

# Crown Land Management Regulation 2018

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New South Wales

## Status Information

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Authorisation

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# Crown Land Management Regulation 2018



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Crown Land Management Regulation 2018*.

### 2 Commencement and repeal

- (1) This Regulation commences on the day on which the *Crown Lands Act 1989* is repealed by the Act (except as provided by subclause (2)) and is required to be published on the NSW legislation website.
- (2) The following provisions of this Regulation commence on 19 March 2018:
  - (a) this Part,
  - (b) clause 26,
  - (c) clauses 30, 61–63 and 72 and Schedule 1 (but only to the extent of their application to provisions of, or provisions referred to in, Schedule 4 to the Act),
  - (d) clause 37,
  - (e) clause 40,
  - (f) clause 67,
  - (g) Schedule 4.
- (3) Schedule 4 is repealed on 20 March 2018.

### 3 Definitions

- (1) In this Regulation:

**fee unit**—see clause 2 of Part 2 of Schedule 1.

**pest** has the same meaning as in the *Biosecurity Act 2015*.

**the Act** means the *Crown Land Management Act 2016*.

**Western lands lease** has the same meaning as in Schedule 3 to the Act.

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Use of Crown land**

### **Division 1 Protection of dedicated or reserved Crown land**

#### **4 Definitions**

(1) In this Division:

**authorised person**, in relation to dedicated or reserved Crown land, means any of the following:

- (a) an authorised officer,
- (b) a member of the board or governing body of a responsible manager of the land,
- (c) any employee of a responsible manager who is authorised in writing by the manager to exercise the functions of an authorised person under this Division.

**employee** of a responsible manager includes, if the manager is the Minister, an employee of the Department.

**responsible manager** of dedicated or reserved Crown land means:

- (a) for land with one Crown land manager—the Crown land manager, or
- (b) for land with 2 or more Crown land managers—each of the Crown land managers in accordance with any allocation made under section 3.14 of the Act, or
- (c) for land with no Crown land managers—the Minister.

(2) Any person who:

- (a) held an appointment as an authorised person for the purposes of Division 5 of Part 7 of the *Crown Lands Act 1989* immediately before that Act's repeal, and
- (b) is not a person of the kind referred to in paragraph (a), (b) or (c) of the definition of **authorised person** in subclause (1),

is taken to be an authorised person for the purposes of this Division for the period of 12 months commencing on the day this clause commences.

## **5 Public access to dedicated or reserved Crown land**

- (1) A responsible manager of dedicated or reserved Crown land may, by a public notice displayed at or adjacent to each entrance to the land, do any of the following:
  - (a) specify the times during which the land or any part of the land is to be open to the public,
  - (b) close to the public the whole or any part of the land or any structure or enclosure in or on the land (but only temporarily or periodically if the land is dedicated or reserved for public recreation),
  - (c) restrict or regulate in any other way the purposes for which the whole or any part of the land, or any structure or enclosure in or on the land, may be used,
  - (d) prohibit the use of the whole or any part of the land, or any structure or enclosure in or on the land, for any purpose specified in the notice.
- (2) A person must not enter or use dedicated or reserved Crown land or any structure or enclosure in or on the land (or any part of the land or a structure or enclosure) in a way that is contrary to a public notice displayed under this clause.

Maximum penalty: 50 penalty units.

## **6 Responsible manager may set aside parts of dedicated or reserved Crown land for certain uses**

- (1) The responsible manager of dedicated or reserved Crown land may set aside any part of the land (including any building or enclosure in or on the land) for any purpose for which the land may be used.
- (2) The setting aside is subject to, and must be consistent with, any plan of management for the dedicated or reserved Crown land.

## **7 Fees and charges in connection with use of dedicated or reserved Crown land**

- (1) A responsible manager of dedicated or reserved Crown land may, from time to time, determine the fees or charges payable in respect of any one or more of the following:
  - (a) the use of the whole or any part of the land or any structure or enclosure in or on the land,
  - (b) the parking or use of any vehicle or class of vehicles on the land,
  - (c) the use of electricity, gas and water,
  - (d) the disposal of rubbish and the cleaning of the land,
  - (e) the removal of effluent.



- (2) A responsible manager of dedicated or reserved Crown land (other than land for a cemetery or crematorium) may, from time to time, determine the fees or charges payable in respect of entry to the whole or any part of the land or any structure or enclosure in or on the land.
- (3) In determining fees and charges, the responsible manager is to have regard to any contractual arrangements entered into by a responsible manager of the land.
- (4) The fees or charges payable under subclause (1) or (2) must be displayed in a public notice erected at or adjacent to each entrance to the dedicated or reserved Crown land or part of the land, or building or enclosure, to which the fees or charges relate.
- (5) If it is not reasonably practicable for fees or charges to be displayed in a public notice as provided by subclause (4), it is sufficient compliance with that subclause if:
  - (a) the fees and charges are posted on a publicly accessible website, and
  - (b) the erected public notice indicates that the fees and charges are posted on that website.
- (6) The responsible manager may in any particular case waive payment of any fee or charge determined under this clause.
- (7) The Minister may serve notice on a Crown land manager that is a responsible manager of the dedicated or reserved Crown land disallowing or varying any fee or charge as set out in the notice and the Crown land manager is to give effect to the Minister's notice.

## **8 Conditions of entry for dedicated or reserved Crown land**

- (1) A person who enters dedicated or reserved Crown land or a part of the land or any structure or enclosure in or on the land (whether or not on payment of an entrance fee) enters subject to any conditions that:
  - (a) are determined from time to time by a responsible manager of the land, and
  - (b) are displayed in public notices erected at or adjacent to each entrance to the land or part or the structure or enclosure.
- (2) A responsible manager for the dedicated or reserved Crown land may designate entrance and exit points to and from the land, any part of the land or any structure or enclosure in or on the land by public notices displayed at or near those points.
- (3) A person must not enter or leave dedicated or reserved Crown land or part of the land (or a structure or enclosure) for which entrances or exit points have been designated as provided by subclause (2) by any other means than those entrances or points.

Maximum penalty: 50 penalty units.

- (4) If a responsible manager of dedicated or reserved Crown land has designated an entrance point and determined an entrance fee for the land, any part of the land or any structure or enclosure in or on the land, a person must not enter the land or part or the structure or enclosure unless:
- (a) the person pays that entrance fee, and
  - (b) the person enters as directed by public notices displayed at or adjacent to an entrance point where any entrance fee demanded is payable.

Maximum penalty (subclause (4)): 50 penalty units.

### **9 Conduct prohibited in dedicated or reserved Crown land**

- (1) A person must not do any of the following on dedicated or reserved Crown land:
- (a) damage, deface or interfere with any structure, sign, public notice, descriptive plate, label, machinery or equipment on the land, or
  - (b) obstruct any authorised person or employee of, or contractor to, a responsible manager of the land in the performance of the authorised person's duty or the employee's or contractor's work on the land, or
  - (c) bring in or on to the land any animal that is diseased or a pest, or
  - (d) walk over, mark, scratch or otherwise mutilate, deface, injure, interfere with, remove or destroy any Aboriginal object in or on the land, or
  - (e) remain in or on the land or any part of the land or any structure or enclosure in or on the land when reasonably requested to leave by an authorised person, or
  - (f) bring into or leave on the land any refuse, waste material, scrap metal (including any vehicle or vehicle part), rock, soil, sand, stone or other similar substance.

Maximum penalty: 50 penalty units.

- (2) It is a defence to the prosecution of an offence against this clause if the defendant proves that there was a reasonable excuse for the conduct that is alleged to give rise to the offence.

- (3) In this clause:

**Aboriginal object** has the same meaning as in the [National Parks and Wildlife Act 1974](#).

### **10 Certain acts and omissions not to be offences against Division**

- (1) A person does not commit an offence against a provision of this Division in relation to dedicated or reserved Crown land if the conduct giving rise to the offence was:

- (a) by an authorised officer or a board member, officer or employee of the responsible manager of the land in the exercise of their functions, or
- (b) in accordance with the conditions (whether express or implied) of a holding, or
- (c) under the direction or with the written consent of a responsible manager of the land.

(2) The consent of a responsible manager may be given generally or in a particular case.

(3) Nothing in this clause permits a responsible manager (or a person referred to in subclause (1) (a)) to consent to the doing of any thing on the land that is prohibited by the Act or any other law (except this Division).

### **11 Savings of public notices under *Crown Lands (General Reserves) By-law 2006***

A public notice that had effect for a reserve immediately before the repeal of the *Crown Lands (General Reserves) By-law 2006* under a provision of the By-law specified in Column 1 of the following Table continues in effect for the same land under the corresponding provision of this Regulation specified in Column 2 opposite as if the notice had been displayed by the responsible manager of the land:

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of <i>Crown Lands (General Reserves) By-law 2006</i></b>	<b>Corresponding provision of this Regulation</b>
Clause 16	Clause 5
Clause 18	Clause 7
Clause 19	Clause 8

## **Division 2 General**

### **12 Dumping of materials**

For the purposes of section 9.2 (1) (g) (ii) of the Act, the following kinds of matter are prescribed:

- (a) vehicles or parts of them,
- (b) water craft or aircraft or parts of them,
- (c) household effects, appliances, materials or waste,
- (d) clothing,
- (e) agriculture, building, commercial or industrial materials or waste,

- (f) machinery, plant or equipment or parts of them,
- (g) chemicals or metals,
- (h) vegetable matter,
- (i) stone, sand, shells, clay, earth or ash,
- (j) radioactive material,
- (k) hospital or biological waste,
- (l) abattoir waste,
- (m) toxic or hazardous waste,
- (n) computers, televisions, printers and other electronic devices,
- (o) liquid waste.

