

Land Administration Amendment Bill 2000

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Western Australia

LEGISLATIVE ASSEMBLY

Land Administration Amendment Bill 2000

A Bill for

An Act to —

- **validate certain acts related to land administration;**
- **amend the *Land Administration Act 1997*;**
- **amend the *Transfer of Land Act 1893*;**
- **extend the period for the acceptance of certain offers; and**
- **to effect certain changes in respect of Reserve No. 1667.**

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Land Administration Amendment Act 2000*.

2. Commencement

- (1) The provisions of this Act, other than the provisions set out in subsections (2), (4), and (5), come into operation on the day on which it receives the Royal Assent.
- 5 (2) Sections 8, 10(2), 12, 14(1) and (2), 19(2) and (3), 22, 24 to 37, and 51 come into operation on a day fixed by proclamation.
- (3) Different days may be fixed under subsection (2) for different provisions.
- (4) Section 38(1) is taken to have come into operation on the day on
10 which the *Land Administration Act 1997* came into operation.
- (5) Section 52 comes into operation on the day after the day on which this Act receives the Royal Assent.

3. The Act amended

15 The amendments in this Act are to the *Land Administration Act 1997** unless otherwise specified.

[* *Act No. 30 of 1997.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 133 and Acts Nos. 13 and 24 of 2000.]

20 **4. Section 3 amended**

Section 3(1) is amended as follows:

- (a) by deleting the definition of “private road” and inserting the following definition instead —

“

25 **“private road”** means alley, court, lane, road, street, thoroughfare or yard on alienated land, or a right of way created under section 167A(1) of the TLA, which —

- 30 (a) is not dedicated, whether under a written law or at common law, to use as such by the public; and

-
- (b) is shown on a plan or diagram deposited or
in an instrument lodged with the Registrar,
and which —
- 5 (c) forms a common access to land, or premises,
separately occupied;
- (d) once formed or was part of a common access
to land, or premises, separately occupied, but
no longer does so;
- 10 (e) is accessible from an alley, court, lane, road,
street, thoroughfare, yard or public place that
is dedicated, whether under a written law or
at common law, to use as such by the public;
or
- 15 (f) once was, but is no longer, accessible from
an alley, court, lane, road, street,
thoroughfare, yard or public place that was
dedicated, whether under a written law or at
common law, to use as such by the public;
- 20 (b) by deleting the definition of “road” and inserting the
following definition instead —
- “
- 25 **“road”** means, subject to section 54, land dedicated at
common law or reserved, declared or otherwise
dedicated under an Act as an alley, bridge, court,
lane, road, street, thoroughfare or yard for the
passage of pedestrians or vehicles or both;
- ”.

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5. **Section 6C inserted**

Before section 7 the following section is inserted in Part 1 —

“

5 **6C. Avoidance of doubt in relation to certain rights of way**

To avoid doubt, it is declared that if —

10 (a) land was or is taken or resumed and vested in a local government for the purpose of a right of way or a right of way and recreation, and not a road; and

(b) the land comprising the right of way or right of way and recreation has not been or is not dedicated as a road under a written law,

the land —

15 (c) is and since it was vested in the local government has remained a right of way; and

20 (d) the common law relating to the creation of a public right of way by way of dedication and acceptance has never applied and does not apply to the land so as to dedicate the land as a public right of way.

”.

6. **Section 13 amended**

After section 13(5) the following subsections are inserted —

25 “

(6) An order revoked or replaced under section 165(4) ceases to have effect from the day the order revoking it or replacing it is registered.

30 (7) An order amended under section 165(4) is to be treated as having been made in its amended form from the day the order amending it is registered.

”.

7. Section 15 amended

(1) Section 15(13)(a) is amended by inserting after “covenantor” —
“ or his or her successor in title ”.

(2) After section 15(13) the following subsections are inserted —

5

“

(14) In relation to Crown land, the Minister may be the
covenantor of a covenant registered under
subsection (3) or (6).

10

(15) If a covenant is registered under subsection (3) or (6)
against Crown land by an instrument against the
relevant certificate of Crown land title or qualified
certificate of Crown land title, the covenant is by
operation of this subsection transferred to, and applies
to, the fee simple when the Crown land is transferred in
fee simple in all respects as if the fee simple had been
referred to in the covenant.

15

”.

8. Section 18 amended and validation

(1) Section 18(1) is amended as follows:

20

(a) by deleting “without the prior approval in writing of the
Minister” and inserting instead —

“ without authorisation under subsection (7) ”;

(b) by inserting after “land” —

“ or create or grant an interest in Crown land ”.

25

(2) Section 18(2) is amended by deleting “without the prior
approval in writing of the Minister” and inserting instead —

“ without authorisation under subsection (7) ”.

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- (3) Section 18(3) is amended by deleting “without the prior approval in writing of the Minister” and inserting instead —
“ without authorisation under subsection (7) ”.
- 5 (4) Section 18(4) is amended by deleting “without the prior approval in writing of the Minister” and inserting instead —
“ without authorisation under subsection (7) ”.
- (5) After section 18(6) the following subsections are inserted —
“
- 10 (7) A person or lessee may make a transaction under subsection (1), (2), (3) or (4) —
- (a) with the prior approval in writing of the Minister; or
 - (b) if the transaction is made in circumstances, and in accordance with any condition, prescribed for the purposes of this paragraph.
- 15
- (8) This section does not apply to a transaction relating to an interest in Crown land if —
- (a) that land is set aside under, dedicated or vested for the purposes of an Act other than this Act, and the transaction is authorised under that Act;
 - (b) that interest may be created, granted, transferred or otherwise dealt with under an Act other than —
 - (i) this Act; or
 - (ii) a prescribed Act;
 - (c) an agreement, ratified or approved by another Act, has the effect that consent to the transaction was not required under section 143 of the repealed Act; or
- 20
- 25

- (d) the transaction is a lease, sublease or licence and the approval of the Minister is not required under section 46(3b).

”.

- 5 (6) Despite section 18(6) of the *Land Administration Act 1997*, an act —
- (a) done in contravention of section 18(1), (2), (3) or (4) of that Act on or before the coming into operation of this section;
 - 10 (b) that, if it had been done after the coming into operation of this section, would have required the approval in writing of the Minister; and
 - (c) approved in writing by the Minister within 12 months, or such longer period as may be prescribed under that Act, after the coming into operation of this section,

is, and is taken always to have been, as valid and effective as it would have been if the act were done with the approval in writing of the Minister.

- 20 (7) Despite section 18(6) of the *Land Administration Act 1997*, an act —
- (a) done in contravention of section 18(1), (2), (3) or (4) of that Act on or before the coming into operation of this section; and
 - 25 (b) that, if it had been done after the coming into operation of this section, would not have required the approval in writing of the Minister,

is, and is taken always to have been, as valid and effective as it would have been if the act were done with the approval in writing of the Minister.

- 30 (8) Despite section 18(6) of the *Land Administration Act 1997*, if within 12 months of the day on which this section comes into operation an act is done in contravention of section 18(1), (2),

s. 9

(3), or (4) of that Act as amended by this section that act is valid and effective if, within 12 months of the day on which this subsection comes into operation, the Minister approves the act in writing.

5 **9. Section 19A inserted**

After section 19 the following section is inserted —

“

19A. Encumbrances in respect of fee simple in Crown land

10 To avoid doubt, if the fee simple in Crown land is transferred under this Act subject to encumbrances, it is declared that sections 81Q, 81R, and 81RA (in respect of a transfer effected on or after the coming into operation of the *Land Administration Act 1997*) of the TLA apply to that land whether or not there is a specific provision in the TLA or this Act that provides for encumbrances to be transferred to, and applied to, the fee simple when transferred in all respects as if the fee simple had been referred to in the encumbrance.

