

# Western Lands Act 1901 No 70

[1901-70]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Previously named**  
Western Lands Act of 1901
- **Does not include amendments by**  
[Western Lands Amendment Act 2009 No 9](#), Sch 2 [24] (not commenced)  
[Biosecurity Act 2015 No 24](#) (not commenced)  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2015 No 58](#) (not commenced — to commence on 15.1.2016)

### Authorisation

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New South Wales

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# Western Lands Act 1901 No 70



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Western Lands Act 1901*.

### 2 Objects of Act

The objects of this Act are as follows:

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

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

- (1) The provisions of the [Crown Lands Act 1989](#) specified in Schedule 2 (and any regulations under that Act having effect for the purposes of those provisions) apply to and in respect of land in the Western Division in the same way as they apply to and in respect of land in the Eastern and Central Division.
- (2) Those provisions so apply with the modifications, and subject to the restrictions, specified in Schedule 2.
- (3) In the application of any such provision to and in respect of land in the Western Division, if the expression “Crown Lands Acts” or “this Act” occurs in the provision it is to be read as including the expression “and the [Western Lands Act 1901](#)”.
- (4) Except as provided by this Act or the Crown Lands Acts, the [Crown Lands Act 1989](#) does not apply to land in the Western Division.
- (5) This section is subject to section 35XC (6).

### Note—

That subsection provides that a lease granted under section 35XC (a **special purpose lease**) is subject to the provisions of the [Crown Lands Act 1989](#) and is not subject to any provision of this Act (other than Part 9E).

## 2B Savings, transitional and other provisions

Schedule 3 has effect.

## 3 Definitions

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

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

**Assistant Commissioner** means an Assistant Western Lands Commissioner holding office as such under Chapter 1A of the [Public Sector Employment and Management Act 2002](#).

**Commissioner** means the Western Lands Commissioner holding office as such under Chapter 1A of the [Public Sector Employment and Management Act 2002](#).

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

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

**Department** means the Land and Property Management Authority.

**Director-General** has the same meaning as in the [Crown Lands Act 1989](#).



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

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

**Leased land** means land held under a lease granted or issued under this Act.

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

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

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

**Western Division** has the same meaning as it has in the [Crown Lands Act 1989](#).

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

### **3A Minister may approve forms**

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

### **3B (Repealed)**

## **Part 2 Administration**

### **4 Western Lands Commissioner and Assistant Commissioners**

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

## **5 Disqualification from office**

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

## **6-8 (Repealed)**

### **8A Delegation by Commissioner**

The Commissioner may delegate to:

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

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

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

- (1) There is to be a Western Lands Advisory Council.
- (2) The Western Lands Advisory Council is to have 15 members appointed by the Minister, and of whom:
  - (a) four are to be appointed to represent lessees in the Western Division:
    - (i) 2 being nominees of the Western Division Council of the NSW Farmers' Association, and
    - (ii) one being the nominee of The Pastoralists' Association of West Darling, and
    - (iii) one being a person who is independent of each of the associations referred to in subparagraphs (i) and (ii), and
  - (b) two are to be appointed to represent the interests of local councils, each being a nominee of the Local Government and Shires Association of New South Wales, and
  - (c) two are to be appointed to represent the interests of Aboriginal people, of whom one is to be appointed on the nomination of the New South Wales Aboriginal Land Council, and
  - (d) one is to be appointed on the nomination of the Nature Conservation Council of New South Wales to represent the interests of environment protection groups, and

- (e) one is to be appointed to represent the interests of the Western Region Local Board under the *Local Land Services Act 2013*, and
  - (f) one is to be appointed to represent the interests of the Minister for Climate Change and the Environment, and
  - (g) one is to be appointed to represent the interests of the Minister for Primary Industries, and
  - (g1) one is to be appointed to represent the interests of the Minister for Mineral Resources, and
  - (h) one is to be the Commissioner, and
  - (i) one is to be appointed as an independent chairperson for the Council.
- (3) Each of the members referred to in subsection (2) (a)-(e) must be a person who, in the Minister's opinion, has a current or recent connection with, or has a relevant interest in, the Western Division.
  - (4) If a candidate to represent the interests of any person or body is not duly nominated as referred to in subsection (2), the Minister may appoint any person to represent those interests without the need for nomination.
  - (5) The regulations may make provision with respect to qualifications for appointment as a member of the Western Lands Advisory Council.
  - (6) Schedule 5 has effect with respect to the constitution and procedure of the Western Lands Advisory Council.

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

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

## **9 Power to establish administrative districts**

- (1) The Minister may within the Western Division by notification in the Gazette establish and define the boundaries of administrative districts, and may, in like manner, alter, modify, or cancel the same.
- (2)-(7) (Repealed)

## **9A-10B (Repealed)**

## **10C Minister may deal with matters by agreement**

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

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

(b) determines a matter under subsection (2),

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

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

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

## **11 Appointment of staff**

Such staff as may be necessary to enable the Commissioner to exercise the Commissioner's functions shall be employed under the [Public Sector Employment and Management Act 2002](#).

## **12 Right to enter on Crown lands**

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

## **12A Delegation by Minister**

The Minister may delegate to:

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

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

## **Parts 3, 4**

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

## **Part 5 Conditions of leases**

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

Each lease must contain:

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

### **18A Condition of fencing**

- (1) The Commissioner may from time to time, by order in writing, direct that:
  - (a) the boundaries of any leased land, or any specified part of those boundaries, or
  - (b) any specified part or parts of leased land,be fenced within such period, and with such kind of fencing, as is specified in the order.
- (2) An order under subsection (1) (a) may apportion the costs of complying with the order between the lessee of the leased land concerned and the owner or lessee of any adjoining land along the boundaries of that land.
- (3) The order is to be served on the lessee of the leased land and, in the case of an order that apportions costs as referred to in subsection (2), on the owner or lessee of the adjoining land.
- (4) Each lease is subject to a condition that the lessee will comply with the requirements of any order in force under this section in relation to the fencing of the leased land.
- (5) An order under this section may authorise the erection or use as a boundary fence of any fence that, although not on a boundary, will in the Commissioner's opinion serve the purposes of a boundary fence.
- (6) A person who is affected by an order made by the Commissioner under this section may appeal to the Civil and Administrative Tribunal against that order.

**Note—**

An appeal to the Civil and Administrative Tribunal under this section is an external appeal to the Tribunal for the purposes of the [Civil and Administrative Tribunal Act 2013](#). A decision of the Tribunal on such an external appeal may be appealed to the Land and Environment Court under Schedule 1 to that Act.

### **18B Recovery of contributions from adjoining landowners**

- (1) This section applies in circumstances in which an order under section 18A (1) (a) apportions the costs of complying with the order between two or more persons, as referred to in section 18A (2).

- (2) If, in complying with the order, a person incurs costs in excess of his or her due proportion under the order, the person may recover the excess, as a debt in a court of competent jurisdiction, from any other person or persons to whom the order apportions the costs.
- (3) In any proceedings for recovery of such a debt, the certificate of the Commissioner as to the making and contents of the order is evidence of the matters set out in the certificate.

**18C (Repealed)**

**18CC Recovery of debts**

Money due to the Crown under this Act may be recovered, as a debt, in any court of competent jurisdiction.

**18D Provisions governing leases**

- (1) The following provisions shall govern all leases and the holders of such leases, namely:
  - (a) No lease other than a special lease for that purpose shall confer any right to remove material from the leased land or to prevent the entry and removal of material by authorised persons.
  - (b) A lessee may take from land under the lease such timber and other material for building and other purposes on the land or on any contiguous land held in the same interest as may reasonably be required by the lessee.
  - (c) No lessee shall prevent any persons duly authorised in that behalf from cutting or removing timber or material or from searching for any mineral within the land under lease.
  - (d) A lessee shall take such measures as the Commissioner may direct to protect the land under lease and, without affecting the generality of the foregoing, the Commissioner may direct the lessee:
    - (i) to prevent the use by stock of any part of the land for such periods as the Commissioner considers necessary and to erect fencing for that purpose,
    - (ii) to prevent the overstocking of the land,
    - (iii) to prevent any part of the land being used for such agricultural practices of such types and for such periods as the Commissioner considers necessary,
    - (iv) to foster and cultivate edible shrubs and plants on the land,
    - (v) to preserve trees, scrub and vegetative cover on the land, and

- (vi) to take such measures to protect the land (including measures to prevent soil erosion or other damage to the land) as the Commissioner of the Soil Conservation Service may recommend.
  - (e) A lessee shall not overstock or permit or allow to be overstocked the said land, and the decision of the Commissioner as to what constitutes overstocking shall be final.
  - (f) A lessee shall not erect a building on the land under lease (not being land in an area within the meaning of the *Local Government Act 1993*) except with the prior approval of the Commissioner and in accordance with any condition to which the approval is subject.
  - (g) A lessee shall, if the Commissioner so directs, erect gates on public roads on the land under lease.
  - (h) A lessee shall carry out such repairs to improvements on the land under lease as the Commissioner may direct.
  - (i) A lessee shall furnish such returns and statements as the Commissioner may from time to time require on any matter connected with the land under lease or any other land (whether within or outside the Western Division) in which the lessee has an interest.
- (2) To the extent that the provisions of this section are inconsistent with those of a conservation agreement entered into under the *National Parks and Wildlife Act 1974*, this section does not apply to a lease relating to land subject to that agreement.

