



Crown Lands (Continued Tenures) Act 1989 No 7

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New South Wales

Crown Lands (Continued Tenures) Act 1989 No 7

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New South Wales

Crown Lands (Continued Tenures) Act 1989 No 7

An Act to provide for the continuation, and administration, of tenures in force under the repealed provisions of the *Crown Lands Consolidation Act 1913*, the Closer Settlement Acts and certain other Acts.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Crown Lands (Continued Tenures) Act 1989*.

2 Commencement

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

3 Definitions

(1) In this Act:

dealing means a dealing with land.

Department means the Land and Property Management Authority.

holding means an incomplete purchase, a perpetual lease, a term lease or a special lease.

incomplete purchase means:

- (a) a tenure listed in Part 1 of Schedule 1,
- (b) a purchase under Schedule 7 of land comprised in a perpetual lease, a term lease or a special lease,
- (c) a purchase under section 28BB of the *Western Lands Act 1901* (after the commencement of Part 1 of Schedule 1) of land comprised in a lease under that Act,
- (d) a tenure created by a subdivision of:
 - (i) a tenure listed in Part 1 of Schedule 1 to this Act, or
 - (ii) a purchase referred to in paragraph (b) or (c), or
- (e) a tenure created by a redesign of an incomplete purchase in an irrigation area under section 16, as in force before its repeal,

to which either or both of the following provisions apply:

- (f) the payment of the purchase price or any other amount due to the Crown in respect of the tenure or purchase is not complete,
- (g) if the land comprised in the tenure or purchase has been sold subject to conditions which are recorded in the Register, those conditions have not been performed or complied with.

minimum annual instalment has the meaning given by Part 1B.

minimum half-yearly instalment has the meaning given by Part 1B.

permissive occupancy means:

- (a) a permissive occupancy or permission to occupy Crown land granted under section 136K of the *Crown Lands Consolidation Act 1913*, or
- (b) a permit to occupy land granted under section 39 of the *Closer Settlement Act 1904*,

and in force immediately before the commencement of section 11.

perpetual lease means:

- (a) a tenure listed in Part 2 of Schedule 1 and in force immediately before the commencement of that Part,
- (b) a tenure created by a subdivision of such a tenure, or
- (c) a tenure created by a redesign of a perpetual lease in an irrigation area under section 16, as in force before its repeal.

Principal Act means the *Crown Lands Act 1989*.

public purpose, in relation to a provision of this Act, means any purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose for the purposes of the provision.

special lease means a special lease granted under the *Crown Lands Consolidation Act 1913* and in force immediately before the commencement of section 10 or a special lease created by a subdivision of such a lease.

term lease means a tenure listed in Part 3 of Schedule 1 and in force immediately before the commencement of section 8 or a tenure created by a subdivision of such a tenure.

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

Water Administration Ministerial Corporation means the corporation of that name constituted by the *Water Management Act 2000*.

- (2) Expressions used in this Act have the same meaning as they have in the Principal Act unless a contrary intention appears.
- (3) In this Act:
 - (a) a reference to a function includes a reference to a power, authority and duty, and
 - (b) a reference to the exercise of a function includes, in relation to a duty, a reference to the performance of the duty.
- (4) Notes included in this Act do not form part of this Act.

4 Application of Act

This Act applies to and in respect of:

- (a) land in the Eastern and Central Division (and land in special land districts that are not in the Eastern and Central Division),
- (b) holdings and permissive occupancies created under the Crown Lands Acts and situated in the Western Division,
- (c) incomplete purchases of land formerly comprised in leases under the *Western Lands Act 1901* and land formerly comprised in those incomplete purchases, and
- (d) land formerly comprised in incomplete purchases created under the Crown Lands Acts and situated in the Western Division.

Part 1A Rents

4A Application of Part

- (1) This Part applies in respect of any lease, other than a lease of land situated in the Western Division.
Note. See, however, Division 2B of Part 7 of the Principal Act, which applies a minimum rent to certain leases of land situated in the Western Division.
- (1A) Section 4C also applies in respect of a permissive occupancy, other than a permissive occupancy situated in the Western Division.
- (2) The regulations may apply the provisions of this Part, with or without modification, in respect of leases of land situated in the Western Division. The regulations may also apply the provisions of section 4C, with or without modification, in respect of permissive occupancies situated in the Western Division.
- (3) This Part, and any regulations made under subsection (2), have effect despite anything to the contrary in this Act and despite any condition to which a lease or permissive occupancy is subject.

4B Definitions

In this Part:

lease means a perpetual lease, special lease, term lease or Commonwealth lease.

minimum rent has the same meaning as in Division 2A of Part 7 of the Principal Act.

4C Adjustment of annual rent in line with Consumer Price Index—rent subject to redetermination

- (1) The annual rent of a lease (except a lease the rent of which is not subject to redetermination) or permissive occupancy at a due date that is the effective date of a redetermination of the rent of the lease or permissive occupancy, or that is the next due date after a mid-term redetermination of the rent of the lease or permissive occupancy, is:
 - (a) the rent as so redetermined, or
 - (b) if the minimum rent at that due date exceeds the rent as so redetermined, the minimum rent.
- (2) The annual rent of a lease or permissive occupancy referred to in subsection (1) at any other due date is:
 - (a) the CPI adjusted rent at that due date, or
 - (b) if the minimum rent at that due date exceeds the CPI adjusted rent, the minimum rent.

Note. As at 1 July 2004, the minimum rent under Division 2A of Part 7 of the Principal Act is \$350. That amount is subject to CPI adjustment under that Act and may also be increased by the regulations under that Act.

See also Part 4 of Schedule 8 to the Principal Act, which provides for the phasing-in of minimum rents from 1 July 2004 to 1 July 2006.

- (3) The *CPI adjusted rent* is to be determined in accordance with the following formula:

$$R = A \times \frac{C}{D}$$

where:

R represents the CPI adjusted rent.

A represents the determined rent, being the annual rent as at the last due date before 1 July 2004, or as at the effective date of the last redetermination of rent to take effect on or before the due date, whichever is later.

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

D represents the Consumer Price Index number for the last quarter for which such a number was published before the last due date before 1 July 2004, or as at the effective date of the last redetermination of rent to take effect on or before the due date, whichever is later.

- (4) Despite subsections (1) and (2), if a mid-term redetermination of rent is made, the rent as so redetermined may be charged, on a pro rata basis, in respect of the period commencing on the date the redetermination takes effect and ending on the next due date in respect of the rent, and the annual rent payable may be adjusted by the Minister as appropriate (even if the rent in respect of that period has already been paid in advance).
- (5) The operation of this section in respect of the rent of a lease or permissive occupancy is not of itself a redetermination of the rent for the purposes of this Act. Accordingly, clause 11 of Schedule 5 does not apply.
- (6) For avoidance of doubt, the rent of a lease is not to be regarded as being subject to redetermination merely because the holder of the lease has the option, under clause 10 of Schedule 5, of applying to the Minister for a redetermination of the rent. However, it does become subject to redetermination if such an application is made.

Note. See section 4F.

- (7) In this section:

mid-term redetermination of rent is a redetermination of rent that takes effect on any date other than the due date for the rent.

Note. See sections 4E and 4F in relation to effective dates of redetermination of rent. Redeterminations of rent are made in respect of rent review dates, which coincide with due dates for the rent. However, if a redetermination of rent is made more than 6 months after a rent review date, it takes effect on the date it is made (not the rent review date or due date for the rent). This is a mid-term redetermination of rent.

4D Adjustment of annual rent in line with Consumer Price Index—rent not subject to redetermination

- (1) The annual rent of a lease the rent of which is not subject to redetermination is:
 - (a) the CPI adjusted rent at the due date, or
 - (b) if the minimum rent at that due date exceeds the CPI adjusted rent, the minimum rent.

Note. As at 1 July 2004, the minimum rent under Division 2A of Part 7 of the Principal Act is \$350. That amount is subject to CPI adjustment under that Act and may also be increased by the regulations under that Act.

See also Part 4 of Schedule 8 to the Principal Act, which provides for the phasing-in of minimum rents from 1 July 2004 to 1 July 2006.

- (2) The ***CPI adjusted rent*** is to be determined in accordance with the following formula:

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

where:

R represents the CPI adjusted rent.

B represents the rent base, being the annual rent as at the last due date occurring before 1 July 2004.

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date for which the CPI adjusted rent is being calculated.

D represents the Consumer Price Index number for the last quarter for which such a number was published before 1 July 2004.

- (3) The operation of this section in respect of the rent of a lease is not a redetermination of rent for the purposes of this Act. Accordingly, clause 11 of Schedule 5 does not apply.

4E Redetermination of rents

- (1) This section applies from 1 July 2004 in respect of a lease the rent of which was, immediately before 1 July 2004, subject to redetermination by the Minister under this Act, except the following leases:

- (a) a lease in respect of which the rent may be redetermined by the Minister at any time,
- (b) a lease in respect of which the rent may be redetermined by the Minister at intervals of less than 3 years.

Note. The leases to which this section applies are more fully described in clauses 6, 8 and 9 of Schedule 5. Before 1 July 2004, the rents of the leases to which this section applies were redetermined at the intervals set out in those clauses.

In addition, this section applies to Commonwealth leases that were subject to redetermination before 1 July 2004.

- (2) The Minister is to redetermine the rent payable in respect of a lease to which this section applies as provided by this section.
- (3) A redetermination of the rent of a lease is to be made in respect of each rent review date.
- (4) The rent review dates in respect of a lease are as follows:
- (a) if the effective date of the last redetermination of the rent of the lease was not more than 3 years before 1 July 2004:
 - (i) the first rent review date is the first due date in respect of the rent occurring on or after 1 July 2004 that is not less than 3 years after the effective date of that redetermination, or such later due date as may be determined by the Minister, and
 - (ii) thereafter, rent review dates fall on the third anniversary of the previous rent review date,
 - (b) if paragraph (a) does not apply:
 - (i) the first rent review date is the first due date in respect of the rent occurring on or after 1 July 2004, or such later due date as may be determined by the Minister, and
 - (ii) thereafter, rent review dates fall on the third anniversary of the previous rent review date.
- (5) A redetermination of rent in respect of the first rent review date for a lease under this section:
- (a) may be made at any time before the first rent review date or within 6 months after the first rent review date, and, if so made, takes effect on the first rent review date, and
 - (b) may be made more than 6 months after the first rent review date but, if so made, takes effect from the date of the redetermination.

- (6) A redetermination of rent in respect of any other rent review date for a lease under this section:
 - (a) may be made within 6 months before or after a rent review date and, if so made, takes effect on the rent review date, and
 - (b) may be made more than 6 months after a rent review date but, if so made, takes effect from the date of the redetermination.
- (7) Any redetermination of rent or adjustment of rent following a redetermination does not become due and payable, for the purpose of calculating interest, until the date notified to the holder of the lease by the Minister as being the due date in respect of the rent or adjustment.
- (8) For avoidance of doubt, this section does not affect the operation of clauses 11 and 12 of Schedule 5.

4F Redetermination of rent following application for redetermination

- (1) This section applies in respect of a lease if an application is made under clause 10 of Schedule 5 for a redetermination of the rent of the lease.
- (2) The Minister is to redetermine the rent payable in respect of a lease to which this section applies as provided by this section.
- (3) A redetermination of rent is to be made, as provided by this section, in respect of each rent review date.
- (4) If the application for redetermination was made before 1 July 2004, rent review dates for the lease are as follows:
 - (a) if the effective date of the last redetermination of the rent was not more than 3 years before 1 July 2004:
 - (i) the first rent review date is the first due date in respect of the rent occurring on or after 1 July 2004 that is not less than 3 years after the effective date of that redetermination, or such later due date as may be determined by the Minister, and
 - (ii) thereafter, rent review dates fall on the third anniversary of the previous rent review date,
 - (b) if paragraph (a) does not apply:
 - (i) the first rent review date is the first due date in respect of the rent occurring on or after 1 July 2004, or such later due date as may be determined by the Minister, and
 - (ii) thereafter, rent review dates fall on the third anniversary of the previous rent review date.
- (5) If the application for redetermination is made on or after 1 July 2004:
 - (a) the first rent review date is the first due date in respect of the rent after the application is made, and
 - (b) thereafter, each third anniversary of the previous rent review date is a rent review date.
- (6) A redetermination of rent in respect of the first rent review date for a lease under this section:
 - (a) may be made at any time before the first rent review date or within 6 months after the first rent review date, and, if so made, takes effect on the first rent review date, and
 - (b) may be made more than 6 months after the first rent review date but, if so made, takes effect from the date of the redetermination.

- (7) A redetermination of rent in respect of any other rent review date for a lease under this section:
 - (a) may be made within 6 months before or after a rent review date and, if so made, takes effect on the rent review date, and
 - (b) may be made more than 6 months after a rent review date but, if so made, takes effect from the date of the redetermination.
- (8) Any redetermination of rent or adjustment of rent following a redetermination does not become due and payable, for the purpose of calculating interest, until the date notified to the holder of the lease by the Minister as being the due date in respect of the rent or adjustment.
- (9) For avoidance of doubt, this section does not affect the operation of clauses 11 and 12 of Schedule 5.

Part 1B Minimum instalments—purchases of land

4G Application of Part

- (1) This Part applies in respect of any purchase of land under this Act, including an incomplete purchase.
- (2) Subject to subsection (3), this Part does not apply in respect of a purchase of land situated in the Western Division.
- (3) The regulations may apply the provisions of this Part, with or without modification, in respect of land situated in the Western Division.
- (4) This Part, and any regulations made under subsection (3), have effect despite anything to the contrary in this Act and despite any condition to which a purchase (or incomplete purchase) is subject.

4H Minimum annual instalments

- (1) An annual instalment of the purchase price of land under this Act is not in any case to be less than the minimum annual instalment payable at the due date.
- (2) If an annual instalment of the purchase price of land (whether with or without interest added) is less than the minimum annual instalment at the due date, the annual instalment is increased to the minimum annual instalment.
- (3) For the purpose of this Act, the *minimum annual instalment* at each due date is determined in accordance with the following formula:

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

where:

M represents the minimum annual instalment.

B represents the annual instalment base.