20

”.

10. Section 20 amended

(1) Section 20(1) is amended by inserting after “certificate of Crown land title” —

“ or a qualified certificate of Crown land title ”.

25 (2) Section 20(2) is amended as follows:

- (a) after paragraph (a) by deleting “or”;
- (b) after paragraph (b) by deleting the full stop and inserting —

30

“

; or

(c) an interest referred to in section 18(8).

”.

11. Section 43 amended

(1) Section 43(2) is amended by deleting “a number of” and inserting instead —

“ the period of 14 ”.

5 (2) After section 43(2) the following subsections are inserted —

“

(3) If the notice of a resolution referred to in subsection (1) is given to a House and that resolution is not lost but, before the period of 30 sitting days mentioned in subsection (1)(b) and (c) expires, Parliament is
10 prorogued or that House is dissolved or expires —

(a) the relevant proposal does not lapse but, subject to paragraph (b)(iii), it cannot be implemented; and

15 (b) on the commencement of the next session of Parliament —

(i) the Minister may cause the proposal to be laid before that House again;

20 (ii) notice of a resolution disallowing the proposal may be given again in that House; and

25 (iii) subsection (1) applies again but as if the references in subsection (1)(b) and (c) to the period of 30 sitting days after the proposal was laid were references to the remaining sitting days after notice of a resolution disallowing the proposal is given under subparagraph (ii).

30 (4) In subsection (3)(b)(iii) —

“remaining sitting days” means the number of sitting days equal to the portion of the period of 30 sitting days mentioned in subsection (1)(b) and (c) that

remained unexpired when Parliament was prorogued, or the relevant House was dissolved or expired, as referred to in subsection (3).

”.

5 **12. Section 46 amended and validation**

(1) After section 46(3) the following subsections are inserted —

“

(3a) The Minister may by order —

(a) without the consent of the management body of a reserve, vary —

10

(i) an order made under subsection (3)(a);
or

(ii) an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898* that subsists as an order made under subsection (3)(a),

15

in relation to whether or not prior approval in writing of the Minister is required to a grant of a lease, sublease, or licence;

20

or

(b) with the consent of the management body of a reserve, vary any other condition to which —

(i) an order made under subsection (3)(a);
or

25

(ii) an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898* that subsists as an order made under subsection (3)(a),

is subject.

(3b) The Minister's approval under section 18 is not required for the exercise of a power conferred under subsection (3)(a) unless —

5

(a) the person on whom the power is conferred is —

(i) a body corporate that is constituted for a public purpose under an enactment and is an agency of the Crown in right of the State; or

10

(ii) a person referred to in subsection (10)(b),

and the order provides that the Minister's approval under section 18 is required; or

15

(b) the person on whom the power is conferred is a person other than a person referred to in paragraph (a).

”.

(2) Section 46(5) is amended by deleting “or (3)” and inserting instead —

20

“ , (3) or (3a) ”.

(3) Section 46(7) is repealed and the following subsections are inserted instead —

“

25

(7) A person with whom the care, control and management of a reserve is placed by order under subsection (1) has, by virtue of this subsection, the capacity, functions and powers to hold and deal with the reserve in a manner consistent with the order, any order conferring power on that person under subsection (3)(a) and this Act to the extent that the person does not already have that capacity or those functions and powers.

30

(8) Subsection (7) does not authorise a management body to perform a function or exercise a power if another

enactment expressly prevents the person from performing that function or exercising that power, or expressly authorises another person to perform that function or exercise that power.

- 5 (9) Any instrument in relation to the care, control and management of a reserve entered into or given by a person holding an office referred to in subsection (10)(b)(i) or (v) is taken to have been entered into or given by the person for the time being holding that office.
- 10
- (10) In subsection (1), a reference to a person is a reference to —
- (a) a person having perpetual succession;
- (b) a person not having perpetual succession who is —
- 15 (i) a Minister to whom the Act specified in the relevant order is for the time being committed by the Governor;
- (ii) the Lands and Forest Commission established under section 18 of the *Conservation and Land Management Act 1984*;
- 20 (iii) the National Parks and Nature Conservation Authority established under section 21 of the *Conservation and Land Management Act 1984*;
- 25 (iv) the Marine Parks and Reserves Authority established under section 26A of the *Conservation and Land Management Act 1984*; or
- 30 (v) a person holding a prescribed office.
- (11) If an order made under section 33 of the repealed Act subsists under clause 16(1) of Schedule 2 as if it were a

management order under section 46(1), the Minister may by order vary that order to place the care, control and management of the reserve the subject of the order with a person referred to in subsection (10).

- 5 (12) An order made under section 46(1) before the coming into operation of section 12 of the *Land Administration Amendment Act 2000* may be varied by the Minister by order to place the care, control and management of the reserve the subject of the order with a person referred to in subsection (10).
- 10

”.

- (4) Section 46(3a) of the *Land Administration Act 1997* as inserted by subsection (1) applies in respect of any order made under section 46(3)(a) of that Act, whether that order was made on, before, or after the coming into operation of subsection (1).
- 15 (5) Section 46(3b) of the *Land Administration Act 1997* as inserted by subsection (1) applies in respect of an order made under section 46(3)(a) of that Act, whether that order was made on, before, or after the coming into operation of subsection (1).
- 20 (6) Section 46(7), (8), (9), and (10) of the *Land Administration Act 1997* (the “**Act**”), as inserted by section 12(3) of the *Land Administration Amendment Act 2000* applies in respect of —
- (a) any order made, or purportedly made, under section 46(1) of the Act;
- 25 (b) a lease, sublease, or licence granted, or purportedly granted, by a person referred to in section 46(10) in a manner consistent with the order, any order made under section 46(3)(a) of the Act and the Act; and
- (c) any other instrument entered into, or purportedly entered into, by a person referred to in section 46(10) in relation to the care, control and management of a reserve,
- 30 on or before the coming into operation of section 12(3) of the *Land Administration Amendment Act 2000* as if section 46(7),

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(8), (9), and (10) had come into operation on the day on which the Act came into operation.

13. Section 50 amended

- 5 (1) Section 50(3) is amended by inserting after “management order” in both places where it occurs —
- “
- or an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898* that subsists as if it were a management order
- 10 ”.
- (2) Section 50(6) is amended in the definition of “management lease” by inserting after “granted” —
- “ or a lease that subsists as if it were a lease granted ”.
- (3) After section 50(6) the following subsection is inserted —
- 15 “
- (7) In subsections (1), (2), (4) and (5) —
- “**management order**” includes an order made under section 46(3)(a) or an order made under section 33 of the repealed Act or section 42 or 43 of the
- 20 *Land Act 1898* that subsists as if it were a management order or an order made under section 46(3)(a).
- ”.

14. Section 52 amended

- 25 (1) Section 52(2)(b) is amended by deleting “(3)(b)” and inserting instead —
- “ (3)(b)(i) or (ii), as the case requires ”.
- (2) Section 52(3) is amended as follows:
- (a) in paragraph (a)(i) by inserting after “subject land” —
- 30 “ unless the local government holds that freehold ”;

(b) in paragraph (a)(ii) by inserting after “subject land” —
“ unless the local government holds that freehold ”.

(c) by deleting paragraph (b) and inserting the following paragraph instead —

5

“

(b) in the case of —

10

(i) alienated land referred to in subsection (1)(a) or a private road referred to in subsection (1)(b), state in the notice a period of not less than 30 days from the day of that notice during which period persons may lodge objections with it against the making of that request; or

15

(ii) any land referred to in subsection (1)(c), advertise or take such steps as may be prescribed to notify interested persons of an intention to make the request and state in the notification a period of not less than 30 days from the day of that notification during which period persons may lodge objections with it against the making of that request.

