance with this Division.

#### **155 Obligations of owners and occupiers of private land**

- (1) An occupier of any private land on whom a general destruction obligation in relation to a pest is imposed by a pest control order must eradicate any pest on the land by any lawful method (or, if the order specifies a method to be used, by the method specified).

Maximum penalty: 50 penalty units.

- (2) An occupier of any private land on whom a limited destruction obligation in relation to a pest is imposed by a pest control order must eradicate any pest on the land during

the stages of its development or life cycle specified in the order by any lawful method (or, if the order specifies a method to be used, by the method specified).

Maximum penalty: 50 penalty units.

- (3) An occupier of any private land on whom a notification obligation in relation to a pest is imposed by a pest control order must give oral or written notice to the authority for the district in which the land is situated of the presence of the pest on the land as soon as practicable after becoming aware of its presence.

Maximum penalty: 20 penalty units.

- (4) An occupier of land within a district is not guilty of an offence under subsection (1) or (2) if the occupier uses a method to eradicate a pest other than that (if any) specified in the pest control order concerned and the method used has been approved by the authority for the district in accordance with this Part.

### **156 Obligations of occupiers of public land**

- (1) An occupier of any public land on whom a general destruction obligation in relation to a pest is imposed by a pest control order must (to the extent necessary to minimise the risk of the pest causing damage on any land) eradicate any pest on the land by any lawful method (or, if the order specifies a method to be used, by the method specified).
- (2) An occupier of any public land on whom a limited destruction obligation in relation to a pest is imposed by a pest control order must (to the extent necessary to minimise the risk of the pests causing damage on any land) eradicate any pest on the land during the stages of its development or life cycle specified in the order by any lawful method (or, if the order specifies a method to be used, by the method specified).
- (3) An occupier of any public land on whom a notification obligation in relation to a pest is imposed by a pest control order must give oral or written notice to the authority for the district in which the land is situated of the presence of the pest on the land as soon as practicable after becoming aware of its presence.
- (4) An occupier of public land fulfills any obligation referred to in subsection (1) or (2) if the occupier uses a method to eradicate a pest on the land other than that (if any) specified in a pest control order applying to the land and the method used has been approved by the authority for the district in accordance with this Part.

## **Division 3 Eradication orders**

### **157 When may eradication orders be given?**

- (1) An authority that has been empowered to give an eradication order in relation to a pest on controlled land within its district may give the order only if the authority



considers that it is necessary to give it to ensure the effective eradication of the pest on the land.

- (2) An individual eradication order is to be served on the occupier or owner of the land concerned.
- (3) A general eradication order is to be published in a newspaper circulating generally in the district or part of the district concerned.

**158 Period for compliance with eradication order**

- (1) An eradication order must specify a reasonable period within which the terms of the order are to be complied with, subject to this section.
- (2) An order may require compliance within a short period (not being less than 24 hours) in circumstances which the authority believes constitute a serious risk of harm being caused by the pest to which the order relates.

**159-162 (Repealed)**

**163 Reasons for order to be given**

- (1) An authority must give the occupier or owner of land to whom an individual eradication order is given reasons for the order.
- (2) The reasons may be given in the order or in another instrument.
- (3) The reasons must be given when the order is given, except in a case of urgency. In a case of urgency, the reasons may be given the next working day.

**164 Notice of right to appeal against order**

An authority must, in giving an occupier or owner of private land an individual eradication order:

- (a) state that the person may appeal to the local land board against the order, and
- (b) specify the period within which the appeal may be made.

**165 Appeal against individual eradication order of authority**

- (1) An occupier or owner of land (other than a public authority) given an individual eradication order by an authority may appeal to the appropriate local land board only on any one or more of the following grounds:
  - (a) that the authority was not authorised to give the order,
  - (b) that the authority has failed to comply with the requirements of this Division in respect of the making of the order,

- (c) that the action required to be taken under the order to eradicate the pest concerned is inappropriate or likely to be ineffective or that the authority has failed to consider the feasibility of alternative action,
  - (d) that the period of time specified by the order for the taking of action is not reasonable.
- (2) The appeal must be made within 28 days or within the period specified by the order for taking action to eradicate the pest concerned, whichever is the lesser.
  - (3) On hearing the appeal, the local land board may:
    - (a) amend or revoke the individual eradication order, or
    - (b) confirm the order.
  - (4) If an appeal is made to a local land board against an individual eradication order, the order has no force or effect unless the local land board confirms or amends the order or the appeal is withdrawn.
  - (5) If the local land board confirms or amends an individual eradication order, the order has force and effect from the day on which it is confirmed or amended.
  - (6) If an appeal against an individual eradication order is withdrawn, the order is taken to have force and effect from the day on which the order was given.

#### **166 Individual eradication order of Minister**

- (1) An authority may recommend to the Minister that an individual eradication order be given by the Minister to a public authority.
- (2) The Minister may serve an order on a public authority requiring the public authority to eradicate a pest specified in the order by use of a method specified by the Minister in the order within a period specified in the order.
- (3) Before giving an order to a public authority, the Minister must consult with the public authority as to the giving of the order and its contents.

#### **167 Obligations to comply with eradication orders**

- (1) An owner or occupier of land who is served with an individual eradication order by an authority must comply with the individual eradication order.  
Maximum penalty: 50 penalty units.
- (2) An occupier of land who is served with an individual eradication order by the Minister must (to the extent that is reasonably practicable) comply with the eradication order.
- (3) Any occupier of private land to which a general eradication order applies must comply

with the eradication order.

Maximum penalty: 50 penalty units.

- (4) Any occupier of public land to which a general eradication order applies must (to the extent that is reasonably practicable) comply with the general eradication order.

**168 (Repealed)**

**Division 4 Powers of authorised officers and others concerning eradication of pests**

**169 Eradication of pests**

An authorised officer may take such measures and carry out such work on any controlled land as the authorised officer considers necessary to eradicate pests on the land if:

- (a) a pest control order authorises the taking of such action, or
- (b) the owner or occupier of the land has failed to comply with a pest control order or an eradication order applying to the land, or
- (c) the owner or occupier of the land consents to the measures or work being taken or carried out.

**170 Destruction of pests may be required**

- (1) An authorised officer may, by notice in writing, require a person in possession of a live pest (other than a person who has an approval to keep the pest under section 174):
  - (a) to destroy the pest, or
  - (b) to move the pest to a specified place and there destroy it within a time specified in the notice, or
  - (c) to move the pest to a place where it is not a pest within a period specified in the notice.
- (2) If the person refuses or fails to comply with a requirement specified in such a notice, an authorised officer may take the required action, whether or not it involves taking possession of the pest.
- (3) An authorised officer who believes on reasonable grounds that a vehicle may contain a pest (other than a pest that is being conveyed for the purpose of complying with a requirement made under this section) may do one or more of the following:
  - (a) require the driver to stop the vehicle,
  - (b) search the vehicle,

(c) if any pest is found in or on the vehicle, request the driver to move the vehicle to a specified place so that the pest may be destroyed,

(d) seize and destroy any pest found in or on the vehicle.

(4) A person who fails to comply with a requirement made of the person under this section by an authorised officer is guilty of an offence.

Maximum penalty: 40 penalty units.

### **171 Compliance notice—pests**

(1) The Minister or an authority may, by notice given to the occupier or owner of any controlled land, impose on the occupier or owner:

(a) an inspection charge to cover the reasonable costs of any inspection of the land for the purposes of this Part, or

(b) a charge to cover the reasonable expenses of any action taken by an authorised officer under this Part as a consequence of the occupier or owner failing to take any action the occupier or owner is required to take under this Part.

(2) The notice is to specify the day on or before which the charge is to be paid.

(3) A notice must not be given in respect of any action taken that a pest control order specifies is to be carried out by the State free of cost to the occupier or owner of land.

#### **Note—**

See Division 1 of Part 13 and Schedules 4 and 5 on recovery of unpaid charges.

### **172 Contributions towards eradication of pests that are insects**

(1) The Minister may, by notice, require the authority for a district to pay to the Minister an amount as a contribution to the cost of any action taken by the Minister in eradicating pests that are insects.

(2) A notice cannot be given by the Minister under this section unless the Minister is authorised to give the notice by a pest control order.

(3) A contribution is payable within such period after the notice is given as is specified in the notice or within such other period as the Minister allows.

(4) Any contribution that remains unpaid is recoverable by the Minister from the authority in a court of competent jurisdiction.

### **173 Money advanced or paid to Minister for eradication of pests that are insects**

(1) The Treasurer may advance to the Minister, on such terms and conditions as may be determined by the Treasurer in consultation with the Minister, money required for any

of the following purposes:

- (a) money for purchase of materials for the eradication of pests that are insects, or
  - (b) money for meeting the cost of eradicating pests that are insects as provided by this Part, or
  - (c) money for paying any contribution required to be made by the State to the Australian Plague Locust Commission.
- (2) The Minister may apply money advanced under this section only for the purpose for which it is advanced.

## **Division 5 Miscellaneous**

### **174 Approval to keep pest in captivity or use alternative method of eradication**

- (1) Any person may apply in writing to an authority that is empowered by a pest control order to give approval to keep a pest in captivity for approval for the person to keep the pest in captivity on specified land.
- (2) Any person may apply in writing to an authority that is empowered by a pest control order to give approval for use of an alternative method of eradication of a pest to use an alternative method of eradication described in the application to that specified in the order.
- (3) An authority to which an application is made under this section may give the approval sought in writing subject to the conditions (if any) stated in the approval.
- (4) An application under this section is taken (for the purposes only of any appeal) to have been refused if it has not been determined within the period of 40 days after the making of the application.

### **175 Appeal against refusal to approve keeping of pest in captivity or use alternative eradication method**

- (1) An applicant for an approval under section 174 may appeal to the appropriate local land board against a decision of the authority to which the application was made to refuse to give the approval sought.
- (2) The appeal must be made within 28 days of the refusal.
- (3) On hearing the appeal, the local land board may:
  - (a) revoke the decision and give the approval sought (whether or not subject to conditions), or
  - (b) confirm the decision.

- (4) A decision of the local land board on an appeal is to be given effect to as if it were the decision of the authority concerned.

**176 Offences relating to pests kept in captivity**

- (1) A person must not keep a pest in captivity on any land except in accordance with an approval to keep the pest in captivity on the land given under section 174.

Maximum penalty: 20 penalty units.

- (2) Any person who (without lawful excuse) liberates, or attempts to liberate, a pest from captivity is guilty of an offence.

Maximum penalty: 50 penalty units.

**177 Offence of administering prohibited substance to pests**

- (1) A person must not administer any substance to a pest if the substance is declared by the pest control order relating to the pest to be a prohibited substance in relation to a pest of that kind.

Maximum penalty: 100 penalty units.

- (2) For the purposes of any proceeding for an offence under this section, if it is proved that a prohibited substance was administered to a pest, it is, until the contrary is proved, to be presumed that the owner (if any) of the pest administered the substance.

**178 Offences involving fences and pests and conveyance of pests**

- (1) A person must not, without lawful excuse, carry, drive or pass a pest through, under or over a fence or gate on any land (whether controlled land or otherwise) that is designed to prevent such a pest from entering land.

Maximum penalty: 50 penalty units.

- (2) A person must not, without lawful excuse:

(a) leave open a gate in a fence on any land (whether controlled land or otherwise) that is designed to prevent pests from entering land, or

(b) destroy or damage any such fence or gate, or

(c) interfere with any such fence or gate or the surface or subsurface under it in a manner likely to impair its effectiveness as a barrier to such pests.

Maximum penalty: 50 penalty units.

- (3) A person must not, without lawful excuse, convey a live pest from one place to another (whether by vehicle or otherwise).

Maximum penalty: 200 penalty units.

**179 Damage, destruction, removal of eradication devices**

A person must not, without lawful excuse:

- (a) destroy, damage or remove any thing that is being used or intended to be used for the purposes of eradicating pests in accordance with this Part, or
- (b) interfere with any such thing in a manner that is likely to impair its effectiveness.

Maximum penalty: 50 penalty units.

**180 Campaigns for eradication of pests**

- (1) An authority may conduct (or participate in the conduct of) campaigns for the eradication of pests and may make any necessary arrangements and take all necessary steps for carrying out such campaigns.
- (2) Arrangements under this section may be made with other authorities, with the occupiers or owners of land or persons within the authority's district or with the government of this or any other State, the Commonwealth or a Territory.

**181 Disputes between a Minister and another Minister**

- (1) If a dispute arises between the Minister and another Minister or between the Minister and the Minister responsible for a public authority in connection with:
  - (a) the eradication of pests on the whole or part of public land for which the other Minister or a public authority is responsible, or
  - (b) the implementation of any measure with respect to the eradication of pests on that land,a party to the dispute may submit the dispute to the Premier for settlement.
- (2) On submission of a dispute to the Premier, the Premier may hold an inquiry into the dispute and may make such decisions about the dispute as the Premier thinks fit, having regard to the public interest and the circumstances.
- (3) A Minister or public authority must comply with a decision of the Premier under this section and for that purpose is empowered to do so, despite the provisions of this or any other Act.

## **Part 12 Powers of authorised officers**

### **Division 1 Preliminary**

#### **182 Power of entry**

- (1) An authorised officer may enter any premises to enable the authorised officer to exercise any function conferred or imposed on the authorised officer, or any function of the authority the officer is authorised to exercise, by or under this Act.
- (2) The authorised officer may enter premises with such persons and with such vehicles, horses and dogs as the authorised officer considers are necessary to enable or assist the authorised officer to exercise the function concerned.

#### **183 Purposes for which powers under Part may be exercised**

Powers may be exercised under this Part for the following purposes:

- (a) for determining whether there has been compliance with or a contravention of this Act or the regulations or any order, licence, notice, permit or requirement issued or made under this Act,
- (b) for obtaining information or records for purposes connected with the administration of this Act,
- (c) for the purpose of enabling an authority, the authorised officer or any other person to exercise any function conferred or imposed on the person under this or any other Act.

#### **184 Effect on other functions**

Nothing in this Part affects any function under any other Part of this Act.

### **Division 2 Authorised officers**

#### **185 Authorised officers**

An authorising authority may appoint a police officer or any other person (including a class of persons) as an authorised officer for the purposes of this Act.