C represents 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 represents the Consumer Price Index number for the last quarter for which such a number was published before the annual instalment base adjustment date.

- (4) In this section:

annual instalment base means \$350 or such higher amount as the regulations may from time to time prescribe.

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.

4I Minimum half-yearly instalments

- (1) A half-yearly instalment of the purchase price of land under this Act is not in any case to be less than the minimum half-yearly instalment payable at the due date.
- (2) 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.

- (3) For the purpose of this Act, 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 represents the minimum half-yearly instalment.

B represents the half-yearly instalment base.

C represents 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 represents the Consumer Price Index number for the last quarter for which such a number was published before the half-yearly instalment base adjustment date.

- (4) In this section:

half-yearly instalment base means \$175 or such higher amount as the regulations may from time to time prescribe.

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.

4J Adjustment of final instalment

If the balance of purchase money and interest owing in respect of a purchase is at any time less than the amount of a minimum annual instalment or, in the case of instalments paid half-yearly, the minimum half-yearly instalment, the balance only is payable.

Part 2 Provisions applicable to continued tenures etc

5 Continued tenures

- (1) A tenure in force under a repealed Act immediately before its repeal remains in force subject to the provisions of this Act and the Principal Act.
- (2) If the tenure is a lease or occupancy for a defined term, the tenure does not (except as provided in this Act or the Principal Act) continue beyond the end of that term.
- (3) A conditional purchase current under section 28B or 28BB of the *Western Lands Act 1901* immediately before the commencement of Part 1 of Schedule 1 continues after that commencement as a conditional purchase subject to this Act, the Principal Act and the *Western Lands Act 1901*.
- (4) In this section:
repealed Act means an Act repealed by the Principal Act or the *Prickly Pear Act 1987*.
tenure means:
 - (a) an incomplete purchase listed in Part 1 of Schedule 1, or
 - (b) a perpetual lease, term lease or special lease, or
 - (c) a permissive occupancy, or
 - (d) (Repealed)
 - (e) a lease to the Commonwealth under section 69A of the *Crown Lands Consolidation Act 1913*.

6 Incomplete purchases etc

- (1) Part 1 of Schedule 2 applies:
 - (a) to and in respect of incomplete purchases (other than purchases made after the commencement of this section or tenures derived from any such purchases), and
 - (b) to the extent that they are expressed to so apply—to and in respect of land formerly comprised in those incomplete purchases.
- (2)–(4) (Repealed)
- (5) In this Act, a reference to land formerly comprised in an incomplete purchase includes a reference to land that was an incomplete purchase at any time before the commencement of this section even if the purchase was completed before that commencement.

7 Perpetual leases

Part 2 of Schedule 2 applies to and in respect of perpetual leases.

8 Term leases

Part 3 of Schedule 2 applies to and in respect of term leases.

9 (Repealed)

10 Special leases

Part 5 of Schedule 2 applies to and in respect of special leases.

11 Permissive occupancies

Part 6 of Schedule 2 applies to and in respect of permissive occupancies.

12 (Repealed)

13 Commonwealth leases

Part 8 of Schedule 2 applies to and in respect of leases to the Commonwealth under section 69A of the *Crown Lands Consolidation Act 1913*.

14–16 (Repealed)

Part 3 Miscellaneous

17 General provisions applicable to CPI adjustments

- (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 or an instalment, regard may be had to the last Index number so published before a notice or invoice of the rent or instalment payable by the person liable to pay the rent or instalment 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 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 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.

18 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following:
 - (a) the functions of officers employed or acting in the administration or execution of this Act,
 - (b) the circumstances in which fees, costs or deposits may be charged or required and the amount of any such fees, costs or deposits,
 - (c) authorising the waiver or refund of the whole or any part of any fee, cost, deposit, interest or rent paid or payable under this Act,
 - (d) determining the person to whom a refund of any fee, cost, deposit, interest or rent is payable,
 - (e) prescribing the periods within which, and the manner in which, notices, objections and appeals may be made,
 - (f) the keeping of records and books of account, the furnishing of returns and records and the inspection of, and the taking of extracts from, records or books,

- (g) the manner of, and the places and times for, the payment of rent, purchase money or other money,
 - (h) the payment, by an incoming holder, of the value of any improvements on Crown land to the owner of those improvements,
 - (i) the form and lodgment of, and manner of dealing with, applications, dealings, instruments or documents,
 - (j) the execution of applications, dealings, instruments or documents,
 - (k) the powers and functions of the Registrar-General in respect of applications, dealings, instruments or documents.
- (2) A regulation may create an offence punishable by a maximum penalty not exceeding 5 penalty units.

19 Savings and transitional provisions

Schedule 8 has effect.

Schedule 1 Continued tenures

(Section 3)

Part 1 Incomplete purchases

- (a) An auction purchase, being land sold by auction under section 63 of the *Crown Lands Consolidation Act 1913* or under section 21 (6) of the *Closer Settlement (Amendment) Act 1909*.
- (b) An after-auction purchase, being land sold under section 64 (1) of the *Crown Lands Consolidation Act 1913* or by way of after auction sale under section 4 of the *Closer Settlement (Amendment) Act 1914*.
- (c) A conditional purchase (whether ordinary, non-residential, for mining purposes or within a special area), including an original and an additional conditional purchase, made under the Crown Lands Acts (other than this Act and the Principal Act).
- (d) A conditional purchase made under section 28B or 28BB of the *Western Lands Act 1901* before the commencement of this Part.
- (e) An improvement purchase made under section 62 of the *Crown Lands Consolidation Act 1913*.
- (f) A residential lease purchase, being a purchase (under section 81 of the *Crown Lands Consolidation Act 1913*) of land comprised in a residential lease.
- (g) A returned soldiers' special holding purchase, being a purchase (under section 4A of the *Returned Soldiers Settlement Act 1916*) of land comprised in a returned soldiers' special holding.
- (h) A settlement purchase made under the *Closer Settlement Act 1904*, the *Closer Settlement (Amendment) Act 1909* or the *Closer Settlement Amendment (Conversion) Act 1943*.
- (i) A soldiers' group purchase made under section 4B of the *Returned Soldiers Settlement Act 1916*.
- (j) A special purchase made under section 65, 66 or 68 of the *Crown Lands Consolidation Act 1913*.
- (k) A suburban holding purchase, being a purchase (under section 129B of the *Crown Lands Consolidation Act 1913*) of the land comprised in a suburban holding.
- (l) A tender purchase, being land sold under section 63A of the *Crown Lands Consolidation Act 1913* or under section 21 (6) of the *Closer Settlement (Amendment) Act 1909*.
- (m) An after-tender purchase, being land sold under section 64 (2) of the *Crown Lands Consolidation Act 1913* or by way of after tender sale under section 4 of the *Closer Settlement (Amendment) Act 1914*.
- (n) A town lands lease purchase, being a purchase (under section 82A of the *Crown Lands Consolidation Act 1913*) of land comprised in a lease of town lands.
- (o) A week-end lease purchase, being a purchase (under section 136H of the *Crown Lands Consolidation Act 1913*) of land comprised in a week-end lease.

- (p) An irrigation farm purchase made under section 139, 144E or 145 of the *Crown Lands Consolidation Act 1913*.
- (q) A non-irrigable purchase made under section 139, 144E or 145 of the *Crown Lands Consolidation Act 1913*.
- (r) A town land purchase made under section 139, 144E or 145 of the *Crown Lands Consolidation Act 1913*.

Part 2 Perpetual leases

- (a) A closer settlement lease under the Closer Settlement Acts.
- (b) A conditional lease under the Crown Lands Acts (other than a conditional lease for a term of years).
- (c) A conditional purchase lease (whether an original or an additional holding) under the Crown Lands Acts.
- (d) A Crown-lease (whether an original or an additional holding) under the Crown Lands Acts (other than a Crown-lease for a term of years).
- (e) A group purchase lease under the Closer Settlement Acts.
- (f) A homestead farm (whether an original or an additional holding) under the Crown Lands Acts.
- (g) A homestead selection or grant (whether an original or an additional holding) under the Crown Lands Acts.
- (h) A prickly-pear lease, being a lease of infested land under section 17 of the *Prickly-pear Act 1924* (other than a prickly-pear lease for a term of years).
- (i) A returned soldiers' special holding, being a lease to a discharged soldier under section 4 of the *Returned Soldiers Settlement Act 1916*.
- (j) A settlement lease (whether an original or an additional holding) under the Crown Lands Acts.
- (k) A settlement purchase lease under the Closer Settlement Acts.
- (l) A special conditional purchase lease (whether an original or an additional holding) under the Crown Lands Acts.
- (m) A suburban holding (whether an original or an additional holding) under the Crown Lands Acts.
- (n) A town lands lease, being a lease of town lands under section 82A of the *Crown Lands Consolidation Act 1913*.
- (o) A week-end lease under the *Crown Lands Consolidation Act 1913*.
- (p) An irrigation farm lease under the Crown Lands Acts.
- (q) A non-irrigable lease under the Crown Lands Acts.
- (r) A town land lease under the Crown Lands Acts (being a lease within a special land district).

Part 3 Term leases

- (a) A conditional lease under the *Crown Lands Consolidation Act 1913* for a term of years.
- (b) A Crown-lease (whether an original or an additional holding) under the *Crown Lands Consolidation Act 1913* for a term of years.
- (c) A prickly-pear lease, being a lease of infested land or of commons and reserves under section 17 or 18 of the *Prickly-pear Act 1924*, for a term of years.

Part 4 (Repealed)

Schedule 2 Provisions applicable to continued tenures etc

(Sections 6–13)

Part 1 Incomplete purchases etc

(Section 6)

1 Definition

In this Part:

incomplete purchase does not include a purchase made after the commencement of this Part or a tenure derived from any such purchase.

2 References in folios of the Register

In a folio of the Register relating to an incomplete purchase or to land formerly comprised in an incomplete purchase:

- (a) a reference to an Act repealed by the Principal Act shall be taken to be a reference to the Principal Act and this Act,
- (b), (c) (Repealed)
- (d) a reference to section 146, 146B or 257 of the *Crown Lands Consolidation Act 1913* or to section 3 of the *Closer Settlement (Amendment) Act 1918* shall be taken to be a reference to Schedule 4 (subdivision of holdings),
- (e) a reference to section 235A of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to section 172 (land with boundaries to lakes, roads etc) of the Principal Act,
- (f) a reference to section 12 of the *Closer Settlement (Amendment) Act 1919* shall be taken to be a reference to clause 3 (payments generally),
- (g) a reference to section 136L of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to Division 5 of Part 4 of the Principal Act (easements),
- (h) a reference to section 142 of the *Crown Lands Consolidation Act 1913* in relation to restrictions on land use shall be taken to be a reference to clause 7 (restrictions on use—certain land in special land districts),
- (i) a reference to section 147 of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to Part 6 of the Principal Act (forfeiture of holdings), and
- (j) a reference to section 109 (3), 183 (1) or 184 (1) (h) of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to that provision as continued by clause 17 (4) of Schedule 8 to the Principal Act (payment of cost of deferred surveys).

3 Payments generally

- (1) The balance of purchase money and any other money payable under the provisions of an Act repealed by the Principal Act or under section 28B or 28BB of the *Western Lands Act 1901* (as in force before the commencement of this clause) in respect of an incomplete purchase are, subject to this Act, payable under this Act as if those provisions were contained in this Act.
- (2) An amount shown as payable in the records of the Department in respect of an incomplete purchase is, unless the contrary is proved, payable in the manner and at the time indicated in those records.

- (3) If:
- (a) money is payable to the Crown in respect of an incomplete purchase by half-yearly or annual instalments, and
 - (b) the annual rate of interest payable on the money would, but for this subclause, be less than 8 per cent,
- the annual rate of interest so payable is, from the commencement of this clause, increased to 8 per cent.
- (4) If the interest rate in respect of money payable to the Crown is increased, the Minister may adjust the half-yearly or annual instalments so that the total amount owing is paid over the same or a longer period.
- (5) If the purchase price (whether with or without interest added) of an incomplete purchase is, immediately before the commencement of this clause, payable by annual instalments of less than \$100, the annual instalments are increased to \$100 as from that commencement.
- Note.** See Part 1B of this Act in relation to minimum instalments on certain purchases after 1 July 2004.
- (6) If the balance of purchase money and interest owing in respect of an incomplete purchase is at any time less than the amount to which an instalment is increased under subclause (5), the balance only is payable.
- (7) If:
- (a) the purchase price for an incomplete purchase, or
 - (b) any other amount payable in respect of the incomplete purchase,
- without the interest added, is payable by equal annual instalments over a period, the Minister may vary the manner of payment so that the purchase price or other amount, with the interest added, is payable by equal annual instalments over the same or a longer period.
- (8) The balance of purchase money in respect of a conditional purchase taken up before 10 August 1875 which has not been brought under the instalment system is payable in full on the first due date for payment of interest occurring after the commencement of this clause.
- (9) On the subdivision of land in an incomplete purchase to which Schedule 4 does not apply the Minister may apportion to each portion of the subdivided land, in a way that to the Minister seems appropriate, the purchase money and any other amounts payable in respect of the incomplete purchase.
- (10) Despite the other provisions of this clause but without affecting any liability to make a payment due but unpaid before the commencement of this clause:
- (a) any instalment of the value of timber treatment under the *Crown Lands (West Bogan Settlers) Improvements Relief Act 1943*, and
 - (b) the interest on such an instalment,
- that but for this subclause would be payable after that commencement in respect of an incomplete purchase are waived.

4 Supplementary provisions applicable to payments on incomplete purchases in special land districts

- (1) This clause supplements clause 3 in relation to incomplete purchases in special land districts.
- (2) In clause 3 (1) the reference to the provisions of an Act repealed by the Principal Act includes a reference to section 18A of the *Irrigation Act 1912* (repealed by the *Miscellaneous Acts (Crown Lands) Amendment Act 1989*).

