

LAND AND PUBLIC WORKS LEGISLATION AMENDMENT BILL 2022

EXPLANATORY MEMORANDUM

BACKGROUND TO THE LAND AND PUBLIC WORKS LEGISLATION AMENDMENT BILL 2022

The Bill amends the *Land Administration Act 1997*, the *Public Works Act 1902* and makes a number of consequential and related amendments to other Acts. In particular it:

- makes a number of administrative improvements to the *Land Administration Act 1997*, to:
 - update delegation powers
 - confirm that the Minister for Lands can hold land in freehold, and the Minister’s powers in relation thereto
 - provide a statutory timeframe for consultations with local governments
 - streamline the process for road dedication and road closure, including enabling the Minister for Lands to close roads on the Minister’s own initiative following a consultation and advertising process
 - provide a new consultation process for certain actions affecting managed reserves
 - enable the Minister for Lands to excise land from managed reserves for public works
 - strengthen the Minister’s powers in relation to conditional tenure land
 - enable easements in gross to be transferred
 - modernise the means by which notices can be given
 - provide new information sharing provisions
- provides for a new and more flexible form of non-exclusive lease tenure that will facilitate the demand for multiple land uses on a broad scale without compromising access by other key interest holders, primarily the resource sector and native title parties
- makes a range of amendments to Part 7 of the *Land Administration Act 1997*, including enabling pastoral lessees to extend the term of pastoral leases and transfer diversification permits, and changing the way that pastoral lease rental is determined to improve transparency and reduce volatility
- makes a number of administrative improvements to the *Public Works Act 1902* to modernise the definition of “public work”.

The following is an explanation of the contents of the Bill on a clause-by-clause basis.

Part 1 Preliminary

This Part deals with preliminary matters, including the short title and commencement of this Bill.

Clause 1 Short title

Provides that the name of this Bill when enacted is the *Land and Public Works Legislation Amendment Act 2022*.

Clause 2 Commencement

Sets out the commencement provisions and provides that different sections of the Act will commence on different days fixed by proclamation.

Part 2 Land Administration Act 1997 amended

Clause 3 Act amended

Provides that this Part of the Bill amends the *Land Administration Act 1997*.

Clause 4 Section 3 amended – Terms used

This section is amended to delete the definitions of “location or lot” and “State instrumentality” as these are replaced with the new versions below and to insert the following definitions:

- “Board”, which is moved from section 93 as it is now referred to in both Parts 7 and new Part 10A
- “Commissioner”, which is moved from section 93 as it is now referred to in both Parts 6A and 7
- “condition of land”, which relates to new sections 92F, 100A, 108A, and 108C, and concerns obligations of the lessee in respect of land under a pastoral lease or diversification lease
- “DBNGP corridor”, being the Dampier to Bunbury Natural Gas Pipeline corridor, which relates to amendments to sections 55, 58, and new section 58A
- “diversification lease” and “diversification lessee”, which relate to new Part 6A
- “location or lot”, to reflect new section 3A(1)
- “management plan”, to refer to a pastoral management plan under new section 108A
- “public work”, to reflect the new *Public Works Act 1902* provisions
- “soil conservation notice” is moved from section 93
- “State instrumentality”, to modernise and rationalise the current inconsistent wording, where that term is used in sections 15, 34, 51AA, 59, 62, 161, 195, 258A, 264, and “instrumentality of the State” is used in section 204

The definition of “land” is expanded to include the airspace above, and subsoil beneath the land and waters of the defined categories to accord with the common law position that “land” includes the airspace above and the subsoil beneath that land, and that title to land can exist solely in respect of airspace or subsoil. This change, together with new section 3A will allow for different strata of Crown land to be held in different Crown land tenures.

Additionally, the section is amended to:

- omit the reference to section 54 in the definition of “road” as that section is deleted
- change “freehold of” to “freehold in” for grammatical correctness.

Clause 5 Section 3A inserted – Location or lot

This section is inserted to confirm that a “location or lot” may be three-dimensional. This amendment operates with the amended definition of “land” in section 3, to clarify that land can refer to airspace or subterranean space independently of the surface land, and will allow for different strata of Crown land to be held in different Crown land tenures.

Clause 6 Section 9 replaced – Delegation by Minister and Chief Executive Officer of Department

This section replaces the existing section, and includes the Chief Executive Officer of the Department administering the Act, as a position to which the Minister for Lands may delegate any of the Minister’s powers or duties under the Act. The new section also enables the Chief Executive Officer to sub-delegate and removes the requirement that delegations must be gazetted. Delegations under this new section must be in writing.

The amendments are intended to make the delegation process under section 9 more efficient and less costly in terms of gazettal fees.

Currently, only the Minister can delegate functions under the Act and there is no power of sub-delegation.

Clause 7 Section 10 amended – General powers of Minister in relation to land

This section is amended to confirm that the Minister for Lands may exercise powers or perform duties under the *Land Administration Act 1997* that affect interests or caveats, without the interest holder’s consent, where another provision of the Act allows it.