**13 Activities that can be prohibited on Crown land by direction or notice under Part 9 of Act**

(1) Each of the activities specified in the following Table is prescribed for the purposes of sections 9.4 (1) (b), 9.5 (1) (b) and 9.5 (2) of the Act:

**Table**

<b>Item</b>	<b>Activity</b>
1	Entering Crown land at a time when the Crown land is not open to the public
2	Entering any building, structure or enclosure or part of Crown land not open to the public
3	Holding a meeting or performance or conducting entertainment for money or consideration of any kind, or in a manner likely to cause a nuisance to any person
4	Taking part in any gathering, meeting or assembly (except, in the case of a cemetery, for the purpose of a religious or other ceremony of burial or commemoration)
5	Selling, offering or exposing for sale any article or thing, or conducting any commercial activity
6	Displaying or causing any sign or notice to be displayed
7	Distributing any circular, advertisement, paper or other printed, drawn, written or photographic matter
8	Having or operating photographic or video devices for commercial purposes
9	Camping

- 10 Planting any tree, shrub, vine, flower or other plant
- 11 Damaging, picking or removing any tree, shrub, plant, vine, flower or other vegetation (whether dead or alive), except as permitted by items 12 and 13
- 12 Removing any dead timber, log or stump, whether standing or fallen, except for the purpose of cooking food on the Crown land
- 13 Damaging any lawn, playing field or green, except in the course of and as a normal incident of any recreational or sporting activity
- 14 Defacing or removing or disturbing any rock, soil, sand, stone or similar substance
- Lighting a fire:
  - 15 (a) at any time when the lighting of fires on the Crown land is prohibited under the [Rural Fires Act 1997](#), or
  - (b) at any other time except in a properly constructed fireplace or in portable cooking equipment
- 16 Climbing any tree, building, fence, seat, table, enclosure or other structure
- 17 Destroying, capturing, injuring, annoying, or interfering with the habitat of, any animal, bird or other fauna, whether native or introduced
- 18 Having or keeping any dog or other animal, or allowing any animal under the person's control to depasture
- 19 Carrying, laying or setting any trap, snare or poison bait, or dropping from any aircraft any trap, snare or poison bait
- 20 Placing any beehive
- 21 Carrying, having or using a firearm, or an imitation firearm (as defined in the [Firearms Act 1996](#)) or a prohibited weapon (as defined in the [Weapons Prohibition Act 1998](#)) unless that person is a police officer acting in connection with the performance of that person's duties as such an officer
- 22 Discharging fireworks
- 23 Carrying or using any explosives
- 24 Having, selling, serving or consuming any intoxicants
- 25 Having or using any axe, saw or similar tool or implement
- 26 Assembling or using a hang-glider or landing a helicopter
- 27 Flying a mechanically propelled model aircraft or similar thing
- 28 Breaking any glass or throwing or projecting any stone, missile or other object

- 29 Operating an audio or audio visual device at a volume likely to cause a nuisance to any person
- 30 Conducting or taking part in any sporting activity that forms part of any organised competition or tournament
- 31 Rock climbing, abseiling, base jumping or bungee jumping
- 32 Riding on or using a bicycle, skateboard, roller skates, roller blades, scooter or similar apparatus
- 33 Jetskiing or surfboarding
- 34 Fishing
- 35 Using any bow and arrow
- 36 Driving a vehicle or riding a horse or other animal

- (2) Nothing in this clause prohibits a person with a disability (within the meaning of the [Disability Discrimination Act 1992](#) of the Commonwealth) from being accompanied by an assistance animal (that is, an animal referred to in section 9 of that Act) or using a mobility aid.

**14 When Minister taken to give consent for certain development applications over dedicated or reserved Crown land**

- (1) For the purposes of section 2.23 (3) (b) of the Act, the carrying out of development involving the erection, repair, maintenance or replacement of services is excluded if the development is not being carried out principally for the benefit of the dedicated or reserved Crown land to which the development application relates.
- (2) For the purposes of section 2.23 (3) (b) of the Act, the carrying out of development within a domestic waterfront precinct is excluded unless:
- (a) the development involves the repair or maintenance of an existing lawful building or other structure, and
  - (b) the development does not involve the excavation of land, and
  - (c) the building or structure (as repaired or maintained) does not change any of the following:
    - (i) any interruption of water flow caused by the existing building or structure,
    - (ii) the height of the existing building or structure,
    - (iii) the above water footprint of the existing building or structure.
- (3) In this clause:

**domestic waterfront precinct** means:

- (a) submerged dedicated or reserved Crown land (including the bed of a river or estuary) that is within the coastal waters of the State (as defined in section 58 of the *Interpretation Act 1987*), and
- (b) dedicated or reserved Crown land that is not submerged, but adjoins:
  - (i) submerged dedicated or reserved Crown land above the mean high water mark for tidal land, or
  - (ii) the bank of a river, creek or lake.

### **15 Destruction or taking of plants or animals**

Nothing in this Division prevents a responsible manager of dedicated or reserved Crown land from authorising:

- (a) the destruction on the land of any plant or animal that is a pest, or
- (b) subject to the provisions of any Act, the taking from the land of any plant or animal that, in the opinion of the manager, has assumed pest proportions or is required for scientific purposes.

## **Part 3 Management and vesting of Crown land**

### **Division 1 Non-council managers**

#### **16 Category 1 non-council managers**

For the purposes of section 3.25 (2) (c) of the Act, each of the following is assigned as a category 1 non-council manager:

- (a) NSW Crown Holiday Parks Land Manager,
- (b) Northern Metropolitan Cemeteries Land Manager,
- (c) Rookwood General Cemeteries Reserve Land Manager,
- (d) Catholic Metropolitan Cemeteries Trust and, on and from its abolition by the Act, the Catholic Cemeteries Board,
- (e) Southern Metropolitan Cemeteries Land Manager,
- (f) Rookwood Necropolis Land Manager.

#### **17 Community advisory groups for non-council managers**

- (1) This clause applies in relation to any community advisory group that the Minister directs a non-council manager to establish under section 3.29 of the Act for dedicated

or reserved Crown land under the manager's management (the ***managed land***).

- (2) The function of a community advisory group is to provide advice to the non-council manager regarding community views on proposed management of managed land (including the impact that proposed management of the managed land may have on different members of the community).
- (3) The community advisory group is to consist of the number of members directed by the Minister.
- (4) The non-council manager is to appoint members, in accordance with any directions of the Minister, that include persons who represent (as far as is reasonably practicable) all of the community stakeholders who have an interest in the managed land.
- (5) The maximum term for a member is 5 years or any greater or lesser term directed by the Minister.
- (6) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by written instrument given to the non-council manager, or
  - (d) is removed from office by the non-council manager under this clause.
- (7) The non-council manager may remove a member from office only in the circumstances directed by the Minister.
- (8) The procedure for the calling of meetings of the community advisory group and for the conduct of business at those meetings is, subject to any directions of the Minister, to be as determined by the group.
- (9) The quorum for a meeting of the community advisory group is a majority of its members for the time being.

## **18 Annual reports for non-council managers**

- (1) For the purposes of section 3.30 of the Act, the annual report of a non-council manager is to include, unless the Minister determines differently by written notice given to the manager, the following in relation to the manager's management operations:
  - (a) financial statements setting out details of income, expenditure, assets and liabilities,
  - (b) details of the value and condition of all assets (other than land) valued at:



- (i) for a category 1 non-council manager—\$50,000 or more, or
- (ii) for a category 2 non-council manager—\$5,000 or more,
- (c) details of heritage items,
- (d) details of the value of work and improvements undertaken costing more than:
  - (i) for a category 1 non-council manager—\$50,000, or
  - (ii) for a category 2 non-council manager—\$5,000,
- (e) details of any insurance arrangements in place,
- (f) details of the fire prevention and workplace health and safety measures in place,
- (g) details of any plans of management, strategic plans, financial plans or business plans in place,
- (h) details of any environmental management initiatives undertaken,
- (i) details of leases, licences and permits that have been granted or are in force, including rent and fee levels,
- (j) details of the purposes for which the land is used,
- (k) any particulars of pecuniary interests recorded in the book referred to in clause 26 (3) of Schedule 5 to the Act,
- (l) details of any grants or sponsorship received,
- (m) details of employees and contractors, including details about any training provided to such persons,
- (n) for a manager that is a statutory land manager with a board—the number of meetings of the board held during the financial year and records of attendance at those meetings,
- (o) details of the manager’s compliance with any applicable guidelines for Crown land managers issued by the Department and published on its website.

**Note—**

Section 5 (2) of the *Cemeteries and Crematoria Act 2013* provides that if provision is made both by or under the *Crown Land Management Act 2016* and the *Cemeteries and Crematoria Act 2013* in relation to the exercise of functions by, or in respect of, a Crown cemetery operator in the same or substantially the same circumstances the function is not exercisable under the *Crown Land Management Act 2016*. Section 99 of the *Cemeteries and Crematoria Act 2013* makes special provision for annual reports by Crown cemetery operators.

- (2) If a non-council manager is appointed as the Crown land manager of more than one

area of dedicated or reserved Crown land, the annual report must permit dissection of the matters referred to in subclause (1) for each area unless the Minister determines differently by written notice.

- (3) If directed by the Minister by written notice to do so, a non-council manager must arrange for an annual report to be audited by a person approved by the Minister.
- (4) If there are 2 or more non-council managers for dedicated or reserved Crown land, each manager must prepare an annual report in accordance with this clause to the extent to which the matters referred to in subclause (1) relate to the functions allocated to the manager under section 3.14 of the Act, except to the extent that the manager is not allocated the function of reporting those matters.

### **19 Record keeping by non-council managers**

- (1) For the purposes of section 3.31 (1) (a) of the Act, a non-council manager must keep the records specified in this clause unless the Minister determines differently by written notice.
- (2) If there are 2 or more non-council managers for dedicated or reserved Crown land, each manager must keep records in accordance with this clause to the extent to which they relate to the functions allocated to the manager under section 3.14 of the Act.
- (3) If a non-council manager manages more than one area of dedicated or reserved Crown land, the manager must keep records kept in accordance with this clause in a manner that will permit dissection of the details of those records for each area of land being managed.
- (4) The records to be kept in relation to the dedicated or reserved Crown land managed by the non-council manager are as follows:
  - (a) account books showing details of all income and expenditure,
  - (b) records of assets and liabilities and improvements made to the land,
  - (c) bank, building society or credit union deposit books or statements,
  - (d) records of other financial instruments or investments,
  - (e) plant and asset register,
  - (f) heritage register,
  - (g) records of leases, licences and permits granted or in force,
  - (h) insurance policies and certificates,
  - (i) details of fire prevention and other workplace health and safety measures in place,

- (j) details of any contractual arrangements with third parties,
- (k) any correspondence, approvals, authorisations, orders or directions from public authorities,
- (l) for a manager with a board—the minutes of all meetings of the board or any committee of the board,
- (m) for a manager that is a statutory land manager—details of the persons who have authority to make decisions for the manager,
- (n) any other records necessary for the manager to prepare an annual report under section 3.30 of the Act.

## **Division 2 Statutory land managers**

### **20 Receipts and disbursements of statutory land managers**

- (1) All money received by a statutory land manager is to be deposited to the credit of an account established with any authorised deposit-taking institution in the name of the manager.
- (2) Each item of expenditure by or on behalf of the statutory land manager is to be authorised or confirmed for payment at a duly convened and constituted meeting of the manager by tabling and approval of a report by the treasurer of the manager relating to that item of expenditure.
- (3) Cheques drawn on the statutory land manager's account are to be signed by one or more persons approved by the manager.
- (4) If an administrator of a statutory land manager has been appointed under the Act, cheques are to be signed by the administrator and one other person chosen by the administrator.

### **21 Treasurers and secretaries of statutory land managers that are category 2 non-council managers**

- (1) **Application** This clause applies in relation to statutory land managers that are category 2 non-council managers.
- (2) **Appointment of secretaries and treasurers** A statutory land manager:
  - (a) if the manager has a board—must appoint and employ a secretary and treasurer for the manager, or
  - (b) if the manager does not have a board—may appoint and employ a secretary and treasurer for the manager.
- (3) One person may be appointed to the positions of secretary to, and treasurer of, the

statutory land manager.

