



New South Wales

# Crown Land Management Act 2016 No 58

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New South Wales

# Crown Land Management Act 2016 No 58

Act No 58, 2016

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An Act to make provision for the ownership, use and management of the Crown land of New South Wales; to repeal certain legislation consequentially; and for other purposes. [Assented to 14 November 2016]

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

**Introductory note.** This Part sets out the objects of this Act, defines terms and expressions used in this Act and explains what is (or is not) Crown land. It also provides for the application of this Act and its inter-relationship with other legislation.

### **Division 1.1 Introduction**

#### **1.1 Name of Act**

This Act is the *Crown Land Management Act 2016*.

#### **1.2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) The following provisions commence on the date of assent to this Act:
  - (a) Division 4.2 (Vesting of Crown land in local councils),
  - (b) section 13.5 (Regulations),
  - (c) Schedule 7 (Savings, transitional and other provisions).

#### **1.3 Objects of Act**

The objects of this Act are:

- (a) to provide for the ownership, use and management of the Crown land of New South Wales, and
- (b) to provide clarity concerning the law applicable to Crown land, and
- (c) to require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land, and
- (d) to provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of New South Wales, and
- (e) to facilitate the use of Crown land by the Aboriginal people of New South Wales because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land, and
- (f) to provide for the management of Crown land having regard to the principles of Crown land management.

#### **1.4 Principles of Crown land management**

For the purposes of this Act, the *principles of Crown land management* are:

- (a) that environmental protection principles be observed in relation to the management and administration of Crown land, and
- (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible, and
- (c) that public use and enjoyment of appropriate Crown land be encouraged, and
- (d) that, where appropriate, multiple use of Crown land be encouraged, and
- (e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and

- (f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

## Division 1.2 Interpretation

### 1.5 General definitions

- (1) In this Act:

**appointment instrument**, in relation to a Crown land manager, means the appointment instrument referred to in section 3.3 (as varied from time to time) for the manager.

**asset** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**authorised officer** means a person appointed as an authorised officer under Division 10.3.

**community engagement strategy** means a community engagement strategy approved under Division 5.3.

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission.

**Consumer Price Index** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

**Consumer Price Index number**, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index.

**contaminate** has the same meaning as in the *Contaminated Land Management Act 1997*.

**continued holding** means each of the following:

- (a) a continued tenure (as defined in Schedule 1),
- (b) a continued irrigation tenure (as defined in Schedule 2),
- (c) a continued Western lands tenure (as defined in Schedule 3).

**council manager** is defined in section 3.20.

**court attendance notice** means:

- (a) in relation to proceedings for an offence commenced in the Local Court—a court attendance notice (within the meaning of the *Criminal Procedure Act 1986*) issued in respect of the person alleged to have committed the offence, and
- (b) in relation to proceedings for an offence commenced in the Land and Environment Court in its summary jurisdiction—an application for an order under section 246 of the *Criminal Procedure Act 1986* in respect of the person alleged to have committed the offence.

**Crown land** is defined in Division 1.3.

**Crown Land Acts** means the following:

- (a) each of the Acts, or provisions of Acts, that were defined to be the **Crown Lands Acts** in section 3 (1) of the *Crown Lands Act 1989* immediately before the repeal of the *Crown Lands Act 1989*,
- (b) each of the following Acts repealed by this Act:
  - (i) the *Hay Irrigation Act 1902*,
  - (ii) the *Trustees of Schools of Arts Enabling Act 1902*,

(iii) the *Wentworth Irrigation Act 1890*,

(iv) the *Western Lands Act 1901*,

(c) this Act.

**Crown land commissioner** means a person appointed as a Crown land commissioner under section 12.2.

**Crown land management rules** is defined in section 3.15.

**Crown land manager** for Crown land means a person appointed as a Crown land manager of the land under Division 3.2.

**Crown road** has the same meaning as in the *Roads Act 1993*.

**dedicated Crown land** means Crown land dedicated for use for one or more purposes under Part 2.

**Department** means the Department of Industry, Skills and Regional Development.

**development** and **development application**, in relation to land, have the same meanings as in the *Environmental Planning and Assessment Act 1979*.

**Eastern and Central Division** is defined in section 1.6.

**enclosure permit** is defined in section 5.34.

**filming project** has the same meaning as in the *Local Government Act 1993*.

**forestry right** has the same meaning as in section 87A of the *Conveyancing Act 1919*.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**General Register of Deeds** means the General Register of Deeds kept under Division 1 of Part 23 of the *Conveyancing Act 1919*.

**government agency** means any public authority, and includes:

- (a) a State owned corporation, and
- (b) Local Land Services,

but does not include a local council or a Crown land manager.

**government sector agency** has the same meaning as in the *Government Sector Employment Act 2013*.

**government sector employee** means an employee of a government sector agency.

**holding** means each of the following:

- (a) any lease or licence under this Act (including one that is a continued holding),
- (b) any incomplete purchase,
- (c) any other continued holding (except a permit or permission).

**Note.** Schedules 1–3 provide for continued holdings that are leases and licences to continue in force as leases or licences under this Act.

**incomplete purchase** means each of the following:

- (a) a continued incomplete tenure purchase (as defined in Schedule 1) that remains incomplete,
- (b) a continued incomplete irrigation lease purchase (as defined in Schedule 2) that remains incomplete,
- (c) a continued incomplete Western lands lease purchase (as defined in Schedule 3) that remains incomplete,
- (d) a new incomplete purchase that remains incomplete.

**land** includes any waters on or under the surface of the land.

**land of the Crown** includes, but is not limited to, Crown land.

**lawful authority** for conduct or an activity is defined in subsection (2).



**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**local government area**, in relation to a local council, has the same meaning as **area** in the *Local Government Act 1993* in relation to the council.

**Lord Howe Island** has the same meaning as **Island** in the *Lord Howe Island Act 1953*.

**mineral**, in relation to a provision of this Act, means:

- (a) a mineral (as defined in the *Mining Act 1992*), and
- (b) any other substance prescribed by the regulations for the purposes of the provision.

**Ministerial Corporation** means the Lands Administration Ministerial Corporation constituted by this Act, as provided by section 12.5.

**modification** includes addition, exception, omission or substitution.

**motor vehicle** has the same meaning as in the *Road Transport Act 2013*.

**native title certificate** is defined in section 8.4.

**native title legislation** means the *Native Title Act 1993* of the Commonwealth and the *Native Title (New South Wales) Act 1994* (and any regulations or other statutory instruments in force under either Act).

**native title rights and interests** has the same meaning as in the *Native Title Act 1993* of the Commonwealth.

**new incomplete purchase** is defined in Part 5 of Schedule 4.

**non-council manager** is defined in section 3.24.

**perpetual lease** means a lease under this Act for which no term is specified.

**pollution** has the same meaning as in the *Protection of the Environment Operations Act 1997*.

**public authority** means any of the following:

- (a) a Minister,
- (b) a government sector agency,
- (c) a statutory body representing the Crown,
- (d) a local council or a county council (as defined in the *Local Government Act 1993*).

**public purpose**, in relation to a provision of this Act, means any purpose declared to be a public purpose for the purposes of the provision by:

- (a) the Minister in a notice published in the Gazette, or
- (b) the regulations.

**Note.** See also clause 33 (Existing declarations of public purposes) of Schedule 7.

**Public Reserves Management Fund** means the Public Reserves Management Fund established by the *Public Reserves Management Fund Act 1987*.

**purchasable lease** is defined in Schedule 4.

**Register** means the Register kept under the *Real Property Act 1900*.

**registered proprietor**, in relation to land, has the same meaning as in the *Real Property Act 1900*.

**reserved Crown land** means Crown land reserved for use for one or more purposes under Part 2.

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

**Secretary** means the Secretary of the Department.

**special purpose holding** is defined in Division 5.7.

**State strategic plan for Crown land** means a State strategic plan for Crown land that complies with Division 12.4.

**statutory land manager** means a statutory land manager constituted under Schedule 5.

**structure** includes any of the following:

- (a) any building,
- (b) any post, pile, stake, pipe, chain, wire or any other thing fixed to the soil or to anything fixed to the soil,
- (c) any roadwork, pathway or paving,
- (d) any works for the reclamation of land that are or are liable to be, or would, but for the reclamation, be or be liable to be, covered wholly or partly by water,
- (e) any excavation works, drain, canal, sump or foundation, whether lined or unlined.

**temporary structure** means a temporary structure (as defined in the *Environmental Planning and Assessment Act 1979*), but only if that structure remains in place for less than 30 days.

**term lease** means a lease under this Act for which a term is specified.

**travelling stock reserve** has the same meaning as in the *Local Land Services Act 2013*.

**vacant Crown land** means Crown land that is not held under a holding.

**vehicle** includes:

- (a) any motor vehicle or other thing capable of transporting a person (including any aircraft, vessel, bicycle, bus, car, horse, train or tram), and
- (b) any trailer or caravan attached to any thing of that kind.

**vehicle offence** means:

- (a) an offence against section 9.6, or
- (b) an offence against the regulations involving a vehicle being used, parked or moored in contravention of the regulations.

**waters** includes a stream, creek, river, estuary, dam, lake or reservoir.

**Western Division** is defined in section 1.6.

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

- (2) There is **lawful authority** for a person's conduct or an activity for the purposes of this Act if it:
  - (a) is authorised or required by or under this 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.
- (3) A reference in this Act to a repealed Act or repealed statutory rule is a reference to the repealed Act or repealed statutory rule as in force immediately before its repeal unless the context or subject-matter indicates or requires differently.
- (4) If this Act (or an instrument made under this Act) provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day unless the context or subject-matter indicates or requires differently.
- (5) Introductory and other notes included in this Act do not form part of this Act.

## 1.6 Divisions of State

- (1) For the purposes of this Act, the State is divided into the following 2 geographical areas:
  - (a) the Eastern and Central Division,
  - (b) the Western Division.
- (2) Subject to subsection (4), the *Eastern and Central Division* is comprised of the following:
  - (a) those parts of the State remaining after both Lord Howe Island and the Western Division are excluded,
  - (b) the coastal waters of the State as defined in Part 10 of the *Interpretation Act 1987* (including the seabed and subsoil beneath, and the airspace above, those waters).
- (3) Subject to subsection (4), the *Western Division* is comprised by that part of the State recorded in the Register as Lot 1901, Deposited Plan 1133899.
- (4) The boundary between the Eastern and Central Division and the Western Division may be altered or redefined by the regulations.
- (5) The Minister is not to recommend the making of a regulation for the purposes of subsection (4) unless the Minister certifies that:
  - (a) a notice describing the alteration or redefinition proposed to be made by the regulation has been published in the manner prescribed by the regulations, and
  - (b) the notice stated that written objections and submissions relating to the proposed alteration or redefinition could be lodged with the Department not later than 28 days after publication of the notice, and
  - (c) the Minister has considered the objections and submissions that were duly made.

## Division 1.3 Crown land

### 1.7 Definition of “Crown land”

Subject to this Division, each of the following is *Crown land* for the purposes of this Act:

- (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 this Act or a declaration made under 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).

**Note.** Clause 6 of Schedule 7 provides for certain land under Acts repealed by Schedule 8 to become Crown land under this Act. Section 1.10 then provides for this land to be vested in the Crown.

Land that will become Crown land under this Act includes land vested in the Crown that is dedicated for a public purpose. This land was previously excluded from the definition of *Crown land* in the *Crown Lands Act 1989*. See also section 1.8 (2).

### 1.8 When land is vested in Crown

- (1) 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.

- (2) Land may be Crown land even though it is dedicated for a public purpose under this Act or another Act or law.

### **1.9 When land ceases to be or is not Crown land**

- (1) Land ceases to be Crown land if:
  - (a) the land is sold, or lawfully contracted to be sold, and the purchase price or other consideration for the sale has been received by the Crown (or by a person on behalf of the Crown) regardless of whether the purchaser is recorded in the Register as the registered proprietor of the land, or
  - (b) contracts for the sale of the land have been exchanged and the deposit has been received by the Crown (or by a person on behalf of the Crown).
- (2) Land to which subsection (1) (b) applies becomes Crown land again if the purchaser fails to complete the purchase following the exchange of contracts.

**Note.** See section 1.10 (When land becomes Crown land because of this Act).
- (3) To avoid doubt, subsection (1) does not prevent the Minister (or any other person acting on behalf of the Crown) from completing a sale of land that has ceased to be Crown land because of that subsection.
- (4) Crown land does not include land under an incomplete purchase.

### **1.10 When land becomes Crown land because of this Act**

- (1) This section applies to land that becomes Crown land because of the operation of a provision of this Act or a declaration made under section 4.4.
- (2) Any land to which this section applies is vested in the Crown when it becomes Crown land as an estate in fee simple, freed and discharged from all estates, interests, trusts or obligations, except as provided by subsections (3), (4) and (6).
- (3) The vesting of land in the Crown does not operate to:
  - (a) extinguish any mortgage over the land, or
  - (b) revoke any lease, licence, easement or right of way in relation to the land, or
  - (c) revoke or alter any dedication or reservation of the land, or
  - (d) extinguish, revoke or alter any estate, interest, trust or obligation to the extent that it is continued over the land by the provision or declaration under which the land becomes Crown land, or
  - (e) have any other kind of effect prescribed by the regulations.
- (4) A regulation for the purposes of subsection (3) (e) may provide that it extends to a vesting of land under this section occurring before the regulation was made.
- (5) Subsection (3) does not prevent a declaration under section 4.4 from including provisions that discontinue an interest of a kind referred to in that subsection.
- (6) A vesting of land under this section takes effect subject to any native title rights and interests existing in relation to the land immediately before the vesting.
- (7) To avoid doubt, a vesting of land under this section operates to change the ownership of the land even if the registered proprietor for the land specified in the Register remains unchanged.

**Note.** The Registrar-General must alter the Register to reflect the change in ownership if the Minister requests it under section 1.11.
- (8) The operation of this section is not to be regarded as:
  - (a) a breach of contract or confidence or otherwise as a civil wrong, or

- (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of the land, or
  - (c) giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of the land, or
  - (d) an event of default under any contract or other instrument.
- (9) No attornment to the Crown by a lessee of the previous owner of the land is required.
  - (10) No compensation is payable for the extinguishment of any estates, interests, trusts or obligations (or the abolition or loss of any office or other position) because of the operation of this section.
  - (11) This section has effect subject to any different provision that is made by this Act.
  - (12) In this section:  
*instrument* means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

#### **1.11 Updating Crown land entries in Register**

- (1) If the Minister requests it, the Registrar-General must alter the Register to state that the Crown is the registered proprietor of land under the *Real Property Act 1900* if it has become Crown land because of the operation of a provision of this Act or a declaration made under section 4.4.
- (2) This section does not limit any power of the Registrar-General under Part 2 or 3 of the *Real Property Act 1900* to alter the Register.

#### **1.12 Relationship of Division with Real Property Act 1900**

This Division has effect despite anything contained in section 42 of the *Real Property Act 1900*.

### **Division 1.4 Application of Act**

#### **1.13 Relationship between Schedules 1–4 and Parts 5–7**

- (1) The provisions of Schedules 1–4 prevail over the provisions of Parts 5–7 of this Act to the extent of any inconsistency.  
**Note.** Schedules 1–4 contain provisions relating to continued holdings, land in the Western Division and purchasable leases for which special provision was made under the former *Crown Lands (Continued Tenures) Act 1989*, *Hay Irrigation Act 1902*, *Wentworth Irrigation Act 1890* and *Western Lands Act 1901*.
- (2) Subsection (1) does not apply to the extent that its application is:
  - (a) expressly excluded or modified by a provision of this Act, or
  - (b) excluded by the regulations.

#### **1.14 Application of Act**

- (1) This Act applies in relation to both the Eastern and Central Division and the Western Division.
- (2) This Act does not apply in relation to Lord Howe Island.

#### **1.15 Dealings with Crown land generally subject to Act**

- (1) Crown land must not be occupied, used, sold, leased, licensed, dedicated, reserved or dealt with in any other way unless it is authorised by this Act.

- (2) However, this Act does not affect the operation of another Act to the extent that it:
- (a) makes special provision for particular Crown land or any particular kind of Crown land, or
  - (b) authorises Crown land to be dealt with in any manner inconsistent with this Act.

## **Part 2 Dedicated or reserved Crown land**

**Introductory note.** This Part provides for the dedication or reservation of Crown land by the Minister. It includes provisions dealing with:

- (a) the circumstances in which the Minister may dedicate or reserve Crown land, and
- (b) the alteration, addition and purposes of dedicated or reserved Crown land, and
- (c) the circumstances in which a dedication or reservation may be revoked, and
- (d) the permitted uses of dedicated or reserved Crown land, and
- (e) the kinds of dealings with dedicated or reserved Crown land that are permitted (including certain special powers of the Minister over dealings).

Part 3 enables the Minister to appoint Crown land managers for dedicated or reserved Crown land.

Division 5.3 also requires the Minister to approve community engagement strategies for proposed alterations or removals of the purposes for which dedicated or reserved Crown land is dedicated or reserved.

### **Division 2.1 Introduction**

#### **2.1 Crown land to which Part applies**

This Part applies to all Crown land except Crown land excluded under this Division.

#### **2.2 Exclusion of Crown land from Part**

The Minister may, by order published in the Gazette, exclude specified Crown land (or specified kinds of Crown land) from the application of this Part.

### **Division 2.2 Dedicated Crown land**

#### **2.3 Minister may dedicate Crown land**

- (1) The Minister may, by notice published in the Gazette, dedicate Crown land for use for one or more purposes specified in the notice.
- (2) Before doing so, the Minister must be satisfied that the use of the land for each purpose is:
  - (a) consistent with one or more objects of this Act, or
  - (b) in the public interest.

#### **2.4 Adding other Crown land to existing dedicated Crown land**

- (1) The Minister may, by notice published in the Gazette, add other Crown land to any dedicated Crown land.
- (2) When the notice takes effect, the additional land becomes part of the dedicated Crown land and is to be managed, used and dealt with accordingly.

#### **2.5 Proposed dedication or addition must be tabled in Parliament**

- (1) A notice dedicating Crown land (or adding Crown land to dedicated Crown land) cannot be published in the Gazette unless the proposed notice is tabled in both Houses of Parliament.
- (2) The proposed notice must be tabled in the House concerned at least 10 sitting days before the notice is published in the Gazette.

#### **2.6 Existing dedicated or reserved Crown land can be dedicated**

- (1) Crown land may be dedicated (or added to dedicated Crown land) even if it is already dedicated or reserved Crown land or part of dedicated or reserved Crown land.
- (2) However, the dedication or reservation of Crown land that is already dedicated or reserved Crown land (or already part of dedicated or reserved Crown land) ceases to

have effect when its new dedication, or its addition to other dedicated Crown land, takes effect.

## **2.7 Revocation of dedication**

- (1) The Minister may, by notice published in the Gazette, revoke the dedication (or part of the dedication) of dedicated Crown land.
- (2) However, a notice revoking a dedication must not be published unless:
  - (a) the Minister has caused a proposal to revoke the dedication to be published in the Gazette (the *revocation proposal*), and
  - (b) a copy of the revocation proposal is tabled in each House of Parliament within 10 sitting days after its publication, and
  - (c) notice of a resolution disallowing the revocation proposal is not duly given under subsections (3) and (4) or, if it is, the resolution is not passed or the notice of the resolution is withdrawn or lapses.
- (3) Either House of Parliament may pass a resolution disallowing the revocation proposal after the copy of the proposal is tabled in that House.
- (4) Notice of a disallowance resolution must be given within 14 sitting days after the revocation proposal is tabled in the House.
- (5) A dedication of land may be revoked even if:
  - (a) after dedication, a Crown grant has issued or a folio of the Register has been or is created, or
  - (b) before dedication, the land had been alienated by the Crown and subsequently resumed, purchased or acquired in any other way by the Crown.
- (6) This section extends to land that has ceased to be Crown land but remains subject to a dedication.

## **Division 2.3 Reserved Crown land**

### **2.8 Minister may reserve Crown land**

- (1) The Minister may, by notice published in the Gazette, reserve Crown land for use for one or more purposes specified in the notice.
- (2) Before doing so, the Minister must be satisfied that the use of the land for each purpose is:
  - (a) consistent with one or more objects of this Act, or
  - (b) in the public interest.

### **2.9 Adding other Crown land to existing reserved Crown land**

- (1) The Minister may, by notice published in the Gazette, add other Crown land to any reserved Crown land.
- (2) When the notice takes effect, the additional land becomes part of the reserved Crown land and is to be managed, used and dealt with accordingly.

### **2.10 Reserved Crown land can be reserved again**

- (1) Crown land may be reserved (or added to reserved Crown land) even if it is already reserved Crown land or part of other reserved Crown land.
- (2) However, if Crown land is already reserved Crown land (or part of other reserved Crown land) when it is reserved (or added to reserved Crown land) by a notice under this Division:



- (a) the existing reservation ceases to have effect in relation to the land unless the notice provides differently, and
- (b) for land that already forms part of other reserved Crown land—the reservation of the rest of the other Crown land remains unaffected.

#### **2.11 Revocation of reservation**

- (1) The Minister may, by notice published in the Gazette, revoke the reservation (or part of the reservation) of reserved Crown land.
- (2) This section extends to land that has ceased to be Crown land but remains subject to a reservation.

### **Division 2.4 Use of dedicated or reserved Crown land**

#### **2.12 Dedicated or reserved Crown land to be used for limited purposes**

Dedicated or reserved Crown land may be used only 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 this Act or another Act.

**Note.** Section 3.38 authorises dedicated or reserved Crown land to be used for a purpose specified in a plan of management for the land. See also sections 2.18 and 2.19.

#### **2.13 Use of dedicated or reserved Crown land with multiple purposes**

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.

#### **2.14 Additional purposes for dedicated or reserved Crown land**

- (1) The Minister may, by notice published in the Gazette, authorise dedicated or reserved Crown land to be used for one or more additional purposes.
- (2) Before doing so, the Minister must be satisfied that the use of the dedicated or reserved Crown land for each additional purpose:
  - (a) would be in the public interest, and
  - (b) would not be likely to materially harm the use of the land for any of the purposes (an *existing purpose*) for which it is dedicated or reserved.
- (3) Without limitation, the following considerations are relevant to the question of whether the use of dedicated or reserved Crown land for an additional purpose would not be likely to materially harm its use for an existing purpose:
  - (a) the proportion of the area of the land that may be affected by the additional purpose,
  - (b) if the activities to be conducted for the additional purpose will be intermittent, the frequency and duration of the impacts of those activities,
  - (c) the degree of permanence of likely harm and in particular whether that harm is irreversible,
  - (d) the current condition of the land,
  - (e) the geographical, environmental and social context of the land,
  - (f) any other considerations that may be prescribed by the regulations.
- (4) An additional purpose does not limit any existing purpose.

### **2.15 Alteration of purpose for dedicated or reserved Crown land**

- (1) The Minister may, by notice published in the Gazette, alter one or more purposes for which Crown land is dedicated or reserved under this Part.
- (2) Before doing so, the Minister must be satisfied that the use of the land for each altered purpose is:
  - (a) consistent with the objects of this Act, and
  - (b) in the public interest.
- (3) To avoid doubt, a purpose replaced by an altered purpose ceases to have effect when the notice takes effect.

### **2.16 Removal of purpose for dedicated or reserved Crown land**

- (1) This section applies to dedicated or reserved Crown land that is dedicated or reserved for use for more than one purpose.
- (2) The Minister may, by notice published in the Gazette, declare that the Crown land is no longer dedicated or reserved for use for a specified purpose if:
  - (a) the Minister is satisfied that the land is not being used for that purpose, and
  - (b) the land continues to be used for one or more of the other purposes for which it is dedicated or reserved.
- (3) The specified purpose ceases to be a purpose for which the Crown land is dedicated or reserved when the notice takes effect.

### **2.17 Effect of dedication or reservation for public use**

The dedication or reservation of Crown land under this Part for a purpose that permits or requires its use by members of the public does not:

- (a) prevent the holder of a holding over the land from using it for commercial purposes, or
- (b) prevent the person responsible for the care, control and management of the land from charging fees for the use of the land by members of the public (provided the fees collected are used in accordance with this Act), or
- (c) entitle members of the public to have unrestricted access to the land (particularly, in relation to any part of the land under a holding).

**Note.** Section 3.16 will generally require Crown land managers for dedicated or reserved Crown land to apply any fees charged for the use of the land for the improvement of the land and its purposes. Also, paragraph (c) allows for restrictions on, but not wholesale prohibitions of, access to the land.

## **Division 2.5 Special powers of Minister**

### **2.18 Special provisions relating to Minister's powers over dedicated or reserved Crown land**

- (1) Despite any other provision of this Act, the Minister may grant a lease, licence, permit, easement or right of way over dedicated or reserved Crown land for any of the following purposes (a *relevant interest*):
  - (a) any facility or infrastructure,
  - (b) any other purpose the Minister thinks fit.
- (2) Before doing so, the Minister must:
  - (a) consult the following persons or agencies:
    - (i) for land for which there is a Crown land manager—the manager,

- (ii) for land used, occupied or administered by a government agency—the agency (if a Minister is the agency) or the Minister to whom that agency is responsible (in any other case), and
  - (b) for land to be used or occupied under the relevant interest for any purpose except a purpose for which it is currently dedicated or reserved—cause a notice to be published specifying the purposes for which the land is to be used or occupied under the relevant interest, and
  - (c) be satisfied that it is in the public interest to grant the relevant interest.
- (3) A failure to comply with subsection (2) (a) does not affect the validity of the relevant interest.
- (4) The proceeds from a relevant interest are to be applied as directed by the Minister and, without limitation, a direction may include any of the following:
- (a) a direction that the proceeds (or part of the proceeds) be paid into the Consolidated Fund or the Public Reserves Management Fund,
  - (b) if the relevant interest is granted over dedicated or reserved Crown land with a Crown land manager—a direction that the proceeds (or part of the proceeds) be paid to the manager or to another Crown land manager,
  - (c) if the relevant interest is granted in respect of a travelling stock reserve under the care, control and management of Local Land Services—a direction that the proceeds (or part of the proceeds) be paid to Local Land Services,
  - (d) if it is Crown land referred to in subsection (2) (a) (ii)—a direction that the proceeds (or part of the proceeds) be paid to the relevant government agency.
- (5) To avoid doubt:
- (a) the power of the Minister to grant a relevant interest over dedicated or reserved Crown land under this section includes the power to enter into an agreement for the relevant interest, and
  - (b) subsection (2) (b) does not require the Minister to publish:
    - (i) details about the relevant interest as well as the purposes for which the land is to be used or occupied under the relevant interest, or
    - (ii) a new notice each time a relevant interest is renewed (instead of granted).
- (6) Dedicated or reserved Crown land under a special purpose holding may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the provisions of the special purpose holding.

## **2.19 Secondary interests in dedicated or reserved Crown land**

- (1) The Minister's power to grant a lease, licence, permit, easement or right of way (a *secondary interest*) over dedicated or reserved Crown land is not limited by its dedication or reservation, except as provided by this section.
- (2) The Minister cannot grant a secondary interest over dedicated or reserved Crown land unless satisfied that the use of the land under the secondary interest:
- (a) would be in the public interest, and
  - (b) would not be likely to materially harm its use for the purposes for which it is dedicated or reserved.
- (3) Without limitation, the following considerations are relevant to the question of whether the use of dedicated or reserved Crown land under a secondary interest would not be likely to materially harm its use for the purposes for which it is dedicated or reserved:

- (a) the proportion of the area of the land that may be affected by the secondary interest,
  - (b) if the activities to be conducted under the secondary interest will be intermittent, the frequency and duration of the impacts of those activities,
  - (c) the degree of permanence of likely harm and in particular whether that harm is irreversible,
  - (d) the current condition of the land,
  - (e) the geographical, environmental and social context of the land,
  - (f) any other considerations that may be prescribed by the regulations.
- (4) To avoid doubt:
- (a) the purposes for which a secondary interest can be granted are not limited to public purposes or purposes that are ancillary or incidental to a purpose for which the land is dedicated or reserved, and
  - (b) a secondary interest does not materially harm the use of the land for the purposes for which it is dedicated or reserved just because:
    - (i) the use of the land under the interest may be inconsistent or incompatible with a purpose for which it is dedicated or reserved, or
    - (ii) the land may be used for grazing under the interest.
- (5) The Minister can validate a secondary interest that has not been validly granted because of this section by making any changes to the purpose for which it was granted, or to its terms and conditions, that may be necessary to make the interest valid.
- (6) If a secondary interest is validated under this section:
- (a) the secondary interest is taken to have been validly granted from the date of its original grant, and
  - (b) the use of Crown land in accordance with the secondary interest before its validation is taken to be, and always to have been, valid.
- (7) In this section:
- grant** includes a purported grant.
- use** of land includes its occupation.
- Note.** This section also applies to leases, licences, permits, easements or rights of way granted by Crown land managers over dedicated or reserved Crown land. See section 3.17.

## 2.20 Short-term licences over dedicated or reserved Crown land

- (1) The regulations may make provision for or with respect to the following concerning short-term licences over dedicated or reserved Crown land:
  - (a) any purposes for which the licences may be granted (**prescribed purpose**),
  - (b) any conditions to which the licences are subject (**prescribed condition**),
  - (c) the maximum term for which licences may be granted (**prescribed maximum term**).
- (2) The Minister may grant a short-term licence over dedicated or reserved Crown land for any prescribed purpose.
- (3) A short-term licence may be granted even if the purpose for which it is granted is inconsistent with the purposes for which the Crown land is dedicated or reserved.
- (4) A short-term licence may be granted subject to conditions specified by the Minister and is also subject to any prescribed conditions.

- (5) A short-term licence may not be granted for any purpose for which an authority, permit, lease or licence may be granted under the *Fisheries Management Act 1994*.
- (6) A short-term licence ceases to have effect when the prescribed maximum term after it is granted expires, unless it is revoked sooner by the Minister or is granted for a shorter term.
- (7) Sections 2.18 and 2.19 do not limit the circumstances in which short-term licences can be granted under this section.

**Note.** This section also applies to short-term licences granted by Crown land managers over dedicated or reserved Crown land. See section 3.17.

## **Division 2.6      General**

### **2.21    Division of assets, rights and liabilities when land added to different dedicated or reserved Crown land**

- (1) This section applies if the whole or any part of dedicated or reserved Crown land (the ***added land***) is added to different dedicated or reserved Crown land (the ***expanded land***) under this Part.
- (2) The Minister may, by the notice that adds the added land to the expanded land or a subsequent notice published in the Gazette, provide for specified assets, rights and liabilities of the former Crown land manager of the added land to be transferred to the Crown land manager of the expanded land.
- (3) An asset, right or liability cannot be specified for the purposes of subsection (2) unless:
  - (a) the Minister is satisfied that it was created, exercisable or incurred in connection with the exercise of functions as the Crown land manager of the added land, or
  - (b) the parties to an agreement under subsection (4) have requested it.
- (4) The former Crown land manager of the added land and the Crown land manager of the expanded land may agree to the appropriate division of the assets, rights and liabilities of the former Crown land manager in relation to the added land.
- (5) The Minister does not have to transfer any assets, rights or liabilities under this section unless:
  - (a) if there is an agreement under subsection (4)—the parties to the agreement request it, or
  - (b) the Minister is satisfied that an agreement under subsection (4) is not likely to be reached.
- (6) Schedule 6 applies to a transfer of any asset, right or liability to a person by a notice referred to in subsection (2).

### **2.22    Responsibility for public reserves**

- (1) This section applies to dedicated or reserved Crown land that is a public reserve and has effect despite anything in the *Local Government Act 1993*.
- (2) The Minister may, by notice published in the Gazette, declare that the dedicated or reserved Crown land is for the time being under the care, control and management of the Minister.
- (3) Accordingly, the council does not have control of the dedicated or reserved Crown land as provided by section 48 of the *Local Government Act 1993*.

- (4) If the Minister, by subsequent notice published in the Gazette, revokes a notice under subsection (2) in relation to dedicated or reserved Crown land, section 48 of the *Local Government Act 1993* is taken to apply in relation to the land.
- (5) In this section:  
*public reserve* means a public reserve as defined in the *Local Government Act 1993* (except a public reserve referred to in section 48 (1) (b) of that Act).

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

- (1) This section:
  - (a) applies in relation to dedicated or reserved Crown land for the purposes of the *Environmental Planning and Assessment Act 1979* (and any instrument made under that Act), and
  - (b) has effect despite anything in that Act (or any instrument made under that Act).
- (2) The Minister is taken to have given written consent on behalf of the Crown (as the owner of dedicated or reserved Crown land) for its Crown land manager or the holder of a lease or licence over the land to make a development application relating to any of the following kinds of development:
  - (a) without limiting paragraph (g), the repair, maintenance, restoration or renovation of an existing building on the land if it will not do any of the following:
    - (i) alter the footprint of the building by adding or removing more than one square metre (or any other area that may be prescribed by the regulations),
    - (ii) alter the existing building height by adding or removing more than one storey,
    - (iii) involve excavation of the land,
  - (b) the erection of a fence approved by the manager or the repair, maintenance or replacement of a fence erected with the manager's approval,
  - (c) the use of the land for any of the following purposes:
    - (i) a purpose for which the land may be used under this Act,
    - (ii) a purpose for which a lease or licence has been granted under this Act,
  - (d) the erection of signage approved by the manager or the repair, maintenance or replacement of signage erected with the manager's approval,
  - (e) the erection, repair, maintenance or replacement of a temporary structure on the land,
  - (f) the installation, repair, maintenance or replacement of services on the land,
  - (g) the erection, repair, maintenance or replacement of any of the following on the land:
    - (i) a building or other structure on the land permitted under the lease,
    - (ii) a toilet block,
    - (iii) a structure for the protection of the environment,
  - (h) the carrying out on the land of any other development of a kind prescribed by the regulations or permitted under a plan of management for the land.
- (3) Subsection (2) does not apply in relation to any development that involves any of the following:
  - (a) the subdivision of land,

- (b) the carrying out of development of a kind excluded by the regulations.
- (4) Any regulations made for the purposes of subsection (3) (b) may exclude the whole or any part of a kind of development specified by subsection (2).
- (5) To avoid doubt, the Minister's consent on behalf of the Crown (as the owner of dedicated or reserved Crown land) to lodgment of a development application in respect of that land is required for the carrying out of any development to which subsection (2) does not apply.

#### **2.24 Limits on compensation payable for compulsory acquisition of dedicated or reserved Crown land**

- (1) This section applies to each of the following:
  - (a) the determination of the amount of compensation payable under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* in respect of the compulsory acquisition of the whole or part of dedicated or reserved Crown land managed by a Crown land manager,
  - (b) the determination under section 191 of the *Roads Act 1993* of the amount of compensation payable or provided under Division 2 of Part 12 of that Act in respect of the acquisition under that Division of the whole or part of dedicated or reserved Crown land managed by a Crown land manager,
  - (c) the determination under section 22A of the *Pipelines Act 1967* of the amount of compensation payable in respect of the vesting of the whole or part of dedicated or reserved Crown land managed by a Crown land manager or the vesting of an easement over the whole or part of land of that kind.
- (2) This section does not apply to land that comprises dedicated land for which a Crown grant was granted to a former reserve trust or a predecessor in title before the commencement of the *Crown Lands (Land Titles) Amendment Act 1980*.
- (3) Despite section 55 of the *Land Acquisition (Just Terms Compensation) Act 1991*, in determining the amount of compensation, if any, payable to a Crown land manager of dedicated or reserved Crown land managed by the manager, regard is to be had to the following matters only (as assessed in accordance with this section):
  - (a) the value to the manager of any improvements (including structures) erected or carried out by the manager on the land being acquired or vested, or over which the easement is vested, on the date the land is acquired,
  - (b) the amount of any loss attributable to the reduction in public benefit from any loss of public open space that arises from the acquisition or vesting of the land,
  - (c) the amount of any reduction in the value to the manager, as at the date the land is acquired or vests, or the easement vests, of any other improvements (including structures) erected or carried out by the manager on other land that is caused by the land acquired being severed from the other land under management,
  - (d) the cost to the manager of acquiring additional land having environmental benefits that are comparable to the land being acquired or vested,
  - (e) any loss attributable to disturbance (as defined in section 59 of that Act), other than loss arising from the termination of a lease or licence over the whole or part of the land being acquired.
- (4) For the purposes of a determination of an amount of compensation:
  - (a) the Crown is to be treated as being the only holder in fee simple of the land that is acquired or vested or over which the easement is vested, and
  - (b) section 56 (2) of the *Land Acquisition (Just Terms Compensation) Act 1991* applies as if the value of improvements (including structures) erected or

carried out by the Crown land manager on the land is the market value of the manager's interest in the land.

- (5) If dedicated or reserved Crown land is managed by the authority acquiring the whole or part of the land, the authority is not entitled to compensation in respect of the acquisition or vesting if it decides not to require compensation and does not revoke that decision before the acquisition of the land concerned.
- (6) This section does not affect:
  - (a) any function of the Minister over the dedicated or reserved Crown land or the requirements of the Crown land management rules concerning the application of compensation that is payable, or
  - (b) the rights under the *Land Acquisition (Just Terms Compensation) Act 1991* of a person from whom native title rights and interests in relation to land have been acquired.
- (7) In this section:

***dedicated or reserved Crown land*** managed by a Crown land manager includes land:

  - (a) to which the provisions of this Part are applied by another Act or that is taken under another Act to be dedicated or reserved Crown land under this Act, and
  - (b) for which a Crown land manager has been appointed or is taken to have been appointed.

#### **2.25 Notice of challenges to validity of interests in dedicated or reserved Crown land**

- (1) The validity of a lease, licence, permit, easement or right of way over dedicated or reserved Crown land (whether granted by the Minister, a Crown land manager or another person) cannot be questioned in legal proceedings unless a party to the proceedings has given the Minister not less than the minimum period of notice of the alleged invalidity.
- (2) Notice can be given before proceedings are commenced by a prospective party to proceedings.
- (3) The ***minimum period*** of notice is 3 months or a shorter period that may be prescribed by the regulations.
- (4) The notice of alleged invalidity must be given in the form approved by the Minister and must provide the information required by the approved form.
- (5) The court before which proceedings are pending may adjourn the proceedings to enable notice of alleged invalidity to be given.
- (6) In a particular case, the Minister may, by written instrument, waive the requirement for the giving of notice or reduce the minimum period.



## Part 3 Management of Crown land

**Introductory note.** This Part provides for the management of dedicated or reserved Crown land. It includes provisions that:

- (a) enable the Minister to appoint Crown land managers for dedicated or reserved Crown land, and
- (b) make a Crown land manager of dedicated or reserved Crown land responsible for the care, control and management of the land, and
- (c) provide for the functions of Crown land managers (including specifying the kinds of dealings with managed land that they are authorised to do), and
- (d) enable the Minister to issue Crown land management rules for Crown land managers.

The following persons can be appointed as Crown land managers for dedicated or reserved Crown land:

- (a) local councils,
- (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) statutory land managers constituted under Schedule 5,
- (e) the Ministerial Corporation,
- (f) associations under the *Associations Incorporation Act 2009*,
- (g) companies under the *Corporations Act 2001* of the Commonwealth,
- (h) any other bodies corporate or corporations constituted by or under another Act,
- (i) heads of government sector agencies.

This Part also makes it clear that the Minister is responsible for the care, control and management of Crown land if there is no Crown land manager of the land or it is not dedicated or reserved.

Schedule 5 sets out the duties of board members of statutory land managers.

Schedule 7 provides for board members of reserve trusts (including reserve trusts constituted by members of community groups) under the former *Crown Lands Act 1989* for existing dedicated or reserved Crown land to become the board members of statutory land managers constituted under that Schedule to manage those lands. The creation of new statutory land managers in the future (as well as the ability to appoint associations and companies as Crown land managers) will enable community groups to continue to be involved in the management of dedicated or reserved Crown land.

### Division 3.1 Introduction

#### 3.1 Responsibility for management of Crown land

- (1) The person responsible for the care, control and management of particular dedicated or reserved Crown land is:
  - (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.
- (2) The Minister is responsible for the care, control and management of:
  - (a) all Crown land that is not dedicated or reserved Crown land, and
  - (b) all dedicated or reserved Crown land for which there are no Crown land managers.
- (3) This section does not:
  - (a) limit the functions of the Minister under this Act or another Act in relation to dedicated or reserved Crown land for which there is a Crown land manager, or
  - (b) limit the functions of a person or body taken to be the Crown land manager of dedicated or reserved Crown land for the purposes of this Act because of the operation of another Act, or
  - (c) affect a different allocation of management responsibilities made by another provision of this Act.

### 3.2 Management of parts of Crown land

To avoid doubt, Crown land managers can be appointed and allocated responsibilities under this Part for a part (or different parts) of particular dedicated or reserved Crown land as an alternative to their appointment and allocation for the whole of the land.

**Note.** The Minister is responsible (because of section 3.1 (2) (b)) for the care, control and management of any part of particular dedicated or reserved Crown land for which there is no Crown land manager.

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

### 3.3 Minister may appoint Crown land managers

- (1) The Minister may, by written instrument (an *appointment instrument*), appoint one or more qualified persons to be Crown land managers for specified dedicated or reserved Crown land.
- (2) Each of the following is a *qualified person* for appointment as a Crown land manager:
  - (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,
  - (e) the Ministerial Corporation,
  - (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.
- (3) A Crown land manager may be appointed to manage more than one area of dedicated or reserved Crown land at a time.
- (4) A corporation constituted by or under another Act appointed as a Crown land manager is authorised to accept the appointment, and to exercise all the functions of a Crown land manager, despite anything in the Act.
- (5) A local council may only be appointed as the Crown land manager of dedicated or reserved Crown land that is wholly or partly within the local government area of another local council with the consent of the other council.
- (6) The appointment of a qualified person as a Crown land manager does not make the person a statutory body representing the Crown if the person is not already one.

### 3.4 Appointment term

- (1) A Crown land manager is appointed for a term if:
  - (a) the term is specified in the Crown land manager's original appointment instrument, or
  - (b) the term is subsequently specified by a notice of the Minister published in the Gazette.
- (2) The Minister may, by notice published in the Gazette, extend the current term of a Crown land manager's appointment from time to time.

### 3.5 Content of appointment instrument

- (1) An appointment instrument may, in a manner not inconsistent with this Act, make provision for or with respect to any matter concerning the exercise of the management functions of the Crown land manager.
- (2) Without limiting subsection (1), the appointment instrument may make provision for or with respect to the following:
  - (a) the kinds of functions that can (or cannot) be exercised,
  - (b) the circumstances in which functions can (or cannot) be exercised,
  - (c) conditions or other obligations in relation to the exercise of functions (including reporting requirements),
  - (d) any other matter required or permitted by this Act or prescribed by the regulations.

### 3.6 Appointment cannot take effect unless notified in Gazette

- (1) A Crown land manager's appointment cannot take effect unless notice of the appointment is published in the Gazette.
- (2) The notice of the appointment must:
  - (a) state the name of the appointee, and
  - (b) specify the Crown land for which the appointee is the Crown land manager, and
  - (c) specify the term (if any) of the appointment, and
  - (d) specify any other details about the appointment that may be prescribed by the regulations.
- (3) A corporation can be appointed as a Crown land manager even if it does not yet exist, but only if its appointment takes effect on the day it comes into existence or on a later day specified in the notice of the appointment.
- (4) This section does not apply in relation to an appointment made, or taken to be made, by a provision of this Act or another Act.

### 3.7 Recording of Crown land manager in Register

- (1) If the Minister requests it, the Registrar-General must:
  - (a) record particulars about the appointment of a Crown land manager of dedicated or reserved Crown land that the Registrar-General considers necessary in the folio of the Register for the land, and
  - (b) alter or remove a recording about the appointment of a Crown land manager of dedicated or reserved Crown land that does not correctly or accurately state those particulars.
- (2) This section does not limit any power of the Registrar-General under Part 2 or 3 of the *Real Property Act 1900* to alter the Register.

### 3.8 Appointment instruments for managers appointed by Acts

- (1) An appointment instrument may be given to a Crown land manager who has been appointed, or is taken to have been appointed, by a provision of this Act (for example, Schedule 7) or another Act.

**Note.** Schedule 7 provides for certain persons to be appointed as Crown land managers for the purposes of this Act on repeal of the *Crown Lands Act 1989*.
- (2) The appointment instrument may include any provisions (including in relation to the term of the appointment), not inconsistent with the Act that made the appointment,

that can be included in an appointment instrument for a Crown land manager and may be varied accordingly.

### 3.9 Variation of appointment

The Minister may, by further appointment instrument given to a Crown land manager, vary the Crown land manager's appointment:

- (a) to include or alter provisions in the instrument in respect of the matters referred to in section 3.5, or
- (b) to allocate, or alter the allocation of, responsibility for the care, control and management of the Crown land concerned if there are one or more other Crown land managers for the land.

### 3.10 Revocation of appointment

- (1) The Minister may, by notice published in the Gazette, revoke a person's appointment as a Crown land manager at any time for any or no reason.
- (2) The notice may also provide for specified assets, rights and liabilities of the person whose appointment is revoked to be transferred, on the revocation, to one or more specified persons.
- (3) An asset, right or liability cannot be specified for the purposes of subsection (2) unless the Minister is satisfied that it was created, exercisable or incurred in connection with the exercise of functions as a Crown land manager.
- (4) A person specified for the purposes of subsection (2) must be:
  - (a) a public authority, or
  - (b) any new Crown land manager of the dedicated or reserved Crown land.
- (5) Schedule 6 applies to a transfer of any asset, right or liability to a person by a notice under this section.
- (6) A person whose appointment as a Crown land manager is revoked is not entitled to any compensation for the revocation of the appointment.

**Note.** See Parts 6 and 7 of Schedule 5 for when the Minister dissolves a statutory land manager.

### 3.11 Change of name does not affect appointment

- (1) A change in the name of a Crown land manager of dedicated or reserved Crown land does not operate to revoke the manager's appointment.
- (2) Accordingly, the renamed Crown land manager continues to be responsible for the care, control and management of the dedicated or reserved Crown land (including any accounts in authorised deposit-taking institutions or with utility providers, and insurance policies, under its former name).

### 3.12 End of appointment

- (1) A Crown land manager's appointment ends if:
  - (a) the manager resigns by a written instrument given to the Minister, or
  - (b) the manager's appointment is revoked by the Minister, or
  - (c) the manager completes the manager's term of appointment and is not re-appointed.

**Note.** If the Crown land manager is a statutory land manager with a board, a board member can resign from the board. See clause 13 of Schedule 5.

- (2) A local council or statutory land manager cannot resign as a Crown land manager without the Minister's consent.

### **Division 3.3 Functions of Crown land managers generally**

**Note.** Section 5.3 (4) provides that the appointment of a Crown land manager of dedicated or reserved Crown land does not limit the Minister's powers to deal with the land.

#### **3.13 Functions of Crown land managers**

- (1) The functions of a Crown land manager of specified dedicated or reserved Crown land are:
  - (a) to be the person responsible for the care, control and management of the Crown land for purposes referred to in section 2.12 applicable to the land, and
  - (b) to exercise any other functions that are conferred or imposed on the manager by or under this Act or another Act (including by Divisions 3.4 and 3.5).
- (2) The Crown land manager must 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 under section 3.14, and
  - (c) any applicable Crown land management rules, and
  - (d) any applicable plan of management (whether under the *Local Government Act 1993* or Division 3.6), and
  - (e) for managers except local councils—the requirements of any community engagement strategy applicable to the manager.

**Note.** See also any guidance materials and handbooks issued by the Department.

- (3) The members of the board or other governing body of a Crown land manager that is not a statutory land manager must, when participating in decision-making concerning the exercise of the manager's functions, comply with the duties imposed on board members of statutory land managers by Division 4 (Conduct of board members) of Part 4 of Schedule 5.
- (4) Subsection (3) has effect subject to:
  - (a) any modifications to the provisions of Division 4 (Conduct of board members) of Part 4 of Schedule 5 prescribed by the regulations, and
  - (b) any applicable Crown land management rules, and
  - (c) the constitution of, and any other governance provisions applicable to, the Crown land manager under another Act that it is required to comply with.

#### **3.14 Allocation of responsibilities between multiple Crown land managers**

- (1) The Minister may 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 in accordance with this section.
- (2) An allocation may be made by:
  - (a) the appointment instruments for the managers, or
  - (b) a notice published in the Gazette.
- (3) The Minister may allocate different aspects of the responsibility for the care, control and management of the dedicated or reserved Crown land to different Crown land managers.
- (4) An allocation may be made by reference to any one or more of the following factors:

- (a) specified functions relating to the care, control and management of the dedicated or reserved Crown land,
  - (b) specified parts of the dedicated or reserved Crown land,
  - (c) functions or parts as determined by the Minister from time to time.
- (5) The Minister remains responsible for any aspect of the care, control and management of the dedicated or reserved Crown land for which responsibility has not been allocated.
- (6) Each Crown land manager is responsible only for those aspects of the responsibility for the care, control and management of the Crown land that have been allocated to the manager.