Subsection (3) currently allows the Minister to exercise powers or perform duties in respect of land despite interests or caveats existing in respect of that land, but only with the interest or caveat holder’s consent, or where the interest or caveat is not adversely affected. In these cases, the interests or caveats continue to apply to the land.

Other provisions of the Act allow the Minister to affect interests and caveats without consent. For example, compulsory acquisition under Part 9 or extinguishment of interests through the revestment of roads under section 55.

Subsection (3) is amended to clarify that consent is not required under section 10 where another provision of the Act allows the Minister to affect interests and caveats without the holder’s consent.

Clause 8 Sections 11A and 11B inserted – Minister’s powers in relation to freehold land

These sections are inserted to confirm that the Minister for Lands may hold and deal with freehold land and also confirm the Minister’s powers in relation to the administration and management of that land.

Section 11A Minister may hold and deal with alienated land

This section is inserted to confirm that the Minister for Lands:

- may hold land in freehold; and
- may deal with freehold land held in the name of the Crown, the State or the Minister; and
- can subdivide, amalgamate, develop, alter, improve and manage this freehold land.

There is currently no general power for the Minister for Lands, as a body corporate, to hold and deal with land in freehold. This new section will mean that freehold land does not have to be revested as Crown land in order to bring the land under the *Land Administration Act 1997* and the Minister will no longer be required to personally execute all related documents using the Minister's executive power as a Minister of the State.

These amendments are particularly relevant to current Government policy around the sale of State land assets. These types of powers will allow the Minister to obtain the highest value for the land.

Section 11B inserted – Powers of Minister in relation to administration and management of land

This section is inserted to provide the Minister for Lands with the power to administer land held in freehold under section 11A, as well as Crown land, and to enter into contracts for the management of such land.

There is currently no specific power in the *Land Administration Act 1997* for the Minister, as a body corporate, to enter into such contracts and the Minister has to rely on the Minister's executive powers.

Subsection (2) confirms that the Minister may enter into contracts for services in connection with the administration or management of land, such as mustering, cleaning sites, technical advice, and general management.

Clause 9 Section 12 amended – Powers and duties of Minister restricted in relation to managed reserves and mall reserves

This section is amended to clarify that consent is not required from a reserve management body in the circumstances set out in section 12(2). In those circumstances, set out below, the Minister for Lands will be required to consult the management body pursuant to the process set out in new section 46A:

- undertaking certain actions in respect of class A reserves under section 42(3)
- implementing an action under sections 43(1)(a) or (c) following a proposal under sections 42(4), 44(1) or 45(4) being tabled in both Houses of Parliament without being subject to a disallowance motion or a disallowance motion being lost
- undertaking certain actions in respect of reserves subject to the *Conservation and Land Management Act 1984*, under section 45(2)
- revoking a management order where a management body agrees to the revocation or where a management body does not comply with its management order or a reserve plan, under section 50(1)

- revoking a management order in the public interest or where necessary for a public work under section 50(2)
- excising an area from a managed reserve (other than a Class A reserve or a reserve subject to the *Conservation and Land Management Act 1984* under section 45(2)) where the Minister considers the excision is in the public interest or necessary for the purposes of a public work under section 51(2)
- performing a duty imposed under sections 42(4) or 45(4) i.e. in respect of the Minister laying the proposal before each House of Parliament
- exercising a power under Part 9.

As the management order is not an interest in land, the consent of the management body is not required in the above listed circumstances as consultation in accordance with new section 46A is considered sufficient.

Clause 10 Section 14 replaced – Minister to consult local governments before exercising certain powers in relation to Crown land

This section is replaced with a clear process by which the Minister for Lands is to consult the relevant local government authority when exercising any power under the *Land Administration Act 1997*.

There is currently no indication of the timeframe for consultation or for responses from local governments. A statutory timeframe is introduced to streamline the referral process for proposed actions under the Act and enable approvals to be given in a shorter period.

Subsection (2) will require the Minister to give written notice to the local government, and the local government will have 42 days to provide comments, unless the Minister extends the period upon request under subsection (3).

Consultation is not required when it is impracticable to do so, or the Minister is creating roads under Part 5 of the Act, as roads are either created at the request of the local government or the process already includes consultation.

Clause 11 Section 22 replaced – Interest or caveat to continue despite change in status of Crown land

This section is amended to address the inconsistency between sections 22 and 50(4) and to confirm that an interest or caveat which exists on Crown land, continues to exist on the Crown land despite a change in the Crown land status (i.e. if the land is reserved or ceases to be reserved under Part 4).

This section is also amended to take into account the new reserve excision power in section 51(2) and to confirm that any interest or caveat over an excised portion of a reserve is extinguished unless that interest or caveat only applies to the excised portion and the excision order specifies that it continues.