20

”.

25

(3) Section 52(6) is amended as follows:

(a) by deleting “Compensation” and inserting instead —

“ Subject to subsection (7), compensation ”;

(b) by deleting “(not being a private road)”.

(4) After section 52(6) the following subsections are inserted —

30

“

(7) A person with an interest in land that is a private road (including a person who has the benefit of an easement

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created under section 167A of the TLA) the subject of an order under subsection (4)(a) who suffers loss on the registration of the order is not entitled to compensation under Part 10.

- 5 (8) Sections 188, 189, 190 and 191 do not apply to a private road or an interest in land that is a private road if the land is the subject of an order under subsection (4)(a) and the land was taken or resumed or purportedly taken or resumed under a written law for
10 the purpose of a right of way or a right of way and recreation.

”.

15. Section 55 amended

- 15 (1) Section 55(2) is amended by inserting after “*Main Roads Act 1930*” —

“ and the *Public Works Act 1902* ”.

- (2) Section 55(4) is amended by deleting “the holder of the freehold in that land” and inserting instead —

“

- 20 a person with an interest in that land (including a person who has the benefit of an easement created under section 167A of the TLA)

”.

16. Section 56 amended

- 25 (1) Section 56(5)(a) is amended by inserting after “Crown land” —

“ or, in the case of a private road, alienated land ”.

- (2) Section 56(6) is amended as follows:

- (a) by deleting “subsection(1)(c)” and inserting instead —

“ subsection (1)(b) or (c) ”.

- (b) by deleting “the holder of the freehold in that land” and inserting instead —

“

5

a person with an interest in that land (including a person who has the benefit of an easement created under section 167A of the TLA)

”.

17. Section 57 amended

10

Section 57(1)(b) is amended by deleting “or the Commissioner of Main Roads” and inserting instead —

“

15

, the Commissioner of Main Roads, or the Minister responsible for the administration of the *Public Works Act 1902*

”.

18. Section 58 amended and validation

- (1) Section 58(5) is amended as follows:

20

- (a) after paragraph (a) by inserting “and”;
- (b) after paragraph (b) by deleting the semicolon and “and” and inserting a full stop;
- (c) by deleting paragraph (c).

25

- (2) If the Minister has not caused notice of the registration of an order made under section 58(4) of the *Land Administration Act 1997* to be published in a newspaper circulating in the district of the relevant local government under section 58(5)(c) of the *Land Administration Act 1997*, that failure does not render the order invalid and the order is, and is taken always to have been, as valid and effective as it would have been if the notice had been so published.

19. Section 75 amended

(1) Section 75(4) is amended as follows:

- (a) by deleting “beneficial” where it first occurs;
- (b) by deleting subparagraph (b)(ii) and inserting the following subparagraph instead —

“

- (ii) if the fee simple in the conditional tenure land was transferred under subsection (1) for a discounted price, an amount calculated using the following formula —

$$A = ((P - DP) / P) \times R$$

where —

- A is the amount the Minister may recover from the holder of the freehold in the conditional tenure land;
- P is the unimproved value of the conditional tenure land at the time the discounted price was paid;
- DP is the discounted price;
- R is the unimproved value of the conditional tenure land at the time of the recovery,

”.

(2) Section 75(7) is amended by inserting after “land accompanied” —

“ , subject to subsection (7a), ”.

(3) After section 75(7) the following subsection is inserted —

“

- (7a) The Minister may in prescribed circumstances, with the prior approval of the Treasurer, waive in whole or part

the payment of the relevant amount referred to in subsection (4)(b)(i) or (ii), subject to such conditions as the Minister determines.

”.

5 **20. Section 80 amended**

(1) Section 80(4) is amended by deleting “the Minister must, on payment to him or her of the full purchase price, transfer that Crown land in fee simple to that lessee.” and inserting instead —

“

10 the Minister must transfer that Crown land in fee simple to that lessee —

15 (c) if a purchase price was fixed when the conditional purchase lease was granted, on payment to him or her of the full purchase price, whether or not paid by rental that the conditional purchase lease provides or the Minister agrees may be offset against the purchase price, together with any other outstanding rental or outstanding interest as the
20 Minister may require the lessee to pay before the Crown land is transferred to the lessee; or

25 (d) if a purchase price was not fixed when the conditional purchase lease was granted, on payment to him or her of the full purchase price, which price is to be fixed by the Minister or calculated in accordance with the terms of the conditional purchase lease, together with any other outstanding rental or outstanding interest as
30 the Minister may require the lessee to pay before the Crown land is transferred to the lessee.

”.

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- (2) Section 80(5) is repealed and the following subsections are inserted instead —

“

- 5 (5) In determining whether under subsection (4)(c) or (d) the full purchase price has been paid, the Minister is to offset against the price fixed by him or her or calculated in accordance with the terms of the conditional purchase lease any rental payment that the conditional purchase lease provides or the Minister agrees may be offset against the purchase price.
- 10 (6) If the lease is mortgaged, is affected by another interest or is subject to a caveat and the lessee, during the continuance of the mortgage, other interest or caveat, becomes entitled under subsection (4), the mortgage, other interest or caveat is by operation of this subsection transferred to the fee simple and applies to the fee simple when transferred in all respects as if the fee simple had been referred to in the mortgage, other interest or caveat and has the same effect in respect of the fee simple as if it
- 15
- 20 were a mortgage, other interest or caveat under the TLA.

”.

21. Section 89 amended

- (1) Section 89(4) is amended by inserting after “caveat” where it last occurs —

25

“

and has the same effect in respect of the fee simple as if it were a mortgage, other interest or caveat under the TLA

”.

- (2) Section 89(5) and (6) are repealed.

30 **22. Section 93 amended**

- (1) Section 93 is amended in paragraph (a) of the definition of “pastoral purposes” by inserting after “grazing of” —

“ authorised ”.

(2) Section 93 is amended in paragraph (b) of the definition of “pastoral purposes” by inserting after “grazing of” —
“ authorised ”.

(3) Section 93 is amended by inserting, in the appropriate
5 alphabetical positions, the following definitions —
“

“**authorised stock**” means stock, or its produce, that is
prescribed;

10 “**prohibited stock**” means stock, or its produce, other
than authorised stock;

”.

23. Section 97 amended

(1) Section 97(1)(a) is amended by deleting “(in this section called
“industry members”)”.

15 (2) After section 97(1) the following subsection is inserted —
“

(1a) In this section the chairperson and the members
referred to in subsection (1)(a), (d), and (e) are called
the “**appointed members**”.

20 ”.

(3) Section 97(2) is amended by deleting “member appointed by
him or her” and inserting instead —

“ appointed member ”.

(4) Section 97(4) is amended by deleting “A member appointed by
25 the Minister” and inserting instead —

“ An appointed member ”.

(5) Section 97(5) is amended by deleting “a member or deputy
appointed by him or her” and inserting instead —

“ an appointed member or deputy ”.

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(6) Section 97(7) is amended by deleting “industry” and inserting instead —

“ appointed ”.

(7) Section 97(8) is amended by deleting “industry” and inserting instead —

“ appointed ”.

(8) Section 97(9) is amended by deleting “industry” and inserting instead —

“ appointed ”.

10 **24. Section 101 amended**

Section 101(5) is amended as follows:

(a) in paragraph (a) by inserting after “carrying sufficient” —
“ authorised ”;

(b) after paragraph (a) by deleting “or”;

(c) after paragraph (b) by deleting the full stop and inserting instead —

“

; or

(c) the lease is to become, together with an adjoining pastoral lease or part of an adjoining pastoral lease, a pastoral business unit under section 142A, the creation of which has been approved under section 142A(1).

”.