### **3.15 Crown land management rules**

- (1) The Minister may make rules (*Crown land management rules*), not inconsistent with this Act, for or with respect to the management of dedicated or reserved Crown land by Crown land managers.
- (2) Any Crown land management rules must be published in the Gazette.
- (3) A copy of any Crown land management rules must also be published on the Department's website. A failure to do so does not, however, affect their validity.
- (4) Sections 42 and 43 of the *Interpretation Act 1987* apply to and in respect of any Crown land management rules in the same way as they apply to and in respect of a statutory rule as defined in that Act.
- (5) Without limitation, the Crown land management rules may make provision for or with respect to the following:
  - (a) maximum terms for leases, licences or permits that can be granted by Crown land managers (but not so as to exceed any maximum terms imposed by this Act),
  - (b) provisions that Crown land managers must or may include in holdings they grant,
  - (c) standards of conduct for Crown land managers, and any persons involved in decision-making by Crown land managers, in connection with the exercise of management functions over the Crown land they manage (including applying, whether with or without modifications, the standards of conduct specified by Division 4 of Part 4 of Schedule 5 to Crown land managers that are not statutory land managers with boards),
  - (d) setting aside, applying or disposing of amounts received by Crown land managers from sales, leases, easements, licences or other dealings with dedicated or reserved Crown land or as compensation for the compulsory acquisition of that land,
  - (e) requiring Crown land managers to pay amounts they receive into the Consolidated Fund or Public Reserves Management Fund or to other Crown land managers,
  - (f) the investment of amounts received by Crown land managers (including rights, duties and other functions of managers in connection with investments they make),
  - (g) reports and other information to be provided to the Minister,
  - (h) environmental standards or considerations to be taken into account in decision-making,
  - (i) public access to, and the use (including by the Aboriginal people of the State) of, dedicated or reserved Crown land,

- (j) compliance with heritage requirements and with other requirements for the protection of dedicated or reserved Crown land,
- (k) any other matters prescribed by the regulations.

### **3.16 Application of proceeds of managed Crown land**

- (1) The net amount of the proceeds of dedicated or reserved Crown land managed by a Crown land manager must be applied by the manager for a permitted purpose for the land.
- (2) A Crown land manager of more than one area of dedicated or reserved Crown land may pool the net amount of the proceeds for some or all of those areas and apply the pooled funds for any permitted purpose for any of those areas.
- (3) Each of the following is a *permitted purpose* for land:
  - (a) the purpose of making improvements to the land,
  - (b) any other purpose referred to in section 2.12 that applies to the land.
- (4) This section applies except to the extent that any of the following provide differently:
  - (a) the manager's appointment instrument,
  - (b) the Crown land management rules,
  - (c) the regulations,
  - (d) a plan of management under Division 3.6 for the land.
- (5) In this section:  
*proceeds* of dedicated or reserved Crown land means any amounts received by a Crown land manager from sales, leases, easements, licences or other dealings with the land or as compensation for the compulsory acquisition of the land (whether wholly or partly).

### **3.17 Application of certain special provisions to Crown land managers**

- (1) Each of the following provisions extends to leases, licences, permits, easements or rights of way granted by Crown land managers as if references in those sections to the Minister were references to a Crown land manager:
  - (a) section 2.19 (Secondary interests in dedicated or reserved Crown land),
  - (b) section 2.20 (Short-term licences over dedicated or reserved Crown land).

**Note.** Section 2.25 (Notice of challenges to validity of interests in dedicated or reserved Crown land) also applies in relation to Crown land managers.
- (2) Subsection (1) does not authorise a Crown land manager to grant anything without the Minister's consent if another provision of this Part requires the Minister's consent.

### **3.18 Delegation of functions with Ministerial approval**

- (1) A Crown land manager of dedicated or reserved Crown land may delegate to another person any of the manager's functions in relation to the land, but only if the delegation to that person (or to a class of persons to which the person belongs) has been approved by the Minister.
- (2) Despite subsection (1), the following functions cannot be delegated:
  - (a) the power of delegation conferred by subsection (1),
  - (b) any other function excluded by the regulations.

### 3.19 Reports and information on other matters

- (1) The Minister may, by written direction given to a Crown land manager, require the manager to provide the Minister with reports or other information on specified matters (at the times specified) concerning the exercise of the manager's management functions.
- (2) This section does not limit or affect any other reporting requirements imposed on Crown land managers by this Part.

### Division 3.4 Crown land managed by councils

**Note.** Part 8 includes provisions that are applicable to council managers concerning the management of land over which there may be native title rights and interests.

#### 3.20 Application of Division

- (1) This Division applies in relation to any local council that is a Crown land manager of dedicated or reserved Crown land (a *council manager*).  
**Note.** See Division 4.2 in relation to the powers and other functions of councils in which Crown land is vested under that Division.
- (2) This Division applies despite anything in the *Local Government Act 1993*.
- (3) The regulations may make provision for or with respect to the modification of the provisions of the *Local Government Act 1993* applicable under this Division to council managers.

#### 3.21 Management in accordance with Local Government Act 1993

- (1) A council manager is authorised to classify and manage its dedicated or reserved Crown land as if it were public land within the meaning of the *Local Government Act 1993*, subject to this Division.  
**Note.** The term *public land* (as defined by the *Local Government Act 1993*) excludes land to which this Act applies even if it is vested in or under the control of a local council. The Act also requires local councils to classify their public lands as either community land or operational land and manage the land accordingly.
- (2) Accordingly, a council manager is also authorised to manage its dedicated or reserved Crown land as if it were community land or operational land, but only as permitted or required by this Division.  
**Note.** For example, requirements relating to reporting and plans of management will generally be as provided by the *Local Government Act 1993* rather than this Act.

#### 3.22 Functions of council managers

- (1) Except as provided by subsection (2) or (3), a council manager of dedicated or reserved Crown land:
  - (a) must manage the land as if it were community land under the *Local Government Act 1993*, and
  - (b) has for that purpose all the functions that a local council has under that Act in relation to community land (including in relation to the leasing and licensing of community land).
- (2) A council manager of dedicated or reserved Crown land that is a public reserve (as defined in the *Local Government Act 1993*):
  - (a) must manage the land as a public reserve under that Act, and
  - (b) has for that purpose all the functions that a local council has under that Act in relation to a public reserve.

**Note.** Section 2.22 enables the Minister to assume responsibility from a local council for the care, control and management of dedicated or reserved Crown land that is a public reserve.



- (3) A council manager of dedicated or reserved Crown land that is classified, with the written consent of the Minister under this section, as operational land under the *Local Government Act 1993*:
  - (a) must manage the land as if it were operational land under that Act, and
  - (b) has for that purpose all the functions that a local council has under that Act in relation to operational land.
- (4) However, a council manager of dedicated or reserved Crown land cannot:
  - (a) sell or dispose of the land in any other way unless the Minister gives written consent for it, or
  - (b) classify the land as operational land under the *Local Government Act 1993* unless the Minister gives written consent for it, or
  - (c) do any other thing under the *Local Government Act 1993* that would involve a contravention of a provision of this Act that applies to council managers, or
  - (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*).
- (5) The Minister may give written consent under subsection (4) (b) for the classification of land as operational land only if the council manager satisfies the Minister that:
  - (a) the land does not fall within any of the categories for community land under the *Local Government Act 1993*, 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.

### 3.23 Management of land as community land

#### (1) Application

This section applies to a council manager that is required by this Division to manage dedicated or reserved Crown land as if it were community land under the *Local Government Act 1993*.

#### (2) Initial assignment of categories

The council manager must, as soon as practicable after it becomes the manager of the dedicated or reserved Crown land (including because of the operation of Schedule 7), assign the land to one or more categories of community land referred to in section 36 of the *Local Government Act 1993*.

**Note.** Section 36 (4) of the *Local Government Act 1993* requires a draft plan of management for community land to categorise the land by reference to one or more of the following categories:

- (a) a natural area,
- (b) a sportsground,
- (c) a park,
- (d) an area of cultural significance,
- (e) general community use.

It also enables land that is categorised as a natural area to be further categorised as bushland, wetland, escarpment, watercourse, foreshore or a category prescribed by the regulations under that Act (or a combination of these).

- (3) The assigned category or categories must be those that the council considers to be the category or categories that are most closely related to the purposes for which the land is dedicated or reserved.
- (4) The council manager must give written notice to the Minister of the categories to which it has assigned the land as soon as practicable after assigning them.
- (5) The Minister may, by written notice given to the council manager, require the manager to alter an assigned category if the Minister considers that:
  - (a) the assigned category is not the most closely related to the purposes for which the land is dedicated or reserved, or
  - (b) the management of the land by reference to the assigned category is likely to materially harm the use of the land for any of the purposes for which it is dedicated or reserved.
- (6) **Adoption of plans of management**

Plans of management for the land are to be prepared and adopted in accordance with the provisions of Division 2 of Part 2 of Chapter 6 of the *Local Government Act 1993*, subject to this section.
- (7) The following provisions apply during the period of 3 years after the commencement of this section (the *initial period*):
  - (a) a council manager must ensure that the first plan of management applicable to the land is adopted as soon as practicable within the initial period,
  - (b) the first plan of management may be prepared and adopted under Division 2 of Part 2 of Chapter 6 of the *Local Government Act 1993* by:
    - (i) amending an existing plan of management so that it applies to the land, or
    - (ii) adopting a new plan of management for, or that includes, the land,
  - (c) if the draft first plan of management results in the land being categorised by reference to categories assigned as provided by this section, the council manager will not be required to hold public hearings under section 40A of the *Local Government Act 1993*, but must give public notice of it as required by section 38 of that Act,
  - (d) if the draft first plan of management alters the categories assigned as provided by this section, the council manager must:
    - (i) obtain the written consent of the Minister to adopt the plan if the re-categorisation would require an addition to the purposes for which the land is dedicated or reserved, and
    - (ii) hold public hearings under section 40A of the *Local Government Act 1993*,
  - (e) section 37 (b), (c) and (d) of the *Local Government Act 1993* do not apply to the first plan of management,
  - (f) section 44 of the *Local Government Act 1993* applies to the land pending the adoption of a plan of management,
  - (g) this subsection does not apply to any further plans of management (or amendments to plans of management) made during the initial period.
- (8) To avoid doubt, Chapter 6 of the *Local Government Act 1993* (except section 37 (b), (c) and (d)) will apply to plans of management made after the first plan of management is made during the initial period.

(9) **Alteration of land categorisation**

The categorisation of land by a plan of management cannot be altered by a further plan of management unless the Minister has given written consent for the further plan to alter it.

- (10) The Minister cannot give written consent to the alteration of the categorisation of land if the Minister considers that the alteration is likely to materially harm the use of the land for any of the purposes for which it is dedicated or reserved.
- (11) A written consent given by the Minister to the alteration of the categorisation of land operates as if the Minister had authorised the land to be used for additional purposes under section 2.14 that correspond to the purposes for which community land of that category can be used.
- (12) An additional purpose taken to be authorised by subsection (11) does not cease to be an authorised purpose for which the land is dedicated or reserved if the council manager concerned ceases to be the Crown land manager of the land.

### **Division 3.5 Crown land managed by other managers**

#### **3.24 Application of Division**

- (1) This Division applies in relation to a person (except a local council) that is a Crown land manager of dedicated or reserved Crown land (a *non-council manager*).
- (2) A non-council manager of dedicated or reserved Crown land has the authority to exercise functions of the Minister in relation to the land only in the way permitted by this Division for the category of manager to which the non-council manager has been assigned.
- (3) Any authority to exercise a function of the Minister in relation to dedicated or reserved Crown land conferred on its non-council manager by this Division does not authorise the manager:
- (a) to purchase or take a lease of, or acquire the benefit of an easement in respect of, any land (whether or not adjoining the dedicated or reserved Crown land) unless it is required by the manager for use in connection with the dedicated or reserved Crown land, or
  - (b) to 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.
- (4) The exercise of a function of the Minister in relation to dedicated or reserved Crown land by its non-council manager authorised by this Division has the same effect as if it had been duly done by the Minister under this Act.

#### **3.25 Categories of non-council managers**

- (1) The authority of a non-council manager to exercise functions of the Minister in connection with dedicated or reserved Crown land depends on whether the manager has been assigned as a category 1 or category 2 manager.
- (2) A non-council manager may be assigned (or reassigned) to a particular category of manager by:
- (a) the manager's appointment instrument, or

- (b) a notice published in the Gazette, or
  - (c) the regulations.
- (3) Any notice or regulation for the purposes of subsection (2) may assign a non-council manager specifically or by class.
- (4) If a non-council manager's appointment instrument and the regulations (or a notice published in the Gazette) assign the manager to different categories, the assignment made by the appointment instrument is to prevail unless the regulations (or notice) exclude the operation of this subsection.
- (5) A non-council manager is taken to be assigned as a category 2 manager if the manager has not been assigned to a particular category of manager under subsection (2).

### **3.26 Exercise of functions by category 1 non-council managers**

- (1) A non-council manager of dedicated or reserved Crown land assigned to category 1 may, with the written consent of the Minister, exercise any of the functions of the Minister over the land.  
**Note.** Part 8 includes provisions that are applicable to category 1 non-council managers concerning the management of land over which there may be native title rights and interests.
- (2) Despite subsection (1), the non-council manager is not required to obtain the Minister's consent for the exercise of any of the following functions of the Minister:
  - (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 minor changes to leases or licences under section 3.28,
  - (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.
- (3) A non-council manager that grants a lease or licence for a term of more than one year without the Minister's written consent must give the Minister written notice of the grant of the lease or licence within 14 days after it is granted. A failure to comply with this subsection does not, however, affect the validity of the lease or licence.
- (4) A non-council manager must indemnify the State against any liability that the manager may incur as a result of the manager granting a lease or licence (including any easements granted in connection with them) unless the manager sought and obtained the written consent of the Minister before granting it.

### **3.27 Exercise of functions by category 2 non-council managers**

- (1) A non-council manager of dedicated or reserved Crown land assigned to category 2 may, with the written consent of the Minister, exercise any of the functions of the Minister over the land.
- (2) Despite subsection (1), the non-council manager is not required to obtain the Minister's consent for the exercise of any of the following functions of the Minister:
  - (a) granting licences for a term of one year or less (including any option for the grant of a further term),
  - (b) making minor changes to leases or licences under section 3.28,
  - (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.

### 3.28 Minor changes to leases or licences do not require Ministerial consent

- (1) A non-council manager may make minor changes to leases or licences that the manager (or a previous manager) has granted over dedicated or reserved Crown land under the manager's management.
- (2) A **minor change** to a lease or licence over dedicated or reserved Crown land is a change that does not result in a change to any of the following:
  - (a) the rent payable for the lease or licence,
  - (b) the term for which the lease or licence will be in force (including any option to renew),
  - (c) provisions relating to insurance,
  - (d) provisions relating to native title rights and interests or claims under the *Aboriginal Land Rights Act 1983*,
  - (e) provisions relating to the holder making good any damage to the land or structures on it,
  - (f) provisions relating to works undertaken by the holder for which consent is required,
  - (g) provisions relating to the termination or revocation of the lease or licence.

### 3.29 Community advisory groups

- (1) The Minister may direct some or all non-council managers to establish community advisory groups for dedicated or reserved Crown land under their management.
- (2) The regulations may make provision for or with respect to the following:
  - (a) the giving of directions to establish community advisory groups,
  - (b) the membership, procedures and functions of community advisory groups.

### 3.30 Annual reports

- (1) As soon as practicable after 30 June (but on or before 31 October) of each year, a non-council manager must provide the Minister with a report (an **annual report**) on the manager's management operations for the period ending on 30 June in that year.
- (2) The annual report must contain the information and other matters that may be prescribed by the regulations.
- (3) Without limiting subsection (2), the regulations may make provision for or with respect to the following:
  - (a) the form of annual reports,
  - (b) reviews to be conducted for inclusion in annual reports (including, for example, reviews of governance and financial management),
  - (c) financial auditing requirements,
  - (d) information for inclusion in annual reports about the financial position of non-council managers and their exercise of functions (for example, dealings with land under the management of non-council managers),
  - (e) the publication of annual reports to enable public access,
  - (f) directions by the Minister concerning any of these matters.
- (4) Without limiting section 42 of the *Interpretation Act 1987*, the regulations may impose different reporting obligations on non-council managers by reference to the category of non-council manager to which they are assigned under section 3.25.

- (5) The *Annual Reports (Departments) Act 1985* and *Annual Reports (Statutory Bodies) Act 1984* do not apply to annual reports by non-council managers concerning the exercise of their functions as Crown land managers.

### 3.31 Record keeping

- (1) A non-council manager must:
- (a) keep any records (including accounting records) in accordance with the regulations, and
  - (b) provide the Minister or an authorised officer with these records (or copies of or extracts from these records) for inspection and copying if directed to do so or as required by the regulations.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
- (a) the form in which records are to be kept,
  - (b) the inspection of records (including by members of the public),
  - (c) the retention of records by persons who have ceased to be non-council managers,
  - (d) exemptions from the requirement to keep records.

## Division 3.6 Plans of management and other plans

### 3.32 Application of Division

- (1) This Division applies to each of the following Crown land managers (an ***applicable Crown land manager***):
- (a) a non-council manager,
  - (b) a council manager (but only if it is not required to have a plan of management under the *Local Government Act 1993* for dedicated or reserved Crown land under its management).
- (2) This Division applies despite anything in the *Local Government Act 1993*.

### 3.33 Preparation of draft plan of management

- (1) The Minister may direct an applicable Crown land manager to prepare a draft plan of management for dedicated or reserved Crown land under the manager's management.
- (2) An applicable Crown land manager may, with the consent of the Minister, prepare a draft plan on the manager's own initiative.
- (3) A draft plan of management may, with the approval of the Minister, specify one or more purposes for which it is proposed to use the dedicated or reserved Crown land in addition to the purposes for which it is currently dedicated or reserved.
- (4) If a draft plan of management is prepared on an applicable Crown land manager's initiative, the manager must forward a copy of the draft plan to the Minister.
- (5) If the Minister directs an applicable Crown land manager to prepare a draft plan of management, the manager must:
- (a) prepare it within the time directed by the Minister, and
  - (b) forward a copy of it to the Minister.

- (6) The draft plan of management must be in the form, and provide for the matters, that may be required by the Minister and must be prepared in accordance with any guidelines made by the Minister under this Division.
- (7) An applicable Crown land manager of more than one area of dedicated or reserved Crown land may prepare a single draft plan of management for all the land under the manager's management.

### **3.34 Guidelines for draft plans of management**

- (1) The Minister may, by order published in the Gazette, make guidelines for or with respect to draft plans of management, including but not limited to the content and duration of plans.
- (2) Without limitation, the guidelines may include environmental principles and principles to facilitate the use of land by Aboriginal people that must be taken into account by applicable Crown land managers when preparing draft plans of management.
- (3) The Minister must:
  - (a) provide a copy of any guidelines for dedicated or reserved Crown land to the applicable Crown land managers affected by the guidelines, and
  - (b) publish the guidelines in the Gazette.
- (4) The Minister may make any other arrangements that the Minister considers necessary to ensure that the guidelines are readily accessible to the public.
- (5) A failure to comply with subsection (3) does not affect the validity of any guidelines made under this section.

### **3.35 Community engagement on draft plan of management**

An applicable Crown land manager must undertake any community engagement on a draft plan of management required by a community engagement strategy.

### **3.36 Adoption of plan of management**

- (1) The Minister may adopt a plan of management for dedicated or reserved Crown land without alteration or with any alterations that the Minister thinks fit.
- (2) If community engagement was required to be undertaken on the draft plan of management, the Minister cannot adopt a plan of management that provides for the dedicated or reserved Crown land to be used for purposes in addition to the purposes for which it is currently dedicated or reserved unless the Minister is satisfied that:
  - (a) the additional purposes were in the draft plan when the community engagement was undertaken, or
  - (b) the additional purposes were altered from those in the draft plan following representations made during the community engagement.
- (3) If a plan of management is adopted:
  - (a) the applicable Crown land manager concerned must carry out and give effect to it, and
  - (b) no activities may be undertaken on or in relation to the dedicated or reserved Crown land to which it relates unless they are in accordance with the plan, and
  - (c) the applicable Crown land manager must ensure that all leases or licences over the dedicated or reserved Crown land that the manager grants include a provision that requires their holders to comply with the requirements of any plan of management in force for the land from time to time that are relevant to the holders' use or occupation of the land.

### **3.37 Alteration or cancellation of plan**

- (1) The Minister may from time to time alter a plan of management adopted under this Division or may cancel the plan.
- (2) If a plan of management is cancelled, a new plan of management may be adopted, at the same time or later, in accordance with this Division.
- (3) The Minister may direct that a proposed alteration of a plan be prepared and the alteration is to be prepared, referred and adopted as if it were a plan of management.
- (4) The plan as altered becomes the plan adopted for the purposes of this Division.
- (5) In this section:  
*alter* a plan of management includes omit any provisions of the plan.

### **3.38 Land may be used for additional purposes approved in plan of management**

Dedicated or reserved Crown land can be used for a purpose specified in a plan of management as a purpose that is additional to the purposes for which the land is dedicated or reserved.

### **3.39 Approvals of activities under Local Government Act 1993 must comply with plans of management**

A local council cannot grant an approval for an activity under Part 1 of Chapter 7 of the *Local Government Act 1993* that authorises or requires a person to do (or not to do) anything on or in relation to dedicated or reserved Crown land that would result in a contravention of a plan of management for the land.

### **3.40 Publication of plans of management**

- (1) A copy of a plan of management in force for dedicated or reserved Crown land must be published on the Department's website or in any other way directed by the Secretary. A failure to do so does not, however, affect the validity of the plan.
- (2) An applicable Crown land manager of the dedicated or reserved Crown land may also publish a copy on the manager's own website (if any).

### **3.41 Other plans**

- (1) In addition to a plan of management, the Minister may do any of the following:
  - (a) require or permit an applicable Crown land manager of dedicated or reserved Crown land to prepare one or more other plans for the management of the land,
  - (b) require an applicable Crown land manager to submit a draft plan to the Minister for approval before it is adopted,
  - (c) require an applicable Crown land manager to provide a copy of a plan the manager has made to the Minister even if it does not require the Minister's approval.

**Note.** Other kinds of plans could include, for example, strategic, financial or business plans.

- (2) If a plan requires the Minister's approval before it is adopted, an applicable Crown land manager can adopt the plan under this section only with the approval of the Minister. The Minister may require changes to the plan before giving approval.
- (3) The applicable Crown land manager must inform the Minister when the manager intends to exercise functions in a manner inconsistent with an adopted plan. A failure to do so does not, however, affect the validity of the exercise of the function.



## **Division 3.7      General**

### **3.42    Effect of sale of dedicated or reserved Crown land by Crown land managers**

- (1) Any dedicated or reserved Crown land that is sold and conveyed by a Crown land manager results in the purchaser obtaining the land free from all trusts to which it was subject while it was dedicated or reserved.
- (2) Also, the dedication or reservation of the land is revoked to the extent to which it affected the land before its conveyance.

### **3.43    Termination of certain leases and licences granted by Crown land managers**

- (1) A lease or licence granted by a Crown land manager over dedicated or reserved Crown land terminates if the dedication or reservation over the whole or part of the land is revoked unless the notice of revocation provides differently.
- (2) If a proposed revocation would affect only part of the land under a lease or licence, the Crown land manager and the holder of the lease or licence may agree that the lease or licence is to continue in force as if it had never been granted in relation to that part.
- (3) If an agreement is entered under subsection (2), the lease or licence:
  - (a) does not terminate, and
  - (b) continues in force, from the time of the revocation, in accordance with the agreement.
- (4) No compensation is payable for the termination of a lease or licence by operation of this section.

### **3.44    Preservation of certain leases and licences over land added to other dedicated or reserved Crown land**

- (1) This section applies to a lease or licence over dedicated or reserved land granted by a Crown land manager if the land under the lease or licence is added to other dedicated or reserved Crown land.
- (2) The lease or licence over the land continues in force as if:
  - (a) the land had continued to be dedicated or reserved for the same purposes, and
  - (b) the lease or licence had been granted by the Crown land manager of the land to which it is added.
- (3) This section applies despite section 3.43 or any term or condition of the lease that provides differently.

### **3.45    Inquiries and audits of affairs of Crown land managers**

- (1) The Minister may appoint a person to inquire into, or carry out an audit of, the affairs of any Crown land manager in connection with exercise of the manager's functions.
- (2) The person appointed may, for the purposes of the inquiry or audit:
  - (a) inspect and take copies of or extracts from any records (including accounting records) of the manager, or
  - (b) require any person concerned in the management of the manager to give information and answer questions relating to the affairs of the manager.
- (3) The power of the appointed person to inspect the records of a manager includes the power to inspect any records of the holder of a lease or licence that the manager has power to inspect under the lease or licence.

- (4) A person must not:
- (a) refuse or fail to allow the appointed person access to records to which the appointed person is entitled, or
  - (b) refuse or fail to give information or answer questions, as required by the appointed person, or
  - (c) intentionally obstruct or delay the appointed person in the exercise of a function under this section.
- Maximum penalty: 100 penalty units.
- (5) It is a defence to the prosecution of an offence against subsection (4) if the defendant proves that there was a lawful excuse for the conduct that is alleged to give rise to the offence.

#### **3.46 Compensation not generally payable for conduct of Crown land managers**

- (1) Compensation is not payable by or on behalf of the State for the conduct of a Crown land manager in the exercise (or purported exercise) of functions under this Act in respect of dedicated or reserved Crown land under the manager's management.
- Note.** See also Division 8.4 for the compensation responsibilities of certain Crown land managers for their conduct when it affects native title rights and interests.
- (2) Subsection (1) does not extend to any liability of the State for the conduct of a Crown land manager if:
- (a) the conduct has been specifically approved or required by the Minister, or
  - (b) the manager is the head of a government sector agency or a statutory body representing the Crown.
- (3) In this section:
- conduct** includes any conduct, whether unconscionable, misleading, deceptive or otherwise.
- the State** means the Crown as defined in the *Crown Proceedings Act 1988*, and includes a government sector agency and an officer, employee or agent of the Crown or a government sector agency.

## Part 4 Acquisition of land and vesting of Crown land

**Introductory note.** This Part enables:

- (a) the Minister to acquire land for the purposes of this Act (including by way of gifts), and
- (b) the Minister to declare certain land to be Crown land, and
- (c) the Minister to vest Crown land in local councils and certain other government agencies, and
- (d) the owner of land, or the holder of a holding, to surrender it to the Crown.

### Division 4.1 Acquisition of land generally

#### 4.1 Power of Minister to accept gifts of land

- (1) The Minister may acquire any land by gift for the purposes of this Act and may agree to the conditions of the gift.
- (2) Land acquired under this section:
  - (a) becomes Crown land, and
  - (b) cannot be dealt with in contravention of a condition to which the Minister has agreed.

**Note.** See section 1.10 (When land becomes Crown land because of this Act).
- (3) The rule of law against remoteness of vesting does not apply to any condition to which the Minister has agreed.
- (4) Without limiting subsection (1), the Minister may agree to conditions that involve:
  - (a) excluding members of the public from the land, or
  - (b) excluding or limiting the exercise of functions under this Act in respect of the land.
- (5) Despite anything in this Act, another Act or any rule of law:
  - (a) the Minister may transfer land acquired under this section (or grant a lease, permit, licence, easement or right of way over the land) in accordance with an agreed condition, and
  - (b) the land may be transferred (or the lease, permit, licence, easement or right of way may be granted) without consideration or, if the condition provides, for the consideration that is provided for by the condition.
- (6) If an agreed condition provides for it, the Minister may pay the cost (or part of the cost) of the transfer of the land to the Minister and any subsequent dealing with the land.
- (7) A condition of a gift has no effect for the purposes of this section unless it is expressed in writing in the agreement or instrument that provides for the gift.
- (8) In this section:  
**gift** includes a devise or bequest.

#### 4.2 Acquisition of land for public purpose

- (1) The Minister may acquire land (including an interest in land), for any public purpose, by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) For the purposes of the *Public Works and Procurement Act 1912*, the acquisition of land is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Sections 34, 35, 36 and 37 of the *Public Works and Procurement Act 1912* do not apply in respect of works constructed under this Act.

#### 4.3 Surrender of land or lease

- (1) The owner of any land or the holder of any lease under this Act may, with the consent of the Minister, surrender the whole or a part of the land or lease to the Crown.
- (2) A surrender does not operate to extinguish any debt.
- (3) On the surrender, the land or the land leased (to the extent to which it is not Crown land) becomes Crown land.  
**Note.** See section 1.10 (When land becomes Crown land because of this Act).
- (4) The Secretary may adjust the rent for a lease on surrender of part of the land leased with the agreement of the holder of the lease.

#### 4.4 Certain land may be declared to be Crown land

- (1) This section applies to any of the following land even if it was acquired before this section's commencement:
  - (a) land acquired by compulsory process for any public purpose and vested in a Minister on behalf of the Crown by or under the authority of an Act,
  - (b) land acquired by or on behalf of the Crown by gift or in any other way,
  - (c) land acquired by compulsory process and vested in a public authority (or acquired by or vested in a public authority in any other way) by or under the authority of an Act,
  - (d) land acquired by a Crown land manager in the capacity of the Crown land manager of dedicated or reserved Crown land.
- (2) The Minister may, by notice published in the Gazette, declare the land to be Crown land.
- (3) A declaration may:
  - (a) be limited to the surface of the land or to the surface and a stated depth below the surface, and
  - (b) contain provisions relating to the discontinuation or continuation of any interests affecting the land.
- (4) A declaration cannot be made in relation to land vested in or acquired by or on behalf of a public authority without the consent of the public authority.
- (5) Land declared to be Crown land under this section becomes Crown land.  
**Note.** See section 1.10 (When land becomes Crown land because of this Act).

### Division 4.2 Vesting of Crown land in local councils

**Note.** Part 8 includes provisions concerning the management of land vested in local councils over which there may be native title rights and interests.

#### 4.5 Interpretation

- (1) In this Division:  
**transferable Crown land** means dedicated or reserved Crown land or any other Crown land, but does not include:
  - (a) land 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 this 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.

- (2) This Division applies despite anything in the *Local Government Act 1993*.

#### **4.6 Vesting of transferable Crown land in local councils**

- (1) The Minister may, by notice published in the Gazette (a *council vesting notice*), vest specified transferable Crown land in a local council if:
  - (a) the land is wholly located within the local government area of the council, and
  - (b) the council has agreed, and
  - (c) for land for which a claim has been made under the *Aboriginal Land Rights Act 1983*—written consent for the vesting of the land has been given by:
    - (i) the Local Aboriginal Land Council for the Local Aboriginal Land Council area (as defined in that Act) in which the land is located, and
    - (ii) where the claim is made by the New South Wales Aboriginal Land Council—the New South Wales Aboriginal Land Council, and
  - (d) the Minister is satisfied, after taking into account the criteria prescribed or identified by regulations made for the purposes of subsection (2), that the land is suitable for local use.
- (2) The regulations may make provisions for or with respect to the criteria to be applied in determining whether transferable Crown land is suitable for local use.

#### **4.7 Content of council vesting notices**

- (1) A council vesting notice may limit the vesting of the transferable Crown land to:
  - (a) the surface of the land, or
  - (b) the surface of the land and a stated depth below the surface.
- (2) A council vesting notice:
  - (a) must include a reservation to the Crown of all minerals in the transferable Crown land, and
  - (b) may include any other reservations and exceptions that the Minister considers to be in the public interest.

#### **4.8 Classification of vested land under Local Government Act 1993**

- (1) Transferable Crown land vested in a local council under this Division is taken to have been acquired by the council as community land under the *Local Government Act 1993* on its vesting, except as provided by subsection (2).
- (2) The Minister may, in a council vesting notice, declare that the land to which it applies is to be acquired by the local council concerned as operational land under the *Local Government Act 1993* on its vesting.
- (3) The Minister may make a declaration under subsection (2) only if the council satisfies the Minister that:
  - (a) the land does not fall within any of the categories for community land under the *Local Government Act 1993*, 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.

#### **4.9 Effect of vesting**

- (1) A local council in which transferable Crown land is vested under this Division obtains an estate in fee simple in the land, subject to this section.

- (2) A vesting of land under this Division takes effect subject to:
  - (a) any native title rights and interests existing in relation to the land immediately before the vesting, and
  - (b) any reservations and exceptions contained in the council vesting notice for the land.
- (3) The following provisions apply if the land is not excluded land when it is vested until it becomes excluded land:
  - (a) for land that was dedicated or reserved for one or more purposes immediately before its vesting—the land continues to be dedicated or reserved for the purposes for which it had been dedicated or reserved,
  - (b) the land cannot be sold or disposed of in any way.
- (4) The following provisions apply to land that is excluded land when it is vested, or becomes excluded land after its vesting, if it was dedicated or reserved for one or more purposes immediately before the vesting:
  - (a) for land that is section 24FA protected land:
    - (i) the land continues to be dedicated or reserved for those purposes until it becomes excluded land for some other reason, and
    - (ii) the dedication or reservation is revoked despite subparagraph (i) if the land is sold or disposed of in any other way while it is protected,
  - (b) for land that becomes excluded land (except section 24FA protected land) after its vesting—the dedication or reservation is revoked when it becomes excluded land.

**Note.** If land is excluded land (except section 24FA protected land) when it is vested, subsection (6) revokes the dedication or reservation on its vesting.
- (5) Subsections (3) (a) and (4) (a) do not prevent a local council from using the land in accordance with the *Local Government Act 1993*.
- (6) Except as provided by subsections (3) and (4), on the vesting of land in a local council under this Division:
  - (a) the land ceases to be Crown land, and
  - (b) any dedication or reservation is revoked to the extent to which it affects the land, and
  - (c) if the land is subject to a condition, trust or proviso contained in the Crown grant, or contained or referred to in a folio of the Register created for the land—the local council is released from it except to the extent specified in the council vesting notice, and
  - (d) if a person was a trustee of all or any part of the land immediately before it vested, the person ceases to be a trustee of the land, and
  - (e) if a person was a Crown land manager of the land, the person ceases to be the manager of the land, and
  - (f) if there is a lease or licence over the land in force immediately before the land vested, the lease or licence continues in force as if it were a lease or licence granted by the council and has effect despite any provisions of the lease or licence, or any Act or other law, to the contrary.
- (7) To avoid doubt, a local council in which Crown land is vested under this Division becomes entitled to any income generated by the land on or after its vesting.
- (8) The revocation of a dedication or reservation of land by this section does not operate to revoke a Crown grant or certificate of title issued, or a folio of the Register created, for that land.

- (9) No compensation is payable for the extinguishment of any estates, interests, trusts or obligations (or the abolition of any office or other position) because of the operation of this section.
- (10) A vesting of land under this Division is taken to be an act to which section 104A of the *Native Title (New South Wales) Act 1994* applies.
- (11) In this section:  
*excluded land* is defined in Part 8.  
*section 24FA protected land* means an area of land to which section 24FA protection (as defined in the *Native Title Act 1993* of the Commonwealth) applies.

#### 4.10 Registrar-General to record certain information about vested land

The Registrar-General must, when requested by the Minister, record information in the Register to indicate that:

- (a) land that has been vested in a local council under this Division is held subject to native title rights and interests or any other restrictions, reservations or exceptions referred to in section 4.9 (2), (3), (4) or (6), or
- (b) a recording made following a previous request has ceased to have effect.

### Division 4.3 Vesting of Crown land in other government agencies

#### 4.11 Application of Division

- (1) This Division applies in relation to the following persons or bodies (a *government agency*):
  - (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,
  - (b) an agency of the Commonwealth capable of holding property in its own name.
- (2) This Division does not:
  - (a) apply in relation to a local council (which is dealt with by Division 4.2), or
  - (b) limit the application of the *Government Property NSW Act 2006*.
- (3) In this Division, *transferable Crown land* has the same meaning as in Division 4.2.

#### 4.12 Vesting of transferable Crown land in government agency

The Minister may, by notice published in the Gazette (a *government agency vesting notice*), vest specified transferable Crown land in a government agency if:

- (a) the Minister is satisfied that:
  - (i) it is in the public interest to vest the land in the agency, or
  - (ii) the agency would, because of the functions that are conferred or imposed on the agency, be an appropriate owner and manager of the land, and
- (b) for land for which a claim has been made under the *Aboriginal Land Rights Act 1983*—written consent for the vesting of the land has been given by:
  - (i) the Local Aboriginal Land Council for the Local Aboriginal Land Council area (as defined in that Act) in which the land is located, and
  - (ii) where the claim is made by the New South Wales Aboriginal Land Council—the New South Wales Aboriginal Land Council.

#### **4.13 Content of government agency vesting notices**

- (1) A government agency vesting notice may limit the vesting of the transferable Crown land to:
  - (a) the surface of the land, or
  - (b) the surface of the land and a stated depth below the surface.
- (2) If the government agency is not a statutory body representing the Crown, the government agency vesting notice:
  - (a) must include a reservation to the Crown of all minerals in the transferable Crown land, and
  - (b) may include any other reservations and exceptions that the Minister considers to be in the public interest (including in relation to native title rights and interests).

#### **4.14 Effect of vesting**

- (1) A government agency in which transferable Crown land is vested under this Division obtains an estate in fee simple in the land, subject to this section.
- (2) A vesting of land under this Division takes effect subject to any reservations and exceptions contained in the government agency vesting notice for the land.
- (3) On the vesting of land in a government agency under this Division:
  - (a) the land ceases to be Crown land, and
  - (b) any dedication or reservation is revoked to the extent to which it affects the land, and
  - (c) if the land is subject to a condition, trust or proviso contained in the Crown grant, or contained or referred to in a folio of the Register created for the land—the government agency is released from it except to the extent specified in the government agency vesting notice, and
  - (d) if a person was a trustee of all or any part of the land immediately before it vested, the person ceases to be a trustee of the land, and
  - (e) if a person was a Crown land manager of the land—the person ceases to be the manager of the land, and
  - (f) if there is a lease or licence over the land in force immediately before the land vested—the lease or licence continues in force as if it were a lease or licence granted by the agency and has effect despite any provisions of the lease or licence, or any Act or other law, to the contrary.
- (4) The revocation of a dedication or reservation of land by this section does not operate to revoke a Crown grant or certificate of title issued, or a folio of the Register created, for that land.

#### **4.15 Registrar-General to record certain information about vested land**

The Registrar-General must, when requested by the Minister, record information in the Register to indicate that:

- (a) land that has been vested in a government agency under this Division is held subject to native title rights and interests or any other reservations or exceptions referred to in section 4.14 (2) or (3), or
- (b) a recording made following a previous request has ceased to have effect.



## Part 5 Dealings involving Crown land and other related land

**Introductory note.** This Part enables the Minister to deal with Crown land on behalf of the Crown. It includes powers for the Minister:

- (a) to sell Crown land and impose conditions, restrictions and covenants over the land that will apply after it is sold, and
- (b) to grant leases, licences, permits, easements and rights of way over Crown land, and
- (c) to grant forestry rights (including carbon sequestration rights) over Crown land.

Community engagement strategies approved by the Minister will set out the procedures and other matters concerning community engagement about certain proposed dealings and other action affecting Crown land use.

The Part also enables:

- (a) the Minister to grant enclosure permits to enable permit holders to enclose Crown roads and watercourses that cross Crown land or freehold land, and
- (b) easements for public access to be created over Crown land or freehold land.

### Division 5.1 Introduction

#### 5.1 Application of Part

This Part applies principally (but not exclusively) to dealings involving Crown land.

**Note.** Some of the provisions of this Part also apply to former Crown land (for example, Crown land that has been sold) and freehold land affected by Crown land (for example, land through which Crown roads pass).

Schedules 1–4 contain special provisions concerning continued holdings, land in the Western Division and purchasable leases. Section 1.13 provides that those provisions prevail over the provisions of this Part to the extent of any inconsistency.

#### 5.2 Terms and conditions of holdings generally prevail over Act and regulations

- (1) The terms and conditions of a holding are valid and enforceable even if a provision of this Act or the regulations deals with the same matter differently, except as provided by this section.
- (2) Without limitation, the terms and conditions of a holding may include provisions about any of the following:
  - (a) the determination, redetermination or adjustment of rent payable for the holding,
  - (b) for a holding that is a lease or licence—the granting of subleases or sublicences by the holder of the holding,
  - (c) the forfeiture, termination or revocation of the holding,
  - (d) the giving of notices or information,
  - (e) access and inspection rights over the land under the holding,
  - (f) any matter that is required or permitted to be included in the terms and conditions of the holding by a provision of this Act or the regulations.
- (3) Despite subsections (1) and (2), a term or condition of a holding is (except as provided by the regulations) unenforceable if it provides for anything that is inconsistent with a mandatory matter.
- (4) Each of the following is a **mandatory matter**:
  - (a) section 12.13 (Holding or permit cannot be transferred if in arrears),
  - (b) section 12.14 (Forfeiture or end of holding or permit does not extinguish debts),
  - (c) 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 this Act,
  - (e) the maximum term that is allowed for a holding by this 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 this 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 for the purposes of this section.
- (5) This section does not affect any requirements of this Act or the regulations concerning how and when a holding can be granted (including requirements for certain procedures or preconditions to be followed or met before the holding can be granted).
- (6) In this section:  
*holding* includes an enclosure permit.

## **Division 5.2 Powers of Minister over Crown land**

### **5.3 Powers of Minister generally**

- (1) Subject to this Act (particularly, Part 2), the Minister can do anything with Crown land that a registered proprietor of land can do.
- (2) Anything the Minister does with Crown land has the same effect as if its owner had done it.
- (3) Without limiting subsection (1), the powers of the Minister include:
  - (a) selling, exchanging, transferring or in any other way disposing of or dealing with Crown land, and
  - (b) mortgaging Crown land or allowing it to be mortgaged, and
  - (c) granting easements, rights of way, leases, licences or permits over Crown land, and
  - (d) imposing, requiring or agreeing to covenants, conditions or other restrictions on use (or removing or releasing, or agreeing to remove or release, covenants, conditions or other restrictions on use) in connection with dealings involving Crown land.
- (4) The appointment of a Crown land manager of dedicated or reserved Crown land does not limit the Minister's powers to deal with the land.
- (5) This section does not authorise the sale of dedicated or reserved Crown land.

## **Division 5.3 Community engagement strategies**

### **5.4 Definitions**

In this Division:

*dealings or other action affecting Crown land use* means each of the following:

- (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 this 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.

***responsible persons for dealings*** means each of the following:

- (a) the Minister,
- (b) the Secretary,
- (c) a non-council manager,
- (d) the Ministerial Corporation,
- (e) an employee of the Department involved in administering this Act,
- (f) any other person of a kind prescribed by the regulations.

#### **5.5 Minister to approve community engagement strategies**

- (1) The Minister must approve one or more community engagement strategies for dealings or other action affecting Crown land use (including dedicated or reserved Crown land use).
- (2) The purpose of a community engagement strategy is to set out any procedures and other matters concerning community engagement to be followed by responsible persons for dealings with Crown land.
- (3) The Minister may revoke or amend any community engagement strategy.
- (4) Before approving or amending a community engagement strategy, the Minister must:
  - (a) publicly exhibit a copy of the proposed strategy or amendment for a period of at least 28 days along with any other explanatory material that the Minister considers appropriate or necessary, and
  - (b) allow submissions to be made about the proposed strategy or amendment during the exhibition period.
- (5) The Secretary is to ensure that copies of any current community engagement strategies are made publicly available (for example, by posting them on the Department's website or publishing them in the Gazette).

#### **5.6 Content of community engagement strategies**

- (1) A community engagement strategy must provide for the following:
  - (a) the kinds of dealings or other action affecting Crown land use, and the kinds of responsible persons for dealings, to which the strategy applies,
  - (b) the circumstances in which community engagement is (or is not) required for dealings or other action affecting Crown land use to which the strategy applies,
  - (c) the types of community engagement for dealings or other action affecting Crown land use to which the strategy applies,
  - (d) the period for notifications (if any) about proposed dealings or other action affecting Crown land use to which the strategy applies,
  - (e) the extent to which compliance with the requirements of the strategy are mandatory for the purposes of section 5.8.
- (2) In addition, a community engagement strategy may make provision for or with respect to any other matter concerning community engagement about dealings or other action affecting Crown land use.

- (3) Sections 42 and 43 of the *Interpretation Act 1987* apply to and in respect of any community engagement strategy in the same way as they apply to and in respect of a statutory rule as defined in that Act.

#### **5.7 Requirements concerning approval of community engagement strategies**

- (1) The Minister must, by the time this Division commences, ensure that one or more community engagement strategies have been approved for dealings or other action affecting Crown land use.
- (2) A community engagement strategy has been approved for the purposes of this section even if it provides that no community engagement is required for dealings of the kind concerned.
- (3) The Minister is ensure that approved community engagement strategies are kept under regular and periodic review.

#### **5.8 Compliance with community engagement strategies**

- (1) A responsible person for dealings proposing to undertake a dealing or other action affecting Crown land use must comply with any requirements of a community engagement strategy that applies to the dealing or other action.
- (2) Any non-compliance with a requirement of the community engagement strategy does not affect the validity of a dealing or other action affecting Crown land use to which it applies unless the strategy provides that compliance with the requirement is mandatory for the purposes of this section.
- (3) Despite subsection (2), non-compliance with a mandatory requirement of a community engagement strategy does not affect:
  - (a) any interest in or right over Crown land that a person has acquired in good faith as a result of a dealing or other action affecting Crown land use to which the strategy applies, or
  - (b) any dealing or other action affecting Crown land use to which the strategy applies if the non-compliance was inadvertent or did not significantly limit the capacity of the community to be informed or express concerns about the dealing or other action before it occurred.
- (4) A person has *acquired an interest in or right over Crown land in good faith* if the person did not have notice of:
  - (a) the non-compliance, or
  - (b) any circumstances from which the non-compliance might have been discovered if the person had made reasonable inquiries.
- (5) This section applies despite any other provision of this Act (including Schedules 1–4).

### **Division 5.4 Sale of Crown land**

#### **5.9 Restrictions on sale or disposal of Crown land in Western Division**

- (1) The Minister cannot sell Crown land in the Western Division or dispose of it in any other way unless the Minister is 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 this 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.

**Note.** Schedule 4 also contains special provisions that enable the sale of land in the Western Division to certain holders of purchasable leases over land in that Division.

- (2) The regulations may make provision for or with respect to:
  - (a) the classification or identification of land for the purposes of subsection (1) (a), (b), (c) or (d), and
  - (b) prescribing replacement classes of land for the purposes of subsection (1) (e) or (f) if any of the classes referred to in those provisions changes or ceases to be used.
- (3) In this section:

***Land and Soil Capability Assessment Scheme*** means the scheme documented in:

  - (a) *The land and soil capability assessment scheme—second approximation* (ISBN 978 1 74293 634 5) published by the Office of Environment and Heritage in October 2012, or
  - (b) any other publication prescribed by the regulations as being a replacement publication.

#### **5.10 Sale of certain leased Crown land permitted**

- (1) The Minister can sell Crown land even if there is a lease over the land under this Act except if it is a perpetual lease or a purchasable lease.
- (2) The sale of the Crown land does not operate to terminate the lease.
- (3) Instead, the lease continues in force on the sale's completion as a lease between the purchaser and the lessee.
- (4) The provisions of the lease also continue in force, but only to the extent that they would be enforceable at law if contained in a lease between persons not forming part of, or representing, the Crown or the State.

#### **5.11 Conditions that may be included in contracts of sale and purchase applications**

- (1) This section applies to:
  - (a) a contract of sale for Crown land, and
  - (b) an application to purchase Crown land under a purchasable lease.
- (2) The Minister may include in the contract or the grant of an application any conditions that the Minister determines.
- (3) A condition included in a contract of sale of land does not merge in the transfer of title to the land on completion of the sale.

- (4) The Registrar-General must, when requested by the Minister, record information in the Register to indicate that:
  - (a) land specified in the request is held subject to a condition, or
  - (b) a recording made following a previous request has ceased to have effect.
- (5) The Minister must not make a request under subsection (4) (a) unless it is for the purpose of ensuring that the conditions in the contract of sale under which the land was sold are complied with. The Registrar-General is not, however, required to inquire into whether the request has been made for the purpose.

#### **5.12 Imposition of conditions on sale of certain land**

- (1) The Registrar-General must, when requested by the Minister, record information in the Register to indicate that:
  - (a) Crown land specified in the request is, on its sale to a purchaser, to be held subject to conditions specified or referred to in the request, or
  - (b) a recording made following a previous request has ceased to have effect.
- (2) The conditions may include any conditions the Minister is authorised by section 5.11 to include in a contract for the sale of land.
- (3) If a recording under subsection (1) (a) is in effect, each condition to which the recording relates has effect as a condition of sale in any contract of sale for the land entered into by the Minister after the recording is made.
- (4) A condition that has effect as a condition of a contract of sale of land does not merge in the transfer of title to the land on completion of the sale.

#### **5.13 Restrictions on transfer of certain land**

The Registrar-General must, when requested by the Minister, record information in the Register to indicate that:

- (a) Crown land specified in the request is held subject to the restriction that the land may not be transferred without the consent of the Minister unless there has been compliance with a specified condition, or
- (b) a recording made following a previous request has ceased to have effect.

#### **5.14 Effect of recording in Register**

- (1) This section applies if a recording is made in the Register under this Division indicating that there is a condition or restriction applying to the land to which the recording relates.
- (2) The Registrar-General cannot register under the *Real Property Act 1900* a transfer of the land to or by a person (except the Minister) if:
  - (a) the recording still has effect in respect of the land, and
  - (b) the Minister has not consented to the transfer.

**Note.** Section 13.4 applies in relation to a condition that is subject to a recording referred to in this section.

#### **5.15 Securing payment from purchaser with mortgage**

The Ministerial Corporation may, on behalf of the Crown, take a mortgage from a purchaser of land from the Crown in respect of any part of the purchase price of the land or other money due to the Crown.

## **Division 5.5 Leases over Crown land**

### **5.16 Term**

- (1) The term of a lease of Crown land (including any option for the grant of a further term) granted by the Minister is not to exceed 100 years, except as provided by subsection (2).
- (2) A perpetual lease may be granted by the Minister over Crown land in the Western Division.

**Note.** Division 7 of Part 3 of Schedule 3 also enables the holder of a term lease over Crown land in the Western Division to apply to the Minister to convert the lease into a perpetual lease.

### **5.17 Certain dealings to be leases**

A disposition of Crown land by the Minister on behalf of the Crown, expressed to be a lease, is a lease even if exclusive possession of the land is not conferred on any person.

### **5.18 Application of Conveyancing Act 1919**

The Minister may, in granting a lease of Crown land, include in the lease a condition excluding the operation of any specified provisions of the *Conveyancing Act 1919* in respect of the lease.