Section 22 currently provides that existing interests or caveats affecting reserves continue, despite changes in the Crown land status i.e. if the

Crown land ceases to be reserved under Part 4. That is inconsistent with section 50(4), which currently states that interests will terminate unless the revocation order specifies that the interest should continue (section 50(5)).

In addition, where land is excised from a reserve, it is not always appropriate for the interest or caveat over that excised land to continue. For example, if land is excised from a reserve to create a road and the interest is inconsistent with road purposes.

Clause 12 Section 23 amended – Adjustment of boundaries of Crown land for purposes of survey or resurvey

This section is amended to modernise terminology and take into account the amendments to sections 27 and 28. Section 23 now deals solely with the adjustment of boundaries of Crown land for purposes of surveying or resurveying the internal or external boundaries.

Clause 13 Section 26A amended – Names of roads and areas in new subdivision

This section is amended to modernise terminology.

Clause 14 Section 27 amended – Subdivision and development of Crown land

This section is amended to confirm the Minister for Lands' powers to subdivide and/or develop Crown land, provide for encumbrances to continue on subdivided Crown land and to take into account changes to the provisions under which roads are dedicated under the *Land Administration Act 1997* (sections 28, 55 and 56).

Currently, section 27 provides the Minister with the power to subdivide and/or develop Crown land. It operates with section 28 to dedicate as road, land that is surveyed into lots and designated on a plan for the purpose of road. Prior to being dedicated, the land on which the road is located must be unallocated Crown land. The dedication occurs by statute and pursuant to section 55, the absolute property in the land comprising a road is revested in the Crown and removed from the *Transfer of Land Act 1893*.

Section 27(3) currently provides that the consent of each person having an interest, other right or power in or over the Crown land, to the extinguishment of such interest right or power, is required prior to the subdivision. Once the extinguishment occurs under subsection 27(4) / section 55(1), the land reverts to unallocated Crown land.

Subsection (1) is amended to modernise terminology.

Subsection (3)(b) is inserted and sets out the process by which a road or road extension shown on a survey, will now be dedicated.

Former subsections (3) and (4) are redundant and have been removed. Subsection (4) now provides that encumbrances specified on the Ministerial order continue on the subdivided lots, even if the lot is dedicated as a road. This means that the land does not need to be unallocated Crown land prior to road dedication, and the requirement for consent to extinguish interests is not required.

Clause 15 Section 28 deleted – Subdivisions of Crown land, dedication etc. of roads in

See above. This section is deleted as it is rolled into section 27.

Clause 16 Section 29 amended – Certificates etc. of Crown land title, creation and registration of

This section is amended consequentially to take account of changes to section 27.

Clause 17 Section 30 amended – Authorised land officers, appointing etc.

This section is amended to modernise terminology.

Clause 18 Section 35 amended – Breach of condition or covenant applying to Crown or freehold land, Minister’s powers in case of

This section is amended to modernise terminology and to enable the Minister for Lands to elect to retain forfeited conditional tenure land in freehold. This section operates with new section 11A.

Section 35 deals with the forfeiture of interests in land, including conditional tenure land under section 75. It currently provides that where such land is forfeited, the land reverts to unallocated Crown land. The Minister will now have the option to retain forfeited land as Crown land or freehold.

Reserves

The reserves provisions in Part 4 are modernised and new Ministerial powers added. These amendments operate with changes to section 12.

Currently, under section 12, the Minister for Lands must not exercise a power in respect of the care, control or management of a managed reserve or mall reserve without the consent of the management body.

Section 12 is amended such that consent is not required from a management body in the circumstances set out in new section 12(2). In those circumstances, section 46A sets out a new consultation process that will apply.

Part 4 is amended to reflect the new consultation process. This will apply to:

- those actions affecting class A reserves listed in section 42(3)
- those actions affecting class A reserves listed in section 42(4), which are subject to a Parliamentary process
- those actions affecting reserves under section 45, listed in section 45(2) and (4) i.e. certain reserves under the *Conservation and Land Management Act 1984*
- excisions from reserves that are not under sections 42, 43 or 45, where the Minister considers the excision is in the public interest or necessary for the purposes of a public work.

Where the relevant action is an excision from a managed reserve, the current process is lengthy and unwieldy. There have additionally been contentious situations where the Department seeks to excise a portion

of land from a managed reserve in the absence of consent from the management body. The only course of action available is to revoke the management order under section 50(2) and then seek to have the management body accept a new management order for the balance of the reserve. This is impracticable and undesirable and can result in the balance of the reserve being unmanaged.

For excisions under sections 42(3), 43(1)(a) or (c), 45(2) or 51(2), new section 51AA provides that the management body may seek compensation under section 204 for any improvements on the excised land, save for where the management body is a State instrumentality.

Clause 19 Section 42 amended – Class A reserves, creating, changing etc.

This section is amended to take account of amendments to section 12, and to insert section 42(6) to reference the new consultation requirement in respect of managed reserves.