- (3) In clause 3 (2) the reference to the Department includes, in relation to an incomplete purchase in a special land district, a reference to the Water Administration Ministerial Corporation, the Department of Water Resources and the State Bank.
- (4) In clause 3 (3) and (4) a reference to the Crown includes, in relation to an incomplete purchase in a special land district, a reference to:
 - (a) the Water Administration Ministerial Corporation and the Department of Water Resources, and
 - (b) the State Bank or, if another person or body is prescribed for the purposes of this paragraph, that other person or body.
- (5) If:
 - (a) by virtue of clause 3 (1) a provision of an Act repealed by the Principal Act applies to an incomplete purchase in a special land district,
 - (b) there is a reference to the State Bank in the provision, and
 - (c) a person or body other than the State Bank is prescribed for the purposes of this paragraph,the reference to the State Bank shall be read as a reference to that other person or body.
- (6) If the purchase price (whether with or without interest added) of an incomplete purchase in a special land district is, immediately before the commencement of this clause, payable by half-yearly instalments of less than \$50, the half-yearly instalments are increased to \$50 as from that commencement.
Note. See Part 1B of this Act in relation to minimum half-yearly instalments on certain purchases after 1 July 2004.
- (7) If, in respect of an incomplete purchase in a special land district, the balance of purchase money and interest owing is at any time less than the amount to which an instalment is required to be increased under subclause (6), the balance only is payable.
- (8) If, in respect of an incomplete purchase in a special land district:
 - (a) the purchase price or any other amount payable (without the interest added) is payable by equal half-yearly instalments over a period, or
 - (b) the purchase price or any other amount payable (with the interest added) is payable by equal half-yearly instalments over a period,the Minister may vary the manner of payment so that the purchase price or other amount, with the interest added, is payable by equal annual instalments over the same or a longer period.

5 Payment of balance of purchase money etc on transfer

- (1) In this clause, a reference to a transfer does not include a reference to a change of ownership arising by way of:
 - (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 (other than a transfer to a person who is not a party to, or a child of, the marriage), or

- (g) a transfer by order of any other court (other than a transfer effected under a writ of execution) if the Minister has directed that this clause is not to apply to the transfer.
- (2) On the recording in a folio of the Register of the first transfer of the whole or a part of an incomplete purchase after the commencement of this clause, all money owing to the Crown in respect of the holding (whether or not payable by instalments which have not then become due) becomes due and payable.
- (3) An amount due under this clause and unpaid is payable by the holder for the time being of the incomplete purchase.
- (4) 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 holding,
 - (b) after that—the rate for the time being prescribed for the purposes of this paragraph.
- (5) Action to forfeit an incomplete purchase may not be taken in respect of non-payment of an amount due under this clause earlier than 3 months after the due date for payment.

6 Title and conditions

- (1) The holder of an incomplete purchase has an estate in fee simple in the land comprised in the purchase subject to any recordings in the folio of the Register created in respect of it and to the provisions of this Act, the Principal Act and, if the purchase is in the Western Division, the *Western Lands Act 1901*.
- (2) The holder of an incomplete purchase shall:
 - (a) comply with any provisions, conditions or covenants recorded in the folio of the Register created for the holding,
 - (b) comply with the requirements of any law relating to the use or management of the land being purchased, and
 - (c) if there are on the land any improvements 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 prescribed risks with an insurer approved by the Minister.
- (3) The holder of an incomplete purchase shall not do, permit or suffer anything that will materially degrade the land being purchased.

7 Restrictions on use—certain land in special land districts

Land comprised or formerly comprised in an incomplete purchase in a special land district shall not be used to plant:

- (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, or
- (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,

if a condition to that effect was attached to the land immediately before the commencement of this clause (unless the planting is in accordance with an approval or consent given as provided by the condition).

8 (Repealed)

Part 2 Perpetual leases

(Section 7)

1 References in folios of the Register

In a folio of the Register relating to a perpetual lease:

- (a) a reference to an Act repealed by the Principal Act shall be taken to be a reference to the Principal Act and this Act,
- (b) a reference to:
 - (i) section 101, 129, 265, 272 or 274 of the *Crown Lands Consolidation Act 1913* or to a provision of any of those sections,
 - (ii) section 145A of the *Crown Lands Consolidation Act 1913* or to a provision of that section so far as it relates to irrigation farm leases or non-irrigable leases,
 - (iii) section 11 of the *Closer Settlement Amendment (Conversion) Act 1943* or to a provision of that section (other than subsection (1A)),
 - (iv) section 10 of the *Returned Soldiers Settlement Act 1916* or to a provision of that section, or
 - (v) section 20 of the *Prickly-pear Act 1924* or to a provision of that section, in relation to restrictions on dealings shall be taken to be a reference to Part 1 of Schedule 3 (transfer restrictions),
- (c) a reference to:
 - (i) section 145A of the *Crown Lands Consolidation Act 1913* or to a provision of that section so far as it relates to town land leases, or
 - (ii) section 274A of the *Crown Lands Consolidation Act 1913* or to a provision of that section,shall be taken to be a reference to Part 2 of Schedule 3 (transfer restrictions),
- (d) a reference to section 146 or 257 of the *Crown Lands Consolidation Act 1913* or to section 21B of the *Prickly-pear Act 1924* shall be taken to be a reference to Schedule 4 (subdivision of holdings),
- (e) a reference to section 142D of the *Crown Lands Consolidation Act 1913* in relation to restrictions on land use shall be taken to be a reference to clause 6 (restrictions on use—certain land in special land districts),
- (f) a reference to section 147 of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to Part 6 of the Principal Act (forfeiture of holdings),
- (g) a reference to section 235A of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to section 172 (land with boundaries to lakes, roads etc) of the Principal Act,
- (h) a reference to section 12 of the *Closer Settlement (Amendment) Act 1919* shall be taken to be a reference to clause 2 of Schedule 5 (payment of rent etc), and
- (i) a reference to section 109 (3), 183 (1) or 184 (1) (h) of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to that provision as continued by clause 17 (4) of Schedule 8 to the Principal Act (payment of cost of deferred surveys).

2 Rent etc

Schedule 5 applies to and in respect of the rent and other money payable in respect of a perpetual lease.

3 Conditions etc

Schedule 6 applies to and in respect of perpetual leases.

4 Purchase of land held under perpetual lease

- (1) Land held under perpetual lease (other than land in a special land district) may be purchased under the provisions of Part 1 of Schedule 7.
- (2) Land held under perpetual lease in a special land district may be purchased under Part 2 of Schedule 7.
- (3) This clause does not apply to land within the Western Division which was held under a homestead selection or grant under the Crown Lands Acts immediately before the commencement of this clause.

4A Purchase of perpetual leases—special arrangements

Schedule 7A has effect.

5 Addition of land to perpetual leases

- (1) The Minister may, on application by the holder of a perpetual lease, add vacant Crown land to the lease.
- (2) On the addition of the land to the lease, the lease becomes, in respect of the added land, subject to such rent and conditions as are determined by the Minister.
- (3) The Minister shall cause particulars of the addition to be notified in the Gazette.
- (4) The Registrar-General may create such folios of, and make such recordings in, the Register as are in the Registrar-General's opinion necessary to give effect to the addition.
- (5) Land may not be added to a lease under this clause unless the Minister is satisfied that the land has been assessed under Part 3 of the Principal Act.

6 Restrictions on use—certain land in irrigation areas

Land comprised in an irrigation farm lease or a non-irrigable lease shall not be used to plant:

- (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, or
- (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,

if a condition to that effect was attached to the land immediately before the commencement of this clause (unless the planting is in accordance with an approval or consent given as provided by the condition).

7 (Repealed)

Part 3 Term leases

(Section 8)

1 References in folios of the Register

In a folio of the Register relating to a term lease:

- (a) a reference to an Act repealed by the Principal Act shall be taken to be a reference to the Principal Act and this Act,
- (b) a reference to:
 - (i) section 265, 272 or 274 of the *Crown Lands Consolidation Act 1913* or to a provision of any of those sections, or
 - (ii) section 20 of the *Prickly-pear Act 1924* or to a provision of that section, in relation to restrictions on dealings shall be taken to be a reference to Part 1 of Schedule 3 (transfer restrictions),
- (c) a reference to section 257 of the *Crown Lands Consolidation Act 1913* or to section 21B of the *Prickly-pear Act 1924* shall be taken to be a reference to Schedule 4 (subdivision of holdings),
- (d) a reference to section 235A of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to section 172 (land with boundaries to lakes, roads etc) of the Principal Act, and
- (e) a reference to section 109 (3), 183 (1) or 184 (1) (h) of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to that provision as continued by clause 17 (4) of Schedule 8 to the Principal Act (payment of cost of deferred surveys).

2 Rent etc

Schedule 5 applies to and in respect of the rent and other money payable in respect of a term lease.

3 Conditions etc

Schedule 6 applies to and in respect of term leases.

4 Occupancy after expiration of lease

A holder who, with the consent of the Minister, remains in possession of land after the expiration of a term lease, does so as a tenant from month to month:

- (a) at a rent per month equal to one-twelfth of the yearly rent, and
- (b) subject to the conditions, applicable to the lease immediately before its expiration.

5 Purchase of land held under term lease

Land held under a term lease may be purchased under Part 1 of Schedule 7.

Part 4 (Repealed)

Part 5 Special leases

(Section 10)

1 References in folios of the Register

In a folio of the Register relating to a special lease:

- (a) a reference to the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to the Principal Act and this Act,
- (b) a reference:
 - (i) in relation to restrictions on dealings—to section 75A or 75B of the *Crown Lands Consolidation Act 1913* or to a provision of either of those sections, or
 - (ii) to clause (12) of Regulation 106 of the *Crown Lands Regulations*, shall be taken to be a reference to Part 1 of Schedule 3 (transfer restrictions),
- (c) a reference to section 257 of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to Schedule 4 (subdivision of holdings), and
- (d) a reference to section 235A of the *Crown Lands Consolidation Act 1913* shall be taken to be a reference to section 172 (land with boundaries to lakes, roads etc) of the Principal Act.

2 Rent etc

Schedule 5 applies to and in respect of the rent and any other money payable in respect of a special lease.

3 Conditions

- (1) Subject to this Act and the Principal Act, a special lease remains subject to the conditions to which it was subject immediately before the commencement of this clause.
- (2) The holder of a special lease which 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 and the Principal Act.
- (3) The holder of a special lease shall 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.
- (4) A condition of a special lease which provides for the determination of a matter by a local land board (other than a determination which is, in effect, a review of a decision of the Minister) shall be read as providing for the determination of the matter by the Minister.
- (5) If a condition of a special lease or any law provides for an appeal against any such determination of a local land board, the condition or law shall be read as providing for an appeal against a determination of the Minister.
- (6) 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.

4 Purchase etc of certain land leased for a term of years

- (1) The holder of a special lease for a term of years (other than a special lease granted over an expired conditional lease, the holder of which had failed to apply for extension of the term of the lease) may, during the currency of the lease:
 - (a) apply to the Minister to purchase the land leased, or
 - (b) apply to the Minister for a new lease of the land, under the provisions of the Principal Act.
- (2) The Minister has an absolute discretion to grant or refuse an application.

5 Purchase of land leased in perpetuity or certain land leased for a term of years

Land held under a special lease in perpetuity or a special lease for a term of years granted over an expired conditional lease (the holder of which had failed to apply for extension of the term of the lease) may be purchased under Part 1 of Schedule 7.

6 Occupancy after expiration of lease for a term

The holder of a special lease for a term who, with the consent of the Minister, remains in possession of land after the expiration of the special lease, does so as a tenant from month to month:

- (a) at a rent per month equal to one-twelfth of the yearly rent, and
- (b) subject to the conditions,
applicable to the lease immediately before its expiration.

Part 6 Permissive occupancies

(Section 11)

1 Payment of rent etc

- (1) The rent, royalty, security deposit and any other money payable under the provisions of an Act repealed by the Principal Act in respect of a permissive occupancy are, subject to this Act and the Principal Act, payable under this Act as if those provisions were contained in this Act.
- (2) Subject to this Act and the Principal Act, any amount shown as payable in the records of the Department in respect of a permissive occupancy is, unless the contrary is proved, payable in the manner and at the time indicated in those records.
- (3) The rent of a permissive occupancy is payable in advance.

2 Redetermination of rent

- (1) The rent of a permissive occupancy may be redetermined by the Minister at any time.
- (2) A redetermination of rent takes effect from the first due date that is not earlier than 3 months after notice of the redetermination has been given by the Minister to the holder.
- (3) Clauses 11 and 12 of Schedule 5 apply to a redetermination of the rent of a permissive occupancy in the same way as they apply to the redetermination of the rent of a lease.

3 Review of royalties and security deposits

- (1) The Minister may from time to time review the amount of royalty payable, and the amount of any security deposited, in respect of a permissive occupancy.
- (2) If the Minister is of the opinion that the amount of the royalty or security should be changed the Minister shall serve a notice to that effect on the holder.
- (3) The amount of the royalty or security changes as provided by the notice with effect from a date stated for the purpose in the notice.

4 Conditions

- (1) Subject to this Act and the Principal Act, a permissive occupancy remains subject to the conditions to which it was subject immediately before the commencement of this clause.

- (2) A condition of a permissive occupancy which provides for the determination of a matter by a local land board shall be read as providing for the determination of the matter by the Minister.
- (3) If a condition of a permissive occupancy or any law provides for an appeal against any such determination of a local land board, the condition or law shall be read as providing for an appeal against a determination of the Minister.
- (4) If a condition of a 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.

5 Termination

A permissive occupancy is terminable at will by the Minister.

Part 7 (Repealed)

Part 8 Commonwealth leases

(Section 13)

1 Application of Part

This Part applies to leases to the Commonwealth under section 69A of the *Crown Lands Consolidation Act 1913*.

2 Redetermination of rent

Any condition of a lease to the Commonwealth which provides for the redetermination or reappraisalment of the rent by a local land board shall be read as providing for the redetermination of the rent by the Minister.

3 Objections and appeals against redeterminations etc

Clauses 11 and 12 of Schedule 5 apply to a redetermination or reappraisalment of the rent of a lease to the Commonwealth in the same way as they apply to the redetermination of the rent of a lease within the meaning of Schedule 5.