### **5.19 Transfer restrictions to be recorded in Register**

The Registrar-General must, when requested by the Minister, record information in the Register to indicate:

- (a) that a lease specified in the request is held subject to the restriction that the lease may not, without the Minister's consent, be:
  - (i) transferred or subleased, or
  - (ii) dealt with in any other specified manner, or
- (b) a recording made following a previous request has ceased to have effect.

### **5.20 Removal of transfer restrictions from Register**

If a recording under section 5.19 is made in the Register concerning a lease, the Registrar-General cannot register under the *Real Property Act 1900* any dealing referred to in the recording if:

- (a) the recording still has effect in respect of the land, and
- (b) the Minister has not consented to the dealing.

## **Division 5.6 Licences over Crown land**

### **5.21 Licences generally**

- (1) A licence may authorise the use or occupation of Crown land for the purposes that the Minister thinks fit.
- (2) A licence may be granted for the term that the Minister thinks fit.
- (3) Subject to section 5.25, the Minister may grant a licence for any purpose over Crown land under a lease under this Act (including for the purposes of a filming project), but only with the consent of the holder of the lease.

### 5.22 Certain dealings to be licences

A disposition of Crown land by the Minister on behalf of the Crown, expressed to be a licence, is a licence even if exclusive possession of the land is conferred on a person.

### 5.23 Revocation of licences

- (1) A licence (except a licence granted under section 5.62 by the holder of a lease) over Crown land is revocable at will by the Minister or with the notice (if any) specified in the licence.
- (2) Compensation is not payable for the revocation of a licence even if the licence is revoked before the expiration of its term.

### 5.24 Restrictions on transfer of licences

- (1) A licence over Crown land may be transferred only if:
  - (a) for a licence that includes provisions concerning its transfer—the licence is transferred in accordance with those provisions, or
  - (b) for a licence that does not include provisions concerning its transfer—the licence specifies a parcel of land that benefits from the licence (the *benefited land*) and the licence is transferred to the owner or holder of the benefited land.
- (2) The Minister may, without notice, revoke a licence transferred on the basis of subsection (1) (b) if the licence is, at any time, held by a person who is not the owner or holder of the benefited land. Compensation is not payable on the revocation of the licence.
- (3) This section does not apply in relation to a licence authorising the use or occupation of Crown land for the purposes of constructing, operating or maintaining telecommunications infrastructure.
- (4) In this section:  
*transfer* includes anything that results in another person gaining effective control over the use of most or all of the rights given by a licence.

### 5.25 Licences for removal of minerals

- (1) A licence to remove minerals to which the *Mining Act 1992* applies cannot be granted over Crown land unless the Minister administering the Act concerned has given approval for it.
- (2) The Minister administering the Act concerned may waive compliance with subsection (1) in the circumstances, and to the extent, that the Minister thinks fit.
- (3) A licence to remove minerals may be granted over Crown land even if it is held under a lease under this Act.

### 5.26 Licences for unauthorised users or occupiers of Crown land

- (1) The Minister may grant a licence to authorise a person to use or occupy Crown land if the person is currently using or occupying the land without lawful authority.
- (2) A copy of the licence must be served on the person and takes effect when it is served.
- (3) The licence may be granted without the person's consent and binds the person even if it is granted without consent.
- (4) Without limiting section 5.3, the regulations may make provision for or with respect to the provisions of a licence granted under this section, including provisions relating to any of the following:



- (a) the payment of rent, fees or other amounts in connection with licences,
  - (b) the purposes and activities authorised by licences,
  - (c) the expiry, termination or revocation of licences,
  - (d) obligations in connection with the use or occupation of Crown land for which licences are granted (including obligations relating to indemnifications or releases from liability),
  - (e) the carrying out of remedial or restoration work, and the payment of compensation or fines, in connection with the unauthorised use or occupation of Crown land before licences are granted,
  - (f) the revocation of licences if their holders fail to comply with the requirements of the *Environmental Planning and Assessment Act 1979* (including for relevant approvals or consents).
- (5) A provision of the licence for the payment of rent may provide for the rent payable to be calculated from the time that the person was first notified that the use or occupation of the Crown land was without lawful authority.

#### **5.27 Revocation of licence benefiting other land that is sold or leased again**

- (1) This section applies if:
- (a) a licence has been granted over Crown land (the *Crown licence*), and
  - (b) the holder of the Crown licence is the owner or lessee of other land (whether or not Crown land) (the *other land*), and
  - (c) the holder of the Crown licence is transferring the other land, or the licensee's lease over the other land, to a new owner or lessee (the *transferee*), and
  - (d) the Crown licence provides a benefit to the other land (for example, because it allows access to a waterfront, nature reserve or other recreational facility or services to be provided to the other land).
- (2) The Minister may, on the application of the holder of the Crown licence, revoke the licence on or before the transfer of the other land or the lease over the other land.
- (3) The Minister may require the holder of the Crown licence to do any one or more of the following before revoking the Crown licence:
- (a) pay any rent, fees or other amounts in arrears under the Crown licence,
  - (b) remove any structures erected on the Crown land under the licence and make good any damage to the land to the Minister's satisfaction,
  - (c) pay any fees in connection with updating information in the Register in connection with the licence.
- (4) If the Crown licence is not revoked before the other land or a lease over it is transferred by its holder:
- (a) the Crown licence continues in force as a licence under this Act granted to the transferee, and
  - (b) the transferee becomes liable for any rent, fees or other amounts under the Crown licence (including any that are in arrears).
- (5) A transferee to whom subsection (4) applies must, in the manner and within the period prescribed by the regulations, notify the Minister of the date of the transfer and the transferee's name and address.
- Maximum penalty: 50 penalty units.

- (6) The Registrar-General must, when requested to do so by the Minister, record information in the Register to indicate that the transfer of other land (or a lease over the land) is subject to the requirements of this section.

#### 5.28 Sublicences

The holder of a licence over Crown land may grant a sublicence, but only if the provisions of the licence permit the granting of the sublicence.

### Division 5.7 Special purpose holdings over Crown land

#### 5.29 Definitions

In this Division:

**general purpose lease** means any lease under this Act (except a special purpose lease), but does not include an incomplete purchase.

**general purpose licence** means any licence under this Act (except a special purpose licence).

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

**special purpose holding** means a special purpose lease or special purpose licence.

**special purpose lease** is defined in section 5.30.

**special purpose licence** is defined in section 5.30.

#### 5.30 Grant of special purpose holdings

- (1) The Minister may grant a special purpose lease or special purpose licence over Crown land.
- (2) A **special purpose lease** or **special purpose licence** is a lease or licence over Crown land that is granted for the purpose of enabling its holder to do any one or more of the following:
- to construct and operate facilities for the harnessing of energy from any source (including the sun or wind) and its conversion into electricity energy,
  - to remove gravel, sand or any other material (whether or not a mineral as defined in the *Mining Act 1992*),
  - to construct, operate or maintain telecommunications infrastructure,
  - to carry out any other development of a kind approved by the Minister under subsection (3).
- (3) The Minister may, by order published in the Gazette, approve kinds of development for which a special purpose holding may be granted.
- (4) The Minister cannot grant a special purpose holding over Crown land already subject to a general purpose lease without its holder's written consent unless:
- it is a special purpose licence to enable its holder to remove gravel, sand or any other material that is not a mineral as defined in the *Mining Act 1992*, or
  - it is a special purpose licence to enable its holder to construct, operate or maintain telecommunications infrastructure, or
  - it is a special purpose holding of a kind prescribed by the regulations.
- (5) Also, the Minister cannot grant a special purpose holding over Crown land already under any of the following leases without the consent of the Minister administering the Act concerned:

- (a) a mining lease under the *Mining Act 1992*,
  - (b) a production lease under the *Petroleum (Onshore) Act 1991*.
- (6) The maximum term for which a special purpose holding may be granted (including the period of any option to renew) is 100 years.
- (7) A written consent given for the purposes of subsection (4) by the lessee under a general purpose lease is irrevocable and binds each successor in title to the land the subject of that lease.
- (8) This section does not limit the Minister's powers under section 5.3 or Divisions 5.5 and 5.6.

### **5.31 Relationship between general purpose leases and special purpose holdings**

#### **(1) Provisions relating to general purpose leases**

The following provisions apply to a general purpose lease over land that also has a special purpose holding over it:

- (a) if the holding is a special purpose lease—the general purpose lease is, or remains, a lease even though it does not confer, or no longer confers, exclusive possession on its holder,
- (b) the general purpose lease is taken to include a condition prohibiting its holder from doing anything that has the effect of restricting or impeding the holder of the special purpose holding from exercising the rights conferred by that holding,
- (c) the general purpose lease is taken to include a further condition prohibiting its holder from carrying out development for the purposes of any dwelling-house, garden or significant improvement on the land except with the written consent of the holder of the special purpose holding.

#### **(2) Provisions relating to special purpose holdings**

The following provisions apply to a special purpose holding over land that also has a general purpose lease over it:

- (a) if the holding is a special purpose lease—the special purpose lease is, or remains, a lease even though it does not confer, or no longer confers, exclusive possession on its holder,
  - (b) the special purpose holding is taken to include a condition prohibiting its holder, except with the written consent of the holder of the general purpose lease, from exercising any of the rights conferred by that holding over any part of the land:
    - (i) on which, or within 200 metres of which, any dwelling-house is located, or
    - (ii) on which, or within 50 metres of which, any garden is located, or
    - (iii) on which any significant improvement is located,
  - (c) the special purpose holding is taken to include a further condition prohibiting its holder from unreasonably withholding any consent referred to in subsection (1) (c).
- (3) A written consent given for the purposes of subsection (2) (b) is irrevocable and binds each successor in title to the land.
- (4) Subsection (2) (b) (i) and (ii) do not prevent the holder of the special purpose holding from travelling along any road or track within 200 metres or 50 metres, respectively, of a dwelling-house or garden referred to in those subparagraphs.

- (5) A special purpose holding over land that also has a general purpose lease over it may include conditions agreed to between each of the holders of those holdings.
- (6) Any condition of the kind referred to in subsection (5):
- (a) that is included in a special purpose holding over land that also has a general purpose lease over it, or
  - (b) that, because of subsection (7), is taken to be included in a sublease or sublicence of a special purpose holding over land that also has a general purpose lease over it,
- is enforceable, as between the licensees, lessees, sublicensees and sublessees for the time being under those holdings, as if it were contained in a deed entered into between them.
- (7) **Sublicences and subleases**
- Any sublease of a general purpose lease, or sublease or sublicence of a special purpose holding, is taken to include the conditions that, under this section, are included (or taken to be included) in the lease or holding.
- (8) **Application of section**
- This section applies regardless of the order in which the special purpose holding and the general purpose lease over the land have been granted.
- (9) This section applies to a general purpose lease or special purpose holding (and any sublease or sublicence of that lease or holding):
- (a) for a general purpose lease (or a sublease of that lease)—only while the land over which it is granted also remains subject to a special purpose holding, and
  - (b) for a special purpose holding (or a sublease or sublicence of that holding)—only while the land over which it is granted also remains subject to a general purpose lease.

### **5.32 Relationship between general purpose licences and special purpose holdings**

(1) **Provisions relating to general purpose licences**

The following provisions apply to a general purpose licence over land that also has a special purpose holding over it:

- (a) the general purpose licence is taken to include a condition prohibiting its holder from doing anything that has the effect of restricting or impeding the holder of the special purpose holding from exercising the rights conferred by that holding,
- (b) the general purpose licence is taken to include a further condition prohibiting its holder from carrying out development for the purposes of any dwelling-house, garden or significant improvement on the land except with the written consent of the holder of the special purpose holding.

(2) **Provisions relating to special purpose holdings**

The following provisions apply to a special purpose holding over land that also has a general purpose licence over it:

- (a) the special purpose holding is taken to include a condition prohibiting its holder, except with the written consent of the holder of the general purpose licence, from exercising any of the rights conferred by that holding over any part of the land:
  - (i) on which, or within 200 metres of which, any dwelling-house is located, or
  - (ii) on which, or within 50 metres of which, any garden is located, or

- (iii) on which any significant improvement is located,
  - (b) the special purpose holding is taken to include a further condition prohibiting its holder from unreasonably withholding any consent referred to in subsection (1) (b).
- (3) A written consent given for the purposes of subsection (2) (a) is irrevocable and binds each successor in title to the land.
- (4) Subsection (2) (a) (i) and (ii) do not prevent the holder of the special purpose holding from travelling along any road or track within 200 metres or 50 metres, respectively, of a dwelling-house or garden referred to in those subparagraphs.
- (5) A special purpose holding over land that also has a general purpose licence over it may include conditions agreed to between each of the holders of those holdings.
- (6) Any condition of the kind referred to in subsection (5):
  - (a) that is included in a special purpose holding over land that also has a general purpose licence over it, or
  - (b) that, because of subsection (7), is taken to be included in a sublease or sublicence of a special purpose holding over land that also has a general purpose licence over it,is enforceable, as between the licensees, lessees, sublicensees and sublessees for the time being under those holdings, as if it were contained in a deed entered into between them.
- (7) **Sublicences and subleases**

Any sublicence of a general purpose licence, or sublease or sublicence of a special purpose holding, is taken to include the conditions that, under this section, are included (or taken to be included) in the licence or holding.
- (8) **Application of section**

This section applies regardless of the order in which the special purpose holding and the general purpose licence over the land have been granted.
- (9) This section applies to a general purpose licence or special purpose holding (and any sublicence or sublease of that licence or holding):
  - (a) for a general purpose licence (or a sublicence of that licence)—only while the land over which it is granted also remains subject to a special purpose holding, and
  - (b) for a special purpose holding (or a sublease or sublicence of that holding)—only while the land over which it is granted also remains subject to a general purpose licence.

## **Division 5.8 Enclosure permits for Crown roads and watercourses**

### **5.33 Definitions**

In this Division:

**Crown road** includes any road vested in the Crown and any other land vested in the Crown and indicated on official maps or plans as being reserved for a road or defined or left as a road:

- (a) in a subdivision of Crown land, or
- (b) in the measurement or granting of Crown land, or
- (c) as a consequence of an approval by the Minister.

**Crown watercourse** means a river, stream or other watercourse vested in the Crown.

**holder** of land means the owner or lessee of the land.

**land** includes:

- (a) land comprised in a holding (except a licence under this Act), and
- (b) freehold land.

#### **5.34 Granting of enclosure permits for Crown roads or watercourses**

- (1) The Minister may, on the application of a holder of land, grant a permit (an **enclosure permit**) to the holder of the land to enclose, whether wholly or partly, any Crown road or Crown watercourse that crosses or bounds the land.

**Note.** Part 6 provides for rent to be payable on holdings (including enclosure permits).

- (2) An enclosure permit may be granted subject to any of the following conditions:
  - (a) conditions requiring the erection of gates or providing some other means of access or both (so as not to interfere unnecessarily with any traffic),
  - (b) any other conditions that the Minister may determine.

#### **5.35 Enclosure of additional Crown roads or watercourses**

An enclosure permit and its conditions may be varied by the Minister if its holder wishes to enclose (or has already enclosed) an additional Crown road or Crown watercourse.

#### **5.36 Unauthorised enclosure of Crown roads or watercourses**

- (1) A holder of land is liable to pay an annual rent determined by the Minister for a Crown road or Crown watercourse that crosses or bounds the land if:
  - (a) the road or watercourse is enclosed as if it were part of the land held, and
  - (b) the enclosure was done (whether before or after the commencement of this section) without the Minister's permission.
- (2) If the Crown road or Crown watercourse is additional to any road or watercourse covered by an enclosure permit over the same land, the Minister may determine the annual rent payable for the additional road or watercourse.
- (3) The Minister must give the holder of the land written notice of any determination of rent under this section.
- (4) A determination of rent under this section in respect of a Crown road or Crown watercourse has effect as an enclosure permit granted to the holder of the land. Accordingly, Part 6 applies to the determination, redetermination and adjustment of that rent in the same way as it applies to an enclosure permit granted by the Minister.
- (5) The Minister may impose conditions in respect of a Crown road or Crown watercourse enclosed as referred to in this section in the same way as the Minister may impose conditions in respect of a Crown road or Crown watercourse enclosed on the application of a holder.
- (6) This section does not affect the Minister's power to take action under Division 9.3 in respect of any enclosure of a Crown road or Crown watercourse or any structure on a road or watercourse of that kind.

#### **5.37 Transfer of enclosure permit**

- (1) If an enclosure permit is transferred from the holder of land to another person at any time after it is granted:
  - (a) the permit remains in force, and

- (b) the holder for the time being of the land is liable for payment of rent (including arrears of rent and interest) in respect of the enclosure.
- (2) A person to whom an enclosure permit is transferred must, in the manner and within the period prescribed by the regulations, notify the Secretary of the date of the transfer and the person's name and address.  
Maximum penalty (subsection (2)): 50 penalty units.

#### **5.38 Subdivision of land within which Crown road or watercourse is enclosed**

If the subdivision of land to which an enclosure permit relates results in different holders for different parts of the land that is crossed or bounded by the Crown road or Crown watercourse for which it was granted:

- (a) an enclosure permit is taken to have been granted to each different holder in respect of the different parts of the Crown road or Crown watercourse, and
- (b) the holder of each enclosure permit must pay rent at the same rate per hectare as applied to the original enclosure permit before the subdivision (subject to any minimum rent as provided under Part 6), and
- (c) the Minister may impose conditions in respect of each enclosure permit in the same way as the Minister may impose conditions in respect of a Crown road or Crown watercourse enclosed on the application of a holder.

#### **5.39 Cancellation of enclosure permit and removal of structures**

- (1) The Minister may, by written notice served on the holder of an enclosure permit:
  - (a) cancel the permit or direct that section 5.36 does not apply to an enclosure (or both), and
  - (b) order the former holder of the enclosure permit to remove any fence, gate or other structure on any Crown road or Crown watercourse within a specified period.
- (2) A former holder of an enclosure permit must comply with an order served under this section on the former holder.  
Maximum penalty (subsection (2)):
  - (a) for a corporation—100 penalty units, or
  - (b) for an individual—20 penalty units.

#### **5.40 Cancellation or variation of enclosure permit following certain events**

- (1) An enclosure permit authorising the enclosure of a Crown road or Crown watercourse as if it were part of any land must be cancelled or varied by the Minister if:
  - (a) the land is acquired by the Crown or any public authority, or
  - (b) for land comprised in a holding—the holding ends or is forfeited, or
  - (c) the road is closed or dedicated as a public road, or
  - (d) the road or watercourse ceases to be enclosed.
- (2) A cancellation or variation takes effect from the date (whether before or after the decision to cancel or vary) as may be determined by the Minister.
- (3) If a permit is varied, the rental is to be at the same rate per hectare as it was before the variation (subject to any minimum rent as provided under Part 6).
- (4) If a forfeiture of a holding is reversed, the Minister may also reverse any cancellation or variation of a permit to enclose a road or watercourse as if it were part of the holding.

- (5) A reversal of a cancellation or variation is backdated to the date of the cancellation or variation.

#### 5.41 Combined enclosure permits

- (1) The Minister may, on the application of the holder of 2 or more enclosure permits, grant the holder a combined enclosure permit.
- (2) The combined enclosure permit may be granted subject to any conditions that the Minister thinks necessary.
- (3) A combined enclosure permit has effect as one permit for the purposes of this Division.
- (4) The annual rent in respect of a combined permit is:
- (a) the sum of the separate rents of the enclosure permits that have been combined, or
  - (b) if one or more of the enclosure permits that have been combined is held at a minimum rent—the amount (not in excess of the sum of the separate rents of the permits) that the Minister may determine.

#### 5.42 Access to enclosed Crown roads and alteration of enclosure structures

- (1) On the application of any person, the Minister may, by written notice given to the holder of an enclosure permit, direct the holder:
- (a) to take specified action that the Minister considers necessary to provide better access to a Crown road enclosed under the permit, or
  - (b) to remove, modify or replace any enclosure structure (or anything attached to it).
- (2) Unless the direction is revoked sooner:
- (a) if no objection is made to the Minister against the direction—the direction takes effect when the period of 28 days after it is served expires, and
  - (b) if an objection is made to the Minister against the direction—the direction takes effect or, if varied, takes effect as varied, on the date of the Minister's decision on the objection.
- (3) A holder of an enclosure permit must comply with a direction given to the holder under this section.
- Maximum penalty:
- (a) for a corporation—100 penalty units, or
  - (b) for an individual—20 penalty units.
- (4) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions:
- (a) a decision of the Minister refusing to give a direction under this section on the application of the person,
  - (b) a decision of the Minister to give a direction under this section in respect of land for which the person has an enclosure permit.
- (5) In this section:
- enclosure structure** means any fence, gate or other structure for enclosing a Crown road or Crown watercourse.



#### **5.43 Cultivation of enclosed Crown roads**

- (1) The Minister may vary an enclosure permit for a Crown road to permit its holder to cultivate the land enclosed (a ***cultivation permission***) for a specified period and subject to any conditions that the Minister thinks appropriate.
- (2) In doing so, the Minister must be satisfied that:
  - (a) public access to the enclosed Crown road is not justified during a particular period, and
  - (b) the suspension of public access to the road would facilitate the cultivation of adjoining land by the holder of the enclosure permit.
- (3) The Minister cannot grant a cultivation permission unless:
  - (a) notice of at least 21 days is given in a local newspaper inviting objections to the proposal, and
  - (b) the Minister has considered any duly made objections.
- (4) Without limiting subsection (1), the conditions to which a cultivation permission may be subject include a condition requiring the holder of the enclosure permit to provide alternative public access through adjacent land of the holder to the satisfaction of the Minister and for the permission's duration.
- (5) The rights of the public or any person to use alternative access to an enclosed Crown road provided under subsection (4) are the same as those applicable to the road.
- (6) A cultivation permission operates to suspend any rights of the public or any person to use the enclosed Crown road as a road for its duration.
- (7) The Minister may, by written notice given to the holder of the enclosure permit, vary the permit to revoke a cultivation permission if:
  - (a) the Minister is satisfied that the conditions of the permission have been contravened, or
  - (b) the Minister has given the holder written notice of at least 6 months (or any shorter period prescribed by the regulations) of the Minister's intention to revoke it.
- (8) The Secretary may, when a cultivation permission is granted or at any time while it is in force, redetermine the rent for the enclosure permit.
- (9) A cultivation permission does not authorise the carrying out of any activity prohibited under another Act.

#### **5.44 Responsibility for dividing fences**

The holder of an enclosure permit to enclose a Crown road or Crown watercourse is taken to be the owner or lessee (as the case requires) of the land enclosed for the purposes of any law relating to dividing fences.

#### **5.45 Certain gates erected under this Division to be treated as public gates**

A gate is a public gate for the purposes of the *Roads Act 1993* if:

- (a) the Minister directed the erection of the gate under this Division, and
- (b) the gate is erected in accordance with the direction, and
- (c) the Minister has, in the direction, specified that the gate, when erected, is to be a public gate for the purposes of the *Roads Act 1993*.

## **Division 5.9 Easements**

### **5.46 Definitions**

In this Division:

**easement** includes an easement without a dominant tenement referred to in section 88A of the *Conveyancing Act 1919*.

**holder**, in relation to Crown land, means:

- (a) a person who holds a lease under this Act over the land, or
- (b) a person who is a mortgagee of a lease under this Act over the land.

### **5.47 Grant of easements generally**

- (1) The Minister may grant an easement over Crown land on any terms and conditions that the Minister thinks appropriate (including terms and conditions relating to compensation payable to the Crown).
- (2) The benefit of an easement granted under this section may be annexed to land even if, at the time the easement is granted, the land is vested in the Crown.
- (3) An easement granted under this section is not extinguished because the land with the benefit or burden of the easement becomes, or both become, vested in the Crown.
- (4) Sections 88A and 181A of the *Conveyancing Act 1919* apply to a notice or instrument purporting to grant an easement for the purposes of this section.
- (5) Section 89 of the *Conveyancing Act 1919* applies to an easement granted for the purposes of this section.

### **5.48 Consent of holders generally required for creation or release of easement**

- (1) When granting or releasing an easement over land under this Division, the Minister must be satisfied that:
  - (a) for the grant of an easement—the holder (if any) for the time being of the land has consented to the creation of the easement, or
  - (b) for the release of an easement—the holder (if any) for the time being of the land having the benefit of the easement has consented to the release of the easement.
- (2) A failure to comply with subsection (1) does not affect the validity of any easement or release.
- (3) This section does not apply to easements granted under section 5.49.

### **5.49 When consent of holder not required for creation of easement over Crown land**

- (1) The Minister may grant an easement over Crown land without the consent of the holder (if any) for the time being of the land for any of the following purposes:
  - (a) to enable the owner of other land to access the owner's land,
  - (b) to enable necessary services (for example, drainage, water, gas or electricity services) to be provided to other land,
  - (c) to enable a person who has access rights over the land (including for the purpose of travelling stock) to continue to have access to the land when the land is sold,
  - (d) to preserve or protect the interests or rights of the Crown in the land (including forestry or mining rights) when the land is sold.

- (2) The Minister may create an easement for a purpose under subsection (1) if the Minister is satisfied that:
  - (a) for a purpose under subsection (1) (a)—access under the easement would be significantly more convenient than other access arrangements, or
  - (b) for a purpose under subsection (1) (b)—the easement would enable the owner of the other land to avoid unreasonable expenses involved in obtaining alternative service provision, or
  - (c) for a purpose under subsection (1) (c)—access under the easement would be significantly more convenient following the sale than other access arrangements.
- (3) Subsection (2) does not apply to an easement being created:
  - (a) in connection with the sale of the land to the holder of a lease over the land, or
  - (b) for a purpose under subsection (1) (d).
- (4) Despite anything in the *Real Property Act 1900*, an easement granted under this section over Crown land in the Western Division can be registered under that Act without the need for a plan of survey for the easement.
- (5) It is sufficient if an easement registered as permitted by subsection (4) is registered by reference to boundaries shown diagrammatically on a compiled easement plan of a kind approved by the Registrar-General.

#### **5.50 Local councils to seek easements from Crown in certain cases**

- (1) This section applies to a local council that has an ongoing need to enter Crown land to carry out work of the kind referred to in section 191A (Power of entry—construction and maintenance of water supply, sewerage and stormwater drainage works) of the *Local Government Act 1993*.
- (2) The local council must, as soon as practicable after becoming aware that it needs access on an ongoing basis, ask the Minister to create an easement for access to the Crown land to carry out the work it needs to carry out.
- (3) The local council must provide the Minister with any information that the Minister requires concerning the proposed easement (including the work it needs to carry out).
- (4) Without limiting section 5.47, the Minister must grant the easement if the Minister is satisfied that it is appropriate to do so.
- (5) This section does not limit the powers of a local council under section 191A of the *Local Government Act 1993*.

#### **5.51 Creation of easements for public access**

- (1) An easement for public access may be granted:
  - (a) for Crown land proposed to be sold under this Act—by the Minister at any time before the sale, or
  - (b) for dedicated or reserved Crown land—by the Minister, or
  - (c) for Crown land authorised to be sold or transferred by the Minister under another Act—by the Minister at any time before the sale or transfer, or
  - (d) for land under a lease from the Crown—by the Minister with the consent of the holder of the lease, or
  - (e) for freehold land—by its owner.
- (2) An easement for public access may be granted for the benefit of the Crown without a dominant tenement.

- (3) An easement for public access may be defined by reference to a natural or physical feature as it exists from time to time.
- (4) An easement for public access over land confers on the public a right to enter the land and to carry on any activity except an activity of a kind prescribed by the regulations (a *prescribed activity*).
- (5) A person must not carry on a prescribed activity on land that is subject to an easement for public access.  
Maximum penalty: 100 penalty units.
- (6) This section extends to Crown land regardless of whether or not:
  - (a) there is a holding or enclosure permit over it, or
  - (b) it is dedicated or reserved Crown land.

#### **5.52 Rights of owners or lessees of land affected by public access easements**

- (1) An owner or lessee of land over which there is an easement for public access cannot erect any structure unless the Minister gives written consent for it.
- (2) Despite subsection (1), the Minister's written consent is not required to erect:
  - (a) a fence or gate that does not unduly hinder public entry to the land, or
  - (b) any other kind of structure prescribed by the regulations.
- (3) Division 9.3 applies in respect of structures erected on land that is subject to an easement for public access in the same way as it applies in respect of structures erected on Crown land.
- (4) An owner or lessee who suffers damage caused by a person using an easement for public access contrary to this Act or the regulations may recover damages from the person.

#### **5.53 Release of easements benefiting Crown land**

- (1) The Minister may at any time release any easement that benefits Crown land.
- (2) This Division does not affect any right of any other person to release an easement granted under this Division.

#### **5.54 Method for granting or releasing easements under this Division**

- (1) An easement granted under this Division may be granted:
  - (a) for land to which the *Real Property Act 1900* applies—in the way provided in that Act or in section 88B of the *Conveyancing Act 1919*, or
  - (b) for land to which the *Real Property Act 1900* does not apply:
    - (i) in the way provided in section 88B of the *Conveyancing Act 1919*, or
    - (ii) by notice published in the Gazette (except if it is an easement for public access).
- (2) An easement benefiting Crown land may be released by the Minister under this Division:
  - (a) for land to which the *Real Property Act 1900* applies—in accordance with that Act, or
  - (b) for land to which the *Real Property Act 1900* does not apply—by notice published in the Gazette.

### **5.55 Recording of particulars of easement or release in Register**

- (1) This section applies if an easement over land to which the *Real Property Act 1900* applies is granted or released under this Division.
- (2) The Registrar-General may record any particulars of the grant or release of the easement as the Registrar-General considers necessary in any folio of the Register for the land that, in the Registrar-General's opinion, is affected by the grant or release.

## **Division 5.10 Restrictions and covenants**

### **5.56 Imposition of restrictions and covenants on Crown land**

- (1) The Minister may, on behalf of the Crown, impose any restrictions on use, or public positive covenants, on Crown land.
- (2) The restriction or public positive covenant is to be imposed in accordance with section 88D or 88E of the *Conveyancing Act 1919* (as appropriate), and that Act applies in respect of the restriction or public positive covenant.  
**Note.** See also section 13.4, which applies in relation to a restriction on use or public positive covenant imposed as referred to in this section.
- (3) Without limiting subsection (1), a restriction or public positive covenant extends to any separate lots created by a subsequent subdivision of the land to which the restriction or covenant relates.
- (4) The Minister may, on behalf of the Crown, exercise the functions of a prescribed authority under sections 88D and 88E of the *Conveyancing Act 1919* in relation to the restriction or covenant.
- (5) Section 88D (9) of the *Conveyancing Act 1919* does not apply in respect of any interest in the land acquired by the purchaser of the land before the restriction or public positive covenant takes effect and, accordingly, does not prevent the enforcement of the restriction or covenant. A reference in this subsection to a purchaser includes a reference to a mortgagee (or a person claiming through a mortgagee) or any other person claiming through the purchaser.
- (6) This section does not limit the Minister's power under Division 5.4 to include conditions in a contract of sale of Crown land.

### **5.57 Removal of restrictions or covenants on Crown land**

- (1) The Minister may consent to the removal of a restriction or covenant on Crown land imposed under this Division.  
**Note.** Division 2 of Part 2 of Schedule 7 provides for restrictions on use, and public positive covenants, on Crown land imposed under the *Crown Lands Act 1989* to continue in effect under this Act. Accordingly, they can be removed under the provisions of this Act (including this section).
- (2) Where the restriction or covenant was originally imposed under Part 4A of the *Crown Lands Act 1989*, the Minister must consent to its removal if:
  - (a) the land is being sold or an application to purchase the land under a purchasable lease is granted, and
  - (b) the purchaser or applicant requests its removal and provides the Minister with any documentation required by the Minister to give effect to its removal.
- (3) However, the Minister cannot consent to the removal of a restriction or covenant on Crown land originally imposed under Part 4A of the *Crown Lands Act 1989* without the consent of the Minister for the Environment if the land:
  - (a) adjoins or abuts, or is within 100 metres of, land dedicated or reserved under the *National Parks and Wildlife Act 1974*, or

- (b) is within, or comprises or contains, or is part of, or adjoins or abuts, or is within 100 metres of:
  - (i) a wilderness area (as defined in the *Wilderness Act 1987*), or
  - (ii) land for the time being identified as wilderness under that Act.
- (4) Also, the Minister cannot consent to the removal of a restriction or covenant on Crown land originally imposed under section 77B of the *Crown Lands Act 1989* unless satisfied, having regard to the prescribed assessment principles, that it is appropriate to do so.
- (5) The regulations may make provision for or with respect to principles (the **prescribed assessment principles**) to be applied by the Minister when deciding whether it is appropriate to consent to the removal of a restriction or covenant on Crown land originally imposed under section 77B of the *Crown Lands Act 1989*.
- (6) The Minister is not to recommend to the Governor the making of a regulation that provides for or amends the prescribed assessment principles unless the Minister has certified that the Office of Environment and Heritage was consulted about the principles or amendment.
- (7) Except as provided by subsections (2), (3) and (4), this section does not limit the circumstances in which the Minister may decide to remove (or consent to the removal of) a restriction or covenant on Crown land.

## Division 5.11 Forestry rights and carbon related rights

### 5.58 Granting of forestry rights

- (1) The Minister may, on any terms and conditions determined by the Minister, grant a forestry right over Crown land.

**Note.** Section 1.5 (1) defines a **forestry right** to have the same meaning as in section 87A of the *Conveyancing Act 1919*. Section 87A of that Act defines a forestry right to include a carbon sequestration right in relation to land. Carbon sequestration is the process by which a tree or forest absorbs carbon dioxide from the atmosphere.  
A forestry right is, for all purposes, taken to be a profit à prendre (see section 88AB of the *Conveyancing Act 1919*).
- (2) Before doing so, the Minister must be satisfied that any holder of a lease over the Crown land has consented to the grant of the forestry right.
- (3) If the Crown land is dedicated or reserved Crown land, the provisions of section 2.18 apply to the granting by the Minister of a forestry right over the land as if it were a relevant interest under that section.
- (4) If the Crown land is under a perpetual lease, the Minister may, on any terms and conditions determined by the Minister, consent to the holder of the lease granting a forestry right over the land.
- (5) The holder of a perpetual lease over Crown land may, with the consent of the Minister under subsection (4), grant a forestry right over the land subject to any terms and conditions determined by the Minister.
- (6) Also, the Minister must consult the Minister administering the *Forestry Act 2012* before:
  - (a) granting a forestry right over Crown-timber land (as defined in the *Forestry Act 2012*), or
  - (b) consenting to the holder of a perpetual lease over Crown-timber land granting a forestry right.

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

- (7) Without limitation, the terms and conditions determined by the Minister under this section for the grant of a forestry right may include any restrictions on dealings with the right.

#### **5.59 Method for granting forestry rights and use restrictions and covenants**

- (1) A forestry right granted under this Division may be created:
- (a) for land to which the *Real Property Act 1900* applies—in the way provided in that Act or section 88B of the *Conveyancing Act 1919*, or
  - (b) for land to which the *Real Property Act 1900* does not apply—in any of the following ways:
    - (i) in the way provided in section 88B of the *Conveyancing Act 1919*, or
    - (ii) if the Minister consents to it, by an instrument registered in the General Register of Deeds, or
    - (iii) by a notice published in the Gazette (except for a forestry right granted by the holder of a perpetual lease).
- (2) Without limiting Division 4 of Part 6 of the *Conveyancing Act 1919*, restrictions on the use of land and covenants may be imposed in accordance with that Division on Crown land over which a forestry right is granted under this Division.

#### **5.60 Other carbon related rights**

- (1) The regulations may make provision for or with respect to the granting and effect of rights over Crown land in connection with any scheme (whether of this State, the Commonwealth or internationally) for the reduction of carbon emissions or other greenhouse gases in the atmosphere.
- (2) This section, or any regulation made for the purposes of this section, does not limit the granting of forestry rights under this Division that comprise or include carbon sequestration rights (as defined in section 87A of the *Conveyancing Act 1919*).

### **Division 5.12 General**

#### **5.61 Payment of royalties, security deposits, fees or other amounts for holdings**

- (1) A holding over Crown land may be granted subject to the payment of any royalty, security deposit, fee or other amount that the Minister may determine in respect of the holding.  
**Note.** Part 6 also provides for rent to be payable on holdings (except incomplete purchases).
- (2) The provisions of a holding may include provisions for the determination or redetermination of any royalty, fee or other amount.
- (3) The Minister may, from time to time, review the amount of a royalty, security deposit, fee or other amount payable for a holding.
- (4) The Minister may, by written notice served on the holder of a holding, change the amount of a royalty, security deposit, fee or other amount payable for the holding.
- (5) In this section:  
**holding** does not include an incomplete purchase.

#### **5.62 Use of land for filming projects**

- (1) Subject to section 5.25, the holder of a holding may, with the Minister's written consent, grant another person one of the following (a **subholding**) to enable the person to use the land under the holding to carry out a filming project:
- (a) if the holding is a lease—a sublease or licence,

(b) if the holding is a licence—a sublicence.

**Note.** The Minister may also grant a licence over Crown land (including leased land) under section 5.21.

- (2) A subholding granted with the Minister's consent is subject to any conditions that the Minister thinks fit to impose.
- (3) Subsection (1) does not require the consent of the Minister if the use of the land for the purpose of a filming project:
  - (a) is authorised by the holding or generally consistent with the purposes for which the land may be used under the holding, and
  - (b) will not affect any native title rights and interests in relation to the land.
- (4) If a subholding is granted without the Minister's consent, it is taken to be a condition of the holding that:
  - (a) the holder must give the Minister written notice of the grant of the subholding within 28 days after it is granted, and
  - (b) the holder must ensure that:
    - (i) the fee charged for the subholding reflects the holder's costs and is kept to a minimum, and
    - (ii) the subholding requires the film makers when filming to comply with any appropriate safety measures and operational requirements of a kind required by the Minister from time to time.
- (5) The Minister may give consent under subsection (1), and the subholding may be granted following that consent, despite any provision to the contrary in the holding or this Act.

#### **5.63 Crown land acquired by purchase or exchange provides fee simple**

- (1) A person acquiring Crown land by purchase or exchange under this Act obtains an estate in fee simple in the land.
- (2) This section does not apply to a person acquiring land under a lease from the Crown by exchange.

#### **5.64 Removal of recordings in Register**

- (1) The Minister may inform the Registrar-General that a covenant, condition, reservation or provision no longer applies to a holding or land if the Minister is satisfied of it.
- (2) The Registrar-General may amend the Register in accordance with that information.



## Part 6 Rents for holdings

**Introductory note.** This Part provides for the payment of rent for holdings (including enclosure permits, but not incomplete purchases). It includes provisions for the payment of minimum annual rent for a holding.

If the provisions of a holding provide for how rent is to be determined, redetermined or adjusted, it must be done in accordance with those provisions.

However, if the holding does not provide for how rent is to be determined, redetermined or adjusted, this Part will enable it to be done as follows:

- (a) when determining rent on granting or renewing a holding—the Minister,
- (b) when redetermining or adjusting rent for a holding during its term—the Secretary.

Generally speaking, this will be done by reference to certain principles (including the principle that market rent should be payable).

Schedules 1–4 contain special provisions concerning continued holdings, land in the Western Division and purchasable leases. Section 1.13 provides that those provisions prevail over the provisions of this Part to the extent of any inconsistency.

### Division 6.1 Introduction

#### 6.1 Definitions

In this Part:

*during the term* of a holding, in relation to a holding with no term (such as a perpetual lease), includes while the holding remains in force.

*holding* includes an enclosure permit, but not an incomplete purchase.

### Division 6.2 Payment of rent

#### 6.2 Rent is generally payable for holding

- (1) The holder of a holding is required to pay rent for the holding unless:
  - (a) the provisions of the holding provide for no rent to be payable, or
  - (b) the rent has been waived or its payment postponed under this Act.

**Note.** Section 12.15 enables the Minister to:

  - (a) waive, reduce, or remit rent for a holding, or
  - (b) postpone the payment of rent for a holding, or
  - (c) grant a rebate of rent for a holding.
- (2) A holding may include provisions concerning the amount of rent payable for the holding (including how it is to be determined, redetermined or adjusted and when and to whom it is payable).
- (3) The rent payable for a holding is to be determined, redetermined or adjusted:
  - (a) for a holding that includes provisions for how rent is to be determined, redetermined or adjusted—in accordance with those provisions, or
  - (b) in any other case—in accordance with the provisions of this Part and any other applicable provisions of this Act or the regulations.
- (4) Subsection (3) (a) does not limit the powers of the Secretary to redetermine or adjust rent if a provision of this Act or the regulations requires or permits the Secretary to redetermine or adjust rent following a change to the area, purposes or conditions of the holding (for example, under section 4.3 and Divisions 7.2 and 7.3).

#### 6.3 Roles of Minister and Secretary

- (1) The Minister is responsible for determining the rent payable for a holding when it is granted or renewed.

- (2) The Secretary is responsible for redetermining or adjusting the rent for a holding during the term of the holding if a provision of this Act or the holding requires or permits it to be done.
- (3) The Secretary is to redetermine or adjust the rent for a holding during the term of the holding in accordance with the provisions of this Part unless the provisions of the holding provide differently.
- (4) A provision of a holding (whether granted before or after the commencement of this Part) that provides for the Minister to redetermine or adjust its rent is to be read in all cases (including for the purposes of subsection (2)) as providing for the Secretary to do it instead of the Minister.

#### 6.4 Annual rent cannot generally be less than minimum rent

- (1) The annual rent for a holding is not to be less than the minimum rent as at the date the rent is due and payable.
- (2) If the annual rent for a holding on a due date is less than the minimum rent as at that due date, the annual rent is increased to the minimum rent.
- (3) Despite subsection (1), the holder of a holding is not required to pay the minimum rent if:
  - (a) the holder has been granted a waiver, reduction, remission, postponement or rebate of rent resulting in no rent or a lesser amount of rent being payable, or
  - (b) the provisions of the holding provide that the holder is not required to pay the minimum rent.
- (4) The *minimum rent* of a holding at each due date is to be calculated using the following formula:

$$M = B \times \frac{C}{D}$$

where:

*M* is the minimum rent.

*B* is the minimum base rent.

*C* is the Consumer Price Index number for the last quarter for which a number was published before the due date for the rent.

*D* is the Consumer Price Index number for the last quarter for which a number was published before the rent base adjustment date.

- (5) In this section:

*minimum base rent* means \$472 or any greater amount that may be prescribed by the regulations.

*rent base adjustment date* means 1 July first occurring after the commencement of this section or, if the minimum rent base is prescribed by the regulations, the date prescribed by the regulations as the rent base adjustment date.

### Division 6.3 Determination, redetermination and adjustment of rents

#### 6.5 General principles for rent determinations or redeterminations

- (1) The principles set out in this section are to be applied when:
  - (a) determining the rent for a holding (including when determining provisions concerning rent for inclusion in the provisions of holding), and
  - (b) redetermining the rent for a holding.

- (2) The following principles apply to the determination or redetermination of rent for a holding:
  - (a) the rent is to be the market rent for the land under the holding having regard to any restrictions, conditions or terms to which it is subject,
  - (b) any improvements on the land that were made by the holder of the holding, or are owned or in the course of being purchased from the Crown by the holder, are to disregarded,
  - (c) regard may be had to any additional value that, because of the holding, has accrued (or may reasonably be expected to accrue) to other land held by the holder of the holding,
  - (d) regard may be had to the duration of the time for which the rent will be payable.
- (3) The Minister may, by order published in the Gazette, exempt a specified holding (or class of holding) from the market value principle set out in subsection (2) (a) if:
  - (a) the Secretary has recommended the making of the order, and
  - (b) the Treasurer has agreed to the exemption.
- (4) A recommendation made by the Independent Pricing and Regulatory Tribunal in relation to the rent for a holding (or class of holdings) may be applied by the Minister or Secretary (as the case requires) despite subsection (2) when:
  - (a) redetermining the rent for any lease or licence to which the recommendation relates, or
  - (b) determining or redetermining the rent for any enclosure permit to which the recommendation relates.

#### **6.6 Rent increases**

The rent payable for a holding may be increased during the term of the holding:

- (a) if the holding's provisions specify a methodology for determining increases—in accordance with that methodology, or
- (b) if the holding's provisions provide that the rent is fixed and cannot be changed during the term—in accordance with a redetermination made by the Secretary under this Division, but only where the redetermination is required because:
  - (i) the area of the holding has changed, or
  - (ii) of a provision of Schedule 1, 2, 3 or 4, or
- (c) if the holding's provisions make no provision about whether or how rent may be increased during the term or provide for the Secretary to make redeterminations of rent under this Act—in accordance with a redetermination made by the Secretary under this Division, or
- (d) if a provision of this Act or the regulations requires or permits the Secretary to redetermine rent following a change to the area, purposes or conditions of the holding (for example, under section 4.3 and Divisions 7.2 and 7.3).

#### **6.7 Redetermination of rent**

- (1) The Secretary must (if required), and may (if permitted), redetermine the rent for a holding if a provision of this Act or the regulations requires or permits the Secretary to redetermine rent following a change to the area, purposes or conditions of the holding (for example, under section 4.3 and Divisions 7.2 and 7.3).
- (2) The following provisions apply if the Secretary is required or permitted to redetermine the rent for a holding in other circumstances:

- (a) subject to paragraphs (b) and (c), the Secretary may redetermine the rent as often as the Secretary considers appropriate or as required by the regulations unless the holding's provisions provide differently,
  - (b) the rent must be redetermined at least once every 5 calendar years,
  - (c) the rent for a holding cannot be redetermined more than once in each calendar year.
- (3) The Secretary must give the holder of a holding written notice of any redetermination of rent made by the Secretary. The notice may contain any other information (including in relation to the making of objections) as the Secretary considers it appropriate to include.
- (4) The redetermined rent cannot take effect unless the written notice is given.

#### **6.8 Objections to rent redeterminations**

- (1) The holder of a holding may object to a redetermination of rent made by the Secretary unless:
- (a) the redetermination is done under the provisions of the holding rather than this Part, or
  - (b) the provisions of the holding preclude objections against redeterminations, or
  - (c) the redetermination results from a recommendation of the Independent Pricing and Regulatory Tribunal, or
  - (d) the redetermination results from an increase in the minimum annual rent payable for the holding.
- (2) The objection must:
- (a) be made in writing in the approved form, and
  - (b) contain the approved particulars, and
  - (c) be lodged with the Secretary within 28 days after the holder is given written notice of the redetermination.
- (3) After considering an objection, the Secretary may:
- (a) reject the objection, or
  - (b) vary the redetermined rent to take into account anything raised by the objection that the Secretary considers relevant.
- (4) The Secretary must give the objector written notice of the Secretary's decision concerning the objection (including any adjusted rent resulting from the decision).
- (5) In this section:  
***approved*** means approved by the Secretary from time to time.

## **Part 7 Alteration, withdrawal and forfeiture of holdings**

**Introductory note.** This Part enables the Minister:

- (a) to alter or revoke the conditions or purposes of a holding (or exempt holders of holdings from conditions of the holding), and
- (b) to withdraw land from a holding for public purposes, and
- (c) to declare that a holding is forfeited for contraventions of provisions of this Act or another Act or the conditions of the holding and for certain other reasons.

Schedules 1–4 contain special provisions concerning continued holdings, land in the Western Division and purchasable leases. Section 1.13 provides that those provisions prevail over the provisions of this Part to the extent of any inconsistency.

### **Division 7.1 Introduction**

#### **7.1 Definition**

In this Part:

*altered* includes modified or added to.

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

#### **7.2 Application**

To avoid doubt, this Division extends to conditions contained in a Crown grant.

#### **7.3 Alteration or revocation of conditions and purposes**

- (1) The Minister may direct that any of the following be altered or revoked (whether conditionally or unconditionally):
  - (a) the conditions attaching to a holding or the land to which a holding relates,
  - (b) the purpose of a holding.
- (2) A direction can only be on the application, or with the consent, of the holder of the holding concerned.

#### **7.4 Exemption from condition compliance**

- (1) On the application of the holder of a holding, the Minister may exempt (either permanently or temporarily and to a specified extent) the holder from complying with a condition attaching to a holding or the land to which a holding relates.
- (2) An exemption may be conditional or unconditional.

#### **7.5 Rent redetermination following alteration, revocation or exemption**

If a condition or purpose is altered or revoked (or an exemption from compliance with a condition is given) under this Division, the Secretary may redetermine the rent for a holding for the remainder of the current rent redetermination period applicable to the holding.

#### **7.6 Removal of conditions and other restrictions**

The Minister may direct that any covenant, condition, reservation or provision attaching or applying to a holding or the land to which a holding relates ceases to attach or apply to the holding or land.

### 7.7 Recording of directions

The Registrar-General must, when requested by the Minister, make recordings in the Register that are necessary to give effect to a direction under this Division of which the Registrar-General has been notified.

## Division 7.3 Withdrawal of land from holdings

### 7.8 Withdrawal of land from holding for public purposes

- (1) The Minister may, by notice published in the Gazette, withdraw land required for a public purpose from any holding.
- (2) A withdrawal does not operate to extinguish any debt to the Crown relating to the land withdrawn, except to the extent to which the Minister directs.
- (3) The Minister may, by notice published in the Gazette, revoke or modify any withdrawal.
- (4) Compensation is payable for the withdrawal of land under this section, but subject to the conditions or provisions applying to the holding concerned.
- (5) The provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* relating to the payment of compensation for land acquired by compulsory process apply, with any modifications that may be prescribed by the regulations, to the payment of compensation under this section.
- (6) On the withdrawal of land from a holding, the Secretary may:
  - (a) if the rent payable in respect of the holding is subject to periodic redetermination—redetermine the rent and adjust (in proportion to the land withdrawn) any other money payable in respect of the lease or licence, or
  - (b) if the rent is not subject to periodic redetermination—proportionately adjust:
    - (i) the rent and any other money payable in respect of the holding, and
    - (ii) if the withdrawal is from a lease—any rent base for the lease.
- (7) If part of a rent base apportioned under subsection (6) is less than the minimum rent base, that part of the rent base is increased to the minimum rent base.
- (8) Part 6 applies to the redetermination of rent for a holding under this section.
- (9) In this section:

**minimum rent base** means \$472 or any other amount that may be prescribed by the regulations.

**public purpose** includes any of the following:

  - (a) the purpose of a road,
  - (b) the purpose of a travelling stock route,
  - (c) the purpose of a camping reserve or other reserve,
  - (d) a purpose of a kind prescribed by the regulations for the purposes of this definition or specified by a notice published by the Minister in the Gazette.