Currently, in relation to managed class A reserves, the Minister for Lands may only effect minor amendments under section 42(3) or major amendments of the kind listed in section 42(4) under section 43(1)(a) or (c), with the consent of the management body under section 12.

Minor amendments have little practical effect on the management body, and the process set out in sections 42(4) and 43 for major amendments to Class A reserves involves Parliamentary scrutiny.

Section 12 is amended such that the consent of the management body is no longer required for actions under sections 42(3) or 43(1)(a) and (c), or when performing a duty imposed by section 42(4).

Section 42(6) is inserted and requires that before exercising a power under section 42(3) or performing a duty imposed by section 42(4) in relation to managed reserves, the Minister must consult with the management body in accordance with the process set out in new section 46A.

Clause 20 Section 45 amended – Certain land subject to *Conservation and Land Management Act 1984* or *Swan and Canning Rivers Management Act 2006*, Minister’s powers as to

This section is amended to take account of amendments to section 12 and to insert new section 45(5A) to reference the new consultation requirement in respect of managed reserves.

Currently, in addition to the consent of the Minister for Environment, the Minister for Lands may only effect amendments to reserves for the purpose of conservation park, national park or Class A nature reserves under section 45(2), with the consent of the management body under section 12.

Minor amendments have little practical effect on the management body, the process set out in section 45(2) already requires the consent of the Minister for Environment, and where the excision is for the purpose of creating a road, the proposal is subject to Parliamentary scrutiny pursuant to sections 45(4) and 43.

Section 12 is amended so that the consent of the management body is not required for any action under section 45(2) or the performance of a duty imposed by section 45(4).

Section 45(5A) is inserted and before exercising a power under section 45(2) or performing a duty imposed by section 45(4) in relation to reserves for the purpose of conservation park, national park or Class A nature reserves, the Minister for Lands must consult with the management body in accordance with the process set out in new section 46A.

Clause 21 Section 46 amended – Care, control and management of reserves

This section is amended such that when acting pursuant to section 46(2), the Minister for Lands is only required to obtain consent from relevant interest holders, being those that hold interests that will be affected by a change to the management order condition.

Subsection (2A) is inserted to provide that the relevant interests are those granted by the management body or resulting from a transaction to which the management body was a party, rather than those where the management order is subject to the already existing interest.

Clause 22 Section 46A inserted – Consultation with management body

This new section is inserted and operates with sections 42(6), 45(5A) and 51(3) by setting out the new consultation procedure in respect of certain actions affecting managed reserves.

The Minister for Lands must consult with the management body before:

- undertaking an action under subsections 42(3) or 42(4) in relation to a managed Class A reserve
- undertaking an action under subsections 45(2) or 45(4) in relation to a managed reserve subject to the *Conservation and Land Management Act 1984*
- excising an area from a managed reserve under subsection 51(2).

The Minister is required to give written notice to the management body and the management body has 42 days in which to provide submissions, or such longer period as the Minister allows.

Clause 23 Section 50 amended – Management order, revocation of

This section is amended to enable the Minister for Lands to revoke a management order if the Minister considers it necessary for the purposes of a public work.

Subsection (2) currently provides for a revocation of a management order “in the public interest”. It is not always clear whether a public work qualifies as being “in the public interest”. For that reason, management bodies have been required to enter into management order deeds so that the Minister has the power to revoke a management order where the land is required for a public work. This is an extra administrative burden and adds to delays in processing an approval.

Subsection (2) is amended to empower the Minister to revoke a management order if the Minister views the revocation is in the public interest or necessary for the purposes of a public work, in the absence of agreement from the management body or its non-compliance with its management order.

Subsection (3) is amended to confirm that the Minister may preserve any registered interests or caveats in the revocation order. Subsection (4) confirms that any interests or caveats not so preserved are extinguished. Where extinguished, the management body or interest holder will be eligible for compensation under new section 51AA(3) or (4).

Clause 24 Section 51 amended – Minister's powers to cancel, change purpose of or otherwise affect reserve

This section is amended to clarify that in addition to existing powers; the Minister for Lands may also reduce the area of, and excise an area from, a reserve.

Subsection (2) is inserted to enable the Minister to excise an area from a managed reserve (other than a class A reserve or a reserve referred to in section 45(2)) if the Minister considers the excision is in the public interest or necessary for the purposes of a public work.

The consent of the management body is not required but under new subsection (3), the Minister must consult the management body in accordance with the procedure set out in section 46A.

Clause 25 Section 51AA inserted – Compensation provisions

This new section is inserted. It provides that compensation may be claimed in respect of excisions from managed reserves under sections 42(3), 43(1)(a) or (c), 45(2) or 51(2) or on the revocation of management orders under subsection 50(2).

Compensation will be limited to that provided for in section 204 (essentially the depreciated value of improvements and structures). Compensation will not be payable where the management body is a State instrumentality. State instrumentalities are defined in section 3.

Clause 26 Section 54 deleted – Dimensional configuration and situation of roads

This section is deleted as it now forms part of new section 3A.