#### **18DA Cultivation of certain land**

- (1) This section applies to:
- (a) a lease expressed to be granted or issued for the purpose of grazing, and
  - (b) any other lease not being a lease expressed to be granted or issued for the purpose of agriculture, grazing and agriculture combined or mixed farming or for any similar purpose or purposes.
- (1A) This section also applies to any other class of land in the Western Division prescribed for the purposes of this section.
- (2) In this section:
- cultivate**, in relation to land:
- (a) includes the preparation of the land for cultivation and the further cultivation of the land if it has previously been cultivated, and
  - (b) does not include any clearing of native vegetation, or clearing of State protected



land, to which the condition referred to in section 18DB (3) applies.

**occupier** means the person who, under the Crown Lands Acts, the *Commons Management Act 1989* or the *Local Land Services Act 2013*:

- (a) is the holder of a permissive occupancy, a licence, a conditional lease or any other prescribed tenure, or
  - (b) has the care, control and management of land prescribed for the purposes of this section as referred to in subsection (1A).
- (3) Except in such circumstances as may be prescribed, the lessee of land the subject of a lease to which this section applies, or the occupier of any other land to which this section applies, shall not cultivate any part of the leased or occupied land unless:
- (a) the Commissioner has consented in writing to the cultivation of that part, and
  - (b) the consent is in force, and
  - (c) any condition to which the consent is subject under subsection (6) is complied with.
- (4) Application for consent under this section shall be made to the Commissioner in a form approved by the Commissioner and shall be accompanied by the prescribed fee.
- (5) The Commissioner shall not give consent under this section without having first referred the application for consent to the Commissioner of the Soil Conservation Service appointed under the *Soil Conservation Act 1938*, for consideration and advice.
- (6) The Commissioner may give consent under this section unconditionally or subject to such conditions as the Commissioner may specify in the instrument of consent or may refuse consent.
- (7) (Repealed)
- (8) Without limiting the generality of subsection (6), the conditions referred to in that subsection may include a condition for the payment of an annual fee, being a fee determined having regard to the value of the lessee or occupier of the use, for the purpose of cultivation, of the land to which the consent relates.
- (8A) The Commissioner may, on the ground that any condition to which a consent under this section is subject has been contravened or on any other ground:
- (a) suspend the consent, or
  - (b) after affording the lessee or occupier an opportunity to be heard—revoke the consent.
- (8B) The Commissioner may terminate the suspension of a consent under this section.

- (9) A consent under this section remains in force for such period as the Commissioner may specify in the instrument of consent unless it is sooner revoked or surrendered.
- (10) A person may appeal to the Land and Environment Court against:
- (a) the refusal of the Commissioner to give a consent under this section to the person,
  - (b) any condition to which a consent given to the person under this section is subject, or
  - (c) the suspension or revocation of a consent given under this section to the person or the person's predecessor in title.
- (11) For the purpose only of enabling an appeal to be made under subsection (10), a failure by the Commissioner to determine an application for a consent under this section within 6 months after the application is received by the Commissioner constitutes a refusal by the Commissioner to give the consent.
- (12) A lease to which this section applies shall be liable to forfeiture if any part of the land the subject of the lease is cultivated in contravention of this section or any conditions imposed under this section.
- (13) No act, matter or thing which a lessee, under or in conformity with a consent under this section, does upon or in relation to the land the subject of the lease shall render the lease liable to forfeiture under this Act merely by reason of the fact that the doing of the act, matter or thing constitutes a breach or non-performance of any covenant, condition or provision applicable to the lease.

**18DB Condition relating to clearing native vegetation and protected land**

- (1) This section applies to any lease granted or issued for any purpose under this Act (whether before or after the commencement of this section) unless the land leased has an area of 0.5 hectares or less.
- (2) In this section, **clearing** and **native vegetation** have the same meanings as they have in the [Native Vegetation Act 2003](#), and **State protected land** has the same meaning as it has in clause 4 of Schedule 3 to that Act.
- (3) It is a condition of any lease to which this Act applies that any native vegetation on the land the subject of the lease, and any part of that land that is State protected land, must not be cleared except in accordance with the [Native Vegetation Act 2003](#) (including the [Native Vegetation Conservation Act 1997](#) as applied by that Act and the regulations under that Act).
- (4) However, such a condition does not apply in relation to any clearing that is carried out for the purpose of obtaining timber for use on the leased land for building, fencing or

firewood.

**18E Subsisting leases: extension**

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

The application shall be accompanied by the prescribed fee.

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

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

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

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

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

- (a) an application under this section shall not be entertained where the granting of the same appears to be contrary to the public interest or to be otherwise undesirable,
- (b) (Repealed)
- (c) an application shall not be granted in respect of such part of the land comprised in the lease as is:
- (i) reserved from sale, lease or licence under any Act—unless the Minister so approves,
  - (ii) within a State forest or timber or forest reserve—unless the Forestry Corporation so approves,
  - (iii) within an area over which, by virtue of the provisions of the *Mining Act 1992* or any instrument under that Act, an authority or claim, or a particular authority or claim, under that Act cannot be granted or registered—unless the Director-General of the Department of Industry and Investment so approves,
- (d), (e) (Repealed)
- (f) an application may be withdrawn with the consent of the Minister and upon payment of the costs incurred in dealing with the application.

- (3) (Repealed)

- (4) Where an application under subsection (1) has been granted as to part only of the land comprised in the lease:
- (a) separate leases shall be created under section 28A for such part and for the residue of the land comprised in the lease, and any person having an interest in the original lease shall be deemed to have an equivalent interest whether by way of mortgage or otherwise in the new leases,
  - (b) the new leases shall commence on the date upon which the application under subsection (1) is granted and the term of the lease for such residue shall be the balance of the term of the lease subsisting at that date,
  - (c) the lease for the residue of the land shall, subject to this section, be held subject to the conditions appertaining to the lease at the date of the said application,
  - (d) the cost of any necessary survey shall be paid by the holder in the manner and at the time prescribed and upon default of payment the leases shall become liable to forfeiture.
  - (e) (Repealed)
- (4A), (4B) (Repealed)
- (5) A lease in perpetuity granted in pursuance of this section shall, in addition to the conditions appertaining to the lease at the date of the application under subsection (1), be subject to such terms and conditions of improvement and maintenance thereof including water supply and the destruction of rabbits, wild dogs and other noxious animals as the Minister after report by the Director-General may consider necessary to reasonably increase the carrying capacity of the land, and may impose when granting the application.
- (6) All leases held in the same interest shall be included in one application.
- (7)-(13) (Repealed)

**18F (Repealed)**

**18FA Subdivision of leases**

- (1) The holder of a lease under this Act may, with the Minister's approval, subdivide land comprised in the lease.
- (2) An application for approval is to be made in the form approved by the Minister.
- (3) The applicant is required to meet all reasonable costs incurred in dealing with the application.
- (4) The Minister may, in the Minister's absolute discretion, refuse the application or approve the subdivision either conditionally or unconditionally.

- (5) A condition of approval also has effect as a condition attaching to any lease resulting from the subdivision that is a lease to which the condition relates.
- (6) The Minister may make such consequential alterations to the conditions or purpose of the lease for a subdivided portion as the Minister considers necessary as a result of the subdivision.
- (7) The Minister may exclude from a subdivision any areas required for roads of access to the subdivided portions.
- (8) Excluded areas are, on approval being given to the subdivision, surrendered to the Crown free from any right to compensation.
- (9) The Minister may apportion rent or other money due to the Crown to the subdivided portions in such manner as the Minister considers appropriate.
- (10) The approval of the Minister for a subdivision does not affect the requirements of any other written law that apply to the subdivision.
- (11) This section applies to leases whether granted or issued before or after the commencement of this section.

### **18G Dealings in leased land**

- (1) Land held under a lease:
  - (a) in the case of land under the *Real Property Act 1900*, may not be transferred, and
  - (b) in the case of any other land, may not be conveyed,except with the consent of the Minister.
- (2) A conveyance effected in contravention of subsection (1) (b) is void for all purposes.
- (3) In the case of land:
  - (a) that has an area of not more than 4,050 square metres, and
  - (b) that is the subject of a lease for residential, business, motel, community or other such purposes,the Minister may, by notice published in the Gazette, declare that consent to the transfer or conveyance of the land is not required under this section.
- (4) If any land to which such a notice relates is land under the *Real Property Act 1900*, the Registrar-General must make an appropriate recording in respect of that land in the Register kept under that Act.
- (5) Subsections (1) and (2) do not apply to:

- (a) any transfer of a sublease or mortgage, or
  - (b) any conveyance effected for the purpose of creating, assigning or extinguishing a sublease, mortgage or easement, or
  - (c) any land the subject of a notice referred to in subsection (3).
- (6) The following provisions apply to the subleasing of land held under a lease (the **head lease**):
- (a) the sublease must specify the purpose for which the land may be used under the sublease, being a purpose that is consistent with the purpose for which the land may be used under the head lease,
  - (b) the head lessee must notify the Commissioner of the granting of the sublease within 28 days after it is granted,
  - (c) the head lessee must take all reasonable steps to ensure that the sublessee complies with the requirements of this Act and the conditions of the head lease with respect to the land.
- (6A) Subsection (6) does not prevent the sublease of land held under a head lease, with the consent of the Minister, for the purposes of enabling the carrying out of a filming project, and such a sublease may be granted, despite any provision of the head lease or this Act relating to the purposes for which the land may be used.
- (6B) The head lessee under subsection (6A) may grant a licence over land that is held under the head lease to enable the carrying out of a filming project (within the meaning of the [Local Government Act 1993](#)), but only with the consent of the Minister and on such terms and conditions as the Minister determines.
- (6C) Subsection (6B) does not require the consent of the Minister if the use of the land for the purpose of a filming project is authorised by the head lease or is generally consistent with the purposes for which the land may be used under the head lease.
- (6D) The head lessee must notify the Commissioner of the granting of a licence without the consent of the Minister as referred to in subsection (6C) within 28 days after it is granted.
- (6E) A head lessee who grants a licence under subsection (6B) or as referred to in subsection (6C) must take all reasonable steps to ensure that the licensee complies with the requirements of this Act and the conditions of the head lease with respect to the land.
- (6F) Consent may be given to the grant of a licence under subsection (6B) that will enable the carrying out of a filming project (within the meaning of the [Local Government Act 1993](#)), and the licence may be granted, despite any provision to the

contrary in the head lease.