## Division 7.4 Forfeiture of holdings

### 7.9 Minister may forfeit holdings

- (1) The Minister may declare that a holding is forfeited if:
  - (a) the holder contravenes a provision of this Act or another Act applying to, or a condition of, the holding, or

- (b) the holder does not make any payment due under this 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 this Act, the regulations or a condition of the holding, or
  - (d) the holding becomes subject to forfeiture under this Act.
- (2) The acceptance of money by the Crown in respect of a forfeited holding does not operate as a waiver of the forfeiture.
- (3) A person (other than the holder of a perpetual lease) cannot seek relief against forfeiture from any court or tribunal in connection with a forfeiture of a holding under this section.
- Note.** See section 7.13 for the right of the holder of a perpetual lease to appeal to the Land and Environment Court against forfeiture.

#### **7.10 Forfeiture takes effect when notice given**

The forfeiture of a holding takes effect:

- (a) if the holding is under the *Real Property Act 1900*—on the Minister causing a notice of the forfeiture to be entered in the Register, or
- (b) if the holding is not under the *Real Property Act 1900*—on notice of the forfeiture being published in the Gazette.

#### **7.11 Effect of forfeiture**

- (1) When a holding is forfeited:
- (a) the land to which the holding relates (to the extent to which it is not Crown land) becomes Crown land, and
  - (b) all money paid to the Crown in respect of the holding is forfeited.
- Note.** See section 1.10 (When land becomes Crown land because of this Act).
- (2) Without limiting section 1.10, land that becomes Crown land because of this section is vested free of any estate conveyed by or related to the holding.
- (3) The forfeiture of a holding does not operate to release the holder from any obligation to comply with a condition or provision that, by its nature, is required to be complied with after the holding is forfeited.

#### **7.12 Reversal of forfeiture**

- (1) The Minister may (whether conditionally or unconditionally) reverse a forfeiture of a holding.
- (2) The reversal of the forfeiture of a holding takes effect:
- (a) if the holding is under the *Real Property Act 1900*—on the Minister causing a notice of the reversal to be entered in the Register, or
  - (b) if the holding is not under the *Real Property Act 1900*—on notice of the reversal being published in the Gazette.
- (3) A forfeiture that is reversed is taken never to have had effect.

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

- (1) The holder of a perpetual lease (but no other holding) may appeal to the Land and Environment Court against any declaration of forfeiture made under this Division.
- (2) Subject to any order of the Land and Environment Court, the making of the appeal does not stay the effect of the declaration.

#### **7.14 Removal of entries in Register about mortgaged leases**

- (1) This section applies if:
  - (a) a lease of Crown land is forfeited under this Act, and
  - (b) a mortgage over the lease is registered in the Register.
- (2) The Minister may request that the Registrar-General remove both the recording of the lease and the mortgage from the Register if the Minister reasonably considers that the Minister has complied with the provisions of any agreement between the mortgagee and the Minister concerning the forfeiture of the lease.
- (3) The Registrar-General must remove the recordings concerned from the Register if the Minister requests it.

### **Division 7.5 General**

#### **7.15 Forfeited, surrendered or vacant Crown land may be added to adjacent or adjoining holdings**

- (1) The Minister may, by notice published in the Gazette, add any of the following kinds of Crown land to Crown land to which an adjoining or adjacent holding relates:
  - (a) Crown land that was under a forfeited or surrendered holding,
  - (b) vacant Crown land.
- (2) The Minister can add the Crown land only with the consent of the holder of the adjoining or adjacent holding.
- (3) The land is added subject to any conditions that the Minister may determine.

#### **7.16 Ownership of improvements when holding ends**

- (1) This section applies if a holding ends because it is forfeited, surrendered, terminated or ceases to have force for any other reason.
- (2) Except as provided by this section or the terms and conditions of a holding over land, the end of the holding results in all improvements to the land becoming the property of the Crown. Also, no compensation is payable for the improvements.
- (3) The Minister may, within 2 years after the holding ends, require the former holder:
  - (a) to remove any improvement made or owned by the former holder or a previous holder, and
  - (b) to make good any damage done to the land because of the removal of the improvement (including damage to other improvements that were not required to be removed).
- (4) If an improvement is removed by the former holder when required by the Minister, the Crown ceases to have (and is taken never to have had) any right to the improvements.
- (5) If a former holder does not comply with a requirement of the Minister to remove an improvement, the Minister may direct any government sector employees, contractors or other agents to enter the land and remove the improvement.
- (6) A person directed under subsection (5) to enter land and remove an improvement is authorised to enter the land, at any reasonable time, to remove the improvement.
- (7) Subsection (6) does not authorise a person to enter any part of a structure used only for residential purposes except with the consent of the occupier of the structure.



- (8) The Minister may recover the cost of removing an improvement and making good any damage to the land (including to other improvements) from the former holder in any court of competent jurisdiction as a debt due by that person to the Crown.
- (9) In this section:  
*improvements* to land includes structures in or on the land.

## Part 8 Native title rights and interests

**Introductory note.** This Part provides for:

- (a) the issuing of native title certificates by the Minister, and
- (b) the obligations of certain Crown land managers for dedicated or reserved Crown land and local councils vested with Crown land in connection with the management of native title issues in relation to the land (including using native title managers to provide advice on certain dealings with the land), and
- (c) compensation responsibilities concerning native title rights and interests for the conduct of these Crown land managers and local councils.

### Division 8.1 Introduction

#### 8.1 Definitions

In this Part:

**approved training or qualifications** means training or qualifications approved under section 8.2.

**excluded land** means each of 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.

**relevant land** means:

- (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).

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

#### 8.2 Approved training or qualifications for native title managers

The Minister may, by notice published in the Gazette, approve kinds of training or qualifications that a person must have to act as a native title manager for the purposes of this Part.

#### 8.3 Relationship of Part with Local Government Act 1993

This Part applies despite anything in the *Local Government Act 1993*.

## **Division 8.2 Native title certificates**

### **8.4 Issue of native title certificates**

- (1) The Minister may, at the Minister's absolute discretion, issue a certificate (a *native title certificate*) to a person for specified Crown land or former Crown land stating that, following investigations made by the Department, there is adequate evidence to show that native title rights and interests in relation to the land have been extinguished or do not exist.  
**Note.** Section 12.8 enables the Minister to charge fees for services provided by the Department (including in connection with issuing native title certificates).
- (2) The Minister may, by notice given to the person to whom a native title certificate is issued, revoke the certificate.
- (3) A native title certificate is taken to be revoked if the land becomes subject to an approved determination of native title (as defined in the *Native Title Act 1993* of the Commonwealth).
- (4) Copies of any native title certificates issued under this section may (but need not) be published on the Department's website.
- (5) Any requirements of the native title legislation in relation to land are not affected by the issuing of a native title certificate for the land.

## **Division 8.3 Management of relevant land**

### **8.5 Application of Division**

This Division applies to responsible persons for relevant land, but not if the land is excluded land.

### **8.6 Employment or engagement of native title manager**

- (1) A responsible person for relevant land must employ or engage at least one native title manager to ensure the person's dealings with the land comply with any applicable provisions of the native title legislation.
- (2) A native title manager must have approved training or qualifications.

### **8.7 When advice of native title manager required**

- (1) A responsible person for relevant land cannot do any of the following unless the person has first obtained the written advice of at least one of the person's native title managers that it complies with any applicable provisions of the native title legislation:
  - (a) grant leases, licences, permits, forestry rights, easements or rights of way over the land,
  - (b) mortgage the land or allow it to be mortgaged,
  - (c) impose, require or agree to covenants, conditions or other restrictions on use (or remove or release, or agree to remove or release, covenants, conditions or other restrictions on use) in connection with dealings involving the land,
  - (d) approve (or submit for approval) a plan of management for the land that authorises or permits any of the kinds of dealings referred to in paragraph (a), (b) or (c).

- (2) However, the written advice of a native title manager is not required for the sale or other disposal of the land.

**Note.** See also Divisions 3.4 and 3.5 and section 4.9 for limitations on Crown land managers and local councils vested with Crown land to sell or dispose of managed or vested land in relation to which native title rights and interests may or do exist.

#### **8.8 Notice of native title managers to be given to Minister**

- (1) A responsible person for relevant land must give written notice to the Minister about:
- (a) whether any person is engaged or employed as a native title manager for the responsible person, and
  - (b) the name and contact details of that person.
- (2) The notice must be given as soon as practicable after 30 June (but not later than 31 October) of each year.

#### **8.9 Compulsory acquisition of native title rights and interests requires Ministerial consent**

- (1) This section applies to a responsible person for relevant land, but only if the person is managing the land as Crown land manager.
- Note.** This section does not apply to a local council that is vested with Crown land under Division 4.2.
- (2) The responsible person for relevant land cannot, without the written consent of the Minister, take action that will result in the compulsory acquisition of native title rights and interests in relation to the land.

#### **8.10 Division does not affect compliance with native title legislation**

A responsible person for relevant land must comply with any requirements of the native title legislation in relation to the land (including in respect of the matters referred to in sections 8.7 (1) and 8.9).

### **Division 8.4 Compensation responsibilities**

#### **8.11 Application of Division**

This Division applies to the following conduct (*relevant conduct*):

- (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),
- (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.

**Note.** The State will remain liable for its own conduct.

#### **8.12 Compensation payable by person engaged in relevant conduct**

- (1) This section applies if:
- (a) compensation is payable under section 24JAA, 24KA, 24MD or 24NA of the *Native Title Act 1993* of the Commonwealth in respect of an act that is relevant conduct, and
  - (b) the act is attributable to the State under that Act.

- (2) Subject to the regulations, the person who engaged in the relevant conduct is declared, in accordance with section 24JAA (9) (b) (i), 24KA (6) (b) (i), 24MD (4) (b) (i) or 24NA (7) (b) (i) (as the case requires) of the *Native Title Act 1993* of the Commonwealth, to be liable to pay the compensation.
- (3) The regulations may limit the circumstances or persons (or both) to which the declaration made by subsection (2) applies.

### **8.13 Contributions and indemnification for compensation for relevant conduct**

- (1) Without limiting section 8.12, a person who engaged in relevant conduct must (in accordance with the regulations) contribute to, or indemnify the State against, any compensation payable by the State for the impact of the conduct on native title rights and interests.
- (2) Any amount payable to the State under this section is recoverable by the State as a debt in a court of competent jurisdiction.
- (3) The regulations may make provision for or with respect to:
  - (a) contributions to, or indemnification against, compensation payable by the State for the impact of relevant conduct on native title rights and interests, and
  - (b) conferring jurisdiction on the Land and Environment Court to resolve disputes between the State and persons who engaged in relevant conduct concerning the allocation of responsibility for the payment of compensation for the impact of the conduct on native title rights and interests.

## Part 9 Protection of Crown land

**Introductory note.** This Part contains provisions to ensure that Crown land is protected from damage and improper use. The provisions make it an offence for a person:

- (a) to use Crown land for certain purposes, or
- (b) to pollute or contaminate Crown land.

The Part enables the Secretary to issue orders to stop unlawful or unsafe activities.

The Part also gives the Minister, authorised officers and Crown land managers certain remediation and enforcement powers (including conferring powers to give directions) to protect Crown land.

### Division 9.1 Introduction

#### 9.1 Definitions

In this Part:

**damage:**

- (a) in relation to land includes:
  - (i) harming an animal, or picking a plant, that is in or on that land, or
  - (ii) damming, diverting or polluting any waters on that land, or
  - (iii) damaging anything in or on the land (for example, a structure or any object or place of cultural value), or
  - (iv) removing anything, or part of anything, in or on the land, and
- (b) in relation to a plant, includes picking the plant, and
- (c) in relation to an animal, includes harming the animal.

**erection**, in relation to a structure, includes any work carried out in creating the structure.

**interfere**, in relation to a substance on, in or forming part of Crown land, includes remove, cut, dig up, disturb, displace, stack and heap the substance.

**parking**, in relation to water craft, includes the mooring of water craft.

**substance**, in relation to Crown land, includes plants, trees, timber, turf, stone, clay, shells, earth, sand and gravel.

### Division 9.2 Improper use of Crown land

#### 9.2 Unauthorised use of Crown land

- (1) A person must not do any of the following:
  - (a) reside on Crown land,
  - (b) erect a structure on Crown land,
  - (c) graze stock on Crown land,
  - (d) drive stock on Crown land,
  - (e) clear, dig up or cultivate Crown land,
  - (f) interfere with any substance on, in or forming part of Crown land,
  - (g) deposit or leave any of the following on Crown land except in a place or receptacle provided for the purpose:
    - (i) any rubbish or litter, refuse, dead animal or other similar matter,
    - (ii) any matter of a kind prescribed by the regulations,
  - (h) enclose Crown land (except a road or watercourse to which section 5.36 applies).

Maximum penalty: as determined under section 11.7.

- (2) A person must not cause or permit a contravention of subsection (1).  
Maximum penalty: as determined under section 11.7.

### **9.3 Pollution or contamination involving Crown land**

- (1) A person must not do any of the following:
- (a) pollute or contaminate Crown land or any waters in, on or under the land,
  - (b) pollute or contaminate other land or any waters in, on or under the land if the source of the pollution or contamination is in, on or under Crown land.
- Maximum penalty: as determined under section 11.7.
- (2) A person must not cause or permit a contravention of subsection (1).  
Maximum penalty: as determined under section 11.7.

### **9.4 Authorised officers may give directions to stop structure or land use**

- (1) An authorised officer may direct a person, within a specified period, to stop:
- (a) using a structure on Crown land that the officer considers is being used without lawful authority, or
  - (b) carrying on an activity on Crown land of a kind prescribed by the regulations.
- (2) A person must not contravene a direction.  
Maximum penalty (subsection (2)):
- (a) for a corporation—200 penalty units and, for a continuing offence, a further penalty of 20 penalty units for each day the offence continues, or
  - (b) for an individual—100 penalty units and, for a continuing offence, a further penalty of 10 penalty units for each day the offence continues.

### **9.5 Notices prohibiting structure or land use**

- (1) The Minister may cause a notice to be displayed in a conspicuous place on or near Crown land (or at a commonly used access point to the land) that prohibits persons from:
- (a) using a structure on the land without lawful authority, or
  - (b) carrying on an activity on the land of a kind prescribed by the regulations.
- (2) A Crown land manager of dedicated or reserved Crown land may cause a notice to be displayed in a conspicuous place on or near the land (or at a commonly used access point to the land) that prohibits persons from carrying on an activity on Crown land of a kind prescribed by the regulations.
- (3) A person must not use a structure, or carry on an activity, on Crown land if the person is prohibited from doing so by a notice under this section.  
Maximum penalty (subsection (3)):
- (a) for a corporation—200 penalty units and, for a continuing offence, a further penalty of 20 penalty units for each day the offence continues, or
  - (b) for an individual—100 penalty units and, for a continuing offence, a further penalty of 10 penalty units for each day the offence continues.

### **9.6 Directions concerning vehicles on Crown land**

- (1) The Minister may give reasonable directions to persons concerning the entry, use and parking or storage of vehicles on Crown land.

- (2) A direction under subsection (1) must be given:
  - (a) by means of a sign displayed in a conspicuous place on or near the Crown land (or at a commonly used access point to the land), or
  - (b) by any other means as may be prescribed by the regulations.
- (3) A person must not interfere with, alter or remove any sign erected or displayed with the authority of the Minister for the purposes of subsection (2).  
Maximum penalty: 100 penalty units.
- (4) An authorised officer or Crown land manager may give reasonable directions to persons concerning the entry, use and parking or storage of vehicles on Crown land for the purpose of preventing danger or harm to persons, animals, structures or property.
- (5) A direction given under this section does not have effect to the extent that it would operate to derogate from the rights of the holder of a holding over the Crown land unless the direction is given with the holder's consent.
- (6) A person to whom a direction given under this section applies must not contravene the direction.  
Maximum penalty (subsection (6)):
  - (a) for a corporation—200 penalty units and, for a continuing offence, a further penalty of 20 penalty units for each day the offence continues, or
  - (b) for an individual—100 penalty units and, for a continuing offence, a further penalty of 10 penalty units for each day the offence continues.

### **Division 9.3      Unauthorised structures and materials on Crown land**

#### **9.7    Definitions**

In this Division:

***unauthorised material*** means any material (for example, timber, building materials or equipment) brought on to Crown land without lawful authority, except structures or other fixtures.

***unauthorised structure*** on Crown land means:

- (a) a structure that, at the time of its erection, was not authorised to be erected by or under the provisions of this Act or another Act (except Part 11 or 12A of the *Local Government Act 1919*, Part 1 of Chapter 7 of the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*), or
- (b) a structure that:
  - (i) was authorised to be erected or used by or under the provisions of this Act or another Act (except Part 11 or 12A of the *Local Government Act 1919*, Part 1 of Chapter 7 of the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*), and
  - (ii) is or was required to be removed by or under those provisions at or within a specified time, and
  - (iii) has not been removed as required.

#### **9.8    Claims concerning authorisation for structure or material**

- (1) The Minister may cause a claim notice to be:
  - (a) displayed on or adjacent to a structure or material on Crown land that the Minister considers might be an unauthorised structure or material, or



- (b) published in a local newspaper or any other newspaper (if any) as the Minister may determine.
- (2) A **claim notice** must state that any of the following persons may give the Minister a written claim statement concerning the structure or material:
  - (a) a person who claims to have authority to erect, maintain or use the structure or material (or any part of the structure or material),
  - (b) a person who claims any interest in the structure or material.
- (3) A **written claim statement** must:
  - (a) be signed by the person who makes it, and
  - (b) state the basis for the person's authority:
    - (i) to erect, maintain or use the structure (or part of the structure) or to bring in or use the material concerned, or
    - (ii) to claim an interest in the structure or material.
- (4) Despite any other Act or law, a person cannot make a claim against the Minister or another person concerning a removal under this Division unless:
  - (a) the person has given the Minister a duly completed written claim statement, and
  - (b) the statement is given within one month after the display or publication of the claim notice for the structure or material.

#### **9.9 Removal of unauthorised structures or materials**

- (1) The Minister may cause any unauthorised structure or material (or part of an unauthorised structure or material) on Crown land to be removed, along with its contents.
- (2) The Minister may do so by:
  - (a) giving a direction under this section to a person, or
  - (b) using government sector employees, contractors or other agents.
- (3) The Minister may give a direction to any of the following persons to remove anything referred to in subsection (1) within a specified period:
  - (a) a person who erected the unauthorised structure or brought the unauthorised material on to the land,
  - (b) for an unauthorised structure or material for which a claim notice was displayed or published under section 9.8 for at least one month—a person who used the structure or material after the notice was displayed or published and knew (or ought reasonably to have known) that the notice had been displayed or published,
  - (c) if it is not possible to give a direction to a person referred to in paragraph (a) or (b)—a person who has a holding over the Crown land on which the unauthorised structure or material is located.
- (4) A person given a direction under this section must not contravene the direction.  
Maximum penalty:
  - (a) for a corporation—200 penalty units and, for a continuing offence, a further penalty of 20 penalty units for each day the offence continues, or
  - (b) for an individual—100 penalty units and, for a continuing offence, a further penalty of 10 penalty units for each day the offence continues.

- (5) The Minister cannot use government sector employees, contractors or other agents to remove anything under this section unless:
  - (a) a claim notice for the structure or material was displayed or published under section 9.8 for at least one month and the Minister was not given any written claim statements under that section within that period, or
  - (b) a person who was given a direction under this section to remove the thing has not complied with the direction within the specified period.
- (6) A person used or required to remove anything under this section is authorised to enter Crown land and remove it even if there is a holding over the land.

#### **9.10 Minister's powers over removed structure, materials or contents**

- (1) The Minister may cause anything removed under this Division:
  - (a) to be destroyed, sold or stored, or
  - (b) to be returned to a person considered by the Minister to be its owner.
- (2) The Minister may, on condition that it is removed, sell anything that the Minister can cause to be removed under this Division.
- (3) The Minister may recover, as a debt due to the Crown, the expenses incurred in the removal, destruction, sale or storage of anything under this Division from each appropriate debtor for the thing.
- (4) An *appropriate debtor* for anything removed, destroyed, sold or stored under this Division is:
  - (a) for anything that was (or was part or contents of) an unauthorised structure or material when it was erected or brought on to the land—the person who erected it or brought it on to the land or caused it to be erected or brought on to the land, or
  - (b) for anything that was (or was part or contents of) an unauthorised structure or material that a person used in contravention of a direction given to the person by an authorised officer under section 9.4—the person given the direction, or
  - (c) for anything that was (or was part or contents of) an unauthorised structure or material for which a claim notice was displayed or published under section 9.8 for at least one month—a person who used the structure or material after the notice was displayed or published and knew (or ought reasonably to have known) that the notice had been displayed or published, or
  - (d) for anything that was (or was part or contents of) an unauthorised structure of a kind referred to in paragraph (b) of the definition of *unauthorised structure* in section 9.7—the person who was required to remove the structure by or under the provisions set out in that paragraph.
- (5) Expenses recoverable by the Minister under this section from 2 or more appropriate debtors are recoverable from all of them jointly and each of them severally.

### **Division 9.4 Removal of persons from Crown land**

#### **9.11 Removal of trespassers from Crown land**

- (1) An authorised officer may apply to the Local Court for an order (a *trespasser order*) authorising the officer to deal with a person as a trespasser of specified Crown land.  
**Note.** Part 4 of the *Local Court Act 2007* applies to proceedings under this section. See section 44 of that Act.
- (2) The Local Court may make a trespasser order against a person if the Court is satisfied that the person is unlawfully occupying or using the Crown land (including if the

person claims that the occupation or use is authorised under a holding that has expired or been forfeited).

- (3) A trespasser order must specify:
  - (a) the person against whom it is made, and
  - (b) the Crown land to which it applies, and
  - (c) the date on which the order takes effect, and
  - (d) the authorised officer authorised to deal with the person as a trespasser of the Crown land.
- (4) If the Local Court makes a trespasser order against a person in relation to Crown land, the order authorises the authorised officer named by the order to enter the land and do any or all of the following:
  - (a) remove the person from it,
  - (b) remove any structures or goods from the land that were erected or brought on to the land by the person,
  - (c) take possession of the land on behalf of the Crown.
- (5) Without limiting section 10.15, a person may be removed from Crown land under subsection (4) by an authorised officer with the aid of any other authorised officers or police officers as the authorised officer considers necessary and with the use of reasonable force.

#### **9.12 Removal of persons by employees of Crown land managers**

- (1) This section applies to the following persons (an *authorised employee*) in relation to particular dedicated or reserved Crown land that is managed by a Crown land manager:
  - (a) an authorised officer who is an employee of the Crown land manager,
  - (b) any other employee of the Crown land manager who is authorised in writing by the manager to exercise functions under this section.
- (2) An authorised employee may remove a person from the dedicated or reserved Crown land if the employee is satisfied, on reasonable grounds, that:
  - (a) the person is contravening a provision of the regulations made for the purposes of section 9.25, or
  - (b) the person's disorderly conduct is causing inconvenience to persons on the land or entering or leaving it.
- (3) A person may be removed from dedicated or reserved Crown land under this section with the assistance of a police officer.

### **Division 9.5 Remediation of damaged Crown land**

#### **9.13 Authorised officer may give remediation notice**

- (1) An authorised officer may, by notice given to a person (a *remediation notice*), require the person to carry out specified remediation work on Crown land within a period specified in the notice.
- (2) Before doing so, the authorised officer must be satisfied that the Crown land (or any habitat, plant or animal in or on the land) has been damaged in, or as a result of, the commission of an offence against this Act or the regulations by the person.
- (3) A remediation notice may be given regardless of whether proceedings for the offence have been brought or the person has been convicted of the offence.

- (4) A remediation notice may be varied or revoked in a further written notice given to the person.
- (5) In this section:  
*damaged* includes contaminated.

#### **9.14 Content of remediation notice**

The remediation work specified in a remediation notice may include one or more of the following types of work:

- (a) work to control, abate or mitigate the damage to the land, habitat, plant or animal concerned,
- (b) work to maintain, remediate or restore the damaged land, habitat, plant or animal concerned (including replacing dead or removed plants or animals).

#### **9.15 Minister may authorise certain other persons to carry out remediation work in non-compliance cases**

- (1) If a person does not comply with a remediation notice, the Minister may authorise government sector employees, contractors or other agents to enter the land concerned and carry out all or part of the specified work.
- (2) The Minister may recover the cost of that work from the person given the remediation notice in any court of competent jurisdiction as a debt due by that person to the Crown.

#### **9.16 Entry to land to carry out remediation work**

- (1) A person is authorised to enter land, at any reasonable time, to carry out remediation work required under this Division.
- (2) This section does not authorise a person to enter any part of a structure used only for residential purposes except with the consent of the occupier of the structure.

### **Division 9.6 Stop activity orders**

#### **9.17 Definitions**

In this Division:

*activity* includes the use of Crown land (or a structure located on Crown land).

*emergency* has the same meaning as in the *State Emergency and Rescue Management Act 1989*.

#### **9.18 Secretary may issue order to stop unsafe activities**

- (1) The Secretary may, by written notice given to a person, order a person not to carry out a specified activity if the Secretary is satisfied that:
  - (a) the activity is being carried out on Crown land in a manner that poses a threat to public safety or the environment, or
  - (b) the activity has become unsafe for the time being because of an emergency.
- (2) A person must comply with an order under this section given to the person.  
Maximum penalty (subsection (2)):
  - (a) for a corporation—2,000 penalty units and, for a continuing offence, a further penalty of 200 penalty units for each day the offence continues, or
  - (b) for an individual—1,000 penalty units and, for a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

### **9.19 Secretary may issue order to stop unlawful activities**

- (1) The Secretary may, by written notice given to a person, order a person not to carry out a specified activity if the Secretary is satisfied that:
  - (a) the person is contravening, or is about to contravene, this Act or the regulations because of the activity, or
  - (b) the activity is being carried out on Crown land without lawful authority.
- (2) A person must comply with an order under this section given to the person.  
Maximum penalty (subsection (2)):
  - (a) for a corporation—200 penalty units and, for a continuing offence, a further penalty of 20 penalty units for each day the offence continues, or
  - (b) for an individual—100 penalty units and, for a continuing offence, a further penalty of 10 penalty units for each day the offence continues.

### **9.20 Content and duration of stop activity orders**

- (1) An order under this Division:
  - (a) takes effect immediately or on any later day that may be specified in the notice, and
  - (b) is subject to any conditions that the Secretary may specify in the notice.
- (2) The Secretary may vary or revoke the order or the conditions of the order in a further written notice given to the person.
- (3) An order remains in force until whichever of the following happens first:
  - (a) the order is revoked by the Secretary,
  - (b) the period (if any) for which the order is expressed in the notice to be in force ends,
  - (c) the period of 6 months from the day on which the order took effect ends.

## **Division 9.7 General**

### **9.21 Appeals to Land and Environment Court**

- (1) A person may appeal to the Land and Environment Court against a direction, notice or order under section 9.4, 9.9 (2) (a), 9.13 or 9.19 within 28 days (or such other period as is prescribed instead by the regulations) after being given the direction, notice or order.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the direction, notice or order appealed against.

### **9.22 Defence of lawful authority**

It is a defence to the prosecution of an offence against this Part (except Division 9.6) if the defendant proves that there was lawful authority for the conduct or activity that is alleged to give rise to the offence.

### **9.23 How direction is given**

- (1) A direction under this Part may be given orally or in writing.
- (2) Written confirmation of a direction that is given orally is to be given to the person to whom it applies within 7 days after the oral direction is given, unless the oral direction has already been complied with.

- (3) This section does not affect the meaning of any provisions of this Act (except for this Part).

#### **9.24 Impounding of animals and articles**

- (1) For the purposes of the *Impounding Act 1993*, the Minister is the occupier of vacant Crown land.
- (2) An authorised officer may exercise any power conferred on the Minister by the operation of this section.
- (3) An authorised officer may, on behalf of the Minister, take proceedings for the trespass committed on the vacant Crown land by animals impounded by virtue of this section.
- (4) For the purposes of subsection (3), the Minister is taken to be in exclusive possession of vacant Crown land.
- (5) This section does not:
- (a) prevent a court attendance notice being filed for an offence against section 9.2 or 9.3, or
  - (b) affect any proceedings for the offence.

#### **9.25 Regulations concerning care, control and management of Crown land**

- (1) The regulations may make provision for or with respect to the care, control and management of Crown land.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
- (a) the use and enjoyment of Crown land,
  - (b) the regulation or prevention of the taking of alcohol or other intoxicants on to, and their consumption on, Crown land,
  - (c) the taking of animals on to Crown land,
  - (d) the parking and use of vehicles on Crown land and camping on Crown land (including charges for these activities),
  - (e) the preservation, protection and removal of vegetation, animals, material or substances on Crown land,
  - (f) charges or fees for entry to, or use of, Crown land,
  - (g) the closure of Crown land to members of the public and other persons,
  - (h) the carrying out of commercial activities on Crown land,
  - (i) the appointment, removal and functions of rangers for Crown land,
  - (j) the granting, transfer and revocation of exclusive rights of burial in relation to Crown land that is dedicated or used for the purposes of a public cemetery,
  - (k) the measures to be taken by way of compensation to former holders of exclusive rights of burial in the event those rights are revoked.
- (3) Subsection (2) (j) and (k) and this subsection are repealed on a day to be appointed by proclamation.
- (4) In this section:
- animal* includes a bird, reptile or fish.

## Part 10 Investigation of compliance

**Introductory note.** This Part provides powers to enable the investigation of compliance with this Act, the regulations and the provisions of holdings. It enables the following:

- (a) the Minister to appoint authorised officers,
- (b) the Minister and authorised officers to obtain information and records,
- (c) authorised officers to enter and search non-residential land or structures (and to obtain search warrants to enter and search residential land or structures),
- (d) authorised officers to question and identify persons,
- (e) authorised officers to seize vehicles used in connection with certain offences.

The Part also creates offences for:

- (a) contravening certain requirements made of persons under this Part, or
- (b) knowingly engaging in false or misleading conduct in trying to comply with a requirement of this Part, or
- (c) obstructing or impersonating an authorised officer.

### Division 10.1 Introduction

#### 10.1 Definition

In this Part:

**land use restriction** means:

- (a) a restriction on use imposed on land under Division 5.10, or
- (b) a public positive covenant imposed on land under Division 5.10, or
- (c) a condition on land to which a recording under section 5.11 (4) (a), 5.12 (1) (a) or 5.13 (a) relates.

#### 10.2 When functions are exercised for a compliance purpose under Part

A function is exercised for a **compliance purpose** for the purposes of this Part 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 this 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 this Act, or
- (e) generally for administering this Act.

### Division 10.2 Compliance generally

#### 10.3 Offence: contravention of requirement under Part

- (1) A person must comply with a requirement made of the person under this Part.

Maximum penalty (subject to section 10.25 (4)):

- (a) for a corporation—200 penalty units and, for a continuing offence, a further penalty of 20 penalty units for each day the offence continues, or
- (b) for an individual—100 penalty units and, for a continuing offence, a further penalty of 10 penalty units for each day the offence continues.

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

#### 10.4 Offence: false or misleading conduct under Part

A person must not provide any information or do any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material respect.

Maximum penalty:

- (a) for a corporation—2,000 penalty units and, for a continuing offence, a further penalty of 200 penalty units for each day the offence continues, or
- (b) for an individual—1,000 penalty units and, for a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

#### 10.5 Offences: obstruction or impersonation of authorised officer

A person must not:

- (a) threaten, hinder, obstruct or delay an authorised officer in the exercise of the officer's functions under this Act or the regulations, or
- (b) damage, destroy or interfere with any vehicle or equipment that is used in the exercise of an authorised officer's functions under this Act or the regulations, or
- (c) impersonate an authorised officer.

Maximum penalty (subject to section 10.25 (4)):

- (a) for a corporation—2,000 penalty units and, for a continuing offence, a further penalty of 200 penalty units for each day the offence continues, or
- (b) for an individual—1,000 penalty units and, for a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

### Division 10.3 Authorised officers

#### 10.6 Authorised officers

- (1) The Minister may, by written instrument, appoint:
- (a) a specified qualified person to be an authorised officer, or
- (b) persons of a specified class of qualified persons to be authorised officers.
- (2) A person is a *qualified person* for appointment as an authorised officer if the person is any of the following:
- (a) an employee of a government sector agency,
- (b) an employee of a local council,
- (c) an employee of a Crown land manager of dedicated or reserved Crown land,
- (d) any other person of a class prescribed by the regulations.
- (3) A person cannot be appointed as an authorised officer unless the person has undergone training, or has any competency, that may be required by the Minister.
- (4) The Minister may exercise any power conferred by or under this Act on an authorised officer.
- (5) Accordingly, in this Act (except this Division and section 10.12) references to an authorised officer include references to the Minister.



### **10.7 Exercise of functions by authorised officers**

- (1) An authorised officer has the functions conferred on authorised officers by or under this Act or another Act.
- (2) The Minister may, in the instrument of appointment of an authorised officer:
  - (a) provide that the officer may not exercise specified functions, or
  - (b) provide that the officer may exercise specified functions only, or
  - (c) restrict in other ways the functions that the officer may exercise, including (for example) by limiting the circumstances in which the officer may exercise any functions conferred or imposed on the officer.

### **10.8 Identity cards**

- (1) The Minister must issue an authorised officer with an identity card.
- (2) The identity card must:
  - (a) be in the form approved by the Minister, and
  - (b) state the following:
    - (i) that it is issued under this Act,
    - (ii) the name of the authorised officer,
    - (iii) the expiry date (if any) for the appointment.
- (3) The identity card may, but need not, contain a photograph of the authorised officer.
- (4) An authorised officer must not exercise a function conferred by or under this Act unless an identity card has been issued to the officer by the Minister.
- (5) An authorised officer must produce the officer's identity card for inspection on request when exercising the officer's functions.
- (6) A person who has been issued with an identity card must return it to the Minister (or the Minister's delegate) on demand.  
Maximum penalty (subsection (6)): 100 penalty units.

### **10.9 Arrangements with other government agencies**

- (1) The Minister may 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 under this Act.
- (2) An employee of a government agency or local council who exercises the functions of an authorised officer in accordance with the arrangement is taken to be an authorised officer for the purposes of this Act.

## **Division 10.4 Powers to require information or records**

### **10.10 Application of Division**

This Division applies whether or not a power of entry under Division 10.5 is being or has been exercised.

### **10.11 Requirement to provide information and records to Minister**

The Minister may, by written notice given to a person, require the person to provide the Minister with the information or records (or both) for a compliance purpose as the Minister requires in the notice.

**10.12 Requirement to provide information and records to authorised officer**

An authorised officer may, by written notice given to a person, require the person to provide the authorised officer with the information or records (or both) for a compliance purpose as the authorised officer requires in the notice.

**10.13 Matters to be specified by notice**

A notice under this Division must specify the manner in which information or records are required to be provided and a reasonable time by which the information or records are required to be provided.

**10.14 Provisions relating to records**

- (1) A notice under this Division may only require a person to provide existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The person to whom any record is provided under this Division may take copies of it.
- (3) If any record required to be provided under this Division is in electronic, mechanical or other form, the notice requires the record to be provided in written form, unless the notice provides differently.

**Division 10.5 Powers of entry and search of land and structures**

**10.15 Powers of authorised officers to enter land and structures**

- (1) An authorised officer may, for a compliance purpose, enter:
  - (a) any Crown land (or any structure in or on Crown land), and
  - (b) any land that is not Crown land (or any structure in or on the land), but is subject to a land use restriction, and
  - (c) any other land (or any structure in or on the land) to gain access to any land or structure referred to in paragraph (a) or (b).
- (2) Entry may be:
  - (a) if the authorised officer reasonably suspects that an offence is being committed on the land—at any time, or
  - (b) in any other case—at any reasonable time.
- (3) The power to enter authorises entry by foot or by means of a vehicle or in any other manner.
- (4) Entry may be effected by an authorised officer with the aid of any other authorised officers or police officers as the authorised officer considers necessary and with the use of reasonable force.
- (5) This section does not limit the circumstances in which entry may be effected to any land (or any structure in or on land) with the authority of a search warrant under section 10.18.

**10.16 Entry into residential premises only with permission or warrant**

This Part does not empower an authorised officer to enter any part of a structure used only for residential purposes without:

- (a) the permission of the occupier, or
- (b) the authority of a search warrant under section 10.18.

### 10.17 Powers of authorised officers to do things on entry

- (1) An authorised officer may, on or in any land (or structure) lawfully entered under section 10.15 (1) (a) or (b), do anything that in the opinion of the authorised officer is necessary to be done for a compliance purpose, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any or all of the following:
  - (a) examine and inspect any structure, vehicle or other article,
  - (b) take and remove samples,
  - (c) make any examinations, inquiries and tests that the authorised officer considers necessary,
  - (d) take any photographs, films, audio, video and other recordings that the authorised officer considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine and inspect any records,
  - (g) copy any records,
  - (h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
  - (i) for the purposes of paragraph (h), direct the occupier of the land or structure where the thing is seized to retain it on the land or at the structure or at another place under the control of the occupier,
  - (j) do any other thing the authorised officer is empowered to do under this Part.
- (3) The power to seize anything connected with an offence includes a power to seize:
  - (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.

A reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

### 10.18 Search warrants

- (1) An authorised officer may apply to a warrants issuing officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that:
  - (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
  - (b) there is in or on any premises any matter or a thing that is connected with an offence against this Act or the regulations.
- (2) A warrants issuing officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer under this Act named in the warrant:
  - (a) to enter the premises, and
  - (b) to exercise any function of an authorised officer under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:  
**matter or a thing** connected with an offence means:
  - (a) matter or a thing with respect to which the offence has been committed, or

- (b) matter or a thing that will afford evidence of the commission of an offence, or
- (c) matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

**offence** includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

**premises** has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**warrants issuing officer** means an authorised officer as defined in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **10.19 Authorised officers may request assistance**

A person may accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this Act if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.

#### **10.20 Assistance to be given to authorised officers**

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Act in connection with any land (or any structure in or on land).
- (2) The Minister may, by written notice given to the owner or occupier of the land (or the structure in or on the land), require the owner or occupier to provide any reasonable assistance and facilities as may be specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

#### **10.21 Care to be taken**

In the exercise of a power of entering or searching premises under this Part, the authorised officer must do as little damage as possible.

#### **10.22 Compensation**

The Minister must compensate all interested parties for any damage caused by an authorised officer in exercising a power of entering land (or any structure in or on land) (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.

### **Division 10.6 Powers to question and identify persons**

#### **10.23 Power of authorised officers to require answers**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for a compliance purpose to answer questions in relation to those matters.
- (2) The Minister may, by written notice, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.

- (4) An authorised officer may, by written notice, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend under subsection (4) is to be:
  - (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.

#### **10.24 Recording of evidence**

- (1) An authorised officer may cause any questions and answers to questions given under this Division to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer.
- (3) A copy of the record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.
- (4) A record may be made under this section despite the provisions of any other law.

#### **10.25 Power of authorised officers to demand name and address**

##### **(1) Name and address to be given if offence suspected**

An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have offended or to be offending against this Act or the regulations to state the person's full name and residential address.

##### **(2) Driver licence to be produced if required on Crown land**

An authorised officer may require a person driving or riding a motor vehicle on Crown land to produce the person's driver licence and to state the person's full name and residential address.

##### **(3) Proof of name and address**

An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence against a provision of Division 10.2 to refuse or fail to comply with the request.

##### **(4) Maximum penalty limited for contraventions of this section**

The maximum penalty for an offence against a provision of Division 10.2 in connection with a requirement under this section is 100 penalty units despite anything in that Division.

##### **(5) Definition**

In this section:

*driver licence* includes:

- (a) a relevant Australian driver licence as defined in the *Road Transport Act 2013*, and
- (b) a foreign driver licence as defined in Part 5.1 of the *Road Transport Act 2013*.

## Division 10.7 Power to seize vehicles

### 10.26 Seizure of vehicles for continuing vehicle offences

- (1) An authorised officer may seize a vehicle on Crown land if the officer has reason to believe that:
  - (a) the vehicle was used to commit a vehicle offence, and
  - (b) the vehicle offence has been a continuing offence for a period of at least 3 days.
- (2) The power conferred by subsection (1) includes a power to remove the vehicle from the place where it is found and to secure it from interference.
- (3) The State, the authorised officer and any other person acting under the direction of the authorised officer is not liable for a seizure under this Division for which there was reasonable cause.

### 10.27 Forfeiture of vehicles by order of court

- (1) A court that convicts a person of a vehicle offence in respect of which the vehicle was seized under this Division may order the forfeiture of the vehicle.
- (2) The court is not to order the forfeiture of the vehicle if it is satisfied that the vehicle was used without the authority of its owner or that its owner did not have reasonable cause to suspect that the vehicle would be used to commit the offence.
- (3) To avoid doubt, a forfeiture order is not a monetary penalty for the purposes of the provision of this Act or regulations that provides for the maximum monetary penalty that may be imposed by a court in proceedings for the offence concerned.
- (4) A vehicle that is forfeited because of an order of a court under this section is forfeited to the Crown.
- (5) The Minister may deal with the forfeited vehicle in any way the Minister considers appropriate.
- (6) Without limiting subsection (5), the Minister may destroy, sell or dispose of the vehicle or authorise its destruction, sale or disposal.

## Division 10.8 Functions in relation to seized things

### 10.28 Definitions

- (1) In this Division:
  - owner* of a thing includes a person entitled to possession of the thing.
  - responsible person* for a seized thing means the apparent owner of the thing or the apparent occupier of premises at which the thing is seized.
  - seized thing* means a thing seized by an authorised officer under this Part.
- (2) For the purposes of the Division, the continued retention of a seized thing in custody is *not justified* if and only if:
  - (a) it is not or is no longer necessary to retain the thing to prevent, eliminate or minimise a biosecurity risk posed by or in relation to the thing, and
  - (b) it is not or is no longer necessary to retain the thing as evidence of an offence.

### 10.29 Receipt for seized things

- (1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to a responsible person.

- (2) If it is not practicable to comply with subsection (1), the authorised officer may instead leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) A receipt is not required if the thing is seized in a public place and the apparent owner of the thing cannot be located after reasonable inquiry.
- (4) A receipt must describe generally the seized thing and its condition.
- (5) This section does not apply if it is impracticable or would be unreasonable to give a receipt given the nature, condition or value of a seized thing.

#### **10.30 Return of seized things**

- (1) An authorised officer must return a seized thing to its owner if the authorised officer is satisfied that:
  - (a) it is lawful for the owner to have possession of the thing, and
  - (b) the continued retention of the thing in custody is not justified.
- (2) A requirement to return a seized thing to its owner includes a requirement to remove or lift any restrictions on an owner's access to a seized thing.
- (3) This section does not apply if an authorised officer certifies in writing that the authorised officer is unable to return the seized thing to its owner.

#### **10.31 Certification of inability to return seized thing**

- (1) An authorised officer may certify in writing that the authorised officer is unable to return a seized thing to its owner if:
  - (a) the authorised officer cannot find the owner of the thing after making any inquiries it is reasonable to make in the circumstances, or
  - (b) the authorised officer cannot, for any other reason, return the thing to its owner after making any efforts to do so that are reasonable to make in the circumstances.
- (2) Regard is to be had to a thing's nature, condition and value in deciding:
  - (a) whether it is reasonable to make inquiries or efforts, and
  - (b) what inquiries or efforts (if any) are reasonable in the circumstances.
- (3) The Minister may give directions as to the inquiries or efforts that are to be made by authorised officers in relation to the return of any seized thing or class of seized things.
- (4) Compliance with any such directions is evidence that all reasonable inquiries or efforts were made.

#### **10.32 Court order requiring delivery of seized thing**

- (1) A court may, on application by any person, make an order directing that a seized thing be delivered to the person.
- (2) A court may make such an order only if satisfied that:
  - (a) the person is the owner of the seized thing, and
  - (b) it is lawful for the person to have possession of the thing, and
  - (c) the continued retention of the seized thing in custody is not justified.
- (3) In deciding an application the court may do any one or more of the following things:
  - (a) make a finding or order as to the ownership of the thing,

- (b) make a finding or order as to liability for, and payment of, costs and expenses incurred in keeping a thing in custody,
  - (c) make any necessary incidental or ancillary findings or orders.
- (4) The court to which an application under this section may be made is:
  - (a) the Local Court, if the estimated value of the thing does not exceed \$100,000, or
  - (b) the Land and Environment Court, if the estimated value of the thing exceeds \$100,000.
- (5) Despite subsection (4), a court that is hearing proceedings for an offence may deal with an application relating to a seized thing connected with that offence regardless of the estimated value of the thing.
- (6) A court cannot make an order under this section in respect of a thing that has been seized by an authorised officer in the case of an emergency unless the Minister has given notice of the Minister's intention to declare the seized thing to be forfeited to the Minister.
- (7) A court cannot make an order under this section in respect of a seized thing that has been forfeited to the Crown.
- (8) A requirement to deliver a seized thing to its owner includes a requirement to remove or lift any restrictions on an owner's access to a seized thing.

### **10.33 Forfeiture of seized thing**

- (1) The Minister may, by written order, declare any seized thing to be forfeited to the Crown.
- (2) The Minister may make such an order only if:
  - (a) the Minister is satisfied that the continued retention of the thing in custody is not justified, and
  - (b) the thing cannot be returned to its owner.
- (3) A thing cannot be returned to its owner if:
  - (a) the Minister is satisfied that it is not lawful for the owner of the seized thing to have possession of the thing, or
  - (b) an authorised officer certifies in writing that the authorised officer is unable to return the seized thing to its owner.
- (4) The Minister must give notice of the Minister's intention to declare a seized thing to be forfeited to the Crown.
- (5) The notice must be given at least 21 days before the order is made.
- (6) The Minister gives notice by:
  - (a) publishing the notice on the Department's website, and
  - (b) serving the notice on the apparent owner of the thing.
- (7) However, it is not necessary to serve the notice on the apparent owner of the thing if an authorised officer has certified in writing that the authorised officer is unable to return the seized thing to its owner.

**Note.** Notice of the intention to make the declaration gives the owner of the thing an opportunity to seek a court order for the return of the thing.



### **10.34 Dealing with forfeited things**

- (1) When an order is made by the Minister declaring a seized thing to be forfeited to the Minister, the seized thing is forfeited to the Crown and becomes the property of the Crown.
- (2) The Minister may deal with the thing in any way the Minister considers appropriate.
- (3) Without limiting subsection (2), the Minister may destroy, sell or dispose of the thing or authorise its destruction, sale or disposal.

## **Division 10.9 General**

### **10.35 Provisions relating to requirements to provide records, information or answer questions**

#### **(1) Warning to be given on each occasion**

A person is not guilty of an offence of failing to comply with a requirement under this Part to provide records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

#### **(2) Self-incrimination not an excuse**

A person is not excused from a requirement under this Part to provide records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

#### **(3) Information or answer not admissible if objection made**

However, any information provided or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against this Part) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.

#### **(4) Records admissible**

Any record provided by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

#### **(5) Further information**

Further information obtained as a result of a record or information provided or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:

- (a) that the record or information had to be provided or the answer had to be given, or
- (b) that the record or information provided or answer given might incriminate the person.

#### **(6) Requirement to state name and address**

This section extends to a requirement under this Part to state a person's name and address.

**10.36 Revocation or variation of notices**

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limitation, a notice may be varied by extending the time for complying with the notice.

## Part 11 Enforcement

**Introductory note.** This Part provides for how offences against this Act and the regulations are to be dealt with. It includes provisions that provide for:

- (a) criminal proceedings to be dealt with summarily rather than on indictment, and
- (b) the time within which criminal proceedings may be commenced, and
- (c) penalty notices to be issued for offences prescribed by the regulations instead of commencing criminal proceedings, and
- (d) the determination of liability for offences (including those by corporations and in respect of continuing offences or offences involving vehicles, stock or structures), and
- (e) increased penalties for certain offences committed in particular circumstances of aggravation, and
- (f) a court in criminal proceedings to have certain additional remedial powers, and
- (g) the Land and Environment Court to make restoration orders.

The Part also contains certain evidentiary provisions in connection with criminal or other proceedings under this Act.

### Division 11.1 Proceedings for offences

#### 11.1 Nature of proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

#### 11.2 Time for commencement of proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be commenced within, but not later than, 2 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within, but not later than 2 years, after the date on which evidence of the alleged offence first came to the attention of any authorised officer.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice:
  - (a) must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer, and
  - (b) does not have to contain particulars of the date on which the offence was committed.

The date on which evidence first came to the attention of any authorised officer is the date specified in the court attendance notice, unless the contrary is established.

- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or another Act.

#### 11.3 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.  
**Note.** The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

#### **11.4 Legal proceedings do not affect, and unaffected by, other action under this Act**

The prosecution of a person for an offence against this Act or the regulations, or the issue of a penalty notice in respect of such an offence, does not affect, and is unaffected by, any other action taken under this Act in relation to the conduct giving rise to the offence.

### **Division 11.2 Liability for offences**

#### **11.5 Offences by corporations**

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

#### **11.6 Continuing offences**

- (1) A person who is guilty of an offence because the person fails to comply with a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or in any other way) to do or cease to do something (whether or not within a specified period or before a particular time):
  - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.  
**Note.** For example, an offence for which the maximum penalty is required to be determined as provided by section 11.7 is an offence that provides for a continuing penalty.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

#### **11.7 Maximum penalties for certain significant offences**

##### **(1) Application of section**

This section applies to an offence against a provision of this Act if the provision provides for the maximum penalty for the offence to be determined under this section.