Clause 27 Section 55 amended – Property in and management of roads

This section is amended in subsection (1) to delete the provision that land comprising a road is removed from the operation of the *Transfer of Land Act 1893*. This amendment takes account of changes to sections 27 and 56 to permit encumbrances to subsist in Crown land over which a road is dedicated.

Existing subsection (1)(b) is redundant and encumbrances that continue on the land comprising a road will in future be recorded against the certificate of Crown land title for the road.

Subsection (3)(b)(ii) is inserted to provide that the encumbrances specified in the road dedication process set out in sections 27(4), 56(3A) or 168(10) of the *Planning and Development Act 2005* continue on the land, despite the revestment of the absolute property of the land comprising a road in the Crown.

Subsection (4) is amended to remove reference to “private” road to take account of changes to sections 27 and 56 that allow Crown land as well as private road to be dedicated as road.

Subsection (5) is inserted to allow roads to be created over the Dampier to Bunbury Natural Gas Pipeline corridor. The existence of the corridor will be recorded against the road because the road will have a Crown land title.

Clause 28 Section 56 amended – Dedication of land as a road

This section is amended to reflect that encumbrances can subsist in Crown land over which a road is dedicated i.e. the land no longer has to be unallocated Crown land.

Subsection (3A) is inserted to provide that encumbrances specified in the Ministerial order survive the dedication of a local government road.

Clause 29 Section 57 amended – Leases in relation to roads

This section is amended to take account of new section 58A. A lease granted over land comprising a road will continue to subsist if the road is closed during the term of the lease, if the road is closed pursuant to new section 58A as well as section 58.

Clause 30 Section 58 replaced – Closure of roads

Section 58 is replaced with two new road closure provisions; a revised section 58 that streamlines the process for closing a road at the request of a local government, and new section 58A which enables the Minister for Lands to initiate a road closure of the Minister’s own volition.

Section 58 inserted – Closure of roads at request of local government

The current section is replaced with an amended version, which streamlines the current process for closing a road at the request of a local government. The local government may ask the Minister for Lands to close a road in accordance with regulations. Section 58(5) sets out what may be in those regulations.

The Minister may grant the road closure request, direct the local government to reconsider the request or refuse the request. The road is closed from the day the Minister registers the order at Landgate and any rights that were suppressed when the road was created cease to be suppressed.

Any encumbrances which were specified in the order creating the road under sections 27(4), 56(3A) or 168(10) of the *Planning and Development Act 2005*, are unaffected by the road closure. The road

closure also does not affect any state corridor rights under the *Dampier to Bunbury Pipeline Act 1997* that may exist over the former road.

Section 58A inserted – Closure of road on Minister’s own initiative

This new section is inserted to enable the Minister for Lands to initiate a road closure in the absence of a request from the local government.

Prior to closing a road, new section 58A(2) requires the Minister to give written notice to the local government and to advertise the proposal. The local government and the public have 35 days in which to make submissions. Either may apply to the Minister for a longer period for submissions.

If the Minister closes the road under this section, the road is closed from the day the Minister registers the order at Landgate and any rights that were suppressed when the road was created cease to be suppressed.

Any encumbrances which were specified in the order creating the road under sections 27(4), 56(3A) or 168(10) of the *Planning and Development Act 2005*, are not affected by the road closure. The road closure also does not affect any state corridor rights under the *Dampier to Bunbury Pipeline Act 1997* that may exist over the former road.

Clause 31 Section 59 amended – Creation and management of mall reserves

This section is amended consequentially to reflect changes to section 58 dealing with road closures.

Clause 32 Section 64 amended – Declaring etc. public access route through Crown land

This section is amended to modernise the description of the plans referred to.

Clause 33 Section 65 amended – Nature, signposting and routes of public access route

This section is amended to modernise the description of the plans referred to.

Clause 34 Section 75 amended – Transfer of Crown land in fee simple subject to conditions

This section is amended by inserting subsection (4A) to provide that it is taken to be a breach of conditions, where the registered proprietor of conditional tenure land fails to use the land for the specified use and the Minister for Lands considers that failure is unreasonable in all the circumstances. The Minister may forfeit the conditional tenure land on a breach of a condition(s).

Currently, section 75 provides for the transfer of freehold subject to condition(s) concerning the use of the land. It may be transferred for a nominal or discounted value because of a community benefit to be provided by the specified use. The introduction of section 75(4A) assists the Minister in better ensuring that the land is actually used for the specified use.

Clause 35 Section 79 amended – Minister's powers as to lease of Crown land

This section is amended consequentially to take account of new Part 6A Diversification leases.

Subsection (4) is amended to extend the Minister for Lands' general power to vary leases with the consent of the lessee, to pastoral leases. Pastoral leases can currently be varied only in those circumstances set out in Part 7 of the Act.