- (4) A member of the board of a statutory land manager may be appointed and employed under this clause. However, the member cannot receive remuneration in addition to the member's remuneration without the approval of the Minister.
- (5) **Functions of secretary** The secretary of a statutory land manager is:
  - (a) to keep and maintain minutes of each meeting of the manager, and
  - (b) to keep and maintain the book required by clause 26 (Disclosure of material personal interest by board members) of Schedule 5 to the Act, and
  - (c) to perform other functions as directed by the manager.
- (6) **Functions of treasurer** The treasurer of a statutory land manager is:
  - (a) to be responsible to the statutory land manager for keeping and maintaining proper financial records, and
  - (b) to keep and maintain the records required to be kept by the manager for the purposes of section 3.31 (1) (a) of the Act.
- (7) **Appointment of secretaries and treasurers by boards** If a statutory land manager has a board, the board is to appoint the secretary and treasurer of the manager at the annual general meeting of the manager. The term of office of a secretary or treasurer ends on the day of the next annual meeting.
- (8) If a casual vacancy occurs in the office of the secretary or treasurer of a statutory land manager with a board, the board, at the first meeting held after the occurrence of the casual vacancy, is to appoint a person to fill the vacancy. The person appointed is entitled to hold office for the unexpired part of the term of office of that person's predecessor.

## 22 Meetings

- (1) Unless the Minister allows differently, the board of a statutory land manager is to meet at least 4 times a year at the places and times as determined by the board.
- (2) A statement of accounts is to be presented to the annual general meeting of the board.

## 23 Special meetings

On receipt by the chairperson of the board of a statutory land manager of a written request for a meeting of the board of the manager, the chairperson, if the request is signed by at least 2 members of the board and specifies the purpose of the meeting, is to call a special meeting to be held within 28 days after receipt of the request at the place and time specified by the chairperson.

## **24 Prior notice of meetings**

- (1) If a date is appointed for a meeting of the board of a statutory land manager, the chairperson of the board is to forward a written notice to each member of the board setting out the place and time of the meeting and the agenda for that meeting.
- (2) The notice is to be forwarded not later than 10 days before the day appointed for the meeting.
- (3) However, if the chairperson is of the opinion that a special meeting should be held as soon as possible, the chairperson may give such notice of the place and time of, and the agenda for, the meeting as the chairperson considers appropriate.

## **25 Committees**

- (1) The board of a statutory land manager may form one or more committees to carry out the works or perform the duties that the board determines.
- (2) The committees must consist of members of the board and, if the committee deals with finance or the preparation of budget estimates, must include the treasurer.

## **Division 3 Vesting**

### **26 Local land criteria for vesting transferable Crown land in local councils**

- (1) For the purposes of section 4.6 (2) of the Act, the following criteria are prescribed:
  - (a) whether the land provides, or has demonstrated potential to provide, a public good predominantly for residents in the local government area of the local council concerned, or in adjacent local government areas, in a way that is consistent with local planning instruments,
  - (b) whether the land use is consistent with the functions of local government or could be used for activities consistent with those functions,
  - (c) whether the land is managed, or has identified potential to be managed, as a community asset by a local council or some other body.
- (2) A good is not a public good for the purposes of subclause (1) (a) if:
  - (a) residents can be prevented or excluded from using it, or
  - (b) one resident's enjoyment of it will reduce another person's enjoyment of it.

### **27 Vesting of Crown land in statutory corporations**

A statutory corporation is prescribed for the purposes of section 4.11 (1) (a) (ii) of the Act in relation to particular dedicated or reserved Crown land or other Crown land if:

- (a) the corporation is permitted or required to exercise its functions in a way that is

consistent with the purposes for which the land is dedicated, reserved or used, and

- (b) the Minister responsible for administering the Act by or under which the corporation is constituted or regulated consents to the transfer of the land.

## **Division 4 Indemnification by local councils for their impact on native title rights and interests**

### **28 Local councils to indemnify State**

A local council is liable to indemnify the State for the whole of any amount of compensation payable by the State for the impact of relevant conduct (as defined in Division 8.4 of the Act) by the council on native title rights and interests.

## **Part 4 Dealings and holdings**

### **29 Terms and conditions in holdings that are enforceable despite Act and regulations**

For the purposes of section 5.2 (2) (f) of the Act, each of the following matters is permitted to be included in the terms and conditions of a holding:

- (a) insurance requirements,
- (b) indemnity requirements,
- (c) obligations concerning land or water management,
- (d) obligations to prevent or minimise land contamination,
- (e) obligations to return land or premises to the same condition as at the commencement of the holding.

### **30 Sale or disposal of Crown land in the Western Division within 20 kilometres of urban area**

For the purposes of section 5.9 (1) (c) of the Act, the distance of 20 kilometres is prescribed.

### **31 Short-term licences over dedicated or reserved Crown land**

- (1) Each of the following purposes is prescribed as a purpose for which a short-term licence may be granted under section 2.20 of the Act:
  - (a) access through a reserve,
  - (b) advertising,
  - (c) camping using a tent, caravan or otherwise,
  - (d) catering,

- (e) community, training or education,
  - (f) emergency occupation,
  - (g) entertainment,
  - (h) environmental protection, conservation or restoration or environmental studies,
  - (i) equestrian events,
  - (j) exhibitions,
  - (k) filming (as defined in the *Local Government Act 1993*),
  - (l) functions,
  - (m) grazing,
  - (n) hiring of equipment,
  - (o) holiday accommodation,
  - (p) markets,
  - (q) meetings,
  - (r) military exercises,
  - (s) mooring of boats to wharves or other structures,
  - (t) sales,
  - (u) shows,
  - (v) site investigations,
  - (w) sporting and organised recreational activities,
  - (x) stabling of horses,
  - (y) storage.
- (2) In addition to any other condition to which a short-term licence granted under section 2.20 of the Act is subject, the condition that the relationship of landlord and tenant is not created between the parties is also prescribed.
- (3) The period of one year is prescribed as the maximum term for which a short-term licence may be granted under section 2.20 of the Act (including any further term available under an option or holding over provision).

### **32 Licences for unauthorised users or occupiers of Crown land**

- (1) A licence granted under section 5.26 of the Act is subject to the provisions specified by this clause.
- (2) Rent must be paid annually in advance for the Crown land to which the licence applies (the **licensed land**) unless the Minister otherwise approves.
- (3) The holder of the licence must maintain the licensed land in a good condition to the satisfaction of the Minister.
- (4) The holder of the licence must comply with all laws in relation to the holder's use of the licensed land.
- (5) The holder of the licence must make good the licensed land to the satisfaction of the Minister, including by reinstating the land to the condition that it was in before the holder began occupying the land.
- (6) The holder of the licence can only use the licensed land for the purpose specified in the licence.
- (7) The holder of the licence must indemnify and release the Minister from any liability in connection with the licence holder's use or occupation of the licensed land.
- (8) The Minister may terminate the licence at the Minister's absolute discretion.

### **33 Notifications to Minister by transferee of land benefited by licensed Crown land**

For the purposes of section 5.27 (5) of the Act:

- (a) the manner prescribed for notifying the Minister is by lodging a written notice with the Department accompanied by the relevant fee, and
- (b) the period prescribed for giving the notice is the period of 28 days after the date of the transfer.

### **34 Notification to Secretary by transferee of enclosure permit**

For the purposes of section 5.37 (2) of the Act:

- (a) the manner prescribed for notifying the Secretary is by lodging a written notice with the Department accompanied by the relevant fee, and
- (b) the period prescribed for giving the notice is the period of 28 days after the date of the transfer.

### **35 Prescribed activities prohibited on easements for public access**

- (1) For the purposes of section 5.51 (4) of the Act, the following activities are prescribed as activities that may not be carried out on land the subject of an easement for public



access:

- (a) camping,
  - (b) using firearms or any other weapon or thing used for hunting,
  - (c) lighting fires (except as part of a hazard reduction exercise),
  - (d) taking any animal onto the land (unless the animal is a companion animal as defined in the *Companion Animals Act 1998*),
  - (e) damaging or injuring any fauna or flora,
  - (f) setting traps,
  - (g) driving any motor vehicle, trail bike or other vehicle propelled by mechanical power for a purpose other than to access other land (for example, for recreational purposes),
  - (h) depositing or leaving any rubbish, litter, dead animal or other similar matter.
- (2) Despite subclause (1), an activity referred to in subclause (1) (a), (b), (d), (f) or (g) may be carried out on land the subject of an easement for public access if a sign is displayed with the authority of the Minister on the site of the easement authorising the activity or if the Minister has authorised the activity in writing.
- (3) Also, subclause (1) does not prevent recreational or commercial fishing activities.

### **36 Structures that may be erected on easements for public access**

For the purposes of section 5.52 (2) (b) of the Act, the following types of structure (in addition to fences and gates) may be erected, without the written consent of the Minister, on land the subject of an easement for public access by the owner or lessee of land affected by the easement, but only if the structure does not unduly hinder public entry to the land:

- (a) cattle grids,
- (b) pipelines,
- (c) pumps.

### **37 Prescribed assessment principles for granting consent to remove covenants or restrictions**

- (1) The principles specified in this clause are the prescribed assessment principles for the purposes of section 5.57 (5) of the Act.
- (2) Natural and cultural conservation values should be maintained.

- (3) Habitat connectivity should be maintained.
- (4) There should be no increase in the number or severity of threats to biodiversity.

### **38 Minimum rents and adjustment dates**

- (1) For the purposes of the definition of **minimum base rent** in section 6.4 (5) of the Act, \$490 is prescribed.
- (2) For the purposes of the definition of **rent base adjustment date** in section 6.4 (5) of the Act, 1 January 2018 is prescribed as the rent base adjustment date in relation to the minimum base rent prescribed by subclause (1).
- (3) For the purposes of the definition of **minimum rent base** in section 7.8 (9) of the Act, the amount of the minimum rent applicable under section 6.4 of the Act for the holding concerned is prescribed.

### **39 Modification of [Land Acquisition \(Just Terms Compensation\) Act 1991](#) in its application to withdrawal of land from holding for public purposes**

In determining compensation payable under section 7.8, the provisions of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) are modified to the extent necessary to limit the amount of compensation payable for the withdrawal of land under that section to the value of any improvements made by the holder of the holding over the land as at the date of the withdrawal.

### **40 Purchase applications**

- (1) For the purposes of clause 5 of Schedule 4 to the Act, the Minister must take into account each of the following considerations in determining whether to grant or refuse a purchase application under Schedule 4 to the Act for Crown land under a Western lands perpetual lease within the meaning of that Schedule:
  - (a) whether the land has areas developed for agricultural uses (including dry land or irrigated cultivation, agriculture, horticulture, viticulture or similar uses),
  - (b) whether the land has legal access,
  - (c) whether the land contains travelling stock reserves,
  - (d) whether the land has any easements or third party access arrangements,
  - (e) whether there are any outstanding compliance issues associated with the land,
  - (f) whether there are any outstanding payments owing on the land,
  - (g) whether the land has extractive materials required by the State,
  - (h) whether the land is likely to be required for a future public purpose,

- (i) whether any part of the land is protected for environmental or conservation purposes (such as conservation reserves or environmental offsets),
  - (j) whether the land is likely to be required for public infrastructure.
- (2) If a purchase application is made under Schedule 4 to the Act after the commencement of that Schedule for a lease that is mortgaged, the application must be endorsed with the mortgagee's consent.
- (3) If the fee for the application is in excess of the cost of dealing with the application, the balance must be applied, firstly, to any duty payable and, secondly, to payment of any amount due on the purchase.