**Note—**

**Authorising authority** is defined in the Dictionary.

#### **186 Scope of authority**

- (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.
- (2) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions, or the exercise of functions in such part of the district of the authority, as are specified in the instrument of appointment.



- (3) If such authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

### **187 Identification**

- (1) Every authorised officer, other than a police officer, is to be provided by the authorising authority with an identification card.
- (2) In the course of exercising the functions of an authorised officer under this Act, an authorised officer, other than a police officer, must, if requested to do so by any person affected by the exercise of the functions, produce the officer's identification card to the person.
- (2A) In the course of exercising the functions of an authorised officer under this Act, an authorised officer who is a police officer must, if requested to do so by any person affected by the exercise of the functions, produce his or her identification as a police officer (unless he or she is in uniform).
- (3) An identification card is a card or document that:
- (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the powers conferred and the source of the powers, and
  - (d) states the date (if any) on which it expires, and
  - (e) describes the kind of premises to which the power extends, and
  - (f) bears the signature of the person prescribed by the regulations for the purposes of this paragraph.

### **188 Time of entry**

An authorised officer may enter any premises at any reasonable time.

### **189 Entry into residential premises only with permission or warrant**

This Part does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant issued under section 196.

### **190 Powers of authorised officers to do things on premises**

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Act, including (but not limited to) the things specified in subsection (2).

- (2) An authorised officer who enters premises may do any or all of the following:
- (a) inspect the premises,
  - (b) search the premises,
  - (c) examine, seize, detain or remove any pest in or about those premises,
  - (d) examine, seize, detain or remove any other thing that the authorised officer has reasonable grounds to believe is being used to contravene this Act or the regulations,
  - (e) require the production of and inspect any records in or about those premises,
  - (f) take copies of, or extracts or notes from, any such records,
  - (g) require any person in or about those premises to answer questions or otherwise furnish information,
  - (h) require the occupier of those premises to provide the authorised officer with such assistance and facilities as are reasonably necessary to enable the authorised officer to exercise his or her functions,
  - (i) remove or destroy or cause to be removed or destroyed any pest found in or about those premises that is being kept in captivity without lawful authority,
  - (j) break open and search any box, container, package or receptacle (including any place that could be used as a receptacle) in or about those premises,
  - (k) examine or muster any stock.

**191 Notice of entry**

- (1) Before an authorised officer enters premises under this Part, the authorising authority must give the occupier of the premises oral or written notice of the intention to enter the occupier's premises on a day or within a period of days specified in the notice.
- (2) The day or any day within the period of days specified must not be the day on which the notice is given.
- (3) This section does not require notice to be given:
  - (a) if entry to the premises is made with the consent of the occupier of the premises, or
  - (b) if entry has been authorised by a search warrant issued under section 196, or
  - (c) if entry is required urgently and the authorising authority has authorised in writing (either generally or in the particular case) entry without notice, or

- (c1) if the authorised officer concerned is a police officer and the giving of notice would defeat the purpose for which it is intended to exercise the power of entry, or
- (d) if entry is required to eradicate any pest kept in captivity without lawful authority.

### **192 Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to any premises (other than residential premises) under a power conferred by this Part but only if authorised by the authorising authority in accordance with this section and in accordance with any guidelines.
- (2) No force is to be exercised in any case unless the authorising authority has authorised in writing (either in a specified class of cases or in the particular case) the use of force in the circumstances of the case.
- (3) A general authority given by the authorising authority for the use of force is invalid. The authority is to specify the circumstances that are required to exist in a case before force is used.

### **193 Notification of use of force or urgent entry**

- (1) An authorised officer must give the authorising authority prompt oral or written advice of:
  - (a) any use of force by the authorised officer for the purpose of gaining entry to premises, or
  - (b) any entry to premises by the authorised officer without notice having been given to the occupier of the premises of the intention to enter as required by section 191.
- (2) The authorising authority must give notice of the entry to such persons or authorities as appear to be appropriate in the circumstances.

### **194 Care to be taken**

In the exercise of a function under this Part, an authorised officer must do as little damage as possible.

### **195 Compensation**

An authorising authority must compensate all interested parties for any damage caused by an authorised officer who enters premises under this Part in entering the premises (but not any damage caused by exercising any other function), unless the occupier of the premises obstructed, hindered or restricted the authorised officer in the exercise of the power of entry.

### **196 Search warrant**

- (1) An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for a search warrant if the authorised officer under this Act has reasonable grounds for believing that a provision of this Act or the regulations has been or is being or is about to be contravened in or about any premises.
- (2) An authorised officer under this Act may not apply for a search warrant to search premises unless the authorised officer under this Act has notified the authorising authority of the intended application.
- (3) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a warrant authorising an authorised officer under this Act named in the warrant to enter the premises and to exercise there the powers under section 190.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) (Repealed)

### **197 Authorised officer may request assistance**

- (1) An authorised officer may request the assistance of any police officer if the authorised officer reasonably believes that the performance of functions conferred or imposed by or under this Act will be obstructed.
- (2) An authorised officer may request the assistance of any person the authorised officer believes to be capable of providing assistance in the performance of functions conferred or imposed by or under this Act.

## **Division 3 Offences in relation to authorised officers**

### **198 Offence: obstructing authorised officer**

- (1) A person who:
  - (a) prevents an authorised officer from exercising a function conferred or imposed by or under this Act, or
  - (b) hinders, obstructs, threatens or assaults an authorised officer in the exercise of such a function, or
  - (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of an authorised officer asked in accordance with this Act or the regulations, or

(d) furnishes an authorised officer with information knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) A person is not guilty of an offence under subsection (1) (c) unless it is established that, at the material time, the authorised officer:

(a) identified himself or herself as an authorised officer, and

(b) warned the person that a failure or refusal to comply with the requirement may constitute an offence.

### **199 Offence: impersonating authorised officer or other authorised person**

A person who impersonates or falsely represents that the person is an authorised officer is guilty of an offence.

Maximum penalty: 10 penalty units.

## **Part 13 Enforcement provisions**

### **Division 1 Recovery of outstanding rates, charges and other amounts**

#### **200 Sale of land for unpaid amounts owing to authority**

Schedule 5 has effect.

#### **201 Recovery of rates, charges, fees and other unpaid amounts**

- (1) Any rate, charge, fee or other money due to an authority or any other person under this Act may be recovered by the authority or person as a debt in a court of competent jurisdiction.
- (2) The amount of any judgment that is recovered in proceedings brought under this section, and of any costs awarded to the authority or other person concerned in respect of the proceedings is a charge on any land (other than public land) concerned.
- (3) Schedule 5 applies to an amount or any part of an amount awarded or ordered to be paid to an authority or other person under this section that remains unpaid after the expiration of 5 years from the date of the judgment or order of the court concerned.
- (4) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

#### **202 Accrual of interest on overdue rates, charges and other amounts**

- (1) Interest accrues on rates, charges and other amounts payable to an authority, the

Minister or any other person under this Act.

- (2) Interest accrues on a daily basis or on such other basis as is determined by the authority or person concerned.
- (3) The rate of interest is that set by the authority or person concerned but must not exceed the rate specified for the time being by the Minister by notice published in the Gazette.
- (4) Accrued interest is, for the purpose of its recovery, taken to be a rate, charge or amount that is due and payable.
- (5) Interest continues to accrue on unpaid rates, charges or amounts even though judgment for payment of the rates, charges or amounts may have been obtained in a court. Interest is not payable on the judgment debt, despite any other Act.

### **203 Special provision with respect to recovery of unpaid rates and charges**

Despite anything to the contrary in the *Limitation Act 1969*, proceedings for the recovery of a rate or charge may be commenced at any time within 20 years after the date when the rate or charge becomes payable.

## **Division 2 Proceedings for offences**

### **204 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence against this Act may instead be dealt with summarily before the Supreme Court in its summary jurisdiction.
- (3) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act or the regulations is 100 penalty units.
- (4) The maximum penalty that may be imposed by the Supreme Court in proceedings for an offence against this Act is the maximum penalty specified by the relevant section in respect of the offence.

### **205 Time within which summary proceedings may be commenced**

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
  - (a) in the case of a prescribed offence—within but not later than 2 years after the day on which the offence is alleged to have been committed, or
  - (b) in any other case—within but not later than 12 months after that day.
- (2) This section applies only to proceedings that are to be dealt with summarily.

(3) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.

(4) In this section:

**prescribed offence** means:

(a) an offence arising under the following sections:

- section 76 (Annual returns of land and stock),
- section 81 (Notice to be given of changes in occupancy or ownership of rateable land),

(b) an offence against this Act that is declared by the regulations to be a prescribed offence for the purposes of this section.

## **206 Penalty notices for certain offences**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed

the maximum amount of penalty that could be imposed for the offence by a court.

- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## **207 Penalties belong to prosecuting authorities or State Council**

- (1) In this section:

***relevant period*** means:

- (a) the period beginning on the commencement of this subsection and ending on 31 December 2003, or
- (b) any subsequent year.
- (2) Whenever any monetary penalty is imposed for an offence against this Act that is prosecuted by an authority the proper officer of the court that imposed the penalty must pay the amount of the penalty to the authority.
- (3) An amount paid to an authority under this section, or paid under section 206 for a penalty payable under a penalty notice served by an authorised officer appointed by an authority who is not a police officer, belongs to the authority concerned.
- (4) An amount paid under section 206 for a penalty payable under a penalty notice served by an authorised officer who is a police officer belongs to the State Council.
- (5) The total of the amounts paid as referred to in subsection (4) in a relevant period must be distributed to the authorities in the year following the relevant period by way of reduction of the contribution that each authority is required to pay under section 31. The reduction must be in the same proportion as the amount of contribution payable by the authority for the year following the relevant period bears to the total amount of contributions calculated in accordance with section 31 for that year.
- (6) This section applies irrespective of any other law to the contrary.

## **208 Court may order payment of additional penalty in certain cases**

- (1) A court that finds a person guilty of an offence under a prescribed section (whether or not it convicts the person of the offence), may, in addition to any other penalty that it may impose, order the person to pay to the authority in whose district the offence was committed an amount sufficient to reimburse or compensate the authority for any expenses (including any costs of agistment) incurred or losses suffered by the authority as a result of the offence.
- (2) If a court finds that such an offence was committed on a road or travelling stock reserve located in 2 or more districts, the court must apportion in an equitable manner the expenses ordered to be paid in accordance with this section between the



authorities concerned.

(3) In this section:

**prescribed section** means any of the following sections:

- (a) section 107 (Movement and grazing of stock authorised by stock permit must comply with Act and regulations),
- (b) section 139 (Offence of causing or permitting stock to use public road, travelling stock reserve or public land without authority).

### **209 Offences by authorities**

- (1) If an authority contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the authority or who is concerned in the management of the authority is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the authority has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on an authority for an offence committed by the authority against this Act or the regulations.

### **210 Offences relating to provision of information in relation to certain matters**

- (1) A person who, having been required under a provision of this Act or the regulations to provide information, fails without reasonable excuse to provide that information is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) A person must not make a statement for the purposes of this Act to a person engaged in the administration of this Act, or make a statement in an official document under this Act, that the person knows:
  - (a) is false or misleading in a material respect, or
  - (b) omits material matter.

Maximum penalty: 20 penalty units.

- (3) A document is an **official document** under this Act if it is an application, return, declaration or other document that is required to be given to the Minister, the State Council, an authority, the Director-General or an authorised officer for the purposes of this Act or the regulations.
- (4) A person who forges or fraudulently alters any permit, licence, authority or other

document issued or purporting to be issued under this Act is guilty of an offence.

Maximum penalty: 100 penalty units.

### **211 Onus of proof concerning reasonable or lawful excuse**

In any proceedings under this Act, the onus of proving that a person had a reasonable or lawful excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.

**Note—**

See also sections 156 (Public documents) and 158 (Evidence of certain public documents) of the [Evidence Act 1995](#) in relation to proof of various matters in proceedings under this Act.

## **Division 3 Miscellaneous**

### **212 General description of land sufficient for purposes of legal proceedings**

For the purposes of any proceedings, or an order, notice or permit given, under this Act or the regulations:

- (a) a holding or land need not be described by metes and bounds, and
- (b) it is sufficient if the holding or land is referred to by its name, location or boundaries or in any other way that adequately identifies it.

### **213 Legal proceedings against an occupier or owner whose name is unknown**

If the name of the occupier or owner of a holding or land is unknown to a person who wishes to serve a notice or other document or bring proceedings against that occupier or owner under this Act, the notice or document may be served on, or the proceedings may be brought against, the occupier or owner of the holding or land without specifying the name of that occupier or owner.

### **214 Jurisdiction of court or local land board not to be ousted in certain proceedings**

- (1) The jurisdiction of a court or local land board is not affected merely because, in proceedings before the court or board under or for the purposes of this Act or the regulations, a question arises concerning:
  - (a) title to land, or
  - (b) any matter in which rights in future may be bound, or
  - (c) any general right or duty.
- (2) A decision of a court or local land board relating to such a question is not evidence in any other court or in any other legal proceeding.

### **214A Proof of certain matters not required**

In any proceedings under this Act, proof is not required (unless evidence is given to the contrary) of any of the following:

- (a) the constitution of a particular authority or district,
- (b) the boundaries of a district or of a division of a district,
- (c) the fact that specified land or a specified place is or is not within a particular district or a particular division of a district,
- (d) the election or appointment of a board of an authority's directors, chairperson or deputy chairperson,
- (e) the appointment of any district veterinarian or any other member of the Government Service employed to enable a board to carry out its functions,
- (f) the fact that the defendant is, or at any relevant time was, the occupier, owner, manager or caretaker of a holding or land to which the proceedings relate if the defendant is so described in the process by which the proceedings were initiated,
- (g) the fact that a holding or land to which the proceedings relate is within the jurisdiction of a particular court or local land board,
- (h) the notification, dedication, reservation or declaration of a travelling stock reserve or stock watering place.

## **Part 14 Administration of functions of State Council and authorities**

### **Division 1 Administration of State Council**

#### **215 Appointment of administrator of all functions of State Council**

- (1) The Minister may, by order published in the Gazette:
  - (a) remove all members of the State Council from office and appoint a person specified in the order as administrator of all the functions of the State Council, and
  - (b) specify a date after which new members may be appointed in accordance with this Act to fill the vacancies on the State Council.
- (2) An order may be made if the State Council:
  - (a) has failed to comply with any direction of the Minister concerning, or to carry out to the satisfaction of the Minister, any of its functions, or
  - (b) has failed to enter into a memorandum of understanding in accordance with section 13, or

(c) has failed to exercise its functions in accordance with such a memorandum of understanding.