Clause 36 Section 81 amended – Surrender of lease of Crown land

This section is amended by inserting subsection (4) to confirm that subleases of pastoral leases do not continue following the surrender of a pastoral lease. As new pastoral leases may only be granted following a public advertising process under section 102, it is not appropriate for subleases of pastoral leases (which do not require a public advertising process) to continue as that would have a perverse result.

Clause 37 Section 81A inserted – Removal of expired registered leases from certificate of Crown land title

This new section is inserted to provide for the removal of an expired lease of Crown land granted by the Minister for Lands under the *Land Administration Act 1997*, from the Crown land title where:

- at least a year has passed since expiry, and
- the Minister is satisfied that
 - the lessee is no longer in occupation of the land
 - there is no ongoing tenancy agreement in place
 - rent is not being paid, and
 - any other requirements prescribed in regulations have been met.

Where those criteria are met, the Minister may direct the Registrar of Titles to remove the lease and any connected encumbrance from the Crown land title.

The current process, under section 184 of the *Transfer of Land Act 1893*, is cumbersome and places an undue burden on the Minister, in circumstances where a lease has ceased to exist and there is no estate in which an interest can be held. Expired leases need to be removed from the title so that other interests can be granted in respect of that land.

Clause 38 Section 87 amended – Sale etc. of crown land for amalgamation with adjoining land

This section is amended for clarity.

Clause 39 Section 89 amended – Certain lessees of Crown land may purchase, or purchase options to purchase, the land

This section is amended consequentially to take account of new Part 6A and confirm that diversification lessees cannot apply to purchase the land in freehold.

Clause 40 Section 92 amended – Improvements to leased etc. Crown land vest in Crown

This section is amended to extend to all leases or licences granted under the *Land Administration Act 1997*, excluding pastoral leases. This then includes leases under new Part 6A.

Improvements will not vest in the Crown upon the termination of a lease where: the lease contains express provision to the contrary, or the land is being transferred to the lessee in freehold or if a new lease is granted to the same lessee.

Clause 41 Part 6A inserted – Diversification leases

A new head of power is inserted to enable the Minister for Lands to grant a form of non-exclusive leasehold tenure called a diversification lease.

Part 6A works in conjunction with consequential amendments to the *Mining Act 1978*. Section 8 of that Act will confirm that a diversification lease is “Crown land” for the purposes of that Act.

Section 20 of the *Mining Act 1978* provides for buffer zones on Crown land within which mining activity may not occur without consent from the occupier or mining warden. For example, mining cannot occur within 100 metres of any land that is in actual occupation and on which a house or other substantial building is erected. These categories will apply to diversification leases, with the addition of a new category of “substantial structures” to pick up other types of infrastructure that may be erected on a diversification lease given the diversity of possible uses under this type of lease. A substantial structure must be man-made, but it may be something other than a building or house or the other types of infrastructure currently referred to in section 20. For example, it might include wind turbines or solar panels.

The protection afforded by section 20 of the *Mining Act 1978* will only apply to land on which a substantial structure is located, where that is identified in the lease (section 92C(4)).

The Minister for Mines’ approval will be required under section 16 of the *Mining Act 1978* in the following circumstances:

- as for other *Land Administration Act 1997* leases, for the initial grant of the diversification lease
- to identify land within 100 metres of a substantial structure on a diversification lease in order to obtain protection under section 20 of the *Mining Act 1978*, at any time during the term of the diversification lease
- for a variation of the diversification lease purpose, as given the wide range of possible uses under a diversification lease over the term of that lease, a change in use could potentially affect mining activity.

Section 5 of the *Land Administration Act 1997* will apply to diversification leases such that mining, petroleum and geothermal interests can still be registered over the land.

The appropriate future act process will need to be completed under the *Native Title Act 1993* (Cth) before a diversification lease is granted.

Consistent with other leases granted under Part 6 of the *Land Administration Act 1997*, there will be no standard lease form. As the lease purpose(s) will vary, lease conditions will be tailored appropriately. The Minister for Lands will have discretion regarding what conditions to include in a diversification lease, including as to rental and term.

Division 1 – Application of Part

Section 92A inserted – Leases to which this Part applies

This section is inserted and provides that new Part 6A does not apply to a lease unless the lease specifies it is granted under section 92B.

Division 2 – Grant of diversification lease

Section 92B inserted – Minister’s powers as to grant of diversification lease

This section is inserted and provides the head of power for the Minister to grant a new form of tenure to be known as a “diversification lease” which can be granted for any purpose(s), and will allow for multiple and varied uses of the Crown estate.

Division 3 – Conditions of diversification lease

Section 92C inserted – Provisions that can be included in a diversification lease

This section is inserted and provides that, as for leases under Part 6 of the *Land Administration Act 1997*, the Minister for Lands will have broad powers in respect of the terms, reservations, covenants or penalties that can be included in a diversification lease, including options to renew.

Subsection (3) provides that an option to purchase the land in freehold (section 92C(3)) cannot be included in a diversification lease, as is also the case for pastoral leases.

