



New South Wales

Crown Land Management Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to consolidate in one Act the statutory provisions dealing with the ownership, use and management of the Crown land of New South Wales, and
- (b) to repeal certain legislation consequentially.

Summary of the operation of this Bill

Background

The *Crown Lands Act 1989* and *Crown Lands (Continued Tenures) Act 1989* were enacted to reform the law relating to the Crown land of New South Wales.

Until that time, the law applicable to Crown land was to be found in a miscellany of Acts, including the Acts known as the Closer Settlement Acts and the *Crown Lands Consolidation Act 1913*. There were also many different kinds of leases and other kinds of tenures that could be granted over Crown land.

The *Crown Lands Act 1989* repealed those Acts and sought to simplify the law applicable to Crown land and the kinds of tenures that could be granted over it. The principal focus of that Act was Crown land in the Eastern and Central Division of the State. The Act also provided for a process of Crown land assessment to identify the Crown land of the State and its potential capabilities and uses.

However, the *Crown Lands Act 1989* does not deal exhaustively with all Crown land. In particular, the *Crown Lands (Continued Tenures) Act 1989* has continued in force in relation to certain

pre-1989 leases and other tenures over Crown land and modified the application of the *Crown Lands Act 1989* over them. Also, the *Western Lands Act 1901* has continued to make special provision in relation to leases and other tenures over Crown land in the Western Division of the State.

This Bill

This Bill will consolidate in one Act the statutory provisions applicable to the ownership, use and management of the Crown land of New South Wales.

This Bill is the first stage of the process of creating a new legislative regime for Crown land by making provision for substantive matters concerning Crown land.

The second stage of the process will involve making consequential amendments to legislation and further repeals if required. It is intended that a Bill for that purpose will be introduced in 2017.

Application of proposed Act

The proposed Act will apply to both the Eastern and Central Division and the Western Division of the State, but not Lord Howe Island.

The new Act will increase the current inventory of the Crown land of New South Wales and bring it into one statutory regime. The land to be added includes the following:

- (a) any land vested in the Crown dedicated for a public purpose (as referred to in paragraph (a) of the definition of ***Crown land*** in section 3 (1) of the *Crown Lands Act 1989*),
- (b) any land in which an estate in fee simple is, or is taken to be, vested in a reserve trust (including land acquired by a reserve trust under section 101 of the *Crown Lands Act 1989*), but not including certain land vested by means of a Crown grant,
- (c) any land to which section 126 or 127 of the *Crown Lands Act 1989* applies,
- (d) any common to which the *Commons Management Act 1989* applies,
- (e) certain land to which the *Trustees of Schools of Arts Enabling Act 1902* applies that is vested in the Crown or was formerly vested in the Crown,
- (f) any land in the ***Area*** as defined in the *Hay Irrigation Act 1902*,
- (g) the land comprised by the Orange Show Ground,
- (h) any land in the ***Area*** as defined in the *Wentworth Irrigation Act 1890*.

Reforms to be introduced by proposed Act

The proposed Act will introduce a number of reforms. Some of these reforms were outlined in the *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response* (October 2015, ISBN 978 1 74256 694 8) published by the Department of Industry, Skills and Regional Development.

In addition to increasing the current inventory of the Crown land of New South Wales, the principal reforms are as follows:

- (a) dedicated or reserved Crown land will no longer be vested in reserve trusts,
- (b) the Minister will, instead, be able to appoint Crown land managers for dedicated or reserved Crown land (including local councils),
- (c) the Minister will be able to create statutory land managers for appointment as Crown land managers (with board members of reserve trusts being automatically appointed by the proposed Act to statutory land managers for former reserve trust lands),
- (d) better governance structures and conduct requirements will be introduced for Crown land managers and their boards (where applicable),
- (e) the Minister will be able to issue Crown land management rules for the management of dedicated or reserved Crown land,

- (f) the Minister will be required to approve community engagement strategies for certain dealings or other action affecting Crown land (including altering or removing purposes for which Crown land is dedicated or reserved and preparing certain plans of management),
- (g) the terms and conditions of certain holdings will be permitted to deal with particular matters (such as the determination and redetermination of rent and the granting of subleases and sublicences) in a way that is different from default provisions for those matters set out in the proposed Act,
- (h) the determination and redetermination of rent for holdings over Crown land will be rationalised and simplified (and applied to certain existing special tenures after a transitional period),
- (i) the holder of a holding or permit will be required to pay any rent or other amount due to the Crown before the holder can transfer it to another person,
- (j) a local council that is appointed as a Crown land manager of dedicated or reserved Crown land will be able to manage the land in accordance with the provisions of the *Local Government Act 1993* applicable to community land (subject to certain exceptions and modifications),
- (k) the Minister will be able to transfer Crown land to local councils if the land is of local (and not State) significance,
- (l) special provisions will be introduced to protect native title rights and interests (including when Crown land is managed by or vested in local councils),
- (m) the current land assessment programme established by the *Crown Lands Act 1989* will be discontinued,
- (n) more flexible arrangements will be introduced for the sale, use and leasing of Crown land in the Western Division (including enabling certain additional leaseholders to purchase the freehold in their leased lands),
- (o) modern and robust provisions will be introduced for investigating compliance with, and enforcing, the proposed Act and holdings granted under it (including provisions based, in part, on those of the *Protection of the Environment Operations Act 1997*),
- (p) the Minister will be required to approve 10-year State strategic plans for Crown land based on draft plans prepared and submitted for approval by the Secretary of the Department of Industry, Skills and Regional Development (the *Secretary*).

Repeal of existing Crown land legislation and related legislation

The proposed Act will repeal the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989*, the *Western Lands Act 1901* and certain other legislation.

Outline of provisions

Part 1 Preliminary

Division 1.1 Introduction

Clause 1.1 sets out the name (also called the short title) of the proposed Act.

Clause 1.2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except for the following provisions (which will commence on the date of assent):

- (a) Division 4.2 (which will enable certain Crown land to be vested in local councils),
- (b) proposed section 13.5 (which will enable the Governor to make regulations under the proposed Act),
- (c) Schedule 7 (which contains savings, transitional and other provisions consequent on the enactment of the proposed Act, including for the provisions that commence on assent).

Clause 1.3 sets out the objects of the proposed Act.

Division 1.2 Interpretation

Clause 1.4 defines certain words and expressions used in the proposed Act and includes other general interpretative provisions.

Clause 1.5 defines the Eastern and Central Division and Western Division. It also enables the boundary between Divisions to be altered by regulation (as is currently the case under the *Crown Lands Act 1989*).

Division 1.3 Crown land

Clause 1.6 defines *Crown land* to mean each of the following:

- (a) land that was Crown land as defined in the *Crown Lands Act 1989* immediately before the Act's repeal,
- (b) land that becomes Crown land because of the operation of a provision of the proposed Act or a declaration made under proposed section 4.4,
- (c) land vested, on and from the repeal of the *Crown Lands Act 1989*, in the Crown (including when it is vested in the name of the State).

Schedule 7 provides for certain land under Acts repealed by Schedule 8 that is not currently Crown land to become Crown land under the proposed Act.

Clause 1.7 makes it clear that:

- (a) land is not Crown land if it is vested in a Minister, or a statutory body representing the Crown, with express power under an Act (except the *Interpretation Act 1987*) to hold land in the exercise of the Minister's or body's functions, and
- (b) land may be Crown land even though it is dedicated for a public purpose under the proposed Act or another Act or law.

The definition of *Crown land* in the *Crown Lands Act 1989* currently excludes land that is dedicated for a public purpose.

Clause 1.8 provides for the circumstances in which land will cease to be Crown land. This includes when the land is sold. It also makes it clear that land under an incomplete purchase is not Crown land. An *incomplete purchase* occurs when Crown land under a lease is sold to the leaseholder, but the full purchase price has not yet been completely paid (for example, because it is being paid by instalments).

Clause 1.9 provides for land to be vested in the Crown when it becomes Crown land because of the operation of a provision of the proposed Act or a declaration made under proposed section 4.4. It also ensures that certain rights and interests (including native title rights and interests) are preserved despite the vesting.