25 **25. Section 106 amended**

(1) Section 106(2) is amended by deleting “or 122” and inserting instead —

“ , 122 or 122A ”.

(2) After section 106(2) the following subsection is inserted —

“

(3) An offence is not committed under subsection (1) by a pastoral lessee in respect of purposes referred to in paragraph (b) or (c) of the definition of “pastoral purposes” referred to in section 93 (an “**ancillary purpose**”) if —

- (a) a permit would otherwise be required in respect of that ancillary purpose;
- (b) a permit has been issued under Division 5; and
- (c) the pastoral lessee has acted in accordance with that permit.

”.

26. Section 108 amended

After section 108(5) the following subsection is inserted —

“

(6) In subsection (2) —

“**stock**” means —

- (a) authorised stock; and
- (b) stock for which a permit has been issued under section 122A.

”.

27. Section 111 amended

After section 111(3) the following subsections are inserted —

“

(4) A pastoral lessee must not —

- (a) keep prohibited stock on land under a pastoral lease; or
- (b) sell prohibited stock,

except in accordance with a permit to do so issued under Division 5.

Penalty: \$10 000.

- (5) If stock being kept on a pastoral lease by a pastoral lessee on the commencement day is prohibited stock, subsection (4) does not apply to that person until 6 months after the commencement day.
- 5 (6) If stock being kept on a pastoral lease by a pastoral lessee becomes prohibited stock after the commencement day, subsection (4) does not apply to that person until 6 months after the day on which the stock became prohibited stock or such other period as
10 may be prescribed but which period is not to be less than one month.
- (7) In subsection (1) —
“stock” means —
 (a) authorised stock; and
15 (b) stock for which a permit has been issued under section 122A.
- (8) In subsections (5) and (6) —
“commencement day” means the day on which
20 section 27 of the *Land Administration Amendment Act 2000* comes into operation.

”.

28. Section 112 amended

Section 112(1) is amended by inserting after “section 111” —
“ and the operation of any permit issued under Division 5 ”.

25 **29. Section 113 amended**

After section 113(3) the following subsection is inserted —

“

- (4) In subsection (2) —
“stock” means —
30 (a) authorised stock; and

- (b) stock for which a permit has been issued under section 122A.

”.

30. Section 114 amended

5 After section 114(4) the following subsection is inserted —

“

(4a) Despite subsection (4) and section 143(5a) or (6c) —

- 10 (a) if the Minister is not satisfied that the land subsisting in a lease is capable, when fully developed, of carrying sufficient authorised stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit;
- 15 (b) the land subsisting in the lease is a part only of the land that was in the lease when it was granted;
- (c) the lease is not to be amalgamated with an adjoining pastoral lease; and
- 20 (d) the lease is not to become, together with an adjoining pastoral lease or part of an adjoining pastoral lease, a pastoral business unit,

25 the Minister may by order cancel a grant or extension of a lease in relation to that land that is to commence immediately upon the expiration of the lease concerned, and the lessee is entitled to receive from the Minister as compensation an amount determined by the Valuer-General to be the market value on the date of cancellation of any lawful improvements existing on

30 the land subsisting under the lease.

”.

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31. Section 122A inserted

After section 122 the following section is inserted in
Division 5 —

“

5 **122A. Permits to keep or sell prohibited stock**

(1) The Board may, on an application in writing from a
pastoral lessee, issue a permit for the lessee to do either
or both of the following —

- 10 (a) keep prohibited stock on land under a pastoral
 lease;
- (b) sell prohibited stock.

(2) A permit under this section —

- (a) may include a permit for the sale of any
 produce arising from an activity permitted; and
- 15 (b) may be issued for any period and subject to any
 conditions the Board thinks fit.

”.

32. Section 129 amended

20 (1) Section 129(1) is amended after paragraph (c) by deleting “or”
and inserting —

“

- (ca) a condition of a permit issued in respect of the
 lease; or

”.

25 (2) Section 129(2) is amended as follows:

- (a) by inserting after “A default notice” —
 “ issued under subsection (1) ”;
- (b) in paragraph (f) by inserting after “result in” —
 “ a fine, ”;
- 30 (c) in paragraph (f) by inserting after “lease” —
 “ , or both ”.

33. **Section 130 replaced**

Section 130 is repealed and the following section is inserted instead —

“

5 **130. Offence of failure to comply with a default notice**

If a default notice is issued under section 129(1)(a), (b), (c) or (ca), a pastoral lessee who fails to comply with the default notice commits an offence.

Penalty: \$50 000, and a daily penalty of \$1 000.

10

”.

34. **Section 131 replaced**

Section 131 is repealed and the following section is inserted instead —

“

15 **131. Minister may issue forfeiture notice**

If the Minister is satisfied that a pastoral lessee has failed to comply with —

- (a) a provision of this Act;
- (b) a provision of the lease;
- 20 (c) a condition set or determination made by the Board under this Part; or
- (d) a condition of a permit issued in respect of the lease,

25

the lease is liable to forfeiture under section 35 as if that failure to comply were the breach of a condition or covenant referred to in that section.

”.

35. **Section 132 amended**

- 30 (1) Section 132 is amended by inserting before “The” the subsection designation “(1)”.

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- (2) At the end of section 132 by inserting the following subsection is inserted —

“

- 5 (2) The liability of any person to the forfeiture of a pastoral lease is not affected by the imposition of a penalty for an offence in relation to a matter to which the liability to forfeiture related.

”.

36. Section 134 amended

- 10 (1) Section 134(4) is amended as follows:

- (a) in paragraph (a) by inserting after “carrying sufficient” —

“ authorised ”;

- (b) after paragraph (a) by deleting “or”;

- 15 (c) after paragraph (b) by deleting the full stop and inserting instead —

“

; or

- 20 (c) if a part is not so capable — the lease will be divided and that part, together with an adjoining pastoral lease or part of an adjoining pastoral lease, will become a pastoral business unit under section 142A, the creation of which has been approved under that section.

25

”.

- (2) After section 134(4) the following subsections are inserted —

“

- (4a) If a division of a lease takes place under subsection (4)(a) —

- 30 (a) subject to subsection (8), each part of the land under the lease that was divided is to be held on the same conditions, including the term of the lease, as it was held before the division;

- 5
- (b) the provisions of this Act continue to apply in relation to each part of the land under the lease that was divided, as if the land in each part subsists in the lease and the lease is a lease solely of that land; and
- (c) without limiting paragraph (b), section 143(6) to (6i) apply in relation to each part of the land under the lease that was divided, as if the land in each part subsists in the lease and the lease is a lease solely of that land.
- 10
- (4b) If a division of a lease takes place under subsection (4)(c) —
- (a) subject to subsection (8), the land remaining in the lease that was divided and any land in the lease that was divided and included in a pastoral business unit under section 142A are to be held on the same conditions, including the term of the lease, as the land was held before the division;
- 15
- (b) the provisions of this Act continue to apply —
- (i) in relation to the land remaining in the lease that was divided, as if that land subsists in the lease and the lease is a lease solely of that land; and
- 20
- (ii) in relation to any land in the lease that was divided and included in a pastoral business unit under section 142A, as if the land subsists in the lease and the lease is a lease solely of that land;
- 25
- and
- 30
- (c) without limiting paragraph (b), section 143(6) to (6i) apply —
- (i) in relation to the land remaining in the lease that was divided, as if that land

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subsists in the lease and the lease is a lease solely of that land; and

- (ii) in relation to any land in the lease that was divided and included in a pastoral business unit under section 142A, as if the land subsists in the lease and the lease is a lease solely of that land.

5

”.

- (3) After section 134(7) the following subsection is inserted —

10

“

- (8) If a transfer results in the effective division of the land under a lease into parts with different lessees, the annual rent for the lease is to be apportioned between the parts of the lease in proportion to the area of each part.