Schedule 3 Transfer restrictions

(Parts 2, 3 and 5 of Schedule 2)

Part 1 General restrictions

1 Application of Part

This Part applies to land comprised in a perpetual lease, a term lease or a special lease but only if:

- (a) the folio of the Register created in respect of the land contains a reference to this Part or a reference to a provision which by this Act is to be taken to be a reference to this Part, or
- (b) (Repealed)

2 Consent to transfer

- (1) Land to which this Part applies may not be transferred, leased, subleased, assigned or otherwise dealt with without the written consent of the Minister.
- (2) Subclause (1) does not apply to:
 - (a) a mortgage or discharge of mortgage, or
 - (b) (Repealed)
 - (c) a transfer to a Minister on behalf of the Crown, or to a public authority, of land comprised in a perpetual lease.
- (3) In this clause:
public authority means:
 - (a) a council within the meaning of the *Local Government Act 1993*, or
 - (b) a public body declared by the Minister, by order published in the Gazette, to be a public authority for the purposes of this clause.

3 Invalidation of transfers etc

A transfer, lease, sublease, conveyance, assignment or other dealing in contravention of this Part is not valid for any purpose.

4 Applications for consent

An application for consent shall be made as prescribed.

5 Dealing with applications

- (1) The Minister has discretion to give or refuse consent to a dealing with land to which this Part applies.
- (2)–(6) (Repealed)

6, 7 (Repealed)

8 Removal of restrictions

- (1) A holder of land to which this Part applies may apply to the Minister for the issue of a certificate that the land may be transferred or otherwise dealt with without the consent of the Minister.
- (2) Such a certificate may be issued by the Minister if the land is of a prescribed class or if the land has a dwelling on it and:

- (a) does not exceed 4 050 square metres in area,
 - (b) was made available for the erection of a dwelling, or
 - (c) is a parcel within the meaning of the *Strata Schemes (Freehold Development) Act 1973*.
 - (d) (Repealed)
- (2A)–(4) (Repealed)
- (5) If the Minister issues a certificate under this clause in respect of any land, the Minister's consent is not required to any subsequent transfer of, or other dealing with, the land.
 - (6) The effect of the issue of a certificate shall be recorded by the Registrar-General in the Register.
 - (7) In this clause:
holder includes a mortgagee in possession.

9, 10 (Repealed)

Part 2 Restrictions applicable to certain land (week-end leases and town land leases)

1 Application of Part

This Part applies to land comprised in a holding but only if:

- (a) the folio of the Register created in respect of the land contains a reference to a provision which by this Act is taken to be a reference to this Part, or
- (b) (Repealed)

2 Consent to transfer

- (1) Land to which this Part applies shall not be transferred without the written consent of the Minister.
- (2) Subclause (1) does not apply to:
 - (a) a mortgage or discharge of mortgage, or
 - (b) a transfer to a Minister on behalf of the Crown, or to a public authority, of land comprised in a perpetual lease.
- (3) In this clause:
public authority means:
 - (a) a council within the meaning of the *Local Government Act 1993*, or
 - (b) a public body declared by the Minister, by order published in the Gazette, to be a public authority for the purposes of this clause.

3 Invalidation of transfers

A transfer in contravention of this Part is not valid for any purpose.

4 Applications for consent

An application for consent shall be made as prescribed.

5 Dealing with applications

- (1) The Minister has discretion to give or refuse consent to any transfer of land to which this Part applies.

- (2) If the Minister is satisfied that a certificate that the land may be transferred without consent would, on application, be issued under clause 6, the Minister may, instead of giving consent, issue such a certificate as if an application for removal of restrictions had been made.

6 Removal of restrictions

- (1) A holder of land to which this Part applies may apply to the Minister for a certificate that the land may be transferred without the consent of the Minister.
- (2) A certificate shall not be issued in respect of the land comprised in a perpetual lease that is a week-end lease unless the land does not exceed 4 050 square metres in area and a dwelling is erected on the land.
- (3) (Repealed)
- (4) A certificate shall be issued if the land was sold subject to a condition requiring the erection of a dwelling on the land and the Minister is satisfied that the dwelling has been erected or has waived compliance with the condition.
- (5) A certificate shall also be issued if the land:
 - (a) is comprised in a town land lease,
 - (b), (c) (Repealed)and there are no special conditions relating to improvements applying to the land or, if there are, the Minister is satisfied that they have been complied with.
- (6) If the Minister issues a certificate under this clause in respect of any land, the Minister's consent is not required to any subsequent transfer of the land.
- (7) The effect of the issue of a certificate shall, on application, be recorded by the Registrar-General in the Register.

Part 3 (Repealed)

Schedule 4 Subdivision of holdings

(Parts 1–3, 5 of Schedule 2, clause 6 of Part 1, clause 4 of Part 2 of Schedule 7)

1 Application of Schedule

This Schedule applies to land comprised in any holding only if:

- (a) specific provision to that effect is elsewhere made by or under this Act, or
- (b) the folio of the Register created in respect of the land contains a reference to this Schedule or a reference to a provision which by this Act is taken to be a reference to this Schedule.

2 Minister's approval

- (1) A holder may not, without the Minister's approval, subdivide land to which this Schedule applies.
- (2) An application for approval shall be made as prescribed.
- (3) The applicant shall meet all costs incurred in dealing with the application.
- (4) The Minister may refuse the application or, 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 holding resulting from the subdivision that is a holding to which the condition relates.
- (6) The Minister may make such consequential alterations to the conditions or purpose of a subdivided holding as the Minister considers are necessary as a result of the subdivision.
- (7)–(9) (Repealed)

3 Exclusion of areas required for roads of access

- (1) The Minister may exclude from a subdivision any areas required for roads of access to the subdivided portions.
- (2) Excluded areas are, on approval being given to the subdivision, surrendered to the Crown free from any right to compensation.

4 Apportionment of money payable

- (1) In this clause:
rent base, in respect of a lease the rent of which is not subject to redetermination, means the amount used as the basis for adjusting the rent in line with movements in the Consumer Price Index.
- (2) The Minister may apportion:
 - (a) any purchase price, instalments of purchase money, rent or other money payable in respect of a subdivided holding, or
 - (b) any rent base for a subdivided holding,to each portion of the subdivided holding in a way that to the Minister seems appropriate.
- (3) If a part of a rent base apportioned under subclause (2) to a portion of a lease is less than \$100, that part of the rent base is increased to \$100.
- (4) A part of a purchase price apportioned under subclause (2) to a portion of a subdivided holding shall be taken, for the purposes of clause 11 of Part 1 of Schedule

7 or clause 9 (4) of Part 2 of Schedule 7 (adjustment of purchase price in line with Consumer Price Index), to have been the purchase price of the portion as at the commencement of the clause.

- (5) A part of a rent base apportioned under subclause (2) to a portion of a lease (or such a part of a rent base as increased under subclause (3)) shall be taken, for the purposes of clause 5 of Schedule 5 (adjustment of certain rents in line with Consumer Price Index), to have been the annual rent of the portion as at the commencement of the clause.
- (6) The annual rent of a portion of a subdivided lease (as apportioned under subclause (2)) is, if it is less than the amount that would have been payable had the portion always been a separate lease subject to a rent base ascertained in respect of it under this clause, increased to that amount.
- (7) This clause does not apply in respect of the determination of the annual rent of a portion of a subdivided lease if Part 1A of this Act applies in respect of the rent of the lease.

4A Apportionment of money payable—Part 1A leases

- (1) This clause applies in respect of the determination of the annual rent of a portion of a subdivided lease if Part 1A of this Act applies in respect of the rent of the lease.
- (2) If a subdivided lease is subject to redetermination, the Minister may determine the rent in respect of each portion of the subdivided lease.
- (3) If a subdivided lease is not subject to redetermination, the Minister may apportion the rent and rent base for the subdivided lease to the portions of the leases as the Minister considers appropriate.
- (4) A part of a rent base apportioned to a portion of a lease under this clause is taken, for the purpose of section 4D, to have been the annual rent of the portion of the lease as at the last due date occurring before 1 July 2004. The annual rent of the portion of the lease is to be determined accordingly.

5 Subdivided portions to be separate holdings

On approval being given to a subdivision of a holding each portion of the subdivided holding shall be held and be transferable as a separate holding of the same kind as the subdivided holding.

6 Removal of restriction on subdivision of certain land in special land districts

If a certificate has been issued under clause 8 of Part 1 or clause 6 of Part 2 of Schedule 3 (removal of restrictions on transfer) (as in force before its amendment by the *Crown Lands and Irrigation Legislation Amendment (Removal of Transfer Restrictions) Act 1997*) in respect of:

- (a) land formerly comprised in an irrigation farm purchase or in an incomplete purchase of an irrigation farm lease, being land not exceeding 2 hectares in area to which no water rights are attached,
- (b) land formerly comprised in a non-irrigable purchase or in an incomplete purchase of a non-irrigable lease, being land declared by the Minister to be non-farming land, or
- (c) land formerly comprised in a town land purchase or in an incomplete purchase of a town land lease, being land in respect of which any conditions relating to improvements have been complied with,

the approval of the Minister is not required to any subsequent subdivision of the land.

Schedule 5 Rent etc

(Parts 2–5 of Schedule 2)

1 Definitions

- (1) In this Schedule:
lease means a perpetual lease, a term lease or a special lease.
- (2) In this Schedule, a reference to the rent of a lease which is subject to periodic redetermination includes a reference to the rent of a lease which may be redetermined at any time.

2 Payment of rent etc

- (1) The rent and any other money payable under the provisions of an Act repealed by the Principal Act or under the provisions of the *Prickly-pear Act 1924* (including the provisions of that Act continued by, and repealed under, the *Prickly Pear Act 1987*) in respect of a lease are, subject to this Act and the Principal Act, payable under this Act as if those provisions were contained in this Act.
- (2) Subject to this Act and the Principal Act, any amount shown as payable in the records of the Department in respect of a lease is, until the contrary is proved, payable in the manner and at the time indicated in those records.
- (3) The rent of a lease is payable in advance.
- (4) If the rent of a lease or any other money payable to the Crown in respect of a lease is payable half-yearly, the rent or other money is, as from a date fixed by the Minister, payable annually.
- (5) If:
 - (a) money is payable to the Crown in respect of a lease by half-yearly or annual instalments, and
 - (b) the annual rate of interest payable on the money would, but for this subclause, be less than 8 per cent,the annual rate of interest so payable is, from the commencement of this clause, increased to 8 per cent.
- (6) If the interest rate in respect of money payable to the Crown is increased, the Minister may adjust the half-yearly or annual instalments so that the total amount owing is paid over the same or a longer period.
- (7) If any money payable to the Crown in respect of a lease, without the interest added, is payable in equal annual instalments over a period, the Minister 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.
- (8) Despite the other provisions of this clause but without affecting any liability to make a payment due and unpaid before the commencement of this clause, any annual payment of 2.5 per cent of the value of timber treatment under the *Crown Lands (West Bogan Settlers) Improvements Relief Act 1943* that but for this subclause would be payable after that commencement in respect of a perpetual lease is waived.

3 Supplementary provisions applicable to payment of rent etc on leases in special land districts

- (1) This clause supplements clause 2 in relation to leases in special land districts.

- (2) In clause 2 (1) the reference to the provisions of an Act repealed by the Principal Act includes a reference to section 18A of the *Irrigation Act 1912* (repealed by the *Miscellaneous Acts (Crown Lands) Amendment Act 1988*).
- (3) In clause 2 (2) the reference to the Department includes, in relation to a lease in a special land district, a reference to the Water Administration Ministerial Corporation, the Department of Water Resources and the State Bank.
- (4) In clause 2 (5)–(7) a reference to the Crown includes, in relation to a lease in a special land district, a reference to:
 - (a) the Water Administration Ministerial Corporation and the Department of Water Resources, and
 - (b) the State Bank or, if another person or body is prescribed for the purposes of this paragraph, that other person or body.
- (5) If:
 - (a) by virtue of clause 2 (1) a provision of an Act repealed by the Principal Act applies to a lease in a special land district,
 - (b) there is a reference to the State Bank in that provision, and
 - (c) a person or body other than the State Bank is prescribed for the purposes of this paragraph,the reference to the State Bank shall be read as a reference to that other person or body.
- (6) After the commencement of this clause the rent of a lease in a special land district is payable in advance on each 1 July.
- (7) Payment of the rent for the first period in advance after the commencement of this clause shall be deferred (free of interest) but shall be payable on the granting of an application to purchase the land comprised in the lease.

4 Rent for certain leases

- (1) If the annual rent of a lease:
 - (a) was less than \$100 immediately before the commencement of this clause, and
 - (b) is not subject to periodic redetermination, the annual rent is increased to \$100 with effect from the commencement of this clause.
- (2) If the rent for a lease has been paid, or is payable, in advance in respect of a period of 12 months that expires during the year commencing at the commencement of this clause, subclause (1) does not operate to require the payment of any increase of rent in respect of that period of 12 months.

5 Adjustment of certain rents in line with Consumer Price Index

- (1) If the rent of a lease is not subject to periodic redetermination, it may be adjusted as at each due date in accordance with the following formula:

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

where:

R represents the adjusted rent,

B represents the rent base, being the annual rent as at the commencement of this clause or, if the rent was increased by clause 4, \$100,

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date, and

D represents the Consumer Price Index number or the last quarter for which such a number was published before the commencement of this clause.

- (2) This clause does not apply in respect of the rent of a lease if Part 1A applies in respect of the rent of the lease.

Note. From 1 July 2004, most rental adjustments are made under Part 1A, not the above provision. As at 1 July 2004, Part 1A does not apply in respect of certain leases of land situated in the Western Division. Accordingly, this clause continues to apply in respect of such leases. Note that the regulations may apply Part 1A in respect of such leases.

- (3)–(5) (Repealed)

6 Redetermination of rent of certain leases

- (1) This clause applies to:
- (a) a lease described in paragraph (b), (d), (f), (g) or (o) of Part 2 of Schedule 1 or paragraph (a) or (b) of Part 3 of Schedule 1, the title to which commenced on or after 23 March 1964,
 - (b) a prickly-pear lease described in paragraph (h) of Part 2 of Schedule 1,
 - (c) a suburban holding (other than a suburban holding in respect of a block notified under section 124 of the *Crown Lands Consolidation Act 1913* as made available for the erection of a dwelling) the title to which commenced on or after 23 March 1964, and
 - (d) a special lease in perpetuity applied for before 1 February 1984 or a special lease extended to a lease in perpetuity if the extension was applied for before 1 February 1984.
- (2) The Minister shall redetermine the rent of a lease to which this clause applies at 5 yearly intervals commencing as provided by this clause.
- (3) If the lease commenced not more than 5 years before the commencement of this clause, the intervals for redeterminations under subclause (2) commence from the date of commencement of the lease.