Clause 1.10 requires the Registrar-General to alter the Register under the *Real Property Act 1900* when requested by the Minister to state that the Crown is the registered proprietor of land under that Act if it has become Crown land because of the operation of a provision of the proposed Act or a declaration made under proposed section 4.4.

Clause 1.11 makes it clear that the Division has effect despite section 42 of the *Real Property Act 1900*. This provision is necessary to ensure that land that becomes Crown land under the proposed Act is treated as being owned by the Crown even though the registered proprietor's name has not yet been updated in the Register under the *Real Property Act 1900*.

Division 1.4 Application of Act

Clause 1.12 ensures that Schedules 1–4 prevail over the provisions of Parts 5–7 to the extent of any inconsistency. Those Schedules contain provisions relating to certain existing holdings over Crown land (defined as *continued holdings*), land in the Western Division and purchasable leases

for which special provision is currently made under the *Crown Lands (Continued Tenures) Act 1989*, *Hay Irrigation Act 1902*, *Wentworth Irrigation Act 1890* and *Western Lands Act 1901*.

Clause 1.13 provides that the proposed Act applies to both the Eastern and Central Division and the Western Division, but not Lord Howe Island.

Clause 1.14 provides that Crown land must not be occupied, used, sold, leased, licensed, dedicated, reserved or dealt with in any other way unless it is authorised by the proposed Act.

However, it also makes it clear that the proposed Act does not affect the operation of another Act to the extent that it makes special provision for any particular kind of Crown land or authorises Crown land to be dealt with in any manner inconsistent with the proposed Act.

For example, the proposed Act will not affect the operation of the *National Parks and Wildlife Act 1974* to the extent that it makes special provision for land reserved under that Act for national parks or any of the other purposes referred to in section 30A of that Act.

Part 2 Dedicated or reserved Crown land

Division 2.1 Introduction

Division 2.1 provides that the Division applies to all Crown land except Crown land excluded by the Minister by order published in the Gazette.

Division 2.2 Dedicated Crown land

Division 2.2 enables the Minister:

- (a) to dedicate Crown land for use for one or more purposes, and
- (b) to add Crown land to dedicated Crown land, and
- (c) to revoke a dedication of Crown land.

The Division requires proposed dedications, additions and revocations to be tabled in each House of Parliament. It also enables each House of Parliament to disallow a proposed revocation.

Division 2.3 Reserved Crown land

Division 2.3 enables the Minister:

- (a) to reserve Crown land for use for one or more purposes, and
- (b) to add Crown land to reserved Crown land, and
- (c) to revoke a reservation of Crown land.

Division 2.4 Use of dedicated or reserved Crown land

Division 2.4 makes it clear that dedicated or reserved Crown land may only be used for the following purposes:

- (a) the purposes for which it is dedicated or reserved,
- (b) any purpose incidental or ancillary to a purpose for which it is dedicated or reserved,
- (c) any other purposes authorised by or under the proposed Act or another Act.

Dedicated or reserved Crown land that is dedicated or reserved for use for more than one purpose may be used for any one or more of those purposes.

The Division also enables the Minister, in certain circumstances, to alter the purposes for which Crown land is dedicated or reserved (including by adding new purposes and removing spent purposes).

Division 2.5 Special powers of Minister

Division 2.5 preserves certain special powers of the Minister over dedicated or reserved Crown land set out in sections 34A and 34AA of the *Crown Lands Act 1989*. The Division also enables

the Minister to issue short-term licences over dedicated or reserved Crown land for purposes and terms, and with the conditions, to be prescribed by the regulations.

Section 34A of the *Crown Lands Act 1989* currently enables the Minister to grant a lease, licence, permit, easement or right of way over dedicated or reserved Crown land in certain circumstances for the purposes of any facility or infrastructure or any other purpose the Minister thinks fit despite any other provision of that Act. The Division re-enacts the section, but clarifies when notice of a grant is required under that section and what requires notice (for example, notice will not be required for the renewal of an interest that has been previously notified).

Section 34AA of the *Crown Lands Act 1989* also enables the Minister to grant a lease, licence, permit, easement or right of way over dedicated or reserved Crown land despite the purposes for which it is dedicated or reserved if satisfied that it would be in the public interest and would not be likely to materially harm the land's use for the purposes for which it is dedicated or reserved. The Division re-enacts the section, but makes it clear that land is not materially harmed for the purposes of the proposed section just because an interest is granted that enables the land to be used:

- (a) in a way that is inconsistent or incompatible with a purpose for which it is dedicated or reserved, or
- (b) for grazing purposes.

Division 2.6 General

Division 2.6:

- (a) provides for the division of assets, rights and liabilities of Crown land managers for dedicated or reserved Crown land when land under management is added to other land under management, and
- (b) enables the Minister to declare that certain public reserves are to be under the care, control and management of the Minister instead of a local council, and
- (c) provides that the consent of the Crown (as the owner of dedicated or reserved Crown land) is taken to have been given for certain development applications by Crown land managers for dedicated or reserved Crown land, and
- (d) limits the compensation payable to Crown land managers for dedicated or reserved Crown land that is compulsorily acquired, and
- (e) requires notices to be given to the Minister if proceedings are commenced questioning the validity of an interest that has been granted over dedicated or reserved Crown land.

Part 3 Management of Crown land

Division 3.1 Introduction

Division 3.1 provides that, if dedicated or reserved Crown land is managed by one or more Crown land managers, then they are responsible for the care, control and management of the land. The Division makes it clear that the Minister is responsible for the care, control and management of all Crown land that is not dedicated or reserved Crown land or for which there is no Crown land manager.

The Division is also expressed to enable the appointment of Crown land managers for parts of dedicated or reserved Crown land (as well as for the whole of the land).

Division 3.2 Appointment of Crown land managers for dedicated or reserved Crown land

Division 3.2 enables the Minister to appoint (and revoke the appointment of) any of the following as Crown land managers for dedicated or reserved Crown land:

- (a) a local council,

- (b) a Local Aboriginal Land Council under the *Aboriginal Land Rights Act 1983*,
- (c) a prescribed body corporate for the purposes of a provision of the *Native Title Act 1993* of the Commonwealth,
- (d) a statutory land manager constituted under the proposed Act,
- (e) the Lands Administration Ministerial Corporation constituted by the proposed Act,
- (f) an association under the *Associations Incorporation Act 2009*,
- (g) a company under the *Corporations Act 2001* of the Commonwealth,
- (h) any other body corporate or corporation constituted by or under another Act,
- (i) the head of a government sector agency.

Division 3.3 Functions of Crown land managers generally

Division 3.3 provides generally for the functions of Crown land managers for dedicated or reserved Crown land. Divisions 3.4 and 3.5 place limits on the exercise of these functions based on the kind of Crown land manager.

The Division also:

- (a) enables the Minister:
 - (i) to make Crown land management rules for or with respect to the management of dedicated or reserved Crown land by Crown land managers, and
 - (ii) to allocate the responsibility for the care, control and management of particular dedicated or reserved Crown land for which there are 2 or more Crown land managers, and
- (b) requires Crown land managers to apply the net amount of the proceeds of dedicated or reserved Crown land for the improvement of the land or the purposes for which the land may be used (unless different provision is made in the appointment instrument, the Crown land management rules, the regulations or a plan of management), and
- (c) enables a Crown land manager to delegate functions to persons (or classes of persons) approved by the Minister, and
- (d) enables the Minister to direct Crown land managers to provide the Minister with reports or other information concerning the exercise of their functions.

In addition to Divisions 3.4 and 3.5, a Crown land manager will be required to exercise the manager's functions in accordance with:

- (a) the provisions of the manager's appointment instrument and the regulations, and
- (b) if there are 2 or more Crown land managers for the Crown land concerned—in accordance with any allocation of responsibility made by the Minister, and
- (c) any applicable Crown land management rules, and
- (d) any applicable plan of management for the land, and
- (e) for managers except local councils—the requirements of any community engagement strategy applicable to the manager.