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

**18GA-18I (Repealed)**

**18J Conditions attaching to leases: alteration by consent**

Any covenant, condition, purpose or provision of a lease granted or brought under this Act may with the consent of the lessee be varied modified or revoked or added to by the Minister to such extent and on such terms (including terms relating to the rent or other money payable under the lease or relating to the use of land for the purposes of carbon sequestration within the meaning of section 87A of the [Conveyancing Act 1919](#)) as the Minister may deem desirable.

**18JJ Minimum ages**

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

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

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

provisions of this Act.

### **18L Removal of conditions etc**

(1) The Minister may:

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

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

## **Part 6 Rent payable under leases**

### **Division 1 Preliminary**

#### **19 Definitions**

In this Part:

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

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

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

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

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

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

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

**urban lease** means any lease of a kind declared under section 27D to be an urban lease



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

## Division 2 Rural holdings

### 20 Annual rent

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

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

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

### 21 Calculation of base rent

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

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

where:

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

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

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

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

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

**A<sub>5</sub>** represents 10,000 hectares or (for a rural holding of less than 30,000 hectares) the number of hectares in the holding in excess of 20,000, and **k<sub>5</sub>** represents an amount of

money per hectare prescribed by the regulations for the twenty-first to the thirtieth 1,000 hectares (inclusive) of a rural holding.

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

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

## 22 Calculation of cultivation charge

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

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

where:

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

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

**PC** represents the number of hectares in the holding on which cultivation is permitted under this Act indefinitely:

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

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

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

## 23 Calculation of intensive agriculture charge

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

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

where:

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

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

#### 24 Calculation of rehabilitation rebate

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

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

where:

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

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

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

#### 25 Assessment of annual rent

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

## **26 Review of assessment by Civil and Administrative Tribunal**

- (1) If the owner of a rural holding is dissatisfied with any of the following decisions of the Commissioner with respect to an assessment of annual rent for specified land:
  - (a) a decision that the land is or is not a single holding,
  - (b) a decision that cultivation is or is not permitted under this Act on the whole or any part of the land,
  - (c) a decision that the whole or any part of the land is or is not being used for or in connection with intensive agriculture,
  - (d) a decision that managed rehabilitation is or is not being carried out on the whole or any part of the land,the owner may apply to the Civil and Administrative Tribunal for a review of the decision.
- (2) The making of an application for such a review does not stay the owner's obligation to pay the annual rent to which the application relates.
- (3) Subject to section 27, the decision of the Civil and Administrative Tribunal has effect as if it were the decision of the Commissioner.

## **27 (Repealed)**

### **27A Ministerial guidelines**

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

regard must be had to any guidelines in force under this section.

## **Division 3 Urban leases**

### **27B Annual rent**

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

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

where:

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

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

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

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

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

## **Division 4 Miscellaneous**

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

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

## **27E Concessional rent**

(1) The Minister:

- (a) may waive, reduce or remit the whole or any part of the annual rent that would otherwise be payable by a lessee under this Part, and
- (b) may postpone payment, for up to 10 years, of the whole or any part of the annual rent payable by a lessee under this Part,

in respect of such classes of lessees or classes of lands as are prescribed by the regulations.

(2) The total amount of rent waived or remitted by the Minister in each rental year (but not rent reduced or postponed in relation to debt management) are to be published:

- (a) in the Department's annual report under the *Annual Reports (Departments) Act 1985* for the financial year concerned, and
- (b) in the Treasurer's budget papers for the following financial year.

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

### **28 (Repealed)**

#### **28A Granting of leases**

(1) The Minister may, in such manner as the Minister determines, dispose of Crown land by way of a lease for:

- (a) grazing, or
- (b) agriculture, or
- (c) agriculture and grazing combined, or
- (d) mixed farming, or
- (e) a purpose similar to a purpose referred to in paragraphs (a)-(d), or

(e1) the use of land for the purposes of carbon sequestration within the meaning of section 87A of the *Conveyancing Act 1919* (including for plantation purposes), or for any such purpose combined with any one or more of the other purposes referred to in this subsection, or

(f) any other purpose declared by the Minister, by order published in the Gazette and for the time being in force, to be a purpose for which a lease may be granted under this section.

(1A) If the Minister makes an order under subsection (1) (f) with respect to a particular

lease purpose, the Minister must also make an order under section 27D declaring that a lease for that purpose is either a rural lease or an urban lease for the purposes of Part 6.

- (1B) The purposes listed in subsection (1) (a)–(e1) do not limit the purposes for which a declaration may be made under subsection (1) (f).
- (2) A disposal of Crown land under this section may be effected on such terms and conditions determined by the Minister as are not inconsistent with this section or with section 18E.
- (3) A lease granted under this section may be:
  - (a) a lease in perpetuity, or
  - (b) a lease for a term not exceeding 40 years.
- (4) The rent of a lease to be granted under this section may not be determined at auction or by tender if it is a lease for a purpose referred to in subsection (1) (a)–(e).
- (5) Any money consideration (other than rent) for a lease disposed of under this section at auction or by tender is payable on such terms and conditions as are determined by the Minister.
- (6) If tenders are invited for a lease under this section, they shall be considered by a tender board consisting of the Commissioner as Chairperson and 2 persons nominated by the Minister.
- (7) The tender board shall report to the Minister on the tenders considered by it and the Minister may, but need not, accept any tender, whether or not it is the highest tender.
- (8) An application for a lease made before the commencement of this section and not finally dealt with before that commencement shall be dealt with as an application made under this section for the granting of the lease.
- (9) In this section:

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

### **28B Extension of term of lease**

- (1) This section applies to a lease, other than a lease in perpetuity, granted under section 28A.
- (2) The term of a lease to which this section applies may be extended from time to time:
  - (a) for a term not exceeding 40 years, and

(b) on such terms and conditions (not affecting the amount of rent) as the Minister thinks fit.

(3) An extension under subsection (2) may be for the whole, or a specified part, of the land leased.

(4) (Repealed)

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

#### **28BA Forfeiture of lease**

(1) If, in relation to a lease granted under section 28A before or after the insertion of this section by the *Western Lands (Amendment) Act 1989*, the Minister determines:

(a) that the land comprised in the lease is not used or occupied in good faith for the purpose for which the lease is in force, or

(b) that a condition of the lease has not been complied with,

the lease is liable to be forfeited.

(2) Except to the extent, if any, that the Minister otherwise directs, forfeiture of a lease to which this section applies includes forfeiture of any improvements made and rent paid.

#### **28BB Purchase of land held under certain leases**

(1) This section applies to any of the following leases (other than a lease that has become liable to forfeiture):

(a) a lease for residential, business, motel, community or other such purposes, but not for grazing or pastoral purposes (either alone or in combination with other purposes),

(b) a lease for agricultural or mixed farming purposes, being a lease that was originally granted for those purposes, where:

(i) the lease was granted before 23 December 1996, or

(ii) the lease was granted on or after 23 December 1996, and the granting of the lease is a past act, or

(iii) the lease was granted on or after 23 December 1996 in respect of land in respect of which an earlier lease for grazing or pastoral purposes had previously been granted, where the granting of the earlier lease is a past act, or



- (iv) the lease was granted on or after 23 December 1996 in respect of land that had been the subject of a previous exclusive possession act,
- (c) a lease for agricultural or mixed farming purposes, being a lease that was originally granted for grazing or pastoral purposes, but was subsequently altered, pursuant to section 18J, to a lease for agricultural or mixed farming purposes, where:
  - (i) the alteration occurred before 23 December 1996, or
  - (ii) the alteration occurred on or after 23 December 1996, and is a past act, or
  - (iii) the alteration occurred on or after 23 December 1996, and the land the subject of the lease had previously been the subject of an earlier lease for grazing or pastoral purposes, where the granting of the earlier lease is a past act, or
  - (iv) the alteration occurred on or after 23 December 1996, and the land the subject of the lease had been the subject of a previous exclusive possession act,

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

- (2) The holder of a lease may apply to purchase:
  - (a) the whole or a part of the land comprised in the lease, or
  - (b) as 1 purchase, the whole or a part of the land comprised in 2 or more adjoining leases,and Schedule 4 then applies.

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

### **Part 8**

#### **29-31A (Repealed)**

### **Part 9 Surrender of lease**

#### **32, 33 (Repealed)**

#### **33A Surrender**

- (1) The Minister may:
  - (a) accept a surrender of the whole or any part of a lease under this Act, and

(b) under section 18FA or 28A, grant a new lease, or new leases, of the surrendered land on such terms and conditions as the Minister thinks fit.

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

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

(2A)-(3) (Repealed)

### **34, 35 (Repealed)**

## **Part 9A General**

### **35A Permission to enclose roads**

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

### **35B (Repealed)**

### **35C Forfeited or surrendered lands may be added**

- (1) The Minister may, by notice in the Gazette, add any forfeited homestead grant, conditional purchase, or any lease or lands surrendered under the provisions of the Crown Lands Acts or Western Lands Acts, or any land comprised in a reserve from lease or licence which has been revoked or any other vacant Crown lands, to any adjoining or adjacent lease, licence, purchase, homestead grant, upon such conditions and at such rent, licence fee, or purchase money, as may be determined by the Minister; or such forfeited or surrendered lands or such revoked reserves may be leased under the provisions of this Act.
- (2) Any such forfeited or surrendered lands or any such revoked reserves shall not be added to a lease, licence, purchase or homestead grant except:
  - (a) with the consent of the holder of the lease, licence, purchase or homestead grant, and
  - (b) on the payment by that holder of such costs as may be prescribed.