#### **41 Surrender of lands and leases**

- (1) This clause applies to the surrender of land or a lease under section 4.3 of the Act.
- (2) If the Minister consents to the surrender, the holder of the land or the lease must lodge with the Department a surrender instrument in the form approved by the Minister together with:
- (a) the balance, if any, of the cost of dealing with the surrender, and
  - (b) the Crown grant or certificate of title, if any, relating to the land the subject of the surrender.
- (3) If the application for the consent to the surrender is made after the commencement of section 4.3 of the Act, the surrender instrument for land or a lease that is mortgaged must be endorsed with the mortgagee's consent.
- (4) If the fee for the application for consent to the surrender paid exceeds the cost of dealing with the surrender, the balance is to be refunded.
- (5) A holder of land or a lease is exempt from the requirement to obtain the Minister's consent for the surrender of the land or lease (or to pay for the costs of dealing with the surrender) if the surrender is being made at the insistence, or for the benefit, of the Crown.

## **Part 5 Crown land in Western Division**

### **Division 1 Interpretation**

#### **42 Definitions**

In this Part:

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

***intensive agriculture*** includes irrigated farming, feedlot farming, aquaculture and

pisciculture.

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

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

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

**rural Western lands lease** has the same meaning as in Schedule 3 to the Act.

**urban Western lands lease** has the same meaning as in Schedule 3 to the Act.

## Division 2 Perpetual Western lands leases

### 43 Approved activities on land under perpetual Western lands leases

- (1) For the purposes of clause 19 of Schedule 3 to the Act:
  - (a) the activity specified in Column 1 of the Table to this subclause is prescribed as an approved activity, and
  - (b) the requirements specified in Column 2 of the Table opposite the activity are prescribed in relation to the carrying out of the activity for it to be an approved activity.

#### Table

	<b>Column 1</b>	<b>Column 2</b>
	<b>Approved activity</b>	<b>Requirements for approved activity</b>
1	Conservation	The holder of the lease must not restrict the Forestry Corporation of New South Wales from accessing Crown timber for harvesting purposes in accordance with any rights that the Corporation has under the <a href="#">Forestry Act 2012</a> .

		<p>The activity must be limited to 20 guests at any one time and use only existing farm buildings and infrastructure.</p> <p><b>Note—</b></p> <p>Camping in connection with tourism and farm tourism is not limited to 2 nights at a time (as provided for recreation activities below).</p>
2	Tourism and farm tourism	<p>The holder of the lease must ensure the activity is covered by public liability insurance which covers the duration of activity of at least \$10 million in respect of each and every occurrence, and unlimited in the aggregate for any period of cover.</p>
3	Feedlots (except if they are for the purposes of designated development under the <i>Environmental Planning and Assessment Act 1979</i> )	<p>The activity must comply with any requirements applicable to the activity under the <i>Environmental Planning and Assessment Act 1979</i> or any other law.</p>
4	Aquaculture	<p>The activity must comply with any requirements applicable to the activity under the <i>Environmental Planning and Assessment Act 1979</i> or any other law.</p>
5	Sport and leisure events	<p>The holder of the lease must ensure that the events are covered by appropriate public liability insurance that covers the duration of events on the land of at least \$10 million in respect of each and every occurrence, and unlimited in the aggregate for any period of cover.</p>
6	Recreation	<p>Camping in locations without camping facilities must be for no more than 2 nights at a time.</p>
		<p>The exercises must be conducted and authorised by the Department of Defence of the Commonwealth.</p>
7	Military exercises	<p>The holder of the lease must ensure that appropriate public liability insurance is in place which covers the duration of the exercises of at least \$20 million in respect of each and every occurrence, and unlimited in the aggregate for any period of cover.</p>

8	Recreational shooting	<p>Shooters must be licensed to carry firearms under the <i>Firearms Act 1996</i>.</p> <p>Warning signs must be displayed on the perimeter of the land.</p> <p>Only feral animals are to be hunted unless hunters are authorised to harm animals under the <i>Biodiversity Conservation Act 2016</i>.</p> <p>The holder of the lease must ensure that appropriate public liability insurance is in place which covers the duration of the activity of at least \$20 million in respect of each and every occurrence, and unlimited in the aggregate for any period of cover.</p>
9	Animal breeding	Nil.
10	Dog kennel operation	<p>The activity must comply with any requirements applicable to the activity under the <i>Environmental Planning and Assessment Act 1979</i> or any other law.</p>
11	Cattery operation	<p>The activity must comply with any requirements applicable to the activity under the <i>Environmental Planning and Assessment Act 1979</i> or any other law.</p>
12	Cultivation	<p>The cultivation must be for only one or more of the following purposes:</p> <ul style="list-style-type: none"><li>(a) improved pasture on an area not exceeding 1,000 hectares,</li><li>(b) fodder production for on-farm use on an area not exceeding 100 hectares,</li><li>(c) the control of rabbits or plants that are pests,</li><li>(d) saltbush planting,</li><li>(e) plantation of a kind of species for which the Secretary has previously given written approval on an area not exceeding 50 hectares.</li></ul>

13	Film making	<p>The holder of the lease must give at least 28 days prior notice of the activity to the Secretary of the Department.</p> <p>Any fee charged by the holder of the lease must reflect the holder's costs only.</p> <p>The film makers must be required to comply with safety measures and appropriate operational requirements.</p> <p>The holder of the lease must ensure that appropriate public liability insurance is in place which covers the duration of the activity of at least \$10 million in respect of each and every occurrence, and unlimited in the aggregate for any period of cover.</p>
14	Motorsport rally	<p>The holder of the lease must give at least 28 days prior notice of the activity to the Secretary of the Department.</p> <p>The holder of the lease must ensure that appropriate public liability insurance is in place which covers the duration of the activity of at least \$20 million in respect of each and every occurrence, and unlimited in the aggregate for any period of cover.</p>
15	Fishing	<p>The activity must be recreational fishing only that is not carried out by a commercial operator in the course of the operator's business.</p> <p>The activity must be carried out in accordance with any applicable requirements of the <a href="#">Fisheries Management Act 1994</a>.</p>
16	Fossicking	<p>The activity must be carried out in accordance with any applicable requirements of the <a href="#">Mining Act 1992</a>.</p>
17	Small to medium scale renewable energy generation	Nil

(2) In this clause:

**recreation** means hiking, camping or any other recreational activity that has a minimal environmental impact.

**small to medium scale renewable energy generation** means energy generation from a renewal energy source (for example, from the sun, water or wind) with a generation capacity of no more than 5 megawatts of energy.

## Division 3 Rural Western lands holdings

### 44 Annual rent

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

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

(2) However, the annual rent cannot be less than the minimum rent applicable under section 6.4 of the Act.

### 45 Calculation of base rent

The **base rent** referred to in clause 44 (1) is to be calculated for a rural Western lands holding as follows:

$$\text{Base rent} = S \times [(A_1 \times k_1) + (A_2 \times k_2) + (A_3 \times k_3) + (A_4 \times k_4) + (A_5 \times k_5) + (A_6 \times k_6) + (A_7 \times k_7)]$$

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 Western lands 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 specified by clause 50 for the first 1,000 hectares of a rural Western lands holding.

**A<sub>2</sub>** represents 4,000 hectares or (for a rural Western lands 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 specified by clause 50 for the second to the fifth 1,000 hectares (inclusive) of a rural Western lands holding.

**A<sub>3</sub>** represents 5,000 hectares or (for a rural Western lands 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 specified by clause 50 for the sixth to the tenth 1,000 hectares (inclusive) of a rural Western lands holding.

**A<sub>4</sub>** represents 10,000 hectares or (for a rural Western lands 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 specified by clause 50 for the eleventh to the twentieth 1,000 hectares (inclusive) of a rural Western lands holding.

**A<sub>5</sub>** represents 10,000 hectares or (for a rural Western lands 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 specified by clause 50 for the twenty-first to the thirtieth 1,000 hectares (inclusive) of a rural Western lands holding.

**A<sub>6</sub>** represents 20,000 hectares or (for a rural Western lands 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 specified by clause 50 for the thirty-first to the fiftieth 1,000 hectares (inclusive) of a rural Western lands holding.

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

#### 46 Calculation of cultivation charge

The **cultivation charge** referred to in clause 44 (1) is to be calculated for a rural Western lands 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 the Act for a limited period of time pursuant to a cultivation consent under Part 5 of Schedule 3 to the Act, and **k<sub>8</sub>** represents an amount of money per hectare specified by clause 50 for such land.

**PC** represents the number of hectares in the holding on which cultivation is permitted under the 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 cultivation consent under Part 5 of Schedule 3 to the Act,

and **k<sub>9</sub>** represents an amount of money per hectare specified by clause 50 for such land.

#### 47 Calculation of intensive agriculture charge

The **intensive agriculture charge** referred to in clause 44 (1) is to be calculated for a rural Western lands holding as follows:

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

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 Minister, being used for or in connection with intensive agriculture, and **k<sub>10</sub>** represents an amount of money per hectare specified by clause 50 for such land.

#### 48 Calculation of rehabilitation rebate

The **rehabilitation rebate** referred to in clause 44 (1) is to be calculated for a rural Western lands 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 Minister, 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 specified by clause 50 for such land.

**PR** represents the number of hectares in the holding on which, in the opinion of the Minister, 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 specified by clause 50 for such land.

#### 49 Scaling factor for rent

- (1) This clause provides for the **scaling factor** referred to in clauses 45–48 for the financial year commencing on 1 July 2017 and for each subsequent financial year.
- (2) The scaling factor for the financial year commencing on 1 July 2017 is 1.16.
- (3) The scaling factor for each subsequent financial year is to be the scaling factor for the immediately preceding financial year plus half the CPI movement.

**Note—**

This formula will result in a reduction in the scaling factor in the case of a downward CPI movement.

- (4) The **CPI movement** is to be calculated as follows:

$$\text{CPI movement} = \frac{C_1}{C_2} - 1$$

where:

**C<sub>1</sub>** represents the CPI for the December quarter for the calendar year immediately preceding the financial year for which the scaling factor is to be determined.

**C<sub>2</sub>** represents the CPI for the December quarter for the calendar year immediately preceding the calendar year referred to in the definition of C<sub>1</sub>.

(5) In this clause:

**CPI** means the index known as the Weighted Average of Eight Capital Cities: All Groups Consumer Price Index that is published quarterly by the Australian Statistician.