Division 3.4 Crown land managed by councils

Division 3.4 enables a local council that is a Crown land manager of dedicated or reserved Crown land (a **council manager**) to manage the land as if it were classified as community land under the *Local Government Act 1993*, subject to certain exceptions. The exceptions are these:

- (a) land that is a public reserve must be managed as a public reserve under the *Local Government Act 1993*, and
- (b) land can be managed as if it were operational land under the *Local Government Act 1993*, but only with the Minister's written consent (which can only be given if the council manager satisfies the Minister that the land does not fall within any of the categories for

community land under that Act or the land could not continue to be used and dealt with as it currently can if it were required to be used and dealt with as community land).

In addition, a council manager cannot do any of the following:

- (a) sell or dispose of the land in any other way unless the Minister gives written consent for it,
- (b) classify the land as operational land under the *Local Government Act 1993* unless the Minister gives written consent for it,
- (c) do any other thing under the *Local Government Act 1993* that would involve a contravention of a provision of the proposed Act that applies to council managers,
- (d) do anything that contravenes:
 - (i) any limitations or other restrictions specified by the provisions of the manager's appointment instrument, or
 - (ii) the regulations, or
 - (iii) any applicable Crown land management rules, or
 - (iv) any applicable plan of management under Division 3.6 (if there is no requirement for a plan of management under the *Local Government Act 1993*).

The Division contains special provisions about the categorisation of land that is to be managed as community land. Under the *Local Government Act 1993*, community land is required to be categorised in a plan of management under that Act by reference to certain categories. The Division will enable a local council to make an initial categorisation within 3 years pending categorisation in a plan of management. It also requires the Minister's consent for community land to be recategorised.

Division 3.5 Crown land managed by other managers

Division 3.5 enables a Crown land manager of dedicated or reserved Crown land that is not a local council (a *non-council manager*) to exercise the Minister's functions over the land with the Minister's consent.

However, the Minister's consent will not be required for the exercising of certain functions, depending on whether the non-council manager has been assigned as a category 1 or category 2 manager. The assignment can be made by the appointment instrument, a notice published in the Gazette or the regulations.

A non-council manager assigned to category 1 will not require the Minister's consent for any of the following:

- (a) granting leases or licences for a term of 10 years or less (including any option for the grant of a further term),
- (b) granting easements in connection with these leases or licences,
- (c) making certain minor changes to leases or licences,
- (d) any other kind of functions authorised by the manager's appointment instrument, the regulations or an applicable plan of management under Division 3.6.

A non-council manager assigned to category 2 will not require the Minister's consent for any of the following:

- (a) granting licences for a term of one year or less (including any option for the grant of a further term),
- (b) making certain minor changes to leases or licences,
- (c) any other kind of functions authorised by the manager's appointment instrument, the regulations or an applicable plan of management under Division 3.6.

The Division also provides for:

- (a) the establishment of community advisory groups by non-council managers, and
- (b) requirements concerning the preparation of annual reports, and

- (c) the keeping of records required by the regulations.

Division 3.6 Plans of management and other plans

Division 3.6 enables the Minister to direct non-council managers, and council managers not required to prepare plans of management under the *Local Government 1993*, to prepare and give effect to plans of management for Crown land they manage. These plans of management cannot come into effect unless adopted by the Minister.

The Division also enables the Minister to require or permit those non-council managers and council managers to prepare other kinds of plans for the Crown land they manage (for example, strategic, financial or business plans).

Division 3.7 General

Division 3.7:

- (a) confirms that the sale and conveyance of dedicated or reserved Crown land by a Crown land manager results in the purchaser obtaining the land free of any trusts and the dedication or revocation being revoked, and
- (b) provides that the revocation of a dedication or reservation of Crown land results in existing leases or licences over the land being terminated unless the notice of revocation provides differently, and
- (c) provides that dedicated or reserved Crown land being added to other Crown land does not result in the termination of existing leases or licences over the added land, and
- (d) enables the Minister to appoint persons to inquire into, or carry out audits of, the affairs of non-council managers and council managers funded by, or required to provide funds to, the Public Reserves Management Fund established by the *Public Reserves Management Fund Act 1987*, and
- (e) limits the compensation payable by or on behalf of the State for the conduct of Crown land managers.

Part 4 Acquisition of land and vesting of Crown land

Division 4.1 Acquisition of land generally

Division 4.1 enables the Minister to acquire land by gift for the purposes of the proposed Act (and to give effect to any conditions of the gift). Land acquired by those means becomes Crown land. The Division also enables the Minister:

- (a) to acquire land for any public purpose (whether by agreement or compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*), and
- (b) to declare certain acquired land to be Crown land.

Division 4.2 Vesting of Crown land in local councils

Division 4.2 enables the Minister to vest dedicated or reserved Crown land in local councils, but only if it is suitable for local use. The Minister may approve local land criteria to be used to determine whether Crown land is suitable for local use. However, the Minister will not be able to vest Crown land that is:

- (a) dedicated or reserved under the *National Parks and Wildlife Act 1974* or declared to be a wildlife refuge under that Act, or
- (b) land that an Act (except the *National Parks and Wildlife Act 1974* or proposed Act) provides is:
 - (i) to be used for a purpose referred to in that other Act, or
 - (ii) not to be used for any purpose except a purpose referred to in that other Act.

The Division ensures that appropriate protections will remain in place for land that may be subject to native title rights and interests. It also provides for the land to be vested as community land under the *Local Government Act 1993* unless the Minister declares that it should vest as operational land because:

- (a) the land does not fall within any of the categories for community land under that Act, or
- (b) the land could not continue to be used and dealt with as it currently can if it were required to be used and dealt with as community land.

Division 4.3 Vesting of Crown land in other government agencies

Division 4.3 enables the Minister to vest the same kinds of Crown land as can be vested in local councils in certain other government agencies, but only if it would be in the public interest to do so and the agency's functions would make it an appropriate owner and manager of the land. The government agencies in which the Crown land can be vested are:

- (a) a Minister, or an agency of the State, with express power under an Act to hold land in the exercise of the Minister's or agency's functions, including:
 - (i) a State owned corporation, and
 - (ii) any other statutory corporation prescribed (or of a kind prescribed) by the regulations, and
- (b) an agency of the Commonwealth capable of holding property in its own name.

Part 5 Dealings involving Crown land and other related land

Division 5.1 Introduction

Division 5.1 recognises that although the Division largely applies to Crown land, it also applies in some circumstances to land that is not Crown land (for example, because it has been sold).

The Division also makes it clear that the terms and conditions of certain holdings under the proposed Act (for example, leases, licences, incomplete purchases and enclosure permits) can have terms and conditions that are different from the provisions of the proposed Act and the regulations.

However, terms and conditions that provide for anything that is inconsistent with a mandatory matter will be unenforceable (except as provided by the regulations). A *mandatory matter* is defined to mean each of the following:

- (a) proposed section 12.13 (Holding or permit cannot be transferred if in arrears),
- (b) proposed section 12.14 (Forfeiture or end of holding or permit does not extinguish debts),
- (c) proposed section 13.2 (Exclusion of minerals and qualifications from dealings under Act),
- (d) the purposes for which the land is authorised to be used under the proposed Act,
- (e) the maximum term that is allowed for a holding by the proposed Act,
- (f) any of the following terms and conditions of a holding:
 - (i) a term or condition of a special purpose holding,
 - (ii) a term or condition that is taken to be included (or required to be included) in a holding by the proposed Act, the Crown land management rules or the regulations,
 - (iii) a term or condition for a holding specified by a provision of Schedules 1–4,
- (g) any other matter prescribed by the regulations to be a mandatory matter.

Division 5.2 Powers of Minister over Crown land

Division 5.2 provides that (subject to the proposed Act) the Minister can do anything with Crown land that a registered proprietor of land under the *Real Property Act 1900* can do. However, the

Division makes it clear that this general power does not include the power to sell dedicated or reserved Crown land unless authorised by or under another provision of the proposed Act.

The Division also makes it clear that the Minister can exercise the Minister's powers over dedicated or reserved Crown land even if a Crown land manager has been appointed for the land.

Division 5.3 Community engagement strategies

Division 5.3 requires the Minister to approve one or more community engagement strategies for dealings or other action affecting Crown land use (including dedicated or reserved Crown land) to be followed by certain persons responsible for dealing with Crown land. Each of the following dealings are defined to be *dealings or other action affecting Crown land use*:

- (a) the alteration or removal of a purpose for which Crown land is dedicated or reserved,
- (b) the selling, transferring or vesting of Crown land under the proposed Act (except if it is required or permitted under the *Aboriginal Land Rights Act 1983*),
- (c) the granting of leases (except purchasable leases), licences or permits over Crown land,
- (d) the preparation of plans of management for Crown land under Division 3.6,
- (e) the preparation of a State strategic plan for Crown land under Division 12.4.