(3) The administrator holds office (subject to this Act) until immediately before the first meeting of the State Council held after the appointment of new members in accordance with subsection (1).

#### **216 Appointment of administrator of some functions of State Council**

(1) The Minister may, by order published in the Gazette, appoint a person specified in the order as administrator of one or more (but not all) of the functions of the State Council specified in the order.

(2) An order may be made if the State Council:

(a) has failed to comply with any direction of the Minister concerning, or to carry out to the satisfaction of the Minister, the function or functions specified in the order, or

(b) has failed to enter into a memorandum of understanding in accordance with section 13 in respect of the function or functions specified, or

(c) has failed to exercise the function or functions in accordance with such a memorandum of understanding.

(3) The administrator holds office (subject to this Act) for such period as may be specified in the administrator's instrument of appointment.

#### **217 Effect of appointment of administrator**

(1) An administrator appointed under this Division has and may exercise, subject to any conditions specified in the order appointing the administrator, the functions of the State Council specified in the order.

(2) Any delegation or authority made or conferred by the State Council in respect of any function of the State Council that may be exercised by an administrator appointed under this Division ceases to have effect on that appointment.

### **Division 2 Administration of authorities**

#### **218 Appointment of administrator of all functions of authorities**

(1) The Minister may, by order published in the Gazette, remove all directors of an authority from office and appoint a person specified in the order as administrator of all the functions of the authority.

(2) An order may be made:

(a) if the authority fails to hold an election as required by Schedule 2, or

- (b) if the authority has failed to comply with any order of the State Council under section 27 (State Council may order an authority to take specified action), or
  - (c) if the board of the authority has insufficient directors to form a quorum, or
  - (d) if the authority has failed to carry out any function relating to animal health or any other matter to the satisfaction of the Minister, or
  - (e) in such other circumstances as may be prescribed by the regulations.
- (3) An order under subsection (2) (b) or (c) may be made only at the request of the State Council.
- (4) If the State Council requests the Minister to make an order on the ground that a board has insufficient directors to form a quorum, the Minister may, instead of removing the directors from office, by order published in the Gazette appoint the necessary number of persons qualified to hold office as directors of the board until the vacancies can be filled as provided by this Act.
- (5) The administrator holds office (subject to this Act) until immediately before the first meeting of the board following an election held in accordance with a direction given under section 221.
- (6) The administrator must, as soon as practicable after being appointed, take control of all of the property of the authority concerned.
- (7) The administrator must, subject to and in accordance with any direction of the Minister, exercise the functions of the authority in such manner as appears to the administrator to be in the best interests of the ratepayers of the district for which the authority is established.

### **219 Appointment of administrator of some functions of an authority**

- (1) The Minister may, by order published in the Gazette, appoint a person specified in the order as administrator of one or more (but not all) of the functions of an authority specified in the order.
- (2) An order may be made:
- (a) if the authority has failed to comply with any order of the State Council under section 27, or
  - (b) if the authority has failed to carry out any function relating to animal health or any other matter to the satisfaction of the Minister,
  - (c) in such other circumstances as may be prescribed by the regulations.
- (3) An order under subsection (2) (a) may be made only at the request of the State

Council.

- (4) The administrator holds office (subject to this Act) for such period as may be specified in the administrator's instrument of appointment.

## **220 Effect of appointment of administrator**

- (1) An administrator appointed under this Division has and may exercise, subject to any conditions specified in the order appointing the administrator, the functions of the authority specified in the order.
- (2) Any delegation or authority made or conferred by the authority in respect of any function of the authority that may be exercised by an administrator appointed under this Division ceases to have effect on that appointment.

## **221 Administrator to hold special election of directors when directed to do so**

- (1) The Minister may, at any time while an administrator of an authority is holding office under section 218, give to the administrator a direction requiring the administrator to hold a special election of directors of the board of the authority.
- (2) An administrator of an authority that is given such a direction must:
  - (a) by notice published in the Gazette, fix a date for the holding of a special election of the directors of the board of the authority, and
  - (b) hold a special election of directors on that date.
- (3) The administrator holds office (subject to this Act) until immediately before the first meeting at the board following an election held in accordance with this section.
- (4) Unless for any reason they vacate office earlier, directors who are elected at a special election held under this section cease to hold office immediately before their successors take office in accordance with Schedule 2.

## **Division 3 Administration of authorities pending election of directors**

### **222 Definitions**

In this Division:

**amalgamated district** means a district constituted by or as a consequence of an amalgamation by a proclamation under section 5.

**amalgamation facilitator** means a person appointed as an amalgamation facilitator under section 225.

**amalgamation proclamation** means a proclamation constituting an amalgamated district.

***constituent parts of an amalgamated district*** means the divisions of districts and parts of divisions of districts that are to be amalgamated by a proclamation under section 5 to constitute the amalgamated district.

### **223 Appointment of an initial administrator**

- (1) As soon as practicable after a district is constituted (whether or not as a consequence of an amalgamation) under section 5, the Minister must, by notice published in the Gazette:
  - (a) appoint an administrator to manage the affairs of the authority pending the election of directors of the board of the authority, and
  - (b) fix a period within which the administrator must hold a general or special election to elect the directors of the board.
- (2) As soon as practicable within the period fixed in accordance with subsection (1) (b), or within such extended period as the Minister allows, the administrator must:
  - (a) establish an electors' roll for the district and enter on the roll the names, residential addresses and other particulars (if any) prescribed by the regulations of those persons who, having the required qualifications, apply to have their names entered on the roll, and
  - (b) hold a general or special election of directors in accordance with Schedule 2.
- (3) The administrator holds office (subject to this Act) until immediately before the first meeting at the board following an election held in accordance with this section.
- (4) Unless for any reason they vacate their offices earlier, directors who are elected at an election held under this section cease to hold office immediately before their successors take office in accordance with Schedule 2.

### **224 Alternative arrangements to appointment of initial administrator**

- (1) Section 223 does not apply to or in respect of an amalgamated district or any other district constituted under section 5 if the Minister, at the request of the State Council, makes an order under this section.
- (2) The Minister may, by order, direct that a person holding office as a director of a constituent part of an amalgamated district continue to exercise functions as such a director pending the election of the directors of the board for the amalgamated district.
- (3) The Minister may, by order, direct that a person holding office as a director of any district exercise the functions of director of a district constituted under section 5 (otherwise than by, or as a consequence of, an amalgamation) pending the election of the directors of the board for the newly constituted district.

- (3A) The Minister may, by order, direct that a person exercise the functions of director of a district constituted under section 5 as a consequence of an amalgamation (whether or not the person was a director of a district that was a constituent part of an amalgamated district) pending the election of the directors of the board of the authority for the newly constituted district.
- (3B) The Minister may appoint a person directed under subsection (2), (3) or (3A) to exercise functions as a director to act as Chairperson of the board of the authority of a newly constituted district pending the election of the directors of the board of the authority for the district.
- (4) A person directed to exercise the functions of the director of a newly constituted district by an order under this section has and may exercise, subject to any conditions specified in the order, all the functions of a director of the newly constituted district until the first meeting of the directors of the board elected for the newly constituted district.

## **225 Amalgamation facilitator and other staff**

- (1) The Minister may appoint an amalgamation facilitator and such other persons as the Minister considers necessary to assist in the conduct of the first election for the directors of an amalgamated district.
- (2) The amalgamation facilitator:
- (a) has all the functions in respect of the first election of directors for an amalgamated district that a board for a district has in respect of a general election of directors for the district, and
  - (b) is to be the returning officer for the first election for the amalgamated district, and
  - (c) is to carry out such other functions as may be determined by the Minister to facilitate the amalgamation of the district pending the election of the directors of the board for the district.
- (3) The Minister may, at any time, remove a person from office to which the person has been appointed under this section.
- (4) A person appointed under this section 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 person.
- (5) A person who ceases to hold office by virtue of subsection (3) is not entitled to any remuneration or compensation because of the loss of office.

## **226 (Repealed)**



## **227 Employees, property and expenditure of affected authorities in transitional period**

(1) In this section:

**affected authority** means an authority for a constituent part of an amalgamated district.

**relevant date** means the date the amalgamation proclamation is published in the Gazette.

- (2) An affected authority must not in the period between the relevant date and the date on which the amalgamation proclamation takes effect:
- (a) sell or otherwise dispose of any property of the authority, or
  - (b) incur any expenses under this or any other Act or engage any employee otherwise than in accordance with a contract, agreement or arrangement entered into before the relevant date, or
  - (c) remunerate any person on terms more advantageous than those on which the person was remunerated by the authority immediately before the relevant date, or
  - (d) dismiss, or terminate the employment on the ground of redundancy, any employee other than an employee against whom action for dismissal or redundancy had commenced before the relevant date, or
  - (e) transfer any employee from the place in the district in which, immediately before the relevant date, the employee is based to another place in the district.
- (3) Despite subsection (2), an affected authority may take any action described in that subsection with the approval of the Minister given in a particular case or class of cases or if the action is taken in accordance with such terms and conditions as may be specified by order for the purposes of this subsection by the Minister.
- (4) For the purposes of section 229, any expenditure incurred by or on behalf of an authority in breach of this clause is improperly incurred.
- (5) The Auditor-General may surcharge a person who was a director or employee of an affected authority at the time the expenditure was improperly incurred with an amount under section 229 whether or not the person is a director or employee at the time the surcharge is imposed.

## **Division 4 Miscellaneous**

### **228 Provisions applicable to administrators**

- (1) The regulations may make provision for or with respect to administrators appointed under this Part.

- (2) Schedule 3 has effect with respect to an administrator appointed under this Part.

## **Part 15 Surcharges**

### **229 Auditor-General may surcharge for improper expenditure**

- (1) The Auditor-General may disallow any expenditure that has been improperly incurred by or on behalf of the State Council or an authority or any improper entry or transfer appearing in the State Council's or an authority's accounting records.
- (2) The Auditor-General may surcharge the members or employees of the State Council or directors or employees of the authority who incurred or authorised the expenditure or who made or authorised the entry or transfer with the amount of the expenditure, entry or transfer disallowed by the Auditor-General.
- (3) The Auditor-General may surcharge a member or employee of the State Council or a director or employee of an authority with the amount of:
  - (a) any deficiency that is attributable to the culpable negligence or misconduct of the member, director or employee, or
  - (b) any money that the member, director or employee ought to have accounted for.

### **230 Procedure for surcharging**

- (1) Before surcharging a person, the Auditor-General must:
  - (a) cause notice of the proposed surcharge, and of the reasons for the proposed surcharge, to be given to the person, and
  - (b) allow the person a reasonable opportunity to make submissions to the Auditor-General with respect to the proposed surcharge, and
  - (c) take into consideration any submissions made by the person with respect to the proposed surcharge.
- (2) The Auditor-General must certify in the State Council's or authority', accounts the amount by which the Auditor-General has surcharged any person.
- (3) Immediately on surcharging an amount on any person, the Auditor-General must give notice of that fact to the person and specify the day by which the surcharge is payable.

### **231 Right of appeal**

- (1) A person who is surcharged under this Part may, in accordance with rules of court, appeal to the District Court against the surcharge.
- (2) Such an appeal must be made within 28 days after the person is given notice of the

surcharge.

- (3) The District Court may confirm or annul the surcharge or may reduce the amount of the surcharge.
- (4) The Auditor-General must give effect to the decision of the District Court.

### **232 Recovery of surcharges**

- (1) The amount of a surcharge becomes payable to the Minister as a debt when the time within which an appeal may be made against the surcharge expires or, if such an appeal is made and the surcharge is not annulled, when the appeal is finally determined.
- (2) The Minister may appropriate any money under the control of the State Council or an authority or the Crown that is due to a director, member or employee who has been surcharged towards payment of the surcharge and direct that it be dealt with in whatever manner the Minister considers appropriate.
- (3) The amount of a surcharge or any deficiency that remains after appropriation of any money under subsection (2) is a debt recoverable by the Minister in a court of competent jurisdiction.

### **233 Effect of failure to pay surcharge**

- (1) A member of the State Council or a director of an authority who does not pay a surcharge imposed on the member or director under this Part within the period specified by the Auditor-General:
  - (a) ceases to hold office as member or director, and
  - (b) is ineligible for election or appointment as a member or director while the amount of the surcharge is unpaid.
- (2) An employee of the State Council or an authority who does not pay a surcharge imposed on the employee within the period specified by the Auditor-General may be suspended from duty (without pay) by the State Council or the authority while the amount of the surcharge is unpaid.

## **Part 16 Miscellaneous**

### **234 Resolution of authority disputes**

- (1) The State Council may resolve any dispute to which this section applies by mediation, arbitration or any other procedure the State Council considers appropriate.
- (2) This section applies to the following disputes:
  - (a) a dispute between 2 or more authorities arising under this Act,

- (b) a dispute between 2 or more directors of an authority arising under this Act,
  - (c) a dispute between an authority and one or more of its directors or members of staff arising under this Act,
  - (d) a dispute between an authority and a person in relation to a determination of the authority in relation to a complaint.
- (3) The parties to a dispute referred to in subsection (2) (a), (b) or (c) must comply with any direction of the State Council arising out of its resolution of the dispute.

### **235 Resolution of disputes between State Council and authorities**

- (1) If a dispute arises between the State Council and an authority in connection with any function conferred or imposed on the State Council or the authority by or under this Act, the State Council or the authority may submit the dispute to the Director-General for settlement.
- (2) On submission of a dispute to the Director-General, the Director-General may hold an inquiry into the dispute and may make such decisions about the dispute as the Director-General thinks fit, having regard to the public interest and the circumstances.
- (3) The Director-General may recommend that the Minister make an order under Part 14 in respect of the State Council or the authority if the Director-General considers the inquiry indicates that such an order should be made.

**Note—**

The Director-General may delegate this function to an officer of the Department. See section 241 (Delegation).

- (4) The State Council and the authority must comply with a decision of the Director-General under this section.