## 50 Amounts of money represented by “k”

For the purposes of the calculations required by clauses 45–48, the symbols **k<sub>1</sub>–k<sub>12</sub>** in those clauses represent the amounts of money specified in the following Table in respect of each of those symbols:

### Table

Symbol	Land to which symbol relates	Amount (\$)
k <sub>1</sub>	each hectare of the first 1,000 hectares of a rural Western lands holding	0.30
k <sub>2</sub>	each hectare of the second to fifth 1,000 hectares (inclusive) of a rural Western lands holding	0.05
k <sub>3</sub>	each hectare of the sixth to tenth 1,000 hectares (inclusive) of a rural Western lands holding	0.03
k <sub>4</sub>	each hectare of the eleventh to twentieth 1,000 hectares (inclusive) of a rural Western lands holding	0.015
k <sub>5</sub>	each hectare of the twenty-first to thirtieth 1,000 hectares (inclusive) of a rural Western lands holding	0.008
k <sub>6</sub>	each hectare of the thirty-first to fiftieth 1,000 hectares (inclusive) of a rural Western lands holding	0.003
k <sub>7</sub>	each hectare in a rural Western lands holding after the fifty-thousandth	0.001
k <sub>8</sub>	each hectare of land in a rural Western lands holding on which cultivation is permitted under the Act for a limited period of time pursuant to a cultivation consent under Part 5 of Schedule 3 to the Act	0.30
k <sub>9</sub>	each hectare of land in a rural Western lands holding on which cultivation is permitted under the Act indefinitely	0.40
k <sub>10</sub>	each hectare in a rural Western lands holding which, in the opinion of the Minister, is being used for or in connection with intensive agriculture	2.30

k <sub>11</sub>	each hectare in a rural Western lands holding on which, in the opinion of the Minister, managed rehabilitation is being carried out on a temporary basis	0.30
k <sub>12</sub>	each hectare in a rural Western lands holding on which, in the opinion of the Minister, managed rehabilitation is being carried out on a permanent basis	0.40

## **51 Assessment of annual rent**

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

## **52 Ministerial guidelines**

- (1) The Minister may, by order published in the Gazette, establish guidelines with respect to the assessment of annual rents for rural Western lands holdings.
- (2) In determining any of the following for the purposes of this Division, regard must be had to any guidelines in force under this clause:
  - (a) whether land is or is not a single rural Western lands holding, or
  - (b) whether cultivation is or is not permitted under the Act on the whole or any part of a rural Western lands holding, or
  - (c) whether the whole or any part of a rural Western lands 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 Western lands holding, or
  - (e) any other matter relevant to the assessment of annual rent for a rural Western lands holding.

## Division 4 Urban Western lands leases

### 53 Annual rent

- (1) Annual rent is to be calculated for an urban Western lands 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 Western lands lease.

**p** represents a percentage specified by subclause (3) with respect to the class of land to which the urban Western lands lease belongs.

- (2) However, the annual rent cannot be less than the minimum rent applicable under section 6.4 of the Act.
- (3) For the purposes of the symbol **p** in the formula in subclause (1):
- (a) 6 percent is the percentage for Western lands leases of the Urban (Business) class (which is a class consisting of leases expressed to be granted or issued for business purposes),
  - (b) 3 percent is the percentage for Western lands leases of the Urban (General) class (which is a class consisting of all other urban leases).

### 54 Assessment of annual rent

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

## Division 5 Extension of terms of Western Lands leases

### 55 Application for extension of term lease

More than one Western Lands lease may be included in a single application under clause

32 of Schedule 3 to the Act for extension of the term of a Western Lands lease if they are worked as one holding.

**56 Extension of term to be notified to mortgagee**

If the term of a Western Lands lease that is mortgaged is extended under an application under clause 32 of Schedule 3 to the Act, notice of the extension is to be served by the lessee on the mortgagee within 28 days after the application is made.

**Division 6 Conversion of term Western lands leases into perpetual leases**

**57 Conversion of mortgaged term Western Lands lease to be notified to mortgagee**

If a Western Lands lease that is converted into a perpetual lease under an application under Division 7 of Part 3 of Schedule 3 is mortgaged, notice of the conversion is to be served by the lessee on the mortgagee within 28 days after the application is made.

**58 Survey fees for granted lease conversion applications**

- (1) The cost of any necessary survey payable under clause 35 (2) (f) of Schedule 3 to the Act must be paid to the Minister no later than 60 days after the Minister has advised the holder of the lease of the amount payable.
- (2) A survey fee (other than a subdivision fee) is not to be charged:
  - (a) to a lessee claiming title through a previous holder who has paid the survey fee, or
  - (b) if the survey has been carried out with the Minister's permission by a licensed surveyor employed by the lessee.
- (3) Survey fees or costs are payable to the Minister.

**Division 7 Cultivation consents under Part 5 of Schedule 3 to Act**

**59 Circumstances in which cultivation consent not required**

- (1) Cultivation consent for the cultivation of applicable Western land is not required to be obtained under clause 42 of Schedule 3 to the Act in any of the circumstances specified in the Table to this subclause, subject to any conditions set out in the Table.

**Table**

**Circumstance**

- |   |  |
|---|--|
| 1 | Cultivation on land held under a Western Lands lease, or under a licence or other tenure, granted or issued for the purpose of agriculture, grazing and agriculture combined or mixed farming, or for any similar purpose. |
|---|--|

- 2 Cultivation in connection with rehabilitation works undertaken by or under the direct guidance of the Minister.
- Cultivation in connection with rabbit ripping undertaken as part of a planned rabbit control program on land that is not:
- (a) within 20 metres of the bank of a stream or watercourse, or
- (b) within 100 metres of the bank of a lake or an ancient lake, or
- 3 (c) on a sand dune or a sandhill, or
- (d) within 20 metres of the edge of the carriageway of the constructed portion of a road under the control of Roads and Maritime Services or a local government authority.
- Cultivation carried out on a once only basis to control plants on land that are pests if it is not:
- (a) within 20 metres of the bank of a stream or watercourse, or
- (b) within 100 metres of the bank of a lake or an ancient lake, or
- 4 (c) on a sand dune or a sandhill, or
- (d) within 20 metres of the edge of the carriageway of the constructed portion of a road under the control of the Roads and Maritime Services or a local government authority.
- Cultivation carried out on a once only basis to allow the introduction of local, endemic native species on land that is not:
- (a) within 20 metres of the bank of a stream or watercourse, or
- (b) within 100 metres of the bank of a lake or an ancient lake, or
- 5 (c) on a sand dune or a sandhill, or
- (d) within 20 metres of the edge of the carriageway of the constructed portion of a road under the control of the Roads and Maritime Services or a local government authority.
- 6 Cultivation carried out on research, experimental or demonstration plots (not exceeding a total area of 10 hectares).
- 7 Cultivation in connection with fodder production on land (not exceeding a total area of 100 hectares), but only if the fodder is exclusively for on-farm use.
- 8 Cultivation on land that is not more than 30 metres wide and that is being cultivated in direct connection with the formation of a road, the construction of tank drains for water diversion or the maintenance of the perimeters of an airstrip.

9 Cultivation of an area of 5,000 square metres or less, but only if failure to cultivate would impede the authorised use of the land and the cultivation is being undertaken by or at the direction of Local Land Services or a Crown land manager, commons trust or local government authority with direct responsibility for the care, control and management of the land.

- (2) An exemption under this clause from the requirement for cultivation consent does not authorise:
- (a) cultivation in contravention of conditions applying to a Western Lands lease under the Act, or
  - (b) cultivation that is contrary to any direction given by the Minister, or
  - (c) cultivation on a sand dune or sandhill, or
  - (d) cultivation in a State forest, timber reserve or flora reserve under the [Forestry Act 2012](#).
- (3) Despite the exemptions under this clause, the Minister may, if the Minister considers it appropriate, require an application for a cultivation consent under clause 42 of Schedule 3 to the Act in respect of any cultivation to which that clause applies.

(4) In this clause:

**ancient lake** means land that formerly constituted a lake and that is distinguishable from its surrounding land by such features as its soil and vegetation and by a reasonably defined shore.

## Division 8 Enclosure permits

### 60 Giving of notices about applications

The Minister is to give notice of the time and place appointed for consideration of an application for an enclosure permit over Crown land in the Western Division to the holder of any land that appears to be directly affected by it.

## Part 6 Administration

### 61 Applications

- (1) An application for the exercise of a function under the Act or this Regulation is to be made in the form approved by the Minister from time to time and published on the website of the Department.
- (2) An application must be accompanied by the fee for the exercise of the function prescribed by this Regulation or approved by the Minister under section 12.8 of the Act.



- (3) Subclause (2) does not apply to the extent that the fee has been waived, reduced, remitted or postponed by the Minister under section 12.15 of the Act.

## 62 Fees for certain matters

- (1) A fee is payable for:
- (a) during the financial year commencing on 1 July 2018 and ending on 30 June 2019 (the **2018-19 financial year**)—each item specified in Part 1 of Schedule 1 for the amount specified for the item for that financial year, and
  - (b) during the financial year commencing on 1 July 2019 and ending on 30 June 2020 (the **2019-20 financial year**)—each item specified in Part 1 of Schedule 1 for the amount specified for the item for that financial year, and
  - (c) during and after the financial year commencing on 1 July 2020 and ending on 30 June 2021 (the **2020-21 financial year**)—each item specified in Part 2 of Schedule 1 for the amount of the fee units for the item.

### Note—

Other provisions of this Regulation also prescribe fees for particular matters. See, for example, clause 58 (Survey fees for granted lease conversion applications).

Also, section 12.8 of the Act enables fees to be charged for amounts approved by the Minister for services provided by the Department in connection with Crown land. These fees are published on the website of the Department.

- (2) A fee is payable during the period commencing on 19 March 2018 and ending on 30 June 2018 for an item specified in Part 1 of Schedule 1 for an amount equivalent to the amount specified for the item for the 2018-19 financial year.

## 63 Interest rates

- (1) The prescribed rate of interest is 8 percent per year plus the Bank Accepted Bill rate rounded to the second decimal place (rounding 0.005 upwards) for the purposes of section 12.12 (2) of, and clause 24 (3) (b) of Schedule 4 to, the Act.
- (2) The prescribed rate of interest is 8 percent for the purposes of clause 22 (2) of Schedule 2, and clause 11 (5) of Schedule 4, to the Act.
- (3) In this clause:

**Bank Accepted Bill rate** has the same meaning as in section 22 (4) of the [Taxation Administration Act 1996](#).

## 64 Advice on draft State strategic plans for Crown land

For the purposes of section 12.21 (2) of the Act, the Minister is required to seek advice from each of the following on a draft State strategic plan:

- (a) the Office of Local Government,
- (b) the New South Wales Aboriginal Land Council,
- (c) NTSCORP Limited,
- (d) the Office of Environment and Heritage,
- (e) the Department of Planning and Environment,
- (f) the Registrar-General.

#### **65 Electronic service of documents**

For the purposes of section 12.32 (1) (e) of the Act, service of a document by email or any other electronic means is authorised if the recipient consents to service of a document of that kind in that way.

#### **66 Provision of information about holdings to local councils**

The Secretary, or a person authorised by the Secretary, may disclose the following information about a holding or enclosure permit (and its holder) to a local council for use in connection with the exercise of local council functions under the [Local Government Act 1993](#):

- (a) the holder's name,
- (b) the holding number,
- (c) the commencement date for the holding or permit,
- (d) a description of the land to which the holding or permit relates,
- (e) the holder's postal address,
- (f) the purpose of the holding or permit,
- (g) the area of the land under the holding.