### **35D-35J (Repealed)**

### **35K Transfers under legal process etc**

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

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

Provided however that:

- (a) any mortgagee or execution creditor before proceeding under this subsection shall register at the office of the Commissioner the total amount of the mortgagee's mortgage or the creditor's judgment debt and other particulars as prescribed, and thereafter any person may before such forfeiture as aforesaid apply to the Commissioner to purchase the said lease for the amount of such debt; and the Commissioner may grant such application, and upon payment to the mortgagee or execution creditor of the amount then due the applicant shall become the holder of the lease of such land free of such debt, but subject to all conditions attaching to such land which remain to be performed,
- (b) any mortgagee or execution creditor shall not take proceedings under this subsection unless the mortgagor has been in default for one year, or in the case of such creditor until one year after judgment has been signed.

### **35L, 35M (Repealed)**

#### **35MA Notices**

- (1) If by or under this Act a notice, order or other document is required to be given to or served on any person, the notice, order or other document may be given or served:
  - (a) in the case of a person other than a corporation:
    - (i) by delivering it to the person, or
    - (ii) by posting it to the address, if any, specified by the person for the giving of notices or service of documents under this Act, or if no such address is

specified, to the person's usual or last known place of residence or last known place of business, or

(b) in the case of a corporation:

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

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

## **Part 9B Productivity schemes**

### **35N Agreements relating to betterment schemes**

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

### **35O Advances and payments**

The Minister may, out of moneys provided by Parliament:

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

### **35P Remedy for default**

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

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

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

## **Part 9C Public roads, rights of way and easements**

### **Division 1 Public roads**

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

- (1) The Minister may, by notice published in the Gazette, withdraw from lease, for the purpose of its being dedicated as a public road, any land that, in the Minister's

opinion, is being used by the public as a road.

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

### **35QA Public roads over freehold land**

The Minister may create public roads over freehold land by acquiring the land under Part 12 of the [Roads Act 1993](#) and dedicating the land so acquired as a public road under Part 2 of that Act.

## **Division 2 Rights of way**

### **35R Definitions**

In this Division:

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

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

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

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

- (1) The Minister may, by instrument lodged with the Registrar-General, create the following easements over land within the Western Division that, in the Minister's opinion, is being used as a road or track:
  - (a) an easement in the nature of a right of way,
  - (b) such other easements as are appropriate to the construction and maintenance of a right of way.
- (2) Such an instrument:
  - (a) may not be lodged with respect to freehold land, and
  - (b) may only be made with respect to land held under a lease on the application of

the lessee or lessees of the land, and

- (c) must specify the beneficiary of the easement or the land to which the benefit of the easement is appurtenant.
- (3) An instrument lodged under subsection (1) is to be made by reference to a plan that is registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919*.
- (4) On receiving an instrument lodged under subsection (1), the Registrar-General may record such particulars of the creation of the special easement as the Registrar-General considers necessary in any folio of the Register relating to land which, in the Registrar-General's opinion, is affected by the creation of the easement.
- (5) No duty is payable under the *Duties Act 1997* in respect of an instrument lodged under subsection (1).
- (6) Sections 88A and 181A of the *Conveyancing Act 1919* apply to an instrument lodged under subsection (1).
- (7) An easement referred to in section 88A of the *Conveyancing Act 1919* may be created not only in favour of a public authority referred to in that section but also in favour of such other persons or bodies as may be specified in that regard by the plan referred to in subsection (3), in which case any reference in that section to a public authority extends to any person or body so specified.
- (8) As soon as practicable after a special easement is created, the Minister must cause notice of that fact to be given to:
  - (a) each beneficiary of the easement, and
  - (b) each lessee of land over which the easement is in force.
- (9) Section 89 of the *Conveyancing Act 1919* does not apply to a special easement.
- (10) Neither the creation of a special easement in respect of any land held under a lease, nor a lessee's request for the creation of a special easement in respect of any such land, is to be regarded:
  - (a) as a breach of any contractual provision prohibiting, restricting or regulating the lessee's right to deal with the land, or
  - (b) as giving rise to any remedy by a party to any legal instrument, or as causing or permitting the termination of any legal instrument, because of the creation of the easement or the making of the request.
- (11) This section applies to land held under a lease granted or issued before the commencement of this section, but does not apply to land held under a lease granted or issued after that commencement.

(12) In this section and in section 35T, **the Register** means the Register kept under the [Real Property Act 1900](#).

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

(1) On the application of:

- (a) each beneficiary of a special easement, and
- (b) in the case of a special easement over land held under a lease, each lessee of the land,

the Minister may, by instrument lodged with the Registrar-General, release the easement.

(2) On receiving an instrument lodged under subsection (1), the Registrar-General may record such particulars of the release of the special easement as the Registrar-General considers necessary in any folio of the Register relating to land which, in the Registrar-General's opinion, is affected by the release of the easement.

(3) No duty is payable under the [Duties Act 1997](#) in respect of an instrument lodged under subsection (1).

(4) As soon as practicable after a special easement is released under this section, the Minister must cause notice of that fact to be given to:

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

### **35U (Repealed)**

## **Division 3 Easements to maintain Border Fences**

### **35UA Definitions**

In this Division:

**Border Fence** means the Queensland Border Fence, or the South Australian Border Fence, within the meaning of the [Wild Dog Destruction Act 1921](#).

**fenced portion of the State boundary** means:

- (a) so much of the boundary between New South Wales and Queensland as extends west from a point at latitude 29° 0' 0" South, longitude 144° 34' 1.6" East, for a distance of approximately 349 kilometres to the intersection of the New South Wales, Queensland and South Australia State boundaries, and
- (b) so much of the boundary between New South Wales and South Australia as extends north from a point at latitude 31° 1' 37.4" South, longitude 141° 0' 0" East, for a



distance of approximately 257 kilometres to the intersection of the New South Wales, Queensland and South Australia State boundaries.

**fencing easement** means an easement created under section 35UB.

**Wild Dog Destruction Board** means the Wild Dog Destruction Board constituted under the [Wild Dog Destruction Act 1921](#).

### **35UB Fencing easements to be created**

- (1) This section applies to land situated within the prescribed distance of the fenced portion of the State boundary.
- (2) The Minister may, by notice published in the Gazette, declare that the following easements are vested in the Wild Dog Destruction Board over land to which this section applies:
  - (a) an easement for repairs in relation to the Border Fences,
  - (b) a right of access in relation to the Border Fences,
  - (c) such other easements as are appropriate to the maintenance of those fences and that right of access.
- (3) The power conferred on the Minister by subsection (2) may only be exercised in relation to freehold land with the consent of each person having an estate or interest in that land.
- (4) On publication of the notice, each easement specified in the notice is vested in the Wild Dog Destruction Board to the extent to which it was not so vested immediately before publication.
- (5) If, by the operation of subsection (4), an easement over land under the provisions of the [Real Property Act 1900](#) becomes vested in the Wild Dog Destruction Board, the Board must forthwith make a request to the Registrar-General under section 46C of the [Real Property Act 1900](#) in relation to the easement.
- (6) On receipt of a request under section 46C of the [Real Property Act 1900](#) in relation to any such easement, the Registrar-General may record, in any folio of the Register kept under that Act for land affected by the creation of the easement, such particulars as the Registrar-General considers appropriate.
- (7) Section 89 of the [Conveyancing Act 1919](#) does not apply to an easement created under this section.
- (8) In this section, **prescribed distance** means 100 metres or such greater distance (not exceeding 200 metres) as the regulations may specify in relation to the whole or any part of the fenced portion of the State boundary.

### **35UC Compensation**

- (1) A person who has an estate or interest in any freehold land over which a fencing easement is created, or who, but for this Act, would have had such an estate or interest, is entitled to receive compensation from the Crown in respect of the creation of the easement.
- (2) The *Land Acquisition (Just Terms Compensation) Act 1991* applies (with such modifications as may be prescribed by the regulations) to the payment of any such compensation as if the creation of the fencing easement were effected by an acquisition notice under that Act.
- (3) If there is any disagreement between the Crown and any person claiming compensation under this section as to the amount of compensation, the claim may be heard and disposed of in accordance with section 24 of the *Land and Environment Court Act 1979*.
- (4) No compensation is payable to any person in relation to any loss or damage arising from the creation of a fencing easement over land other than freehold land.

### **35UD Fencing easements may be extinguished**

- (1) The Minister may, by notice published in the Gazette, declare that any fencing easement that is vested in the Wild Dog Destruction Board is extinguished.
- (2) On publication of the notice, each fencing easement specified in the notice is extinguished to the extent to which it subsisted immediately before publication.
- (3) On receipt of a request under section 46C of the *Real Property Act 1900* in relation to any fencing easement extinguished under this section, the Registrar-General may record, in any folio of the Register kept under that Act for land affected by the extinguishment of the easement, such particulars as the Registrar-General considers appropriate.

#### **Note—**

For example, it may be necessary to extinguish one easement in order to replace it with another with different terms.

### **35UE Notice to be given of creation or extinguishment of fencing easements**

As soon as practicable after a fencing easement is created or extinguished under this Division, the Minister must cause notice of that fact to be given to each owner (in relation to freehold land) or lessee or licensee (in relation to land other than freehold land) of land affected by the creation or extinguishment of the easement.

### **35UF Fencing easements not dutiable**

No duty is payable under the *Duties Act 1997* in respect of the creation or extinguishment

of a fencing easement under this Division.