### **236 Certificate as to rates, charges and other matters**

- (1) Any person may apply to an authority for a certificate as to any of the following matters:
  - (a) the amount (if any) due or payable to the authority by way of rates, charges or other amounts in respect of the land,
  - (b) the person liable to pay any amount referred to in paragraph (a),
  - (c) any other matter prescribed by the regulations for the purposes of this section.
- (2) The application must be in the approved form and be accompanied by the fee prescribed by the regulations.
- (3) The authority is to issue a certificate to the applicant in the approved form containing

the information sought.

- (4) The production of the certificate is conclusive proof of the matters certified.
- (5) For the purposes of this section, rates, charges or other amounts are taken to be due or payable even though the requisite period after service of any relevant rate or other notice may not have expired.

### **237 Owner of stock may be ordered to muster stock**

- (1) An authorised officer of the Minister or an authority may, with the approval of the Minister or the authority, order a person who owns stock to muster the stock on the person's holding (or on a designated part of it) or at some other designated place for a purpose and at a time specified in the order.
- (2) A person who fails to comply with such an order at the time specified in it is guilty of an offence.

Maximum penalty: 20 penalty units.

- (3) If a person fails to comply with such an order at the specified time the authorised officer may have the muster carried out at the person's expense.
- (4) The Minister or the authority concerned may recover the expense of having a muster carried out under this section as a debt in any court of competent jurisdiction.

### **238 Protection from liability**

- (1) A matter or thing done by the State Council, an authority, a member or employee of the State Council, a director or employee of an authority, an authorised officer or any person acting under the direction or authority or with the concurrence of the State Council or an authority does not, if the matter was done in good faith for the purpose of executing this or any other Act or in accordance with any policy direction of the government communicated to the State Council or an authority by the Minister or the Director-General, subject a member, director, employee, authorised officer or person so acting personally, or the Crown, to any action, liability, claim or demand.
- (2) A matter or thing done by the State Council or an authority does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act or in accordance with any policy direction of the government communicated to the State Council or the authority by the Minister or the Director-General, subject the State Council or the authority, or the Crown, to any action, liability, claim or demand.
- (3) A matter or thing done by the Minister, or the Director-General or any person acting under the direction of the Minister or the Director-General does not, if the matter was done in good faith for the purpose of executing this Act, subject the Minister, Director-General or person so acting personally, or the Crown, to any action, liability, claim or demand.

### **239 Form of notices**

Any notice or other document issued, made or given for the purposes of this Act or the regulations must be in writing, except where this Act expressly authorises another means of giving notice.

### **240 Service and giving of notices and other documents**

- (1) For the purposes of this Act and the regulations, a notice or document may be given to a person (or a notice or document may be served on a person) by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person personally, or
    - (ii) sending it by pre-paid post to the address specified by the person for the giving or service of notices or documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or
    - (iv) sending it by email to the email address of the person, or
  - (b) in the case of a body corporate:
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for giving or serving the document, or
    - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.

#### **Note—**

As to service by post, see section 76 of the [Interpretation Act 1987](#).

- (2) Without limiting subsection (1) (b), a document to be given to (or served on) an authority may be given to or served on the chairperson, director or any authorised officer authorised by the authority to accept it.
- (3) Without limiting subsection (1) (b), a document to be given to or served on the State Council may be given to or served on the chairperson or Chief Executive Officer of the State Council.

### **241 Delegation**

- (1) The Minister may delegate any of the Minister's functions under this Act or the regulations (other than this power of delegation).

- (2) The Director-General may delegate any of the Director-General's functions under this Act or the regulations (other than this power of delegation) to an officer of the Department, the State Council, an authority or any authorised officer.
- (3) An authority may delegate any of the authority's functions under this Act or the regulations (other than this power of delegation or any function conferred on the authority as an authorising authority under Part 12) to a director of the authority, a member of staff of the authority or an authorised officer.
- (4) The State Council may delegate any of the State Council's functions under this Act or the regulations (other than this power of delegation or any other function specified by the regulations) to a member of the State Council, a member of staff of the State Council, an authority, a director of an authority or any authorised officer.

#### **242 Local land board appeals procedure**

- (1) An appeal to a local land board under this Act against a decision or rate levied by an authority is to be made by lodging a notice of appeal with the registrar of the appropriate local land board.
- (2) (Repealed)
- (3) The appellant is to give a copy of the notice of appeal to the authority that made the decision or levied the rate being appealed against.
- (4) The Chairperson of the local land board to which an appeal is made is to give both the appellant and the authority at least 7 days' notice of the time fixed for the hearing of the appeal.

#### **243 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.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
  - (a) the walking and grazing of stock,
  - (b) the erection of signs when stock are walking or grazing on or near a road and the responsibility of drivers in respect of such signs,
  - (c) the use of travelling stock reserves and the use of any structures or things constructed or kept on those reserves,
  - (d) the use or lease of any stock watering place,
  - (e) permits, licences, authorities and other documents for the purposes of this Act or

the regulations,

- (f) the insurance to be effected and bonds to be given or obtained in connection with the use of such documents,
  - (g) the identification of stock,
  - (h) fees, rates and charges payable under this Act or the regulations,
  - (i) the selection on merit of members of the State Council and of appointed directors of boards of authorities,
  - (j) the appointment of members of the State Council by the Policy Council,
  - (k) the process of making, and the form and content of, the strategic plan of the State Council,
  - (l) matters of a savings or transitional nature consequent on any amalgamation of districts.
- (3) The regulations may make provision, not inconsistent with the [State Records Act 1998](#), with respect to the maintenance, preservation and destruction of records kept under this Act.
- (4) A regulation may create an offence punishable by a maximum penalty not exceeding 50 penalty units.

#### **244 Exemptions**

The regulations may exempt from the operation of all or any of the provisions of Part 7, 8 or 10A any specified land or class of land, any specified person or class of persons or any specified activities or class of activities in such circumstances, and subject to such conditions, as may be specified in the regulations.

#### **245 Repeals**

- (1) The [Rural Lands Protection Act 1989](#) is repealed.
- (2) The [Rural Lands Protection Regulation 1995](#) is repealed.
- (3) Different days may be appointed for the commencement of subsection (1) or (2) for the purpose of repealing, on different days, different provisions of the instrument referred to in the subsection.

#### **246 (Repealed)**

#### **247 Savings and transitional provisions**

Schedule 7 has effect.



## 248 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (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.

## 249 Amendment of Act to commence periodic elections for directors

- (1) Schedule 8 commences on 1 January 2014.
- (2) This section and Schedule 8 are repealed on 2 January 2014.
- (3) The repeal of this section and Schedule 8 does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by Schedule 8.

# Schedule 1A Constitution and procedure of Policy Council

(Section 17)

## Part 1 General

### 1 Definitions

In this Schedule:

**Chairperson** means the Chairperson of the Policy Council.

**Deputy Chairperson** means the Deputy Chairperson of the Policy Council.

**member** means any member of the Policy Council.

## Part 2 Constitution

### 2 Terms of office of members

Subject to this Schedule and the regulations, a member holds office for such period as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### 3 Remuneration

- (1) A member of the Policy Council appointed by an authority is entitled to be paid by the authority such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

- (2) A member of the Policy Council appointed by the Minister is entitled to be paid by the State Council such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (3) For the avoidance of doubt, the Minister may determine remuneration for members generally or for a particular class or classes of member.

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

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Policy Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) 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
  - (g) becomes a mentally incapacitated person, or
  - (h) 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, or
  - (i) in the case of a member appointed by an authority—ceases to be a director of the board of the authority or is removed from office by the authority under this clause.
- (2) The Minister may remove a member from office at any time.
- (3) An authority may remove a member appointed by the authority from office at any time.
- (4) Subclause (1) (i) does not apply if a person ceases to be a director by completing a term of office as director.

**Note—**

A person who ceases to be a director by completing a term of office will continue to be a member of the Policy Council until the person's term of office as such a member concludes. However, if the person ceases

to be a director for another reason (for example, failure to attend board meetings), the person will also cease to be a member of the Policy Council.

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

If the office of any member appointed under section 15 (1) (a) becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **6 Chairperson and Deputy Chairperson**

- (1) The members of the Policy Council are to elect a Chairperson and Deputy Chairperson from among the members of that Council appointed under section 15 (1) (a).
- (2) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if he or she:
  - (a) is removed from that office by the Minister under this clause, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member of the Policy Council.
- (3) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

## **7 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Policy Council, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Policy Council.
- (2) A disclosure by a member at a meeting of the Policy Council that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Policy Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Policy Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Policy Council otherwise determines:
  - (a) be present during any deliberation of the Policy Council with respect to the matter, or
  - (b) take part in any decision of the Policy Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Policy Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Policy Council for the purpose of making the determination, or
  - (b) take part in the making by the Policy Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Policy Council.
- (7) This clause applies to a member of a committee of the Policy Council and the committee in the same way as it applies to a member of the Policy Council and the Policy Council.

## **8 Effect of certain other Acts**

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

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

## **9 Personal liability**

A matter or thing done or omitted to be done by the Policy Council, a member of the Policy Council or a person acting under the direction of the Policy Council does not, if the

matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

## **Part 3 Procedure**

### **10 General procedure**

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

### **11 Quorum**

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

### **12 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the members of the Policy Council who are present at a meeting of the Policy Council) is to preside at a meeting of the Policy Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **13 Voting**

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

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

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

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

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Policy Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## 15 First meeting

The Minister may call the first meeting of the Policy Council in such manner as the Minister thinks fit.

# Schedule 1 Constitution and procedure of State Council and boards of authorities

(Sections 21 and 39)

## Part 1 General

### 1 Definitions

In this Schedule:

**board** means board of an authority.

**Chairperson** means:

- (a) in relation to the State Council—the Chairperson of the State Council,
- (b) in relation to a board—the Chairperson of the board.

**Deputy Chairperson** means the Deputy Chairperson of a board or of the State Council.

**director** means a director of a board.

**member** means any member of the State Council.

### 2 What is a pecuniary interest?

- (1) For the purposes of this Schedule, a **pecuniary interest** is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in clause 3.
- (2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in clause 3.

### **3 Who has a pecuniary interest?**

- (1) For the purposes of this Schedule, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:
  - (a) the person, or
  - (b) another person with whom the person is associated as provided in this section.
- (2) A person is taken to have a pecuniary interest in a matter if:
  - (a) the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, has a pecuniary interest in the matter, or
  - (b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

**Note—**

"De facto partner" is defined in section 21C of the [Interpretation Act 1987](#).

- (3) However, a person is not taken to have a pecuniary interest in a matter as referred to in subclause (2):
  - (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
  - (b) just because the person is a member or director of, or is employed by, the State Council or an authority or a statutory body or is employed by the Crown, or
  - (c) just because the person is a member or director of, or a delegate of the State Council or an authority, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

## **Part 2 Constitution**

### **4 Terms of office of members**

- (1) Subject to this Schedule and the regulations, a member holds office for such period as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person is not eligible to hold office as a member for more than 8 years in total or such other period as may be prescribed by the regulations (whether or not involving consecutive terms of office).

### **5 Remuneration of members and directors**

- (1) A member is entitled to be paid by the State Council such remuneration (including

travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

- (2) An authority must pay to its directors in respect of the exercise of their functions such fees, allowances and expenses at such rates as may be fixed from time to time by the Minister, or such lesser amount as the directors elect to receive.
- (3) The Minister may fix different rates under subclause (2) for elected and appointed directors.
- (4) A fee paid under this clause does not constitute salary for the purposes of any Act.

## **6 Vacancy in office of member or director**

- (1) The office of a member or director becomes vacant if the member or director:
  - (a) dies, or
  - (b) completes a term of office and is not re-elected or re-appointed, or
  - (c) resigns the office by instrument in writing addressed, in the case of a member, to the Minister or, in the case of a director, to the board, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is, except on leave granted by the Minister in the case of a member or by the board in the case of the director, absent from 4 consecutive meetings of the State Council or board, respectively, of which reasonable notice has been given to the member or director personally or by post, or
  - (f) 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
  - (g) becomes a mentally incapacitated person, or
  - (h) 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, or
  - (i) in the case of an elected director—ceases:
    - (i) to be an occupier or owner of a holding that consists wholly or partly of rateable land that:
      - (A) is within the division for which the person was elected or appointed, or
      - (B) if the district is not divided into divisions, is within the district, or



(ii) to hold any other qualification for election as a director, or

(j) in the case of a member appointed under section 20 (1) (a)—ceases to be a director.

(1A) Subclause (1) (j) does not apply if a person ceases to be a director by completing a term of office as director.

**Note—**

A person who ceases to be a director by completing a term of office will continue to be a member of the State Council until the person's term of office as such a member concludes. However, if the person ceases to be a director for another reason (for example, failure to attend board meetings), the person will also cease to be a member of the State Council.

(2) The Minister may, by notice published in the Gazette, remove any member or director from office:

(a) at any time for incapacity, incompetence or misbehaviour, or

(b) in relation to a director—on the recommendation of the State Council under section 57E.

(3) A member or director is entitled to be heard before a finding of incapacity, incompetence or misbehaviour is made in respect of the member or director under subclause (2).

(4) The Minister may, but is not obliged to, refer the hearing of an allegation of incapacity, incompetence or misbehaviour in respect of a member or director to a person or body whom or which the Minister has designated for the purpose.

(5) As soon as practicable after an allegation of incapacity, incompetence or misbehaviour is referred to a person or body in accordance with subclause (4), the person or body must hear the allegation and then report the findings to the Minister.

(6) A resignation of a member or director in accordance with subclause (1) (c) takes effect on the date specified in the instrument of resignation or on the date that the instrument is received, in the case of a member, by the Minister or, in the case of a director, by the authority (whichever is the later).

## **7 Filling of vacancy in office of member or appointed director**

If the office of a member or appointed director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **7A Filling of vacancy in office of elected director**

(1) If the office of an elected director becomes vacant, a person is, subject to this Act, to be elected to fill the vacancy. The director so elected holds office, subject to clause 6, for the remainder of the term of office of the director whose office he or she is filling.

- (2) If the vacation of office occurs within 6 months before the term of office of an elected director would have expired, the Minister may appoint a person who would be qualified to be elected as a director to fill the office for the remainder of that term.
- (3) The term of office of a person elected or appointed in accordance with this clause is to be disregarded for the purposes of clause 9 (3) of Schedule 2.