### **Part 7 Miscellaneous**

#### **67 Meaning of "mineral"**

For the purposes of paragraph (b) of the definition of **mineral** in section 1.5 (1) of the Act, petroleum (as defined in the [Petroleum \(Onshore\) Act 1991](#)) is prescribed as a mineral for the purposes of all of the provisions of the Act.

#### **68 Divisions of the State—alteration or redefinition**

- (1) For the purposes of section 1.6 (5) (a) of the Act, a notice describing a proposal to alter or redefine the boundary between the Eastern and Central Division and the

Western Division of the State is required to be published:

- (a) in a newspaper circulating in the locality in which the alteration or redefinition of the boundary is to be made or a newspaper circulating generally in the State, and
  - (b) on the website of the Department.
- (2) The Minister is to provide a copy of the notice to each of the following:
- (a) the Registrar-General,
  - (b) the Surveyor-General,
  - (c) NSW Land Registry Services.

**69 Standard form trust instruments for trusts over institutional private trust land**

- (1) The instrument set out in Schedule 3 is prescribed as the standard form trust instrument for the purposes of clause 22 of Schedule 7 to the Act.
- (2) The following provisions apply in relation to any meeting of the trustees of institutional private trust land held under clause 22 of Schedule 7 to the Act to adopt a trust instrument in or to the effect of a standard form trust instrument:
- (a) written notice of the meeting must be given to each of the trustees at least 28 days before the day of the meeting,
  - (b) the written notice must state that the meeting will consider the adoption of a trust instrument, and
  - (c) a copy of the proposed trust instrument and the agenda for the meeting must be given to each trustee at least 10 days before the day of the meeting.

**70 Exemption from operation of section 3.22 of Act for granting short-term licences during initial period**

- (1) This clause applies to a council manager of dedicated or reserved Crown land during the initial period referred to in section 3.23 of the Act (the **pre-POM Crown land**) until whichever of the following occurs first:
- (a) the council adopts its first plan of management for the land for the purposes of section 3.23 of the Act,
  - (b) the land is classified as operational land with Minister's consent under section 3.22 of the Act.
- (2) The council manager is exempt from the operation of section 3.22 of the Act in respect of:
- (a) the granting of short-term licences over the pre-POM Crown land of a kind that can

- be granted by a Crown land manager under section 2.20 of the Act, and
- (b) the renewal of existing leases over pre-POM Crown land for a term not exceeding 21 years (including any option for the grant of a further term) if there are no additional permitted uses for the land, and
  - (c) the granting of new leases over pre-POM Crown land for a term not exceeding 21 years (including any option for the grant of a further term) if:
    - (i) there was a lease in force over the land immediately before the repeal of the *Crown Lands Act 1989* (the **previous lease**), and
    - (ii) there are no permitted uses for the land under the new lease that are additional to those that were permitted under the previous lease.

**Note—**

Section 3.17 of the Act enables Crown land managers to grant short-term licences under section 2.20 of the Act.

**71 Exemption from operation section 3.30**

A non-council manager is exempt from the operation of section 3.30 of the Act in respect of the provision of an annual report for the year ending 30 June 2018.

**72 Exemption from operation of section 5.9 of Act**

The following Crown land in the Western Division is exempt from the operation of section 5.9 of the Act:

- (a) Crown land under a continued tenure (as defined in Schedule 1 to the Act),
- (b) Crown land under a continued irrigation tenure (as defined in Schedule 2 to the Act).

**Schedule 1 Fees**

(Clause 62)

**Part 1 Fees payable before 2020-21 financial year**

Item	Type of fee	Fee during 2018-19 financial year	Fee during 2019-20 financial year
<b>Licences</b>			
1	Application for licence under the Act (other than an application referred to in item 2 or 2A)	\$438	\$493

2	Application for licence under the Act (domestic waterfront)	\$501	\$563
2A	Application for licence under the Act (short-term)	\$37	\$42
3	Application for transfer of domestic waterfront licence under section 5.24 of the Act	\$180	\$208
4	Notice of transfer of land or lease held by holder of Crown licence under section 5.27 (5) of the Act	\$68	\$79
<b>Leases</b>			
5	Application for lease under the Act	\$641	\$679
6	Application for Minister's consent to transfer lease under Division 5.5 of the Act	\$221	\$257
7	Application for redetermination of rent of a lease under section 6.7 of the Act	\$274	\$317
8	Application to surrender land or lease under section 4.3 of the Act	\$281	\$326
<b>Enclosures</b>			
9	Application for enclosure permit under section 5.34 of the Act	\$180	\$208
10	Application for additional enclosure permit under section 5.35 of the Act	\$180	\$208
11	Application for combination of enclosure permits under section 5.41 of the Act	\$180	\$208
12	Notice of transfer of land with an enclosure permit under section 5.37 of the Act	\$68	\$79
13	Application for direction to provide gates or other access under section 5.42 of the Act	\$180	\$208
14	Application for authority to cultivate enclosed road under section 5.43 of the Act	\$180	\$208
<b>Continued holdings</b>			
15	Application for land to be transferred or otherwise dealt with without the Minister's consent under clause 18 (1) of Schedule 1, clause 11 (1) of Schedule 2 or clause 13 of Schedule 3 to the Act	\$180	\$208
16	Application for the Minister's approval to subdivision of a holding under clause 17 of Schedule 3 or clause 25 of Schedule 4 to the Act	\$402	\$466
17	Application for extension of term of Western lands lease under clause 32 of Schedule 3 to the Act	\$209	\$232

18	Application to convert term lease into a perpetual lease under clause 33 of Schedule 3 to the Act	\$625	\$625
19	Application for consent to cultivate land under clause 43 of Schedule 3 to the Act	\$594	\$660
20	Application to release special easement under clause 51 of Schedule 3 to the Act	\$237	\$237
21	Application by holder to purchase land comprised in a lease under clause 3 of Schedule 4 to the Act	\$474	\$549
21A	Applicable survey fee in relation to a purchase application of land in any Division of the State under clause 4 (2) of Schedule 4 to the Act	\$104	\$121
22	Application for consent to transfer or other dealings with continued holdings under clauses 16 (1) and 21 (1) of Schedule 1, clause 14 of Schedule 2 and clause 16 of Schedule 3 to the Act	\$221	\$257
	<b>Other dealings</b>		
23	Application for alteration of conditions or purpose of a holding under section 7.3 of the Act	\$180	\$208
24	Application for exemption from condition attaching to a holding or land under section 7.4 of the Act	\$180	\$208
25	Application to buy Crown land under Division 5.4 of the Act	\$501	\$563
26	Application for granting of easement (including a special easement) under section 2.18 or 5.47 of, or clause 50 of Schedule 3 to, the Act	\$294	\$340
27	Application for granting of owner's consent to lodge a development application	\$75	\$84
28	Application to remove restriction or covenant on Crown under section 5.57 of the Act	\$536	\$621

## Part 2 Fees payable during and after 2020-21 financial year

### Division 1 Fees payable

Item	Type of fee	Fee (in fee units)
	<b>Licences</b>	
1	Application for licence under the Act (other than an application referred to in item 2 or 2A)	5.47
2	Application for licence under the Act (domestic waterfront)	6.26
2A	Application for licence under the Act (short-term)	0.47

3	Application for transfer of domestic waterfront licence under section 5.24 of the Act	2.37
4	Notice of transfer of land or lease held by holder of Crown licence under section 5.27 (5) of the Act	0.89
<b>Leases</b>		
5	Application for lease under the Act	7.18
6	Application for Minister's consent to transfer lease under Division 5.5 of the Act	2.92
7	Application for redetermination of rent of a lease under section 6.7 of the Act	3.61
8	Application to surrender land or lease under section 4.3 of the Act	3.70
<b>Enclosures</b>		
9	Application for enclosure permit under section 5.34 of the Act	2.37
10	Application for additional enclosure permit under section 5.35 of the Act	2.37
11	Application for combination of enclosure permits under section 5.41 of the Act	2.37
12	Notice of transfer of land with an enclosure permit under section 5.37 of the Act	0.89
13	Application for direction to provide gates or other access under section 5.42 of the Act	2.37
14	Application for authority to cultivate enclosed road under section 5.43 of the Act	2.37
<b>Continued holdings</b>		
15	Application for land to be transferred or otherwise dealt with without the Minister's consent under clause 18 (1) of Schedule 1, clause 11 (1) of Schedule 2 or clause 13 of Schedule 3 to the Act	2.37
16	Application for the Minister's approval to subdivision of a holding under clause 17 of Schedule 3 or clause 25 of Schedule 4 to the Act	5.31
17	Application for extension of term of Western lands lease under clause 32 of Schedule 3 to the Act	2.55
18	Application to convert term lease into a perpetual lease under clause 33 of Schedule 3 to the Act	6.25
19	Application for consent to cultivate land under clause 43 of Schedule 3 to the Act	7.25
20	Application to release special easement under clause 51 of Schedule 3 to the Act	2.37

21	Application by holder to purchase land comprised in a lease under clause 3 of Schedule 4 to the Act	6.25
21A	Applicable survey fee in relation to a purchase application of land in any Division of the State under clause 4 (2) of Schedule 4 to the Act	1.37
22	Application for consent to transfer or other dealings with continued holdings under clauses 16 (1) and 21 (1) of Schedule 1, clause 14 of Schedule 2 and clause 16 of Schedule 3 to the Act	2.92
<b>Other dealings</b>		
23	Application for alteration of conditions or purpose of a holding under section 7.3 of the Act	2.37
24	Application for exemption from condition attaching to a holding or land under section 7.4 of the Act	2.37
25	Application to buy Crown land under Division 5.4 of the Act	6.26
26	Application for granting of easement (including a special easement) under section 2.18 or 5.47 of, or clause 50 of Schedule 3 to, the Act	3.87
27	Application for granting of owner's consent to lodge a development application	0.94
28	Application to remove restriction or covenant on Crown under section 5.57 of the Act	7.07

## Division 2 Adjustment of fees for inflation

### 1 Definitions

In this Division:

**CPI number** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

**financial year** means a period of 12 months commencing on 1 July.

### 2 Calculation of fee unit for purposes of Regulation

(1) For the purposes of this Regulation, a **fee unit** is:

- (a) in the financial year 2020-21—\$100, and
- (b) in each subsequent financial year—the amount calculated as follows:

$$\$100 \times \frac{A}{B}$$

where:

**A** is the CPI number for the March quarter in the financial year immediately



preceding the financial year for which the amount is calculated.

**B** is the CPI number for the March quarter of 2020.

- (2) The amount of a fee unit is to be rounded to the nearest cent (and an amount of 0.5 cent is to be rounded down).
- (3) However, if the amount of a fee unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.

### **3 Rounding of fee amounts**

The amount of a fee calculated by reference to a fee unit is to be rounded to the nearest dollar (and an amount of 50 cents is to be rounded down).

### **4 Notice of indexed fees**

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to:
  - (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of that amount can be published on the NSW legislation website, and
  - (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.
- (2) This Part operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the notification or other notice required by this clause.