A community engagement strategy may provide for specified provisions to be mandatory. A failure to comply with these mandatory provisions may result in dealings being invalid.

Division 5.4 Sale of Crown land

Division 5.4 prevents the Minister from selling or disposing of Crown land in the Western Division unless satisfied that:

- (a) the land is in an urban area, or
- (b) the land is in an area required for urban expansion, or
- (c) the land is located within a distance prescribed by the regulations from an urban area and its sale will contribute to the economic growth of the region in which both the land and urban area are located, or
- (d) the land is in a rural area and is used predominantly for residential, business, industrial or community purposes, or
- (e) the land, or substantial areas of the land, fall within LSC Class 1, 2, 3 or 4 under the Land and Soil Capability Assessment Scheme, or
- (f) the land is leased under the proposed Act and the land, or substantial areas of the land, fall within LSC Class 5 or 6 under the Land and Soil Capability Assessment Scheme, but only if:
 - (i) a cultivation consent (as defined in Part 5 of Schedule 3) is in force for the whole or substantial areas of the land, or
 - (ii) the lease authorises the whole or substantial areas of the land to be used for the purposes of cultivation, agriculture, horticulture or viticulture or a similar purpose.

The Division enables the Minister to impose conditions over any Crown land that is sold and authorises the Lands Administration Ministerial Corporation constituted by the proposed Act to take mortgages on behalf of the Crown from purchasers of Crown land.

The Division also includes provisions concerning recordings in the Register under the *Real Property Act 1900* about conditions and other restrictions imposed under the Division. For example, the Registrar-General will not be able to record a transfer of land without the Minister's consent for which a recording in the Register indicates there is a condition or other restriction.

Division 5.5 Leases over Crown land

Division 5.5 provides that the term of a lease of Crown land granted by the Minister (including any option for the grant of a further term) cannot exceed 100 years. However, the Minister will

still be able to grant perpetual leases over Crown land in the Western Division. A *perpetual lease* is a lease for which no term is specified.

The Division also includes provisions concerning recordings in the Register under the *Real Property Act 1900* about restrictions imposed under the Division. For example, the Registrar-General will not be able to record a transfer of a lease (or a sublease) without the Minister's consent if a recording in the Register indicates it is required.

Division 5.6 Licences over Crown land

Division 5.6 enables the Minister to grant a licence over Crown land to authorise its use or occupation for purposes that the Minister thinks fit (subject to certain restrictions if the licence relates to the removal of minerals).

The Division permits the Minister to revoke a licence at will or with the notice specified by the licence unless it is a licence granted under proposed section 5.62.

A licence is transferable, but only if:

- (a) its provisions permit it, or
- (b) the licence specifies a parcel of land that benefits from the licence and the licence is transferred to the owner or holder of the benefited land.

Sublicences can be granted if the provisions of the licence permit it.

The Division also enables the Minister to grant a licence to a person who is currently occupying or using Crown land without lawful authority. The licence can be granted without the person's consent and binds the person regardless of there being no consent.

Division 5.7 Special purpose holdings over Crown land

Division 5.7 enables the Minister to grant special purpose leases and licences (called *special purpose holdings*) over Crown land even if there are other leases or licences over the land. The purposes for which they may be granted are as follows:

- (a) to construct and operate facilities for the harnessing of energy from any source (including the sun or wind) and its conversion into electricity energy,
- (b) to remove gravel, sand or any other material (whether or not a mineral as defined in the *Mining Act 1992*),
- (c) to construct, operate or maintain telecommunications infrastructure,
- (d) to carry out any other development of a kind approved by the Minister.

Division 3A of Part 4 of the *Crown Lands Act 1989* currently allows special purpose leases to be granted in development districts under that Act. The proposed Act will abolish these districts and enable the granting of special purpose licences as well as special purpose leases over any Crown land.

Division 5.8 Enclosure permits for Crown roads and watercourses

Division 5.8 enables the Minister to grant permits (called *enclosure permits*) to allow landholders to enclose Crown roads and Crown watercourses that cross or bound their land. It also enables the Minister to authorise the cultivation of Crown roads under an enclosure permit. The Division substantially re-enacts provisions in the *Crown Lands Act 1989*.

Division 5.9 Easements

Division 5.9 enables the Minister to grant easements over all Crown land (including for public access). Currently, Division 5 of Part 4 of the *Crown Lands Act 1989* limits the kinds of Crown land over which the Minister may grant easements.

The Division also enables the owner of freehold land to grant easements for public access over the owner's land. The Minister may release any easements benefiting any Crown land.

The Division introduces a new requirement for a local council to seek (and be granted) an easement if there is an ongoing need for it to carry out construction and maintenance of water supply, sewerage and stormwater drainage works.

Division 5.10 Restrictions and covenants

Division 5.10 enables the Minister to impose, on behalf of the Crown, any restrictions on use, or public positive covenants, on Crown land. The Division (unlike the current provisions of Part 4A of the *Crown Lands Act 1989*) does not limit this power to Crown land that is being sold or for the purposes referred to in section 77A (1) of that Act.

Division 5.11 Forestry rights and carbon related rights

Division 5.11 enables the Minister to grant forestry rights (including carbon sequestration rights) over Crown land. The Division (unlike the current provisions in Division 5A of Part 4 of the *Crown Lands Act 1989*) does not limit this power to the granting and creation of a forestry right to the extent that it consists in whole or in part of a carbon sequestration right.

The Division also enables the regulations to authorise the granting in the future of new kinds of rights over Crown land in connection with schemes for the reduction of carbon emissions or other greenhouse gases in the atmosphere.

Division 5.12 General

Division 5.12:

- (a) enables the Minister to require the payment of royalties, security deposits, fees or other amounts for a holding (except an incomplete purchase), and
- (b) enables the holder of a holding over Crown land to grant subleases or sublicences over the land in certain circumstances to allow another person to carry out a filming project on the land, and
- (c) makes it clear that a person who acquires Crown land by purchase or exchange acquires an estate in fee simple in the land, and
- (d) enables the Registrar-General to update the Register under the *Real Property Act 1900* if informed by the Minister that a covenant, condition, reservation or provision no longer applies to a holding or land.

Part 6 Rents for holdings

Division 6.1 Introduction

Division 6.1 defines a *holding* for the purposes of the Part to include an enclosure permit, but not an incomplete purchase.

Division 6.2 Payment of rent

Division 6.2 provides for:

- (a) a requirement to pay rent for a holding unless the provisions of the holding provide for no rent or the rent is waived or postponed, and
- (b) rent to be determined, redetermined or adjusted in accordance with the provisions of a holding or, if there are no provisions for this, in accordance with Part 6 and any other applicable provisions of the proposed Act or the regulations, and
- (c) the Minister to determine the rent for a holding when it is granted or renewed and for the Secretary (and not the Minister, as is currently the case) to redetermine and adjust rents during their term when this is required, and
- (d) a minimum annual rent for holdings with annual rents.

Division 6.3 Determination, redetermination and adjustment of rents

Division 6.3 sets out default provisions for the determination, redetermination and adjustment of rents for holdings if the provisions of the holding do not provide for them.

In particular, the Division:

- (a) sets out general principles to be applied for this purpose (including requiring rent to be determined or redetermined by reference to market value, subject to certain exceptions), and
- (b) provides for when rent increases can occur during the term of a holding, and
- (c) provides for when rent is to be redetermined, and
- (d) enables objections to be made against rent redeterminations in certain circumstances.

Part 7 Alteration, withdrawal and forfeiture of holdings

Division 7.1 Introduction

Division 7.1 defines *altered* to include modified or added to.

Division 7.2 Alterations, revocations and exemptions concerning conditions and other restrictions

Division 7.2 enables the Minister to alter, revoke or remove conditions attaching to, or purposes of, a holding. It also enables the Minister to grant exemptions from conditions.