15

”.

37. Section 142A inserted

After section 142 the following section is inserted —

“

20

142A. Creation of pastoral business unit

- (1) If —
- (a) a pastoral lease granted under section 101(1) or a pastoral lease or a part of a lease the transfer of which was approved under section 134(4)(c) and an adjoining lease are held by the same lessees; and
- (b) the lessees hold the same proportionate share of each lease or part of a lease,

25

the Minister may in writing approve the creation of a pastoral business unit comprising those leases or parts of leases and specify the name of the pastoral business unit.

30

-
- 5
- (2) If the Minister gives approval under subsection (1), the Minister is to lodge a memorial in an approved form with the Registrar in respect of each lease or part of a lease comprising the pastoral business unit stating that the lease or part of a lease is part of the pastoral business unit and the name of the pastoral business unit.
- 10
- (3) The Minister may in writing approve a variation of the leases or parts of leases comprising a pastoral business unit and, if he or she does so, is to —
- 15
- (a) lodge a memorial under subsection (2) in relation to any lease or part of a lease which has been added to a pastoral business unit; or
- (b) withdraw a memorial under subsection (2) in relation to any lease or part of a lease which has ceased to be part of a pastoral business unit.
- 20
- (4) If a memorial is lodged or withdrawn under subsection (2) or (3), the Registrar is to endorse on each certificate of Crown land title, or qualified certificate of Crown land title, subject to the lease referred to in the memorial particulars of the memorial or of a variation or withdrawal of a memorial.
- 25
- (5) If a memorial is lodged under subsection (2), sections 134 and 136 apply to all of the leases or parts of leases comprising the pastoral business unit so long as the leases or parts of leases are part of the pastoral business unit as if a reference in those sections to a lease were a reference to all of the leases or parts of leases comprising the pastoral business unit.
- 30
- (6) The Minister may in a memorial lodged under subsection (2), declare that the provisions of Part 7, or any of those provisions, apply to all of the leases or parts of leases comprising the pastoral business unit so long as the leases or parts of leases are part of the

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pastoral business unit as if a reference in those sections to a lease were a reference to all of the leases or parts of leases comprising the pastoral business unit.

- 5 (7) The Minister may in a memorial in an approved form vary a memorial lodged under subsection (2) and is to lodge such a memorial with the Registrar.
- 10 (8) If a memorial is lodged under subsection (7), the Registrar is to endorse on each certificate of Crown land title, or qualified certificate of Crown land title, subject to the lease referred to in the memorial particulars of the memorial.

”.

38. Section 143 amended

- 15 (1) After section 143(5) the following subsection is inserted —

“

- 20 (5a) If an application is disposed of under section 98(11) of the repealed Act either before or after the appointed day by the lessee accepting the offer of a lease or an extension of a lease, as the case may be, the grant or extension commences immediately upon the expiration of the lease concerned in relation to any land subsisting in the lease at the expiration of the lease.

”.

- 25 (2) Section 143(6) is repealed and the following subsections are inserted instead —

“

- 30 (6) If a lessee of a pastoral lease —
(a) was entitled under section 98(11)(a) of the repealed Act to make an application at any time during 1995 but did not do so; or

(b) was granted the lease between 1 January 1996 and 29 March 1998 (both inclusive),

the Minister may —

- 5 (c) treat that lessee or the successor in title as if he or she had made an application under that section (the “**deemed application**”); and
- 10 (d) consider and determine the matters referred to in section 98(11)(a) of the repealed Act in relation to the deemed application and give the lessee or the successor in title notice in writing of his or her decision not later than the day that is one year after the day on which section 38 of the *Land Administration Amendment Act 2000* comes into operation or such other day as is
- 15 prescribed.
- (6a) A notice given to a lessee or a successor in title under subsection (6)(d) is deemed to be an offer of a lease or an extension of a lease, as the case may be, at the rent and on the other terms and conditions specified in the
- 20 notice.
- (6b) The lessee or the successor in title may accept the offer referred to in subsection (6a) on or before the day specified in the notice, which day is not to be less than one year after the day on which the notice is given.
- 25 (6c) Subject to subsection (6g), if the lessee or the successor in title accepts the offer of a lease or an extension of a lease, as the case may be, under subsection (6a), the grant or extension commences immediately upon the expiration of the lease concerned in relation to any land
- 30 subsisting in the lease at the expiration of the lease.
- (6d) The Minister may for a public purpose exclude land from a lease granted or extended under subsection (6c) by giving a notice in writing under subsection (6e) to the lessee or successor in title to the lease not later than

2 years after the day on which section 38 of the *Land Administration Amendment Act 2000* comes into operation.

- 5 (6e) The notice under subsection (6d) is to contain the following information —
- (a) a description of the area of land to be excluded from the lease;
 - (b) the reason for the land being excluded from the lease;
 - 10 (c) any reduction in the rent payable under the lease as a result of the exclusion of the land from the lease;
 - (d) any proposed variation in the conditions of the lease as a result of the exclusion of the land
 - 15 (e) that the land is to be excluded from the lease or extension concerned upon the commencement of the lease or extension, as the case may be.
- 20 (6f) If a lessee is given a notice under subsection (6d) the lessee may —
- (a) accept the conditions contained in the notice;
 - (b) withdraw from the lease; or
 - (c) enter into negotiations with the Minister on the area to be excluded from the lease or the rent to
 - 25 be paid as a result of the exclusion of the land from the lease.
- 30 (6g) If agreement is not reached on the matters referred to in subsection (6f)(c) by the day that is 2 years, or such longer period as may be prescribed, after the day on which the notice was given to the lessee (the “**final day**”), the lessee is to be regarded as having withdrawn from the agreement to lease or to extend the lease on the final day.

5 (6h) If land is not to be excluded from a lease granted or extended under subsection (6c) for a public purpose, the Minister may give notice in writing to that effect to the lessee not later than 2 years after the day on which section 38 of the *Land Administration Amendment Act 2000* comes into operation.

(6i) If a notice is not given by the day specified in subsection (6d) no land may be excluded from the lease under that subsection.

10 ”.

(3) Section 143(7) and (8) are repealed.

(4) After section 143(9) the following subsection is inserted —

“

15 (10) In this section —
“**public purpose**” means for the purpose of a public work within the definition of the expression “public work” in the *Public Works Act 1902*, conservation, a national park, a nature reserve or a purpose which serves or is intended to serve the
20 interests of the public or a section of the public.

”.

39. Section 144 amended

(1) Section 144(1)(a) is amended by deleting “for any purpose” and inserting instead —

25 “

for a specified purpose or any other purpose the Minister thinks fit

”.

(2) After section 144(2) the following subsection is inserted —

30 “

(2a) An easement may be granted under this section despite the fact that the characteristics of the easement do not

s. 40

satisfy all of the characteristics that must be satisfied for an easement to be created under the common law.

”.

(3) After section 144(3) the following subsection is inserted —

5

“

(4) In this section —

“**specified purpose**” means for —

10

(a) the provision of pipes, conduits, cables, transmission lines, and other services;

(b) the provision of any structure, plant, or equipment;

15

(c) the provision of access for carrying out of any works and the performance of any maintenance that is necessary for, or ancillary or incidental to, giving effect to any of the purposes referred to in paragraph (a) or (b); or

(d) a prescribed purpose.

”.

20

40. Section 151 amended

Section 151(1) is amended in the definition “acquiring authority” by deleting “to take interests in the land under this Part” and inserting instead —

“ to undertake, construct or provide any public work ”.

25

41. Section 159 amended

Section 159 is amended as follows:

(a) in paragraph (c) by deleting “*Electricity Corporation Act 1994*” and inserting instead —

“ *Energy Operators (Powers) Act 1979* ”;

(b) by deleting paragraph (d) and inserting the following paragraph instead —

“

(d) the Minister responsible for administering the *Government Railways Act 1904*;

”.