### **35UG Division not to apply to national parks etc**

This Division does not apply to or in respect of land reserved under the [National Parks and Wildlife Act 1974](#).

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

### **35V Definitions**

In this Part:

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

#### **Note—**

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

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

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

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

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

(1) The Minister may:

- (a) on application made in the approved form, and
- (b) on such terms and conditions as the Minister determines,

grant a forestry right in respect of land held under a lease, but only with the consent of the lessee of that land.

(2) In the case of land that is the subject of a lease in perpetuity, the Minister may, on such terms and conditions as the Minister determines, consent to the lessee granting a forestry right in respect of the land the subject of the lease.

(3) The lessee of any land that is the subject of a lease in perpetuity may, with the consent of the Minister under subsection (2), grant a forestry right in respect of the land on such terms and conditions as the Minister determines.

(4) A forestry right referred to in this section:

- (a) is, in the case of land that is subject to the provisions of the [Real Property Act](#)

[1900](#), created in the way provided in that Act or in section 88B of the [Conveyancing Act 1919](#), or

- (b) is, in the case of land that is not subject to the provisions of the [Real Property Act 1900](#), created:
- (i) in the way provided in section 88B of the [Conveyancing Act 1919](#), or
  - (ii) if the Minister so consents, by instrument registered in the General Register of Deeds, or
  - (iii) by notification in the Gazette (except in the case of a forestry right granted by a perpetual lessee).
- (5) Without limiting the terms and conditions that may be determined by the Minister under this section, any such terms and conditions may restrict any dealings in the forestry right.
- (6) Before granting a forestry right in respect of land that is Crown-timber land within the meaning of the [Forestry Act 2012](#) (or before consenting to the granting of any such forestry right), the Minister must consult the Minister administering the [Forestry Act 2012](#).

**Note—**

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

- (7) Without limiting the operation of Division 4 of Part 6 of the [Conveyancing Act 1919](#), restrictions on the use of land and covenants may, in accordance with that Division, be imposed on land that is the subject of a forestry right granted under this section.

## **Part 9E Development districts and special purpose leases**

### **35XA Definitions**

In this Part:

**designated purpose**, in relation to a development district, means a purpose designated for the district under section 35XB as a purpose for which a special purpose lease may be granted over land in that district.

**development** has the same meaning as in the [Environmental Planning and Assessment Act 1979](#).

**development district** means land the subject of a declaration under section 35XB.

**general purpose lease** means any lease, other than a special purpose lease, to which the provisions of this Act apply.

**significant improvement** means any substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, tree plantation, soil conservation work or other valuable work or structure.

**special purpose lease** means a lease granted under section 35XC.

### **35XB Development districts**

- (1) The Minister may, by notification in the Gazette, declare any land to be a development district for the purposes of this Part.
- (2) Such a declaration must designate the purposes for which a special purpose lease may be granted over land in the development district established by the declaration.
- (3) A purpose may not be designated under subsection (2) unless it is an approved purpose.
- (4) The following purposes are approved for the purposes of subsection (3):
  - (a) the construction and operation of facilities for the harnessing of energy from any source (including the sun or wind) and its conversion into electrical energy,
  - (b) such other purposes as may be approved by a proclamation under section 44B (4) (b) of the [Crown Lands Act 1989](#).
- (5) The Minister may, by notification in the Gazette, alter the boundaries of, or abolish, any development district or, subject to subsections (3) and (4), vary the designated purposes for the district.
- (6) A special purpose lease is not affected merely because the whole or any part of the land over which it is granted ceases to be in a development district as a result of a notification referred to in subsection (5).

### **35XC Minister may grant special purpose leases**

- (1) The Minister may, in accordance with section 34 or 34A of the [Crown Lands Act 1989](#), lease any Crown land within a development district for the purpose of enabling development for a designated purpose to be carried out on that land.
- (2) Despite subsection (1), a lease may not be granted under this section in respect of any land the subject of:
  - (a) a mining lease under the [Mining Act 1992](#), or
  - (b) a production lease under the [Petroleum \(Onshore\) Act 1991](#),except with the consent of the Minister administering the Act concerned.
- (3) The maximum term for which a lease may be granted under this section (including

the period of any option to renew) is 100 years.

- (4) Crown land that is the subject of a general purpose lease may be leased under this section, but only with the written consent of the lessee under the general purpose lease.
- (5) A written consent given for the purposes of subsection (4) by the lessee under a general purpose lease is irrevocable and binds each successor in title to the land the subject of that lease.
- (6) A lease granted under this section is subject to the provisions of the *Crown Lands Act 1989* and is not subject to any provision of this Act (other than this Part).

**35XD Provisions applicable to general purpose lease over land subject to special purpose lease**

- (1) The following provisions apply to a general purpose lease over land the subject of a special purpose lease, regardless of the order in which those leases were granted:
  - (a) the general purpose lease is (or remains) a lease even though it does not confer (or no longer confers) exclusive possession on the lessee under that lease,
  - (b) the general purpose lease is taken to include a condition prohibiting the lessee under that lease from doing anything that has the effect of restricting or impeding the lessee under the special purpose lease from exercising the rights conferred by that lease,
  - (c) the general purpose lease is taken to include a further condition prohibiting the lessee under that lease from carrying out development for the purposes of any dwelling-house, garden or significant improvement on any land to which both leases apply except with the written consent of the lessee under the special purpose lease.
- (2) Any sublease of a general purpose lease is taken to include the conditions that, pursuant to this section, are taken to be included in the general purpose lease.
- (3) This section applies to a general purpose lease, and any sublease of that lease, only for so long as the land over which it is granted remains subject to a special purpose lease.

**35XE Provisions applicable to special purpose lease over land subject to general purpose lease**

- (1) The following provisions apply to a special purpose lease over land the subject of a general purpose lease, regardless of the order in which those leases were granted:
  - (a) the special purpose lease is (or remains) a lease even though it does not confer (or no longer confers) exclusive possession on the lessee under that lease,

- (b) the special purpose lease is taken to include a condition prohibiting the lessee under that lease from exercising any of the rights conferred by that lease over any part of the land held under the general purpose lease:
- (i) on which, or within 200 metres of which, is situated any dwelling-house, or
  - (ii) on which, or within 50 metres of which, is situated any garden, or
  - (iii) on which is situated any significant improvement,
- except with the written consent of the lessee under the general purpose lease,
- (c) the special purpose lease is taken to include a further condition prohibiting the lessee under that lease from unreasonably withholding any consent referred to in section 35XD (1) (c).
- (2) A written consent given for the purposes of subsection (1) (b) by the lessee under a general purpose lease is irrevocable and binds each successor in title to the land the subject of that lease.
- (3) The provisions of subsection (1) (b) (i) and (ii) do not prevent the lessee under the special purpose lease from travelling along any road or track that is within 200 metres or 50 metres, respectively, of a dwelling-house or garden referred to in those subparagraphs.
- (4) A special purpose lease over land the subject of a general purpose lease may include conditions agreed to between each of the lessees under those leases.
- (5) Any sublease of a special purpose lease is taken to include the conditions that, pursuant to this section, are included, or taken to be included, in the special purpose lease.
- (6) Any condition of the kind referred to in subsection (4):
- (a) that is included in a special purpose lease over land the subject of a general purpose lease, or
  - (b) that, pursuant to subsection (5), is taken to be included in a sublease of a special purpose lease over land the subject of a general purpose lease,
- is enforceable, as between the lessees and sublessees for the time being under those leases, as if it were contained in a deed entered into between them.
- (7) This section applies to a special purpose lease, and any sublease of that lease, only for so long as the land over which it is granted remains subject to a general purpose lease.

## **Part 10 Miscellaneous**

### **36 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following:
- (a) the functions of officers employed or acting in the administration or execution of this Act,
  - (b) the procedure to be followed in or in connection with an inquiry held or to be held under this Act,
  - (c) the circumstances in which fees, costs or deposits may be charged or required and the amount of any such fees, costs or deposits,
  - (d) authorising the waiver or refund of the whole or any part of any fee, cost, deposit, interest or rent paid or payable under this Act,
  - (e) determining the person to whom a refund of any fee, cost, deposit, interest or rent is payable,
  - (f) prescribing the periods within which, and the manner in which, notices may be given and objections and appeals may be made,
  - (g) the keeping of records and books of account, the furnishing of returns and records and the inspection of, and the taking of extracts from, records or books,
  - (h) the making of searches in connection with holdings, the issue of certificates relating to holdings and the effect of those certificates,
  - (i) (Repealed)
  - (j) the establishment, definition, alteration, modification and cancellation of administrative districts,
  - (k) applications for land and procedures in respect of conflicting applications,
  - (l) the manner of, and the places and times for, the payment of rent, purchase money or other money,
  - (m) the payment, by an incoming holder, of the value of any improvements on Crown land to the owner of those improvements,
  - (n) the form and lodgment of, and manner of dealing with, applications, dealings, instruments or documents relating to land,
  - (o) the execution of applications, dealings, instruments or documents relating to land,



(p) the powers and functions of the Registrar-General in respect of applications, dealings, instruments or documents relating to land.

- (2) A regulation may create an offence punishable by a maximum penalty not exceeding 5 penalty units.
- (3) The regulations may confer or impose on the Commissioner, with any necessary modifications, any power, authority, duty or function relating to the health of the public that is, or but for being modified would be, the same as a power, authority, duty or function conferred or imposed on a council by or under the [Local Government Act 1993](#) in relation to the health of the public in its area.

### **36A Alteration of due dates for recurring payments**

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

### **36B Interest on arrears**

- (1) Any amount payable under a lease, or under this Act in relation to a lease, bears

interest at the rate prescribed by the regulations.