Division 7.3 Withdrawal of land from holdings

Division 7.3 enables the Minister to withdraw land required for certain public purposes from a holding.

Division 7.4 Forfeiture of holdings

Division 7.4 enables the Minister to declare that a holding is forfeited if:

- (a) the holder contravenes a provision of the proposed Act or another Act applying to, or a condition of, the holding, or
- (b) the holder does not make any payment due under the proposed Act, the regulations or a condition of the holding within 3 months after the due date, or
- (c) the holder gives up or parts with possession of the whole or any part of the holding except as authorised by or under the proposed Act, the regulations or a condition of the holding, or
- (d) the holding becomes subject to forfeiture under the proposed Act.

The Minister may also reverse a forfeiture.

The holder of a perpetual lease will be able to appeal to the Land and Environment Court against a forfeiture decision.

Division 7.5 General

Division 7.5 provides for:

- (a) the Minister to be able to add land under a forfeited or surrendered holding or vacant Crown land to adjacent or adjoining holdings, and
- (b) the ownership of improvements on land under a holding that ends.

Part 8 Native title rights and interests

Division 8.1 Introduction

Division 8.1 defines certain terms and expressions used in Part 8. In particular, it defines *relevant land* to mean:

- (a) dedicated or reserved Crown land managed by a council manager, or
- (b) dedicated or reserved Crown land managed by a non-council manager assigned as a category 1 manager under Division 3.5, or
- (c) land vested in a local council under Division 4.2 (Vesting of Crown land in local councils).

The *responsible person* for relevant land is defined to mean the local council or non-council manager that manages the land or the local council in which the land is vested.

The Division also:

- (a) enables the Minister to approve kinds of training or qualifications that a person must have to act as a native title manager for the purposes of Part 8, and
- (b) makes it clear that Part 8 applies despite anything in the *Local Government Act 1993*.

Division 8.2 Native title certificates

Division 8.2 enables the Minister to issue a certificate (called a *native title certificate*) for specified Crown land or former Crown land stating that, following investigations made by the Department of Industry, Skills and Regional Development, there is adequate evidence to show that native title rights and interests in relation to the land have been extinguished or do not exist.

Division 8.3 Management of relevant land

Division 8.3 seeks to ensure compliance with native title legislation by requiring responsible persons for relevant land to employ or engage native title managers to provide advice on certain dealings with and other action affecting the land that may affect native title rights and interests.

The Division requires the Minister to be informed about native title managers that are engaged or employed. It also requires the consent of the Minister before a council or non-council manager takes action that will result in the compulsory acquisition of native title rights and interests in relation to the land.

The Division will not apply to relevant land that is excluded land. The term *excluded land* is defined in Division 8.1 to mean the following:

- (a) land subject to an approved determination of native title (as defined in the *Native Title Act 1993* of the Commonwealth) that has determined that:
 - (i) all native title rights and interests in relation to the land have been extinguished, or
 - (ii) there are no native title rights and interests in relation to the land,
- (b) land where all native title rights and interests in relation to the land have been surrendered under an indigenous land use agreement (as defined in the *Native Title Act 1993* of the Commonwealth) registered under that Act,
- (c) an area of land to which section 24FA protection (as defined in the *Native Title Act 1993* of the Commonwealth) applies,
- (d) land where all native title rights and interests in relation to the land have been compulsorily acquired,
- (e) land for which a native title certificate is in effect.

Division 8.4 Compensation responsibilities

Division 8.4 provides for compensation responsibilities concerning native title rights and interests for *relevant conduct*, which is defined to mean:

- (a) the conduct of a local council in connection with:
 - (i) any dedicated or reserved Crown land for which it is or was a Crown land manager, or
 - (ii) any former Crown land that is or was vested in it under Division 4.2 (Vesting of Crown land in local councils), or
- (b) the conduct of a non-council manager assigned as a category 1 manager under Division 3.5 in connection with any dedicated or reserved Crown land for which the person is or was a Crown land manager.

The Division:

- (a) declares, for the purposes of certain provisions of the *Native Title Act 1993* of the Commonwealth, a person engaged in relevant conduct to be liable to pay compensation under that Act for that conduct, and
- (b) provides for a person who engaged in relevant conduct to (in accordance with the regulations) contribute to, or indemnify the State against, any damages or compensation payable by the State for the impact of the conduct on native title rights and interests.

Part 9 Protection of Crown land

Division 9.1 Introduction

Division 9.1 defines certain terms and expressions used in Part 9.

Division 9.2 Improper use of Crown land

Division 9.2 makes it an offence for a person:

- (a) to do certain things on or in relation to Crown land (for example, reside or graze stock there) or cause or permit them to be done, or
- (b) pollute or contaminate Crown land (or cause or permit it to be polluted or contaminated).

However, a person will not commit an offence against the Division (because of proposed section 9.22) for something the person does with lawful authority. Proposed section 1.4 provides that there is **lawful authority** for a person's conduct if it:

- (a) is authorised or required by or under the proposed Act or another Act, or
- (b) is authorised or required by or under a holding of the person, or
- (c) occurs in any other circumstances prescribed by the regulations.

The Division also enables:

- (a) authorised officers to give directions to stop the use of structures without lawful authority, or the carrying on of activities prescribed by the regulations, on Crown land, and
- (b) the Minister or Crown land managers to prohibit by notice displayed on or near Crown land the use of structures without lawful authority, or the carrying on of activities prescribed by the regulations, on the land, and
- (c) the Minister, authorised officers and Crown land managers to give reasonable directions to persons concerning the entry, use and parking or storage of vehicles on Crown land.

Non-compliance with these directions or notices will be an offence.

Division 9.3 Unauthorised structures and materials on Crown land

Division 9.3 enables the Minister to remove (or direct the removal) of unauthorised structures and materials from Crown land. Non-compliance with a direction to remove an unauthorised structure or material will be an offence.

The Division also enables the Minister to cause anything removed under the Division to be destroyed, sold, stored or returned to its owner.

Division 9.4 Removal of persons from Crown land

Division 9.4 enables an authorised officer to apply to the Local Court for an order authorising the officer to deal with a person as a trespasser of specified Crown land. The order will enable the authorised officer to remove the trespasser from the land (along with any of the person's structures or goods).

The Division also enables certain employees of Crown land managers to remove a person from dedicated or reserved Crown land if they are satisfied, on reasonable grounds, that:

- (a) the person is contravening a provision of the regulations made for the purposes of Part 9, or
- (b) the person's disorderly conduct is causing inconvenience to persons on the land or entering or leaving it.

Division 9.5 Remediation of damaged Crown land

Division 9.5 enables an authorised officer to require remediation work to be carried out on Crown land by a person if satisfied that the land (or any habitat, plant or animal in or on the land) has been damaged in, or as a result of, the commission by the person of an offence against the proposed Act or the regulations.

Division 9.6 Stop activity orders

Division 9.6 enables the Secretary to order a person not to carry out a specified activity if satisfied that:

- (a) the person is contravening, or is about to contravene, the proposed Act or the regulations because of the activity, or
- (b) the activity is being carried out on Crown land without lawful authority, or
- (c) the activity is being carried out on Crown land in a manner that poses a threat to public safety or the environment, or
- (d) the activity has become unsafe for the time being because of an emergency.

Non-compliance with the order will be an offence.

Division 9.7 General

Division 9.7:

- (a) enables certain persons to whom directions, notices and orders have been given under Part 9 to appeal to the Land and Environment Court against them, and
- (b) provides that it is a defence to the prosecution of an offence against Part 9 (except an offence against Division 9.6) if the defendant proves that there was lawful authority for the conduct that is alleged to give rise to the offence, and
- (c) makes it clear that directions under Part 9 may be given orally or in writing, and
- (d) makes it clear that the Minister is to be treated as the occupier of vacant Crown land for the purposes of the impounding of animals and articles under the *Impounding Act 1993*, and
- (e) enables regulations to be made for the care, control and management of Crown land (which will replace current by-laws under the *Crown Lands Act 1989*).