#### **8 Chairperson and Deputy Chairperson of State Council**

- (1A) The members of the State Council are to elect a Chairperson and Deputy Chairperson from among the members of that Council appointed under section 20 (1) (a) and (b).
- (1) In the absence of the Chairperson of the State Council, the Deputy Chairperson of the State Council may, if available, act in the place of the Chairperson.
  - (2) While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson.
  - (3) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person ceases to be a member.

#### **9 Chairperson and Deputy Chairperson of board**

- (1) The board must elect one of its directors to be Chairperson, and another to be Deputy Chairperson, of the board:
  - (a) at the first meeting of the board held after a general election, and
  - (b) at the next meeting held after each anniversary of the holding of that first meeting.
- (2) A person ceases to hold office as Chairperson or Deputy Chairperson:
  - (a) if he or she:
    - (i) resigns the office, or
    - (ii) is removed from that office by the board, or
    - (iii) ceases to hold office as a director, or
  - (b) at the conclusion of the meeting of the board at which a successor in office is elected.
- (2A) The Chairperson or Deputy Chairperson does not cease to be a director merely because he or she ceases to be Chairperson or Deputy Chairperson.
- (2B) If a vacancy occurs in the office of Chairperson or Deputy Chairperson, the board must, at the next meeting, elect one of its directors to fill that vacancy.

- (3) If both the Chairperson and Deputy Chairperson are absent from a meeting of a board, the directors present must elect one of their number to preside over the meeting.
- (4) The Deputy Chairperson of a board may act in the office of Chairperson during such period as the Chairperson is prevented by absence, illness or other cause from carrying out any function of that office.
- (5) While so acting, the Deputy Chairperson has the Chairperson's functions.

## **10 Invitations for tenders**

- (1) If it is disclosed to the directors of a board, or they have reason to believe, that a director has or may have a direct or indirect pecuniary interest in a proposed contract with the authority, the authority:
  - (a) must, by notice published in a newspaper circulating in its district, invite tenders for the proposed contract, and
  - (b) must not enter into the proposed contract unless satisfied that, in all the circumstances of the case, none of the tenders submitted is more advantageous than the proposed contract.
- (2) The notice inviting tenders must:
  - (a) set out the nature of the work or services to be performed or the goods to be supplied under the contract, and
  - (b) invite persons willing to perform the work or services or supply the goods to submit tenders to the authority on or before a specified date at least 21 days after publication of the notice.
- (3) This clause does not apply in the case of an emergency.

## **11 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the State Council or a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of a board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's or director's duties in relation to the consideration of the matter,the member or director must, as soon as possible after the relevant facts have come to the member's or director's knowledge, disclose the nature of the interest at a meeting of the State Council or board, respectively.

- (2) A disclosure by a member or director at a meeting of the State Council or board that the member or director:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the State Council or board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (not exceeding the amount, if any, prescribed by the regulations) determined by the State Council or board.
- (4) After a member or director has disclosed the nature of an interest in any matter, the member or director must not, unless the Minister or the State Council or board otherwise determines:
- (a) be present during any deliberation of the State Council or board with respect to the matter, or
  - (b) take part in any decision of the State Council or board with respect to the matter.
- (5) For the purposes of the making of a determination by the State Council or board under subclause (4), a member or director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the State Council or board for the purpose of making the determination, or
  - (b) take part in the making by the State Council or board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the State Council or board.
- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to the following:
- (a) the making or levying of a rate or charge,
  - (b) the fixing or charging of a fee for the supply to a relative of the person by the authority of any commodity or service provided by the authority in the same manner and subject to the same conditions as apply to persons who are not

subject to this clause,

- (c) the payment of fees and expenses and the provision of facilities to members or directors (including the Chairperson).

## **12 Insurance of members and directors**

- (1) The State Council or authority must insure its members or directors against personal injury and death arising out of or in the course of:
  - (a) their attendance at any meeting of the State Council or board or a committee of the State Council or board which they are authorised or required to attend, and
  - (b) their performing any business of the State Council or the authority with the approval of the State Council or the authority, and
  - (c) any journey in connection with any such business.
- (2) The State Council or authority is to be regarded as having an insurable interest in respect of any such contract of insurance.
- (3) As soon as practicable after receiving an amount of money under any such contract of insurance, the State Council or the authority must, after deducting any expenses incurred in recovering the amount, pay the balance to the member concerned or, if the member or director has died, to the member's or director's executor or administrator.

## **13 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 or director.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

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

## **Part 3 Procedure**

### **14 General procedure**

The procedure for the calling of meetings of the State Council or a board and for the

conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the State Council or the board.

### **15 Meetings of a board**

- (1) A board must hold its first meeting:
  - (a) where all the vacant positions of elected directors are filled at a general election—within one month, or within such extended period as the State Council allows, after that election, or
  - (b) in any other case—on or before such date as the State Council decides.
- (2) The chairperson must, unless the State Council otherwise approves, convene meetings of the board so that the board meets at least once every month.
- (3) If the offices of Chairperson and Deputy Chairperson of a board of an authority are vacant, the senior administrative member of staff of the authority is to convene any meeting of the board required by this clause.

### **16 Board to keep minutes of its proceedings**

A board must:

- (a) record minutes of all proceedings of meetings of the board, and
- (b) ensure that those minutes are signed by the person presiding at the meeting at which the proceedings took place or by the person presiding at the next succeeding meeting of the board.

### **17 Public notice of meetings**

- (1) A board must give notice to the public of the times and places of its meetings and meetings of those of its committees of which all the members are directors.
- (2) Notice is to be given in such manner as the board considers appropriate.
- (3) A board and each such committee must have available for the public at its principal office copies (for inspection or taking away by any person) of the agenda of a proposed meeting. This requirement does not apply to a matter that, in the opinion of the Chairperson of the board, is likely to be considered when the meeting is closed to the public or to any correspondence or reports that, in the opinion of the Chairperson, are likely to be the subject of a resolution that they be treated as confidential.
- (4) The copies are to be available as nearly as possible to the time they are available to directors.
- (5) The copies are to be available free of charge.

## **18 Who is entitled to attend meetings?**

- (1) Ratepayers and persons who have a direct interest in a matter on the agenda for a board are entitled to attend a meeting of the board and those of its committees of which all the members are directors, except as provided by this clause.
- (2) A board or such a committee may close only so much of its meeting as comprises the receipt or discussion of any of the following:
  - (a) personal matters concerning particular individuals,
  - (b) the personal hardship of any occupier or owner of land in the district,
  - (c) commercial information, the disclosure of which would be likely to prejudice the commercial position of the person who supplies it or to reveal a trade secret,
  - (d) proposals for the sale or purchase of land or entering into contracts of any kind, if prior knowledge of those proposals could confer an unfair financial advantage to any person,
  - (e) information that is subject to legal obligations of confidence,
  - (f) the receipt and consideration of legal advice concerning litigation or which would otherwise be privileged from production in legal proceedings on the ground of client legal privilege,
  - (g) information the disclosure of which would prejudice the maintenance of law,
  - (h) matters affecting the security of the board, directors, board staff or board property.
- (3) The grounds on which a meeting is closed must be specified in the decision to close the meeting and recorded in the minutes of the meeting.
- (4) A person (whether a director or other person) is not entitled to be present at a meeting of the board or such a committee if expelled from the meeting:
  - (a) by a resolution of the meeting, or
  - (b) by the person presiding at the meeting, if the board has, by resolution, authorised the person presiding to exercise the power of expulsion.

## **19 Quorum**

The quorum for a meeting of the State Council, or a board of an authority, is a majority of the members, or the directors of the board, for the time being.

## **20 Presiding member or director**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson or

other person elected to preside over the meeting) is to preside at a meeting of the State Council or board.

- (2) The presiding member or director has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **21 Voting**

A decision supported by a majority of the votes cast at a meeting of the State Council or a board at which a quorum is present is the decision of the State Council or board.

## **22 State Council or board may establish committees**

- (1) The State Council or a board may establish committees to assist it in the exercise of its functions.
- (2) It does not matter that any or all members of a committee are not members or directors.
- (3) The procedure for calling meetings of such a committee is to be determined by the State Council or the board, or, subject to any determination of the State Council or board, the committee.

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

- (1) The State Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the State Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the State Council.
- (2) The State Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter at the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the State Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the State Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.



## Schedule 2 Election or appointment of directors

(Sections 39 (7), 221 and 223)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule:

**enrolment officer** means a person authorised by the State Council to act as the enrolment officer for an authority for the purposes of this Schedule.

**general election** means a general election of directors held as referred to in clause 7.

**relevant day** means:

- (a) in the case of an election—the closing day for nomination of candidates for the election, or
- (b) in the case of an appointment—the day on which the appointment takes effect.

**special election** means a special election of directors held in accordance with clause 10.

### Part 2 Election and appointment of directors

#### 2 Elected directors

- (1) The elected directors of a board for a district are to be elected by the persons who are enrolled to vote:
  - (a) in a general election, or
  - (b) if a casual vacancy occurs in the office of any director of the board—in a special election to fill that vacancy.
- (2) If no person is nominated at a general election or special election, or if for any other reason an election fails, the Minister may appoint a person eligible for election to be a director (or who would be eligible except for clause 9 (3)), and the person, on being appointed, is taken to be a person elected in accordance with this clause.

#### 3 Entitlement to vote at an election

A person is entitled to vote at a general election or special election for the directors of a board for a district if on the date on which the roll is closed the person is enrolled, in accordance with this Schedule, as an elector for the district (or, if the district is divided into divisions, as an elector for a division of the district).

#### **4 Qualification for election or appointment as director**

- (1) A person is qualified for election as an elected director of a board if on the relevant day the person is:
- (a) the occupier (or one of the occupiers) or the owner (or one of the owners) of a holding that consists wholly or partly of rateable land that is within the division for which the person is to be elected or appointed or, if the district is not divided into divisions, is within the district, or
  - (b) a nominee of a corporation that is the occupier or owner of such a holding.

**Note—**

See section 8 (When is a holding within a district?).

- (2) A person is not qualified for election as a director of a board of an authority for a district if, on the relevant day:
- (a) the person is a director of any other board, or
  - (b) the person has nominated as a candidate for an election as director of a board for another district, being an election that has not yet been determined, or
  - (c) the person has nominated as a candidate for an election as director for another division in the same district, being an election that has not yet been determined, or
  - (d) the person is a member of staff of the authority for which the board is established, or
  - (e) the person has served the maximum term of office as a director as specified under clause 9 (3).

#### **5 Disqualification for election or appointment as director**

A person is not qualified for election or appointment as an appointed or elected director of a board for a district if, at any time during the 4 year period preceding the relevant day, the person had been removed from office as a director of a board under section 218.

### **Part 3 Conduct of elections**

#### **6 General provisions applicable to elections of directors of boards**

A general election or special election must be conducted by post in accordance with the procedure prescribed by the regulations.

#### **7 When is general election of directors to be held?**

The State Council is to ensure that:

- (a) a general election for the elected directors of each board is held to enable the directors of the board elected at the general election to take office on 1 May 2009 (or such other date as may be prescribed by the regulations), and
- (b) a general election for the elected directors of each board is held to enable the directors of the board elected at the general election to take office on 1 May 2013.

## **8 Delayed election**

- (1) If the Minister is of the opinion that it would be impractical or inconvenient to hold a general election of the directors of any board in time for the directors to take office when required by clause 7, the Minister may, by order published in the Gazette, appoint a later day by which a general election must be held and the directors be able to take office.
- (2) The Minister is to serve a copy of an order under this clause on each authority to which it relates.
- (3) If a later day is appointed under this clause:
  - (a) the retiring directors continue in office until that day, and if a retiring director resigns in the meantime, his or her office is vacant until that day, and
  - (b) clause 7 applies as if the date by which the directors must be able to take office under that clause were the date appointed by the Minister, and
  - (c) clause 7A of Schedule 1 and clause 10 cease to apply to any vacancy occurring in the office of a director after the order appointing a later day is published in the Gazette and the Minister may, if he or she thinks fit, appoint a person who would be qualified to be elected as a director to fill the office until the later day.

## **9 Term of office of directors**

- (1) Subject to this Schedule and the regulations, the term of office of an elected director of a board expires on the day immediately before the general election held after his or her election as a director.
- (2) Subject to this Schedule and the regulations, an appointed director holds office for the term specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (3) A person is not eligible to hold office as a director (whether elected or appointed) for more than the following period (whether or not involving consecutive terms of office):
  - (a) in the case of a director who is or has been a member of the State Council (after 1 January 2009)—12 years in total or such other period as may be prescribed by the regulations, or

- (b) in any other case—8 years in total or such other period as may be prescribed by the regulations.

#### **10 Special election to be held to fill a casual vacancy in the office of director**

- (1) An authority must hold a special election to fill any vacancy that occurs in the office of any elected director of the board of the authority within 3 months after the occurrence of the vacancy.
- (2) However, if such a vacancy occurs within the period of 6 months immediately preceding the date on which directors elected at a general election are to take office, an election to fill the vacancy must not be held.

**Note—**

See section 221 (Administrator to hold special election of directors when directed to do so).

### **Part 4 Enrolment of electors**

#### **11 Authority to establish and maintain an electors' roll**

- (1) An authority established for a district that is divided into divisions must establish and maintain a roll for each division containing:
  - (a) the full name and postal address of each person enrolled in respect of a holding that is within the division, and
  - (b) particulars identifying the holding.

**Note—**

See section 8 (When is a holding within a district?).

- (2) An authority established for a district that is not divided into divisions must establish and maintain a roll for the district containing:
  - (a) the full name and postal address of each person enrolled in respect of a holding that is within the district, and
  - (b) particulars identifying the holding.
- (3) An enrolment officer for an authority is to be responsible for regularly updating the roll required to be established and maintained by the authority under this clause.
- (4) Without limiting subclause (3), the enrolment officer, subject to this Schedule, is to:
  - (a) include a person's name on the roll as soon as practicable after being notified or otherwise becoming aware that the person is required by this Schedule to be enrolled (for example on being notified of a change of ownership of a holding by the Land Titles Office), and

- (b) remove a person's name from the roll as soon as practicable after being notified or otherwise becoming aware that the person is no longer required to be enrolled.