- (2) No interest is payable if the amount is paid within 3 months after the date on which payment falls due.
- (3) The Minister may waive, postpone or remit payment of interest under this section.

### **36C (Repealed)**

### **36D Liability of incoming holder to pay arrears**

- (1) For the purposes of this section:
  - (a) **holding** means a holding of a prescribed class, and
  - (b) the amount due for payment in respect of a holding includes any amount that would, but for a deferment, postponement or funding granted or directed under this Act or the Crown Lands Acts, be due for payment in respect of the holding.
- (2) A person who is the holder of a holding is liable to pay in respect of that holding any amount:
  - (a) due for payment under this Act, the Crown Lands Acts, the regulations under those Acts or any condition attaching to the holding, and
  - (b) unpaid when the person became the holder.
- (3) If a person who is a holder pays, in respect of a holding, an amount (other than an amount that is attributable to rent or to interest charged under section 36C or to penalty interest for late payment charged under a condition attached to the holding) that, before the person became the holder of the holding, was due and unpaid under:
  - (a) this Act,
  - (b) the Crown Lands Acts,
  - (c) the regulations under this Act or the Crown Lands Acts, or
  - (d) any condition attached to the holding,the person may recover the amount as a debt owed by the person who was the holder of the holding when the amount became due.
- (4) If a person who is a holder pays, in respect of a holding, any amount:
  - (a) that is attributable to rent or to interest charged under section 36C or to penalty interest for late payment charged under a condition attached to that holding, and
  - (b) that, before the person became the holder of the holding, was due and unpaid under this Act, the Crown Lands Acts, the regulations under those Acts or any

condition attached to the holding,

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

- (5) The amount recoverable from a person under subsection (4) is the remainder after deducting from the amount paid any part of it that, calculated on a daily basis, would be attributable to a period when the person was not the holder.
- (6) For the purposes of, but without limiting, subsections (3), (4) and (5), a person:
  - (a) is a holder during a period determined under subsection (7), and
  - (b) is not a holder during a period determined under subsection (8).
- (7) The period determined under this subsection:
  - (a) begins when the person acquires a right to be registered or recorded as the holder of an estate or interest in the holding, and
  - (b) ends when the person is registered or recorded as the holder of the estate or interest.
- (8) The period determined under this subsection:
  - (a) begins when another person acquires a right to be registered or recorded as the holder of an estate or interest in the holding, and
  - (b) ends when the other person is registered or recorded as the holder of the estate or interest.
- (9) Nothing in this section affects any agreement or any rule of law or equity with respect to the ultimate liability for payment of any amount due in respect of a holding.
- (10) This section does not apply to a holding to which section 144 of the *Crown Lands Act 1989* applies.

### **36E Certificate as to amount due**

- (1) The Minister or a prescribed authority or person may, in respect of any holding of a prescribed class, issue a certificate as to the amounts payable to the Crown under this Act, the Crown Lands Acts, the regulations under those Acts or any condition attaching to the holding.
- (2) A certificate under this section is evidence of the matter that it contains.
- (3) This section does not apply to a holding to which section 145 of the *Crown Lands Act 1989* applies.

### **37-43A (Repealed)**

#### **43B Power to withdraw for public purposes**

- (1) The Minister may, by notification published in the Gazette, withdraw from lease (whether the lease was granted or issued before or after the commencement of this section) any land required for any purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose within the meaning of this section.
- (2) Upon withdrawal of land from a lease under this section, the rent of the lease shall be reduced in proportion to the area withdrawn.
- (3) Land withdrawn from a lease under this section may be dealt with in accordance with this Act or the Crown Lands Acts.
- (4) Compensation is payable for land withdrawn from a lease under this section, subject to the conditions attaching to the lease or the provisions applying to the lease.
- (5) The provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* relating to the payment of compensation for land acquired by compulsory process apply, with such modifications as may be prescribed, to the payment of compensation under this section.

#### **44 Power to withdraw for settlement**

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

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

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

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

(2)

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

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

(c) (Repealed)

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

The amount so determined shall not include the value of any improvements.

(4)

(a) Payment of the amount charged upon any lease pursuant to this section shall be made to the Treasurer within such period, by such instalments and with interest at such rate as the Minister may determine.

(b) The Treasurer may credit the whole or any part of any moneys so paid, to the Consolidated Fund or to such other fund or account as the Treasurer may elect.

(c) If any such instalment or interest remains unpaid for a period of six months after the date for payment thereof the lease shall become liable to be forfeited.

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

#### **44A-45 (Repealed)**

## **Part 11 Enforcement provisions**

### **46 Application of Part**

(1) In this Part, a reference to a **condition** of a lease includes a reference to any covenant, term, reservation, exception, exemption, provision or prohibition attaching or applying to the lease, whether by the terms of the lease or the provisions of this Act or otherwise.

(2) This Part (except section 49) applies to and in respect of a contravention of a condition of a lease notwithstanding that the contravention occurred before the

commencement of this Part.

#### **47 Notice to rectify contravention**

- (1) Where a lessee contravenes, whether by act or omission, any condition of a lease under this Act, the Commissioner may serve on the lessee a notice in writing requiring the lessee:
  - (a) to comply with the condition, and
  - (b) to take such measures to rectify the contravention as the Commissioner considers appropriate and as are specified in the notice.
- (1A) If an occupier within the meaning of section 18DA contravenes that section whether by act or omission, the Commissioner may serve on the occupier a notice in writing requiring the occupier:
  - (a) to comply with that section, and
  - (b) to take such measures to rectify the contravention as the Commissioner considers appropriate and specifies in the notice.
- (2) A notice under this section:
  - (a) shall specify the period within which any measures referred to in subsection (1) (b) are to be taken,
  - (b) may be served either personally or by post, and
  - (c) may be varied or revoked by a further notice.
- (3) The Commissioner may, in any case in which the Commissioner considers that it is appropriate to do so, serve a copy of a notice under this section on a mortgagee of the lease to which the notice relates.

#### **48 Commissioner may rectify contravention and recover costs**

- (1) Where the lessee or occupier does not take any of the measures specified in a notice under section 47 within the period required by the notice, the Commissioner may, by the Commissioner's agents or contractors, enter the leased or occupied land and take those measures.
- (2) Any costs incurred by the Commissioner in taking any such measures:
  - (a) may be recovered by the Commissioner from the lessee or occupier as a debt in a court of competent jurisdiction, and
  - (b) shall be a charge on the leased or occupied land until the costs are paid to or recovered by the Commissioner.

## 49 Offences

- (1) A lessee who contravenes, whether by act or omission, any of the following conditions of a lease is guilty of an offence and liable to a maximum penalty not exceeding the amount of maximum penalty specified opposite the condition:
  - (a) (Repealed)
  - (a1) The prohibition in section 18DA (3) (cultivating land without consent of Commissioner or contrary to a condition to which consent is subject)—maximum penalty: 100 penalty units.
  - (b) The condition in section 18D (1) (d) (directions of Commissioner for protection of land)—maximum penalty: 100 penalty units.
  - (c) The condition in section 18D (1) (h) (repairs to improvements)—maximum penalty: 100 penalty units.
  - (d) The condition in section 18A (fencing)—maximum penalty: 100 penalty units.
  - (e) The condition in section 18D (1) (f) (erection of building without approval)—maximum penalty: 20 penalty units.
  - (f) (Repealed)
  - (g) The condition in section 18D (1) (i) (returns etc to be furnished to Commissioner)—maximum penalty: 10 penalty units.
  - (h) The condition in section 18D (1) (g) (gates to be erected on public roads)—maximum penalty: 10 penalty units.
  - (i) A condition of the lease that is prescribed by the regulations made under this Act for the purpose of this section—maximum penalty: 5 penalty units.
- (2) A lessee who fails to comply with a notice under section 47 in connection with a contravention of any of the following conditions of the lease is guilty of an offence and liable to a penalty not exceeding 100 penalty units:
  - (a) The prohibition in section 18DA (3) (cultivating land without consent of Commissioner or contrary to a condition to which consent is subject).
  - (b) (Repealed)
  - (c) The use of the land under lease for a purpose that is not a purpose for which the lease was granted or issued.
- (2A) An occupier within the meaning of section 18DA (cultivation of certain land) who:
  - (a) contravenes, whether by act or omission, the prohibition in section 18DA (3)

(cultivating land without consent of Commissioner or contrary to a condition to which consent is subject), or

(b) fails to comply with a notice under section 47 in connection with such a contravention,

is guilty of an offence.

Maximum penalty: 100 penalty units.

(2B) (Repealed)

(3) A person who aids, abets, counsels or procures the commission of an offence against this section shall be deemed to have committed that offence and is punishable accordingly.

(4) Where an act or omission constitutes an offence under separate provisions of this section or under this section and any other Act, the offender is not liable to be punished twice in respect of the offence.

#### **50 Appeal to Land and Environment Court against forfeiture of leases**

(1) A lessee may appeal to the Land and Environment Court against any declaration of forfeiture made under section 129 of the *Crown Lands Act 1989* (as adopted by Schedule 2).

(2) Subject to any order of the Land and Environment Court, the making of the appeal does not stay the effect of the declaration.

#### **51 Different proceedings may be taken for same contravention**

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

#### **52 Proceedings for offences**

(1) Proceedings for an offence against this Act or the regulations made under this Act shall be dealt with summarily before the Local Court.

(2) Proceedings for an offence against this Act or the regulations made under this Act shall not be instituted without the written consent of the Commissioner or a prescribed officer.

(3) In any proceedings for an offence against this Act or the regulations made under this Act, a consent to institute the proceedings, purporting to have been signed by the Commissioner or a prescribed officer, shall be evidence of that consent without proof of the signature of the Commissioner or the prescribed officer, as the case may be.