Part 10 Investigation of compliance

Division 10.1 Introduction

Division 10.1 defines *compliance purpose* and *land use restriction* for the purposes of Part 10. A function is exercised for a *compliance purpose* if it is exercised for the purpose of:

- (a) determining whether there has been compliance with or a contravention of this Act or the regulations or any notice, direction, order or requirement issued or made under the proposed Act, or
- (b) determining whether there has been compliance with or a contravention of the terms and conditions of a holding, or
- (c) determining whether there has been compliance with or a contravention of a land use restriction, or
- (d) obtaining information or records for purposes connected with the administration of the proposed Act, or
- (e) administering the proposed Act generally.

Division 10.2 Compliance generally

Division 10.2 makes it an offence for a person:

- (a) to refuse or fail to comply with a requirement made of the person under Part 10, or
- (b) to provide false or misleading information, or
- (c) to threaten, hinder, obstruct or delay an authorised officer in the exercise of the officer's functions, or
- (d) to damage, destroy or interfere with any vehicle or equipment that is used in the exercise of an authorised officer's functions, or
- (e) to impersonate an authorised officer.

Division 10.3 Authorised officers

Division 10.3 enables the Minister to appoint authorised officers for the purposes of the proposed Act and provides for their functions. The Division also enables the Minister to enter into an arrangement with the head of any government agency, or with a local council, for an employee of the government agency or council to exercise the functions of an authorised officer.

Division 10.4 Powers to require information or records

Division 10.4 enables the Minister and authorised officers to require persons to provide them with information or records (or both) for a compliance purpose.

Division 10.5 Powers of entry and search of land and structures

Division 10.5 confers powers of entry and search on authorised officers for compliance purposes. However, an authorised officer will be required to obtain a search warrant to enter and search any structure used for residential purposes if its occupier does not give permission for it.

Division 10.6 Powers to question and identify persons

Division 10.6 enables:

- (a) an authorised officer to require a person to answer questions about matters for compliance purposes if the officer suspects on reasonable grounds that the person knows about those matters, and
- (b) the Minister to require a corporation to nominate a person to answer such questions on its behalf, and
- (c) an authorised officer to demand a person's name and address if the person is suspected of an offence against the proposed Act or the regulations, and
- (d) an authorised officer to demand to see the driver licence of a driver or rider of a motor vehicle on Crown land.

Division 10.7 Power to seize vehicles

Division 10.7 enables an authorised officer to seize a vehicle on Crown land if the officer has reason to believe that it was used for certain continuing offences for a period of at least 3 days. A seized vehicle is liable to forfeiture by order of a court that convicts the person of the offence.

Division 10.8 Functions in relation to seized things

Division 10.8:

- (a) requires an authorised officer to give a receipt for a seized thing, and
- (b) requires an authorised officer to return a seized thing if satisfied that it is lawful for the owner to have possession of the thing and the continued retention of the thing in custody is not justified, and
- (c) provides for an authorised officer to certify that the officer is unable to return a seized thing, and
- (d) provides for the making of court orders requiring delivery of seized things to the owner of the seized things, and
- (e) provides for the forfeiture of a seized thing to the Minister if the Minister is satisfied that the continued retention of the thing in custody is not justified and the thing cannot be returned to its owner, and
- (f) makes it clear that forfeited seized things become the property of the Crown.

Division 10.9 General

Division 10.9:

- (a) includes provisions for the protection of natural persons from self-incrimination when required to give information or provide answers under Part 10, and
- (b) enables notices under Part 10 to be revoked or varied.

Part 11 Enforcement

Division 11.1 Proceedings for offences

Division 11.1 enables proceedings for offences against the proposed Act and the regulations to be dealt with summarily by the Local Court or the Land and Environment Court or by way of a penalty notice if the regulations provide for it.

The Division also enables proceedings for offences to be commenced within 2 years (instead of the 6 months generally applicable for summary proceedings under the *Criminal Procedure Act 1986*).

Division 11.2 Liability for offences

Division 11.2 provides for:

- (a) the circumstances in which directors or managers of corporations will be held liable for offences by corporations, and
- (b) the liability of persons committing continuing offences, and
- (c) the liability of persons other than actual offenders for offences involving vehicles, stock or structures who fail to nominate the actual offender.

The Division also provides for increased maximum penalties for certain offences that are committed intentionally and have caused or contributed to, or were likely to cause or contribute to, significant harm to Crown land or persons or animals on Crown land.

Division 11.3 Court orders in connection with offences

Division 11.3 enables a court that finds an offence proved to order the offender to take restorative, remedial or preventative action in relation to the offence. It also enables the recovery of costs, expenses and compensation after the offence is proved. Non-compliance with an order may constitute an offence.

Division 11.4 Civil proceedings to enforce undertakings

Division 11.4 enables the Minister to accept a written undertaking given by a person in connection with a matter in relation to which the Minister has a function under the proposed Act. The Minister may enforce the undertaking in the Land and Environment Court.

Division 11.5 Evidentiary provisions

Division 11.5 contains provisions relating to the admissibility of signed instruments in court proceedings and certificate evidence that the Minister can give.

Part 12 Administration

Division 12.1 Administration generally

Division 12.1 provides that the Minister is responsible for achieving the objects of the proposed Act and enables the Minister to establish advisory committees.

The Minister will be able to appoint Crown land commissioners to advise the Minister, and inquire into and report, on any matter arising out of the administration of the proposed Act or another Act dealing with the administration of Crown land when required by the Minister.

The Minister will also be able to enter administrative arrangements with other public authorities. The Minister, the Secretary, a Crown land commissioner and the Lands Administration Ministerial Corporation constituted by the proposed Act will be able to delegate certain functions. For that purpose, the Minister's delegable functions will not be limited to those under the proposed Act.

Division 12.2 Ministerial Corporation

Division 12.2 constitutes the Lands Administration Ministerial Corporation and provides for its functions. In particular, the Division makes it clear that the Ministerial Corporation is a continuation of, and the same legal entity as, the Lands Administration Ministerial Corporation constituted by the *Crown Lands Act 1989*. This will mean that its assets, rights and liabilities will be unaffected by its reconstitution under the proposed Act.

Division 12.3 Finance

Division 12.3 contains provisions relating to financial matters, including the following:

- (a) the manner and time for making payments,
- (b) the charging of fees for services,
- (c) the addition of GST and the making of adjustments for inflation,
- (d) the charging of interest for amounts in arrears,
- (e) the recovery of amounts owing under the proposed Act,
- (f) the waiver, reduction, remission, postponement or rebate of amounts payable under the proposed Act.

Division 12.4 State strategic plan for Crown land

Division 12.4 requires the Minister to approve a 10-year State strategic plan for Crown land. The Secretary will prepare a draft plan for approval. The plan is to set out the vision, priorities and overarching strategy for the management of Crown land in the State, having regard to the objects

of the proposed Act and appropriate environmental, social, cultural heritage and economic considerations.

Division 12.5 Notices and other documents

Division 12.5:

- (a) provides for how documents may be served, given or sent under the proposed Act, and
- (b) provides for when notices take effect, and
- (c) enables the Minister to combine notices that are required to be published in the Gazette in a single notice.

Division 12.6 General

Division 12.6:

- (a) limits the personal liability of certain persons involved in the administration of the proposed Act for conduct in good faith, and
- (b) requires a plan of measurement for the measurement of Crown land, and
- (c) provides that certain provisions applying to land under the proposed Act do not cease to have effect just because a folio for the land has been created in the Register under the *Real Property Act 1900*, and
- (d) makes it clear that no compensation is payable by or on behalf of the State in connection with the enactment or operation of the proposed Act.

Part 13 Miscellaneous

Part 13 provides for:

- (a) limitations on the acquisition of title by possession against the Crown, and
- (b) the exclusion of minerals from sales, leases or other disposals of land under the proposed Act, and
- (c) the determination of the boundaries of land with a lake, river or road, and
- (d) certain conditions and restrictions on land under the proposed Act to be treated as regulatory instruments for the purposes of section 28 of the *Environmental Planning and Assessment Act 1979* that can be suspended by an environmental planning instrument, and
- (e) the Governor to make regulations for the purposes of the proposed Act, and
- (f) a review of the operation of the proposed Act as soon as possible after the period of 5 years after the date of assent to the proposed Act.