- (4) If the lease was a term lease that was extended to a lease in perpetuity not more than 5 years before the commencement of this clause, the intervals for redeterminations under subclause (2) commence from the date of the extension.
- (5) If the lease is not a lease to which subclause (3) or (4) applies, the intervals for redeterminations under subclause (2) are intervals of 5 years commencing:
 - (a) except as provided by paragraph (b)—5 years before the commencement of this clause, or
 - (b) if the rent was last redetermined not more than 5 years before the commencement of this clause—from the effective date of that last redetermination.
- (6) A redetermination:
 - (a) may be made not more than 6 months before or after the end of the relevant interval and, if so made, takes effect from the end of the interval, or
 - (b) may be made more than 6 months after the end of the relevant interval and, if so made, takes effect from the date of the redetermination.
- (7) For the purposes of subclause (5) (b), a redetermination of rent made by a local land board under clause 8 (2) (a) of Schedule 8 to the *Crown Lands Act 1989* (savings, transitional and other provisions) has effect as if it had been made immediately before the commencement of this clause.
- (8) This clause does not apply in respect of the redetermination of the rent of a lease if Part 1A applies in respect of the redetermination of the rent of the lease.

7 (Repealed)

8 Redetermination of rent of certain special leases

- (1) In this clause, a reference to a special lease is a reference to:
 - (a) a special lease granted for a term of years,
 - (b) a special lease in perpetuity applied for on or after 1 February 1984, or
 - (c) a special lease extended to a lease in perpetuity where the extension was applied for on or after 1 February 1984,other than a special lease the rent of which may be redetermined at any time.
- (2) Despite any condition of a special lease, the Minister shall redetermine the rent of the lease at the intervals fixed by this clause for the lease.
- (3) If the conditions of a special lease provide for redetermination intervals of not more than 5 years, the intervals for redeterminations under subclause (2) are the intervals provided by the lease.
- (4) If:
 - (a) a special lease commenced not more than 5 years before the commencement of this clause, and
 - (b) the conditions of the lease provide for redetermination intervals of more than 5 years,the intervals for redeterminations under subclause (2) are intervals of 5 years commencing from the date of commencement of the lease.
- (5) If:
 - (a) a special lease was a term lease which was extended to a lease in perpetuity not more than 5 years before the commencement of this clause, and

- (b) the conditions of the lease provide for redetermination intervals of more than 5 years,
the intervals for redeterminations under subclause (2) are intervals of 5 years commencing from the date of the extension.
- (6) If a special lease is not a lease to which subclause (3), (4) or (5) applies and the conditions of the lease provide for redetermination intervals of more than 5 years, the intervals for redeterminations under subclause (2) are intervals of 5 years commencing:
 - (a) except as provided by paragraph (b)—5 years before the commencement of this clause, or
 - (b) if the rent was last redetermined not more than 5 years before the commencement of this clause—from the effective date of that last redetermination.
- (7) A redetermination:
 - (a) may be made not more than 6 months before or after the end of the relevant interval and if so made, takes effect from the end of the interval, or
 - (b) may be made more than 6 months after the end of the relevant interval and, if so made, takes effect from the date of the redetermination.
- (8) For the purposes of subclause (6) (b), a redetermination of rent made by a local land board under clause 8 (2) (a) of Schedule 8 to the *Crown Lands Act 1989* (savings, transitional and other provisions) has effect as if it had been made immediately before the commencement of this clause.
- (9) A condition of a special lease providing that the Minister may at any time direct that the rent be reappraised by the local land board has no effect and, instead, the Minister may redetermine the rent at any time.
- (10) This clause does not apply in respect of the redetermination of the rent of a lease if Part 1A applies in respect of the redetermination of the rent of the lease.

9 Redetermination of rent of certain special land district leases

- (1) This clause applies to a lease in a special land district the rent of which, immediately before the commencement of this clause, was subject to periodic redetermination being:
 - (a) an irrigation farm lease of an area of 2 hectares or less,
 - (b) a non-irrigable lease comprising land not used for farming purposes, or
 - (c) a town land lease.
- (2) This clause also applies to a non-irrigable lease in a special land district:
 - (a) the rent of which, immediately before the commencement of this clause, was not subject to periodic redetermination, and
 - (b) which comprises land that, under subclause (4), has been declared to be non-farming land.
- (3) This clause also applies to a lease which is created in a special land district, by subdivision or otherwise, after the commencement of this clause and is:
 - (a) an irrigation farm lease of an area of 2 hectares or less,
 - (b) a non-irrigable lease comprising land that, under subsection (4), has been declared to be non-farming land, or
 - (c) a town land lease.

- (4) If the Minister is of the opinion that land comprised in a non-irrigable lease is primarily suitable for residential, commercial, industrial or business purposes, the Minister may by notification in the Gazette declare the land to be non-farming land.
- (5) Except as provided by subclause (7) or (7A), the Minister shall redetermine the rent of a lease to which this clause applies at 5 yearly intervals commencing:
 - (a) if the lease commenced not more than 5 years before the commencement of this clause—from the date of commencement of the lease, or
 - (b) in any other case:
 - (i) except as provided by subparagraph (ii)—5 years before the commencement of this clause, or
 - (ii) if the rent was last redetermined not more than 5 years before the commencement of this clause—from the effective date of that last redetermination.
- (6) For the purposes of subclause (5) (b) (ii), a redetermination of rent made by a local land board under clause 8 (2) (a) of Schedule 8 to the *Crown Lands Act 1989* (savings, transitional and other provisions) has effect as if it had been made immediately before the commencement of this clause.
- (7) If:
 - (a) a lease to which this clause applies is a non-irrigable lease the rent of which was not subject to periodic redetermination before the commencement of this clause, and
 - (b) the land comprised in the lease has been declared to be non-farming land under subclause (4),the Minister shall redetermine the rent of the lease as at the date of the declaration and after that at 5 yearly intervals.
- (7A) If a lease to which this clause applies is an irrigation farm lease of an area of 2 hectares or less created by a subdivision, the Minister is to redetermine the rent of the lease as at the date of the approval of the subdivision and after that at 5-yearly intervals.
- (8) A redetermination:
 - (a) may be made not more than 6 months before or after the end of the relevant interval and, if so made, takes effect from the end of the interval, or
 - (b) may be made more than 6 months after the end of the relevant interval and, if so made, takes effect from the date of the redetermination.
- (9) This clause does not apply in respect of the redetermination of the rent of a lease if Part 1A applies in respect of the redetermination of the rent of the lease.

10 Applications for redetermination of rent of certain leases

- (1) This clause applies to a lease the rent of which is not subject to periodic redetermination.
- (2) The holder of a lease to which this clause applies may apply to the Minister for a redetermination of the rent of the lease.
- (3) Any redetermination by the Minister takes effect from the first due date after the application.
- (4) The rent of a lease which has been redetermined as a result of an application shall be further redetermined by the Minister at 5 yearly intervals commencing from the date when the first redetermination takes effect.

- (5) A redetermination under subclause (4):
 - (a) may be made not more than 6 months before or after the end of the relevant interval and, if so made, takes effect from the end of the interval, or
 - (b) may be made more than 6 months after the end of the relevant interval and, if so made, takes effect from the date of the redetermination.
- (6) Subclauses (3)–(5) do not apply in respect of the redetermination of the rent of a lease if Part 1A applies in respect of the redetermination of the rent of the lease.

11 Objections to, and appeals against, redeterminations

- (1) The Minister shall give notice of a redetermination of the rent of a lease to the lessee and include in the notice a statement to the effect that the lessee may object to the redetermined rent.
- (2) The Minister shall consider any objection lodged and by notice inform the objector:
 - (a) whether the redetermined rent is to stand or be varied, and
 - (b) that the objector, if dissatisfied with the Minister's decision, may appeal as provided by subclause (3).
- (3) An appeal against the Minister's decision lies:
 - (a) to the Civil and Administrative Tribunal if the determined or redetermined annual rent does not exceed \$10,000 or such greater amount as may be prescribed, or
 - (b) in any other case, to the Land and Environment Court.

Note. An appeal to the Civil and Administrative Tribunal under this subclause is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.
- (4) The Civil and Administrative Tribunal, or the Court, on hearing the appeal, may affirm the Minister's redetermination or substitute its own.
- (5) A redetermination of rent takes effect even if an objection or appeal is lodged.
- (6) If:
 - (a) a redetermination is varied under subclause (2)—the varied redetermination has effect instead of the redetermination varied, or
 - (b) a redetermination is substituted under subclause (3)—the substituted redetermination has effect instead of that for which it is substituted.

12 Redetermination of rent—principles

- (1) In redetermining the rent of a lease, the Minister, the Civil and Administrative Tribunal and the Land and Environment Court shall apply the following principles:
 - (a) the rent is to be the market rent for the land comprised in the lease having regard to any restrictions, conditions or terms to which it is subject, subject to subclause (3),
 - (b) any improvements on the land which were made by the holder, or are owned or in the course of being purchased from the Crown by the holder, shall be disregarded,
 - (c) regard may be had to any additional value which has accrued, or may reasonably be expected to accrue, to other land held by the holder by reason of holding the lease,
 - (d) regard may be had to the duration of the time for which the rent determined will be payable.

- (1A) Despite subclause (1), if the Independent Pricing and Regulatory Tribunal makes a recommendation in relation to the rent of a lease (or any class of lease), the Minister may, in redetermining the rent of any lease that is the subject of the recommendation, apply the recommendation.
- (1B) If the recommendation of the Independent Pricing and Regulatory Tribunal is applied by the Minister in redetermining the rent concerned, the Civil and Administrative Tribunal and the Land and Environment Court are, despite subclause (1), to apply the recommendation in determining any appeal against the Minister's decision.
- (2) (Repealed)
- (3) Except as provided by clause 13, the rent of an irrigation farm lease, a non-irrigable lease or a town land lease, being a lease of land situated in the Western Division, which is subject to periodic redetermination shall be redetermined at 5 per cent of the market value of the land.
- (4) For the purposes of subclause (3), the market value of the land is the market value as determined by the Minister, the Civil and Administrative Tribunal or the Land and Environment Court as at the date of the redetermination, exclusive of improvements which were made by the holder or are owned or being purchased from the Crown by the holder.
- (5) If it appears to the Minister, the Civil and Administrative Tribunal or the Court that the value of the land has been reduced by any act, default or neglect of the holder, the value shall be determined as if the reduction in value had not taken place.
- (6) Subject to Divisions 2A and 2B of Part 7 of the Principal Act, a redetermination of the rent of a lease in a special land district that is situated in the Western Division is subject to any reduction under the *Irrigation Areas (Reduction of Rents) Act 1974*.
- (7) The regulations may modify the application of this clause in respect of leases of land situated in the Western Division. In particular, the regulations may provide that subclause (3) or (6) do not apply in respect of such a lease.

13 Lower rate for certain redeterminations

- (1) In this clause, a reference to a relevant lease is a reference to a lease in a special land district, being a lease of land situated in the Western Division, that:
 - (a) was granted under Part 6 of the *Crown Lands Consolidation Act 1913* before 1 January 1933,
 - (b) was subsisting on 1 January 1948, and
 - (c) is not a lease excluded by subclause (2) or (3).
- (2) A lease is not a relevant lease unless it is:
 - (a) an irrigation farm lease of an area not exceeding 2 hectares, or
 - (b) a non-irrigable lease or town land lease of land notified in the Gazette as available for disposal for the purpose of residence or described in the Gazette as suitable for residential purposes.
- (3) A lease is not a relevant lease:
 - (a) if it was notified in the Gazette as available for disposal for the purpose of residence and was the subject of a consent under section 142D (10) of the *Crown Lands Consolidation Act 1913*, permitting its use for another purpose, or
 - (b) if the annual rent for the lease had, before the commencement of this clause, been redetermined because land had been added to the lease.

- (4) On the commencement of this clause, the rent of a relevant lease is the same as the rent payable immediately before that commencement (including any reduction made by section 20 of the *Irrigation, Water and Rivers and Foreshores Improvement (Amendment) Act 1955*).
- (5) The annual rent shall, at the intervals provided by this Act, be redetermined at 3.875 per cent of the market value of the land determined in accordance with clause 12 (4).
- (6) This section:
 - (a) has effect subject to Divisions 2A and 2B of Part 7 of the Principal Act, and
 - (b) ceases to have effect if, in the opinion of the Minister, the lease is being used mainly or substantially for business purposes.
- (7) The Minister shall, if of the opinion referred to in subclause (6), redetermine the annual rent for the lease under clause 12 for the unexpired portion of the current rental period and, after that, at 5 yearly intervals.
- (8) The regulations may modify the application of this clause in respect of leases of land situated in the Western Division. In particular, the regulations may provide that this clause does not apply in respect of such a lease.

Schedule 6 Conditions etc

(Parts 2, 3 of Schedule 2)

1 Definition

In this Schedule:

lease means a perpetual lease or a term lease.

2 Conditions

- (1) The holder of a lease holds the land comprised in the lease subject to any recordings on the folio of the Register created in respect of it and the provisions of this Act and the Principal Act.
- (2) The holder of a lease shall:
 - (a) comply with any provisions, conditions or covenants recorded on the folio of the Register created in respect of it,
 - (b) comply with the requirements of any law relating to the use or management of the land leased,
 - (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 prescribed risks with an insurer approved by the Minister.
- (3) The holder of a lease shall not:
 - (a) degrade the land leased,
 - (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),
 - (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.
- (4) 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.
- (5) 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 or royalty or otherwise).
- (6) In this clause:

material includes gravel, sand, loam, stone, clay, shells and other prescribed material 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.

Schedule 7 Purchase of land held under lease

(Parts 2, 3, 5 of Schedule 2)

Note. See also Schedule 7A in relation to the purchase of land held under a perpetual lease.