- (4) Proceedings for an offence against this Act or the regulations made under this Act may be instituted within 12 months after the time when the matter giving rise to the proceedings occurred.

## Schedule 1 General lease conditions

(Section 18)

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

- (a) To pay rent annually in advance. To pay any moneys owing to the Crown under the provisions of the Crown Lands Acts.
- (b) To take, within a specified time, such steps and measures to destroy rabbits, dogs, and other vermin as the Commissioner shall from time to time direct, and to keep the lease free of vermin during the currency of the lease to the satisfaction of the Commissioner.
- (c) To carry out the control of noxious weeds (within the meaning of the [Noxious Weeds Act 1993](#)) as directed by the Director-General of the Department of Industry and Investment, by the Minister administering that Act or by an authorised officer within the meaning of that Act.
- (d) (Repealed)
- (e) Not to obstruct or interfere with any reserves, roads, or tracks, or the use thereof by any person.
- (f)–(h) (Repealed)
- (i) To permit the Commissioner and all persons authorised by the Minister or the Commissioner to enter and view the whole or any part of the lease or buildings or other improvements thereon.
- (j) To keep in reasonable repair all improvements on the lease.
- (k) Reservations in favour of the Crown of all minerals, metals, gems, precious stones, coal, and mineral oils, together with all rights necessary for ingress, egress, search, prosecution, and removal and all incidental rights and powers.
- (l) The unrestricted right to proclaim travelling stock, camping or other reserves. The unrestricted right to withdraw any land for the purposes of roads or travelling stock, camping or other reserve.
- (m) The unrestricted right for the Minister, the Commissioner, or any persons duly authorised in that behalf to enter upon and examine such land and the improvements thereon.
- (n) (Repealed)
- (o) A proviso that if rent shall be in arrear for more than three months after due date, or if there has been a breach or non-performance of any of the lessee's covenants or conditions the Minister may cancel the lease.
- (p) Provisions for resumption of lands for mining purposes, townships, or any public purpose under the provisions of the Crown Lands Acts; and for compensation for resumption.
- (q) Reservations in favour of the Crown necessary or proper for giving effect to any Act or regulation

for the time being in force.

## **Schedule 2 Applicable provisions of the [Crown Lands Act 1989](#)**

(Section 2A)

### **Part 1 Preliminary**

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

Section 9 (cities, towns and villages).

### **Part 2 Administration**

Division 1 (Minister)—the whole Division.

Division 2 (Director-General)—the whole Division.

### **Part 4 Sale, lease etc of Crown Land**

Division 1 (general)—only section 34 and only so as to authorise the sale of land for residential, business, motel, community or similar purposes, the disposal of land by way of exchange and the granting of licences and easements, and section 34A except in relation to land that is the subject of a lease granted under the [Western Lands Act 1901](#) or the [Wentworth Irrigation Act 1890](#).

The references in sections 34 (7) and 34A (9) to a special purpose lease are taken to extend to a special purpose lease within the meaning of Part 9E of the [Western Lands Act 1901](#).

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

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

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

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

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

- (1) The Minister may grant a licence for any purpose over land the subject of a lease granted under the [Western Lands Act 1901](#), but only with the consent of the lessee of that land.
- (2) Despite subsection (1), the consent of the lessee is not required in respect of a

licence to remove gravel, sand or any other material that is not a mineral within the meaning of the [Mining Act 1992](#).

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

Division 5A (Carbon sequestration and related forestry rights)—the whole Division except in relation to land that is the subject of a lease under the [Western Lands Act 1901](#).

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

## **Part 4A Restrictions and covenants imposed on land**

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

## **Part 5 Dedication and reservation of land**

Division 1 (preliminary)—the whole Division.

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

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

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

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

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

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

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

### **128A Consent of Western Lands Commissioner to certain operations**

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

## **Part 6 Forfeiture of holdings**

The whole Part is to apply but only in respect of leases granted under the [Western Lands Act 1901](#) and licences granted under the [Crown Lands Act 1989](#).

## **Part 7 Miscellaneous**

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

Division 1A (transfer or vesting of certain land to or in Crown)—the whole Division.

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

Division 2A (minimum rents)—the whole Division, but only in respect of licences and enclosure permits granted under the *Crown Lands Act 1989* and only to the extent (if any) that the regulations under that Division apply that Division in respect of those licences and enclosure permits.

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

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

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

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

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

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

- (aa) section 171 (exclusion of minerals, other reservations, exceptions etc) is to apply to the sale, lease or other disposal of land by the Crown under the *Western Lands Act 1901*,
- (a) section 174 (ownership of improvements on forfeiture etc) is to apply but without affecting any tenant right accrued to the holder of a lease under the *Western Lands Act 1901*,
- (b) in section 177 (certificate as to status of land etc) a reference to a holding is to be read as including a reference to a lease under the *Western Lands Act 1901*.

Division 7 (general provisions)—the whole Division, except sections 184, 185 and 186 and with the following modifications:

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

Schedules 1-6—the whole of the Schedules.

## Schedule 3 Savings, transitional and other provisions

(Section 2B)

### Part 1 Preliminary

#### 1AAA Savings and transitional regulations

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

*Western Lands Amendment Act 2002*

*Western Lands Amendment Act 2009*

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

### Part 1AA Effect of repeal of Act

#### 1AAB Repeal of Act does not affect operation of savings and transitional provisions

- (1) Despite the repeal of the *Western Lands (Amendment) Act of 1905*, sections 11, 13-16, 27-29 and 33-40 of that Act continue to have effect and are taken to have been transferred to this Act.
- (2) Sections 11, 13-16, 27-29 and 33-40 of the *Western Lands (Amendment) Act of 1905* are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

#### 1AAC Application of section 18D

Section 18D extends to leases granted or issued before the commencement of the *Western Lands (Amendment) Act of 1905*.

### Part 1A Provisions consequent on enactment of *Western Lands*

## **(Amendment) Act 1934**

### **1AA Definition**

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

### **1AB Construction of certain references**

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

### **1ABA Application of section 18J**

Section 18J extends to leases granted or brought under this Act before the commencement of the amending Act.

## **Part 1AAA Provisions consequent on enactment of Western Lands (Leases and Productivity Schemes) Amendment Act 1979**

### **1ABB Application of section 18DA**

Section 18DA extends to leases granted or issued before the commencement of that section.

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

### **1AC Definition**

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

### **1AD Construction of references to forms**

- (1) A reference in any other Act, or in any by-law, regulation or ordinance or in any other instrument or document, whether of the same or of a different kind or nature, to a form prescribed under this Act, as in force before 26 March 1980 (the date of commencement of the amending Act), is to be construed as a reference to the corresponding form (if any) approved under this Act, as amended by the amending

Act.

- (2) This clause is taken to have commenced on 26 March 1980.
- (3) Subclause (1) re-enacts (with minor modification) section 4 (2) of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

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

### **1AE Definition**

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

### **1AF Redeterminations of rent**

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

### **1AG Application of sections 28B and 28BA**

Sections 28B and 28BA extend to leases granted under section 28A before the insertion of those sections by the amending Act.

## **Part 1D Provisions consequent on enactment of *Western Lands (Crown Lands) Amendment Act 1989***

### **1 Membership of local land board**

- (1) Except for the purposes of clause 2, on the commencement of the *Western Lands (Crown Lands) Amendment Act 1989*, a person who, immediately before that

commencement, holds office as an appointed member of a local land board ceases to hold office.

- (2) A person who ceases to hold office because of the operation of subclause (1):
  - (a) is not entitled to be paid any remuneration or compensation because of ceasing to hold the office, and
  - (b) is eligible (if qualified) for re-appointment as a member of a local land board.

## **2 Matters pending before a local land board**

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

## **3 Conversion of leases—section 28BB**

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

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

### **4 Definitions**

In this Part:

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

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

### **5 Conditions under section 18**

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



## 6 Transfers under section 18G

Nothing in the *Crown Lands Act 1989* (as applied by the amended Schedule 2) affects any dealing for which a consent had been given under section 18G before the substitution of that section by the 2002 amending Act.

## 7 Forfeitures under section 50

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

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

to the forfeiture of the lease.

## 8 Application of Schedule 1

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

## 9 Application of Schedule 2

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

## 10 Continuation of former rents

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

than on 30 June in any year, includes the further period up to the end of the following 30 June.

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

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

### **Part 3 Provisions consequent on enactment of [Western Lands Amendment Act 2009](#)**

#### **12 Definition**

In this Part, **the 2009 amending Act** means the [Western Lands Amendment Act 2009](#).

#### **13 Local land boards**

- (1) Each local land board established under section 9, as in force immediately before its amendment by the 2009 amending Act, is taken to be a local land board constituted under section 20 of the [Crown Lands Act 1989](#).
- (2) The person who, immediately before section 9 was amended by the 2009 amending Act, was the Chairperson of Local Land Boards under that section is taken to have been appointed as a Chairperson of Local Land Boards under section 19 (1) of the [Crown Lands Act 1989](#).
- (3) A person who, immediately before section 9 was amended by the 2009 amending Act, was a member of a local land board under that section is taken to have been appointed as a member of that board under section 20 of the [Crown Lands Act 1989](#) and, unless he or she sooner vacates office, continues in office for the balance of the term for which he or she was originally appointed.
- (4) Subject to this Act, proceedings that were commenced before any such local land board before section 9 was amended by the 2009 amending Act are to be disposed of in accordance with the relevant provisions of the [Crown Lands Act 1989](#).

#### **14 Term of appointment of members of Western Lands Advisory Council**

The amendment made by the 2009 amending Act to clause 2 of Schedule 5 does not apply to the term of office of any member of the Western Lands Advisory Council who was appointed before the commencement of that amendment.