## **12 Which persons are to be enrolled**

- (1) Except as provided in this Part, a maximum of 2 persons are to be enrolled in respect of each holding that is situated:
  - (a) within a division of a district, if the district is divided into divisions, or
  - (b) within a district, if the district is not divided into divisions.
- (2) A person may be enrolled in respect of a holding only if:
  - (a) the holding consists wholly or partly of rateable land, and
  - (b) the person is an individual who is 18 or more years old.
- (3) The following persons are to be enrolled in respect of a holding:
  - (a) an individual who is the only occupier of the holding,
  - (b) if there are 2 individuals who are occupiers of the holding —both the individuals,
  - (c) if more than 2 individuals are occupiers of a holding:
    - (i) where a nomination has been made in accordance with clause 13—the 2 individuals so nominated.
    - (ii) where no such nomination has been made—2 of those individuals determined by selecting the first 2 names of occupiers occurring in alphabetical order,
  - (d) in the case where the occupier of the holding is a corporation—2 individuals who have been nominated for the holding by the corporation in accordance with clause 13.
- (4) Despite subclause (3), a person is not to be enrolled in respect of more than one holding:
  - (a) within a division of a district, if the district is divided into divisions, or
  - (b) within a district, if the district is not divided into divisions.
- (5) For the purposes of this clause, a person who occupies 2 or more holdings in a district that are treated as a single holding under section 59:
  - (a) is to be treated as the occupier of one holding only, and
  - (b) if the district is divided into divisions, that holding is to be taken to be located in the division in which the majority of the rateable land occupied by the person is situated.

### **13 Nomination of electors for holding—more than 2 human occupiers or corporate occupier**

- (1) **District divided into divisions** If 2 or more individuals are occupiers of a holding in a division of a district, they may nominate at least one of those individuals (but not more than 2 of those individuals) as the persons to be enrolled in respect of the holding as an elector for the division.
- (2) A corporation that is the occupier of a holding within a division of a district may nominate up to 2 individuals as the persons to be enrolled in respect of the holding.
- (3) **Undivided district** If 2 or more individuals are occupiers of a holding in a district that is not divided into divisions, they may nominate at least one of those individuals (but not more than 2 of those individuals) as the persons to be enrolled in respect of the holding as an elector for the district.
- (4) A corporation that is the occupier of a holding within a district that is not divided into divisions may nominate up to 2 individuals as the persons to be enrolled in respect of the holding.
- (5) A nomination under this clause is to be in writing in the approved form and is to be given to the authority.

**Note—**

See section 240 (Service and giving of notices and other documents).

- (6) In this clause, **holding** means a holding that consists wholly or partly of rateable land.

### **14 Objections to enrolment where not related to validity of election**

- (1) Any person who is enrolled on a roll may object to the State Council to the inclusion or exclusion of the name of any person on or from the roll.
- (2) An objection must be made in the approved form.
- (3) The State Council must send particulars of an objection to the person to whom the objection relates (if the objector is not that person).
- (4) The person to whom an objection relates may lodge a written reply with the State Council within 30 days after the date on which particulars of the objection were sent to that person.
- (5) The State Council must consider each objection, and any reply received within that 30 day period, and may make such inquiries as the State Council thinks fit.
- (6) The State Council may decide to accept or reject an objection.
- (7) The State Council must inform the person to whom the objection relates, and the objector (if the objector is not that person), in writing, of the State Council's decision.

- (8) The relevant enrolment officer must amend the relevant roll in accordance with that decision if required to do so to give effect to the State Council's decision.
- (9) The State Council may require a person who lodges an objection, or who replies to an objection, to verify the objection or reply by statutory declaration.

### **15 Method of disputing elections and returns**

- (1) A person who is dissatisfied with the following may dispute the validity of an election by an application made to the Land and Environment Court, and not otherwise:
  - (a) the conduct of the election,
  - (b) any decision of an enrolment officer under this Schedule (including a decision to include or exclude a person's name in or from a roll).
- (2) An application to the Land and Environment Court under subclause (1) must set out the facts relied on to invalidate the election.
- (3) Any person may make an application to the Court under this clause within 28 days after the enrolment officer has publicly declared the result of the election that is the subject of the application.

### **16 Powers of Land and Environment Court**

In determining an application under clause 15, the Land and Environment Court has the same powers as are conferred by section 161 of the [Parliamentary Electorates and Elections Act 1912](#) on the Court of Disputed Returns.

### **17 Right of enrolment officer to be represented**

The enrolment officer is entitled to be represented at the hearing of an application under clause 15.

### **18 Procedure**

- (1) The procedure of the Land and Environment Court on an application under clause 15 is to be determined by rules of court, or in the absence of rules of court, by the Court or a judge of the Court.
- (2) The Land and Environment Court is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

### **19 Regulations**

The regulations may make provision for or with respect to elections (including the keeping of rolls).

## Schedule 3 Administrators

(Section 228)

### 1 Acting administrator

- (1) If, because of illness or absence, an administrator is unable to exercise the functions of his or her office, the Minister may, by notice published in the Gazette, appoint a person to act in that office during the administrator's illness or absence.
- (2) The Minister may, at any time, remove from office a person appointed under subclause (1).
- (3) If the office of an administrator becomes vacant before the holding of an election referred to in Part 14, the Minister must, by notice published in the Gazette, appoint another person to fill the vacancy.

### 2 Vacation of office

- (1) The office of administrator becomes vacant if the administrator:
  - (a) dies, or
  - (b) resigns the office by instrument in writing addressed to the Minister, or
  - (c) is removed from office by the Minister, or
  - (d) 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
  - (e) becomes a mentally incapacitated person, or
  - (f) 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 at any time, by notice published in the Gazette, remove an administrator from office.

### 3 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 an administrator and an administrator is not as such subject to that Act.
- (2) The office of administrator is not, for the purposes of any Act, an office or place of profit under the Crown.



#### 4 Expenses of administrator

- (1) An administrator of the State Council appointed under Division 1 of Part 14 is entitled to be paid, out of the funds of the State Council, such remuneration (including travelling and subsistence allowances) as the Minister may direct.
- (2) An administrator of an authority appointed under Division 2 of Part 14 is entitled to be paid, out of the funds of the authority, such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the administrator.

#### 5 Administrator not liable for losses incurred during administration

- (1) An administrator appointed to manage an authority's or the State Council's affairs is not liable for any loss incurred by the authority or the State Council during the administrator's term of office unless the loss is attributable to the administrator's intentional misconduct, gross negligence or failure to comply with any provision of this Act.
- (2) Neither the Crown nor the Minister is liable for any loss incurred by an authority or the State Council during an administrator's term of office, whether or not the administrator is so liable.

### Schedule 4 Charges on land for unpaid amounts

(Sections 117 (3) and 171)

#### 1 Definition

In this Schedule:

**compliance notice** means a notice under the following sections:

- (a) section 117 (Compliance notice—fencing),
- (b) section 171 (Compliance notice—pests).

#### 2 Registration of compliance notices in relation to land

- (1) An authority or other person that gives a compliance notice to the owner or occupier of land may apply to the Registrar-General for registration of the notice in relation to the land.
- (2) An application under this clause must define the land.
- (3) The Registrar-General must, on application under this clause and lodgment of the compliance notice, register the notice in relation to the land in such manner as the Registrar-General thinks fit.
- (4) If the notice relates to land under the provisions of the *Real Property Act 1900*, the

notice is to be registered under that Act.

### **3 Charge on land subject to compliance notice**

- (1) This clause applies where a compliance notice is registered under clause 2 in relation to land.
- (2) There is created by force of this clause, on the registration of the notice, a charge on the land in relation to which the notice is registered to secure the payment to the authority or person that applied for registration of the notice of the amount specified in the notice.

### **4 When charge ceases to have effect**

- (1) A charge under clause 3 ceases to have effect:
  - (a) on payment to the authority or person concerned of the amount specified in the compliance notice, or
  - (b) on the sale or other disposition of the property with the written consent of the authority or person concerned, or
  - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,whichever first occurs.
- (2) The regulations may make provision for or with respect to the removal of a charge under this clause.

### **5 Charge subject to existing encumbrances**

A charge under clause 3 is subject to every charge or encumbrance to which the land was subject before the notice was registered.

### **6 Registration of charge is notice**

- (1) If:
  - (a) a charge under clause 3 is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
  - (b) the charge is so registered,a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of clause 4, taken to have notice of the charge.
- (2) A person who is taken to have notice of a charge under this clause is liable to pay the amount secured by the charge, or so much of it as remains outstanding, as if the

person were the person originally liable for the amount.

- (3) This clause does not have effect of discharging the liability of a person who was originally or previously liable for the amount secured by the charge.

## **Schedule 5 Sale of land for unpaid money owing to board**

(Section 200)

### **1 Definition**

In this Schedule:

**charge** means a charge or an amount payable under the following sections:

- (a) section 117 (Compliance notice—fencing),
- (b) section 171 (Compliance notice—pests),
- (c) section 172 (Contributions towards eradication of pests that are insects).

### **2 Overdue rates and charges**

For the purposes of this Schedule:

- (a) a rate is overdue if it has remained unpaid for more than 5 years after the date on which it became payable,
- (b) a charge is overdue if it has remained unpaid for more than 5 years after a judgment or costs were awarded in respect of the charge.

### **3 Sale of land for unpaid rates and charges**

- (1) An authority may, in accordance with this Schedule, sell any land (or part of land) on which any rate or charge is overdue.
- (2) The authority must not sell any such land unless it certifies the following in writing:
  - (a) what rates and charges (including overdue rates and charges) are payable on the land,
  - (b) when the rates and charges were made and how they were imposed,
  - (c) when and how each of those rates or charges became payable,
  - (d) what amounts are payable by way of overdue rates and charges on the land,
  - (e) what amounts are payable by way of rates and charges (other than overdue rates and charges) on the land.
- (3) The authority may, in the case of adjoining parcels of land (whether owned by the

same person or not) each of which may be sold under this Schedule:

- (a) sell them separately or as a single parcel and under whatever conditions of sale it considers proper, and
- (b) do such things as it considers appropriate for the purpose of selling the land at its full value.

#### **4 Estate and interest of the Crown in land**

This Schedule does not enable the sale of:

- (a) an estate or interest of the Crown in land, or
- (b) any interest in land owned by the Crown that may not be transferred at law.

#### **5 Notice of proposal to sell land**

(1) Before selling land under this Schedule, the authority must:

- (a) fix a convenient time (being not more than 6 months and not less than 3 months from the publication in a newspaper of the advertisement referred to in paragraph (b)) and a convenient place for the sale, and
- (b) give notice of the proposed sale by means of an advertisement published in the Gazette and in at least one newspaper, and
- (c) take reasonable steps to ascertain the identity of any person who has an interest in the land, and
- (d) take reasonable steps to notify each such person (and the Crown, if the land concerned is owned by the Crown) of the authority's intention to sell the land under this Schedule.

(2) If, before the time fixed for the sale:

- (a) all rates and charges payable (including overdue rates and charges) and the expenses of the authority incurred in connection with the proposed sale are paid to the authority, or
- (b) an arrangement satisfactory to the authority for payment of all such rates, charges and expenses is entered into by the rateable person,

the authority must not proceed with the sale.

#### **6 Sale of land by public auction**

(1) Any sale of land under this Schedule must be by way of public auction, except as provided by this clause.

- (2) Land that fails to sell at public auction may be sold by private treaty.
- (3) Land must not be sold under this Schedule to the authority, a director, a relative of a director, a member of staff of the authority or any relative of a member of staff of the authority.
- (4) In this clause, a reference to a **relative** of a person is a reference to a spouse or de facto partner of the person or a grandparent, parent, son, daughter, grandchild, brother, sister, uncle, aunt, niece or nephew of the person or of the person's spouse or de facto partner.

#### **7 Payment of purchase money**

The purchase money for land sold under this Schedule must be paid to the authority, and the authority's receipt is a discharge to the purchaser in respect of all expenses, rates, charges and debts referred to in clause 8.

#### **8 Application of purchase money**

The authority must apply any purchase money received by it on the sale of land for overdue rates and charges in or towards payment of the following purposes and in the following order:

- (a) firstly, the expenses of the authority incurred in connection with the sale,
- (b) secondly, any rate or charge in respect of the land due to the authority, or any other rating authority, and any debt in respect of the land (being a debt of which the authority has notice) due to the Crown (including any meat industry levy under the [Meat Industry Act 1978](#)) as a consequence of the sale on an equal footing.

#### **9 What if the purchase money is less than the amounts owing?**

If the purchase money is insufficient to satisfy all rates, charges and debts referred to in clause 8 (b):

- (a) the amount available is to be divided between the rates, charges and debts in proportion to the amounts owing on each, and
- (b) the rates, charges and debts are taken to have been fully satisfied.

#### **10 What if the purchase money is more than the amounts owing?**

- (1) Any balance of the purchase money must be paid into the authority's fund and held by the authority in trust for the persons having estates or interests in the land immediately before the sale according to their respective estates and interests.
- (2) The authority may pay the balance of the purchase money or any part of the balance to or among the persons who are, in its opinion, clearly entitled to it, and the receipt of the person to whom any payment is so made is an effectual discharge to the

authority for it.

- (3) The *Unclaimed Money Act 1995* applies to the balance of any purchase money held by the authority as if the authority were a business and the money were unclaimed money within the meaning of that Act.

#### **11 Apportionment of rates on subdivided land**

- (1) This clause applies to any land on which a rate or charge is imposed and which is subsequently subdivided.
- (2) If part only of any such land is sold under this Schedule, any unpaid rates and charges in respect of the land may be apportioned by the authority on the recommendation of the Valuer-General.

#### **12 Conveyance or transfer of the land**

The authority, on payment to it of the purchase money, may convey or transfer the land to the purchaser without any other authority than that conferred by this clause.

#### **13 Land is conveyed free of certain interests**

- (1) A conveyance or transfer under this Schedule vests the land in the purchaser for an estate in fee simple freed and discharged from all trusts, obligations, estates, interests, contracts and charges, and rates and charges under this or any other Act, but subject to:
  - (a) any reservations or conditions for the benefit of the Crown affecting the land, and
  - (b) any easements, restrictive covenants or positive public covenants created in accordance with section 88D or 88E of the *Conveyancing Act 1919* and public rights of way affecting the land.
- (2) This clause does not apply to a leasehold estate under a lease that may be transferred at law in land owned by the Crown.