(2) **Category 1 offence**

An offence is a *category 1 offence* if the prosecution establishes (to the criminal standard of proof) that:

- (a) the offence was committed intentionally, and
- (b) the offence caused or contributed to, or was likely to cause or contribute to, significant harm to Crown land or persons or animals on Crown land.

(3) *Significant harm* includes, but is not limited to, pollution or contamination.

(4) The maximum penalty for a category 1 offence is:

- (a) for a corporation—2,000 penalty units and, for a continuing offence, a further penalty of 200 penalty units for each day the offence continues, or
- (b) for an individual—1,000 penalty units and, for a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

(5) **Category 2 offence**

Any other offence is a *category 2 offence*.

(6) The maximum penalty for a category 2 offence is:

- (a) for a corporation—200 penalty units and, for a continuing offence, a further penalty of 20 penalty units for each day the offence continues, or
- (b) for an individual—100 penalty units and, for a continuing offence, a further penalty of 10 penalty units for each day the offence continues.

(7) **Proceedings for category 1 or category 2 offences**

If conduct can constitute both a category 1 offence and a category 2 offence against the same section of this Act:

- (a) a person cannot be found guilty of a category 1 offence in respect of that conduct unless the court attendance notice specifies that the offence is alleged to be a category 1 offence and the factors that are alleged to make the offence a category 1 offence, and
- (b) a person cannot be found guilty of both a category 1 offence and a category 2 offence against the section in respect of the same conduct.

(8) In proceedings for a category 1 offence, if the court is not satisfied that the offence is proven, but is satisfied that the person committed a category 2 offence against the same section of this Act, the court may find the person guilty of that category 2 offence. The person is liable to punishment accordingly.

(9) Subsection (8) does not apply if the proceedings for the category 1 offence were commenced more than 2 years after the date on which the offence is alleged to have been committed or first came to the attention of an authorised officer (whichever is the later).

**Note.** See section 11.2 (Time for commencement of proceedings for offences).

## 11.8 Liability of responsible person for vehicle, stock or structure offences

(1) **Offences to which section applies**

This section applies to any offence against this Act or the regulations (a *vehicle, stock or structure offence*) if the conduct that gives rise to the offence involves any of the following:

- (a) the entry, use or parking of a vehicle,
- (b) the grazing or driving of stock,
- (c) the use of a structure.

(2) **Liability of responsible person for offence**

A person who, at the time of a vehicle, stock or structure offence, was the responsible person for the vehicle, stock or structure concerned is taken to be guilty of the offence as if the person were the actual offender, except as provided by subsection (3).

(3) A person will not be taken to be guilty of the vehicle, stock or structure offence if:

- (a) the person provides an appropriate nomination document to the relevant enforcement authority under subsection (4), or
- (b) the person satisfies the relevant enforcement authority that:
  - (i) the actual offender would have a defence to any prosecution brought against the offender for the offence, or
  - (ii) the person did not know, and could not with reasonable diligence have ascertained, the name and address of the actual offender, or
  - (iii) the person took all reasonable steps to prevent the offence from being committed, or
  - (iv) for a vehicle or stock—the vehicle or stock was at the relevant time stolen or illegally taken or used by another person, or
  - (v) for a structure—the person did not have effective control over it at the relevant time.

(4) **Appropriate nomination document to nominate actual offender**

A person on whom a penalty notice or court attendance notice is served for a vehicle, stock or structure offence may, within 21 days after its service, provide the appropriate nomination document to the relevant enforcement authority stating the name and address of the person who was in charge of the vehicle, stock or structure at all relevant times during the offence.

(5) An appropriate nomination document under subsection (4) that is produced in any proceedings against the person named in the document that relate to the offence for which it was provided is evidence that the named person was in charge of the vehicle, stock or structure at all relevant times relating to that offence.

(6) However, an appropriate nomination document that relates to more than one vehicle, stock or structure offence is not an appropriate nomination document for the purposes of subsection (4).

(7) **Offence: false nomination**

A person must not, in an appropriate nomination document provided under this section, falsely nominate another person as the person who was in charge of the vehicle, stock or structure at the time the offence occurred.

Maximum penalty:

- (a) for a corporation—200 penalty units, or
- (b) for an individual—100 penalty units.

(8) A person falsely nominates another person as the person in charge of a vehicle, stock or structure for the purposes of subsection (7) if either a false name or address (or both a false name and address) for the other person is supplied in the appropriate nomination document.

(9) **Liability of actual offender**

This section does not affect the liability of the actual offender. However, if a penalty has been imposed on or recovered from any person in relation to any vehicle, stock or structure offence, no further penalty may be imposed on or recovered from any other person in relation to the offence.

(10) **Definitions**

In this section:

**appropriate nomination document** means:

- (a) in the case of a responsible person served with a penalty notice for a vehicle, stock or structure offence—a nomination document approved by the Minister, or
- (b) in the case of a responsible person served with a court attendance notice for a vehicle, stock or structure offence—a statutory declaration.

**relevant enforcement authority** means:

- (a) if a penalty notice has been served for the vehicle, stock or structure offence—the authorised officer who issued it, or
- (b) if a court attendance notice has been served for the vehicle, stock or structure offence—the court before which the proceedings for the offence have been commenced.

**responsible person**, in relation to a vehicle, stock or structure, means:

- (a) for a vehicle—any of the following:
  - (i) a responsible person for the vehicle as defined in the *Road Transport Act 2013* (if it is a vehicle as defined in that Act),
  - (ii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
- (b) for stock—any of the following:
  - (i) the owner of the stock,
  - (ii) the person by whom the stock is ordinarily kept, and
- (c) for a structure—any of the following:
  - (i) the person who erected it,
  - (ii) a person who holds a holding over the land on which it is located,
  - (iii) the person who has effective control over the structure.

### **Division 11.3 Court orders in connection with offences**

#### **11.9 Operation of Division**

(1) **Application to proved offences**

This Division applies where a court finds an offence against this Act or the regulations proved.

(2) **Meaning of proved offences**

Without limiting the generality of subsection (1), a court finds an offence proved if:

- (a) the court convicts the offender of the offence, or
- (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).

(3) **Definitions**

In this Division:

**the court** means the court that finds the offence proved.

**the offender** means the person who is found to have committed the offence.

### **11.10 Orders generally**

(1) **Orders may be made**

One or more orders may be made under this Division against the offender.

(2) **Orders are additional**

Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

(3) **Other action not required**

Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

### **11.11 Orders for restoration and prevention**

The court may order the offender to take any steps that are specified in the order, within the time as is so specified (or any further time as the court on application may allow):

- (a) to prevent, control, abate or mitigate any harm to Crown land caused by the commission of the offence, or
- (b) to make good any resulting damage to Crown land, or
- (c) to prevent the continuance or recurrence of the offence.

### **11.12 Orders for costs, expenses and compensation at time offence proved**

(1) The court may, if it appears to the court that:

- (a) the Department or a Crown land manager has incurred costs and expenses in connection with:
  - (i) the prevention, control, abatement or mitigation of any harm to Crown land caused by the commission of the offence, or
  - (ii) making good any resulting damage to Crown land, or
- (b) a person (including the Department or a Crown land manager) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, that loss or damage,

order the offender to pay to the Department or the Crown land manager or other person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in the amount that may be fixed by the order.

- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (3) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

### **11.13 Recovery of costs, expenses and compensation after offence proved**

(1) If, after the court finds the offence proved:

- (a) the Department or a Crown land manager has incurred costs and expenses in connection with:
  - (i) the prevention, control, abatement or mitigation of any harm to Crown land caused by the commission of the offence, or



- (ii) making good any resulting damage to Crown land, or
- (b) a person (including the Department or a Crown land manager) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, the loss or damage,

the person or the Secretary or the Crown land manager may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

- (2) The amount of the costs and expenses (but not the amount of the loss or damage) may be recovered as a debt.

#### 11.14 Orders regarding costs and expenses of investigation

- (1) The court may, if it appears to the court that the Minister has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Minister the costs and expenses so incurred in the amount that is fixed by the order.
- (2) An order made by the Land and Environment Court under this section is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*. An order made by the Local Court under this section is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (3) In this section:  
**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses:
  - (a) in taking any sample or conducting any inspection, test, measurement or analysis, or
  - (b) of transporting, storing or disposing of evidence, during the investigation of the offence.

#### 11.15 Orders regarding monetary benefits

- (1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the offender or accrued or accruing to the offender.
- (4) In this section:  
**monetary benefits** means monetary, financial or economic benefits.  
**the court** does not include the Local Court.

#### 11.16 Additional orders

- (1) **Orders**  
The court may do any one or more of the following:

- (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its consequences and any other orders made against the person,
- (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
- (c) order the offender to carry out a specified project for the restoration or enhancement of Crown land or for the public benefit,
- (d) order the offender to carry out a specified environmental audit of activities carried on by the offender,
- (e) order the offender to pay a specified amount into the Public Reserves Management Fund, or to a specified organisation, for the purposes of a specified project for the restoration or enhancement of Crown land,
- (f) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,
- (g) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
- (h) if the Minister is a party to the proceedings—order the offender to provide a financial assurance, of a form and amount specified by the court, to the Minister, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the Crown land.

The Local Court is not authorised to make an order referred to in paragraph (c), (d), (e) or (h).

- (2) Without limiting subsection (1) (c), the court may order the offender to carry out any social or community activity for the benefit of the community or persons that are adversely affected by the offence (a *restorative justice activity*) that the offender has agreed to carry out. However, the Local Court is not authorised to make an order under this subsection.

(3) **Machinery**

The court may, by order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(4) **Failure to publicise or notify**

If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:

- (a) the original contravention, its consequences, and any other penalties imposed on the offender, and
- (b) the failure to comply with the order.

(5) **Cost of publicising or notifying**

The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

(6) **Financial assurances**

Sections 302–307 of the *Protection of the Environment Operations Act 1997* apply to a financial assurance provided by an offender under an order made under this section in the same way as they apply to a financial assurance given by a holder of a licence under a condition of a licence under Part 9.4 of that Act.

**11.17 Offence: refusal or failing to comply with order under Division**

A person who refuses or fails to comply with an order under this Division (except an order under section 11.12 or 11.14) is guilty of an offence.

Maximum penalty:

- (a) for a corporation—2,000 penalty units and, for a continuing offence, a further penalty of 200 penalty units for each day the offence continues, or
- (b) for an individual—1,000 penalty units and, for a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

**Division 11.4 Civil proceedings to enforce undertakings**

**11.18 Minister may accept certain undertakings**

- (1) The Minister may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Minister has a function under this Act.
- (2) Without limiting subsection (1), an undertaking that the Minister may accept under that subsection includes an undertaking to carry out a restorative justice activity referred to in section 11.16 (2).
- (3) The person may withdraw or vary the undertaking at any time, but only with the written consent of the Minister. The consent of the Minister is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (4) Subject to this section, no proceedings for a contravention or alleged contravention of this Act or the regulations may be brought against a person if an undertaking is in effect in relation to that contravention.
- (5) No proceedings may be brought for a contravention or alleged contravention of this Act or the regulations against a person who has made an undertaking in relation to that contravention and has completely discharged the enforceable undertaking.
- (6) The Minister may accept an undertaking in relation to a contravention or alleged contravention before proceedings in relation to that contravention have been finalised.
- (7) If the Minister accepts an enforceable undertaking before the proceedings are finalised, the Minister must take all reasonable steps to have the proceedings discontinued as soon as possible.

**11.19 Enforcement of undertaking**

- (1) The Minister may apply to the Land and Environment Court for an order under subsection (2) if the Minister considers that the person who gave an undertaking under section 11.18 has breached any of its terms.
- (2) The Court may make all or any of the following orders if it is satisfied that the person has breached a provision of the undertaking:
  - (a) an order directing the person to comply with that provision of the undertaking,

- (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
- (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
- (d) an order requiring the person to prevent, control, abate or mitigate any actual or likely harm to Crown land caused by the breach,
- (e) an order requiring the person to make good any actual or likely harm to Crown land caused by the breach,
- (f) any other order the Court considers appropriate.

## **Division 11.5 Evidentiary provisions**

### **11.20 Documentary evidence generally**

Any instrument purporting:

- (a) to be an instrument issued, made or given for the purposes of this Act, and
  - (b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,
- is admissible in any proceedings under this Act and (in the absence of evidence to the contrary) is to be taken to be an instrument of that kind and to have been so signed.

### **11.21 Certificate evidence of certain matters**

- (1) A document signed by the Minister, or a person declared in writing by the Minister for the purposes of this section, and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is, in the absence of evidence to the contrary, evidence of the matters so certified.
- (2) The matters referred to in subsection (1) are the following:
  - (a) that an instrument (including a written notice, order or direction), a copy of which is set out in or annexed to the document, being an instrument purporting:
    - (i) to be issued, made or given for the purposes of this Act, and
    - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,was issued, made or given on a specified day,
  - (b) that a person was or was not, at a specified time or during a specified period, an authorised officer,
  - (c) that land was, or was not, at a specified time or during a specified period:
    - (i) Crown land, or
    - (ii) dedicated Crown land, or
    - (iii) reserved Crown land, or
    - (iv) subject to a holding (or class of holding),
  - (d) that a holding was subject to a condition,
  - (e) that a person was the holder of a holding,
  - (f) that an amount was payable under the Crown Land Acts, a regulation under those Acts or a condition of a holding,

- (g) any matter in respect of which a certificate could have been issued under section 145, 177 or 178 of the *Crown Lands Act 1989* had those sections not been repealed.
- (3) Despite subsection (1), a court is not to admit a certificate into evidence in proceedings to the extent that the certificate deals with matters referred to in subsection (2) (c) or (d) if the court is satisfied that the proceedings were commenced (whether wholly or partly) to determine title to land.
- (4) In this section:  
**holding** includes:
  - (a) an enclosure permit, and
  - (b) any tenure, lease, licence or permit granted under the Crown Land Acts that ceased to exist before the commencement of this Act.

## Part 12 Administration

**Introductory note.** This Part provides for matters relating to the administration of this Act. It includes provisions relating to:

- (a) the functions of the Minister in administering this Act, and
- (b) the appointment of Crown land commissioners and their functions, and
- (c) the constitution of the Lands Administration Ministerial Corporation and its functions, and
- (d) financial matters, and
- (e) the service, giving and use of notices and other documents for the purposes of this Act.

### Division 12.1 Administration generally

#### 12.1 Responsibility of Minister

- (1) The Minister is responsible for achieving the objects of this Act.
- (2) The Minister may establish advisory committees to give information and make recommendations concerning:
  - (a) the development and revision of guidelines for land management, and
  - (b) any other matters that may be referred to them by the Minister.

#### 12.2 Crown land commissioner

- (1) The Minister may, by notice published in the Gazette, appoint an individual to be a Crown land commissioner.
- (2) A Crown land commissioner holds office for the term specified in the notice, unless the office is vacated sooner.
- (3) The office of a Crown land commissioner becomes vacant if:
  - (a) the commissioner completes the commissioner's term of office and is not reappointed, or
  - (b) the commissioner resigns the office by a written instrument given to the Minister, or
  - (c) the commissioner dies, or
  - (d) the commissioner is removed from office by the Minister under this section.
- (4) The Minister may, by written instrument given to a Crown land commissioner, remove the commissioner from office at any time and for any or no reason.
- (5) The functions of a Crown land commissioner are:
  - (a) to advise the Minister, and inquire into and report, on any matter arising out of the administration of this Act or another Act dealing with the administration of Crown land when required by the Minister, and
  - (b) to exercise any other functions that are conferred or imposed on the commissioner by or under this Act or another Act.
- (6) A Crown land commissioner (except one who is a government sector employee) is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Minister may from time to time determine in respect of the commissioner.

#### 12.3 Delegation of functions by Minister, Ministerial Corporation, Secretary or Crown land commissioner

- (1) The Minister may delegate any of the Minister's functions to the Secretary, a Crown land commissioner, an authorised officer or any other person (or class of persons).

- (2) The Ministerial Corporation may delegate any of its functions to the Secretary, a Crown land commissioner, an authorised officer or any other person (or class of persons).
- (3) The Secretary or a Crown land commissioner may delegate any of the Secretary's or commissioner's functions to an authorised officer or any employee (or class of employees) of the Department.
- (4) The Secretary or a Crown land commissioner may subdelegate any function delegated by the Minister or Ministerial Corporation, except a function excluded from subdelegation by the Secretary's or commissioner's instrument of delegation.
- (5) However, a power of delegation or subdelegation conferred by this section cannot be delegated.
- (6) In this section:  
*Minister's functions* means any functions conferred or imposed on the Minister by or under this Act or another Act.

#### **12.4 Administration arrangements with other public authorities**

- (1) The Minister or the Ministerial Corporation may enter into an administration arrangement with another public authority.
- (2) An administration arrangement may provide for the Minister or the Ministerial Corporation (or the Minister's or the Ministerial Corporation's delegate) to exercise specified functions of the public authority as its agent.
- (3) Any document executed by the Minister or the Ministerial Corporation (or the Minister's or the Ministerial Corporation's delegate) acting as an agent under an administrative arrangement has effect as if it had been executed by the public authority.

### **Division 12.2 Ministerial Corporation**

#### **12.5 Constitution of Lands Administration Ministerial Corporation**

- (1) A corporation with the corporate name of the Lands Administration Ministerial Corporation is constituted by this Act.
- (2) The affairs of the Ministerial Corporation are to be controlled by the Minister.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by the Ministerial Corporation.
- (4) The Ministerial Corporation is a NSW Government agency.  
**Note.** A body that is a NSW Government agency has the status, privileges and immunities of the Crown. See section 13A of the *Interpretation Act 1987*.
- (5) Section 50 (1) (d) of the *Interpretation Act 1987* (which authorises certain dealings with property) does not apply to the Ministerial Corporation.
- (6) The Ministerial Corporation is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity as, the Lands Administration Ministerial Corporation constituted by the *Crown Lands Act 1989*.  
**Note.** Accordingly, the Ministerial Corporation retains all the assets, rights and liabilities of the Lands Administration Ministerial Corporation constituted by the *Crown Lands Act 1989*.

#### **12.6 Functions of Ministerial Corporation**

- (1) The Ministerial Corporation has the functions that are conferred or imposed on it by or under this Act or another Act.

- (2) The Ministerial Corporation may do any of the following:
  - (a) enter into a contract, agreement or joint venture with any person, corporation or statutory body for the development of, or the construction or undertaking of works on, Crown land or the provision of services for Crown land,
  - (b) enter into a contract or agreement with any person, corporation or statutory body for the person, corporation or body to act as agent for the sale or lease of Crown land,
  - (c) enter into a contract, agreement or joint venture with any person, corporation or statutory body for the provision of services or information:
    - (i) to the person, corporation or body, or
    - (ii) to the Minister or the Department,
  - (d) for the attainment of the objects of this Act or the exercise of functions under this Act:
    - (i) purchase, take on lease or licence, charter or otherwise acquire any vehicle, aircraft, vessel, plant, machinery or other thing, or
    - (ii) adapt or manufacture any machinery or equipment.
- (3) The Ministerial Corporation is taken to be the owner of Crown land for the purpose of securing a loan for:
  - (a) the development of the land, or
  - (b) the construction or undertaking of works on the land, or
  - (c) the provision of services for the land.
- (4) The Ministerial Corporation may:
  - (a) use the services of any employees or facilities of the Department, or
  - (b) arrange for the use of the services of any staff or facilities of any other Public Service agency or other public authority.

## **Division 12.3 Finance**

### **12.7 Payments due under Act**

- (1) Any payment due under this Act must be made as a single payment when due.
- (2) Despite subsection (1), the Minister may accept a payment by instalments on any basis that the Minister determines is appropriate.

### **12.8 Fees for services**

Fees may be charged, for amounts that may be approved by the Minister from time to time, for services provided by the Department in connection with Crown land.

### **12.9 GST may be added to certain amounts**

- (1) If GST is payable in respect of any sale, rent or other matter under this Act (including any fee charged under section 12.8), the amount payable under this Act in respect of the sale, rent or other matter may be increased to cover the cost of GST payable.
- (2) In this section:  
***GST*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.



#### **12.10 General provisions applicable to CPI adjustment**

- (1) This section applies in respect of a provision of this Act that provides for the adjustment of an amount by reference to the Consumer Price Index (a *CPI adjustment provision*).
- (2) If a CPI adjustment provision requires regard to be had to a Consumer Price Index number published before a due date in respect of rent, regard may be had to the last Index number so published before a notice or invoice of the rent payable by the person liable to pay the rent is sent to the person concerned.
- (3) If the Australian Statistician publishes a Consumer Price Index number in respect of a particular quarter after the notice or invoice is sent:
  - (a) except as provided by paragraph (b)—the publication of the later Index number is to be disregarded, or
  - (b) if the Minister so directs—regard is to be had to the later and not to the earlier Index number.
- (4) If the Australian Statistician publishes a Consumer Price Index number in respect of a particular quarter in substitution for a Consumer Price Index number previously published in respect of that quarter:
  - (a) except as provided by paragraph (b)—the publication of the later Index number is to be disregarded, or
  - (b) if the Minister so directs—regard is to be had to the later and not to the earlier Index number.
- (5) If the reference base for the Consumer Price Index is changed, regard is to be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (6) An adjustment under a CPI adjustment provision is to be made to the nearest whole dollar.

#### **12.11 Recovery of money**

Any money payable under this Act is recoverable by the Minister as a debt due to the Crown.

#### **12.12 Interest on arrears**

- (1) Interest accrues day by day on any amount payable to the Crown under this Act and unpaid 28 days (or any other period that may be prescribed by the regulations) after the due date.
- (2) The interest is to be calculated as from the due date at the rate prescribed by the regulations for the purpose of this subsection during the period in which the amount was outstanding.
- (3) This section does not apply to an amount that has become payable to the Crown in respect of an incomplete purchase because the purchase has been transferred.

#### **12.13 Holding or permit cannot be transferred if in arrears**

Subject to section 5.27, the holder of a holding or enclosure permit cannot transfer the holding or permit to another person unless any debt to the Crown in respect of the holding or permit has been fully paid by the holder.

**12.14 Forfeiture or end of holding or permit does not extinguish debts**

The forfeiture, termination or expiry of a holding, or the cancellation or variation of an enclosure permit, does not operate to extinguish any debt to the Crown in respect of the holding or permit unless the Minister approves its extinguishment.

**12.15 Waiver, reduction, remission, postponement or rebate of certain amounts**

- (1) The Minister may:
  - (a) waive, reduce or remit the whole or any part of an amount payable under this Act, or
  - (b) postpone the payment of the whole or part of an amount payable under this Act, or
  - (c) grant a rebate of rent for a holding or enclosure permit.
- (2) A waiver, reduction, remission, postponement or rebate may be made conditionally or unconditionally.
- (3) The Minister may amend or revoke a waiver, reduction, remission, postponement or rebate made by the Minister.
- (4) The regulations may make provision for or with respect to the exercise of functions under this section, including limiting the circumstances in which the functions may be exercised.

**12.16 Alteration of due dates for payments**

- (1) The Minister may, if satisfied that it is expedient for administrative purposes to do so, direct that any amounts payable at recurring times under this Act be payable at the altered times (recurring at the same intervals) as are specified in the direction.
- (2) A direction may be given in respect of amounts whether or not they have become payable.
- (3) If it is necessary to pay a proportionate part of an amount because a time of payment has been altered, it is payable at a time directed by the Minister.
- (4) Notice of a direction must be given to the holder for the time being of the holding or enclosure permit in respect of which the amount is payable.
- (5) A direction:
  - (a) may be given in respect of all holdings or enclosure permits, any class of holding or enclosure permit or a particular holding or enclosure permit, and
  - (b) on notice being given as required—has effect according to its tenor, and
  - (c) may be given from time to time, and
  - (d) may be amended or revoked by the Minister.

**Division 12.4 State strategic plan for Crown land**

**12.17 Purpose and term of State strategic plan for Crown land**

- (1) A State strategic plan for Crown land is to set the vision, priorities and overarching strategy for the management of Crown land in the State, having regard to the objects of this Act and appropriate environmental, social, cultural heritage and economic considerations.
- (2) A State strategic plan for Crown land has effect for the period of 10 years (or any other period as may be prescribed by the regulations) after it is approved by the Minister.

**12.18 Preparation of draft State strategic plan for Crown land**

- (1) The Secretary must prepare a draft State strategic plan for Crown land that complies with this Division and submit the draft plan to the Minister for approval.
- (2) A draft State strategic plan for Crown land is to be prepared and submitted for approval within 2 years of the commencement of this Part and, at any later times, as may be specified by the Minister.
- (3) In preparing a draft State strategic plan for Crown land, the Secretary is to have regard to:
  - (a) any State priorities for Crown land, and
  - (b) the objects of this Act, and
  - (c) the need for engagement of the community, including the Aboriginal community.

**12.19 Contents of draft State strategic plan for Crown land**

A draft State strategic plan for Crown land must include the following:

- (a) the outcomes that are expected to be achieved by the implementation of the plan and the timeframes for achieving those outcomes,
- (b) requirements for reporting on whether those outcomes and timeframes have been achieved,
- (c) any other matters that the Minister may direct to be included in the plan.

**12.20 Community engagement on draft State strategic plan for Crown land**

The Secretary must undertake any community engagement on a draft State strategic plan for Crown land required by a community engagement strategy.

**12.21 Submission of draft State strategic plan for Crown land for approval**

- (1) The Secretary is to submit a copy of the draft State strategic plan for Crown land to the Minister for approval.
- (2) In assessing the draft State strategic plan, the Minister is to seek the advice of any person or body to which the draft State strategic plan is required to be referred by the regulations and take into account any advice provided within the time requested by the Minister.
- (3) The Minister may take into account the advice of any other person or body in assessing the draft State strategic plan.

**12.22 Approval of draft State strategic plan for Crown land**

- (1) The Minister may:
  - (a) approve a draft State strategic plan for Crown land submitted to the Minister by the Secretary, without alteration or with any alteration that the Minister thinks fit, or
  - (b) refer the draft State strategic plan back to the Secretary for further consideration.
- (2) The Minister is not to approve a draft State strategic plan for Crown land unless the Minister is satisfied (having regard to the advice of any person or body to which the draft State strategic plan has been referred) that the plan promotes the achievement of State priorities for Crown land and the objects of this Act.
- (3) Before making any alterations to the draft State strategic plan, the Minister must consult the Secretary.

### **12.23 Publication of State strategic plan for Crown land**

- (1) As soon as practicable after a State strategic plan for Crown land is approved by the Minister, the Secretary:
  - (a) is to cause the plan to be published in any manner that, in the opinion of the Secretary, will make it readily accessible to persons in the State, and
  - (b) is to arrange for a copy of the plan to be published on the website of the Department.
- (2) The Minister may make any other arrangements that the Minister considers necessary to ensure that a State strategic plan for Crown land is readily accessible to the public.

### **12.24 Amendment, replacement or revocation of State strategic plans for Crown land**

- (1) A State strategic plan for Crown land may be amended or replaced by a subsequent plan prepared and approved in accordance with this Division.
- (2) The Minister may revoke a State strategic plan for Crown land, wholly or in part.
- (3) The amendment or revocation of a State strategic plan for Crown land by the Minister under this section takes effect when notice of the amendment or revocation is published by the Minister or on a later date specified in the notice.

### **12.25 Periodic review of State strategic plans for Crown land**

The Secretary is to ensure that the State strategic plan for Crown land is kept under regular and periodic review and, in particular, is to cause the plan to be reviewed if the Minister so directs.

## **Division 12.5 Notices and other documents**

### **12.26 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, *serve* includes give or send.

### **12.27 When notices and other documents take effect**

- (1) A notice or other document published, given or served for the purposes of a provision of this Act or the regulations takes effect on the day it is published, given or served or any later day that may be specified in the notice or other document.

- (2) Subsection (1) does not apply if another provision of this Act or the regulations provides for a notice or other document to take effect at a different time.

**12.28 Ministerial notices published in the Gazette may be combined**

- (1) The Minister may combine a notice that a provision of this Act requires the Minister to publish in the Gazette with any other notices that the Minister is also required to publish in the Gazette.
- (2) The combined notice has effect for the purposes of this Act as if a separate notice had been published for each of the notices that have been combined.

**Division 12.6 General**

**12.29 Evidence of land being measured**

- (1) A measurement of Crown land is not effective until the plan of the measurement has been approved by a person authorised by the Minister.
- (2) The signature of an authorised person on a plan is evidence that the plan has been approved by the person.

**12.30 Effect of creation of folio in Register for certain matters**

- (1) This section applies to each of the following (*statutory land provisions*):
  - (a) any covenants, conditions, terms, reservations, exceptions, exemptions or provisions attaching or applying to land by operation of this Act or an instrument made under this Act,
  - (b) any provisions of this Act or an instrument made under this Act applying to land.
- (2) Except to the extent that a contrary intention appears, statutory land provisions attaching or applying to land:
  - (a) do not cease to attach or apply to the land just because a folio has been created in the Register for the land, and
  - (b) to the extent that they are applicable, attach or apply not only to the land as a whole, but also to each and every part of the land.
- (3) This section is in addition to, and does not limit, any other provision of this Act.

**12.31 Personal liability in connection with administration of Act**

- (1) A matter or thing done or omitted to be done by a protected administrator (or a person acting under the direction of a protected administrator) does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the protected administrator or any person so acting personally to any action, liability, claim or demand.
- (2) Each of the following is a *protected administrator*:
  - (a) the Minister,
  - (b) the Secretary,
  - (c) the Ministerial Corporation,
  - (d) a statutory land manager,
  - (e) a member of the board of a statutory land manager,
  - (f) the administrator of a statutory land manager,
  - (g) an employee of the Department, the Ministerial Corporation or a statutory land manager.

**12.32 Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State because of:
- (a) the enactment or operation of this Act, or for any consequence of that enactment or operation, or
  - (b) any statement or conduct relating to the enactment or operation of this Act.

- (2) In this section:

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**operation of this Act** includes the operation of any instrument made under this Act.

**statement** includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false, misleading or otherwise.

**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer, employee or agent of the Crown.

## Part 13 Miscellaneous

**Introductory note.** This Part provides for a number of miscellaneous matters relating to the operation of this Act. It includes:

- (a) provisions that limit the acquisition of title by possession against the Crown, and
- (b) provisions concerning the exclusion of minerals from sales, leases or other disposals of land under this Act, and
- (c) provisions about the determination of the boundaries of land with a lake, river or road, and
- (d) provisions that deem certain conditions and restrictions on land under this Act to be 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) a provision concerning review of the operation of this Act as soon as possible after the period of 5 years after the date of assent to this Act.

The Part also authorises the Governor to make regulations for the purposes of this Act.

### 13.1 Limitation on acquisition of title by possession against Crown

- (1) Title, based on adverse possession, cannot be claimed or established against the Crown for any of the following:
  - (a) land of the Crown that has been:
    - (i) set out as a road under an Act or in connection with the alienation of land of the Crown, or
    - (ii) left between Crown grants for use as a road or driftway, or
    - (iii) reserved in a Crown grant or recorded in a folio of the Register as being reserved to the Crown,
  - (b) any land of the Crown that has been dedicated or reserved under the Crown Land Acts or any other Act for a public purpose,
  - (c) any other Crown land.
- (2) Also, title, based on adverse possession, cannot be claimed or established against a person holding land referred to in subsection (1) (a) or (b) in trust for a public purpose.
- (3) This section does not affect:
  - (a) the operation of section 46B (Roads included in certain certificates of title) of the *Real Property Act 1900*, or
  - (b) the title to any land referred to in section 170 (5) of the *Crown Lands Act 1989* immediately before the Act's repeal.

### 13.2 Exclusion of minerals and qualifications from dealings under Act

- (1) A sale, lease or other disposal of land under this Act does not include any minerals contained in the land.
- (2) The minerals excluded by subsection (1) are minerals as defined in this Act at the time when the land is contracted to be sold or when the lease commences or the disposal takes place.
- (3) The Registrar-General must record any qualification required by the Minister and notified to the Registrar-General when creating a folio of the Register for land under this Act.
- (4) A sale, lease or other disposal of land under this Act is subject to any qualification approved by the Minister.

- (5) In this section:  
**qualification** means:
- (a) a reservation or exception considered by the Minister to be in the public interest, or
  - (b) without affecting any liability under the *Mine Subsidence Compensation Act 1961*—a condition having the effect of protecting the Crown and any mining lessee against any other liability that could arise from a subsidence as a result of mining operations.

### 13.3 Entitlements over land with boundaries to lakes, rivers or roads

- (1) The boundary of any land that is transferred by the Crown and is described or transferred in either of the following ways is taken to be the bank of the lake at the time of the Crown survey for the purposes of the transfer:
  - (a) as bounded by, by reference to, or by the margin or bank of, a non-tidal lake,
  - (b) by metes expressed or shown to run to a lake or to the margin or bank of a lake.
- (2) Title to land comprising the bed of a non-tidal lake does not pass, and has never passed, by any transfer of land adjoining the lake:
  - (a) as bounded by, by reference to, or by the margin or bank of, the lake, or
  - (b) by metes expressed or shown to run to the lake or to the margin or bank of the lake.

Also, the owner of land transferred in that way is not entitled to any rights of access over, or to the use of, any part of the bed.
- (3) The doctrine of accretion does not apply, and never has applied, to a non-tidal lake.
- (4) The owner of land transferred under this Act, the *Crown Lands Act 1989* or the *Crown Lands (Continued Tenures) Act 1989* in either of the following ways is not entitled to any rights of access over, or to the use of, any part of the bed of the river:
  - (a) as bounded by, by reference to, or by the margin or bank of, a river,
  - (b) by metes expressed or shown to run to a river or to the margin or bank of a river.
- (5) Subsection (4) does not apply to the owner of land sold under the *Crown Lands (Continued Tenures) Act 1989* if the land:
  - (a) was, at the time of the sale, held as a conditional lease, homestead selection, homestead farm, week-end lease, conditional purchase lease, settlement purchase lease, closer settlement lease or group purchase lease under the Crown Land Acts, and
  - (b) was held as that holding before the bed of the adjoining river was reserved from sale or lease under the Crown Land Acts.
- (6) The owner of the land is not entitled to any rights of access over, or to the use of, any part of the bed of a river if, before the commencement of section 172 of the *Crown Lands Act 1989*:
  - (a) the bed of the river was reserved from sale or lease under the Crown Land Acts, and
  - (b) land adjoining the river was subsequently alienated (including alienation under any form of tenure under the Crown Land Acts or any other Act relating to the alienation of land of the Crown):
    - (i) as bounded by, by reference to, or by the margin or bank of, the river, or
    - (ii) by metes expressed or shown to run to the river or to the margin or bank of the river.



- (7) If any land is or was transferred by the Crown with a boundary adjoining, or as bounded by, a road created by the Crown, no part of the road passes, or is to be taken ever to have passed, with the land.
- (8) This section does not affect any rights acquired under the *Water Management Act 2000*.
- (9) In this section:  
**bank** means the limit of the bed of a lake or river.  
**bed** means the whole of the soil of a lake or river including that portion:  
(a) which is alternately covered and left bare with an increase or diminution in the supply of water, and  
(b) which is adequate to contain the lake or river at its average or mean stage without reference to extraordinary freshets in time of flood or to extreme droughts.  
**lake** includes a permanent or temporary lagoon or similar collection of water not contained in an artificial work.  
**river** includes any stream of water, whether perennial or intermittent, flowing in a natural channel, and any affluent, confluent, branch or other stream into or from which the river flows.  
**transferred** means sold, leased or disposed of in any other way under the Crown Land Acts or any other Act relating to the alienation of land of the Crown.

#### 13.4 Application of Environmental Planning and Assessment Act 1979

- (1) This section applies to each of the following (a **relevant instrument**):  
(a) a condition relating to the land to which a recording under Division 5.4 applies,  
(b) a restriction on use or public positive covenant imposed under Division 5.10,  
(c) anything that was a prescribed instrument as defined in section 183A of the *Crown Lands Act 1989* immediately before the Act's repeal.
- (2) For the purposes of section 28 of the *Environmental Planning and Assessment Act 1979*:  
(a) a relevant instrument is taken to be a regulatory instrument, and  
(b) the Minister is responsible for the administration of that regulatory instrument.  
**Note.** Section 28 of the *Environmental Planning and Assessment Act 1979* allows an environmental planning instrument to suspend the operation of a regulatory instrument for the purpose of enabling development to be carried out. The suspension cannot be given effect to without the concurrence in writing of the Minister responsible for the administration of the regulatory instrument.
- (3) In relation to any particular relevant instrument, a provision of an environmental planning instrument made under section 28 of the *Environmental Planning and Assessment Act 1979* and in force:  
(a) immediately before the commencement of section 183A of the *Crown Lands Act 1989*, or  
(b) immediately before the relevant instrument takes effect,  
does not affect the operation of the relevant instrument unless the provision is subsequently amended to expressly affect the operation of the relevant instrument.

#### 13.5 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that

is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) the functions of persons involved in the administration of this Act or the regulations,
  - (b) fees, charges and deposits payable for the purposes of this Act or the regulations (including for applications),
  - (c) penalties for the late payment of amounts payable under this Act or the regulations and the charging of interest on overdue amounts,
  - (d) the conduct of inquiries under this Act,
  - (e) the making, keeping and inspection of records for the purposes of this Act or the regulations,
  - (f) the obligations of new holders of holdings concerning improvements made by former holders (including payments to be made to former holders for those improvements),
  - (g) the making and determination of applications for the exercise of functions under this Act or the regulations,
  - (h) the form, lodgment and execution of applications, dealings or documents relating to land for the purposes of this Act or the regulations,
  - (i) the manner, places and times for the payment of rents, purchase prices and other amounts for the purposes of this Act or the regulations,
  - (j) the conferral of jurisdiction on the Land and Environment Court to hear and determine appeals against specified decisions (or classes of decisions) of decision-makers under this Act or the regulations,
  - (k) the conferral of jurisdiction on the Civil and Administrative Tribunal to hear and determine:
    - (i) applications for an administrative review under the *Administrative Decisions Review Act 1997* of specified decisions (or classes of decisions) of the Minister or Secretary under this Act or the regulations, or
    - (ii) appeals against specified decisions (or classes of decisions) of the Minister or Secretary under this Act or the regulations,
  - (l) the functions of the Registrar-General concerning applications, dealings or instruments relating to land for the purposes of this Act or the regulations.
- (3) The Minister is not to recommend the making of a regulation containing provisions for the purposes of subsection (2) (k) unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.
- (4) The regulations may apply, adopt or incorporate any publication as in force at a particular time or as in force from time to time.
- (5) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.

### 13.6 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Continued tenures

**Introductory note.** The *Crown Lands (Continued Tenures) Act 1989* made special transitional provision for certain tenures over Crown land granted before the *Crown Lands Act 1989* came into force.

These tenures included specified kinds of incomplete purchases, perpetual leases, term leases, special leases and permissive occupancies. The former Act operated to continue these tenures in force even though some of these tenures could no longer be granted under the *Crown Lands Act 1989*.

This Schedule continues these tenures in force under this Act and makes special provision for them, including by continuing to apply some of the provisions of the former *Crown Lands (Continued Tenures) Act 1989*.

In addition, section 1.13 provides that the provisions of this Schedule prevail over those of Parts 5–7 of this Act to the extent of any inconsistency.

### Part 1 Introduction

#### 1 Application of Schedule

- (1) This Schedule applies in relation to continued tenures.
- (2) This Schedule applies subject to Schedule 4 in relation to continued tenures that are purchasable leases (except as provided by Division 4 of Part 2 of this Schedule).

**Note.** Schedule 4 enables land under certain leases over Crown land (including leases that are continued tenures) to be purchased by leaseholders.

#### 2 Definitions

In this Schedule:

*continued incomplete tenure purchase* is defined in Part 8 of this Schedule.

*continued permissive occupancy* is defined in Part 7 of this Schedule.

*continued perpetual lease* is defined in Part 4 of this Schedule.

*continued special lease* is defined in Part 6 of this Schedule.

*continued tenure* means each of the following:

- (a) a continued incomplete tenure purchase,
- (b) a continued permissive occupancy,
- (c) a continued perpetual lease,
- (d) a continued special lease,
- (e) a continued term lease.

*continued term lease* is defined in Part 5 of this Schedule.

*former special land district* means a special land district (as defined in the *Crown Lands Act 1989*) in existence immediately before the Act's repeal.

*pending tenure purchase* is defined in Division 4 of Part 2 of this Schedule.

*transfer*, in relation to a tenure over land, means the sale, assignment or other transfer of the tenure (or, in the case of a lease, of an interest in land that is conferred by the lease).

### Part 2 Continued tenures generally

#### Division 1 Preservation of continued tenures

##### 3 Continued tenures remain in force

- (1) A continued tenure over land remains in force as:
  - (a) for a continued perpetual lease, continued term lease or continued special lease—a lease under this Act over the same land, and

- (b) for a continued incomplete tenure purchase—an incomplete purchase under this Act of the same land, and
  - (c) for a continued permissive occupancy—a licence under this Act to occupy the same land.
- (2) A continued tenure for a term does not (except as provided by this Act) remain in force beyond the end of that term.
  - (3) A continued tenure for an indefinite term, or a term that exceeds the maximum term for a tenure of that kind under another provision of this Act, remains in force indefinitely or for the remainder of its term despite that provision.
  - (4) The terms and conditions of a continued tenure remain the same subject to any variations made by or under this Act.
  - (5) Any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.
  - (6) A continued tenure can be varied, forfeited, revoked, terminated, cancelled or dealt with in any other way under this Act as if it had been granted under this Act.
  - (7) To avoid doubt, any sublease or sublicense of a continued tenure also remains in force under this Act.
  - (8) A continued tenure does not cease to be a continued tenure just because it is renewed or extended.
  - (9) This clause has effect subject to the other provisions of this Schedule. In particular, any terms or conditions of a tenure preserved by this clause do not have effect to the extent of any inconsistency with those provisions or the provisions of Schedule 4.  
**Note.** Clause 1 (2) also provides that this Schedule applies subject to Schedule 4 in relation to purchasable leases that are continued tenures.
  - (10) In this clause:  
*terms and conditions* includes covenants, reservations, exceptions, exemptions, provisions and prohibitions.  
*variations* include:
    - (a) for any terms and conditions—alterations, removals or omissions, and
    - (b) for any amounts—waivers, reductions, remissions or postponements.

#### **4 Schedule does not affect third party interests in land**

- (1) This Schedule does not affect the continuation of any third party interest in land under a tenure that becomes a continued tenure because of the operation of this Schedule.
- (2) A *third party interest* in land under a tenure is a mortgage, easement, right of way or other interest in the land of a person except the holder of the tenure.

#### **5 Updating of references in folio for land under continued tenure**

- (1) In the folio of the Register relating to a continued tenure:
  - (a) a reference to a repealed Act is to be read as being a reference to this Act, and
  - (b) a reference to a provision of a repealed Act is to be read as being a reference to the corresponding provision (if any) of this Act.

- (2) Subclause (1) extends to a reference in a folio of the Register that, because of a provision of a repealed Act, was required to be read as being a reference to a repealed Act (or a provision of a repealed Act).  
**Note.** See clause 2 of Part 1, and clause 1 of Parts 2, 3 and 5, of Schedule 2 to the *Crown Lands (Continued Tenures) Act 1989*.
- (3) For the purposes of this clause, a provision of this Act is a **corresponding provision** in relation to a provision of a repealed Act if the provision of this Act corresponds (or substantially corresponds) to the provision of the repealed Act.
- (4) The regulations may, for the purposes of subclause (3), declare a provision of this Act to be a corresponding provision of a repealed Act. The regulations may do so even if the provision of this Act is not substantially the same as that of the repealed Act.
- (5) In this clause:  
**repealed Act** means the *Crown Lands Act 1989* or *Crown Lands (Continued Tenures) Act 1989*.

## Division 2 Rent for continued tenures

### 6 Application of Division

This Division applies in relation to continued tenures for which rent was payable under the *Crown Lands (Continued Tenures) Act 1989*.

**Note.** Part 1A of, and Schedule 5 to, the *Crown Lands (Continued Tenures) Act 1989* made special provision for the payment of rent and other amounts for perpetual leases, term leases and special leases under that Act.

### 7 Definition

In this Division:

**initial period** means the 2-year period beginning on the day that this Schedule commences.

### 8 Rent during initial period

- (1) **Clause applies only during initial period**  
This clause applies to rent for a continued tenure only during the initial period.
- (2) **Existing law continues to apply, with exceptions**  
Subject to this Division, rent for a continued tenure remains payable in the same way and the same amounts as it was payable under the *Crown Lands (Continued Tenures) Act 1989*.
- (3) For this purpose, any rent shown as payable in the records of the Department remains, until the contrary is proved, payable in the amounts and manner, and at the time, indicated in those records.
- (4) **Other provisions of continuing effect**  
The rent remains payable in advance.
- (5) The annual rate of interest for rent payable by instalments remains 8 percent.
- (6) If any rent, without the interest added, is payable in equal annual instalments over a period, the Secretary may vary the manner of payment so that the money, with the interest added, is payable in equal annual instalments over the same or a longer period.
- (7) The rent for a lease in a former special land district remains payable in advance on each 1 July.

(8) Payment of the rent for a lease in a former special land district for the first period in advance after the commencement of clause 3 of Schedule 5 to the *Crown Lands (Continued Tenures) Act 1989* continues to be deferred (free of interest). However, it becomes payable on the granting of an application to purchase the land comprised in the lease.

(9) **Minimum annual rent and waiver etc**

Section 6.4 (Annual rent cannot generally be less than minimum rent) applies to the annual rent for a continued tenure.

(10) This clause does not limit the application of section 12.15 (Waiver, reduction, remission, postponement or rebate of certain amounts) to rents for continued tenures.

(11) **Definitions**

In this clause:

**Department**, in relation to a lease in a former special land district, includes:

- (a) the Water Administration Ministerial Corporation, and
- (b) the Minister.

**rent** includes any amount payable for a lease.

## 9 Rent redeterminations for continued tenures

(1) The Secretary may, by notice given to the holder of a continued tenure, redetermine the rent for the tenure. The Secretary may do so at any time (whether during or after the expiry of the initial period).

(2) A notice for the redetermination of rent for a continued tenure made during the initial period must provide that the redetermination takes effect only when the initial period ends.

(3) If rent is not redetermined during the initial period, the Secretary must redetermine it as soon as reasonably practicable after the initial period ends.

(4) Where there is a rent redetermination under this clause (the **initial rent redetermination**) for a continued tenure that does not provide for rent redeterminations, the rent for the tenure is to be varied for inflation on the date of each anniversary of the initial rent redetermination (the **CPI adjustment date**) in accordance with the following formula:

$$R = C \times \frac{P_2}{P_1}$$

where:

**R** is the rent adjusted for inflation.

**C** is the rent payable immediately before the CPI adjustment date.

**P<sub>2</sub>** is the Consumer Price Index number for the last quarter for which a number was published before the CPI adjustment date.

**P<sub>1</sub>** is the Consumer Price Index number for the last quarter for which a number was published before the initial rent redetermination or last CPI adjustment date (as the case requires).

(5) Any redetermination of rent under this clause must be in accordance with Part 6 of this Act. For this purpose, that Part applies as if the continued tenure made no provision for how rent is to be redetermined.

**Note.** Division 6.3 of this Act will require the rent to be redetermined by reference to the market rent for the land.

- (6) This clause applies despite any other provision of this Schedule or the terms and conditions of the continued tenure.

#### **10 Application of Part 6 of Act after initial period**

To avoid doubt, Part 6 of this Act applies in relation to rent for a continued tenure after the initial period ends, subject to clause 9.

**Note.** Section 6.7 (2) provides that the following provisions apply if the Secretary is required or permitted to redetermine the rent for a holding in circumstances other than those set out in section 6.7 (1):

- (a) subject to paragraphs (b) and (c), the Secretary may redetermine the rent as often as the Secretary considers appropriate or as required by the regulations unless the holding's provisions provide differently,
- (b) the rent must be redetermined at least once every 5 calendar years,
- (c) the rent for a holding cannot be redetermined more than once in each calendar year.

### **Division 3 Conditions of continued perpetual and continued term leases**

#### **11 Conditions to which continued perpetual and continued term leases taken to be subject**

- (1) This clause sets out conditions that are taken to be included in all continued perpetual leases and continued term leases.
- (2) The holder of a lease holds the land under the lease subject to any recordings on the folio of the Register created in respect of it and the provisions of this Act.
- (3) The holder of a lease must:
  - (a) comply with any provisions, conditions or covenants recorded on the folio of the Register created in respect of it, and
  - (b) comply with the requirements of any law relating to the use or management of the land leased, and
  - (c) comply with any conditions attaching to a Minister's consent given in respect of the land, and
  - (d) if there are any improvements on the land in the course of being purchased from the Crown:
    - (i) maintain those improvements in good order and repair, and
    - (ii) if required by the Minister to do so—keep those improvements insured against fire and any other risks prescribed by the regulations with an insurer approved by the Minister.
- (4) The holder of a lease must not:
  - (a) degrade the land leased, or
  - (b) without the Minister's consent, extract any material in or on the land (not being material required by the holder for building or other purposes on the land or on contiguous land leased from the Crown by the holder), or
  - (c) without the Minister's consent, take any timber on the land, other than:
    - (i) timber taken under the authority of a clearing licence issued under the *Forestry Act 2012*, or
    - (ii) timber required by the holder for building or other purposes on the land or on contiguous land leased from the Crown by the holder, or
  - (d) interfere with or obstruct any person authorised by law to cut timber on, or remove timber or materials from, the land or prevent such a person from using any gate or means of access provided by the person.