#### **15 Application of section 18A**

- (1) Section 18A, as substituted by the 2009 amending Act, extends to leases granted or issued, and to fences erected, before the commencement of that section.

- (2) Any determination, exemption, allowance or authorisation that, immediately before section 18A was substituted by the 2009 amending Act, was in force under that section is taken to be an order to the same effect under that section, as so substituted.

## **Schedule 4 Provisions relating to purchases of certain leased land**

(Section 28BB)

### **1 Application of Schedule**

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

### **2 Transfer and withdrawal of applications**

- (1) A transferee of a lease may, with the approval of the Minister and subject to such conditions as the Minister may determine, adopt an application made by a previous holder.
- (2) An applicant may withdraw an application:
- (a) before it is granted, or
  - (b) if an appeal is lodged against the determination of the purchase price by the Minister or the Civil and Administrative Tribunal—within 28 days after determination of the appeal,
- on payment of such costs as may be assessed by the Minister.

### **3 Granting of applications**

- (1) The Minister may, at the Minister's absolute discretion (exercised subject to clause 4 of Schedule 1 to the *Forestry Act 2012*) grant or refuse an application as to the whole or a part of the land to which it relates.
- (2) The Minister may not grant an application if the land is reserved from sale.
- (3) The Minister may not grant an application in relation to land the subject of a lease for any purpose unless satisfied that the continued use of the land for that purpose is ecologically sustainable.

### **4 Exclusion for roadways etc**

- (1) When granting an application, the Minister may:
- (a) exclude from the land any areas required for roadways or other public purposes,
  - (b) otherwise modify the boundaries of the land, and
  - (c) create easements for public access over the land,

at the discretion of the Minister.

- (2) Any areas excluded from the land for roadways or other public purposes or because of modification of boundaries is surrendered to the Crown.
- (3) A public purpose is any purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose for the purposes of this clause.
- (4) Sections 56–58 of the *Crown Lands Act 1989* (section 56 (3) excepted) apply to and in respect of the creation of an easement under this clause in the same way as they apply to and in respect of the creation of an easement under section 56 of that Act.
- (5) The holder may appeal to the Civil and Administrative Tribunal against a decision under this clause to exclude land or create an easement for public access and the Civil and Administrative Tribunal may, on hearing the appeal, make any order or decision it considers to be appropriate.

**Note—**

An appeal to the Civil and Administrative Tribunal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*. A decision of the Tribunal on such an external appeal may be appealed to the Land and Environment Court under Schedule 1 to that Act.

- (6) On hearing an appeal under subclause (5), the Civil and Administrative Tribunal may include in its order or decision an order or redetermination referred to in subclause (7), or both.
- (7) The Civil and Administrative Tribunal may:
  - (a) make an order requiring the creation of an easement for public access under subclause (1) (c) instead of the exclusion of land under subclause (1) (a), or
  - (b) redetermine the purchase price (or require the Minister to redetermine the purchase price) having regard to any variation in the area of the land to be purchased.

## **5 Depth limitations**

- (1) The Minister may limit the granting of an application to the surface of the land or to the surface and a stated depth below the surface.
- (2) Land excluded by such a limitation is surrendered to the Crown.

## **6 Title and conditions**

- (1) Clause 6 of Part 1 of Schedule 2 to the *Crown Lands (Continued Tenures) Act 1989* applies to and in respect of a purchase under this Schedule.
- (2) A purchase under this Schedule of land comprised in a lease is subject to such of the conditions applying to the lease as the Minister specifies at the time of granting the

application to purchase.

- (3) The title to a purchase under this Schedule commences from a date determined by the Minister.
- (4) The date determined by the Minister shall not be earlier than:
  - (a) if an appeal is lodged:
    - (i) the withdrawal of the appeal, or
    - (ii) 28 days after determination of the appeal (unless the applicant notifies the Minister in writing that the applicant does not wish to withdraw the application), or
  - (b) if no appeal is lodged—the end of the period for lodgment of the appeal or, if the applicant earlier notifies the Minister in writing that the applicant has waived any right of appeal, the date of the notification.
- (5) In any folio of the Register created in respect of land purchased or being purchased under this Schedule the Registrar-General shall, if the land is affected by a profit à prendre reserved to the Crown under clause 5 of Schedule 1 to the *Forestry Act 2012*, record a statement to the effect that the land is so affected.
- (6) Such a recording has effect as if the reservation of the profit à prendre had been included in an instrument of conveyance or transfer from the Crown.

## **7 Subdivision**

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

## **8 Removal of transfer restrictions**

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

## **9 Payment of balance of purchase money etc on transfer**

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

## **10 Price**

- (1) The purchase price for land comprised in a lease is the market value of the land determined by the Minister as at the date of the application to purchase the land.
- (2) Any improvements on the land which were made by the holder, or are owned or in the course of being purchased from the Crown by the holder, shall be disregarded in

determining the market value.

- (3) If it appears to the Minister that the market value of the land has been reduced by any act, default or neglect of the holder, the Minister shall determine the market value as if the reduction in value had not taken place.
- (4) If any areas are to be excluded for roadways or other public purposes or because of modification of boundaries, the purchase price shall be adjusted accordingly.

#### **11 Objections to, and appeals against, determinations**

- (1) The Minister shall, on determining a purchase price for land comprised in a lease, give notice of the determination to the lessee.
- (2) The notice shall include information to the effect that the lessee may object to the purchase price determined by the Minister.
- (3) The Minister shall consider any objection lodged and by notice inform the objector:
  - (a) whether the determination of the purchase price is to stand or be varied, and
  - (b) that the objector, if dissatisfied with the Minister's decision, may appeal as provided by subclause (4).
- (4) An appeal against the Minister's decision lies:
  - (a) to the Civil and Administrative Tribunal if the purchase price determined does not exceed \$150,000 or such greater amount as may be prescribed, or
  - (b) in any other case, to the Land and Environment Court.

#### **Note—**

An appeal to the Civil and Administrative Tribunal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*. A decision of the Tribunal on such an external appeal may be appealed to the Land and Environment Court under Schedule 1 to that Act.

- (5) The Civil and Administrative Tribunal, or the Court, on hearing the appeal, may affirm the Minister's determination or substitute its own.

#### **12 Adjustment of rent where part only of lease purchased**

- (1) If part only of a lease is purchased, the Minister shall redetermine the annual rent of the remaining part of the lease for the remainder of the current rent redetermination period applicable to the lease.
- (2) Clauses 11 and 12 of Schedule 5 to the *Crown Lands (Continued Tenures) Act 1989* apply to a redetermination of rent under this clause in the same way as they apply to a redetermination of rent under that Schedule.

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

### **13 Cost of survey**

- (1) An applicant to purchase land comprised in a lease is liable to pay to the Crown:
  - (a) if a survey fee has not been paid in respect of the lease—the prescribed survey fee, and
  - (b) if a survey is necessary as a result of the purchase and the survey is carried out by the Crown—the cost of survey as assessed by the Minister.
- (2) The Minister may permit an applicant to have any necessary survey carried out (at the applicant's own expense) by a registered land surveyor within the meaning of the [Surveying and Spatial Information Act 2002](#) in accordance with any special requirements of the Minister.
- (3) If a survey is to be carried out by the Crown, the Minister may require the applicant to pay the estimated cost before survey and refuse the application if the estimated cost is not paid.

### **14, 15 (Repealed)**

### **16 Retention of rights of mortgagees**

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

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

### **17 Easements**

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

## **Schedule 5 Provisions with respect to constitution and procedure of**

## Western Lands Advisory Council

(Section 8B)

### Part 1 Constitution

#### 1 Acting chairperson

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

#### 2 Term of office

Subject to this Schedule, a member of the Western Lands Advisory Council holds office for such term (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### 3 Remuneration

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

#### 4 Vacancy in office of appointed member

- (1) The office of a member of the Western Lands Advisory Council becomes vacant if the member:
  - (a) dies, resigns or is removed from office, or
  - (b) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member, unless:
    - (i) the Council has granted the member leave to be absent from those meetings, or
    - (ii) within 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or



(d) becomes a mentally incapacitated person, or

(e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member of the Western Lands Advisory Council from office at any time.

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

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

## **6 Disclosure of pecuniary interests**

(1) A member of the Western Lands Advisory Council who has a direct or indirect pecuniary interest:

(a) in a matter that is being considered, or is about to be considered, at a meeting of the Council, or

(b) in a thing being done or about to be done by the Council,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure at such a meeting that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date of the disclosure.

(3) The Western Lands Advisory Council must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose, and that book must be open at all reasonable hours to the inspection, free of charge, of any person.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister otherwise determines:

(a) be present during any deliberation, or take part in any decision, of the Western Lands Advisory Council with respect to that matter, or

(b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) A contravention of this clause does not invalidate any decision of the Western Lands Advisory Council or the exercise of any function under this Act.

(6) A reference in this clause to a meeting of the Western Lands Advisory Council includes a reference to a meeting of any of its committees.

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

(1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member of the Western Lands Advisory Council and the office of such a member is not, for the purposes of any Act, an office or place of profit under the Crown.

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

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

## **Part 2 Procedure**

### **8 General procedure**

Except as otherwise provided by this Act or the regulations:

(a) meetings of the Western Lands Advisory Council are to be held at such times and places as are fixed by the chairperson, and

(b) the procedure for the convening of meetings and for the conduct of business at those meetings is to be as determined by the chairperson.

### **9 Quorum**

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

## **10 Presiding member**

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

## **11 Decisions**

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

## **12 Record of proceedings**

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

## **13 Authentication of documents**

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

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

## **14 First meeting**

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