## **Schedule 2 Penalty notice offences**

For the purposes of section 11.3 of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
Section 3.45 (4) (a) or (b)	\$1,100

Section 5.27 (5)	\$330
Section 5.37 (2)	\$330
Section 5.39 (2)	\$2,200 (for a corporation) or \$1,100 (for an individual)
Section 5.42 (3)	\$2,200 (for a corporation) or \$1,100 (for an individual)
Section 5.51 (5)	\$220
Section 9.2 (1) or (2)	\$2,200 (for a corporation) or \$1,100 (for an individual)
Section 9.3 (1) or (2)	\$2,200 (for a corporation) or \$1,100 (for an individual)
Section 9.4 (2)	\$2,200 (for a corporation) or \$1,100 (for an individual)
Section 9.5 (3)	\$440 (for a corporation) or \$220 (for an individual)
Section 9.6 (3)	\$330
Section 9.6 (6)	\$220
Section 9.9 (4)	\$2,200 (for a corporation) or \$1,100 (for an individual)
Section 9.18 (2)	\$2,200 (for a corporation) or \$1,100 (for an individual)
Section 9.19 (2)	\$2,200 (for a corporation) or \$1,100 (for an individual)
Section 10.8 (6)	\$110
Section 11.17	\$2,200 (for a corporation) or \$1,100 (for an individual)

**Offences under this Regulation**

Clause 5 (2)	\$220
Clause 8 (3)	\$220
Clause 8 (4)	\$220
Clause 9 (1)	\$220

**Schedule 3 Standard form trust instrument for trust over institutional**

## private trust land

(Clause 69 (1))

### Private Institutional Trust Instrument made at [insert location] on [insert date]

#### Trustees:

The Trustees are detailed in the Schedule to this Instrument (together, **the Trustees**).

#### As Trustees for:

[Insert institution] of [insert address] (**the Institution**).

#### Background

The Institution wishes the Trustees to care for, maintain and manage the Land in accordance with this Instrument. The Trustees have consented to act as trustees of the Land in accordance with this Instrument.

The *Trustees of Schools of Arts Enabling Act 1902* (NSW) previously provided for the appointment and operation of the Trustees.

The *Trustees of Schools of Arts Enabling Act 1902* (NSW) has been repealed by the Crown Land Management Act. This Instrument is in the form of the standard form trust instrument referred to in clause 22 of Schedule 7 to the Crown Land Management Act.

#### Operative provisions

### Part 1 Definitions and interpretation

#### 1.1 Definitions

In this Instrument, unless the context otherwise requires:

**Board** means the board comprised of the Trustees at a meeting duly convened as a Board meeting at which a quorum is present in accordance with Part 12.

**Cash** includes cheques, bank cheques, deposits at call and moneys standing to the credit of any bank account of the Trustees (held in that capacity).

**Commencement Date** means the later of:

- (a) the date the Trustees adopt this Instrument, or
- (b) the date the Minister publishes a notice in the Gazette that authorises the adoption of this Instrument in accordance with clause 22 (5) of Schedule 7 to the Crown Land Management Act.

**Crown Land Management Act** means the *Crown Land Management Act 2016* (NSW).

**Event of Insolvency** means:

- (a) a controller, administrator, receiver and/or manager or similar officer is appointed in respect of a person or any asset of a person, or
- (b) a liquidator or provisional liquidator is appointed, or
- (c) an order is made for the bankruptcy of an individual or their estate under any Insolvency Provision, or
- (d) anything analogous to anything referred to in paragraphs (a)-(c), or
- (e) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

**Financial Year** means each period of 12 months ending on 30 June.

**Government Agency** means:

- (a) a government or government department or other body, or
- (b) a governmental, semi-governmental or judicial person.

**Income** means the net income of the Trust determined in accordance with relevant accounting principles and practices.

**Income Tax Exemption** means an endorsed tax exemption in respect of all Income of the Trust granted by the Australian Taxation Office.

**Insolvency Provision** means any law relating to insolvency, liquidation, winding up or bankruptcy.

**Institution** means [*insert name of Institution*].

**Land** means [*insert Lot(s) and Deposited Plan(s) of the lands managed by the Trust*], being land reserved, dedicated, granted or held for the purposes of the Institution and known as [*insert any street address or other name or identifier*].

**Minister** means the Minister administering the Crown Land Management Act.

**Previous Trustees** means the trustees appointed before the Commencement Date pursuant to the [Trustees of Schools of Arts Enabling Act 1902](#) (NSW).

**Property** includes the Land and any movable or immovable property such as cash (including deposits at call and moneys to the credit of any bank account of the Trustees held in that capacity), and any beneficial interest in any of the foregoing.

**Purpose** has the meaning given in clause 3.1.

**Schedule 1** means Schedule 1 to this Instrument, which identifies certain administrative powers of the Trustees.

**Schedule 2** means Schedule 2 to this Instrument, which identifies the trustees forming the Trustees, as amended from time to time in accordance with clause 10.3.

**Tax** includes all income tax, withholding tax, stamp and other duties, goods and services tax and other taxes, levies, imposts, deductions and charges whatsoever as well as interest on them and penalties with respect of them (if any) and charges, fees or other amounts.

**Trust** means the trust established pursuant to this Instrument.

**Trust Property** means all Property for the time being held by the Trustees upon the terms of the Trust including:

- (a) any further Property as is from time to time provided to or settled upon the Trust, and
- (b) any proceeds of any of the foregoing.

**Trustees** means trustees of the Trust.

**Vesting Day** means the first to occur of:

- (a) the 79th anniversary of the Commencement Date of this Instrument, and
- (b) the date on which the Trust terminates in accordance with the terms of this Instrument.

## 1.2 Interpretation

In this Instrument, unless the context indicates a contrary intention:

- (a) a reference to any document or agreement is to that document or agreement as amended, novated, varied or replaced from time to time, and
- (b) a reference to any legislation or to any section or provision of legislation includes any statutory amendment and all ordinances, by-laws, regulations and other statutory instruments issued under that legislation, and

- (c) words importing the singular include the plural and vice versa, and
- (d) headings are for convenience only and do not affect interpretation.

## **Part 2 The Trust**

### **2.1 Appointment of trustees**

From the Commencement Date, the Trustees are appointed as the trustees of the Trust to hold the Trust Property on trust for the Purpose and on the terms and conditions set out in this Instrument.

### **2.2 Acceptance**

The Trustees accept the appointment as trustees of the Trust and declare that they hold the Trust Property on trust for the Purpose on the terms and conditions set out in this Instrument.

### **2.3 Application of Trust Property**

- (1) Subject to the following, the Trust Property will be applied solely in furtherance of the Purpose.
- (2) Nothing in this clause should be read as limiting the Trustee's power to take any action under or in accordance with clause 4.1 (2) (b), (c) or (d) or 4.2.

### **2.4 Name of the Trust**

The Trust will be known as the “[insert name]” or such other name as the Trustees determine from time to time.

## **Part 3 Purpose**

### **3.1 Trust's purpose**

The Trustees must hold the Trust Property and the Income of the Trust Property derived in each Financial Year on trust for the purpose of:

- (a) improving, maintaining and managing the Land, and
- (b) furthering the objectives of the Institution, and
- (c) such other purposes as determined by the Trustees provided that the purposes are consistent always with paragraphs (a) and (b).

### **3.2 Purpose is primary**

To the extent permitted by law, clause 3.1 is primary to, and prevails over, any other power, obligation or duty of the Trustees and any other provision of this Instrument.

## **Part 4 Trustees**

### **4.1 Powers**

- (1) Subject to this Instrument, and having regard to the Purpose, the Trustees have all the powers in respect of the Trust Property that they could exercise if they were the absolute and beneficial owners of the Trust Property.
- (2) Without limiting subclause (1), the Trustees may from time to time:
  - (a) sell, lease, mortgage or otherwise dispose of the Land or any part the Land, and
  - (b) grant a licence in respect of the Land or any part of the Land, and

- (c) develop the Land or any part of the Land, or enter into an agreement for the development of the Land or any part of the Land, and
  - (d) grant any easement, covenant or other dealing in respect of the Land or any part of the Land, and
  - (e) do the other administrative matters set out in Schedule 1, and
  - (f) do such other matters, such as the granting of consents or authorisations necessary or ancillary to the matters described in paragraphs (a)–(d) above.
- (3) Without limiting subclause (1), the Trustees may enter an agreement with the Minister for the Land to be transferred to the Crown in accordance with Schedule 7 to the Crown Land Management Act.
- (4) Without limiting subclause (1), the Trustees may from time to time exercise the following additional powers:
- (a) to invest the Trust Property in the manner set out in clauses 4.2 and 4.3, and
  - (b) to raise and collect funds, to invite and receive contributions, to accept contributions by way of gifts or grants, and
  - (c) to pay any Tax incurred by or in respect of the Trust, and
  - (d) to apply for endorsement as an Income Tax Exemption, and
  - (e) to exercise the powers set out in Schedule 1, and
  - (f) to exercise any express and implied powers conferred upon the Trustees by any legislation,
- subject to the provisions of this Instrument, in particular Part 3, and any restrictions contained in any legislation or other law as it relates to trusts.
- (5) If, by reason of:
- (a) changes in the law affecting the operation of the Trust for the Purpose, or
  - (b) changes in the law affecting the Trust Property, or
  - (c) any omission or error in the scope of this clause,

the better administration of the Trust supports the Trustees being given further administrative or other powers, then the Trustees may amend the provisions of this Instrument to the extent as may be necessary, provided always that nothing in this clause can permit any amendment that is not consistent with the Purpose.

## **4.2 Investment**

Without limiting the powers in clause 4.1 and subject to the other provisions of this Instrument, the Trustees may invest, pay or apply the Trust Property in any manner they deem fit, including:

- (a) investment of any asset of the Trust Property in any form of investment, and
- (b) sale, transfer, disposal, surrender, termination, release or renewal of any investment comprised in the Trust Property, and
- (c) purchase or acquisition of any Property, and
- (d) purchase, transfer, lease, including any operating lease, sublease, licence, hire, or create any security interest over, any Property, and
- (e) purchase insurance.

### **4.3 Investment assessment**

In the exercise of any investment power, including the investment powers set out in clause 4.2, the Trustees must act prudently and with due caution and have regard to all relevant risks and other matters, so far as they are appropriate to the circumstances of the Trust.

### **4.4 Nothing contrary to Purpose**

The Trustees will not have or exercise powers in relation to any dealing or use whatsoever with the Trust Property that is not in accordance with the Purpose.

## **Part 5 Application of Income**

### **5.1 Distribution**

Until the Vesting Day, the Trustees will in each Financial Year disburse, pay or apply all or any part of the Income of the Trust Property for the Purpose in the proportions that the Trustees think fit.

### **5.2 Accumulation**

The Trustees may, in a Financial Year, accumulate and retain for any period that they think appropriate for the furtherance of the Purpose but not greater than a period permitted by law, all or any part of the Income of the Trust Property derived during that Financial Year.