Part 1 Purchase of land not in a special land district

1 Application to purchase

- (1) The holder of:
 - (a) a perpetual lease,
 - (b) a term lease,
 - (c) a special lease in perpetuity, or
 - (d) a special lease of a term of years granted over an expired conditional lease (the holder of which had failed to apply for extension of the term of the lease),which is not in a special land district and is not liable to forfeiture may apply to purchase the whole or a part of the land comprised in the lease.
- (2) A transferee may, with the approval of the Minister and subject to such conditions as the Minister determines, adopt an application made by a previous holder.
- (3) An applicant may withdraw an application:
 - (a) before it is granted, or
 - (b) if an appeal is lodged against the determination of the purchase price by the Minister or the Civil and Administrative Tribunal—within 28 days after determination of the appeal,on payment of such costs as may be assessed by the Minister.

2 Granting of applications

- (1) If the application is made in respect of:
 - (a) a special lease—the Minister may, at the Minister's absolute discretion (exercised subject to clause 4 of Schedule 1 to the *Forestry Act 2012*), grant or refuse the application as to the whole or a part of the land applied to be purchased, or
 - (b) any other lease—the Minister shall, subject to subclauses (2) and (3) and to clause 4 of Schedule 1 to the *Forestry Act 2012*, grant the application.
- (2) If the application is made in respect of a conditional lease, a Crown-lease, a settlement lease or a prickly-pear lease, the Minister shall not grant the application to the extent that it relates to land which is dedicated as a State forest or reserved from sale under the *Forestry Act 2012*.
- (3) If the application is made in respect of a Crown-lease, a settlement lease or a prickly-pear lease, the Minister shall not grant the application to the extent that it relates to land which is reserved from sale under the Crown Lands Acts.
- (4) The reservations from sale to be considered when dealing with an application to purchase a Crown-lease, settlement lease or prickly-pear lease include any reservations from sale notified after the application is made.

3 Exclusions for roadways etc

- (1) On the granting of an application to purchase the land, or part of the land, comprised in a lease:

- (a) any areas required for roadways or other public purposes may be excluded from the land,
 - (b) the boundaries of the land may be otherwise modified, and
 - (c) easements for public access may be created over the land,at the discretion of the Minister.
- (2) Any areas excluded from the land for roadways or other public purposes or because of modification of boundaries are surrendered to the Crown.
- (3) The holder may appeal to the Civil and Administrative Tribunal against any decision:
 - (a) to exclude land, or
 - (b) to create an easement for public access,under this clause.

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 56–58 of the Principal Act (section 56 (3) excepted) apply to and in respect of the creation of an easement under this clause in the same way as they apply to and in respect of the creation of easements under section 56 of the Principal Act.
- (5) The Civil and Administrative Tribunal may hear and determine an appeal under subclause (3) and may make any order or decision which it considers appropriate.
- (6) The order or decision of the Civil and Administrative Tribunal may include:
 - (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), or
 - (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,or both.

4 Depth limitations

- (1) This clause applies to an application to purchase land comprised in a returned soldier's special holding, a suburban holding, a town lands lease, a week-end lease or a special lease.
- (2) The Minister may limit the granting of an application to the surface of the land or to the surface and a stated depth below the surface.
- (3) Land excluded by such a limitation is surrendered to the Crown.

5 Title and conditions

- (1) An incomplete purchase under this Part is, in addition to being subject to the provisions of this Act, subject to the provisions of the Principal Act.
- (2) Clause 6 of Part 1 of Schedule 2 applies to and in respect of an incomplete purchase under this Part.
- (3) An incomplete purchase under this Part of land comprised in a lease is subject to such of the conditions applying to the lease as the Minister specifies at the time of granting the application to purchase.
- (4) If an application to purchase land comprised in a lease is not withdrawn in accordance with this Part, the title to the incomplete purchase of the land commences:

- (a) except as provided by paragraph (b)—from the date of granting by the Minister of the application, or
 - (b) if there is a right of appeal against the exclusion of areas, creation of easements or determination of a purchase price—a date determined by the Minister.
- (4A) Despite subclause (4), if the Minister, in connection with the grant of an application to purchase land, imposes a restriction on use or public positive covenant in accordance with Part 4A of the Principal Act, the land remains vested in the Crown, or otherwise held on behalf of the Crown, until such time as the restriction on use or public positive covenant has been recorded on the relevant folio of the Register.
- (5) The date determined by the Minister shall not be earlier than:
 - (a) if an appeal is lodged:
 - (i) the withdrawal of the appeal, or
 - (ii) 28 days after determination of the appeal (unless the applicant notifies the Minister in writing that the applicant does not wish to withdraw the application), or
 - (b) if no appeal is lodged—the end of the period for lodgment of the appeal or, if the applicant earlier notifies the Minister in writing that the applicant has waived any right of appeal, the date of the notification.
- (6) In any folio of the Register created in respect of land purchased or being purchased under this Part the Registrar-General shall, if the land is affected by a profit à prendre reserved to the Crown under section 25F of the *Forestry Act 1916*, record a statement to the effect that the land is so affected.
- (7) Such a recording has effect as if the reservation of the profit à prendre had been included in an instrument of conveyance or transfer from the Crown.

6 Subdivision

Schedule 4 applies to and in respect of an incomplete purchase under this Part.

7 (Repealed)

8 Payment of balance of purchase money etc on transfer

Clause 5 of Part 1 of Schedule 2 applies to and in respect of an incomplete purchase under this Part.

9 Price

- (1) If the purchase price of land comprised in a lease is not determined as at the date of the application to purchase, it is subject to adjustment under clause 11.
- (2) If:
 - (a) an amount is shown in the records of the Department as the purchase price that would have been payable had the lease been converted into a purchase tenure before the commencement of this clause, or
 - (b) a purchase price for the land is determinable under a provision repealed by the Principal Act,that amount or price is the purchase price of the land.
- (2A) For the purposes of subclause (2) (a), the purchase price of a closer settlement lease is the capital value only of the lease as shown in the records of the Department and does not include any balance of the capital value owing to the Crown for structural or other improvements in respect of the land.

- (3) In any other case, the purchase price of the land in a lease is the market value of the land determined by the Minister as at a date specified in subclause (4) or (5) in respect of the purchase.
- (4) The purchase price (except in respect of land which has been added to the lease) to be determined by the Minister shall be so determined:
 - (a) if the land is comprised in a conditional lease taken up out of a classified area set apart before 23 March 1964 as available for conditional lease (under section 87 of the *Crown Lands Consolidation Act 1913*)—as at the date of the setting apart of the classified area,
 - (b) if the land is comprised in a conditional lease taken up out of an area set apart as available for homestead selection or settlement lease (under section 4 of the *Crown Lands Act Amendment Act 1903*)—as at the date of application for the conditional lease,
 - (c) if the land is comprised in:
 - (i) a settlement lease,
 - (ii) a homestead selection acquired under the *Church and School Lands Act 1897*, or
 - (iii) a prickly-pear lease for a term of years, the title to which commenced before 23 March 1964, or is comprised in a conditional lease which is a conversion of any such holding—as at the date of application for the settlement lease, homestead selection or prickly-pear lease,
 - (d) if the land is comprised in a special lease granted over an expired conditional lease (the holder of which had failed to apply for extension of the term of the lease)—as at the date at which a purchase price would have been determined in respect of the conditional lease if it had, before expiry, been converted into an additional conditional purchase, or
 - (e) in any other case—as at the date of the application to purchase the land.
- (5) The purchase price of land which has been added to a lease is:
 - (a) if the price at which the added land may be purchased was determined under the Crown Lands Acts before the commencement of this clause—the price so determined, or
 - (b) in any other case—the price determined by the Minister as at the date of the application to purchase the lease.
- (6) Any improvements on the land which were made by the holder, or are owned or in the course of being purchased from the Crown by the holder, shall be disregarded in determining the market value of the land.
- (7) If it appears to the Minister that the market value of the land has been reduced by any act, default or neglect of the holder, the Minister shall determine the market value as if the reduction in value had not taken place.
- (8) If any areas are to be excluded for roadways or other public purposes or because of modification of boundaries, the purchase price shall be adjusted accordingly.

10 Objections to, and appeals against, determinations

- (1) The Minister shall, on determining a purchase price for land comprised in a lease, give notice of the determination to the lessee.
- (2) The notice shall include information to the effect that the lessee may object to the purchase price determined by the Minister.
- (3) The Minister shall consider any objection lodged and by notice inform the objector:

- (a) whether the determination of the purchase price is to stand or be varied, and
 - (b) that the objector, if dissatisfied with the Minister's decision, may appeal as provided by subclause (4).
- (4) An appeal against the Minister's decision lies:
 - (a) to the Civil and Administrative Tribunal if the purchase price determined does not exceed \$150,000 or such greater amount as may be prescribed, or
 - (b) in any other case, to the Land and Environment Court.

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

11 Adjustment of purchase price in line with Consumer Price Index

- (1) The purchase price for land comprised in a lease (other than a purchase price determined as at the date of the application to purchase) shall be adjusted having regard to any movement in the Consumer Price Index between:
 - (a) the quarter in respect of which the Index was last issued before the commencement of this clause, and
 - (b) the quarter in respect of which the Index was last issued before the date of the application to purchase.
- (2) Any such adjustment of the purchase price shall not exceed the relevant movement in the Index.
- (3)–(5) (Repealed)

12 Adjustment of rent etc where part of a lease other than a special lease is purchased

- (1) In this clause:
rent base, in respect of a lease the rent of which is not subject to redetermination, means the amount used as the basis for adjusting the rent in line with movements in the Consumer Price Index.
- (2) If part only of a lease (other than a special lease) is purchased, the remaining part of the lease shall be held subject to such proportionate parts of the rent and rent base as to the Minister seem appropriate.
- (3) If a part of a rent base apportioned under subclause (2) to a part of a lease is less than \$100, that part of the rent base is increased to \$100.
- (4) A part of a rent base apportioned under subclause (2) to a part of a lease (or such a part of a rent base as increased under subclause (3)) shall be taken, for the purposes of clause 5 of Schedule 5 (adjustment of certain rents in line with Consumer Price Index), to have been the annual rent of the lease as at the commencement of that clause.
- (5) The annual rent of the remaining part of a lease (as apportioned under subclause (2)) is, if it is less than the amount that would have been payable had the part always been a separate lease subject to a rent base ascertained in respect of it under this clause, increased to that amount.
- (6) This clause does not apply in respect of a lease if Part 1A of this Act applies in respect of the rent of the lease.

12A Adjustment of rent where part of land subject to lease is purchased

- (1) This clause applies in respect of a lease if Part 1A of this Act applies in respect of the rent of the lease.
- (2) If part only of the land comprised in a lease (other than a special lease) is purchased, and the lease is subject to redetermination, the Minister may determine the rent in respect of the remaining part of the lease.
- (3) If part only of the land comprised in a lease (other than a special lease) is purchased, and the lease is not subject to redetermination, the Minister may proportionately adjust the rent and rent base for the lease.
- (4) A part of a rent base apportioned under this clause is taken, for the purpose of section 4D, to have been the annual rent of the lease as at the last due date occurring before 1 July 2004. The annual rent of the remaining part of the lease is to be determined accordingly.

13 Adjustment of rent, purpose and conditions on purchase of part of a special lease

- (1) If part only of a special lease is purchased, the Minister shall redetermine the annual rent of the remaining part of the lease that is to be payable for the remainder of the current rent redetermination period applicable to the lease.
- (2) Clauses 11 and 12 of Schedule 5 apply to a redetermination of rent under this clause in the same way as they apply to a redetermination of rent under that Schedule.
- (3) The Minister may make such consequential alterations to the purpose and conditions of a special lease as the Minister considers are necessary when part of the land comprised in the lease is purchased.

14 Costs of survey

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

15 Payment of purchase price by instalments

- (1) Subject to this Act, the Principal Act and the regulations, the purchase price for land comprised in a lease, together with interest at the annual rate of 8 per cent, is payable by 33 equal annual instalments.
- (2) No instalment payable under this clause shall be less than \$100 or, if another amount is prescribed, that other amount.
- (3) Subclause (2) does not apply in respect of any instalment of a purchase to which Part 1B of this Act applies.
- (4) This clause does not apply in respect of the purchase price of land if the application for purchase is an application to which clause 15A applies.

15A Payment of purchase price if application made on or after 1 July 2004

- (1) This clause applies in respect of a purchase of land if the application for purchase is made on or after 1 July 2004.
- (2) The purchase price of land in respect of an application for purchase to which this clause applies is to be paid in full within such time as the Minister may require.
- (2A) However, the Minister may allow the purchase price to be paid by instalments on any basis that the Minister determines is appropriate. This subclause extends to any application for purchase that is pending as at the commencement of this subclause.
- (3) This clause does not apply in respect of an application for a purchase of land situated in the Western Division, subject to subclause (4).
- (4) The regulations may apply this clause, with or without modifications, in respect of an application to purchase land situated in the Western Division.

16 Payment of other amounts

- (1) On the commencement of title to an incomplete purchase under this Part the following amounts are payable to the Crown:
 - (a) any stamp duty payable under the *Stamp Duties Act 1920* 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) Failing payment of any such amount within 3 months of demand, the purchase may be declared by the Minister to be 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 incomplete purchase.
- (4) If any amount payable to the Crown after the commencement of title to an 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.

17 Retention of rights of mortgagees

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

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

18 Easements

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

Part 2 Purchase of land in a special land district

1 Application to purchase

- (1) The holder of a perpetual lease which is in a special land district and is not liable to forfeiture may apply to purchase the land comprised in the lease.
- (2) A transferee may, with the approval of the Minister and subject to such conditions as the Minister determines, adopt an application made by a previous holder.
- (3) An applicant may withdraw an application:
 - (a) before it is granted, or
 - (b) if an appeal is lodged against the determination of the purchase price by the Minister or the Civil and Administrative Tribunal—within 28 days after determination of the appeal,on payment of such costs as may be assessed by the Minister.

2 Granting of applications

The Minister shall, subject to this Part, grant an application to purchase the land comprised in a lease.