42. Section 160 amended

Section 160(1) is amended as follows:

(a) in paragraph (c) by inserting after “that corporation” —

“

or to the Gas Corporation established by the *Gas Corporation Act 1994* or to an officer of that corporation, as the case requires

”;

(b) by deleting paragraph (d) and inserting the following paragraph instead —

“

(d) in the case of the Minister referred to in section 159(d), to the Commission within the meaning of the *Government Railways Act 1904* or to any officer of the Commission within the meaning of that Act;

”;

(c) in paragraph (e) by deleting “Authority” in both places where it occurs and inserting instead —

“ Commission or Corporation ”.

43. Section 165 amended

(1) Section 165(2) is amended by deleting “this section” and inserting instead —

“ subsection (1) or (4) ”.

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(2) After section 165(3) the following subsection is inserted —

“

(4) The Minister may by order —

(a) revoke or amend an order made under subsection (1); or

(b) revoke an order made under subsection (1) and replace it with another order.

”.

44. Section 275 amended

(1) Section 275(1) is amended as follows:

(a) after paragraph (g) by deleting “and”;

(b) after paragraph (h) by deleting the full stop and inserting —

“

; and

(i) amending or supplementing, with effect from a time which is not earlier than the appointed day, the provisions set out in Schedule 3 for the purpose of providing an effective and efficient transition of the matters referred to in those provisions to the operation of this Act.

”.

(2) After section 275(2) the following subsection is inserted —

“

(3) Subsection (1)(i) expires 5 years after section 44 of the *Land Administration Amendment Act 2000* commences.

”.

45. **Part 13 inserted**

After section 282 the following Part is inserted —

“

Part 13 — Transitional related to pre-*Land Act 1933* Crown grants, Crown reserves, and Crown leases

283. Interpretation

In this Part —

“**pre-1933 legislation**” means the *Land Act 1898* or an Act or regulation repealed by section 2 of the *Land Act 1898* or section 4 of the *Land Act 1933*.

284. Pre-1933 legislation transitional

The transitional provisions set out in Schedule 3 have effect in relation to pre-1933 legislation.

”.

46. **Schedule 2 amended**

(1) After clause 16(1) to Schedule 2 the following subclauses are inserted —

“

(1a) If, before the appointed day, a vesting order that subsists under subclause (1) as if it were an order made under section 46(3) did not require the Governor’s or Minister’s consent to dealings in interests in land the subject of the order, the Minister’s approval to dealings in the land under section 18 is not required.

(1b) Any dealing before the coming into operation of section 46 of the *Land Administration Amendment Act 2000* in an interest in land the subject of an order referred to in subsection (1a) is taken to be, and always to have been, as valid and effective as it would have been if done with the Minister’s approval.

”.

(2) Clause 16(2) to Schedule 2 is amended by deleting “Any” and inserting instead —

“ Subject to subclause (2a), any ”.

(3) Clause 16(2) to Schedule 2 is amended by deleting
5 “section 33(3)(a)” and inserting instead —

“ section 33(2) ”.

(4) After clause 16(2) to Schedule 2 the following subclauses are inserted —

“

10 (2a) Any lease granted in compliance with a direction referred to in section 33(2) of the repealed Act and subsisting immediately before the appointed day which is in respect of land comprising the whole or a part of the land in a reserve that has been cancelled continues to subsist subject to this
15 Act, and is taken to have so continued to subsist on and from the appointed day, as if that lease were a lease continued under section 22 of this Act.

(2b) Any lease granted in compliance with a direction referred to in section 33(3)(a) of the repealed Act and subsisting immediately before the appointed day continues to subsist subject to this Act, and is taken to have so continued to subsist on and from the appointed day, as if that lease were a lease granted under section 47 of this Act.

(2c) If —

25 (a) a lease granted in compliance with a direction referred to in section 33(3)(a) of the repealed Act; or

(b) a sublease made in compliance with a consent referred to in section 33(3a) of the repealed Act,

30 subsisting immediately before the appointed day is subject to a condition or limitation that required the Governor’s consent or approval that condition or limitation is to be taken instead to be a condition or limitation under which the consent or approval of the Minister is required.

- 5 (2d) Any consent or approval referred to in subclause (2c) given before the coming into operation of section 46 of the *Land Administration Amendment Act 2000* by the Minister is taken to be, and always to have been, as valid and effective as it would have been if given by the Governor. ”.
- (5) Clause 16(3) to Schedule 2 is amended as follows:
- (a) by deleting “referred to in section 46(3) of this Act” and inserting instead —
- 10 “ referred to in section 47 of this Act ”;
- (b) by deleting “section 46(3) of”.
- (6) After clause 17(2) to Schedule 2 the following subclauses are inserted —
- “
- 15 (3) On and from the appointed day any condition referred to in subclause (1)(a) under which the Governor’s consent is required is taken instead to be a condition under which the consent of the Minister is required.
- (4) Any consent referred to in subclause (3) given before the
- 20 coming into operation of section 46 of the *Land Administration Amendment Act 2000* by the Minister is taken to be, and always to have been as, valid and effective as it would have been if given by the Governor.
- (5) If land in fee simple granted within the meaning of
- 25 subclause (1) has a classification of Class A under section 31 of the repealed Act the land is, and is taken since the appointed day to have been, land that may be dealt with in the same manner as if it were a Class A reserve under Part 4 of this Act.
- (6) If land in fee simple granted within the meaning of
- 30 subclause (1) has a classification under section 31 of the repealed Act as a reserve other than as a Class A reserve, that reservation is taken to have been cancelled on and from the appointed day.
- 35 ”.

47. **Schedule 3 inserted**

After Schedule 2 the following Schedule is inserted —

“

**Schedule 3 — Crown grants, Crown reserves, and
Crown leases made or created before the
*Land Act 1933***

[s. 284]

1. Interpretation

In this Schedule, unless the contrary intention appears —

“**land reserved**” means land reserved under the
Land Act 1898 or an Act or regulation repealed by
section 2 of the *Land Act 1898* or by section 4 of the
Land Act 1933 and remaining so reserved immediately
before the appointed day;

“**pre-1933 legislation**” has the same definition as it has in
section 283.

2. Crown grants made before the *Land Act 1933*

(1) A Crown grant conveying to the grantee a portion of Crown
land in fee simple of any reserve granted under pre-1933
legislation and subsisting immediately before the appointed
day is to be taken to be land transferred in fee simple subject
to conditions referred to in section 75(1) of this Act but
subject to —

(a) the same conditions and with the same purpose as
the fee simple so granted except that any condition
under which the consent of the Governor is required
is taken instead to be a condition under which the
consent of the Minister is required; and

(b) any mortgage effected with the consent of the
Governor before the appointed day.