## **Part 6 Trustee's obligations**

### **6.1 Trustee's obligations**

The Trustees must:

- (a) act continuously as Trustees until they have resigned or vacated their roles, and
- (b) exercise reasonable care, skill and diligence in carrying out their functions and exercising rights and performing their obligations under this Instrument in the utmost good faith having regard to the Purpose, and
- (c) comply with any applicable law relating to accumulation of trust income in the exercise of any power under this Instrument, and
- (d) except as provided in this Instrument, not dispose of, encumber or part with possession of the Trust Property, and
- (e) subject to being indemnified to their satisfaction, institute, prosecute, defend and compromise any legal, administrative and arbitral proceedings related to its obligations as trustees, in such places and jurisdictions as the Trustees think fit, and
- (f) retire when required to do so under this Instrument, and
- (g) act in accordance with the decisions of the Board, unless such decisions constitute a breach of this Instrument or a breach of law.

## **Part 7 Proceedings of Trustees**

### **7.1 Systems and procedures**

The Trustees may establish rules, policies, systems and procedures to assist with determining whether to apply any part of the Trust Property to any fund, authority or institution in accordance with the Purpose, and may amend or revoke any such rules, policies, systems and procedures subject to the terms and conditions in

this Instrument.

## **7.2 Records and accounts**

The Trustees must keep accurate minutes, records and accounts of their trusteeship and all receipts and outgoings, including such records required by law and as to ensure that the Trust Property is at all times distinct and identifiable from any other Property not subject to the Trust and have the accounts audited from time to time as determined by the Trustees.

## **Part 8 Liability of Trustees**

### **8.1 Limitation of liabilities of Trustees**

The Trustees are not, subject to the provisions of this Instrument, liable for any liability, loss, costs or expenses caused or contributed to by any act or omission of the Trustees including without limitation:

- (a) anything done by them in good faith in reliance upon any instrument, except when they have reason to believe that the instrument is not genuine and not to have been passed or signed by the proper parties, and
- (b) any failure to do anything because they are prevented or hindered from doing it by law, and
- (c) payments made by them in good faith to a Government Agency, and
- (d) a failure by any person to carry out an agreement with the Trustees in relation to the Trust, and
- (e) a failure to comply with this Instrument in circumstances where it has become impossible or impracticable to do so because of an Event of Insolvency of any person.

## **Part 9 Remuneration of Trustees**

### **9.1 Fees and payment of bona-fide costs and expenses**

Subject to the provisions of this Instrument, the Trustees may reimburse themselves out of the Trust Property only for reasonable liabilities, costs or expenses which they incur in their capacity as trustees of the Trust Property.

### **9.2 Limitation**

The Trustees are not entitled to any reimbursement or indemnity from the Trust Property for costs, expenses and liabilities:

- (a) arising from or in connection with any bad faith, fraudulent or illegal act or omission, negligence or wilful or reckless disregard of the terms of this Instrument by the Trustees, or
- (b) incurred by the Trustees other than in their capacity as trustees of the Trust Property.

## **Part 10 Appointment and retirement of Trustees**

### **10.1 Retirement for cause**

A Trustee must immediately retire as a trustee of the Trust if:

- (a) an Event of Insolvency occurs in respect of that Trustee and that Trustee becomes insolvent in his or her personal capacity, or
- (b) a Trustee fails or neglects to carry out or satisfy any duty imposed on the Trustee by this Instrument.

If a Trustee fails to so retire, the other Trustees will have the right to immediately remove that Trustee.

### **10.2 Resignation of Trustees**



A Trustee may resign from office by providing 60 days (or such lesser period as is agreed) prior written notice of the proposed resignation.

### **10.3 Appointment of Trustees**

On retirement or removal pursuant to clause 10.1, or resignation of a Trustee pursuant to clause 10.2, the Trustees will be entitled to appoint a successor. On the removal or appointment of a Trustee under this clause, Schedule 2 may be updated (to identify any new Trustee or the removal of any Trustee), without the need for this Instrument or any amending document to be executed.

### **10.4 Trust Property to be vested in new Trustee**

Each Trustee on retirement, resignation or removal, vests the Trust Property or causes it to be vested in such new Trustee, will deliver to such new Trustee all books, documents, records and other property whatever relating to the Trust Property, and must execute and deliver any documents and do every other thing that is necessary or desirable to effect the appointment of the new Trustee.

### **10.5 New Trustee to execute deed**

Each new Trustee will execute a deed in the same form as this Instrument by which the new Trustee will undertake all the obligations of a retiring Trustee under this Instrument.

## **Part 11 Termination**

### **11.1 Term of the Trust**

The Trust begins on the Commencement Date and ends on the Vesting Day, unless terminated earlier in accordance with clause 11.3.

### **11.2 Realisation of the charitable Trust Property**

- (1) As soon as practicable after the Vesting Day or winding up of the Trust, the Trustees will realise the remaining Trust Property in accordance with subclause (2).
- (2) The proceeds of realisation of the Trust Property and any net income of the Trust Property for the relevant Financial Year will be applied in the following order of priority:
  - (a) in payment of or provision for the debts, costs, charges, liabilities, expenses, claims and demands incurred or anticipated by the Trustees,
  - (b) in payment to the Trustees of any moneys owing to the Trustees under this Instrument.

### **11.3 Winding up of the Trust**

The Trust terminates if any of the following occur:

- (a) the Land is transferred to the Crown in accordance with Schedule 7 to the Crown Land Management Act,
- (b) the Trust Property does not contain any Property for a period exceeding 12 months,
- (c) the Trust Property consists of no material Property.

## **Part 12 Meetings of Trustees**

### **12.1 Meetings**

The Trustees are to meet together (as the Board) for the purposes of satisfying their obligations under this Instrument. The Board:

- (a) is to consist of Trustees, and

- (b) is to conduct and record its activities by passing resolutions of a majority of the Trustees, and
- (c) requires a quorum of 50 percent of the Trustees present (including the Chair, but excluding any Trustee excluded due to a conflict of interest), and
- (d) must record any conflicts of interest and the Chair will determine if a conflict of interest requires a Trustees to be excused from participating on the voting for any resolution, and
- (e) must meet 11 times per year, or at such other times as the Board determines, and
- (f) may delegate its functions to any person.

## **12.2 Appointment of Chair**

One of the Trustees may be selected by the Board as Chair of the Board. The Board may remove the Chair and appoint another of the Trustees as Chair, at such times as the Board considers appropriate. The Chair may appoint an acting Chair from time to time.

## **12.3 Minutes**

Before each meeting of the Board, the agenda for the meeting and the minutes and actions of any previous meeting are to be circulated at least one week prior to the Board meeting.

## **Part 13 Amendments to the Trust**

### **13.1 Amendments**

The Trustees may by deed amend, vary, add or delete any provision of this Instrument if:

- (a) in the opinion of the Board, it is necessary or expedient to comply with the provisions of any law or the requirement of any relevant Government Agency, or
- (b) in the opinion of the Board it:
  - (i) is made to correct a manifest error or ambiguity or is of a formal technical or administrative nature only, or
  - (ii) will enable the provisions of this Instrument to be more conveniently or advantageously administered, or
  - (iii) is otherwise expressly authorised by this Instrument.

### **13.2 Limitation on variations**

No alteration, variation or modification to the Trust will be capable of being made if it:

- (a) varies or revokes this clause, or
- (b) makes any Trustee a beneficiary under the Trust or capable of becoming a beneficiary, or
- (c) has the effect that the trust upon which the Trust Property is held is deemed not to be for the Purpose, or
- (d) varies or revokes the definition of Purpose.

## **Part 14 Limited recourse**

### **14.1 Limitation on Trustee's liability**

The Trustees enter into this Instrument only in their capacity as trustees of the Trust and in no other capacity. A liability incurred by a Trustee acting in their capacity as a trustee of the Trust arising under or in connection with this Instrument is limited to and can be enforced against that Trustee only to the extent to which it can be

satisfied out of the Trust Property. This limitation of a Trustee's liability applies despite any other provision of this Instrument (other than clause 14.3) and extends to all liabilities and obligations of the Trustees in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Instrument.

## **14.2 Claims against Trustees**

No party may sue the Trustees in respect of liabilities incurred by the Trustees acting in their capacity as trustees of the Trust in any capacity other than as trustees of the Trust, including seeking the appointment of a receiver (except in relation to the Trust Property), a liquidator, an administrator, or any similar person to the Trustees or prove in any liquidation, administration or arrangements of or affecting the Trustees (except in relation to the Trust Property).

## **14.3 Breach of Trust**

The provisions of this Part will not apply to any obligation or liability of the Trustees to the extent that it is not satisfied because under this Instrument or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the Trust Property as a result of the Trustee's fraud, negligence or wilful default.

## **14.4 Acts or omissions**

No act or omission of the Trustees will be considered fraudulent, negligent or a wilful default for the purpose of clause 14.3 to the extent to which the act or omission was caused or contributed to by any failure by any person appointed by the Trustees under this Instrument (other than a person whose acts or omissions the Trustees are liable for in accordance with this Instrument) to fulfil its obligations in relation to the Trust or by any other act or omission of any such person.

## **Part 15 Governing law and jurisdiction**

### **15.1 Governing law and jurisdiction**

This Instrument is governed by and will be construed in accordance with the laws of New South Wales.

## **Part 16 Miscellaneous**

### **16.1 Notices**

Every notice, direction or other communication of any nature whatsoever required to be served, given or made under or arising from this Instrument:

- (a) must be in writing, and
- (b) is served, given or made in relation to a party if it is:
  - (i) delivered to the last known address of that party (or at such other address as may be notified in writing by that party to the other party from time to time), or
  - (ii) posted by prepaid registered post to such address, and
- (c) is deemed to be given, served or made:
  - (i) in the case of prepaid registered post, on the fifth business day after posting, and
  - (ii) in the case of delivery by hand, on delivery.

### **16.2 Severability of provisions**

Any provision of this Instrument that is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions.

### **Schedule 1 Administrative powers**

Pursuant to clause 4.1 (4) (e), the Trustees may from time to time exercise the following additional powers:

- (a) to organise and co-ordinate activities in furtherance of the Purpose and to procure financial assistance in this respect, and
- (b) to hire, employ or enter into contracts of services with any person, corporation, Government Agency or other organisation on such terms as the Trustees deem fit in furtherance of the Purpose, and
- (c) to open and operate bank accounts including placing monies on fixed deposit, and
- (d) to enter into agreements and contracts in any manner and on such conditions as the Trustees may deem necessary in pursuance of the Purpose, and
- (e) to sign and to execute agreements, contracts and any other deed or instrument or in relation to and for the purpose of the Trust, and
- (f) to act in any other legitimate manner in order to realise the Purpose, and
- (g) to sue and settle any claim or proceedings or submit any claim for mediation or arbitration or appeal, and
- (h) to make rules and regulations for the management and administration of the Trust Property or any part of it and for matters connected with the Trust and its objects, and
- (i) generally to do all such other lawful business and things as are incidental to or conducive to the attainment of all or any of the Purpose.

### **Schedule 2 Trustees**

#### **Name of Trustee**

*[Include full name of each Trustee]*

#### **Contact details of Trustee**

*[Include telephone and/or email address of the Trustee concerned]*

### **Schedule 4 (Repealed)**