- (5) A lease is held subject to the rights of the public or stock to use roads or travelling stock, camping or other reserves within the land leased.
- (6) A Minister's consent required under this clause:
  - (a) may be given or refused at the Minister's absolute discretion, and
  - (b) may be given unconditionally or subject to conditions (including conditions requiring payments by way of royalty or otherwise).
- (7) In this clause:

**material** includes gravel, sand, loam, stone, clay, shells and other material prescribed by the regulations, but does not include minerals within the meaning of the *Mining Act 1992*.

**timber** includes the products of growing or dead timber, trees, shrubs and vegetable growth of economic value.

## **Division 4 Pending tenure purchases**

### **12 Application of Division**

- (1) This Division applies in relation to pending tenure purchases.
- (2) A **pending tenure purchase** is an application to purchase land under a lease that becomes a continued tenure when this Schedule commences if it:
  - (a) was made under Schedule 7 to the *Crown Lands (Continued Tenures) Act 1989*, and
  - (b) has not been finally determined on that commencement (including because the purchase price has not been finalised).
- (3) Subclause (2) extends to an application made by invitation of the Minister under Schedule 7A to the *Crown Lands (Continued Tenures) Act 1989*.
- (4) The provisions of this Division prevail over the provisions of Schedule 4 to the extent of any inconsistency.

### **13 Pending tenure purchase to be treated as purchase application under Schedule 4**

- (1) A pending tenure purchase is to be treated by the Minister as if it were an application for the purchase of the land made under Schedule 4.
- (2) For this purpose, the purchase application is to be treated as if it were:
  - (a) for an application of a kind that the Minister was required to grant under the *Crown Lands (Continued Tenures) Act 1989* if it was duly made—an application based on an existing purchase right in relation to the land (as defined in Schedule 4), or
  - (b) for an application of a kind that the Minister had a discretion to grant under the *Crown Lands (Continued Tenures) Act 1989* if it was duly made—an application based on an existing application right in relation to the land (as defined in Schedule 4).

**Note.** See clause 10 of Schedule 4 for provisions about how the purchase price will be determined.

### **14 Objections and appeals made before this Schedule commences**

- (1) This clause applies to an objection or appeal against the purchase price for land to which a pending tenure purchase relates that was made under an existing review provision, but not finally determined, before the commencement of this Schedule.

- (2) An existing review provision continues to apply to the determination of the objection or appeal made under it as if the provision formed part of this Division.
- (3) In this clause:  
*existing review provision* means:
  - (a) clause 3 of Part 1 of Schedule 7 to the *Crown Lands (Continued Tenures) Act 1989*, or
  - (b) clause 10 of Part 1 of Schedule 7 to the *Crown Lands (Continued Tenures) Act 1989*, or
  - (c) clause 10 of Part 2 of Schedule 7 to the *Crown Lands (Continued Tenures) Act 1989*.

#### **15 Determinations of purchase price after this Schedule commences**

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

**Note.** An appeal to the Civil and Administrative Tribunal under this clause is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*. A decision of the Tribunal on such an external appeal may be appealed to the Land and Environment Court under Schedule 1 to that Act.
- (5) The Civil and Administrative Tribunal, or the Land and Environment Court, on hearing the appeal, may affirm the Minister's determination or substitute its own.

### **Division 5 Ministerial consent under this Schedule**

#### **16 Giving of Ministerial consent**

- (1) To avoid doubt, the Minister has a discretion as to whether to grant consent to a transfer or other dealing for the purposes of a provision of this Schedule.
- (2) The Minister may grant a waiver under clause 18 instead of granting consent for the purposes of a provision of this Schedule even if an application for the waiver has not been made.

#### **17 Removal of Ministerial consent requirement for transfers or other dealings**

- (1) The Minister may, by notice published in the Gazette, declare that the Minister's consent is not required under this Schedule to a transfer or other dealing involving specified land (or a class of land).
- (2) The declaration has effect despite the provision of this Schedule that requires the consent.

- (3) If any land to which a declaration relates is land under the *Real Property Act 1900*, the Registrar-General must make an appropriate recording in respect of that land in the Register.

#### **18 Waiver of Ministerial consent requirement**

- (1) The holder of a continued tenure or the mortgagee in possession of land under the tenure may apply to the Minister for a waiver of any requirement under this Schedule for the Minister to give consent before a transfer or other dealing can happen.
- (2) The application must:
  - (a) be made before any agreement or other arrangement for the transfer or other dealing is made by the holder, and
  - (b) specify the land to which the transfer or other dealing relates.
- (3) The Minister may, by written notice given to the applicant, grant the waiver for the period (if any) specified and subject to any conditions that the Minister decides to impose.
- (4) The waiver has effect despite the provision of this Schedule that requires the consent.
- (5) The Registrar-General may rely on the notice when accepting or registering any transfer or other dealing to which the waiver relates if the transfer or dealing is lodged while the waiver is in effect.

#### **19 Certain dealings do not require Ministerial consent**

- (1) A provision of this Schedule requiring the Minister's consent to a transfer or other dealing involving land does not prevent:
  - (a) the creation, transfer or extinguishment of a sublease or mortgage, or
  - (b) the creation, transfer or extinguishment of an easement over the land if it is under a perpetual lease.
- (2) However, the following provisions apply to the subleasing of land held under a lease (the *head lease*):
  - (a) the sublease must:
    - (i) specify the purpose for which the land may be used under the sublease and that purpose must be consistent with the purpose for which the land may be used under the head lease or with a purpose prescribed by the regulations, and
    - (ii) provide that it terminates when the head lease terminates,
  - (b) the holder of the head lease must notify the Minister of the granting of the sublease within 28 days after it is granted,
  - (c) the holder of the head lease must take all reasonable steps to ensure that the holder of the sublease complies with the requirements of this Act and the conditions of the head lease with respect to the land.

### **Part 3 Dealings with continued tenures**

#### **20 Application of Division**

This Division applies to land comprised in a continued tenure if it is:

- (a) land under a continued perpetual lease, continued term lease or continued special lease to which Part 1 of Schedule 3 to the *Crown Lands (Continued Tenures) Act 1989* applied immediately before the Act's repeal, or

- (b) land under a week-end lease or town land lease to which Part 2 of Schedule 3 to the *Crown Lands (Continued Tenures) Act 1989* applied immediately before the Act's repeal.

## 21 Consent to certain dealings

- (1) Land to which this Division applies cannot be:
    - (a) for land under a perpetual lease, term lease or special lease—leased, transferred or dealt with in any other way without the Minister's written consent, or
    - (b) for other land—transferred without the Minister's written consent.
- Note.** Clause 19 provides that this clause does not prevent the creation, transfer or extinguishment of a sublease, mortgage or easement.
- (2) Subclause (1) does not apply to a transfer to a Minister on behalf of the Crown, or to a public authority, of land under a perpetual lease.
  - (3) A lease, conveyance, assignment or other dealing that contravenes this clause is not valid for any purpose.
  - (4) In this clause:  
**public authority** means:
    - (a) a local council, or
    - (b) a public body that was a declared public body for the purposes of a provision of Schedule 3 to the *Crown Lands (Continued Tenures) Act 1989* immediately before the Act's repeal, or
    - (c) any other public body declared by the Minister, by order published in the Gazette, to be a public authority for the purposes of this clause.

## Part 4 Continued perpetual leases

### 22 Application of Part

This Part applies to a continued tenure that was a perpetual lease as defined in the *Crown Lands (Continued Tenures) Act 1989* (a **continued perpetual lease**) immediately before the Act's repeal.

**Note.** See also Part 2 of this Schedule. In particular, clause 3 provides that (subject to this Schedule) any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.

### 23 Restrictions on use of certain land in irrigation areas

- (1) This clause applies to an irrigation farm lease or a non-irrigable lease (as referred to in clause 6 of Part 2 of Schedule 2 to the *Crown Lands (Continued Tenures) Act 1989*).
- (2) The land under the lease must not be used to plant any of the following if a condition prohibiting it was attached to the land immediately before the commencement of clause 6 of Part 2 of Schedule 2 to the *Crown Lands (Continued Tenures) Act 1989*:
  - (a) an area of orchard or vineyard to a greater extent than 5,000 square metres or, if some other area is specified in the conditions attached to the land, that other area,
  - (b) any fruit trees, vines or plantings or a specified class of fruit trees, vines or plantings,

- (c) an area of fruit trees, vines or plantings, or an area of a specified class of fruit trees, vines or plantings, in excess of a specified area.
- (3) Subclause (2) does not prevent planting in accordance with an approval or consent that is given as provided by the condition.

#### **24 Minister taken to have given consent to certain development applications**

- (1) This clause applies for the purposes of the *Environmental Planning and Assessment Act 1979* and any instrument made under that Act and has effect despite anything in that Act or any instrument made under that Act.
- (2) The Minister is taken to have given written consent on behalf of the Crown (as the owner of Crown land under a continued perpetual lease) for the lessee of that land to make a development application relating to any of the following kinds of development:
  - (a) without limiting paragraph (g), the repair, maintenance, restoration or renovation of an existing building on the land,
  - (b) the erection, repair, maintenance or replacement of a fence on the land,
  - (c) the carrying out of development on the land that is consistent with the purposes for which the lease has been granted,
  - (d) the erection, repair, maintenance or replacement of signage on the land,
  - (e) the erection, repair, maintenance or replacement of a temporary structure on the land,
  - (f) the installation, repair, maintenance or replacement of services on the land,
  - (g) the erection, repair, maintenance or replacement of any of the following on the land:
    - (i) a building or other structure on the land that is permitted under the lease,
    - (ii) a toilet block,
    - (iii) a structure for the protection of the environment,
  - (h) the carrying out on the land of any other development of a kind prescribed by the regulations.
- (3) Subclause (2) does not apply in relation to any development that involves any of the following:
  - (a) the subdivision of land,
  - (b) the demolition of a building,
  - (c) the carrying out of remediation works (including the extraction of materials that belong to the Crown or excavations in connection with those works),
  - (d) the carrying out of development of a kind excluded by the regulations.
- (4) Any regulations made for the purposes of subclause (3) (d) may exclude the whole or a part of a kind of development specified by subclause (2).
- (5) To avoid doubt, the Minister's consent on behalf of the Crown (as the owner of Crown land under a continued perpetual lease) to lodgment of a development application in respect of that land is required for the carrying out of any development to which subclause (2) does not apply.

## Part 5 Continued term leases

### 25 Application of Part

This Part applies to a continued tenure that was a term lease as defined in the *Crown Lands (Continued Tenures) Act 1989* (a **continued term lease**) immediately before the Act's repeal.

**Note.** See also Part 2 of this Schedule. In particular, clause 3 provides that (subject to this Schedule) any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.

### 26 Occupancy after expiry of term lease

A holder of a continued term lease who, with the Minister's consent, remains in possession of the leased land after the lease expires does so as a lessee from month to month at a monthly rent of one-twelfth of the annual rent, and subject to the conditions, applicable to the lease immediately before it expired.

## Part 6 Continued special leases

### 27 Application of Part

This Part applies to a continued tenure that was a special lease as defined in the *Crown Lands (Continued Tenures) Act 1989* (a **continued special lease**) immediately before the Act's repeal.

**Note.** See also Part 2 of this Schedule. In particular, clause 3 provides that (subject to this Schedule) any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.

### 28 Conditions

- (1) The holder of a continued special lease that has been brought under the provisions of the *Real Property Act 1900* holds the land comprised in the lease subject to any recordings on the folio of the Register created in respect of it and to the provisions of this Act.
- (2) The holder of a continued special lease must comply with any conditions to which the lease is subject and with any provisions, conditions or covenants recorded on the folio of the Register created in respect of it.
- (3) A condition of a continued special lease that provides for the determination of a matter by a local land board (except a determination that is, in effect, a review of a decision of the Minister) is taken to provide instead for the determination of the matter by the Minister.
- (4) If a condition of a continued special lease or any law provides for an appeal against any determination of a local land board, the condition or law is taken to provide instead for an appeal against a determination of the Minister.
- (5) If a condition of a special lease provides for the exercise of a function by a specified officer, the function may, with the authority of the Minister, be exercised by another officer.

### 29 Occupancy after expiry of special lease for term

A holder of a continued special lease for a term who, with the Minister's consent, remains in possession of the leased land after the lease expires does so as a lessee from month to month at a monthly rent of one-twelfth of the annual rent, and subject to the conditions, applicable to the lease immediately before it expired.

## Part 7 Continued permissive occupancies

### 30 Application of Part

This Part applies to a continued tenure that was a permissive occupancy as defined in the *Crown Lands (Continued Tenures) Act 1989* and becomes a licence under this Act because of clause 3 (a ***continued permissive occupancy***).

**Note.** See also Part 2 of this Schedule. In particular, clause 3 provides that (subject to this Schedule) any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.

### 31 Payment of rent and other amounts

- (1) Subject to this Schedule, any amount shown as payable in the records of the Department in respect of a continued permissive occupancy is, until the contrary is proved, payable in the manner and at the time indicated in those records.
- (2) The rent for a continued permissive occupancy remains payable in advance.

### 32 Conditions

- (1) A condition of a continued permissive occupancy that provides for the determination of a matter by a local land board (except a determination that is, in effect, a review of a decision of the Minister) is taken to provide instead for the determination of the matter by the Minister.
- (2) If a condition of a continued permissive occupancy or any law provides for an appeal against any determination of a local land board, the condition or law is taken instead to provide for an appeal against a determination of the Minister.
- (3) If a condition of a continued permissive occupancy provides for the exercise of a function by a specified officer, the function may, with the authority of the Minister, be exercised by another officer.

## Part 8 Continued incomplete tenure purchases

### 33 Application of Part

- (1) This Part applies to a continued tenure that was an incomplete purchase as defined in the *Crown Lands (Continued Tenures) Act 1989* (a ***continued incomplete tenure purchase***) immediately before the Act's repeal.

**Note.** See also Part 2 of this Schedule. In particular, clause 3 provides that (subject to this Schedule) any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.

- (2) However, a continued incomplete Western lands lease purchase (as defined in Schedule 3) is not a continued incomplete tenure purchase.

### 34 Application of Part 5 of Schedule 4 to purchases

- (1) Subject to this Part and the regulations, Part 5 of Schedule 4 applies in relation to continued incomplete tenure purchases in the same way as it applies in relation to new incomplete purchases.
- (2) The regulations may make provision for or with respect to the modification of Part 5 of Schedule 4 in its application to continued incomplete tenure purchases.

### 35 Annual interest rate for purchases by instalment

The annual interest rate for any money that is payable to the Crown in respect of a continued incomplete tenure purchase by half-yearly or annual instalments remains 8 percent.

### 36 Minimum annual instalments

- (1) This clause applies to a continued incomplete tenure purchase with a purchase price payable by annual instalments.
- (2) An annual instalment of the purchase price of land is not to be less than the minimum annual instalment payable at the due date.
- (3) If an annual instalment of the purchase price of land (whether with or without interest added) is less than the minimum annual instalment, the annual instalment is increased to the minimum annual instalment.
- (4) For the purpose of this Part, the minimum annual instalment at each due date is determined in accordance with the following formula:

$$M = B \times \frac{C}{D}$$

where:

*M* is the minimum annual instalment.

*B* is the annual instalment base.

*C* is the Consumer Price Index number for the last quarter for which such a number was published before the due date for the annual instalment.

*D* is the Consumer Price Index number for the last quarter for which such a number was published before the annual instalment base adjustment date.

- (5) If the balance of purchase money and interest owing in respect of the continued incomplete tenure purchase is at any time less than the amount of the minimum annual instalment, the balance only is payable.
- (6) In this clause:  
*annual instalment base* means \$350 or any higher amount that may be prescribed by the regulations.  
*annual instalment base adjustment date* means 1 July 2004 or, if the annual instalment base is prescribed by the regulations, the date prescribed by the regulations as the annual instalment base adjustment date.

### 37 Minimum half-yearly instalments

- (1) This clause applies to a continued incomplete tenure purchase with a purchase price payable by half-yearly instalments.
- (2) A half-yearly instalment of the purchase price of land is not to be less than the minimum half-yearly instalment payable at the due date.
- (3) If a half-yearly instalment of the purchase price of land (whether with or without interest added) is less than the minimum half-yearly instalment, the half-yearly instalment is increased to the minimum half-yearly instalment.
- (4) For the purpose of this Part, the minimum half-yearly instalment at each due date is determined in accordance with the following formula:

$$M = B \times \frac{C}{D}$$

where:



*M* is the minimum half-yearly instalment.

*B* is the half-yearly instalment base.

*C* is the Consumer Price Index number for the last quarter for which such a number was published before the due date for the half-yearly instalment.

*D* is the Consumer Price Index number for the last quarter for which such a number was published before the half-yearly instalment base adjustment date.

(5) If the balance of purchase money and interest owing in respect of the continued incomplete tenure purchase is at any time less than the amount of the minimum half-yearly instalment, the balance only is payable.

(6) In this clause:

*half-yearly instalment base* means \$175 or any higher amount that may be prescribed by the regulations.

*half-yearly instalment base adjustment date* means 1 July 2004 or, if the half-yearly instalment base is prescribed by the regulations, the date prescribed by the regulations as the half-yearly instalment base adjustment date.

### **38 Forfeiture of purchase**

This Schedule does not limit Division 7.4 (Forfeiture of holdings) of this Act in its application to an incomplete tenure purchase, except to the extent provided by Part 5 of Schedule 4 (as applied by clause 34 of this Schedule).

## Schedule 2 Continued irrigation tenures

**Introductory note.** The former *Hay Irrigation Act 1902* and *Wentworth Irrigation Act 1890* enabled the Lands Administration Ministerial Corporation constituted by the *Crown Lands Act 1989* to grant certain tenures (including leases and incomplete purchases) over land within areas specified in each of those former Acts. Schedule 7 to this Act provides for land in these areas to become Crown land.

This Schedule continues these tenures in force under this Act and makes special provision for them, including by continuing to apply some of the provisions of the former Acts.

In addition, section 1.13 provides that the provisions of this Schedule prevail over those of Parts 5–7 of this Act to the extent of any inconsistency.

### Part 1 Introduction

#### 1 Application of Schedule

- (1) This Schedule applies in relation to continued irrigation tenures.
- (2) This Schedule does not apply in relation to a lease or incomplete purchase that is a continued tenure (as defined in Schedule 1).

**Note.** Schedule 1 makes special provision for continued tenures.

- (3) Also, this Schedule applies subject to Schedule 4 in relation to continued irrigation leases that are purchasable leases (except as provided by Division 2 of Part 2 of this Schedule).

**Note.** Schedule 4 enables land under certain leases over Crown land (including continued irrigation leases) to be purchased by leaseholders.

#### 2 Definitions

In this Schedule:

***continued incomplete irrigation lease purchase*** is defined in Part 4 of this Schedule.

***continued irrigation lease*** means a lease in force under a repealed irrigation Act immediately before the Act's repeal.

***continued irrigation tenure*** means:

- (a) a continued incomplete irrigation lease purchase, or
- (b) a continued irrigation lease.

***pending irrigation lease purchase*** is defined in Division 2 of Part 2 of this Schedule.

***repealed irrigation Act*** means each of the following:

- (a) the *Hay Irrigation Act 1902*,
- (b) the *Wentworth Irrigation Act 1890*.

***transfer***, in relation to a lease, means the sale, assignment or other transfer of the lease (or an interest in land that is conferred by the lease).

### Part 2 Continued irrigation tenures generally

#### Division 1 Preservation of continued irrigation tenures

##### 3 Continued irrigation tenures remain in force

- (1) A continued irrigation tenure over land remains in force under this Act as:
  - (a) for a continued irrigation lease—a lease under this Act over the same land, and
  - (b) for a continued incomplete irrigation lease purchase—an incomplete purchase under this Act of the same land.
- (2) A continued irrigation tenure for a term does not (except as provided by this Act) remain in force beyond the end of that term.

- (3) A continued irrigation tenure for an indefinite term, or a term that exceeds the maximum term for a tenure of that kind under another provision of this Act, remains in force indefinitely or for the remainder of its term despite that provision.
- (4) The terms and conditions of a continued irrigation tenure remain the same subject to any variations made by or under this Act.
- (5) Any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued irrigation tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.
- (6) A continued irrigation tenure can be varied, forfeited, revoked, terminated, cancelled or dealt with in any other way under this Act as if it had been granted under this Act.
- (7) To avoid doubt, any sublease or sublicence of a continued irrigation tenure also remains in force under this Act.
- (8) A continued irrigation tenure does not cease to be a continued irrigation tenure just because it is renewed or extended.
- (9) This clause has effect subject to the other provisions of this Schedule. In particular, any terms or conditions of a tenure preserved by this clause do not have effect to the extent of any inconsistency with those provisions or the provisions of Schedule 4.  
**Note.** Clause 1 (3) also provides that this Schedule applies subject to Schedule 4 in relation to purchasable leases that are continued irrigation leases.
- (10) In this clause:  
*terms and conditions* includes covenants, reservations, exceptions, exemptions, provisions and prohibitions.  
*variations* include:
  - (a) for any terms and conditions—alterations, removals or omissions, and
  - (b) for any amounts—waivers, reductions, remissions or postponements.

#### **4 Schedule does not affect third party interests in land**

- (1) This Schedule does not affect the continuation of any third party interest in land under a tenure that becomes a continued irrigation tenure because of the operation of this Schedule.
- (2) A *third party interest* in land under a tenure is a mortgage, easement, right of way or other interest in the land of a person except the holder of the tenure.

#### **5 Updating of references in folio for land under continued irrigation tenure**

- (1) In the folio of the Register relating to a continued irrigation tenure:
  - (a) a reference to a repealed irrigation Act is to be read as being a reference to this Act, and
  - (b) a reference to a provision of a repealed irrigation Act is to be read as being a reference to the corresponding provision (if any) of this Act.
- (2) Subclause (1) extends to a reference in a folio of the Register that, because of a provision of a repealed irrigation Act, was required to be read as being a reference to a repealed irrigation Act (or a provision of a repealed irrigation Act).
- (3) For the purposes of this clause, a provision of this Act is a *corresponding provision* in relation to a provision of a repealed irrigation Act if the provision of this Act corresponds (or substantially corresponds) to the provision of the repealed irrigation Act.
- (4) The regulations may, for the purposes of subclause (3), declare a provision of this Act to be a corresponding provision of a repealed irrigation Act. The regulations may do

so even if the provision of this Act is not substantially the same as that of the repealed irrigation Act.

## **Division 2 Pending irrigation lease purchases**

### **6 Application of Division**

- (1) This Division applies in relation to pending irrigation lease purchases.
- (2) A *pending irrigation lease purchase* is a proposed purchase of land under a lease that becomes a continued irrigation lease when this Schedule commences if:
  - (a) the holder of the lease is the proposed purchaser, and
  - (b) for land under a mortgage—each mortgagee has given written consent to the purchase, and
  - (c) a contract of sale for the land has not yet been entered (including because the purchase price has not been finalised).
- (3) The provisions of this Division prevail over the provisions of Schedule 4 to the extent of any inconsistency.

### **7 Pending irrigation lease purchase to be treated as purchase application under Schedule 4**

- (1) A pending irrigation lease purchase is to be treated by the Minister as if it were an application for the purchase of the land under Schedule 4.
- (2) For this purpose, the purchase application is to be treated as if it were:
  - (a) for an application of a kind that the Minister was required to grant under a repealed irrigation Act if it was duly made—an application based on an existing purchase right in relation to the land (as defined in Schedule 4), or
  - (b) for an application of a kind that the Minister had a discretion to grant under a repealed irrigation Act if it was duly made—an application based on an existing application right in relation to the land (as defined in Schedule 4).

**Note.** See clause 10 of Schedule 4 for provisions about how the purchase price will be determined.

### **8 Objections and appeals against purchase price made before this Schedule commences**

- (1) This clause applies to an objection or appeal against the purchase price for land to which a pending irrigation lease purchase relates that was made under an existing review provision, but not finally determined, before the commencement of this Schedule.
- (2) An existing review provision continues to apply to the determination of the objection or appeal made under it as if:
  - (a) a reference to the Lands Administration Ministerial Corporation constituted by the *Crown Lands Act 1989* were a reference to the Minister, and
  - (b) the provision (as modified by paragraph (a)) formed part of this Division.
- (3) In this clause:  
*existing review provision* means:
  - (a) section 19B of the *Hay Irrigation Act 1902*, or
  - (b) section 22C of the *Wentworth Irrigation Act 1890*.

## **9 Determinations of purchase price after this Schedule commences**

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

**Note.** An appeal to the Civil and Administrative Tribunal under this clause is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*. A decision of the Tribunal on such an external appeal may be appealed to the Land and Environment Court under Schedule 1 to that Act.
- (5) The Civil and Administrative Tribunal, or the Land and Environment Court, on hearing the appeal, may affirm the Minister's determination or substitute its own.

## **Division 3 Ministerial consent under this Schedule**

### **10 Giving of Ministerial consent**

- (1) To avoid doubt, the Minister has a discretion as to whether to grant consent to a transfer or other dealing for the purposes of a provision of this Schedule.
- (2) The Minister may grant a waiver under clause 12 instead of granting consent for the purposes of a provision of this Schedule even if an application for the waiver has not been made.

### **11 Removal of Ministerial consent requirement for transfers**

- (1) The Minister may, by notice published in the Gazette, declare that the Minister's consent is not required under this Schedule to a transfer of a continued irrigation lease over specified land (or a class of land).
- (2) The declaration has effect despite the provision of this Schedule that requires the consent.
- (3) If any land to which a declaration relates is land under the *Real Property Act 1900*, the Registrar-General must make an appropriate recording in respect of that land in the Register.

### **12 Waiver of Ministerial consent requirement**

- (1) The holder of a continued irrigation lease or the mortgagee in possession of land under the lease may apply to the Minister for a waiver of any requirement under this Schedule for the Minister to give consent to a transfer.
- (2) The application must:
  - (a) be made before any agreement or other arrangement for the transfer is made by the holder, and
  - (b) specify the land to which the transfer relates.

- (3) The Minister may, by written notice given to the applicant, grant the waiver for the period (if any) specified and subject to any conditions that the Minister decides to impose.
- (4) The waiver has effect despite the provision of this Schedule that requires the consent.
- (5) The Registrar-General may rely on the notice when accepting or registering any transfer or other dealing to which the waiver relates if the transfer or dealing is lodged while the waiver is in effect.

### **13 Certain dealings do not require Ministerial consent**

- (1) A provision of this Schedule requiring the Minister's consent to a transfer or other dealing involving land does not prevent:
  - (a) the creation, transfer or extinguishment of a sublease or mortgage, or
  - (b) the creation, transfer or extinguishment of an easement over land if it is under a perpetual lease.
- (2) However, the following provisions apply to the subleasing of land held under a lease (the *head lease*):
  - (a) the sublease must:
    - (i) specify the purpose for which the land may be used under the sublease and that purpose must be consistent with the purpose for which the land may be used under the head lease or with a purpose prescribed by the regulations, and
    - (ii) provide that it terminates when the head lease terminates,
  - (b) the holder of the head lease must notify the Minister of the granting of the sublease within 28 days after it is granted,
  - (c) the holder of the head lease must take all reasonable steps to ensure that the holder of the sublease complies with the requirements of this Act and the conditions of the head lease with respect to the land.

## **Part 3 Continued irrigation leases**

**Note.** See also Part 2 of this Schedule. In particular, clause 3 provides that (subject to this Schedule) any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued irrigation tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.

### **Division 1 Transfers of leases**

#### **14 Consent of Minister required for lease transfers**

- (1) A continued irrigation lease cannot be transferred without the Minister's written consent.
- (2) To avoid doubt, the Minister has a discretion as to whether to grant consent.

### **Division 2 Rent for continued irrigation leases**

#### **15 Definition**

In this Division:

*initial period* means the 2-year period beginning on the day that this Schedule commences.

## 16 Rent during initial period

- (1) Subject to this Division, rent for a continued irrigation lease remains payable during the initial period in the same way and the same amounts as it was payable under the repealed irrigation Act under which it was granted.
- (2) For this purpose, any rent shown as payable in the records of the Department remains, until the contrary is proved, payable in the amounts and manner, and at the time, indicated in those records.
- (3) Section 12.12 (Interest on arrears) applies to rent in arrears during the initial period.
- (4) The following provisions apply during the initial period for a continued irrigation lease that was granted under the *Hay Irrigation Act 1902*:
  - (a) the rent remains payable annually and in advance,
  - (b) section 6.4 (Annual rent cannot generally be less than minimum rent) applies to the annual rent for a continued irrigation lease.
- (5) This clause does not limit the application of section 12.15 (Waiver, reduction, remission, postponement or rebate of certain amounts) to rents for continued irrigation leases.

## 17 Rent redeterminations for continued irrigation leases

- (1) The Secretary may, by notice given to the holder of a continued irrigation lease, redetermine the rent for the lease. The Secretary may do so at any time (whether during or after the expiry of the initial period).
- (2) A notice for the redetermination of rent for a continued irrigation lease made during the initial period must provide that the redetermination takes effect only when the initial period ends.
- (3) If rent is not redetermined during the initial period, the Secretary must redetermine it as soon as reasonably practicable after the initial period ends.
- (4) Where there is a rent redetermination under this clause (the **initial rent redetermination**) for a continued irrigation lease that does not provide for rent redeterminations, the rent for the lease is to be varied for inflation on the date of each anniversary of the initial rent redetermination (the **CPI adjustment date**) in accordance with the following formula:

$$R = C \times \frac{P_2}{P_1}$$

where:

**R** is the rent adjusted for inflation.

**C** is the rent payable immediately before the CPI adjustment date.

**P<sub>2</sub>** is the Consumer Price Index number for the last quarter for which a number was published before the CPI adjustment date.

**P<sub>1</sub>** is the Consumer Price Index number for the last quarter for which a number was published before the initial rent redetermination or last CPI adjustment date (as the case requires).

- (5) Any redetermination of rent under this clause must be in accordance with Part 6 of this Act. For this purpose, that Part applies as if the continued irrigation lease made no provision for how rent is to be redetermined.

**Note.** Division 6.3 of this Act will require the rent to be redetermined by reference to the market rent for the land.
- (6) This clause applies despite any other provision of this Schedule or the terms and conditions of the continued irrigation lease.

## 18 Application of Part 6 of Act after initial period

To avoid doubt, Part 6 of this Act applies in relation to rent for a continued irrigation lease after the initial period ends, subject to clause 17.

**Note.** Section 6.7 (2) provides that the following provisions apply if the Secretary is required or permitted to redetermine the rent for a holding in circumstances other than those set out in section 6.7 (1):

- (a) subject to paragraphs (b) and (c), the Secretary may redetermine the rent as often as the Secretary considers appropriate or as required by the regulations unless the holding's provisions provide differently,
- (b) the rent must be redetermined at least once every 5 calendar years,
- (c) the rent for a holding cannot be redetermined more than once in each calendar year unless the redetermination is required because of a change in the area of the holding.

## Part 4 Continued incomplete irrigation lease purchases

### 19 Application of Part

- (1) This Part applies to incomplete irrigation lease purchases (but not to pending irrigation lease purchases).

**Note.** See also Part 2 of this Schedule. In particular, clause 3 provides that (subject to this Schedule) any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued irrigation tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.

- (2) A *continued incomplete irrigation lease purchase* is a purchase of land that was formerly under a lease granted under a repealed irrigation Act if the payment of the purchase price or any other amount due in respect of the purchase was not complete immediately before the Act's repeal.

### 20 Application of Part 5 of Schedule 4 to purchases

- (1) Subject to this Part and the regulations, Part 5 of Schedule 4 applies in relation to continued incomplete irrigation lease purchases in the same way as it applies in relation to new incomplete purchases.
- (2) The regulations may make provision for or with respect to the modification of Part 5 of Schedule 4 in its application to continued incomplete irrigation lease purchases.

### 21 Title to land, covenants and mortgages

- (1) A continued incomplete irrigation lease purchase continues to be governed by the contract of sale for the land (including with respect to when title to the land purchased passes and the granting of mortgages), subject to this Part.
- (2) Without limiting subclause (1), a continued incomplete irrigation lease purchase remains subject to any covenants required to be entered into by the former Ministerial Corporation.
- (3) The contract of sale is taken to have been entered into by the Minister on behalf of the Crown without the need for any novation. Accordingly, any reference to the former Ministerial Corporation is taken to be a reference to the Minister, except as provided by subclause (4).
- (4) Any mortgage over the land under a continued incomplete irrigation lease purchase granted by the former Ministerial Corporation continues to be held by the Ministerial Corporation under this Act on behalf of the Crown.
- (5) In this clause:  
*former Ministerial Corporation* means the Lands Administration Ministerial Corporation as it was constituted by the *Crown Lands Act 1989*.



## 22 When purchase price payable

- (1) The purchase price for a continued incomplete irrigation lease purchase:
  - (a) for a purchase under the *Hay Irrigation Act 1902* resulting from an application for purchase made on or after 1 July 2004—remains payable in full within the time that had been required by the former Lands Administration Ministerial Corporation constituted by the *Crown Lands Act 1989*, and
  - (b) for a purchase in any other case—remains payable by 74 equal half-yearly instalments along with the applicable annual interest rate (with the first instalment payable on the date of purchase).
- (2) The **applicable annual interest rate** is 4 percent or any other rate that may be prescribed by the regulations.

## 23 Minimum half-yearly instalments

- (1) This clause applies to a continued incomplete irrigation lease purchase resulting from the purchase of land formerly under a lease granted under the *Hay Irrigation Act 1902*.
- (2) A half-yearly instalment of the purchase price of land under a continued incomplete irrigation lease purchase to which this clause applies is not to be less than the minimum half-yearly instalment payable at the due date.
- (3) If a half-yearly instalment of the purchase price of land (whether with or without interest added) is less than the minimum half-yearly instalment, the half-yearly instalment is increased to the minimum half-yearly instalment.
- (4) For the purpose of this Part, the minimum half-yearly instalment at each due date is determined in accordance with the following formula:

$$M = B \times \frac{C}{D}$$

where:

**M** is the minimum half-yearly instalment.

**B** is the half-yearly instalment base.

**C** is the Consumer Price Index number for the last quarter for which such a number was published before the due date for the half-yearly instalment.

**D** is the Consumer Price Index number for the last quarter for which such a number was published before the half-yearly instalment base adjustment date.

- (5) If the balance of purchase money and interest owing in respect of the continued incomplete irrigation lease purchase is at any time less than the amount of the minimum half-yearly instalment, the balance only is payable.
- (6) In this clause:

**half-yearly instalment base** means \$175 or any higher amount that may be prescribed by the regulations.

**half-yearly instalment base adjustment date** means 1 July 2004 or, if the half-yearly instalment base is prescribed by the regulations, the date prescribed by the regulations as the half-yearly instalment base adjustment date.

## 24 Forfeiture of purchase

This Schedule does not limit Division 7.4 (Forfeiture of holdings) of this Act in its application to an incomplete irrigation lease purchase, except to the extent provided by Part 5 of Schedule 4 (as applied by clause 20 of this Schedule).

## Schedule 3 Land in Western Division

**Introductory note.** The *Western Lands Act 1901* made special provision for the granting of certain tenures (including leases and incomplete purchases) over Crown land in the Western Division. It also provided for the application of specified provisions of the *Crown Lands Act 1989* with modifications.

This Schedule continues these tenures in force under this Act and makes special provision for them, including by continuing to apply some of the provisions of the *Western Lands Act 1901*. It also includes other special provisions that will be applicable to certain land in the Western Division.

In addition, section 1.13 provides that the provisions of this Schedule prevail over those of Parts 5–7 of this Act to the extent of any inconsistency.

### Part 1 Introduction

#### 1 Application of Schedule

- (1) This Schedule applies in relation to land in the Western Division.
- (2) This Schedule does not apply in relation to a lease or incomplete purchase that is a continued tenure (as defined in Schedule 1).  
**Note.** Schedule 1 makes special provision for continued tenures.
- (3) Also, this Schedule applies subject to Schedule 4 in relation to Western lands leases that are purchasable leases (except as provided by Division 2 of Part 2 of this Schedule).  
**Note.** Schedule 4 enables land under certain leases over Crown land (including Western lands leases) to be purchased by leaseholders.

#### 2 Definitions

In this Schedule:

***continued incomplete Western lands lease purchase*** is defined in Part 4 of this Schedule.

***continued Western lands lease*** means a lease in force under the *Western Lands Act 1901* immediately before the Act's repeal.

***continued Western lands tenure*** means:

- (a) a continued incomplete Western lands lease purchase, or
- (b) a continued Western lands lease.

***new Western lands lease*** means a lease over Crown land in the Western Division that is granted under this Act after the repeal of the *Western Lands Act 1901*.

***pending Western lands lease purchase*** is defined in Division 2 of Part 2 of this Schedule.

***perpetual Western lands lease*** means a Western lands lease that is a perpetual lease.

***rural Western lands lease*** means a Western lands lease that is declared (or taken to have been declared) as a rural Western lands lease under clause 3.

***transfer***, in relation to a lease, means the sale, assignment or other transfer of the lease (or an interest in land that is conferred by the lease).

***urban Western lands lease*** means:

- (a) a Western lands lease that is declared (or taken to have been declared) as an urban Western lands lease under clause 3, or
- (b) any other Western lands lease that is not a rural Western lands lease.

***Western lands lease*** means:

- (a) a continued Western lands lease, or
- (b) a new Western lands lease.

### 3 Classification of Western lands leases as rural or urban

- (1) The Minister may, by order published in the Gazette, declare that a Western lands lease of a specified kind is either a rural Western lands lease or urban Western lands lease for the purposes of this Schedule and any regulations made for the purposes of this Schedule.
- (2) Until an order under this clause provides differently:
  - (a) any continued Western lands lease that was a rural lease for the purposes of Part 6 of the *Western Lands Act 1901* immediately before the Act's repeal is taken to have been declared a rural Western lands lease under this clause, and
  - (b) any continued Western lands lease that was an urban lease for the purposes of Part 6 of the *Western Lands Act 1901* immediately before the Act's repeal is taken to have been declared an urban Western lands lease under this clause.

## Part 2 Continued Western lands tenures generally

### Division 1 Preservation of continued Western lands tenures

#### 4 Continued Western lands tenures remain in force

- (1) A continued Western lands tenure over land remains in force under this Act as:
  - (a) for a continued Western lands lease—a lease under this Act over the same land, and
  - (b) for a continued incomplete Western lands lease purchase—an incomplete purchase under this Act of the same land.
- (2) A continued Western lands tenure for a term does not (except as provided by this Act) remain in force beyond the end of that term.
- (3) A continued Western lands tenure for an indefinite term, or a term that exceeds the maximum term for a tenure of that kind under another provision of this Act, remains in force indefinitely or for the remainder of its term despite that provision.
- (4) The terms and conditions of a continued Western lands tenure remain the same subject to any variations made by or under this Act.
- (5) Any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued Western lands tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.
- (6) A continued Western lands tenure can be varied, forfeited, revoked, terminated, cancelled or dealt with in any other way under this Act as if it had been granted under this Act.
- (7) To avoid doubt, any sublease or sublicence of a continued Western lands tenure also remains in force under this Act.
- (8) A continued Western lands tenure does not cease to be a continued Western lands tenure just because it is renewed or extended.
- (9) This clause has effect subject to the other provisions of this Schedule. In particular, any terms or conditions of a tenure preserved by this clause do not have effect to the extent of any inconsistency with those provisions or the provisions of Schedule 4.

**Note.** Clause 1 (3) also provides that this Schedule applies subject to Schedule 4 in relation to purchasable leases that are Western lands leases.
- (10) In this clause:

**terms and conditions** includes covenants, reservations, exceptions, exemptions, provisions and prohibitions.

*variations* include:

- (a) for any terms and conditions—alterations, removals or omissions, and
- (b) for any amounts—waivers, reductions, remissions or postponements.

#### **5 Schedule does not affect third party interests in land**

- (1) This Schedule does not affect the continuation of any third party interest in land under a tenure that becomes a continued Western lands tenure because of the operation of this Schedule.
- (2) A ***third party interest*** in land under a tenure is a mortgage, easement, right of way or other interest in the land of a person except the holder of the tenure.

#### **6 Updating of references in folio for land under continued Western lands tenure**

- (1) In the folio of the Register relating to a continued Western lands tenure:
  - (a) a reference to the *Western Lands Act 1901* is to be read as being a reference to this Act, and
  - (b) a reference to a provision of the *Western Lands Act 1901* is to be read as being a reference to the corresponding provision (if any) of this Act.
- (2) Subclause (1) extends to a reference in a folio of the Register that, because of a provision of the *Western Lands Act 1901*, was required to be read as being a reference to the *Western Lands Act 1901* (or a provision of the *Western Lands Act 1901*).
- (3) For the purposes of this clause, a provision of this Act is a ***corresponding provision*** in relation to a provision of the *Western Lands Act 1901* if the provision of this Act corresponds (or substantially corresponds) to the provision of the *Western Lands Act 1901*.
- (4) The regulations may, for the purposes of subclause (3), declare a provision of this Act to be a corresponding provision of the *Western Lands Act 1901*. The regulations may do so even if the provision of this Act is not substantially the same as that of the *Western Lands Act 1901*.

### **Division 2 Pending Western lands lease purchases**

#### **7 Application of Division**

- (1) This Division applies in relation to pending Western lands lease purchases.
- (2) A ***pending Western lands lease purchase*** is an application to purchase land under a lease that becomes a continued Western lands lease when this Schedule commences if it:
  - (a) was made under section 28BB of the *Western Lands Act 1901*, and
  - (b) has not been finally determined on that commencement (including because the purchase price has not been finalised).
- (3) The provisions of this Division prevail over the provisions of Schedule 4 to the extent of any inconsistency.

#### **8 Pending Western lands lease purchase to be treated as purchase application under Schedule 4**

- (1) A pending Western lands lease purchase is to be treated by the Minister as if it were an application for the purchase of the land under Schedule 4.

- (2) For this purpose, the purchase application is to be treated as if it were:
  - (a) for an application of a kind that the Minister was required to grant under the *Western Lands Act 1901* if it was duly made—an application based on an existing purchase right in relation to the land (as defined in Schedule 4), or
  - (b) for an application of a kind that the Minister had a discretion to grant under the *Western Lands Act 1901* if it was duly made—an application based on an existing application right in relation to the land (as defined in Schedule 4).

**Note.** See clause 10 of Schedule 4 for provisions about how the purchase price will be determined.

### **9 Objections and appeals against purchase price made before this Schedule commences**

- (1) This clause applies to an objection or appeal against the purchase price for land to which a pending Western lands lease purchase relates that was made under clause 11 of Schedule 4 to the *Western Lands Act 1901*, but not finally determined, before the commencement of this Schedule.
- (2) Clause 11 of Schedule 4 to the *Western Lands Act 1901* continues to apply to the determination of the objection or appeal as if it formed part of this Division.

### **10 Determination of purchase price after this Schedule commences**

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

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

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

## **Division 3 Ministerial consent under this Schedule**

### **11 Giving of Ministerial consent**

- (1) To avoid doubt, the Minister has a discretion as to whether to grant consent to a transfer or other dealing for the purposes of a provision of this Schedule.
- (2) The Minister may grant a waiver under clause 13 instead of granting consent for the purposes of a provision of this Schedule even if an application for the waiver has not been made.

## **12 Removal of Ministerial consent requirement for transfers or other dealings**

- (1) The Minister may, by notice published in the Gazette, declare that the Minister's consent is not required under this Schedule to a transfer or other dealing involving specified land (or a class of land).
- (2) The declaration has effect despite the provision of this Schedule that requires the consent.
- (3) If any land to which a declaration relates is land under the *Real Property Act 1900*, the Registrar-General must make an appropriate recording in respect of that land in the Register.
- (4) Any notice in effect under section 18G (3) of the *Western Lands Act 1901* for land immediately before the Act's repeal continues in effect as a notice for the purposes of this clause for the same land.

## **13 Waiver of Ministerial consent requirement**

- (1) The holder of a continued Western lands tenure or the mortgagee in possession of land under the tenure may apply to the Minister for a waiver of any requirement under this Schedule for the Minister to give consent before a transfer or other dealing can happen.
- (2) The application must:
  - (a) be made before any agreement or other arrangement for the transfer or other dealing is made by the holder, and
  - (b) specify the land to which the transfer or other dealing relates.
- (3) The Minister may, by written notice given to the applicant, grant the waiver for the period (if any) specified and subject to any conditions that the Minister decides to impose.
- (4) The waiver has effect despite the provision of this Schedule that requires the consent.
- (5) The Registrar-General may rely on the notice when accepting or registering any transfer or other dealing to which the waiver relates if the transfer or dealing is lodged while the waiver is in effect.

## **14 Certain dealings do not require Ministerial consent**

- (1) A provision of this Schedule requiring the Minister's consent to a transfer or other dealing involving land does not prevent:
  - (a) the creation, transfer or extinguishment of a sublease or mortgage, or
  - (b) the creation, transfer or extinguishment of an easement over the land if it is under a perpetual lease.
- (2) However, the following provisions apply to the subleasing of land held under a lease (the *head lease*):
  - (a) the sublease must:
    - (i) specify the purpose for which the land may be used under the sublease and that purpose must be consistent with the purpose for which the land may be used under the head lease or with a purpose prescribed by the regulations, and
    - (ii) provide that it terminates when the head lease terminates,
  - (b) the holder of the head lease must notify the Minister of the granting of the sublease within 28 days after it is granted,

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

## **Part 3 Western lands leases**

### **Division 1 Dealings involving Western lands leases**

#### **15 Application of Part**

This Part does not apply to a new Western lands lease unless it is a perpetual lease.

#### **16 Consent of Minister required for transfer of leases**

A Western lands lease cannot be transferred without the Minister's written consent.

#### **17 Subdivision of land under Western lands lease**

- (1) The holder of a Western lands lease may, with the Minister's written consent, subdivide land comprised in the lease.
- (2) An application for consent is to be made in the form approved by the Minister.
- (3) The applicant is required to meet all reasonable costs incurred in dealing with the application.
- (4) The Minister may, in the Minister's absolute discretion, refuse the application or approve the subdivision either conditionally or unconditionally.
- (5) A condition of consent also has effect as a condition attaching to any lease resulting from the subdivision that is a lease to which the condition relates.
- (6) The Minister may make any consequential alterations to the conditions or purpose of the lease for a subdivided portion as the Minister considers necessary as a result of the subdivision.
- (7) The Minister may exclude from a subdivision any areas required for roads or access to the subdivided portions.
- (8) Excluded areas are, on consent being given to the subdivision, surrendered to the Crown free from any right to compensation.
- (9) The Minister may apportion rent or other money due to the Crown to the subdivided portions in such manner as the Minister considers appropriate.
- (10) The consent of the Minister for a subdivision does not affect the requirements of any other written law that applies to the subdivision.

### **Division 2 Lease conditions generally**

#### **18 Conditions that apply to Western lands leases**

- (1) A Western lands lease is subject to the following conditions (the *standard conditions*):
  - (a) the condition set out in clause 19 (2) if it is a perpetual lease,
  - (b) conditions set out in Division 3 of this Part,
  - (c) conditions prescribed for the purposes of subclause (2).
- (2) The regulations may make provision for or with respect to the conditions applicable to Western lands leases, including the modification of the conditions referred to in subclause (1) (a) and (b).

- (3) A Western lands lease is also subject to:
  - (a) any other conditions specified in the lease or imposed by the Minister under this Act, and
  - (b) for a continued Western lands lease—any conditions to which it was subject immediately before the repeal of the *Western Lands Act 1901*.
- (4) The standard conditions (including if they are modified) prevail over any conditions referred to in subclause (3) to the extent of any inconsistency.

#### **19 Approved activities on land under perpetual Western lands leases**

- (1) The regulations may make provision for or with respect to:
  - (a) approving the carrying out of specified activities (*approved activities*) on land under perpetual Western lands leases, and
  - (b) requirements in relation to the carrying out of a specified approved activity.
- (2) It is a condition of a perpetual Western lands lease that the holder may carry out any approved activity on the land under the lease, but only if:
  - (a) the carrying out of the activity does not result in the activity becoming the primary use of the land, and
  - (b) the activity is carried out in accordance with any applicable requirements for the activity specified by the regulations.

### **Division 3 Conditions taken to apply to Western lands leases**

#### **20 Application of Division**

- (1) This Division sets out conditions that are taken to be included in all Western lands leases.
- (2) However, to the extent that the provisions of this Division are inconsistent with those of a conservation agreement entered into under the *National Parks and Wildlife Act 1974*, the provisions of this clause do not apply to a lease relating to land subject to that agreement.

#### **21 Definitions**

In this Division:

*Building Code of Australia* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

*company* has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

*contact details*, in relation to a person, means:

- (a) the full name of the person, and
- (b) the residential or business address of the person, and
- (c) a telephone number on which the person can be contacted.

#### **22 Materials, minerals and timber**

- (1) The lease (except if it is a lease granted under this Act for that purpose) does not confer any right to remove material from the leased land or to prevent the entry and removal of material by authorised persons.
- (2) The holder of the lease must not prevent any persons duly authorised in that behalf from cutting or removing timber or material or from searching for any mineral within the land under lease.



### **23 Protective measures**

- (1) The holder of the lease must take measures that the Minister may direct to protect the leased land and, without limitation, the Minister may direct the holder to do any one or more of the following:
  - (a) to prevent the use by stock of any part of the leased land for the periods that the Minister considers necessary and to erect fencing for that purpose,
  - (b) to prevent the overgrazing of the land,
  - (c) to prevent any part of the leased land being used for agricultural practices of the types and for the periods that the Minister considers necessary,
  - (d) to take measures to protect the land (including measures to prevent soil erosion or other damage to the land) as the Soil Conservation Commissioner under the *Soil Conservation Act 1938* may recommend.
- (2) The holder of the lease must not overgraze the leased land (or permit or allow it to be overgrazed). For this purpose, a decision of the Minister as to what constitutes overgrazing is final.

### **24 Erection of gates on public roads**

The holder of the lease must, if the Minister directs it, erect gates on public roads on the leased land.

### **25 Repairs to improvements**

The holder of the lease must carry out the repairs to improvements on the leased land that the Minister may direct.