Subsection(4) provides that the Minister for Lands may when granting a diversification lease, or later, identify in the lease (in practice, this will be the lease sketch) any land on which “substantial structures” are located for the purposes of new section 20(5AA) of the *Mining Act 1978*. Part 6A works in conjunction with consequential amendments to that Act.

Section 92D inserted – Non-exclusive possession of land under diversification lease

This section is inserted. A diversification lease is non-exclusive in nature, akin to a pastoral lease. It does not confer exclusive possession on the lessee.

Section 92E inserted – Reservation in favour of Aboriginal persons

This section is inserted. It creates a statutory right of access for Aboriginal people over land subject to a diversification lease as applies to pastoral leases under section 104.

Section 92F inserted – Diversification lessee’s duties as to leased land

This section is inserted. It sets out certain duties of a diversification lessee. The lessee must manage the land using methods of best environmental management practice appropriate to the area and the permitted use of the lease, and must maintain the land condition and mitigate or prevent the effects of land degradation, to the satisfaction of the Minister for Lands.

Division 4 - Forfeiture of diversification lease

Section 92G inserted – Issue of forfeiture notice

This section is inserted to confirm that a diversification lease is subject to forfeiture as for other leases under the *Land Administration Act 1997*.

Division 5 – Notification of certain soil conservation notices

Section 92H inserted – Criminal liability not affected by forfeiture

This section is inserted. It provides that criminal liability under the *Land Administration Act 1997* or under the *Soil and Land Conservation Act 1945* is unaffected by forfeiture of a diversification lease to which the offence related, as for pastoral leases under section 132.

Section 92I inserted – Commissioner to notify Minister of certain soil conservation notices

This section is inserted and requires the Soil and Land Commissioner to notify the Minister for Lands if the Commissioner is issuing a soil conservation notice that relates to land under a diversification lease.

Clause 42 Section 93 amended – Terms used

This section is amended to include a number of definitions for new terms within Part 7 and to delete several definitions which have been moved to section 3.

‘Permitted stock’ is defined as “authorised stock and prohibited stock for which a diversification permit has been issued”, so as to ensure clarity and consistency between the differing definitions of stock in the *Land Administration Act 1997*.

Clause 43 Section 97 amended – Members of Board, appointment of etc.

This section is amended to provide that the Pastoral Lands Board members appointed by the Minister for Lands under section 97(1)(d) and (e), must be appointed on the recommendation of the Minister for Environment and the Minister for Aboriginal Affairs respectively. This is to ensure a more direct role for these Ministers in the appointment of the Board members with expertise in these areas.

Clause 44 Section 99 amended – Particular duties of members

This section is amended by the deletion of subsections (3) and (4), as those obligations are now captured under the new information sharing provisions in Part 10A.

Clause 45 Division 2A inserted – Standards, guidelines and accreditation systems

Currently the Pastoral Lands Board has no formal powers to issue guidelines or standards in relation to the management of pastoral leases.

Several obligations are imposed on the pastoral lessee under section 108:

- to manage and work the land under the lease to its best advantage as a pastoral property
- to use methods of best pastoral and environmental management practice for the management, conservation and regeneration of pasture for grazing
- to maintain the indigenous pasture and other vegetation on the land under the lease to the satisfaction of the Board.

The absence of clear standards and guidelines on fulfilling these obligations means that pastoral lessees are without formal guidance regarding the standards they are required to meet, and leaves the Pastoral Lands Board open to criticism about a lack of transparency in its decision making.

Guidelines and standards will assist with the development of a voluntary accreditation system; assist pastoral lessees by providing clarity as to how the Department expects them to manage the land; and assist the Pastoral Lands Board and Minister for Lands in exercising their functions.

Section 100A inserted – Land condition standards and land management guidelines

This section is inserted. It enables the Pastoral Lands Board to issue land management guidelines and land condition standards setting out benchmarks and objectives in respect of the requirements of pastoral lessees in their management and condition of pastoral lease land.

Subsection (2) confirms that land condition standards will be developed in consultation with the Commissioner of Soil and Land Conservation.

Subsection (4) confirms the purpose of the standards and guidelines. These will assist the Pastoral Lands Board and Minister for Lands in the performance of their functions under Part 7 of the *Land Administration Act 1997*, provide information and guidance to pastoral lessees and persons with an interest in decisions under Part 7 (e.g. pastoral lease managers and rangeland consultants), and assist in the development of accreditation systems under section 100C.

Subsection (5) reflects that there may be different standards and guidelines for different regions of Western Australia, as historical, seasonal and operational considerations differ substantially between the Kimberley, Pilbara and Southern Rangelands.

Subsection (7) requires the standards and guidelines to be published in the manner provided for in regulations.

Section 100B inserted – Regard to standards and guidelines in performance of functions under this Part

This section is inserted and details when and how the Pastoral Lands Board and Minister for Lands shall have regard to the section 100A standards and guidelines.