#### **14 Special provisions concerning leases of land owned by the Crown**

- (1) This clause applies to a leasehold estate under a lease that may be transferred at law in land owned by the Crown.
- (2) A conveyance or transfer under this Schedule of a leasehold estate to which this clause applies vests the leasehold estate in the purchaser freed and discharged from all trusts, obligations, estates, interests, contracts and charges, and rates and charges under this or any other Act, but subject to:
  - (a) any debt payable to the Crown, and
  - (b) any liability for any breach before the conveyance or transfer of the lease, and

- (c) the provisions of the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* and the *Western Lands Act 1901* applicable to the leasehold estate.

### **15 Transfers not invalid because of procedural irregularities**

A conveyance or transfer issued by an authority under this Schedule is not invalid merely because the authority has failed to comply with a requirement of this Schedule with respect to the sale of the land to which the conveyance or transfer relates.

### **16 Registration of transfer of land under *Real Property Act 1900***

- (1) On lodgment of a transfer of land under the *Real Property Act 1900*, the Registrar-General is to make such recordings in the Register kept under that Act as are necessary to give effect to this Schedule.
- (2) The transfer does not operate at law until it is registered under the *Real Property Act 1900*.

## **Schedule 6 (Repealed)**

## **Schedule 7 Savings and transitional provisions**

(Section 247)

## **Part 1 Preliminary**

### **1 Regulations**

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

    this Act

*Pastoral and Agricultural Crimes Legislation Amendment Act 2002*, to the extent that it amends this Act

*Rural Lands Protection Amendment Act 2003*

*Rural Lands Protection Amendment Act 2006*

*Rural Lands Protection Amendment Act 2008*

*Rural Lands Protection Amendment Act 2009*

- (2) Any such 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 any such 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 its 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 its publication.

## **Part 2 Provisions consequential on enactment of this Act**

### **2 Definition**

In this Part:

**former Act** means the *Rural Lands Protection Act 1989*.

### **3 First members of State Council**

- (1) The Minister is to appoint the first members of the State Council.
- (2) A person appointed to hold office under this clause ceases to hold office when the first members of the State Council are elected in accordance with section 21.
- (3) The Minister is to call the first meeting of the State Council in such manner as the Minister thinks fit.

### **4 Rural lands protection districts**

A rural lands protection district constituted under section 4 of the former Act immediately before the repeal of that section is taken to be a rural lands protection district constituted under this Act with the same boundaries and divisions as it had immediately before the repeal.

### **5 Rural lands protection boards**

A rural lands protection board established under section 6 of the former Act immediately before the repeal of that section is taken to be a rural lands protection board constituted under this Act.

### **6 Existing directors of rural lands protection boards**

The chairman and directors of a rural lands protection board elected or appointed under the former Act who were holding office immediately before the repeal of section 6 of that Act continue, subject to this Act, to hold office for the remainder of the term for which they were so elected or appointed.

### **7 Policies of insurance**

A policy of insurance effected under Schedule 1 to the former Act in respect of a director



referred to in clause 6 is taken to have been effected in respect of the director as required by Schedule 1 to this Act.

### **8 Existing district veterinarians**

Any person holding an appointment as a district veterinarian for a rural lands protection district immediately before the repeal of section 22 of the former Act is taken to have been appointed as the district veterinarian by the rural lands protection board established for the corresponding rural lands protection district under this Act.

### **9 Existing members of staff of boards**

Any person employed by a rural lands protection board under section 23 or 24 of the former Act immediately before the commencement of section 43 of this Act is taken to have been appointed as an employee of the corresponding rural lands protection board under section 43.

### **10 Rural lands protection fund, wild dog fund, reserves improvement fund, stock watering places fund and special fund**

- (1) Any money in a fund established by a board under section 32, 33, 34 or 36 of the former Act immediately before the repeal of those sections is, on that repeal, taken to form part of the fund of the board and may be expended for any purpose (not being inconsistent with the purpose for which the fund was established) for which the board may expend money in its fund under this Act.
- (2) A reference in any instrument made or entered into before the commencement of this clause to a fund referred to in subclause (1) is taken to be a reference to the fund of the board.

### **11 (Repealed)**

### **12 Contributions to rabbit proof, dog proof and marsupial proof fences**

- (1) Section 156 of the former Act continues to apply to the holder of a lease or licence who, immediately before the repeal of that section, was liable to pay an annual rental for a fence as if that section were in still in force.
- (2) Section 159 of the former Act continues to apply to an owner of land who, immediately before the repeal of that section, was liable to pay a yearly contribution as if that section were still in force.
- (3) Except as provided by this clause, Division 3 of Part 11 of the former Act continues to operate in respect of any proceeding pending in respect of a contribution towards the cost of work and materials for or in respect of fences under that Part as if the that Part had not been repealed by this Act.

### **13 Electoral rolls established under the former Act**

A roll prepared for the purposes of the former Act and in force immediately before the commencement of Schedule 1 to this Act becomes an electors' roll for the purpose of that Schedule until a fresh roll of electors is prepared for the purposes of this Act.

### **14 Appointment of administrator to continue**

A person who was, immediately before the commencement of section 218 of this Act, holding office as an administrator under the former Act continues in office as if he or she were an administrator appointed under that section.

### **15 Rates and other amounts outstanding under the former Act to remain payable**

- (1) The amount of any rate, fee or charge that has been levied or imposed under a provision of the former Act and has not been paid when that provision is repealed by this Act is payable and recoverable as if that provision had not been repealed.
- (2) An amount referred to in this clause that, by virtue of a provision of the former Act, was secured by a charge and that could, if it had first become due and payable under this Act, have been secured by a charge by virtue of a provision of this Act continues to be secured under the provision of this Act.

### **16 Assessment of carrying capacity under the former Act to continue to have effect**

The last assessment of the carrying capacity of land made under the former Act before the commencement of section 69 of this Act continues to have effect in respect of the land until superseded by an assessment of the notional carrying capacity of the land made in accordance with that section.

### **17 Returns of land and stock**

Despite its repeal by this Act, section 57 of the former Act continues to apply to any occupier of land, or any owner of stock, who had not complied with that section with respect to any 30 June before that repeal took effect.

### **18 Notices of changes of occupancy or ownership of rateable land**

Despite its repeal by this Act, section 65 of the former Act continues to apply to a person who had ceased to be or had become the occupier or owner of rateable land within a district but who had not complied with that section before that repeal.

### **19 Appeals against certain decisions of rural lands boards under the former Act**

- (1) Despite its repeal by this Act, section 55 of the former Act continues to apply to an assessment of the carrying capacity of land that was made before the repeal of that section.
- (2) Section 61 of the former Act continues to apply in respect of proceedings that were

brought under that section before its repeal by this Act.

## **20 Exemptions from rating provisions under section 75 of the former Act**

If an exemption under section 75 of the former Act is in force immediately before the commencement of section 244 of this Act and the land or person or class of persons to which the exemption relates could be exempted under section 244 of this Act, the exemption continues in force as an exemption under that section.

## **21 Existing travelling stock reserves and stock watering places**

- (1) A board that had, or purported to have, control of a travelling stock reserve under section 80 of the former Act immediately before the commencement of section 85 of this Act is taken to have the care, control and management of the reserve under section 85.
- (2) Any act, matter or thing done before the commencement of this clause in relation to a travelling stock reserve by a board that purported to have control of the reserve under section 80 of the former Act that would have been validly done if the board had had such control, is validated.
- (3) Land that, immediately before the commencement of section 129 of this Act, was a stock watering place under the former Act is taken to have been declared to be a stock watering place under section 129 of this Act.

## **22 Existing permits, authorisations and licences relating to stock**

A walking stock permit, grazing permit, stock licence, stock holding permit or apiary site permit or other authority issued under Part 6 of the former Act (an **original authority**) that, immediately before the commencement of this clause, entitled or authorised a person to enter, remain on, occupy, use or engage in any activity in a travelling stock reserve or public road is taken to be a stock permit or reserve use permit (as the case requires) issued under this Act authorising that person to do that thing subject to any conditions to which the original authority was subject.

## **23 Aboriginal lands in travelling stock reserves**

Nothing in this Act affects any claim lodged under section 36 of the [Aboriginal Land Rights Act 1983](#) before the commencement of this clause.

## **24 Sureties paid by holders of Crown land**

Section 60 of the former Act continues to apply to and in respect of a surety lodged under that section before the commencement of section 83 of this Act as if it had not been repealed.

## **25 Stock impounded under the former Act**

Stock impounded under the former Act and not released before the commencement of Part 10 of this Act are to continue to be dealt with as if the relevant provisions of the former Act were still in force.

## **26 Leases of stock watering places to continue to have effect**

- (1) A lease of a stock watering place granted under the former Act and in force at the commencement of section 134 of this Act continues to have effect for the unexpired part of its term.
- (2) The lessee under the lease has the same rights and is subject to the same obligations and liabilities as the lessee would have if the lease had been granted under section 134 of this Act.

## **27 Noxious insects, noxious animals and pest animals**

- (1) In this clause:

**former pest** means:

- (a) any animal or bird of a species that, immediately before the commencement of this clause, was a noxious animal within the meaning of the former Act,
  - (b) any insect of any species that, immediately before the commencement of this clause, was a noxious insect within the meaning of the former Act,
  - (c) any animal or bird of a species that, immediately before the commencement of this clause, was the subject of a control order made under section 138D of the former Act.
- (2) The Minister may make a pest control order under Part 11 that declares a former pest (or only such species, hybrid or description of such a pest as is specified in the order) to be a pest within the meaning of this Act without complying with the requirements of sections 146 and 147. Such a pest control order is taken to be made in accordance with Division 2 of Part 11.
  - (3) Nothing in this clause limits section 26 of the [Interpretation Act 1987](#).

## **28 Orders for the destruction of noxious animals made under the former Act**

An order made under section 127 of the former Act that is in force immediately before the commencement of section 143 of this Act and not fully complied with before that commencement continues to have effect as if Part 9 of the former Act were still in force.

## **29 Permission to keep noxious animals granted under the former Act**

If permission granted under the former Act to keep a noxious animal is in force

immediately before the commencement of section 174 of this Act, that permission is, on that commencement, to be taken to be an approval granted under that section.

### **30 Registration of brand designs and earmark designs**

The registration of a brand design or earmark design under Part 12 of the former Act continues in force in relation to stock as if that Act had not been repealed until a scheme has been established in relation to the identification of stock by or under the regulations made for the purposes of this Act.

### **31 Delegations by the Minister under the former Act**

Any delegation made by the Minister under the former Act that has not been revoked before the commencement of section 241 of this Act and that could have been made under that section if that section had been in force when the delegation was made continues in force as if it had been made under that section.

### **32 Noxious Insects Destruction Account**

The Noxious Insects Destruction Account established under section 148 of the former Act may be continued, on the repeal of that section, as a special deposit account of that name. Money in that account on the repeal of that section may be used for the eradication of plague locusts and other pests that are insects.

### **33 Notices served under the former Act**

If:

- (a) a notice or notification has been given or served under a provision of the former Act, and
- (b) a similar notice or notification could have been served under a corresponding provision of this Act had this Act been in force at the relevant time, and
- (c) either the period within which the notice or notification was due to take effect had not expired when that corresponding provision commenced or, if it had expired, the notice or notification had not been complied with,

the notice or notification is to be treated as if it were a notice or notification served under that corresponding provision.

### **34 Documents prepared for the purposes of the former Act**

If:

- (a) a certificate or other document prepared or created under or for the purposes of a provision of the former Act was in force immediately before the repeal of that provision by this Act, and

- (b) a similar certificate or document could be prepared or created under or for the purposes of a corresponding provision of this Act,

that certificate or document continues to have effect as if it had been prepared or created under or for the purposes of that corresponding provision.

### **Part 3 Provisions consequent on Pastoral and Agricultural Crimes Legislation Amendment Act 2002**

#### **35 Transported stock statements**

- (1) A valid transported stock statement within the meaning of clause 39 (3) of the *Rural Lands Protection (General) Regulation 2001*, as in force immediately before the commencement of this clause, is taken to be a transported stock statement within the meaning of Part 10A.
- (2) The person who filled out and signed such a statement must retain a copy of the statement for 2 years after the end of the journey to which it relates.

### **Part 4 Provisions consequential on enactment of Rural Lands Protection Amendment Act 2003**

#### **36 Electoral rolls**

A roll established under clause 10 of Schedule 2 and in force immediately before the commencement of this clause continues to be an electors' roll for the purposes of that Schedule and may be amended for the purpose of complying with that clause as amended by Schedule 1 [18] to the *Rural Lands Protection Amendment Act 2003*.

### **Part 5 Provisions consequent on enactment of Rural Lands Protection Amendment Act 2006**

#### **37 Financial reports**

This Act, as amended by the *Rural Lands Protection Amendment Act 2006*, applies to the preparation of boards' financial reports, and the auditing of those reports, for the 2006 financial year and each financial year after that.

### **Part 6 Provisions consequent on enactment of Rural Lands Protection Amendment Act 2008**

#### **38 Definition**

In this Part, **amending Act** means the *Rural Lands Protection Amendment Act 2008*.

#### **39 Continuation of State Council**

- (1) The State Council is a continuation of, and the same legal entity as, the State Council

of Rural Lands Protection Boards.

- (2) A reference to the State Council of Rural Lands Protection Boards (however described) in any other Act or instrument is taken to be a reference to the State Council.

#### **40 Rural lands protection districts and boards**

- (1) A rural lands protection district existing immediately before the commencement of the amending Act is taken to be a livestock health and pest district constituted under section 5.
- (2) A rural lands protection board existing immediately before the commencement of the amending Act is taken to be a livestock health and pest authority constituted under section 37.
- (3) A reference to a rural lands protection district (however described) in any other Act or instrument is taken to be a reference to a livestock health and pest district constituted under this Act.
- (4) A reference to a rural lands protection board (however described) in any other Act or instrument is taken to be a reference to a livestock health and pest authority constituted under this Act.