### **26 Provision of returns and statements**

The holder of the lease must provide the Minister with the returns and statements that the Minister may require from time to time on any matter connected with the leased land or any other land (whether within or outside the Western Division) in which the holder has an interest.

### **27 Erection of buildings outside local government areas**

- (1) If the holder of the lease erects a building on the leased land that is outside a local government area, the holder must ensure that the building is erected (whether by the holder or an employee or contractor) in accordance with the applicable requirements of the Building Code of Australia for buildings of that kind.
- (2) This clause does not affect any requirements of the *Home Building Act 1989* concerning residential building work.

### **28 Provision of contact details**

- (1) If the holder of the lease is a company, the holder must provide the Minister with the contact details of the secretary (or, if there is no secretary, the contact details of each of the directors) of the company both when the lease is granted and whenever any of those details change.
- (2) The holder of the lease must not transfer the lease to another person unless the holder first provides the contact details of the person to whom the lease is to be transferred. If the transferee is a company, the contact details should be those of the secretary of the company (or, if there is no secretary, those of each of the directors).

## **29 Contravention of certain conditions is an offence**

A holder of a lease who contravenes a condition specified by clause 23 (1), 24, 25, 26 or 28 (1) is guilty of an offence.

Maximum penalty: as determined under section 11.7.

## **Division 4 Rent for continued Western lands leases**

**Note.** See also Part 2 of this Schedule. In particular, clause 4 provides that (subject to this Schedule) any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount payable for a continued Western lands tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.

### **30 Regulations may provide for rent for continued Western lands leases**

- (1) The regulations may make provision for or with respect to the method for calculating the rent for continued Western lands leases.
- (2) The regulations may also make provision for the redetermination or adjustment of the rent for a continued Western lands lease, including by modifying the application of Part 6 of the Act for this purpose.
- (3) This clause does not limit the application of section 12.15 (Waiver, reduction, remission, postponement or rebate of certain amounts) to rents for continued Western lands leases.

## **Division 5 Development on land under perpetual Western lands leases**

### **31 Minister taken to have given consent to certain development applications**

- (1) This clause applies for the purposes of the *Environmental Planning and Assessment Act 1979* and any instrument made under that Act and has effect despite anything in that Act or any instrument made under that Act.
- (2) The Minister is taken to have given written consent on behalf of the Crown (as the owner of Crown land under a perpetual Western lands lease) for the lessee of that land to make a development application relating to any of the following kinds of development:
  - (a) without limiting paragraph (g), the repair, maintenance, restoration or renovation of an existing building on the land,
  - (b) the erection, repair, maintenance or replacement of a fence on the land,
  - (c) the carrying out of development on the land that is consistent with the purposes for which the lease has been granted,
  - (d) the erection, repair, maintenance or replacement of signage on the land,
  - (e) the erection, repair, maintenance or replacement of a temporary structure on the land,
  - (f) the installation, repair, maintenance or replacement of services on the land,
  - (g) the erection, repair, maintenance or replacement of any of the following on the land:
    - (i) a building or other structure on the land that is permitted under the lease,
    - (ii) a toilet block,
    - (iii) a structure for the protection of the environment,
  - (h) for land under a perpetual Western lands lease—the carrying out of development on the land if it is an approved activity (as defined in clause 19),
  - (i) the carrying out on the land of any other development of a kind prescribed by the regulations.

- (3) Subclause (2) does not apply in relation to any development that involves any of the following:
  - (a) the subdivision of land,
  - (b) the demolition of a building,
  - (c) the carrying out of remediation works (including the extraction of materials that belong to the Crown or excavations in connection with those works),
  - (d) the carrying out of development of a kind excluded by the regulations.
- (4) Any regulations made for the purposes of subclause (3) (d) may exclude the whole or a part of a kind of development specified by subclause (2).
- (5) To avoid doubt, the Minister's consent on behalf of the Crown (as the owner of Crown land under a perpetual Western lands lease) to lodgment of a development application in respect of that land is required for the carrying out of any development to which subclause (2) does not apply.

## **Division 6 Extension of term leases**

### **32 Extension of term of lease**

- (1) The term of a Western lands lease that is a term lease may be extended from time to time:
  - (a) for a term not exceeding 40 years, and
  - (b) on the terms and conditions (not affecting the amount of rent) that the Minister thinks fit.
- (2) An extension may be for the whole, or a specified part, of the land leased.
- (3) An application for an extension must be made in the manner and form approved by the Minister or prescribed by the regulations.

## **Division 7 Conversion of term leases into perpetual leases**

### **33 Application to convert term lease into perpetual lease**

- (1) The holder of a Western lands lease that is a term lease (the *original term lease*) may make an application (a *lease conversion application*) to the Minister for the lease to be converted into a perpetual lease.
- (2) A lease conversion application must be made in the manner and form approved by the Minister or prescribed by the regulations.
- (3) A lease conversion application may be withdrawn with the consent of the Minister if the costs incurred in dealing with the application are paid.
- (4) All leases held in the same interest must be included in one lease conversion application.

### **34 Granting of lease conversion applications**

- (1) Subject to this clause, the Minister may grant or refuse a lease conversion application at the Minister's absolute discretion.
- (2) The Minister must refuse to grant a lease conversion application if the Minister considers the granting of the application is contrary to the public interest or undesirable in any other way.

- (3) A lease conversion application cannot be granted:
  - (a) if any part of the leased land is reserved from sale, lease or licence under any Act—unless the Minister approves, or
  - (b) if any part of the leased land is in a State forest or timber or forest reserve—unless the Forestry Corporation approves, or
  - (c) if any part of the leased land is in an area over which an authority or claim (or a particular authority or claim) cannot be granted or registered under the *Mining Act 1992*—unless the Secretary (as defined in that Act) approves.
- (4) The Minister may, on the recommendation of the Secretary, grant a lease conversion application as to the whole or part of the leased land.

### **35 Effect of grant of lease conversion application**

- (1) Subject to this clause, the granting of a lease conversion application converts the original term lease into a perpetual lease granted under this Act.
- (2) The following provisions apply if a lease conversion application is granted for only part of the leased land:
  - (a) the following separate leases are taken to have been granted under this Act:
    - (i) a perpetual lease limited to that part of the land (the *new perpetual lease*),
    - (ii) a term lease for the rest of the land (the *residual term lease*),
  - (b) any person having an interest in the original term lease is taken to have an equivalent interest (whether by way of mortgage or in any other way) in both the new perpetual lease and the residual term lease,
  - (c) both the new perpetual lease and the residual term lease are taken to commence on the day the application is granted,
  - (d) the term of the residual term lease is taken to be the balance (as at the date the application is granted) of the original term lease,
  - (e) the residual term lease is, subject to this clause, taken to be held subject to the terms and conditions to which the original term lease was subject at the date of the application,
  - (f) the cost of any necessary survey must be paid by the holder of the new perpetual lease and the residual term lease in the manner and at the time prescribed by the regulations and a failure to do so makes the leases liable to forfeiture.
- (3) A perpetual lease resulting from the granting of a lease conversion application is subject to:
  - (a) the terms and conditions to which the original term lease was subject at the date of the application (except those relating to its term), and
  - (b) any other terms and conditions that the Minister decides to impose when granting the application.

## **Part 4 Continued incomplete Western lands lease purchases**

### **36 Application of Part**

- (1) This Part applies to incomplete Western lands lease purchases (but not to pending Western lands lease purchases).

**Note.** See also Part 2 of this Schedule. In particular, clause 4 provides that (subject to this Schedule) any rent, royalty, deposit, fee, purchase price, instalment, interest or other amount

payable for a continued Western lands tenure remains payable in the same way and the same amounts subject to any variations made by or under this Act.

- (2) A ***continued incomplete Western lands lease purchase*** is a purchase of land that was formerly under a lease granted under the *Western Lands Act 1901* if the payment of the purchase price or any other amount due to the Crown in respect of the purchase was not complete immediately before the Act's repeal.

### **37 Application of Part 5 of Schedule 4 to purchases**

- (1) Subject to this Part and the regulations, Part 5 of Schedule 4 applies in relation to continued incomplete Western lands lease purchases in the same way as it applies in relation to new incomplete purchases.
- (2) The regulations may make provision for or with respect to the modification of Part 5 of Schedule 4 in its application to continued incomplete Western lands lease purchases.

### **38 Ministerial consent to dealings not required**

The consent of the Minister is not required for the holder of an incomplete Western lands lease purchase to transfer the land under the purchase, except to the extent provided by Part 5 of Schedule 4 (as applied by clause 37 of this Schedule).

### **39 Forfeiture of purchase**

This Schedule does not limit Division 7.4 (Forfeiture of holdings) of this Act in its application to an incomplete Western lands lease purchase, except to the extent provided by Part 5 of Schedule 4 (as applied by clause 37 of this Schedule).

## **Part 5 Cultivation of certain Western lands**

### **40 Application of Part**

This Part applies to each of the following kinds of land in the Western Division (***applicable Western land***):

- (a) any land under a Western lands lease expressed to be granted for the purpose of grazing,
- (b) any land under a Western lands lease that is not expressed to be granted for the purpose of agriculture, combined grazing and agriculture or mixed farming or for any similar purpose or purposes,
- (c) any land under a continued tenure (as defined in Schedule 1) that was a permissive occupancy, conditional lease or homestead selection under the *Crown Lands (Continued Tenures) Act 1989* immediately before the Act's repeal,
- (d) any dedicated or reserved Crown land for which there is a Crown land manager,
- (e) any stock watering place (as defined in the *Local Land Services Act 2013*) having an area of more than 5,000 square metres,
- (f) any land authorised to be used or occupied under a licence under this Act,
- (g) any other land prescribed by the regulations.

### **41 Definitions**

In this Part:

***applicable Western land*** is defined in clause 40.

**cultivate**, in relation to applicable Western land, includes the preparation of the land for cultivation and the further cultivation of the land if it has previously been cultivated, but does not include any clearing of native vegetation (as defined in the *Native Vegetation Act 2003*), or clearing of State protected land (as defined in clause 4 of Schedule 3 to that Act), to which a cultivation condition applies.

**cultivation condition** is defined in clause 44 (3).

**cultivation consent** is defined in clause 43 (1).

**responsible occupier**, in relation to applicable Western land, means:

- (a) for land under a holding—the holder of the holding, or
- (b) for any other land—the person who has the care, control and management of the land.

#### **42 Cultivation of applicable Western land generally requires consent**

- (1) The responsible occupier for applicable Western land must not cultivate any part of the land unless:
  - (a) there is a cultivation consent in force for it, and
  - (b) the cultivation complies with all of the cultivation conditions applicable to the cultivation consent.

Maximum penalty: as determined under section 11.7.

- (2) If the Minister is satisfied that the responsible occupier for applicable Western land has cultivated the land in contravention of subclause (1), the Minister can disregard the cultivation when deciding (for the purposes of a provision of this Act, the regulations or a lease over the land) whether the land is suitable for agricultural production.
- (3) Without limiting Division 7.4 of this Act, a contravention of subclause (1) by the holder of a holding over the land is a sufficient ground for the Minister to forfeit the holding.
- (4) Subclauses (2) and (3) apply regardless of whether or not a person has been prosecuted for, or convicted of, an offence against subclause (1).
- (5) This clause does not apply in any circumstances that may be prescribed by the regulations.

#### **43 Applications for cultivation consent**

- (1) The responsible occupier for applicable Western land may apply to the Minister for consent (a **cultivation consent**) to cultivate a specified part of the land.
- (2) An application must be made in the manner and form approved by the Minister.

#### **44 Grant of cultivation consent**

- (1) The Minister may refuse or grant an application for a cultivation consent for specified applicable Western land.
- (2) A cultivation consent must be in writing.
- (3) A cultivation consent may be granted unconditionally or subject to any conditions (**cultivation conditions**) that the Minister may decide to specify in the consent.
- (4) A cultivation consent remains in force for the period (if any) specified in the consent, unless it is revoked, suspended or surrendered sooner.
- (5) The regulations may make provision for or with respect to the payment of annual fees for cultivation consents.

**45 Variation of cultivation consent**

The Minister may, by written notice given to the responsible occupier for applicable Western land, vary the period or conditions of a cultivation consent granted for the land.

**46 Suspension or revocation of cultivation consent**

- (1) The Minister may, by written notice given to the responsible occupier for applicable Western land, revoke or suspend any cultivation consent granted for the land.
- (2) A cultivation consent can be revoked or suspended on the ground that a cultivation condition has been contravened or on any other ground.
- (3) The Minister cannot revoke a cultivation consent for applicable Western land unless the Minister first gives the responsible occupier of the land an opportunity to make written submissions about why it should not be revoked.
- (4) A suspension of a cultivation consent has effect for the period specified in the written notice given to the responsible person. A suspended cultivation consent ceases to be in force while it is suspended.
- (5) The Minister may at any time extend, shorten or revoke a suspension of a cultivation consent for applicable Western land in a further written notice given to the responsible occupier for the land.

**47 Appeals against decisions concerning cultivation consent**

- (1) A person may appeal to the Land and Environment Court against any of the following:
  - (a) a refusal of the Minister to grant a cultivation consent to the person,
  - (b) a condition of a cultivation consent granted to the person,
  - (c) the suspension or revocation of a cultivation consent granted to the person or the person's predecessor in title.
- (2) Without limiting subclause (1) (a), the Minister is taken to have refused to grant a cultivation consent for the purposes of an appeal if the Minister does not determine the application for the consent within 6 months after the application is received by the Minister.

**48 Certain existing consents continue in force or are suspended under this Part**

- (1) This clause applies to any consent to cultivate applicable Western land given under section 18DA of the *Western Lands Act 1901* (a **continued consent**) if immediately before the Act's repeal:
  - (a) the consent was in force (a **continued current consent**), or
  - (b) the consent was suspended (a **continued suspended consent**).
- (2) A continued current consent continues in force under this Part as a cultivation consent for the same land.
- (3) A continued suspended consent continues under this Part as a suspended cultivation consent for the same land.
- (4) The continued consent continues to be subject to the terms and conditions specified in the consent or suspension of the consent unless:
  - (a) the terms or conditions are inconsistent with another provision of this Part or the regulations made for the purposes of this Part, or
  - (b) are varied under this Part.

- (5) Subject to this Part, a continued consent can be varied, revoked, suspended or dealt with in any other way under this Part as if it had been granted under this Part.

## Part 6 Roads and tracks

### 49 Definitions

In this Part:

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

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

**special easement** is defined in clause 50.

### 50 Minister may create special easements for roads and tracks

- (1) The Minister may, by instrument lodged with the Registrar-General, create any of the following easements (a **special easement**) over land within the Western Division that, in the Minister's opinion, is being used as a road or track:
  - (a) an easement in the nature of a right of way,
  - (b) any other easements as are appropriate to the construction and maintenance of a right of way.
- (2) An instrument for creating a special easement:
  - (a) cannot be lodged with respect to freehold land, and
  - (b) must specify the beneficiary of the easement or the land to which the benefit of the easement is appurtenant.
- (3) An instrument lodged under this clause is to be made by reference to a plan that is registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919*.
- (4) On receiving an instrument lodged under this clause, the Registrar-General may record any particulars of the creation of the special easement as the Registrar-General considers necessary in any folio of the Register relating to land which, in the Registrar-General's opinion, is affected by the creation of the easement.
- (5) No duty is payable under the *Duties Act 1997* in respect of an instrument lodged under this clause.
- (6) Sections 88A and 181A of the *Conveyancing Act 1919* apply to an instrument lodged under this clause.
- (7) An easement referred to in section 88A of the *Conveyancing Act 1919* may be created not only in favour of a public authority referred to in that section, but also in favour of any other persons or bodies as may be specified in that regard by the plan referred to in subclause (3). In that case, any reference in section 88A of the *Conveyancing Act 1919* to a public authority extends to any person or body specified.
- (8) As soon as practicable after a special easement is created, the Minister must cause notice of that fact to be given to:
  - (a) each beneficiary of the easement, and
  - (b) each lessee of land over which the easement is in force.
- (9) Section 89 of the *Conveyancing Act 1919* does not apply to a special easement.
- (10) Neither the creation of a special easement in respect of any land held under a lease, nor a lessee's request for the creation of a special easement in respect of any such land, is to be regarded:



- (a) as a breach of any contractual provision prohibiting, restricting or regulating the lessee's right to deal with the land, or
  - (b) as giving rise to any remedy by a party to any legal instrument, or as causing or permitting the termination of any legal instrument, because of the creation of the easement or the making of the request.
- (11) This clause applies to land under a Western lands lease granted or issued before 1 December 2002 (which is when section 35S of the former *Western Lands Act 1901* commenced), but does not apply to a lease granted on or after that date.

#### **51 Minister may extinguish special easements**

- (1) The Minister may, by instrument lodged with the Registrar-General, release a special easement on the application of:
  - (a) each beneficiary of a special easement, and
  - (b) for a special easement over land under a lease—each lessee of the land.
- (2) On receiving an instrument lodged under this clause, the Registrar-General may record any particulars of the release of the special easement as the Registrar-General considers necessary in any folio of the Register relating to land which, in the Registrar-General's opinion, is affected by the release of the easement.
- (3) No duty is payable under the *Duties Act 1997* in respect of an instrument lodged under this clause.
- (4) As soon as practicable after a special easement is released under this clause, the Minister must cause notice of that fact to be given to:
  - (a) each former beneficiary of the easement, and
  - (b) each lessee of land over which the easement was formerly in force.
- (5) To avoid doubt, this clause extends to an easement originally granted under section 35S of the former *Western Lands Act 1901*.

#### **52 Minister may dedicate public roads**

- (1) This clause applies to land under a Western lands lease granted or issued before 1 December 2002 (which is when section 35Q of the *Western Lands Act 1901* commenced), but does not apply to a lease granted on or after that date.
- (2) The Minister may, by notice published in the Gazette, withdraw any land from a Western lands lease for the purpose of dedicating it as a public road if, in the Minister's opinion, it is being used by the public as a road.
- (3) After the land is withdrawn, the Minister may dedicate that land as a public road as provided by section 12 of the *Roads Act 1993*.
- (4) No compensation is payable with respect to any loss or damage arising because of the operation of this clause.

#### **53 Public roads over freehold land**

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

#### **54 Repeal of provisions of Part**

The provisions of this Part are repealed on a day or days to be appointed by proclamation.

## Part 7 Compliance and enforcement

### 55 Application of Part

- (1) This Part applies to a condition of a Western lands lease regardless of whether the condition attaches to the lease because of the provisions of the lease, this Act or in any other way.
- (2) In this Part, **condition** of a Western lands lease includes a covenant, term, reservation, exception, exemption, provision or prohibition.

### 56 Notice to rectify condition contraventions

- (1) The Minister may, by written notice given to a holder of a Western lands lease, require the holder:
  - (a) to comply with a condition of the lease that the Minister considers has been contravened, and
  - (b) to take, within a specified period, any specified measures that the Minister considers appropriate to rectify the contravention.
- (2) The Minister may, by written notice given to the responsible occupier of applicable Western land (as defined in Part 5 of this Schedule), require the occupier:
  - (a) to comply with a condition of a cultivation consent for the land granted under Part 5 of this Schedule that the Minister considers has been contravened, and
  - (b) to take, within a specified period, any specified measures that the Minister considers appropriate to rectify the contravention.
- (3) A notice under this clause may be varied or revoked by a further written notice.
- (4) A person given a notice under this clause must comply with the notice.  
Maximum penalty (subclause (4)): as determined under section 11.7.

### 57 Minister may rectify contravention and recover costs

- (1) If a person does not take any of the measures specified by a notice under clause 56 within the period required by the notice, the Minister may, by the Minister's agents or contractors, enter the land concerned and take those measures.
- (2) Any costs incurred by the Minister in taking any of those measures:
  - (a) may be recovered by the Minister from the person as a debt in a court of competent jurisdiction, and
  - (b) are a charge on the land concerned until the costs are paid to or recovered by the Minister.

### 58 Different proceedings may be taken for same contravention

The fact that proceedings have been taken under one of the provisions of this Schedule for a contravention of a condition of a lease does not prevent different proceedings being taken under this Schedule or in any other way for the same contravention.

## Part 8 General

### 59 Continuation of certain special purpose lease despite sale of leased land

- (1) This clause applies to the lease granted to Silverton Wind Farms Developments Pty Ltd (the **Silverton lease**) under section 35XC of the *Western Lands Act 1901* over

certain land in the Western Division (the *leased land*), as in force immediately before the Act's repeal.

- (2) If a lessee of any of the leased land (the *new owner*) applies for (and is granted) the right to purchase the land under this Act, the provisions of this Act relating to special purpose leases continue to apply in respect of the Silverton lease as if the Crown had retained ownership of the land as Crown land, and can be enforced by or against the Crown accordingly.
- (3) The new owner is bound by the Silverton lease in the same way as the owner would have been if the owner had continued to hold a lease from the Crown over the leased land instead of the freehold.
- (4) This clause ceases to bind the Crown, the lessee under the Silverton lease and the new owner if:
  - (a) the lease (or, if renewed under an option, the renewed lease) is revoked under this Act, or
  - (b) the lease (or renewed lease) expires.

## Schedule 4 Purchasable leases

**Introductory note.** The *Crown Lands (Continued Tenures) Act 1989* continued in force certain leases that enabled its holders to purchase the land under the lease. It also continued in force certain incomplete purchases of land under leases of these kinds. The *Hay Irrigation Act 1902*, *Wentworth Irrigation Act 1890* and *Western Lands Act 1901* also permitted certain leaseholders to purchase land under a lease. Schedules 1–3 to this Act continue these leases in force under this Act.

This Schedule makes special provision for the purchase of land under these leases, including by continuing to apply some of the provisions of the former Acts. It also allows for the purchase of certain land under both continued and new perpetual leases in the Western Division. Section 1.13 provides that the provisions of this Schedule prevail over those of Parts 5–7 of this Act to the extent of any inconsistency.

### Part 1 Introduction

#### 1 Application of Schedule

This Schedule applies to each of the following kinds of leases:

- (a) Western lands leases (as defined in Schedule 3) that are perpetual leases,
- (b) continued perpetual leases over Eastern or Central Crown land,
- (c) continued term leases over Western Crown land or Eastern or Central Crown land.

**Note.** Clause 3 (2) provides that the holder of a perpetual lease over Western Crown land can apply to purchase the land only:

- (a) if the Minister is permitted to sell the land under section 5.9, or
- (b) in any other circumstances prescribed by the regulations.

#### 2 Definitions

In this Schedule:

**continued perpetual lease** means a perpetual lease continued in force under this Act by Schedule 1, 2 or 3.

**continued term lease** means a term lease continued in force under this Act by Schedule 1, 2 or 3.

**Eastern or Central Crown land** means Crown land in the Eastern and Central Division.

**existing application right**, in relation to land under a purchasable lease, means a right to make an application to purchase the land (but not a right to have the application granted) that was available to be exercised under a repealed holding Act immediately before the Act's repeal.

**existing purchase right**, in relation to land under a purchasable lease, means a right to purchase the land (or to have an application to purchase the land granted) that was available to be exercised under a repealed holding Act immediately before the Act's repeal.

**purchasable lease** means a lease to which this Schedule applies, but does not include:

- (a) a lease that is liable to forfeiture, or
- (b) a lease that can no longer be purchased.

**purchase application** means an application under this Schedule to purchase the land under a purchasable lease.

**repealed holding Act** means any of the following:

- (a) the *Crown Lands (Continued Tenures) Act 1989*,
- (b) the *Hay Irrigation Act 1902*,
- (c) the *Wentworth Irrigation Act 1890*,

(d) the *Western Lands Act 1901*.

**successful purchase application** means a purchase application that has been granted (whether over the whole or part of the land to which the application relates).

**Western Crown land** means Crown land in the Western Division.

## Part 2 Making purchase applications

### 3 Making application to purchase

- (1) The holder of a purchasable lease may apply to the Minister to purchase the whole or part of the land under the lease.

**Note.** Part 3 of this Schedule provides for the circumstances in which the Minister may or must grant an application. Additional circumstances may also be prescribed under Part 6 of this Schedule.

- (2) However, the holder of a perpetual lease over Western Crown land can apply only:
  - (a) if the Minister is permitted to sell it under section 5.9, or
  - (b) in any other circumstances prescribed by the regulations.

**Note.** Section 5.9 provides for the circumstances in which the Minister can sell Western Crown land.

- (3) A purchase application must be made in the form and manner approved by the Minister.
- (4) A purchase application may be withdrawn by the lessee at any time before it is granted or refused.
- (5) A purchase application can relate to lands under 2 or more perpetual leases held by the same holder, but only if the lands are adjoining.

### 4 Applicant may be required to pay for survey

- (1) An applicant who makes a purchase application is liable to pay to the Crown:
  - (a) if a survey fee has not been paid in respect of the lease to which the application relates—the applicable survey fee, and
  - (b) if a survey is necessary as a result of the purchase and the survey is carried out by the Crown—the cost of the survey as assessed by the Minister.
- (2) The **applicable survey fee** for subclause (1) (a) is any fee prescribed by the regulations for the Division of the State in which the land is located.
- (3) The Minister may permit an applicant to have any necessary survey carried out (at the applicant's own expense) by a registered land surveyor within the meaning of the *Surveying and Spatial Information Act 2002* in accordance with any special requirements of the Minister.
- (4) If a survey is to be carried out by the Crown and not as provided by subclause (3), the Minister may require the applicant to pay the estimated cost before the survey is carried out and refuse the application if the estimated cost is not paid.
- (5) To avoid doubt, the cost of a survey includes the cost of surveying all or any interests or rights of third parties on the land concerned that the Minister directs (for example, third party access rights, travelling stock rights and other rights that could be protected by the creation of an easement).
- (6) The Minister may waive any fees or costs payable under this clause.

## Part 3 Granting of purchase applications

### Division 1 Applications for Western Crown land under perpetual leases

#### 5 When purchase applications can be granted

- (1) The Minister may grant a purchase application for Western Crown land under a perpetual lease if the Minister is satisfied that the applicant was entitled to make the application (as provided by clause 3 (2)).
- (2) The regulations may make provision for or with respect to any other considerations that may or must be taken into account in determining whether to grant or refuse purchase applications (or kinds of purchase applications) under subclause (1), including (without limitation):
  - (a) considerations concerning environmental impacts, and
  - (b) considerations concerning impacts on third parties (for example, impacts on access to land).

### Division 2 Applications for Eastern or Central Crown land under perpetual leases

#### 6 When purchase applications can be granted

- (1) The Minister may grant a purchase application for Eastern or Central Crown land under a continued perpetual lease:
  - (a) if the Minister is satisfied that:
    - (i) there was an existing application right in relation to the land, or
    - (ii) the lessee would have had a right to have the application granted under subclause (2) if it had been made within the 2-year period referred to in that subclause, or
  - (b) in any other circumstances prescribed by the regulations.
- (2) However, the Minister must grant a purchase application for Eastern or Central Crown land under a continued perpetual lease:
  - (a) if there was an existing purchase right in relation to the land and the application is made within 2 years after the commencement of this clause, or
  - (b) in any other circumstances prescribed by the regulations.

**Note.** An applicant may still make an application under subclause (1) after the expiry of the 2-year period. However, the Minister is not required to grant applications under subclause (1).
- (3) The regulations may make provision for or with respect to any other considerations that may or must be taken into account in determining whether to grant or refuse purchase applications (or kinds of purchase applications) under subclause (1).

### Division 3 Applications for land under continued term leases

#### 7 When purchase applications can be granted

- (1) The Minister may grant a purchase application for land under a continued term lease:
  - (a) if there was an existing application right in relation to the land under the term lease and the application is made within the application period, or
  - (b) in any other circumstances prescribed by the regulations.
- (2) However, the Minister must grant a purchase application for land under a continued term lease:

- (a) if there was an existing purchase right in relation to the land and the application is made within the application period, or
  - (b) in any other circumstances prescribed by the regulations.
- (3) The **application period** for the purposes of this clause is 5 years beginning on the day this clause commences.
- (4) The regulations may make provision for or with respect to the considerations that may or must be taken into account in determining whether to grant or refuse purchase applications (or kinds of purchase applications) under subclause (1).
- (5) A continued term lease that expires during the application period is taken to be extended until the end of the application period, unless it is revoked, surrendered or forfeited sooner under this Act.

## Part 4 Successful purchase applications

### Division 1 Determination of purchase price

#### 8 Minister to determine purchase price in accordance with this Division

The Minister is to determine the purchase price for land to which a successful purchase application relates in accordance with this Division.

#### 9 Purchase price is generally to be market value or land value

- (1) The purchase price for land to which a successful purchase application relates is to be one of the following:
- (a) the market value of the land determined by the Minister as at the date of the application,
  - (b) if the Minister elects—the latest land value of the land determined in accordance with the *Valuation of Land Act 1916* as at the date of the application.
- (2) The Minister may make an election under subclause (1) (b) by a written notice given to the applicant.
- (3) Any improvements on the land that were made by the lessee, or are owned or in the course of being purchased from the Crown by the lessee, must be disregarded in determining a purchase price based on the market value of the land.
- Note.** Section 6A of the *Valuation of Land Act 1916* already provides that land value determined under that Act is not to take into account improvements made by the owner (which includes a lessee because the lessee holds an interest in the land).
- (4) If it appears to the Minister that the purchase value of the land has been reduced by any act, default or neglect of the holder, the Minister must determine the purchase price as if the reduction in value had not taken place.

#### 10 When purchase price can be different to market price or land value

- (1) Despite clause 9, the purchase price for land to which a successful purchase application relates is to be:
- (a) for land under a lease over Western Crown land that the Minister is satisfied is predominantly used for primary production (including for grazing, agricultural, pastoral or mixed farming purposes)—3 percent of the market value, or 3 percent of the land value of the land determined in accordance with the *Valuation of Land Act 1916*, as determined by the Minister at the date of the application, or

- (b) for land to which a transferred pending purchase relates—a purchase price determined in accordance with the provisions of the relevant repealed holding Act, or
  - (c) for land under a continued perpetual lease (except a lease referred to in paragraph (a))—a purchase price determined in accordance with the provisions of the relevant repealed holding Act.
- (2) Subclause (1) (c) ceases to apply to purchase applications made more than 2 years after the commencement of this clause.
- (3) In this clause:  
***transferred pending purchase*** means:
- (a) a pending tenure purchase (as defined in Schedule 1), or
  - (b) a pending irrigation lease purchase (as defined in Schedule 2), or
  - (c) a pending Western lands lease purchase (as defined in Schedule 3).

#### **11 Payment by instalments**

- (1) The Minister may determine that the purchase price for land to which a successful purchase application relates is to be paid by annual instalments.
- (2) The minimum annual instalment is to be \$2,500 or any other amount that may be prescribed by the regulations.
- (3) The Minister may allow annual instalments to be paid over a period determined by the Minister (provided the period does not exceed 20 years).
- (4) However, the Minister must allow the payment of the purchase price to be paid over a period of 20 years if:
  - (a) the land purchased is land referred to in clause 10 (1) (a) under a perpetual lease, or
  - (b) the land purchased is Eastern or Central Crown land under a perpetual lease, or
  - (c) the land purchased is Western or irrigation land under a continued term lease.
- (5) The Minister may require interest to be paid with respect to a purchase price that is payable by instalments. The regulations may make provision for or with respect to the determination or calculation of the interest payable for instalment purchases.
- (6) In this clause:  
***Western or irrigation land*** means:
  - (a) Western Crown land, or
  - (b) any land that was in the *Area* as defined in the *Hay Irrigation Act 1902* immediately before the Act's repeal, or
  - (c) any land that was in the *Area* as defined in the *Wentworth Irrigation Act 1890* immediately before the Act's repeal.

#### **12 Objections to market or land valuation**

- (1) An applicant who has made a purchase application and considers that a purchase price based on the market value determined by the Minister is greater than the actual market value of the land may lodge an objection with the Minister in the form and manner approved by the Secretary. However, only one objection can be lodged under this subclause and it must be lodged within 60 days of the determination.
- (2) The applicant must provide the Minister with any evidence and particulars that the Minister may reasonably require in support of the objection.



- (3) The Minister must consider an objection that is duly made under subclause (1) (including any relevant information provided with it) and, if the Minister considers that the market value is lower than the Minister originally determined, must adjust the purchase price accordingly.
- (4) An applicant who has made a purchase application and is dissatisfied with a purchase price based on the land value of the land as determined in accordance with the *Valuation of Land Act 1916* may object to the Valuer-General against the land valuation under Part 3 of that Act. However, Part 4 of that Act does not apply in relation to the Valuer-General's determination of the objection.
- (5) The provisions of Part 3 of the *Valuation of Land Act 1916* apply for the purposes of subclause (4) as if the period of 60 days referred to in section 35 (1) of that Act ran from the day on which the Minister gave the applicant written notice under clause 9 of the election to use the land value.
- (6) A decision of the Valuer-General under this clause is final and binding on the applicant and the Minister.

## **Division 2 Granting of purchase applications generally**

### **13 Exclusions for roadways and other public purposes**

- (1) The Minister may, when granting a purchase application, do any one or more of the following in relation to the land to which the application relates:
  - (a) exclude any areas required for roadways or other public purposes from the land,
  - (b) modify in any other way the boundaries of the land,
  - (c) create easements for public access over the land.
- (2) Any areas excluded from the land for roadways or other public purposes or because of modification of boundaries are surrendered to the Crown.
- (3) The applicant may appeal to the Civil and Administrative Tribunal against any decision under this clause:
  - (a) to exclude land, or
  - (b) to create an easement for public access.

**Note.** An appeal to the Civil and Administrative Tribunal under this subclause is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*. A decision of the Tribunal on such an external appeal may be appealed to the Land and Environment Court under Schedule 1 to that Act.
- (4) Sections 5.51 and 5.52 (except section 5.51 (1)) apply to and in respect of the creation of an easement under this clause in the same way as they apply to and in respect of the creation of easements under section 5.51.
- (5) The Civil and Administrative Tribunal may hear and determine an appeal under subclause (3) and may make any order or decision that it considers appropriate.
- (6) The order or decision of the Civil and Administrative Tribunal may include either or both of the following:
  - (a) an order requiring the creation of an easement for public access under subclause (1) (c) instead of the exclusion of land under subclause (1) (a),
  - (b) a redetermination of the purchase price (or a requirement that the Minister redetermine the purchase price) having regard to any variation in the area of land to be purchased.

#### **14 Depth limitations**

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

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

- (1) This clause applies if only part of the land to which a lease applies is purchased under a successful purchase application.
- (2) The Secretary must redetermine the annual rent for the remaining part of the lease in accordance with Part 6 of this Act for the remainder of the current rent redetermination period applicable to the lease.
- (3) The Minister may make any consequential alterations to the purposes and conditions of a lease as the Minister considers to be necessary because of the purchase of part of the land to which the lease relates.

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

- (1) This clause applies if there is a mortgage over the lease of land to which a successful purchase application relates when the application is granted.
- (2) The mortgagee under the mortgage:
  - (a) retains the rights, powers and remedies that are expressly or impliedly given to the mortgagee against the mortgagor by the mortgage, and
  - (b) has, in respect of the land and to the extent that they are relevant, the same rights, powers and remedies as the mortgagee had in respect of the lease.

#### **17 Easements**

The granting of a purchase application does not affect any easement that is appurtenant to, or a burden on, the land to which the application relates.

## **Part 5 New incomplete purchases**

### **Division 1 Application**

#### **18 Application of Part**

This Part applies to a purchase of land under a purchasable lease on or after the commencement of this Schedule if the payment of the purchase price or any other amount due to the Crown in respect of the purchase is not complete (a *new incomplete purchase*).

### **Division 2 Title to land and conditions**

#### **19 Title to, and conditions of, new incomplete purchases**

- (1) The holder of a new incomplete purchase has an estate in fee simple in the land comprised in the purchase subject to:
  - (a) any recordings in the folio of the Register created in respect of it and to the provisions of this Act (including, in particular, this Schedule), and
  - (b) any conditions that applied to the lease over the land purchased that the Minister may specify at the time of granting the purchase application.
- (2) The title to a new incomplete purchase commences from a date determined by the Minister, except as provided by subclause (3).

- (3) If the Minister, when granting the purchase application, imposes a restriction on use or public positive covenant in accordance with Division 5.10 of this Act, the land remains vested in the Crown, or held on behalf of the Crown, until the time that the restriction on use or public positive covenant has been recorded on the relevant folio of the Register.
- (4) Clause 5 of Schedule 1 to the *Forestry Act 2012* extends to land under a new incomplete purchase, on and from its commencement, in the same way as it applies to purchase-tenure land (as defined in that Schedule).  
**Note.** Clause 5 of Schedule 1 to the *Forestry Act 2012* creates a profit à prendre reserved to the Crown to enable the Forestry Corporation under that Act to take timber and other forest products from land under certain incomplete purchases called purchase-tenure land. The profit à prendre expires at the end of a period of 10 years from the date on which the land became purchase-tenure land.
- (5) In any folio of the Register created in respect of land purchased or being purchased under a new incomplete purchase the Registrar-General must, if the land is affected by a profit à prendre reserved to the Crown under clause 5 of Schedule 1 to the *Forestry Act 2012*, record a statement to the effect that the land is affected by it.
- (6) The recording has effect as if the reservation of the profit à prendre had been included in an instrument of conveyance or transfer from the Crown.

## **20 Obligations of holders of new incomplete purchases**

- (1) The holder of a new incomplete purchase must:
  - (a) comply with any provisions, conditions or covenants recorded in the folio of the Register created for the holding, and
  - (b) comply with any conditions imposed by the Minister (as referred to in clause 19 (1) (b)), and
  - (c) comply with the requirements of any law relating to the use or management of the land being purchased, and
  - (d) if there are any improvements on the land being purchased from the Crown:
    - (i) maintain those improvements in good order and repair, and
    - (ii) if required by the Minister to do so—keep the improvements insured against fire and any other risks prescribed by the regulations with an insurer approved by the Minister, and
  - (e) pay the balance of the purchase price in the instalments and at the times required by the Minister for the purchase.
- (2) Also, the holder of a new incomplete purchase must not do (or permit or allow another person to do) anything that will materially degrade the land being purchased.

## **21 Payment of other amounts when title commences**

- (1) When the title to a new incomplete purchase commences, the following amounts are payable to the Crown:
  - (a) any duty payable under the *Duties Act 1997* in respect of the purchase,
  - (b) any rent (including rent for Crown improvements) payable on the lease up to the commencement of title to the incomplete purchase,
  - (c) any outstanding postponed or funded debts in respect of the lease (whether or not due for payment) together with interest up to the commencement of title to the incomplete purchase,
  - (d) the cost of any necessary survey carried out by the Crown,
  - (e) any other amounts determined by the Minister as payable on the commencement of the title.

- (2) If any of those amounts have not been paid within 3 months of being demanded, the Minister may declare that the new incomplete purchase is forfeited and any money paid in connection with the purchase may (by the declaration) be forfeited to the Crown.
- (3) If there are any other debts outstanding in respect of the lease, they continue (subject to this clause and any increased rate of interest required by this Act) to be payable to the Crown in the same manner as they were payable before the commencement of title to the new incomplete purchase.
- (4) If any amount payable to the Crown after the commencement of title to a new incomplete purchase is payable in equal annual instalments over a period without the interest added, the Minister may vary the manner of payment so that the amount is payable in equal annual instalments over the same or a longer period with the interest added.

## **22 Minerals excluded from new incomplete purchase**

This Schedule does not limit section 13.2, which excludes minerals from any sale of Crown land (including by means of a new incomplete purchase).

## **23 Forfeiture of new incomplete purchase**

This Schedule does not limit Division 7.4 (Forfeiture of holdings) of this Act in its application to a new incomplete purchase, except as provided by clause 24 (4).

## **Division 3 Transfers of new incomplete purchases**

### **24 Payment of balance of money owing when new incomplete purchase transferred**

- (1) On the recording in a folio of the Register of the first transfer of the whole or a part of a new incomplete purchase after the commencement of this clause, all money owing to the Crown in respect of the new incomplete purchase (whether or not payable by instalments which have not then become due) becomes due and payable.
- (2) An amount due under this clause and unpaid is payable by the holder for the time being of the new incomplete purchase.
- (3) An amount due under this clause bears interest at the following rates from the date the amount becomes due to the date of payment:
  - (a) for the first 3 months—a rate which is the same as the rate for the time being applying to the payment of the purchase money for the new incomplete purchase,
  - (b) after that—the rate that is prescribed by the regulations for the time being for the purposes of this paragraph.
- (4) If any of these amounts has not been paid within 3 months of being demanded:
  - (a) the Minister may declare that the new incomplete purchase is forfeited and any money paid in connection with the purchase may (by the declaration) be forfeited to the Crown, and
  - (b) the transfer becomes voided on the forfeiture.
- (5) In this clause:  
*transfer* does not include a change of ownership that results from any of the following:
  - (a) a devise under a will,
  - (b) the taking of an interest under an intestacy,
  - (c) survivorship of a joint tenant,

- (d) a discharge of mortgage,
- (e) a transfer to the Official Trustee in Bankruptcy,
- (f) a transfer by order of the Family Court or under a provision of the *Family Law Act 1975* of the Commonwealth (except a transfer to a person who is not a party to, or a child of, the marriage),
- (g) a transfer by order of any other court (except a transfer effected under a writ of execution) if the Minister has directed that this clause is not to apply to the transfer.

#### **Division 4 Subdivision of land under new incomplete purchase**

##### **25 Minister's approval**

- (1) The holder of a new incomplete purchase cannot subdivide the land being purchased unless the Minister gives written approval for it.
- (2) An application for approval must be made in the manner and form approved by the Minister.
- (3) The applicant must meet all costs incurred in dealing with the application.
- (4) The Minister may:
  - (a) refuse the application, or
  - (b) with the consent of the Water Administration Ministerial Corporation, approve the subdivision either unconditionally or conditionally.
- (5) A condition of an approval also has effect as a condition attaching to any new incomplete purchase resulting from the subdivision.
- (6) The Minister may make any consequential changes to the conditions or purpose of a subdivided new incomplete purchase as the Minister considers are necessary as a result of the subdivision.

##### **26 Exclusion of areas of land required for roads of access**

- (1) The Minister may exclude from a subdivision of land under a new incomplete purchase any areas of land required for roads of access to the subdivided portions.
- (2) Excluded areas of land become Crown land when approval is given for the subdivision.

**Note.** See section 1.10 (When land becomes Crown land because of this Act).

##### **27 Apportionment of money payable**

- (1) The Minister may apportion any purchase price, instalments of purchase money or other money payable in respect of a subdivided new incomplete purchase to each portion of the subdivided holding in a way that seems appropriate to the Minister.
- (2) A part of a purchase price apportioned under subclause (1) to a portion of a subdivided new incomplete purchase is to be determined as if a successful purchase application had been made for the portion.

##### **28 Subdivided portions to be separate incomplete purchases**

When approval is given to a subdivision of a new incomplete purchase, each portion of the subdivided new incomplete purchase is taken to be held (and to be transferable) as separate new incomplete purchases over each of the subdivided portions of land.

## **Part 6 General**

### **29 Regulations for additional purchase or purchase application entitlements**

The regulations may make provision for or with respect to the following:

- (a) additional circumstances to those in Part 3 of this Schedule in which the Minister may or must grant purchase applications,
- (b) the determination of purchase prices (including interest repayments) and methods of payments for successful purchase applications in those additional circumstances,
- (c) authorising the Minister to offer specified kinds of holders of leases to which this Schedule applies the opportunity to purchase land under their leases, including:
  - (i) providing for how offers are to be made and accepted, and
  - (ii) applying provisions of this Schedule concerning purchase applications to accepted offers (whether with or without modification).

## Schedule 5 Statutory land managers

**Introductory note.** This Schedule provides for the creation, governance, administration and dissolution of statutory land managers.

### Part 1 Introduction

#### 1 Definitions

In this Schedule:

**board**, in relation to a particular statutory land manager, means the board of the statutory land manager.

**board member**, in relation to a particular board, means any member of the board.

**Chairperson**, in relation to a particular board, means the Chairperson of the board.

**Deputy Chairperson**, in relation to a particular board, means the Deputy Chairperson of the board.

### Part 2 Constitution and name

#### 2 Minister may create statutory land managers

- (1) The Minister may, by notice published in the Gazette, declare that a statutory land manager is to be constituted by this Act and specify its name.
- (2) A corporation with the corporate name specified in the notice is constituted by this Act on the day that the notice takes effect.

**Note.** See section 50 (Statutory corporations) of the *Interpretation Act 1987* concerning the powers of statutory corporations in the exercise of their functions, including the power to sue or be sued in their corporate name. The section also provides for the perpetual succession of statutory corporations.

- (3) A statutory land manager is not a NSW Government agency.

**Note.** A body that is not a NSW Government agency does not have the status, privileges and immunities of the Crown. See section 13A of the *Interpretation Act 1987*.

#### 3 Minister may change name

- (1) The Minister may, by notice published in the Gazette, change the name of a statutory land manager.
- (2) The name of the statutory land manager is changed to its new name on the day that the notice takes effect.
- (3) To avoid doubt, section 53 (1) of the *Interpretation Act 1987* applies to a change of a statutory land manager's name under this clause in the same way as it applies to an alteration to its name.

**Note.** Section 53 (1) of the *Interpretation Act 1987* provides that if a statutory body's name is altered:

- (a) the body continues in existence under its new name so that its identity is not affected, and
- (b) a reference in any Act or instrument, or in any other document, to the body under its former name is, except in relation to matters that occurred before the alteration took place, to be read as a reference to the body under its new name.

## Part 3 Governance

### 4 Appointment of board

- (1) The Minister may, by notice published in the Gazette, appoint board members for a statutory land manager that has a board.
- (2) A board for a statutory land manager is to consist of no more than 7 members.  
**Note.** Board members can include persons appointed by reference to the offices they hold (that is, ex officio members). See section 49 of the *Interpretation Act 1987*.
- (3) The regulations may make provision for or with respect to the qualifications for appointment as board members.
- (4) Part 4 of this Schedule makes further provision with respect to statutory land managers with boards.

### 5 Responsibility for control of affairs

- (1) The affairs of a statutory land manager are to be controlled by:
  - (a) if the statutory land manager has a board—the board, or
  - (b) if another Act provides for a specified person or body to control its affairs—the person or body specified, or
  - (c) if paragraph (a) or (b) does not apply—the Minister.
- (2) Any act, matter or thing done in the name of, or on behalf of, a statutory land manager by a board, person, body or the Minister that controls its affairs, or with the authority of that board, person, body or the Minister, is taken to have been done by the statutory land manager.
- (3) A statutory land manager whose affairs are not controlled by the Minister is not subject to the control and direction of the Minister (except to the extent specifically provided for in this or any other Act).  
**Note.** For example, the Minister may be able to require statutory land managers to do certain things under Part 3 (Management of Crown land) of this Act in connection with the exercise of their functions as the Crown land manager of particular Crown land.

## Part 4 Provisions applying to statutory land managers with boards

### Division 1 Preliminary

#### 6 Application of Part

This Part applies to statutory land managers with boards.

### Division 2 Constitution

#### 7 Chairperson and Deputy Chairperson

- (1) The Minister is to appoint one board member as the Chairperson and another board member as the Deputy Chairperson of the board.
- (2) A person vacates office as Chairperson or Deputy Chairperson if the person:
  - (a) is removed from that office by the Minister under this clause, or
  - (b) resigns that office by written instrument given to the Minister, or
  - (c) ceases to be a board member of the board.



- (3) The Minister may at any time remove a person from office as the Chairperson or Deputy Chairperson.

#### **8 Other office holders**

The regulations may make provision for or with respect to the employment, engagement or appointment of secretaries and treasurers for statutory land managers with boards (including when they may be removed or vacate office and their functions).

#### **9 Terms of office of board members**

Subject to this Part and the regulations, a board member holds office for the period (not exceeding 5 years) that is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **10 Part-time appointments**

Board members hold office as part-time members.

#### **11 Remuneration**

A board member (except one who is a government sector employee) is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Minister may from time to time determine in respect of the member.

#### **12 Deputies**

- (1) A board member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a board member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a board member, a person has all the functions of the member and is taken to be a board member.
- (4) For the purposes of this clause, a vacancy in the office of a board member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a board member who is the Chairperson or Deputy Chairperson the member's functions as Chairperson or Deputy Chairperson.

#### **13 Vacancy in office of board member**

- (1) The office of a board 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 Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

- (2) The Minister may remove a board member from office at any time for any or no reason and without notice.
- (3) Without limiting subclause (2), a board member may be removed for a contravention of a provision of this Part that applies to the member.

#### **14 Suspension of board members**

- (1) The Minister may, by written order, suspend a board member from office during the investigation and determination of any matter involving an allegation of incompetence, misconduct or breach of duty by the member if the Minister is satisfied that it is appropriate in the public interest to do so.
- (2) A copy of an order under this clause must be served on the board member.
- (3) While suspended from office under this clause, a board member:
  - (a) is not entitled to exercise any functions of the office, and
  - (b) is not entitled to any fee or remuneration to which he or she would otherwise be entitled as the holder of the office.
- (4) The period of suspension under an order made under this clause commences on the date the order is served on the board member or the date specified in the order for the commencement of the period of suspension, whichever is the later.

#### **15 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a person in the person's capacity as a board member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a board member or from accepting and retaining any remuneration payable (if entitled) to the person under this Act as a board member.

### **Division 3 Procedure**

#### **16 General procedure**

The procedure for the calling of meetings of the board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the board.

#### **17 Quorum**

The quorum for a meeting of the board is a majority of its board members for the time being.

#### **18 Presiding board member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the board members of the board who are present at a meeting of the board) is to preside at a meeting of the board.

- (2) The presiding board member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **19 Voting**

A decision supported by a majority of the votes cast at a meeting of the board at which a quorum is present is the decision of the board.