3 Title and conditions

- (1) An incomplete purchase under this Part is, in addition to being subject to the provisions of this Act, subject to the provisions of the Principal Act.
- (2) Clause 6 of Part 1 of Schedule 2 applies to and in respect of an incomplete purchase under this Part.
- (3) An incomplete purchase under this Part of land comprised in a lease is subject to such of the conditions applying to the lease as the Minister may, after having regard to the views of the Water Administration Ministerial Corporation, specify at the time of granting the application to purchase.
- (4) If an application to purchase land comprised in a lease is not withdrawn in accordance with this Part, the title to the incomplete purchase of the land commences:
 - (a) if the lease:
 - (i) was an irrigation farm lease of an area exceeding 2 hectares, or
 - (ii) was a non-irrigable lease of an area exceeding 2 hectares used for farming purposes,from the date of granting by the Minister of the application, or
 - (b) in any other case—from a date determined by the Minister.
- (4A) Despite subclause (4), if the Minister, in connection with the grant of an application to purchase land, imposes a restriction on use or public positive covenant in accordance with Part 4A of the Principal Act, the land remains vested in the Crown, or otherwise held on behalf of the Crown, until such time as the restriction on use or public positive covenant has been recorded on the relevant folio of the Register.
- (5) The date determined by the Minister shall not be earlier than:
 - (a) if an appeal is lodged against the determination of the purchase price:

- (i) the withdrawal of the appeal, or
- (ii) 28 days after determination of the appeal or, if the applicant earlier notifies the Minister in writing that the applicant does not wish to withdraw the application, the date of the notification, or
- (b) if no appeal is lodged—the end of the period for lodgment of the appeal or, if the applicant earlier notifies the Minister in writing that the applicant has waived any right of appeal, the date of the notification.

4 Subdivision

Schedule 4 applies to and in respect of the land comprised in an incomplete purchase under this Part.

5 (Repealed)

6 Restrictions on use

Land comprised or formerly comprised in an incomplete purchase under this Part shall not be used to plant:

- (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, or
- (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,

if a condition to that effect was attached to the land at the time when the application to purchase was made (unless the planting is in accordance with an approval or consent given as provided by the condition).

7 (Repealed)

8 Payment of balance of purchase money etc on transfer

Clause 5 of Part 1 of Schedule 2 applies to and in respect of an incomplete purchase under this Part in the same way as it applies to and in respect of incomplete purchases under Part 1 of Schedule 2.

9 Price

- (1) Subject to any adjustment under subclause (4), the purchase price of land comprised in:
 - (a) an irrigation farm lease of an area exceeding 2 hectares, or
 - (b) a non-irrigable lease used for farming purposes which is of an area exceeding 2 hectares,is, unless it is a lease to which land has been added after the commencement of this clause, 20 times the annual rental of the lease immediately before the commencement of this clause.
- (2) If, after the commencement of this clause, land is added to the land comprised in a lease referred to in subclause (1) (a) or (b), the purchase price of the land is the sum of:
 - (a) 20 times the annual rent of the lease immediately before that commencement, subject to any adjustment under subclause (4), and
 - (b) the price determined by the Minister for the added land as at the date of the application to purchase.

- (3) If:
- (a) the purchase is of land in the land district of Coleambally, and
 - (b) a remission in annual rental was, by reason of the distance of the land from railway facilities, in force as at 30 June last preceding the date of the application to purchase,
- the annual rental of the lease is, for the purposes of this clause but subject to subclause (5), the annual rental that was payable on that 30 June having regard to that remission.
- (4) Subject to subclause (5), the purchase price shall, in the same way as is provided by clause 11 of Part 1, be adjusted in line with any movements in the Consumer Price Index after the commencement of this clause.
- (5) Subclauses (3) and (4) do not apply in relation to so much of the annual rental for, or so much of the purchase price of, the lease as is attributable to land added to the lease after the commencement of this clause.
- (6) In the case of a purchase of land comprised in a lease to which subclauses (1) and (2) do not apply, the purchase price for the land is the market value as determined by the Minister as at the date of the application to purchase.
- (7) Any improvements on land being purchased which were made by the holder, or are owned or in the course of being purchased from the Crown by the holder, shall be disregarded in determining the market value of the land.
- (8) If it appears to the Minister that the market value of the land has been reduced by any act, default or neglect of the holder, the Minister shall determine the market value as if the reduction in value had not taken place.

10 Objections to, and appeals against, determinations

- (1) The Minister shall, on determining a purchase price under clause 9 (6) for land comprised in a lease, give notice of the determination to the lessee.
- (2) The notice shall include information to the effect that the lessee may object to the purchase price determined by the Minister.
- (3) The Minister shall consider any objection lodged and by notice inform the objector:
- (a) whether the determination of the purchase price is to stand or be varied, and
 - (b) that the objector, if dissatisfied with the Minister's decision, may appeal as provided by subclause (4).
- (4) An appeal against the Minister's decision lies:
- (a) to the Civil and Administrative Tribunal if the purchase price determined does not exceed \$150,000 or such greater amount as may be prescribed, or
 - (b) in any other case, to the Land and Environment Court.
- Note.** An appeal to the Civil and Administrative Tribunal under this 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.
- (5) The Civil and Administrative Tribunal or the Court, on hearing the appeal, may affirm the Minister's determination or substitute its own.

11 Payment of purchase price and other amounts

Clauses 15, 15A and 16 of Part 1 apply to and in respect of incomplete purchases under this Part in the same way as they apply to and in respect of incomplete purchases under Part 1.

12 Retention of rights of mortgagees

Clause 17 of Part 1 applies to and in respect of incomplete purchases under this Part in the same way as it applies to and in respect of incomplete purchases under Part 1.

13 Easements

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

Schedule 7A Purchase of perpetual leases—special arrangements

(Clause 4A of Part 2 of Schedule 2)

Part 1 Preliminary

1 Application of Schedule

- (1) This Schedule applies to a perpetual lease the rent of which is not, as at 1 July 2004, subject to redetermination.
- (2) This Schedule supplements Schedule 7 in relation to the purchase of land subject to a lease referred to in subclause (1). However, in the event of any inconsistency between this Schedule and Schedule 7, this Schedule prevails.
- (3) Subject to subclause (4), this Schedule does not apply to a perpetual lease of land situated in the Western Division.
- (4) The regulations may apply this Schedule, with or without modifications, in respect of a perpetual lease of land situated in the Western Division.
- (5) For avoidance of doubt, the rent of a lease is not to be regarded as being subject to redetermination merely because the holder of the lease had the option, at or before 1 July 2004, of applying to the Minister for a redetermination of rent under clause 10 of Schedule 5. However, such a lease is to be regarded as being subject to redetermination if such an application was granted before 1 July 2004.

Part 2 Special arrangements for purchase

2 Lease holders to be given notice of special arrangements

- (1) The Minister may, by notice in writing given to the holder of a lease to which this Schedule applies, invite the holder of the lease to apply to purchase the land comprised in the lease.
- (2) The notice (referred to in this Schedule as a *special purchase notice*) is to advise the holder of the lease of the effect of this Schedule with regard to the purchase price of the land and redetermination of rent.
- (3) A special purchase notice is to be in such form as the Minister approves.

3 Purchase price of land

- (1) The purchase price of the land comprised in a lease to which this Schedule applies is the special purchase price, or the purchase price that would apply under Schedule 7 but for this Schedule, whichever is the lower.
- (2) The *special purchase price* is 3 per cent of the land value of the land (within the meaning of the *Valuation of Land Act 1916*) as at the date the application to purchase the land is made under Schedule 7.
- (3) For the purpose of determining the special purchase price, if the land value of the land is entered in the Register of Land Values kept under the *Valuation of Land Act 1916* as at the date of an application to purchase the land, the land value at that date is taken to be the value so entered in the Register.
- (4) This clause does not apply in respect of an application for purchase made before 1 July 2004.

Part 3 Redetermination of rent

4 Annual rent of land becomes subject to redetermination if not purchased

- (1) The rent of a lease to which this Schedule applies becomes subject to redetermination at the end of the period of 2 years (the **2-year period**) after a special purchase notice is given to the holder of the lease, subject to this clause.
- (2) If an application is made by the holder of the lease, or a transferee, to purchase the whole of the land comprised in the lease before the end of the 2-year period, and the application is not determined by the end of that period, the Minister may, despite clause 5, defer or waive the redetermination of the rent for such period as the Minister considers appropriate.
- (3) If an application is made by the holder of the lease, or a transferee, to purchase the whole of the land comprised in the lease before the end of the 2-year period, and the application is refused by the Minister under Schedule 7, the rent of the lease, following redetermination to market rent by the Minister, is to be discounted, as the Minister considers appropriate, so that the holder of the lease is not required to pay such part of that market rent as exceeds the base amount.
- (4) If an application is made by the holder of the lease, or a transferee, to purchase the whole of the land comprised in the lease before the end of the 2-year period, and the application as to part of the land is refused by the Minister under Schedule 7, the rent of that part of the lease, following redetermination to market rent by the Minister, is to be discounted, as the Minister considers appropriate, so that the holder of the lease is not required to pay such part of that market rent as exceeds the base amount.
- (5) For the purposes of this clause, the **base amount** is the amount of rent that the Minister determines the holder would have been required to pay on a due date for rent in respect of the lease, or part of the lease, if the annual rent of the lease or part had not become subject to redetermination and had been determined in accordance with section 4D.

5 Provisions applicable to redeterminations

- (1) If the rent of a lease becomes subject to redetermination under this Schedule, the Minister is to redetermine the rent payable in respect of the lease as provided by this clause.
- (2) A redetermination of rent is to be made, as provided by this clause, in respect of each rent review date.
- (3) Rent review dates for the lease are as follows:
 - (a) the first rent review date is the first due date in respect of the rent occurring on or after the end of the 2-year period (referred to in clause 4), or such later due date as may be determined by the Minister,
 - (b) thereafter, rent review dates fall on each third anniversary of the previous rent review date.
- (4) A redetermination of rent in respect of the first rent review date for a lease under this clause:
 - (a) may be made at any time before the first rent review date or within 6 months after the first rent review date, and, if so made, takes effect on the first rent review date, and
 - (b) may be made more than 6 months after the first rent review date but, if so made, takes effect from the date of the redetermination.

- (5) A redetermination of rent in respect of any other rent review date for a lease under this clause:
 - (a) may be made within 6 months before or after a rent review date and, if so made, takes effect on the rent review date, and
 - (b) may be made more than 6 months after a rent review date but, if so made, takes effect from the date of the redetermination.
- (6) Any redetermination of rent or adjustment of rent following a redetermination does not become due and payable, for the purpose of calculating interest, until the date notified to the holder of the lease by the Minister as being the due date in respect of the rent or adjustment.
- (7) For avoidance of doubt, this clause does not affect the operation of clauses 11 and 12 of Schedule 5 in respect of a lease.

Part 4

6–8 (Repealed)

Part 5 Miscellaneous

9 Consultation and concurrence requirements in relation to certain leases

- (1) If an application is made to purchase land comprised in a lease to which this Schedule applies, and the lease is a Crown-lease, a settlement lease or a prickly-pear lease, the Minister is to consult with each of the relevant Ministers before making any of the following decisions:
 - (a) a decision to grant or refuse the application,
 - (b) a decision to impose restrictions or public positive covenants in accordance with Part 4A of the Principal Act on the land the subject of the application,
 - (c) a decision to release, vary, rescind or revoke any such restriction or covenant,
 - (d) a decision to grant concurrence under section 28 (4) of the *Environmental Planning and Assessment Act 1979* in relation to a provision of an environmental planning instrument that affects the operation of a restriction or covenant imposed by the Minister in accordance with this Schedule.
- (2) If, in relation to the purchase of land comprised in a lease to which this Schedule applies, a covenant preventing or restricting subdivision is imposed by the Minister in accordance with section 77B of the Principal Act, the Minister is required to obtain the concurrence of each relevant Minister before:
 - (a) consenting to the subdivision of the land, or
 - (b) releasing, varying, rescinding or revoking any such covenant, or
 - (c) granting concurrence under section 28 (4) of the *Environmental Planning and Assessment Act 1979* in relation to a provision of an environmental planning instrument that affects the operation of any such covenant.
- (3) For the purposes of this clause, each of the following Ministers is a **relevant Minister**:
 - (a) the Minister administering the *National Parks and Wildlife Act 1974*,
 - (b) the Minister administering the *Threatened Species Conservation Act 1995*,
 - (c) the Minister administering the *Wilderness Act 1987*.

10 Concurrence requirements in relation to national parks, wilderness areas and other prescribed land

- (1) This clause applies to any lease to which this Schedule applies that:
 - (a) adjoins or abuts, or is within 100 metres of, land reserved or dedicated 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 within the meaning of the *Wilderness Act 1987*, or
 - (ii) land that is for the time being identified as wilderness under that Act, or
 - (c) comprises or contains land prescribed by the regulations.
- (2) In relation to land comprised in a lease to which this clause applies, the Minister is required to obtain the concurrence of each relevant Minister (as referred to in clause 9) before:
 - (a) releasing, varying, rescinding or revoking a covenant that has been imposed on the land, or
 - (b) approving any act, matter or thing that would, but for the approval, contravene any such covenant, or
 - (c) granting concurrence under section 28 (4) of the *Environmental Planning and Assessment Act 1979* in relation to a provision of an environmental planning instrument that affects the operation of a covenant that has been imposed on the land.
- (3) In this clause:
covenant means a restriction on use or public positive covenant imposed in accordance with Part 4A of the Principal Act.

Schedule 8 Savings and transitional provisions

(Section 19)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:
Schedule 1 to the Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997
Schedule 1 to the Crown Lands and Irrigation Legislation Amendment (Removal of Transfer Restrictions) Act 1997
Schedule 2 to the Crown Lands Legislation Amendment (Budget) Act 2004
Crown Lands Legislation Amendment Act 2005
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997

2 Definition

In this Part:

amending Act means the *Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997*.

3 Applications for removal of certain restrictions on transfer

An application for a certificate from the Minister made under clause 10 of Part 1 of Schedule 3 that was not determined before the repeal of that clause by Schedule 1 [9] to the amending Act is taken to be an application made under clause 8 of Part 1 of Schedule 3 as amended by Schedule 1 [7] and [8] to the amending Act.