#### **41 First periodic elections for boards of authorities**

- (1) At the first meeting of each board after the general election held in 2013, the directors so elected are to be divided, in accordance with the method set out in the regulations, into:
  - (a) two year term directors, and
  - (b) four year term directors.
- (2) The term of office of:
  - (a) a two year term director expires on the day immediately before the periodic election to be held in 2015, and
  - (b) a four year term director expires on the day immediately before the periodic election to be held in 2017.
- (3) The following periods of time in relation to a person are to be disregarded for the purposes of clause 9 (3) of Schedule 2:
  - (a) any term of office of a two year director between 2013 and 2015,
  - (b) any period of time served by a director on a board before 1 May 2009.

#### **42 Authority contributions to State Council's fund in 2009**

Despite section 31, the contribution to be made by each authority to the State Council for the purpose of enabling the State Council to carry out its functions in calendar year 2009 is to be determined by the State Council.

#### **43 Guidelines**

A guideline issued by the State Council under section 25 before its repeal by the amending Act is taken to have been made under section 23.

#### **44 Rating during calendar year 2009**

- (1) During calendar year 2009, a rate may consist of:
  - (a) a base amount, and
  - (b) an amount payable for each stock unit based on the total notional carrying capacity of rateable land in the district.
- (2) During calendar year 2009, an authority of a district that was constituted by amalgamation on 1 January 2009 may make and levy different rates for the different constituent parts of its district.
- (3) In this clause, **constituent parts** of an amalgamated district means the divisions of districts and parts of divisions of districts that have been amalgamated by a proclamation under section 5 to constitute the amalgamated district.

#### **45 Remuneration of members of State Council and directors**

- (1) A determination of remuneration for a member of the State Council under clause 5 (1) of Schedule 1, as in force immediately before its amendment by the amending Act, continues in force as if it had been made by the Minister after that amendment.
- (2) A determination of remuneration for a director of a board under clause 5 (2) of Schedule 1, as in force immediately before its amendment by the amending Act, continues in force as if it had been made by the Minister after that amendment.

#### **46 Interim State Council**

- (1) On the commencement of this clause, all members of the State Council cease to hold office.
- (2) The Minister may, by order published in the Gazette:
  - (a) appoint a person specified in the order as administrator of all the functions of the State Council, or
  - (b) appoint up to 9 persons (being persons who have previously served as members of the State Council) as interim members of the State Council.



- (3) The administrator or interim members hold office (subject to this Act) until immediately before the first meeting of the State Council (as constituted by members appointed in accordance with section 20).
- (4) An administrator appointed under this clause has and may exercise, subject to any conditions specified in the order appointing the administrator, the functions of the State Council specified in the order. Any delegation or authority made or conferred by the State Council in respect of any function of the State Council that may be exercised by an administrator appointed under this clause ceases to have effect on that appointment.
- (5) A person appointed as an interim member of the State Council by an order under this clause has and may exercise, subject to any conditions specified in the order, all the functions of a member of the State Council.
- (6) The Minister is to call the first meeting of the State Council (as constituted by members appointed in accordance with section 20) in such manner as the Minister thinks fit.
- (7) Schedule 1 applies, with such modifications as are necessary, to and in respect of any such interim State Council.

#### **47 Changing of financial year**

The financial year of the State Council and an authority that commences on 1 January 2009 is taken to end on 30 June 2010.

### **Part 7 Provisions consequent on enactment of [Rural Lands Protection Amendment Act 2009](#)**

#### **48 Minister's approval of rates: section 62 (3A)**

Section 62 (3A) applies only to a rate made after the commencement of that subsection.

#### **49 Making and levying of rates before commencement of [Schedule 4 \[2\] and \[4\] to Rural Lands Protection Amendment Act 2008](#)**

- (1) This clause:
  - (a) has effect on and from 1 January 2010, and
  - (b) ceases to have effect on the commencement of [Schedule 4 \[2\] and \[4\] to the Rural Lands Protection Amendment Act 2008](#).
- (2) A rate may consist of:
  - (a) a base amount, and
  - (b) an amount payable for each stock unit based on the total notional carrying

capacity of rateable land in the district.

- (3) An authority may, in accordance with the regulations, if any, do either or both of the following:
- (a) divide its district into zones and make and levy different rates for different zones,
  - (b) make and levy different rates for the different constituent parts of its district.
- (4) In this clause, **constituent parts** of a district means the divisions of districts and parts of divisions of districts that have been amalgamated by a proclamation under section 5 to constitute the district.

**Note—**

The making of rates is subject to the approval of the Minister (see section 62 (3A)) and any guidelines and specific orders of the State Council (see section 12 (1)).

## **Schedule 8 Amendment of Act to establish periodic elections**

(Section 249)

**Note—**

The amendments made by this Schedule commence on 1 January 2014 (see section 249).

### **[1] Section 223 Appointment of an initial administrator**

Omit “general or” wherever occurring in section 223 (1) (b) and (2) (b).

### **[2] Schedule 1 Constitution and procedure of State Council and boards of authorities**

Omit “general election” from clause 9 (1) (a) (as amended by Schedule 5).

Insert instead “periodic election”.

### **[3] Schedule 1, clause 15**

Omit clause 15 (1) (a). Insert instead:

- (a) where vacant positions of directors are filled at a periodic election—within one month, or within such extended period as the State Council allows, after that election, or

### **[4] Schedule 2 Election or appointment of directors**

Omit the definition of **general election** from clause 1.

Insert instead in alphabetical order:

**periodic election** means an election for elected directors of a board held as referred to in clause 7.

**[5] Schedule 2, clauses 2, 3, 6 and 8**

Omit “general election” wherever occurring.

Insert instead “periodic election”.

**[6] Schedule 2, clause 7**

Omit the clause. Insert instead:

**7 Timing of periodic elections**

The State Council is to ensure that:

- (a) a periodic election is held for each board for the elected director offices falling vacant in 2015 to enable the directors so elected at the election to take office on 1 May 2015, and
- (b) periodic elections are subsequently held in every second year after 2015 for the elected director offices falling vacant in those years to enable directors elected at those periodic elections to take office on 1 May in that year.

**[7] Schedule 2, clause 9 (1)**

Omit the subclause. Insert instead:

- (1) Subject to this Schedule and the regulations, the term of office of an elected director of a board expires on the day immediately before the second periodic election held after his or her election as a director.

**[8] Schedule 2, clause 10 (2)**

Omit the subclause. Insert instead:

- (2) However, if the vacation of office occurs within 6 months before the term of office of the elected director concerned would have expired, an election to fill the vacancy must not be held.

**[9] Schedule 2, Part 5**

Insert after Part 4:

**Part 5 Elections after all elected director positions fall**

## vacant

### 20 Regulations regarding elections for all elected director positions

The regulations may make provision for or with respect to the holding of an election for all elected director positions (for example, after an amalgamation under section 5 or after the appointment of an administrator under section 218) and, specifically, may make provision for the recommencement of a cycle of periodic elections.

#### [10] Dictionary

Omit the definition of **general election**.

#### [11] Dictionary

Insert in alphabetical order:

**periodic election**—see clause 7 of Schedule 2.

### Dictionary

In this Act:

**administrator** means an administrator appointed under Part 14.

**animal health rate** means a rate levied by an authority under Part 7 as an animal health rate.

**annual return** means a return lodged or required to be lodged with an authority under section 76.

**appointed director** means a director of a board of an authority referred to in section 39 (3) (b).

**appropriate local land board**, in relation to any land, means the local land board for the land district (within the meaning of the [Crown Lands Act 1989](#)) in which the land is situated.

**approved form** means:

- (a) the form prescribed by the regulations for the purposes of the provision in relation to which the expression is used, or
- (b) if no such form is prescribed, the form (if any) approved by the State Council for the purposes of the provision in relation to which the expression is used.

**authorised officer** means a person authorised as an authorised officer under section 185.

**authorising authority** means:

- (a) in relation to an authorised officer appointed by an authority—the authority, or
- (b) in relation to an authorised officer appointed by the Minister—the Minister, or
- (c) in relation to an authorised officer appointed by the State Council—the State Council, or

(d) in relation to an authorised officer appointed by the Director-General—the Director-General.

**authority** means a livestock health and pest authority constituted for a district under this Act.

**board** means a board of an authority.

**cattle** means a bull, cow, ox, heifer, steer, calf or buffalo.

**Chief Executive Officer** means the Chief Executive Officer of the State Council holding office as such under Chapter 1A of the [Public Sector Employment and Management Act 2002](#).

**controlling authority** of a stock watering place—see section 131.

**critical habitat** has the same meaning as in the [Threatened Species Conservation Act 1995](#).

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

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

**Crown road** has the same meaning as it has in the [Roads Act 1993](#).

**Department** means the Department of Industry and Investment.

**director, director of a board, director of a district** and **director of an authority** means a director of a board of an authority.

**Director-General** means the Director-General of the Department.

**district** means a livestock health and pest district constituted by or under this Act.

**Eastern and Central Division** means the Eastern and Central Division of New South Wales as defined by section 4 of the [Crown Lands Act 1989](#).

**ecological community** has the same meaning as in the [Threatened Species Conservation Act 1995](#).

**elected director** means a director of a board of an authority referred to in section 39 (3) (a) (and includes any director appointed under clause 2 (2) of Schedule 2).

**enrolled** means enrolled in accordance with Schedule 2 as an elector in respect of a district or a division of a district.

**exercise** a function includes perform a duty.

**fauna** means any mammal, bird, reptile or amphibian.

**function** includes a power, authority or duty.

**function management plan**—see Division 3 of Part 6.

**general election**—see clause 6 of Schedule 2.

**general rate** means a rate levied by an authority under Part 7 as a general rate.

**goat** includes a buck, doe, wether and kid.

**guidelines** means guidelines issued by the State Council under section 23.

**holding** means:

- (a) a parcel of land, or
- (b) several parcels of land which:
  - (i) are contiguous with one another or are separated from one another only by a road, river, creek or other watercourse, and
  - (ii) constitute or are worked as a single property,

irrespective of whether those parcels are held under the same title or different titles or titles of different kinds or whether they are in the same district.

**Note—**

See section 8 (When is a holding within a district?).

**horse** means a horse, mare, gelding, colt, filly, foal, hinny, mule, donkey or ass.

**Land Register** means the Register kept under the [Real Property Act 1900](#).

**large stock** means horses, cattle, camels or deer.

**local authority** means a council within the meaning of the [Local Government Act 1993](#).

**local land board** means a local land board constituted under the [Crown Lands Act 1989](#) or under the [Western Lands Act 1901](#).

**memorandum of understanding** means the memorandum of understanding referred to in section 13.

**occupier** of land means the following:

- (a) the person for the time being entitled to possession of land and includes, if the person so entitled does not reside on the land, the resident manager or other person in charge of the land,
- (b) if the land is public land to which no person is entitled to possession—the person having the care, control and management of the land,
- (c) if the land is reserved or dedicated for any public use or purpose—the trustee or trustees of the land,
- (d) if the land consists of a public road—the roads authority for that road within the meaning of the [Roads Act 1993](#),
- (e) if the land consists of a travelling stock reserve—the responsible authority within the meaning of Part 8,
- (f) any other person designated by the regulations as an occupier of land for the purposes of this definition.

**owner** of land includes:

- (a) the holder, or the holder subject to mortgage, of any lease or licence or promise of any lease or licence from the Crown, or
- (b) the holder, or the holder subject to mortgage, of any incomplete purchase or perpetual lease from the Crown, or
- (c) the person entitled to an estate of freehold in possession:
  - (i) whether in fee simple or for life or otherwise, or
  - (ii) whether at law or in equity, or
  - (iii) whether absolutely or by way of mortgage, or
- (d) the person in whom is vested any land taken or appropriated under the authority of any statute authorising land to be taken or appropriated for the purpose of any private undertaking.

**pig** includes boar, sow, barrow, piglet and sucker.

**Policy Council** means the State Policy Council of Livestock Health and Pest Authorities established by this Act.

**premises** includes any land, structure, building, aircraft, vehicle and place (whether built on or not) and any part of it.

**private holding** and **private land** mean respectively a holding and land not including or being public land.

**property** means property of all kinds, whether real or personal and whether tangible or intangible and, in particular, includes choses in action.

**protected fauna** means protected fauna within the meaning of the [National Parks and Wildlife Act 1974](#).

**public authority** includes:

- (a) a Minister of the Crown, or
- (b) a local authority constituted by or under an Act, or
- (c) a government department, or
- (d) a statutory body representing the Crown, or
- (e) the trustee or trustees of land reserved or dedicated for any public use or purpose, or
- (f) a State owned corporation, or
- (g) a member of staff or other person who exercises functions on behalf of any of the above.

**public land** means:

- (a) Crown land that is not the subject of a contract for sale, or

(b) land, not being a road, that is the subject of a dedication or permanent reservation for public uses or purposes,

being land that is not the subject of any lease or licence under the Crown Lands Acts or under any other Act authorising the occupation or use of land vested in the Crown.

**public road** has the same meaning as it has in the [Roads Act 1993](#).

**rate** means a rate fixed under Part 7.

**rateable land**—see section 60.

**record** includes a book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

**reserve use permit** means a permit used under section 100.

**selection on merit**, in relation to the appointment of a Policy or State Council member or a director, means the appointment of the member or director after some form of open competition involving the selection of the member or director to be appointed as the person who has the greatest merit among candidates for appointment.

**sheep** includes ram, ewe, wether and lamb.

**special election**—see clause 9 of Schedule 2.

**State Council** means the State Management Council of Livestock Health and Pest Authorities constituted by this Act.

**State forest** means a State forest within the meaning of the [Forestry Act 2012](#).

**stock** means cattle, horses, sheep, goats, camels, alpacas, llamas, pigs, deer, ostriches, emus or, in relation to any specified provision or provisions of this Act, any other kind of animal declared by the regulations to be stock for the purposes of that provision or those provisions.

**stock permit** means a permit issued under section 101.

**stock watering place** means any land declared to be a stock watering place under section 129.

**threatened species** means threatened species within the meaning of the [Threatened Species Conservation Act 1995](#).

**travelling stock** has the meaning it has in section 84.

**travelling stock reserve**—see section 84.

**tree** means a tree of any description and includes a sapling and a seedling of a tree.

**vehicle** includes any means of road, rail, waterborne or airborne transport.

**Western Division** has the same meaning as it has in section 4 of the [Crown Lands Act 1989](#).



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

**wildlife** means protected fauna and native plants.