Schedule 1 Continued tenures

Schedule 1 continues in force under the proposed Act certain tenures (called *continued tenures*) to which the *Crown Lands (Continued Tenures) Act 1989* applies. The tenures include incomplete purchases, term leases, permissive occupancies, perpetual leases and special leases. Schedule 8 repeals the *Crown Lands (Continued Tenures) Act 1989*.

In particular, the Schedule provides for the following:

- (a) the conversion of continued tenures into comparable holdings under the proposed Act,
- (b) transitional provisions concerning rent for certain continued tenures based on existing provisions (but providing for rent redeterminations under the proposed Act after 2 years),
- (c) the continuation of certain existing conditions of, and restrictions on, continued tenures (including concerning transfers),
- (d) the consent of the Crown (as the owner of Crown land) under continued perpetual leases is taken to have been given for certain development applications by leaseholders.

Schedule 2 Continued irrigation tenures

Schedule 2 continues in force under the proposed Act certain incomplete purchases and leases (called *continued irrigation tenures*) to which the *Hay Irrigation Act 1902* and *Wentworth Irrigation Act 1890* apply. Schedule 7 provides for the land under continued irrigation leases to become Crown land. Schedule 8 repeals both the *Hay Irrigation Act 1902* and *Wentworth Irrigation Act 1890*.

In particular, the Schedule provides for the following:

- (a) the conversion of continued irrigation tenures into comparable holdings under the proposed Act,
- (b) transitional provisions concerning rent for certain continued irrigation tenures based on existing provisions (but providing for rent redeterminations under the proposed Act after 2 years),
- (c) the continuation of certain existing conditions of, and restrictions on, continued irrigation tenures (including concerning transfers).

Schedule 3 Land in Western Division

Schedule 3:

- (a) continues in force under the proposed Act certain incomplete purchases and leases (called *continued Western lands tenures*) to which the *Western Lands Act 1901* applies, and
- (b) includes special provisions that will apply to new leases granted over Crown land under the proposed Act, and to the cultivation of land, in the Western Division.

Schedule 8 repeals the *Western Lands Act 1901*.

In particular, the Schedule provides for the following:

- (a) the conversion of continued Western lands tenures into comparable holdings under the proposed Act,
- (b) regulations to be made concerning rent for continued Western lands leases,
- (c) the continuation of certain existing conditions of, and restrictions on, continued Western lands tenures (including concerning transfers),
- (d) conditions taken to apply to both new and continued Western lands leases,
- (e) the carrying out of approved activities prescribed by the regulations on land under perpetual Western lands leases,
- (f) the consent of the Crown (as the owner of Crown land) under both new and continued perpetual leases is taken to have been given for certain development applications by leaseholders,
- (g) the extension of the terms of new and continued term leases and the conversion of term leases into perpetual leases,
- (h) the granting by the Minister of cultivation consents over certain land in the Western Division,
- (i) the continuation of a certain special lease over land in the Western Division under the proposed Act,
- (j) the re-enactment of certain provisions under the *Western Lands Act 1901* relating to roads and tracks and to compliance and enforcement.

Schedule 4 Purchasable leases

Schedule 4 preserves certain entitlements of leaseholders to apply to purchase Crown land under their leases (and, in some cases, to have their applications granted). The existing entitlements arise

under the *Crown Lands (Continued Tenures) Act 1989*, *Hay Irrigation Act 1902*, *Wentworth Irrigation Act 1890* and *Western Lands Act 1901*.

The Schedule also allows for the purchase of certain land under perpetual leases over Crown land in the Western Division (including perpetual leases granted under the *Western Lands Act 1901*).

In particular, the Schedule provides for the following:

- (a) the determination of the purchase price by reference to the market value or land value of the land, subject to certain exceptions (including conferring rights to make objections to determinations),
- (b) the purchase price for an application based on certain existing entitlements to be determined by reference to current provisions,
- (c) the purchase price to be paid by instalments if the Minister allows it or in certain other circumstances,
- (d) provisions that are applicable once the land is sold (including provisions that apply while the purchase remains incomplete).

Schedule 5 Statutory land managers

Schedule 5 enables the Minister to constitute statutory land managers to act as Crown land managers under the proposed Act for dedicated or reserved Crown land.

The Schedule enables the Minister:

- (a) to appoint boards for statutory land managers, and
- (b) to appoint administrators for statutory land managers, and
- (c) to rename or dissolve statutory land managers.

The Schedule also provides for the duties of board members for statutory land managers.

Schedule 6 Transfer of assets, rights and liabilities

Schedule 6 sets out provisions that are to apply to certain transfers of assets, rights and liabilities by a provision of, or as a result of an instrument made under, the proposed Act.

Schedule 7 Savings, transitional and other provisions

Schedule 7 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

In particular, the Schedule:

- (a) provides for certain land that is not currently Crown land to become Crown land, and
- (b) preserves the purposes for which some of this new Crown land can be used by creating dedications or reservations of the new Crown land for these purposes, and
- (c) abolishes reserve trusts and certain other bodies or entities that own land that will become Crown land under the proposed Act, and
- (d) provides for the creation of statutory land managers to manage the lands of these abolished reserves, bodies and entities and the appointment of any current board members and trustees to the boards of these statutory land managers, and
- (e) abolishes the offices of Western Lands Commissioner and Assistant Western Lands Commissioner, and
- (f) continues in force certain dedications, reservations, leases, licences, enclosure permits, appointments and other matters under the *Crown Lands Act 1989*, and

- (g) includes transitional provisions for land held by private trusts under the *Trustees of Schools of Arts Enabling Act 1902*, which is to be repealed by the proposed Act (including enabling the trustees of those trusts to enter into agreements with the Crown to transfer their land to the Crown).

Schedule 8 Repeal of certain legislation

Schedule 8 repeals each of the following:

- (a) the *Commons Management Act 1989*,
- (b) the *Crown Lands Act 1989*,
- (c) the *Crown Lands (Continued Tenures) Act 1989*,
- (d) the *Hay Irrigation Act 1902*,
- (e) the *Irrigation Areas (Reduction of Rents) Act 1974*,
- (f) the *Murrumbidgee Irrigation Areas Occupiers Relief Act 1934*,
- (g) the *Orange Show Ground Act 1897*,
- (h) the *Trustees of Schools of Arts Enabling Act 1902*,
- (i) the *Wentworth Irrigation Act 1890*,
- (j) the *Western Lands Act 1901*,
- (k) the *Western Lands Amendment Act 2009*,
- (l) the regulations and by-laws under any of these Acts.

Comparative table

The proposed Act is intended to introduce a new regulatory regime for Crown land. Accordingly, the legislation has been restructured, new provisions introduced and many existing provisions either not re-enacted or re-enacted with significant modifications.

The following Table is provided as a reader guide about provisions of the proposed Act (if any) that are comparable (though not necessarily corresponding) with provisions of certain Acts to be repealed by the proposed Act.

Column 1	Column 2
Provisions of proposed Act	Comparable provisions of repealed Acts
Part 1 (Preliminary):	
Division 1.1 (Introduction)	<i>Crown Lands Act 1989</i> —see section 10
Division 1.2 (Interpretation)	<i>Crown Lands Act 1989</i> —see sections 3 (1), (3) and (4), 4 and 153
Division 1.3 (Crown land)	<i>Crown Lands Act 1989</i> —see section 3 (1) (definition of Crown land) and (2)
Division 1.4 (Application of Act)	<i>Crown Lands Act 1989</i> —see sections 5, 6 and 7
Part 2 (Dedicated or reserved Crown land):	
Division 2.1 (Introduction)	<i>Crown Lands Act 1989</i> —see section 79
Division 2.2 (Dedicated Crown land)	<i>Crown Lands Act 1989</i> —see sections 80, 81, 82, 83, 84 and 86
Division 2.3 (Reserved Crown land)	<i>Crown Lands Act 1989</i> —see sections 87, 88, 89 and 90