(2) If the land subject to a fee simple granted within the
meaning of subclause (1) was before the appointed day

- 5 mortgaged with the consent of the Governor and, after that
land has become land transferred in fee simple subject to
conditions under that subclause, the mortgagee completes
the exercise of the power of sale or foreclosure under that
mortgage, that land is by virtue of this subclause freed from
the conditions and the purpose referred to in that subclause.
- (3) If land in fee simple granted within the meaning of
subclause (1) has a classification of Class A under section 2(1)
of the *Permanent Reserves Act 1899* the land is to be taken to
be, and to have been on and from the appointed day, land that
may be dealt with in the same manner as if it were a class A
reserve under Part 4 of this Act.
- (4) If land in fee simple granted within the meaning of
subclause (1) has a classification under section 2(2) or (3) of
the *Permanent Reserves Act 1899* as a reserve other than as
a Class A reserve that reservation is taken to have been
cancelled on and from the appointed day.
- 3. Crown reserves created before the *Land Act 1933***
- (1) Any land reserved is to be taken to be land reserved under
section 41 of this Act.
- (2) Any land reserved that was classified as a Class A reserve
and remained so classified immediately before the appointed
day is to be taken to be, and to have been on and from the
appointed day, a class A reserve.
- (3) Any land reserved that was classified as a Class B reserve
and remained so classified immediately before the appointed
day is to be taken to be, and to have been on and from the
appointed day, a Class B reserve under section 31 of the
repealed Act and remains so classified as if the repealed Act
had not been repealed until that reserve ceases to be so
classified, or is cancelled, in accordance with the repealed
Act.
- (4) For the purposes of subclause (3), section 31(2) of the
repealed Act is to be construed as if that section —
- (a) enabled the Minister to cancel a reserve referred to
in that subclause by order made under this Act; and

- (b) required the Minister to present a special report under the proviso to that section following that cancellation.
- 5 (5) Any land reserved that was classified as a Class C reserve and remained so classified immediately before the appointed day is to be treated as a reserve, but not an A class reserve, within the meaning of this Act.
- 10 (6) A vesting order made under section 42 of the *Land Act 1898* and subsisting immediately before the appointed day continues, subject to this Act, to subsist, and is taken to have continued to so subsist on and from the appointed day, as if that order were a management order or an order made under section 46(3) or 59(5), as the case requires, of this Act.
- 15 (7) If, before the appointed day, a vesting order that subsists under subclause (6) as if it were an order made under section 46(3) did not require the Governor's consent to dealings in interests in the land the subject of the order, the Minister's approval to dealings in the land under section 18 is not required.
- 20 (8) An order made under section 43 of the *Land Act 1898* and subsisting immediately before the appointed day continues, subject to this Act, to subsist, and is taken to have continued to so subsist on and from the appointed day, as if that order were a management order.
- 25 (9) Where under an Order in Council made under section 43 of the *Land Act 1898* a board of management has power to make, repeal and alter by-laws for the control and management of a reserve —
- 30 (a) any such by-laws in force before the appointed day continue in force until repealed under this subclause or until the management order is revoked under section 50, whichever first occurs; and
- 35 (b) the board of management having control of the reserve may make, repeal, or alter by-laws in relation to the reserve as if, and with effect as if, section 43 of the *Land Act 1898* had not been repealed.

4. Leases granted under the *Land Act 1898*

(1) Any lease for 999 years granted under section 42 of the *Land Act 1898* and subsisting immediately before the appointed day is to be taken to be and to have been on and from the appointed day a lease granted under section 47 of this Act for the balance of its unexpired term, except that any condition in the lease under which the consent of the Governor is required is to be taken to be a condition under which the consent of the Minister is required.

(2) Any consent referred to in subclause (1) given before the coming into operation of section 47 of the *Land Administration Amendment Act 2000* by the Minister is taken to be, and always to have been, as valid and effective as it would have been if given with the Governor's consent.

5. Other leases granted under pre-1933 legislation

(1) A lease of land or a part of the land in a reserve granted under pre-1933 legislation subsisting immediately before the appointed day is to be taken to be and to have been on and from the appointed day a lease granted under section 47, except that any condition in the lease under which the consent of the Governor is required is to be taken to be a condition under which the consent of the Minister is required.

(2) Any consent referred to in subclause (1) given before the coming into operation of section 47 of the *Land Administration Amendment Act 2000* by the Minister is taken to be, and always to have been, as valid and effective as it would have been if given with the Governor's consent.

48. Validation of certain purported offers of leases

- (1) If a lessee of a pastoral lease or a former lessee of a pastoral lease —
- (a) was given a notice under section 98(11) of the *Land Act 1933*; or

5 (b) was, after 31 December 1995 and before the coming into operation of the *Land Administration Act 1997*, given notice in writing by the Minister that the Minister would upon the expiration of the pastoral lease extend that lease or grant to the lessee a new lease of the whole or part of the land the subject of that lease,

then —

10 (c) that notice is deemed to be, and always to have been, a valid and effective offer of a lease or an extension of a lease, as the case may be;

(d) any acceptance of that offer by the lessee is deemed to be and, in the case of an offer accepted before the coming into operation of this section, always to have been valid and effective; and

15 (e) any lease or extension of a lease arising from an offer and acceptance referred to in paragraphs (c) and (d) is deemed to be and always to have been valid and effective.

(2) Without limiting the effect of subsection (1) —

20 (a) the offer is deemed to have been made to the person who at the time the notice was given was the lessee of the lease in respect of which the notice was given;

25 (b) if the offer was made in relation to a lease by reference to the name of a station and not by reference to the location details of the land contained in the lease or the registered number of the lease under the *Transfer of Land Act 1893*, the offer is deemed to have been made in relation to the land contained in the registered lease applicable to that station at the time the notice was given;

30 (c) if the offer was for a lease or an extension of the lease, the term of the lease or the extension offered is to be for the same term as the term of the existing pastoral lease;

(d) the annual rent payable for the lease or extension of a lease, as the case may be, is to be and is taken always to

have been determined under section 123 of the
Land Administration Act 1997;

- 5
- (e) the offer is to be regarded as being accepted in relation to the land contained in the existing pastoral lease at the time the offer is accepted (other than any land excluded under subsections (3) to (6)); and
- (f) unless otherwise provided in this subsection, the text and terms and conditions of the lease or extension of the lease are the terms and conditions specified in the notice given to the lessee.
- 10
- (3) The Minister may for a public purpose exclude land from a lease or extension of lease referred to in subsection (1) by giving a notice in writing under subsection (4) to the lessee, or the successor in title to the lessee, (the “**lessee**”) not later than 2 years after the day on which this section comes into operation.
- 15
- (4) The notice under subsection (3) is to contain the following information —
- (a) a description of the area of land to be excluded from the lease;
- 20
- (b) the reason for the land being excluded from the lease;
- (c) any reduction in the rent payable under the lease as a result of the exclusion of the land from the lease;
- (d) any proposed variation in the conditions of the lease as a result of the exclusion of the land from the lease; and
- 25
- (e) that the land is to be excluded from the lease or extension concerned upon the commencement of the lease or extension, as the case may be.
- (5) If a lessee is given a notice under subsection (4) the lessee may —
- 30
- (a) accept the conditions contained in the notice;
- (b) withdraw from the agreement to lease or to extend the lease; or

- (c) enter into negotiations with the Minister on the area to be excluded from the lease or the rent to be paid as a result of the exclusion of the land from the lease.
- 5 (6) If agreement is not reached on the matters referred to in subsection (5)(c) by the day that is 2 years, or such other longer period as may, for the purposes of this section, be prescribed under the *Land Administration Act 1997*, after the day on which the notice was given to the lessee (the “**final day**”), the lessee is deemed to have withdrawn from the agreement to lease or to extend the lease on the final day.
- 10 (7) If land is not to be excluded from a lease or extension of a lease referred to in subsection (1) for a public purpose under this section, the Minister may give notice in writing to that effect to the lessee not later than 2 years after the day on which this section comes into operation.
- 15 (8) If a notice is not given by the day specified in subsection (3) no land may be excluded from the lease under that subsection.
- (9) In this section —
- 20 “**existing pastoral lease**” means a pastoral lease subsisting under the *Land Act 1933* immediately before the appointed day as defined in section 3(1) of the *Land Administration Act 1997*;
- “**public purpose**” has the same definition as it has in section 143(10) of the *Land Administration Act 1997*.