Part 3 Provisions consequent on enactment of Crown Lands and Irrigation Legislation Amendment (Removal of Transfer Restrictions) Act 1997

4 Definition

In this Part:

amending Act means the *Crown Lands and Irrigation Legislation Amendment (Removal of Transfer Restrictions) Act 1997*.

5 Applications for consent to transfer

An application for consent made under clause 4 of Part 1 of Schedule 3 that was not determined before the amendment of clause 5 of Part 1 of Schedule 3 by Schedule 1 [21] to the amending Act is to be dealt with under clause 5 of Part 1 of Schedule 3 as so amended.

6 Certain references on folios of the Register to cease to have effect

On commencement of the amending Act, any reference to Part 1 or 2 of Schedule 3 on a folio of the Register created in respect of an incomplete purchase or land formerly comprised in an incomplete purchase ceases to have effect in respect of that purchase or land.

Part 4 Provisions consequent on enactment of Crown Lands Legislation Amendment (Budget) Act 2004

Note. See also Part 4 of Schedule 8 to the Principal Act.

7 Definitions

In this Part:

amending Act means the *Crown Lands Legislation Amendment (Budget) Act 2004*.

lease means a perpetual lease, special lease, term lease or Commonwealth lease.

8 Application of minimum rents and CPI adjustments

- (1) Part 1A of this Act, as inserted by the amending Act, applies to the rent of a lease in respect of any due date that occurs on or after 1 July 2004 (whether or not the rent was paid in advance before that date).
- (2) This clause is subject to Part 4 of Schedule 8 to the Principal Act.
Note. Part 4 of Schedule 8 to the Principal Act provides for the phasing-in of minimum rent provisions.

9 Application of changes to purchase and instalment provisions

- (1) Schedule 7A, as inserted by the amending Act, extends to an application to purchase that was made, but not approved by the Minister, before 1 July 2004.
- (2) Part 1B of this Act, as inserted by the amending Act, extends to an incomplete purchase that had effect immediately before 1 July 2004.
- (3) This clause, as substituted by the *Crown Lands Legislation Amendment Act 2005*, is taken to have commenced on 1 July 2004.

10 Phasing-in of increase in minimum annual instalments

- (1) This clause applies if the purchase price (whether with or without interest added) of an incomplete purchase is, immediately before 1 July 2004, payable by annual instalments and Part 1B of this Act (as inserted by the amending Act) applies in respect of the instalments.
- (2) For the purposes of Part 1B:
 - (a) the minimum annual instalment is taken, in respect of any due date occurring on or after 1 July 2004 and before 1 July 2005, to be \$200, and
 - (b) the minimum annual instalment is taken, in respect of any due date occurring on or after 1 July 2005 and before 1 July 2006, to be \$300.

- (3) For avoidance of doubt, in respect of a due date occurring on or after 1 July 2006, the minimum annual instalment is to be determined as provided by Part 1B.

11 Phasing-in of increase in minimum half-yearly instalments

- (1) This clause applies if the purchase price (whether with or without interest added) of an incomplete purchase is, immediately before 1 July 2004, payable by half-yearly instalments and Part 1B of this Act (as inserted by the amending Act) applies in respect of the instalments.
- (2) For the purposes of Part 1B:
- (a) the minimum half-yearly instalment is taken, in respect of any due date occurring on or after 1 July 2004 and before 1 July 2005, to be \$100, and
 - (b) the minimum half-yearly instalment is taken, in respect of any due date occurring on or after 1 July 2005 and before 1 July 2006, to be \$150.
- (3) For avoidance of doubt, in respect of a due date occurring on or after 1 July 2006, the minimum half-yearly instalment is to be determined as provided by Part 1B.

12 Due date for payment of additional amounts

- (1) If any additional amount of rent or of an instalment is payable in respect of a lease or incomplete purchase as a consequence of the amendments made to this Act by the amending Act, that additional amount does not become due and payable until the date notified to the holder of the lease or purchaser (as appropriate), by the Minister as being the due date in respect of such additional amount.

Note. Accordingly, interest does not become payable in respect of such additional amounts under section 148 of the Principal Act until the holder is notified of the additional amount payable.

- (2) Subclause (1) ceases to have effect on 1 July 2005.

13 (Repealed)

Part 5 Provisions consequent on enactment of Crown Lands Legislation Amendment Act 2005

14 Definition

In this Part:

amending Act means the *Crown Lands Legislation Amendment Act 2005*.

15 Determination or redetermination of rents

The amendments made to clause 12 of Schedule 5 by the amending Act apply in relation to determinations or redeterminations of rent by the Minister whether before or after the commencement of those amendments.

16 Applications to purchase land held under lease

The amendments made to Schedules 7 and 7A by the amending Act extend to applications to purchase land that were made, but not approved by the Minister, before the commencement of those amendments.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

Crown Lands (Continued Tenures) Act 1989 No 7. Assented to 21.3.1989. Date of commencement, 1.5.1990, sec 2 and GG No 51 of 20.4.1990, p 3196. This Act has been amended as follows:

- 1990** No 108 Statute Law (Miscellaneous Provisions) Act (No 2) 1990. Assented to 13.12.1990.
Date of commencement of the provisions of Sch 1 relating to the Crown Lands (Continued Tenures) Act 1989, assent, sec 2.
- 1991** No 94 Statute Law (Miscellaneous Provisions) Act (No 2) 1991. Assented to 17.12.1991.
Date of commencement of the provisions of Sch 1 relating to the Crown Lands (Continued Tenures) Act 1989, assent, Sch 1.
- 1992** No 29 Mining Act 1992. Assented to 18.5.1992.
Date of commencement, 21.8.1992, sec 2 and GG No 101 of 20.8.1992, p 5905.
- No 34 Statute Law (Miscellaneous Provisions) Act 1992. Assented to 18.5.1992.
Date of commencement of the provisions of Sch 1 relating to the Crown Lands (Continued Tenures) Act 1989, assent, Sch 1.
- 1994** No 41 Irrigation Corporations Act 1994. Assented to 2.6.1994.
Date of commencement of items (1), (3)–(5), (8) (b) and (c) and (9) of the provisions of Sch 3 relating to the Crown Lands (Continued Tenures) Act 1989, 24.2.1995, sec 2 (1) and GG No 18 of 24.2.1995, p 914; date of commencement of the remainder of those provisions, 1.7.1996, sec 2 (1) and GG No 77 of 28.6.1996, p 3283.
- 1995** No 11 Statute Law Revision (Local Government) Act 1995. Assented to 9.6.1995.
Date of commencement of the provision of Sch 1 relating to the Crown Lands (Continued Tenures) Act 1989, 23.6.1995, sec 2 (1) and GG No 77 of 23.6.1995, p 3279.
- No 16 Statute Law (Miscellaneous Provisions) Act 1995. Assented to 15.6.1995.
Date of commencement of the provision of Sch 2 relating to the Crown Lands (Continued Tenures) Act 1989, assent, Sch 2.
- 1996** No 139 Strata Schemes Management (Miscellaneous Amendments) Act 1996. Assented to 16.12.1996.
Date of commencement, 1.7.1997, sec 2 and GG No 68 of 27.6.1997, p 4770. Amended by Statute Law (Miscellaneous Provisions) Act 1997 No 55. Assented to 2.7.1997. Date of commencement of Sch 2.18, assent, sec 2 (2).

- 1997** No 67 Crown Lands and Irrigation Legislation Amendment (Transfer Restrictions) Act 1997. Assented to 10.7.1997.
Date of commencement, 1.8.1997, sec 2 and GG No 86 of 1.8.1997, p 5825.
- No 111 Crown Lands and Irrigation Legislation Amendment (Removal of Transfer Restrictions) Act 1997. Assented to 9.12.1997.
Date of commencement, assent, sec 2.
- 2000** No 92 Water Management Act 2000. Assented to 8.12.2000.
Date of commencement of Sch 8.6, 1.1.2001, sec 2 and GG No 168 of 22.12.2000, p 13471.
- 2002** No 83 Surveying Act 2002. Assented to 29.10.2002.
Date of commencement, 25.6.2003, sec 2 and GG No 103 of 25.6.2003, p 5903.
- No 112 Statute Law (Miscellaneous Provisions) Act (No 2) 2002. Assented to 29.11.2002.
Date of commencement of Sch 1.6, assent, sec 2 (3).
- 2004** No 63 Crown Lands Legislation Amendment (Budget) Act 2004. Assented to 6.7.2004.
Date of commencement, 1.7.2004, sec 2.
- 2005** No 58 Crown Lands Legislation Amendment Act 2005. Assented to 1.7.2005.
Date of commencement, 15.7.2005, sec 2 and GG No 90 of 15.7.2005, p 3703.
- 2006** No 120 Statute Law (Miscellaneous Provisions) Act (No 2) 2006. Assented to 4.12.2006.
Date of commencement of Sch 2, assent, sec 2 (2).
- 2007** No 27 Statute Law (Miscellaneous Provisions) Act 2007. Assented to 4.7.2007.
Date of commencement of Sch 1.15, assent, sec 2 (2).
- No 82 Statute Law (Miscellaneous Provisions) Act (No 2) 2007. Assented to 7.12.2007.
Date of commencement of Sch 1, assent, sec 2 (2).
- 2009** No 119 Surveying Amendment Act 2009. Assented to 14.12.2009.
Date of commencement, assent, sec 2.
- 2010** No 59 Statute Law (Miscellaneous Provisions) Act 2010. Assented to 28.6.2010.
Date of commencement of Sch 2.21, 9.7.2010, sec 2 (2).
- 2012** No 96 Forestry Act 2012. Assented to 21.11.2012.
Date of commencement of Sch 4.5, 1.1.2013, sec 2 and 2012 (680) LW 21.12.2012.
- 2013** No 95 Civil and Administrative Legislation (Repeal and Amendment) Act 2013. Assented to 20.11.2013.
Date of commencement, 1.1.2014, sec 2.

Table of amendments

- Sec 3 Am 1994 No 41, Sch 3; 1997 No 111, Sch 1 [1] [2]; 2000 No 92, Sch 8.6; 2002 No 112, Sch 1.6 [1]; 2004 No 63, Sch 2 [1] [2]; 2005 No 58, Sch 2 [1]; 2010 No 59, Sch 2.21.

Sec 4	Am 1994 No 41, Sch 3; 1997 No 111, Sch 1 [3].
Part 1A	Ins 2004 No 63, Sch 2 [3].
Sec 4A	Ins 2004 No 63, Sch 2 [3]. Am 2005 No 58, Sch 2 [2]–[4].
Sec 4B	Ins 2004 No 63, Sch 2 [3].
Sec 4B, note	Ins 2004 No 63, Sch 2 [3]. Rep 2005 No 58, Sch 2 [5].
Sec 4C	Ins 2004 No 63, Sch 2 [3]. Am 2005 No 58, Sch 2 [6] [7].
Secs 4D–4F	Ins 2004 No 63, Sch 2 [3].
Part 1B (secs 4G–4J)	Ins 2004 No 63, Sch 2 [3].
Sec 5	Am 1997 No 111, Sch 1 [4]–[6]; 2006 No 120, Sch 2.18 [1].
Sec 6	Am 1994 No 41, Sch 3; 1997 No 111, Sch 1 [7].
Sec 9	Rep 1997 No 111, Sch 1 [8].
Sec 12	Rep 1997 No 111, Sch 1 [9].
Sec 14	Rep 1997 No 111, Sch 1 [10].
Sec 15	Rep 1997 No 111, Sch 1 [11].
Sec 16	Rep 1994 No 41, Sch 3.
Part 3, heading	Ins 2004 No 63, Sch 2 [4].
Sec 17	Rep 1994 No 41, Sch 3. Ins 2004 No 63, Sch 2 [4].
Sec 19	Ins 1997 No 67, Sch 1 [1].
Sch 1	Am 1994 No 41, Sch 3; 1997 No 111, Sch 1 [12].
Sch 2	Am 1990 No 108, Sch 1; 1994 No 41, Sch 3; 1997 No 67, Sch 1 [2] [3]; 1997 No 111, Sch 1 [13]–[15]; 2004 No 63, Sch 2 [5]–[7].
Sch 3	Am 1991 No 94, Sch 1; 1992 No 34, Sch 1; 1994 No 41, Sch 3; 1995 No 11, Sch 1; 1996 No 139, Sch 2.13 (am 1997 No 55, Sch 2.18 [1]); 1997 No 67, Sch 1 [4]–[10]; 1997 No 111, Sch 1 [16]–[31]; 2006 No 120, Sch 2.18 [2].
Sch 4	Am 1994 No 41, Sch 3; 1997 No 67, Sch 1 [11]; 1997 No 111, Sch 1 [32] [33]; 2002 No 112, Sch 1.6 [2]; 2004 No 63, Sch 2 [8] [9].
Sch 5	Am 1990 No 108, Sch 1; 1994 No 41, Sch 3; 1997 No 111, Sch 1 [34] [35]; 2004 No 63, Sch 2 [10]–[23]; 2005 No 58, Sch 2 [8]; 2013 No 95, Sch 8.6 [1]–[3].
Sch 6	Am 1992 No 29, Sch 5; 2012 No 96, Sch 4.5 [1].
Sch 7	Am 1990 No 108, Sch 1; 1994 No 41, Sch 3; 1995 No 16, Sch 2; 1997 No 67, Sch 1 [12]; 1997 No 111, Sch 1 [36] [37]; 2002 No 83, Sch 2.5; 2004 No 63, Sch 2 [24]–[30]; 2005 No 58, Sch 2 [9] [10]; 2007 No 27, Sch 1.15; 2007 No 82, Sch 1.5; 2009 No 119, Sch 2.6; 2012 No 96, Sch 4.5 [2] [3]; 2013 No 95, Sch 8.6 [4]–[10].
Sch 7A	Ins 2004 No 63, Sch 2 [31]. Am 2005 No 58, Sch 2 [11]–[14].
Sch 8	Ins 1997 No 67, Sch 1 [13]. Am 1997 No 111, Sch 1 [38] [39]; 2004 No 63, Sch 2 [32] [33]; 2005 No 58, Sch 2 [15]–[17].