Column 1	Column 2
Provisions of proposed Act	Comparable provisions of repealed Acts
Division 2.4 (Use of dedicated or reserved Crown land)	<i>Crown Lands Act 1989</i> —see section 121A
Division 2.5 (Special powers of Minister)	<i>Crown Lands Act 1989</i> —see sections 34AA, 34A and 108
Division 2.6 (General)	<i>Crown Lands Act 1989</i> —see sections 35A, 98A, 106A and 125
Part 3 (Management of Crown land):	
Division 3.1 (Introduction)	<i>Crown Lands Act 1989</i> —see section 92 (5) and (6)
Division 3.2 (Appointment of Crown land managers for dedicated or reserved Crown land)	<i>Crown Lands Act 1989</i> —see sections 92 (1), 95 and 96
Division 3.3 (Functions of Crown land managers generally)	<i>Crown Lands Act 1989</i> —see sections 92 (6B), 102B, 106, 107 and 122
Division 3.4 (Crown land managed by councils)	<i>Crown Lands Act 1989</i> —see section 98
Division 3.5 (Crown land managed by other managers)	—
Division 3.6 (Plans of management and other plans)	<i>Crown Lands Act 1989</i> —see Division 6 of Part 5
Division 3.7 (General)	<i>Crown Lands Act 1989</i> —see sections 104, 109, 110, and 123
Part 4 (Acquisition of land and vesting of Crown land):	
Division 4.1 (Acquisition of land generally)	<i>Crown Lands Act 1989</i> —see Division 1 of Part 7 (except section 136)
Division 4.2 (Vesting of Crown land in local councils)	<i>Crown Lands Act 1989</i> —see Division 7 of Part 4
Division 4.3 (Vesting of Crown land in other government agencies)	—
Part 5 (Dealings involving Crown land and other related land):	
Division 5.1 (Introduction)	—
Division 5.2 (Powers of Minister over Crown land)	<i>Crown Lands Act 1989</i> —see section 34
Division 5.3 (Community engagement strategies)	—
Division 5.4 (Sale of Crown land)	<i>Crown Lands Act 1989</i> —see Division 2 of Part 4
Division 5.5 (Leases over Crown land)	<i>Crown Lands Act 1989</i> —see Division 3 of Part 4
Division 5.6 (Licences over Crown land)	<i>Crown Lands Act 1989</i> —see Division 4 of Part 4 (except section 50)
Division 5.7 (Special purpose holdings over Crown land)	<i>Crown Lands Act 1989</i> —see Division 3A of Part 4
Division 5.8 (Enclosure permits for Crown roads and watercourses)	<i>Crown Lands Act 1989</i> —see Division 6 of Part 4
Division 5.9 (Easements)	<i>Crown Lands Act 1989</i> —see Division 5 of Part 4
Division 5.10 (Restrictions and covenants)	<i>Crown Lands Act 1989</i> —see Part 4A

Column 1	Column 2
Provisions of proposed Act	Comparable provisions of repealed Acts
Division 5.11 (Forestry rights and carbon related rights)	<i>Crown Lands Act 1989</i> —see Division 5A of Part 4
Division 5.12 (General)	<i>Crown Lands Act 1989</i> —see sections 44AA, 50, 169 and 179
Part 6 (Rents for holdings):	
Division 6.1 (Introduction)	—
Division 6.2 (Payment of rent)	<i>Crown Lands Act 1989</i> —see Divisions 2A and 2B of Part 7
Division 6.3 (Determination, redetermination and adjustment of rents)	<i>Crown Lands Act 1989</i> —see Divisions 3 and 3A of Part 7
Part 7 (Alteration, withdrawal and forfeiture of holdings):	
Division 7.1 (Introduction)	—
Division 7.2 (Alterations, revocations and exemptions concerning conditions and other restrictions)	<i>Crown Lands Act 1989</i> —see Division 2 of Part 7
Division 7.3 (Withdrawal of land from holdings)	<i>Crown Lands Act 1989</i> —see section 136 <i>Western Lands Act 1901</i> —see section 43B
Division 7.4 (Forfeiture of holdings)	<i>Crown Lands Act 1989</i> —see Part 6
Division 7.5 (General)	<i>Crown Lands Act 1989</i> —see section 174 <i>Western Lands Act 1901</i> —see section 35C
Part 8 (Native title rights and interests)	—
Part 9 (Protection of Crown land):	
Division 9.1 (Introduction)	<i>Crown Lands Act 1989</i> —see section 153
Division 9.2 (Improper use of Crown land)	<i>Crown Lands Act 1989</i> —see sections 155, 156 and 160
Division 9.3 (Unauthorised structures and materials on Crown land)	<i>Crown Lands Act 1989</i> —see section 158
Division 9.4 (Removal of persons from Crown land)	<i>Crown Lands Act 1989</i> —see section 159
Division 9.5 (Remediation of damaged Crown land)	—
Division 9.6 (Stop activity orders)	—
Division 9.7 (General)	<i>Crown Lands Act 1989</i> —see sections 128 and 166
Part 10 (Investigation of compliance):	—
Division 10.1 (Introduction)	—
Division 10.2 (Compliance generally)	<i>Crown Lands Act 1989</i> —see section 168
Division 10.3 (Authorised officers)	<i>Crown Lands Act 1989</i> —see sections 168B and 168E
Division 10.4 (Powers to require information or records)	<i>Crown Lands Act 1989</i> —see section 168D
Division 10.5 (Powers of entry and search of land and structures)	<i>Crown Lands Act 1989</i> —see section 168C

Column 1	Column 2
Provisions of proposed Act	Comparable provisions of repealed Acts
Division 10.6 (Powers to question and identify persons)	<i>Crown Lands Act 1989</i> —see section 167
Division 10.7 (Power to seize vehicles)	—
Division 10.8 (Functions in relation to seized things)	—
Division 10.9 (General)	—
Part 11 (Enforcement):	
Division 11.1 (Proceedings for offences)	<i>Crown Lands Act 1989</i> —see sections 162 and 175
Division 11.2 (Liability for offences)	<i>Crown Lands Act 1989</i> —see sections 161 and 176
Division 11.3 (Court orders in connection with offences)	—
Division 11.4 (Civil proceedings to enforce undertakings)	—
Division 11.5 (Evidentiary provisions)	<i>Crown Lands Act 1989</i> —see sections 145, 177 and 178
Part 12 (Administration):	
Division 12.1 (Administration generally)	<i>Crown Lands Act 1989</i> —see sections 12, 18, 19 and 180
Division 12.2 (Ministerial Corporation)	<i>Crown Lands Act 1989</i> —see sections 13, 14, 15 and 16
Division 12.3 (Finance)	<i>Crown Lands Act 1989</i> —see sections 144, 147, 148, 149, 150, 151, 152, 180A, 180B, 180C and 181A
Division 12.4 (State strategic plan for Crown land)	—
Division 12.5 (Notices and other documents)	<i>Crown Lands Act 1989</i> —see section 181
Division 12.6 (General)	<i>Crown Lands Act 1989</i> —see sections 121 and 173 <i>Western Lands Act 1901</i> —see section 18K
Part 13 (Miscellaneous)	<i>Crown Lands Act 1989</i> —see sections 170, 171, 172, 183A and 184
Schedule 1 (Continued tenures)	<i>Crown Lands (Continued Tenures) Act 1989</i> —see Schedules 2–6
Schedule 2 (Continued irrigation tenures)	<i>Hay Irrigation Act 1902</i> —see sections 18 and 18A and Part 3 <i>Wentworth Irrigation Act 1890</i> —see section 22B and Part 3
Schedule 3 (Land in Western Division)	<i>Western Lands Act 1901</i> —see sections 18D, 18DA, 18E, 18FA, 18G, 28B, 35Q, 35QA, 35R, 35S, 35T, 46, 47, 48, 49 and 51, Part 6 and Schedule 4

Column 1	Column 2
Provisions of proposed Act	Comparable provisions of repealed Acts
Schedule 4 (Purchasable leases)	<i>Crown Lands (Continued Tenures) Act 1989</i> —see Schedules 7 and 7A <i>Hay Irrigation Act 1902</i> —see sections 19A, 19AB, 19AC, 19B, 19C and 19D <i>Wentworth Irrigation Act 1890</i> —see sections 22B, 22C and 22D <i>Western Lands Act 1901</i> —see section 28BB and Schedule 4
Schedule 5 (Statutory land managers)	—
Schedule 6 (Transfer of assets, rights and liabilities)	—
Schedule 7 (Savings, transitional and other provisions)	—
Schedule 8 (Repeal of certain legislation)	—