49. Pastoral leases: extension of period for acceptance of offer

- 25 If —
- (a) a notice has been given, or purported to be given, under section 98(11) of the *Land Act 1933*; and
- (b) the offer or purported offer has not been accepted under section 98(11)(c) of the *Land Act 1933*,
- 30 the lessee, or the successor in title to the lessee, may accept the offer not later than the day that is 12 months after the day on which this section comes into operation or such other day as

may, for the purposes of this section, be prescribed under the *Land Administration Act 1997*.

50. Offers in relation to certain leases

If a person is given a notice under section 143(6)(d) of the *Land Administration Act 1997* then the notice is a valid and effective offer of a lease or an extension of the lease, as the case may be, despite —

- (a) the fact that the person to whom the notice was given was not the lessee at the time the notice was given;
- (b) the fact that the offer was made in relation to a lease by reference to the name of a station and not by reference to the certificate of Crown land title, qualified certificate of Crown land title or other location details of the land contained in the lease or the registered number of the lease under the *Transfer of Land Act 1893*, in which case the offer is deemed to have been made in relation to the land contained in the registered lease applicable to that station at the time the notice was given;
- (c) the fact that the offer of a lease or an extension of the lease did not state the term of the lease or extension or was not for the same term as the term of the existing pastoral lease, in which case the term of the lease or extension of lease is deemed to have been made for the same term as the term of the existing pastoral lease;
- (d) the notice stating that rent reviews during the lease or the extension of the lease are to be under section 123(4) of the *Land Administration Act 1997*, in which case the annual rent payable for the lease or extension of a lease, as the case may be, is to be and is taken always to have been determined under section 123 of the *Land Administration Act 1997*; and
- (e) the notice not stating that the land the subject of the offer is the land contained in the existing pastoral lease other than any land excluded under section 143(6d)

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to (6i), in which case the offer is to be regarded as being accepted in relation to the land contained in the existing pastoral lease at the time the offer is accepted (other than any land excluded under those subsections),

5 and, unless otherwise provided in this subsection, the text and terms and conditions of the lease or extension of the lease are the terms and conditions specified in the notice given to the lessee.

51. Consequential amendments

10 The Acts specified in Schedule 1 are amended as set out in that Schedule.

52. Reserve No. 1667

15 (1) Reserve No. 1667 in the City of Nedlands, classified as a class A reserve, comprising 8.2005 hectares dedicated to the purpose of an “Old Men’s Depot site”, is amended, despite sections 42 and 43 of the *Land Administration Act 1997* —

(a) by changing the purpose of the Reserve to “Retirement village, parks and recreation, community, and ancillary commercial purposes”; and

20 (b) by excising an area of 1 835 square metres being Swan Location 13957 as shown on Land Administration Plan 21181, so that the Reserve comprises 8.0170 hectares being Swan Location 13958 as shown on Land Administration Plan 21181.

25 (2) The Reserve is taken to have been reserved under section 41 of the *Land Administration Act 1997* for the purpose specified in subsection (1)(a).

30 (3) To avoid doubt, it is declared that the land excised from Reserve No. 1667 under subsection (1)(b) being Swan Location 13957 as shown on Land Administration Plan 21181 is unallocated Crown land within the meaning of the *Land Administration Act 1997*.

(4) The Minister is to make an order that is to be taken to be an order made by the Minister under the *Land Administration Act 1997* that —

5

- (a) the purpose of Reserve No. 1667 is changed in the manner referred to in subsection (1)(a); and
- (b) the area of 1 835 square metres being Swan Location 13957 as shown on Land Administration Plan 21181 excised under subsection (1)(b) is excised from Reserve No. 1667.

Schedule 1 — Consequential amendments

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1. ***Sandalwood Act 1929 amended***

5 Section 3(4) of the *Sandalwood Act 1929** is amended by deleting
“*Land Act 1898*” and inserting instead —

“ *Land Administration Act 1997* ”.

[* *Reprinted as approved 14 July 1971.*

*For subsequent amendments see 1999 Index to Legislation of
Western Australia, Table 1, p.225.]*

10 2. ***The Kalgoorlie and Boulder Racing Clubs Act 1904 amended***

Section 2 of *The Kalgoorlie and Boulder Racing Clubs Act 1904** is
amended in the definition of “Minister for Lands” by deleting “*Land
Act 1898*” and inserting instead —

“ *Land Administration Act 1997* ”.

15 [* *Private Act.*

*For subsequent amendments see 1999 Index to Legislation of
Western Australia, Table 1, p.131.]*

3. ***The Salvation Army (Western Australia) Property Trust Act 1931
amended***

20 Section 22 of *The Salvation Army (Western Australia) Property Trust
Act 1931** is amended by deleting “*Land Act 1898*” and inserting
instead —

“ *Land Administration Act 1997* ”.

[* *Reprinted as authorised 20 October 1972.*

25 *For subsequent amendments see 1999 Index to Legislation of
Western Australia, Table 1, p.225.]*

4. Transfer of Land Act 1893 amended

- (1) This clause amends the *Transfer of Land Act 1893**.

[* Reprinted as at 23 July 1999.

*For subsequent amendments see 1999 Index to Legislation of
Western Australia, Table 1, p.256 and Act No 24 of 2000.]*

- (2) Section 4(1) is amended in the definition of “Encumbrances” after
“land” by inserting —

“ , and a dealing that is registered under this Act ”.

- (3) After section 81D(2) the following subsections are inserted —

“

- (3) If a lease is divided under section 134(4)(a) of the
Land Administration Act 1997 the Registrar shall —

(a) register, and has power to do all things
necessary to register, the division of the land
under the lease and the transfer of each part of
the land under the lease; and

(b) register any other dealing or thing that may be
done in relation to each part of the pastoral
lease,

despite anything to the contrary in this Act.

- (4) If a lease is divided under section 134(4)(b) of the
Land Administration Act 1997 the Registrar shall —

(a) register and has power to do all things
necessary to register the division of the lease
and the amalgamation of part of the land with
the land of an adjoining pastoral lease; and

(b) register any other dealing or thing that may be
done in relation to each part of the pastoral
lease,

despite anything to the contrary in this Act.

(5) If a lease is divided under section 134(4)(c) of the *Land Administration Act 1997* the Registrar shall —

5

(a) register, and has power to do all things necessary to register, the division of the lease and transfer of part of the lease; and

(b) register any other dealing or thing that may be done in relation to each part of the pastoral lease,

despite anything to the contrary in this Act.

10

(4) After section 81R the following section is inserted —

“

81RA. Other encumbrances in respect of fee simple in Crown land

15

(1) In subsection (2) —

“**encumbrance**” means an encumbrance (as defined in section 4(1)) that is shown on the transfer or other document by which the transfer of Crown land in fee simple is effected.

20

(2) If —

(a) the fee simple in Crown land in respect of which an encumbrance is registered is transferred under the *Land Administration Act 1997*; and

25

(b) a certificate of title is created and registered in respect of the fee simple of that former Crown land,

30

the encumbrance is by operation of this subsection transferred to and applies to the fee simple when transferred in all respects as if the fee simple had been referred to in the encumbrance until that encumbrance is terminated, withdrawn, discharged, surrendered or expires.

(3) This section does not apply to an encumbrance referred to in section 81Q or 81R.

5 (4) This section applies to a transfer effected on or after the coming into operation of the *Land Administration Act 1997*. ”.

(5) Section 81S(1) is amended by inserting after “that dealing” —
10 “ unless the dealing is one in respect of which the Minister’s permission is not required under the *Land Administration Act 1997* ”.

5. Water Boards Act 1904 amended

15 Section 3(1) of the *Water Boards Act 1904** is amended in the definition of “holding” by deleting “*Land Act 1898*” and inserting instead —

“ *Land Administration Act 1997* ”.

20 [* Reprinted as at 4 November 1996.
For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, pp.267-8.]