#### **20 Transaction of business outside meetings or by telephone etc**

- (1) The board may, if it thinks fit, transact any of its business by the circulation of papers among all the board members of the board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the board made at a meeting of the board.
- (2) The board may, if it thinks fit, transact any of its business at a meeting at which board members (or some board members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),
- the Chairperson and each other board member have the same voting rights as they have at an ordinary meeting of the board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the board.
- (5) Papers may be circulated among the board members for the purposes of subclause (1) by electronic means.

#### **21 First meeting**

The Minister may call the first meeting of the board in such manner as the Minister thinks fit.

### **Division 4 Conduct of board members**

#### **22 Care and diligence**

##### **(1) Care and diligence**

A board member must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:

- (a) were a board member in the statutory land manager's circumstances, and
- (b) occupied the office held by, and had the same responsibilities as, the member.

##### **(2) Business judgment rule**

A board member who makes a business judgment is taken to meet the requirements of subclause (1), and the member's equivalent duties at common law and in equity in respect of the judgment, if the member:

- (a) makes the judgment in good faith for a proper purpose, and
- (b) does not have a material personal interest in the subject-matter of the judgment, and
- (c) informs themselves about the subject-matter of the judgment to the extent that the member reasonably believes to be appropriate, and

- (d) rationally believes that the judgment is in the best interests of the statutory land manager.
- (3) The member's belief that the judgment is in the best interests of the statutory land manager is a rational one unless the belief is one that no reasonable person in the member's position would hold.

**Note.** This subclause only operates in relation to duties under this clause and the equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

- (4) In this clause:  
*business judgment* means any decision to take or not take action in respect of a matter relevant to the business operations of the statutory land manager.

### 23 Use of position

A board member must not improperly use the member's position to:

- (a) gain an advantage for the member or someone else, or
- (b) cause detriment to the statutory land manager.

### 24 Use of information

A person who obtains information because the person is, or has been, a board member must not improperly use the information to:

- (a) gain an advantage for that member or someone else, or
- (b) cause detriment to the statutory land manager.

### 25 Codes of conduct

- (1) A board may issue a code of conduct to be observed by its board members.
- (2) Without limiting what may be included in the code, the code may relate to any conduct of a board member in carrying out the member's functions that is likely to bring the board into disrepute.
- (3) In particular, the code may contain provisions for or with respect to the following conduct:
  - (a) conduct that contravenes all or specified provisions of this Act or the regulations in all or specified circumstances,
  - (b) improper or unethical conduct,
  - (c) abuse of power and other misconduct,
  - (d) action causing, comprising or involving any of the following:
    - (i) intimidation, harassment or verbal abuse,
    - (ii) discrimination, disadvantage or adverse treatment in relation to employment,
    - (iii) prejudice in the provision of a service to the community,
  - (e) conduct of a board member causing, comprising or involving any of the following:
    - (i) directing or influencing, or attempting to direct or influence, a member of the staff of the statutory land manager in the exercise of the functions of the staff member,
    - (ii) an act of disorder committed by the board member at a meeting of the board,

- (f) the disclosure by board members of interests (whether pecuniary or otherwise) that could conflict with the proper performance of a member's functions and avoidance of conflicts of interest,
  - (g) the disclosure by board members of confidential documents and information.
- (4) The code must not be inconsistent with any requirements concerning standards of conduct specified by the Crown land management rules.
- Note.** Section 3.15 (5) enables the Crown land management rules to include standards of conduct for Crown land managers, and any persons involved in decision-making by Crown land managers, in connection with the exercise of management functions over the Crown land they manage.
- (5) A board member must not contravene the code.

## **26 Disclosure of material personal interest by board members**

- (1) If:
- (a) a board member has a direct or indirect material personal interest in a matter being considered or about to be considered at a meeting of the board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.
- (2) A disclosure by a board member at a meeting of the board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.
- (3) Particulars of any disclosure made under this clause must be recorded by the board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.
- (4) After a board member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the board otherwise determines:
- (a) be present during any deliberation of the board with respect to the matter, or
  - (b) take part in any decision of the board with respect to the matter.
- (5) For the purposes of the making of a determination by the board under subclause (4), a board member who has a direct or indirect material personal interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the board for the purpose of making the determination, or
  - (b) take part in the making by the board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the board.

## **27 Invitations for tenders**

- (1) If it is disclosed to the board members of a board, or they have reason to believe, that a member of the board has or may have a direct or indirect material personal interest in a proposed contract with the statutory land manager:

- (a) the board must, by notice published in the Gazette and in a newspaper circulating throughout the State, invite tenders for the proposed contract, and
  - (b) must not enter into the proposed contract unless satisfied that, in all the circumstances of the case, none of the tenders submitted is more advantageous than the proposed contract.
- (2) The notice inviting tenders must:
- (a) set out the nature of the work or services to be performed or the goods to be supplied under the contract, and
  - (b) invite persons willing to perform the work or services or supply the goods to submit tenders on or before a specified date (at least 21 days after publication of the notice) to the statutory land manager.
- (3) This clause does not apply in the case of an emergency.
- (4) A contravention of this clause does not invalidate any decision of the board.

#### **28 Consequences of contravention of Division**

- (1) Clause 13 (3) enables the Minister to remove a board member from office for a contravention of this Division.
- (2) Nothing in this Division (or a code issued under this Division) gives rise to, or can be taken into account in, any civil cause of action, and nothing in this Division affects rights or liabilities arising apart from this Division.

### **Part 5 Administration of statutory land managers**

#### **29 Appointment of administrator**

- (1) The Minister may, by notice published in the Gazette, appoint a person to be the administrator of a specified statutory land manager.
- (2) The administrator holds office for the period (if any) specified in the notice, unless vacated sooner.
- (3) The Minister may extend the period of appointment in a further notice published in the Gazette.

#### **30 Remuneration of administrator**

An administrator of a statutory land manager is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Minister may from time to time determine in respect of the administrator.

#### **31 Vacation in office of administrator**

- (1) The office of an administrator becomes vacant if:
  - (a) the administrator completes the administrator's period of office and is not reappointed, or
  - (b) the administrator resigns the office by a written instrument given to the Minister, or
  - (c) the administrator dies or ceases to exist, or
  - (d) the administrator is removed from office by the Minister under this clause, or
  - (e) a board is appointed for the statutory land manager.
- (2) The Minister may, by written instrument given to an administrator, remove the administrator from office at any time and for any or no reason.

### **32 Effect of appointment of administrator**

- (1) If an administrator is appointed for a statutory land manager with a board:
  - (a) each member (if any) of the board ceases to hold office as a member when the appointment takes effect, and
  - (b) the affairs of the statutory land manager are to be controlled by the administrator instead of a board.
- (2) If an administrator is appointed for a statutory land manager without a board, the affairs of the statutory land manager are to be controlled by the administrator instead of the person or body who is normally responsible for controlling its affairs.
- (3) Any act, matter or thing done in the name of, or on behalf of, a statutory land manager by its administrator, or with the authority of the administrator, is taken to have been done by the statutory land manager.

### **33 Cessation of administration**

This Part does not prevent the appointment of a board (whether with the same or different persons as a previous board) of a statutory land manager before it ceases to be under administration.

**Note.** The appointment of a board results in the administrator vacating office. See clause 31.

## **Part 6 Dissolution of statutory land managers**

### **34 Minister may dissolve statutory land manager**

- (1) The Minister may, by notice published in the Gazette, dissolve a statutory land manager (except a statutory land manager whose affairs are managed by a person or body specified by another Act).
- (2) The notice must specify one or more persons to whom the assets, rights and liabilities of the dissolved statutory land manager are to be transferred on its dissolution.
- (3) A person specified for the purposes of subclause (2) must be:
  - (a) a public authority, or
  - (b) another Crown land manager (whether or not a statutory land manager).
- (4) Schedule 6 applies to a transfer of any asset, right or liability to a person by a notice under this clause.

### **35 Effect of dissolution**

When a dissolution of a statutory land manager takes effect:

- (a) if the statutory land manager has a board—each member of the board ceases to hold office as a member, and
- (b) if the affairs of the statutory land manager are controlled by an administrator—the administrator ceases to hold office as the administrator.

## **Part 7 General**

### **36 No compensation for loss of office**

A person who ceases to hold an office because of the operation of this Schedule (or because the person is removed from office under this Schedule) is not entitled to any remuneration or compensation because of the loss of that office.

**Note.** Section 3.10 (6) provides that compensation is not payable if a person's appointment as a Crown land manager is revoked under that section.

## Schedule 6 Transfer of assets, rights and liabilities

**Introductory note.** This Schedule contains a number of standard provisions concerning the transfer of assets, rights and liabilities under this Act. This Schedule will apply to transfers only if the instrument or provision of this Act that provides for the transfer applies it.

### 1 Application

This Schedule applies to:

- (a) the transfer of assets, rights or liabilities by an instrument made under a provision of this Act that provides for this Schedule to apply to the transfer (an *instrument transfer*), and
- (b) the transfer of assets, rights or liabilities by operation of a provision of this Act that provides for this Schedule to apply (an *automatic transfer*).

### 2 Interpretation

- (1) In this Schedule (except clause 1):

*instrument* means an instrument (except this Act or an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

- (2) In this Schedule, the person or body from which any assets, rights or liabilities are transferred is called the *transferor* and the person or body to which they are transferred is called the *transferee*.
- (3) If an instrument transfer or automatic transfer relates to some (but not all) of the assets, rights or liabilities of a transferor, this Schedule applies only to the extent of the assets, rights or liabilities to which the transfer relates.

**Note.** For example, the assets, rights and liabilities of a transferor may be transferred to more than one transferee.

### 3 Vesting in transferee

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Schedule applies, the following provisions have effect:
  - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become by virtue of this Schedule the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,



- (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to:
  - (i) the transferor, or
  - (ii) any predecessor of the transferor,to the extent to which the reference relates to those assets, rights or liabilities, is taken to be, or include, a reference to the transferee.
- (2) The operation of this Schedule is not to be regarded as:
  - (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
  - (d) an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) An instrument transfer is subject to the terms and conditions of the instrument that gives rise to the transfer.

#### **4 No compensation payable**

No compensation is payable to any person or body in connection with a transfer to which this Schedule applies except to the extent (if any) to which:

- (a) for an instrument transfer—the instrument giving rise to the transfer so provides, and
- (b) for an automatic transfer—the provision of this Act that gives rise to the transfer so provides.

#### **5 Transfer of interests in land**

- (1) In the case of an instrument transfer, the instrument that gives rise to the transfer may transfer an interest in respect of land vested in the transferor without transferring the whole of the interests of the transferor in that land.
- (2) If the interest transferred is not a separate interest, the instrument operates to create the interest transferred in such terms as are specified in the instrument.
- (3) This clause does not limit any other provision of this Act.

#### **6 Date of vesting**

A transfer of assets, rights or liabilities to which this Schedule applies takes effect:

- (a) for an instrument transfer—on the day specified by the instrument that gives rise to the transfer, and
- (b) for an automatic transfer—on the day specified by the provision of this Act that gives rise to the transfer or, if no day is specified, on the commencement of the provision.

#### **7 Consideration for vesting**

The Minister may, by written order, specify the consideration on which a transfer to which this Schedule applies is made and the value or values at which the assets, rights or liabilities are transferred.

## **8 State taxes not chargeable**

- (1) State tax is not payable in relation to:
  - (a) an exempt matter, or
  - (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.
- (2) In this clause:

***exempt matter*** means any of the following:

  - (a) the transfer of any assets, rights or liabilities by operation of this Schedule (including, without limitation, any instrument executed only for a purpose ancillary to or consequential on the operation of this Schedule),
  - (b) anything certified by the Minister in writing as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

***State tax*** means application or registration fees, duty or any other tax, fee or charge imposed by any legislation or other law of the State.

## **9 Confirmation of vesting**

- (1) The Minister may, by written notice, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

## Schedule 7 Savings, transitional and other provisions

**Introductory note.** This Schedule contains savings, transitional and other provisions consequent on the enactment of this Act and certain other Acts. It also enables the regulations to make provision for savings and transitional matters for this purpose.

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any other Act that amends this Act.
- (2) If the regulations so provide, any such provision may:
  - (a) have effect despite any specified provisions of this Act (including a provision of this Schedule or Schedules 1–4), and
  - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule or Schedules 1–4 to consolidate the savings and transitional provisions.

### Part 2 Provisions consequent on enactment of this Act and repeal of other legislation

#### Division 1 Interpretation

##### 2 Definitions

- (1) In this Part:
  - abolished**, in relation to a person, body or trust, means abolished under this Part.
  - amending Act** means another Act that provides for the repeal or amendment (or both) of legislation consequent on the enactment of this Act.
  - Note.** A Bill for an Act for this purpose will be introduced in 2017.
  - corresponding function** in relation to a function is defined in clause 3 (1).
  - corresponding provision** in relation to a provision is defined in clause 3 (1).
  - institutional public trust land** is defined in Division 6 of this Part.
  - Orange Show Ground** means the land to which the *Orange Show Ground Act 1897* applied (which is the land comprised in Crown Grant Volume 1182, Folio 96).
  - repeal day** means the day on which the *Crown Lands Act 1989* is repealed by this Act.
  - repealed Act** or **repealed statutory rule** means an Act or statutory rule repealed by this Act or the amending Act.

**reserve trust** means any reserve trust (as defined in Part 5 of the *Crown Lands Act 1989*) except a special reserve trust, including any other trust or a person or body that is taken to be constituted as a reserve trust for the purposes of the *Crown Lands Act 1989* (whether by that Act or another Act).

**reserve trust board** means the trust board appointed under section 93 of the *Crown Lands Act 1989* for a reserve trust.

**special reserve trust** means each of the following:

- (a) a Crown cemetery trust (as defined in the *Cemeteries and Crematoria Act 2013*),
  - (b) the Hawkesbury Racecourse Reserve Trust referred to in section 5 of the *Hawkesbury Racecourse Act 1996*,
  - (c) the Luna Park Reserve Trust taken to have been established as provided by section 7 of the *Luna Park Site Act 1990*,
  - (d) the National Parks and Wildlife Reserve Trust established by section 9 of the *National Park Estate (Land Transfers) Act 1998*,
  - (e) the Sydney Cricket and Sports Ground Trust constituted by the *Sydney Cricket and Sports Ground Act 1978*,
  - (f) the Wagga Wagga Racecourse Reserve Trust referred to in section 5 of the *Wagga Wagga Racecourse Act 1993*,
  - (g) any other trust, or a person or body, prescribed by the regulations.
- (2) For the purposes of this Part, proceedings are not finally determined if:
- (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
  - (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

### 3 Meaning of “corresponding provision” and “corresponding function”

- (1) For the purposes of this Part:
  - (a) a provision of this Act is a **corresponding provision** in relation to a provision of a repealed Act or repealed statutory rule if the provision of this Act corresponds (or substantially corresponds) to the provision of the repealed Act or rule, and
  - (b) a function conferred or imposed by this Act is a **corresponding function** in relation to a function conferred or imposed by a repealed Act or repealed statutory rule if the function conferred or imposed by this Act corresponds (or substantially corresponds) to the function conferred or imposed by the repealed Act or rule.
- (2) The regulations may, for the purposes of subclause (1), declare a provision of or function under this Act to be a corresponding provision or corresponding function for a provision of or function under a repealed Act or repealed statutory rule. The regulations may do so even if the provision of or function under this Act is not substantially the same as that of or under the repealed Act or rule.

### 4 References to certain other things also references to them just before repeal day

Unless the context or subject-matter indicates or requires differently:

- (a) a reference (however expressed) in another provision of this Part to a person, body, instrument, matter or thing having a particular status or effect under, or for the purposes of, any repealed Act or repealed statutory rule (or a provision

of the Act or rule) is a reference to that person, body, instrument, matter or thing having that status or effect immediately before the repeal day, and

- (b) a reference (however expressed) in another provision of this Part to a right, entitlement, power, authority, duty or obligation under any repealed Act or repealed statutory rule (or a provision of the Act or rule) is a reference to that right, entitlement, power, authority, duty or obligation in existence immediately before the repeal day.

## **5 Continued persons, matters or things may be dealt with under this Act accordingly**

- (1) This clause applies to any matter or thing (a *continued matter or thing*) that is:
  - (a) approved, granted, issued, dedicated, reserved or made under a repealed Act or repealed statutory rule, and
  - (b) continued in force or effect, or taken to be a matter or thing, by a provision of this Part for the purposes of this Act (or a specified provision of this Act).
- (2) A continued matter or thing that was subject to any conditions imposed by or under a repealed Act or repealed statutory rule is subject to the same conditions under this Act.
- (3) A continued matter or thing that would have been in force or had effect under a repealed Act or repealed statutory rule for a specified period ceases to be in force or have effect under this Act at the same time as it would have ceased to be in force or have effect under the repealed Act or repealed statutory rule.
- (4) Despite subclauses (2) and (3), a continued matter or thing may be varied, forfeited, revoked, terminated, cancelled or dealt with in any other way under this Act as if it had been approved, granted, issued, dedicated, reserved or made under this Act.
- (5) This clause has effect unless the context or subject-matter indicates or requires differently.

## **Division 2 Transfer of land and restrictions and qualifications on land**

### **6 Certain land becomes Crown land**

- (1) Subject to subclause (2) and clause 7, each of the following land (to the extent to which it is not Crown land) becomes Crown land on and from the repeal day:
  - (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 any land where the estate in fee simple is not extinguished because of the operation of clause 7 (2),
  - (c) any land to which section 126 or 127 of the *Crown Lands Act 1989* applied,
  - (d) any institutional public trust land,
  - (e) any land in the *Area* as defined in the *Hay Irrigation Act 1902* immediately before the Act's repeal,
  - (f) the land comprised by the Orange Show Ground,
  - (g) any land in the *Area* as defined in the *Wentworth Irrigation Act 1890*.

**Note.** See section 1.10 (When land becomes Crown land because of this Act).
- (2) Any land that was subject to a declaration under section 25A of the *Crown Lands Consolidation Act 1913* does not become Crown land by virtue of this Act. However, the land can continue to be dealt with under this Act as if it were Crown land.

**Note.** Section 25A of the *Crown Lands Consolidation Act 1913* enabled the Minister to declare certain land to be land that could be dealt with under that Act as if it were Crown land.

## 7 Land vested in reserve trusts

- (1) Any estate in fee simple in Crown land vested in a reserve trust by section 100 of the *Crown Lands Act 1989* only for the purposes of Part 5 of that Act (and any by-law under that Part) is extinguished on and from the repeal day. As a result, the Crown is taken to be vested with the whole of the estate in fee simple in the land and the land is Crown land for the purposes of this Act.
- (2) However, any other estate in fee simple in land vested in a reserve trust is not extinguished if:
  - (a) the land was originally vested in trustees by a Crown grant, and
  - (b) the land became vested in the reserve trust by or under the *Crown Lands Act 1989* while the land was still vested in those trustees, and
  - (c) the affairs of the reserve trust were managed for the whole of the period since the land became vested in the reserve trust by:
    - (i) the trust board for the reserve trust, or
    - (ii) a corporation that was the former trustee of the land before it was vested in the reserve trust (but not including a local council).

**Note.** Land with an estate in fee simple to which this subclause does not apply will become Crown land under clause 6.

- (3) Any estate in fee simple of a reserve trust that is not extinguished because of subclause (2) is vested instead in:
  - (a) if the affairs of the reserve trust were managed by its trust board—the successor of the reserve trust, or
  - (b) if the affairs of the reserve trust were managed by a corporation that was the former trustee of the land before it was vested in the reserve trust—the corporation.
- (4) The following provisions apply to land in which an estate in fee simple is vested in the successor of a reserve trust or a corporation by subclause (3):
  - (a) any dedication or reservation of the land continues in force and may be revoked or altered as if it were Crown land,
  - (b) the land is to be managed as if it were Crown land under this Act for which the successor or corporation had been appointed as the Crown land manager,
  - (c) the regulations may make provision for or with respect to the modification of the provisions of this Act for this purpose.
- (5) Section 1.10 (except section 1.10 (1) and (2)) applies to land that is vested (or taken to be vested) by this clause in the same way as it applies to land that becomes Crown land.
- (6) In this clause:

**successor** of a reserve trust means a statutory land manager that is taken by clause 11 to have been appointed as the Crown land manager of the former trust land (as defined in that clause).

## 8 Continuation of certain land qualifications and rights

- (1) Any restriction, reservation, exception or covenant imposed by or under the *Crown Lands Act 1989*, *Crown Lands (Continued Tenures) Act 1989* or *Western Lands Act 1901* in respect of a dealing with land continues in effect under this Act for that land on and from the repeal day.

- (2) Without limiting subclause (1), any exclusion of minerals from a dealing with land to which section 171 of the *Crown Lands Act 1989* applied continues in effect under this Act for that land in respect of the same minerals on and from the repeal day.
- (3) Any carbon sequestration right or forestry right (as defined in section 87A of the *Conveyancing Act 1919*) granted under the *Crown Lands Act 1989* continues in effect under this Act on and from the repeal day.
- (4) In this clause:  
*dealing* with land includes the sale, lease or other disposal of land.

### **Division 3 Continued operation of repealed Acts and statutory rules**

#### **9 Repealed Acts and statutory rules to continue to apply in certain circumstances**

- (1) Without limiting section 30 of the *Interpretation Act 1987*, a repealed Act or repealed statutory rule continues to apply with respect to the following matters on and from the repeal day as if this Act and the amending Act had not been enacted:
  - (a) an offence (or an alleged offence) against the Act or statutory rule,
  - (b) any proceedings for an offence (or an alleged offence) against the Act or statutory rule,
  - (c) any penalty notice, fine enforcement order, penalty notice enforcement order or court enforcement order that is in force in respect of an offence (or an alleged offence) against the Act or statutory rule,
  - (d) any appeal that is pending in a court or tribunal (or any entitlement to appeal to a court or tribunal that has not been exercised) in respect of a matter arising under the Act or statutory rule,
  - (e) any direction, order or notice given under a provision of the Act or statutory rule requiring a matter or thing to be done or not done (whether before, on or after the repeal day),
  - (f) any other matter or thing arising under or in connection with the Act or statutory rule that is prescribed by the regulations.
- (2) The regulations may make provision for or with respect to the modifications of the provisions of a repealed Act or repealed statutory rule as applied by subclause (1).
- (3) This clause is subject to any different provision in this Part or Schedules 1–4.

### **Division 4 Abolition of certain offices, bodies and other things**

#### **10 Abolition of certain statutory offices**

- (1) Each of the following offices is abolished on the repeal day:
  - (a) the Western Lands Commissioner under the *Western Lands Act 1901*,
  - (b) the Assistant Western Lands Commissioner under the *Western Lands Act 1901*,
  - (c) an authorised inspector under the *Crown Lands Act 1989*.

**Note.** Authorised inspectors become authorised officers on the repeal day. See Division 10 of this Part.
- (2) Accordingly, any person holding any of these abolished offices ceases to hold that office on the repeal day.

## 11 Abolition of reserve trusts

### (1) Trusts and boards abolished

On the repeal day:

- (a) each reserve trust (and, if it has one, its trust board) are abolished, and
- (b) any trust over its trust land is abolished.

**Note.** The abolition of a reserved trust does not affect the dedication or reservation of any land for which it was the reserve trust. See Division 5 of this Part.

### (2) Trusts with boards

If an abolished trust's affairs were managed by a reserve trust board, the following provisions apply on and from the repeal day:

- (a) a statutory land manager with a board is taken to have been constituted under this Act,
- (b) the name of the statutory land manager is taken to be the name of the trust (excluding the word "Trust" if it forms part of its name) and ending with the words "Land Manager",
- (c) each member of the trust board is taken to have been appointed as a member of the board of the statutory land manager,
- (d) the statutory land manager is taken to have been appointed as the Crown land manager of the former trust land,
- (e) the assets, rights and liabilities of the trust are transferred to the statutory land manager (subject to Division 2 of this Part).

### (3) Trusts under administration

If an abolished trust's affairs were managed by an administrator appointed under section 117 of the *Crown Lands Act 1989*, the following provisions apply on and from the repeal day:

- (a) a statutory land manager (without a board) is taken to have been constituted under this Act,
- (b) the name of the statutory land manager is taken to be the name of the trust (excluding the word "Trust" if it forms part of its name) and ending with the words "Land Manager",
- (c) the administrator of the trust is taken to have been appointed as the administrator of the statutory land manager,
- (d) the statutory land manager is taken to have been appointed as the Crown land manager of the former trust land,
- (e) the assets, rights and liabilities of the trust are transferred to the statutory land manager (subject to Division 2 of this Part).

### (4) Trusts managed by local councils or corporations

If an abolished trust's affairs were managed by a local council or corporation appointed under section 95 of the *Crown Lands Act 1989*, the following provisions apply on and from the repeal day:

- (a) the local council or corporation is taken to have been appointed as a Crown land manager of the former trust land,
- (b) the assets, rights and liabilities of the trust are transferred to the local council or corporation (subject to Division 2 of this Part).



(5) **Other trusts**

For any other abolished trust, the following provisions apply on and from the repeal day:

- (a) the Minister is responsible for the care, control and management of the former trust land until different provision is made under this Act,
- (b) the assets, rights and liabilities of the trust are transferred to the Crown (subject to Division 2 of this Part).

(6) **Transfers of assets, rights and liabilities**

Schedule 6 applies to a transfer of any assets, rights or liabilities under this clause.

- (7) Without limiting subclause (6), a statutory land manager that is taken by this clause to have been appointed as the Crown land manager of the former trust land of an abolished trust is taken to be the trust's successor for the purposes of its accounts in authorised deposit-taking institutions or with utility providers and its insurance policies.

(8) **Application of clause when there are multiple reserve trust managers**

If the former trust land had more than one reserve trust manager (as defined in section 92 of the *Crown Lands Act 1989*), this clause operates:

- (a) where one or more of those reserve trust managers were reserve trusts of a kind referred to in subclause (2) or (3):
  - (i) to constitute (in accordance with the subclause concerned) one or more statutory land managers as successors for each of the reserve trusts, and
  - (ii) to appoint each of them as a Crown land manager of the land, and
- (b) where one or more of those reserve trust managers are local councils or corporations appointed under section 95 of the *Crown Lands Act 1989*—to appoint each of them as Crown land managers for the land, and
- (c) to allocate responsibility under section 3.14 for the land between each of the Crown land managers appointed by operation of this clause in the same way as responsibility was allocated to the manager (or the manager's predecessor) under section 92 of the *Crown Lands Act 1989*.

**Note.** Section 3.1 (2) provides that the Minister is responsible (because of section 3.1 (2) (b)) for the care, control and management of any part of particular dedicated or reserved Crown land for which there is no Crown land manager.

(9) **Definition**

In this clause:

**former trust land**, in relation to an abolished trust, means:

- (a) any land in which the trust had an estate in fee simple (including because of section 100 of the *Crown Lands Act 1989*), and
- (b) any land acquired by the trust under section 101 of that Act.

**12 Abolition of trusts over reserves under section 126 or 127 of Crown Lands Act 1989**

- (1) This clause applies to land (**special trust land**) to which section 126 or 127 of the *Crown Lands Act 1989* applied if there were trustees for the land but not a reserve trust.
- (2) On the repeal day, each trust over special trust land is abolished.  
**Note.** Special trust land becomes reserved Crown land on the repeal day. See Division 2 of this Part.
- (3) The following provisions apply on and from the repeal day if the special trust land was not under the management of a local council:

- (a) a statutory land manager with a board is taken to have been constituted under this Act,
  - (b) the name of the statutory land manager is taken to be the name of the abolished trust (excluding the word “Trust” if it forms part of its name) and ending with the words “Land Manager”,
  - (c) each trustee of the abolished trust is taken to have been appointed as a member of the board of the statutory land manager,
  - (d) the statutory land manager is taken to have been appointed as the Crown land manager of the special trust land,
  - (e) the assets, rights and liabilities of the abolished trust are transferred to the statutory land manager (subject to Division 2 of this Part).
- (4) If the special trust land was under the management of a local council, the local council is taken on and from the repeal day to have been appointed as the Crown land manager of the land.
- (5) If a trustee of an abolished trust appointed by this clause as a member of the board of a statutory land manager did not hold office for a specified term, the former trustee is taken to have been appointed as a member of the board for a period of 5 years.
- (6) Schedule 6 applies to a transfer of any assets, rights or liabilities under this clause.

### **13 Abolition of trusts over institutional public trust land**

- (1) On the repeal day, each trust over institutional public trust land is abolished.  
**Note.** Institutional public trust land becomes reserved Crown land on the repeal day. See Divisions 2 and 7 of this Part.
- (2) The following provisions apply on and from the repeal day:
- (a) a statutory land manager with a board is taken to have been constituted under this Act,
  - (b) the name of the statutory land manager is taken to be the name of the abolished trust (excluding the word “Trust” if it forms part of its name) and ending with the words “Land Manager”,
  - (c) each trustee of the abolished trust is taken to have been appointed as a member of the board of the statutory land manager,
  - (d) the statutory land manager is taken to have been appointed as the Crown land manager of the institutional public trust land,
  - (e) the assets, rights and liabilities of the abolished trust are transferred to the statutory land manager (subject to Division 2 of this Part).
- (3) If a trustee of an abolished trust did not hold office for a specified term, the former trustee is taken to have been appointed as a member of the board of the statutory land manager for a period of 5 years.
- (4) Schedule 6 applies to a transfer of any assets, rights or liabilities under this clause.

### **14 Abolition of Orange Show Ground Trust**

- (1) The Trust referred to in the preamble to the *Orange Show Ground Act 1897* (the ***Orange Show Ground Trust***) is abolished on the repeal day.  
**Note.** The Orange Show Ground becomes dedicated Crown land on the repeal day. See Divisions 2 and 5 of this Part.
- (2) On and from the repeal day, the following provisions apply:
- (a) Orange City Council is taken to have been appointed as the Crown land manager of Orange Show Ground,

- (b) the assets, rights and liabilities of the trustees of the Orange Show Ground Trust in connection with Orange Show Ground are transferred to Orange City Council (subject to Division 2 of this Part).
- (3) Schedule 6 applies to a transfer of any assets, rights or liabilities under this clause.

**15 Abolition of Western Lands Advisory Council**

- (1) The Western Lands Advisory Council established by the *Western Lands Act 1901* is abolished on the repeal day.
- (2) Accordingly, any person holding office as a member of the Western Lands Advisory Council ceases to hold that office on the repeal day.

**16 Abolition of special land districts**

All land districts (including special land districts) under the *Crown Lands Act 1989* are abolished on the repeal day.

**Division 5 Existing dedications and reservations**

**17 Dedication and reservations under Crown Lands Act 1989**

- (1) Any land dedicated under Part 5 of the *Crown Lands Act 1989* is taken to be dedicated Crown land under this Act that is dedicated for the same purposes for which it was dedicated under the *Crown Lands Act 1989* on and from the repeal day.
- (2) Any land reserved under Part 5 of the *Crown Lands Act 1989* is taken to be reserved Crown land under this Act reserved for the same purposes for which it was reserved under the *Crown Lands Act 1989* on and from the repeal day.

**18 Showgrounds**

- (1) Orange Show Ground is taken on and from the repeal day to be dedicated Crown land under this Act dedicated for the use and general purposes of the Orange Pastoral and Agricultural Association and Orange City Council is taken to have been appointed as its Crown land manager.
- (2) Any land to which section 126 (Provisions applicable to certain showgrounds etc) of the *Crown Lands Act 1989* applied is taken on and from the repeal day to be reserved Crown land under this Act reserved for the following purposes:
  - (a) for use as a showground,
  - (b) for public recreation or community use.

**19 Public parks**

- (1) Any land to which section 127 (Provisions applicable to other reserved etc land) of the *Crown Lands Act 1989* applied is taken on and from the repeal day to be reserved Crown land under this Act reserved for the following purposes:
  - (a) the public park or any other public purpose concerned,
  - (b) public recreation and community use.
- (2) The Minister may, by order published in the Gazette, declare the boundaries (whether by describing them or by reference to a map or survey) of any land to which subclause (1) applies. A declaration is conclusive evidence of the boundaries of the land concerned (including for the purposes of creating a folio in the Register in respect of the land).

## Division 6 Land under Trustees of Schools of Arts Enabling Act 1902

### 20 Definitions

In this Division:

**institution** means Mechanics' Institute, School of Arts or other institution for public instruction or amusement.

**institutional private trust land** means any land (other than institutional public trust land) reserved, dedicated or granted under any Act or instrument, or held in any other way, immediately before the repeal day for the purposes of an institution.

**institutional public trust land** means any land reserved, dedicated or granted under any Act or instrument, or held in any other way, for the purposes of an institution immediately before the repeal day that:

- (a) is land vested in the Crown, or
- (b) was land vested in the Crown before being reserved, dedicated, granted or held for the purposes of an institution.

### 21 Reservation of former institutional public or private trust land

- (1) This clause applies to:
  - (a) institutional public trust land, and
  - (b) institutional private trust land that is transferred to the Crown under this Division.

**Note.** Institutional public trust land becomes Crown land on the repeal day because of the operation of clause 6. Also, Division 4 of this Part abolishes the trusts over them and appoints the former trustees to a statutory land manager that will manage the former trust land.
- (2) Any land to which this clause applies is taken on and from the repeal day to be reserved for the following purposes:
  - (a) for an institution,
  - (b) for community use,
  - (c) for any other purpose for which the land could be used under the trust immediately before this clause applied to it.
- (3) For the purposes of this Division, any reserved Crown land that is taken to be reserved under this Act by subclause (2) is the **substituted institutional trust reserve** for the trust land.
- (4) Reserved Crown land ceases to be a substituted institutional trust reserve for the purposes of this Division if:
  - (a) the purposes for which it is reserved are altered to remove the purpose referred to in subclause (2) (a), or
  - (b) the reservation is revoked.

### 22 Transitional arrangements for trusts over institutional private trust land

- (1) Except as provided by this clause and Division 4 of this Part, the repeal of the *Trustees of Schools of Arts Enabling Act 1902* and the enactment of this Act do not affect any trust over institutional private trust land or the offices of any of its trustees.
- (2) The regulations may make provision for or with respect to standard form trust instruments for trusts over institutional private trust land, including (but not limited to) provisions concerning any of the following:
  - (a) the appointment and vacation of office of trustees,
  - (b) the functions of trustees,

- (c) the application or investment of trust funds,
  - (d) the use of trust land and dealings with it (including creating interests over the land or selling, transferring or disposing of the land),
  - (e) the limitation of liability or indemnification of trustees,
  - (f) decision-making by trustees (including meetings).
- (3) On and from the repeal day, the trustees of institutional private trust land (or, if there are no trustees, the members of the institution concerned) may:
- (a) adopt a trust instrument in or to the effect of a standard form trust instrument to govern the trust over the land, and
  - (b) specify who the trustees for the land will be under the new trust instrument.
- (4) It is sufficient compliance with subclause (3) if a majority of the trustees or members (as the case requires) have passed a resolution at a meeting in favour of adopting the trust instrument. The regulations may make provision for or with respect to the calling or conduct of meetings for this purpose.
- (5) The adoption of a standard form trust instrument cannot take effect unless:
- (a) the Minister is given written notice of the adoption in the form and manner approved by the Secretary, and
  - (b) the Minister publishes a notice in the Gazette that authorises the adoption and names the new trustees.
- (6) If an adoption of a standard form trust instrument for a trust over institutional private trust land is authorised as provided by subclause (5):
- (a) the trust is taken to be governed by the adopted trust instrument instead of any existing instrument that established or governed the trust, and
  - (b) the named trustees are taken to have been duly appointed as trustees of the trust, and
  - (c) the Registrar-General, if provided with a copy of the instrument and the notice of the Minister authorising its adoption, must register the instrument in the General Register of Deeds.
- (7) To avoid doubt, a standard form trust instrument can only be adopted once under this clause.
- (8) The operation of this clause (or any conduct permitted or required by this clause) is not to be regarded as terminating a trust or as a breach of trust or otherwise as a civil wrong.

### **23 Replacement of trustees of institutional private trust land**

- (1) The Minister may appoint new trustees on and from the repeal day to replace the trustees of institutional private trust land who have vacated office if:
- (a) the Minister is satisfied that all of the trustees have vacated office, and
  - (b) the Minister causes a notice of the Minister's intention to appoint new trustees to be displayed in a prominent place on the land (or a building on the land) for a period of at least 30 days, and
  - (c) the notice of intention seeks written expressions of interest within the 30-day period from persons wishing to be appointed as trustees.
- (2) The Minister may (but need not) appoint a person who has expressed an interest in being appointed as a trustee.
- (3) This clause does not prevent the appointment of trustees or their vacation of office in accordance with the provisions of the trust or under the *Trustee Act 1925*.

**24 Transfer of institutional private trust land to Crown by agreement with trustees**

- (1) On and from the repeal day, the Minister and the trustees of institutional private trust land may enter into an agreement for the land to be transferred to the Crown.
- (2) It is sufficient compliance with subclause (1) if a majority of the trustees agree to enter the agreement.
- (3) The trustees may enter into an agreement to transfer institutional private trust land to the Crown and the agreement has effect despite the provisions of any Act, deed, reservation, dedication, grant or other instrument relating to the land.
- (4) The Minister is to comply as far as practicable with the agreement.

**25 Effect of transfer of institutional private trust land**

- (1) Any land that is transferred to the Crown under this Division becomes Crown land.  
**Note.** See section 1.10 (When land becomes Crown land because of this Act).
- (2) Subclause (1) is subject to clause 24 (4).
- (3) On the vesting of institutional private trust land in the Crown under this Division:
  - (a) any assets, rights or liabilities in relation to the land, or in relation to the trustees of the land in their capacity as trustees, become the assets, rights or liabilities of the Crown, and
  - (b) Schedule 6 applies to the transfer of those assets, rights and liabilities.

**Division 7 Continuation of certain existing holdings and permits**

**26 Continuation of certain leases, licences and enclosure permits**

- (1) Any lease over land in force under a repealed Act continues in force on and from the repeal day as a lease under this Act over the same land.
- (2) Any licence over land in force under a repealed Act continues in force on and from the repeal day as a licence under this Act over the same land.
- (3) An enclosure permit for a road or watercourse in force under the *Crown Lands Act 1989* continues in force on and from the repeal day as an enclosure permit under this Act in relation to the same road or watercourse.
- (4) A lease, licence or enclosure permit for a defined term does not (except as provided by this Act) continue beyond the end of that term.
- (5) The lease, licence or enclosure permit continues to be subject to the terms and conditions specified in lease, licence or permit unless the terms or conditions are inconsistent with another provision of this Act.
- (6) To avoid doubt, any sublease or sublicense of a lease or licence that this clause continues in force also continues in force under this Act.
- (7) This clause does not apply in relation to a continued holding.  
**Note.** Schedules 1–3 make special provision in relation to continued holdings.

**27 Validation of certain notices and relevant interests under section 34A of Crown Lands Act 1989**

- (1) This clause applies to each of the following:
  - (a) a notice published before the repeal day in the Gazette for the purposes of section 34A (2) (b) of the *Crown Lands Act 1989* (a **general purpose notice**) in respect of a Crown reserve if:

- (i) the notice specified a purpose (other than the declared purpose of the reserve) for which the reserve was to be used or occupied, and
    - (ii) the notice did not specify the relevant interests under which the reserve could be used or occupied for that purpose,
  - (b) the renewal of a relevant interest before the repeal day for which a notice was not published under section 34A (2) (b) of the *Crown Lands Act 1989* for the renewal (an **unnotified interest renewal**).
- (2) To avoid doubt, both a general purpose notice and an unnotified interest renewal are taken to comply with (and always to have complied with) section 34A (2) (b) of the *Crown Lands Act 1989*.
- (3) Accordingly:
- (a) any relevant interest granted for a purpose specified in a general purpose notice is not invalid (and was never invalid) just because it was not specified in the notice, and
  - (b) an unnotified interest renewal is not invalid (and was never invalid) just because a notice was not published under section 34A (2) (b) of the *Crown Lands Act 1989* for the renewal.
- (4) A term used in this clause that was defined for the purposes of section 34A of the *Crown Lands Act 1989* has the same meaning as it had in that section.

## **28 Continuation of validation of certain secondary interests**

- (1) Without limiting section 30 of the *Interpretation Act 1987*, each of the following remains unaffected by the repeal of the *Crown Lands Act 1989*:
- (a) any validation by clause 59 of Schedule 8 (the **former validation clause**) to the *Crown Lands Act 1989* of an existing secondary interest (as defined by that clause),
  - (b) any conclusive presumption in respect of those interests provided by the former validation clause,
  - (c) the application of section 104A (Saving of native title rights and interests etc) of the *Native Title (New South Wales) Act 1994* to the validation of any interest by operation of section 34AA of the *Crown Lands Act 1989* and the former validation clause.
- (2) The power of the Minister under section 2.19 to validate a secondary interest as referred to in that section extends to an existing secondary interest (as defined by the former validation clause).
- (3) A reference in section 2.19 to the use of Crown land in accordance with the secondary interest before its validation under that section extends to use and occupation before the commencement of that section.
- (4) This clause extends to the operation of section 2.19 in its application to Crown land managers because of section 3.17.
- (5) However, this clause continues not to affect:
- (a) any decision of a court made before the commencement of section 34AA of the *Crown Lands Act 1989*, or
  - (b) any land claim (within the meaning of the *Aboriginal Land Rights Act 1983*) made before 9 November 2012 (the date of the decision in *Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (Goomallee Claim)* [2012] NSWCA 358).

## **Division 8 Vesting of Crown land in local councils during transitional vesting period**

**Note.** Division 4.2 of this Act commences on the date of assent to this Act. This Division of this Part provides for the transfer of Crown land under Division 4.2 of this Act from the date of assent until immediately before the repeal day.

### **29 Definitions**

In this Division:

*new council transfer provisions* means Division 4.2 (Vesting of Crown land in local councils) of this Act.

*old council transfer provisions* means Division 7 of Part 4 of the *Crown Lands Act 1989*.

*transitional vesting period* means the period:

- (a) beginning on the date of assent to this Act, and
- (b) ending immediately before the repeal day.

### **30 Old council transfer provisions cannot be used during transitional vesting period**

The Minister cannot use the old council transfer provisions to vest land in local councils during the transitional vesting period.

### **31 Application of new council transfer provisions and related provisions**

- (1) The following provisions apply in relation to the vesting of land in local councils under the new council transfer provisions during the transitional vesting period:
  - (a) a reference to transferable Crown land in the new council transfer provisions is to be read as being a reference to prescribed land (as defined in the old council transfer provisions),
  - (b) the following provisions of this Act apply (and functions are conferred or imposed under them) in relation to the vesting of land under the new council transfer provisions even if they have not commenced:
    - (i) Part 8 (Native title rights and interests) of this Act,
    - (ii) any other provisions of this Act prescribed by the regulations,
    - (iii) any relevant definitions in Part 1 of this Act, except as provided by paragraph (a).
- (2) To avoid doubt, regulations may be made for the purposes of a provision that applies because of subclause (1) (b) even though it has not commenced.

## **Division 9 Amounts payable**

### **32 Existing amounts payable under repealed Acts or statutory rules**

- (1) Except as provided by subclause (2), any amount owing under a repealed Act or repealed statutory rule to a person, body or entity continues on and from the repeal day to be owing under this Act to the same person, body or entity.
- (2) Any amount owing under a repealed Act or repealed statutory rule to a body or entity abolished by this Part is taken on and from the repeal day to be owing under this Act:
  - (a) if there is a successor body—to the successor body, or
  - (b) if there is no successor body—to the Crown.
- (3) This clause does not limit Schedule 6 if it is applied by a provision of this Part to a particular transfer of assets, rights or liabilities.
- (4) In this clause:



**amount owing** includes fees, charges, rents and royalties.

**successor body** means (subject to the regulations):

- (a) for an abolished reserve trust—a statutory land manager, local council or corporation that is taken by clause 11 to have been appointed as the Crown land manager of the former trust land (as defined in that clause), and
- (b) for an abolished trust for special trust land referred to in clause 12—a statutory land manager taken by clause 12 to have been appointed as the Crown land manager of the trust's land, and
- (c) for an abolished trust over institutional public trust land—a statutory land manager taken by clause 13 to have been appointed as the Crown land manager of the trust's land, and
- (d) for the abolished Trust for the Orange Show Ground—the Orange City Council.

## **Division 10 Administration**

### **33 Existing declarations of public purposes**

- (1) This clause applies to a purpose declared to be a public purpose (a **declared public purpose**) for the definition of **public purpose** in section 3 (1) of the *Crown Lands Act 1989* in relation to a provision of that Act.
- (2) Subject to the regulations, a declared public purpose continues on and from the repeal day to have effect for the purposes of the definition of **public purpose** in section 1.5 (1) of this Act as if the regulations had declared the purpose to be a public purpose for the corresponding provision (if any) of this Act.

### **34 Advisory committees**

Any advisory committee established under section 12 of the *Crown Lands Act 1989* continues in existence on and from the repeal day as an advisory committee established under section 12.1 of this Act.

### **35 References by Minister to Secretary**

Any uncompleted reference to the Secretary under section 19 of the *Crown Lands Act 1989* may be completed on and from the repeal day as if that section had not been repealed.

### **36 Administrative arrangements**

Any arrangement under section 18 of the *Crown Lands Act 1989* is taken on and from the repeal day to be an arrangement entered into under section 12.4 of this Act.

### **37 Authorised inspectors become authorised officers**

- (1) Any person who is an authorised inspector under the *Crown Lands Act 1989* is taken to have been appointed as an authorised officer on and from the repeal day.
- (2) The person's appointment as an authorised officer is subject to the same limitations specified in the person's instrument of appointment as an authorised inspector.
- (3) If any of these limitations is by reference to a provision of the *Crown Lands Act 1989*, that limitation is to be read as a limitation by reference to the corresponding provisions (if any) of this Act.
- (4) The person may continue to use the person's identification card as an authorised inspector as an identity card for the purposes of this Act until it is replaced.

## Division 11 Updating of references

### 38 Application of Division

- (1) This Division applies on and from the repeal day to a provision (an *affected legislative provision*) of another Act or any instrument made under another Act (whether enacted or made before or after the commencement of this clause), except a provision excluded by subclause (2).
- (2) Each of the following provisions is excluded from subclause (1):
  - (a) a provision of the amending Act,
  - (b) a provision of any other Act or instrument made under another Act that contains a reference inserted or substituted by, or retained despite, an amendment made to the provision by the amending Act,
  - (c) a spent savings or transitional provision of any other Act or an instrument made under any other Act,
  - (d) a provision of an Act or instrument made under an Act (or a provision belonging to a class of provisions) prescribed by the regulations.
- (3) This Division extends to an affected legislative provision that contains a reference to an Act repealed by the *Crown Lands Act 1989* if it was required to be read as a reference to the *Crown Lands Act 1989* or *Crown Lands (Continued Tenures) Act 1989*.

**Note.** For example, clause 21 (1) of Schedule 8 to the *Crown Lands Act 1989* required a reference in any other Act, in any instrument made under an Act or in any other instrument to the *Crown Lands Consolidation Act 1913* to be read as a reference to the *Crown Lands Act 1989*. See also section 68 (References to amended or repealed Acts and instruments) of the *Interpretation Act 1987*.
- (4) This Division has effect unless the context or subject-matter indicates or requires differently.

### 39 References to repealed Acts

In any affected legislative provision:

- (a) subject to paragraph (b), a reference to a repealed Act is to be read as a reference to this Act, and
- (b) a reference to a provision of a repealed Act is to be read as a reference to the corresponding provision (if any) of this Act.

### 40 References to dedicated or reserved land and reserve trusts

- (1) A reference in any affected legislative provision to land that is dedicated or reserved under a repealed Act is to be read as a reference to land that is dedicated or reserved under this Act.
- (2) A reference in any affected legislative provision to a reserve trust (as defined in Part 5 of the *Crown Lands Act 1989*) is to be read as a reference to:
  - (a) in the case where it relates to particular dedicated or reserved Crown land—the Crown land manager (if any) for that land, or
  - (b) in any other case—to a Crown land manager.

### 41 References in non-legislative provisions

- (1) Unless the regulations provide differently, this Division applies to the provisions of non-legislative instruments in the same way as it applies to affected legislative provisions.

- (2) A *non-legislative instrument* is an instrument (except an Act or an instrument made under an Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

## **Division 12    Miscellaneous**

### **42    Directions concerning names**

- (1) The Minister may, by written order, give directions as to the name of any statutory land manager or other corporation that is taken to be constituted by this Part.
- (2) A corporation to which a direction applies is taken for the purposes of this Act to have the name specified in the direction despite anything in this Part or any other provision of this Act.

### **43    No compensation payable for operation of Schedule**

No compensation is payable for:

- (a) the loss of an office (including that of a trustee) because of the operation of this Schedule, or
- (b) the abolition of a corporation, trust or other entity because of the operation of this Schedule.

### **44    General savings provision**

Subject to this Part, Schedules 1–4 and the regulations, anything done under or for the purposes of a provision of a repealed Act or repealed statutory rule is, to the extent that it has effect immediately before the repeal of the provision, taken on and from the repeal day to have been done under or for the purposes of the corresponding provision (if any) of this Act.

## **Schedule 8 Repeal of certain legislation**

Each of the following is repealed:

- (a) the *Crown Lands Act 1989* No 6,
- (b) the *Crown Lands (Continued Tenures) Act 1989* No 7,
- (c) the *Hay Irrigation Act 1902* No 57,
- (d) the *Irrigation Areas (Reduction of Rents) Act 1974* No 83,
- (e) the *Murrumbidgee Irrigation Areas Occupiers Relief Act 1934* No 52,
- (f) the *Orange Show Ground Act 1897*,
- (g) the *Trustees of Schools of Arts Enabling Act 1902* No 68,
- (h) the *Wentworth Irrigation Act 1890* No 7,
- (i) the *Western Lands Act 1901* No 70,
- (j) the *Western Lands Amendment Act 2009* No 9,
- (k) the regulations and by-laws under any of these Acts.

[Second reading speech made in—  
Legislative Council on 19 October 2016  
Legislative Assembly on 9 November 2016]