Under subsection (1) the Board and Minister *may* have regard to the guidelines and standards, in performing any of their functions under Part 7.

Under subsection (2) the Pastoral Lands Board *must* have regard to the guidelines and standards in performing its functions under sections 108C (directing monitoring), 109(2) (whether land and vegetation have been restored to the satisfaction of the Pastoral Lands Board) and 111A(1) (determining stock numbers).

Subsection (3) confirms that the Pastoral Lands Board and Minister are still required to exercise their discretion in a particular case, and they are not precluded from considering matters not covered by the guidelines or standards.

Section 100C inserted – Minister may approve land management accreditation systems

This section is inserted. It enables the Minister for Lands to approve one or more voluntary land management accreditation systems, under which pastoral lessees can obtain certification. The purpose of introducing accreditation systems is to promote best practice in the management of land and improvement in sustainable outcomes for the pastoral industry and the communities it supports.

The intent is that such accreditation systems will be developed between industry and Government.

Subsection (3) confirms that the accreditation systems must be consistent with standards and guidelines under section 100A.

Under subsection (4), notice of the Minister's approval or revocation of an accreditation system must be published in the manner provided for in regulations.

Section 100D inserted – Status of standards, guidelines and approved systems

This section is inserted. It confirms that the guidelines and standards introduced by new section 100A and the land management accreditation systems introduced by new section 100C are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Clause 46 Section 101 amended – Grant of pastoral lease, Minister's powers as to

This section is amended by the deletion of subsection (3) as it is now subsection (6)(a).

New subsection (6) is inserted to confirm that in addition to section 101 not applying in relation to a grant or renewal of a pastoral lease under

section 140, it will not apply to the grant of a pastoral lease as a result of a surrender and re-grant to the same pastoral lessee under new section 105A(1)(b).

Clause 47 Section 102 amended – Public offers etc. of pastoral leases to be made before grant

This section is amended to allow alternative forms of publication to a newspaper in respect of offers of pastoral leases, to ensure the public offer reaches every part of Western Australia. Currently, the only means of publication is advertising in a daily newspaper circulating throughout Western Australia. The alternative modes of publication will be prescribed in regulation.

This amendment is a modernisation of the Act with the intention of increasing flexibility, efficiency and lowering costs.

Subsection (1A) is inserted to confirm that the public offer process under subsection (1) does not apply in relation to a grant or renewal of a pastoral lease under section 140 (renewal of lease), or to a surrender and re-grant to the same pastoral lessee pursuant to new section 105A(1)(b) (extension of lease).

Clause 48 Section 105 amended – Duration of pastoral lease

This section is amended consequentially to take account of the new power to extend the term of a pastoral lease in section 105A.

In subsection (2), reference to pastoral leases that expired on 30 June 2015 is also removed as this event has occurred and does not have any ongoing operation.

Subsection (3) is amended to replace “most recent previous” with “expiring”, for clarity.

Clause 49 Sections 105A and 105B inserted - Extensions of pastoral leases or grant for greater term

These sections are inserted to enable the term of a pastoral lease to be increased to the maximum of 50 years via extension or re-grant.

Section 105A inserted – Extension of pastoral lease or grant of pastoral lease for greater term

This section is inserted. It enables the term of a pastoral lease to be increased to the maximum of 50 years via re-grant or extension.

Due to historical reasons, pastoral lease terms vary between 18 and 50 years, 50 years being the maximum term for pastoral leases.

Unlike other leases under the *Land Administration Act 1997*, those with shorter-term pastoral leases cannot presently extend them to 50 years.

Generating long-term sustainable outcomes requires pastoral lessees to have certainty over a long period. Introducing the ability to extend short-term leases will provide these pastoral lessees with an incentive to invest in the land to address land degradation issues.

In addition, many pastoral lessees are keen to participate in carbon sequestration projects. These projects have a minimum term of 25 years, leaving those pastoral lessees with shorter-term leases ineligible. The insertion of new section 105A will assist those pastoral lessees wanting to participate in carbon sequestration projects that are consistent with pastoral purposes by ensuring they have a sufficient term remaining on their lease to meet requirements under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).

Subsection (1) reflects that the increase in the term will not occur automatically. The pastoral lessee must apply to the Minister for Lands, who retains the discretion as to whether to agree to the extension. Extension can be via a simple extension document, or by surrender and re-grant for a longer term.

Subsection (2) provides that where the extension is via re-grant, that re-granted lease will be in the standard form set out in regulations, or if none is prescribed, the same terms as the lease it is replacing or on different conditions.

Subsection (3) requires that the Minister must have regard to whether the pastoral lessee has certification under an approved accreditation system under section 100C when making the Minister's decision.

Subsection (4) confirms that the Minister must seek the advice of the Pastoral Lands Board before making a decision.

Subsection (5) confirms that a pastoral lease extension must specify whether any sublease or other interest is to continue to have effect and to what extent.

Section 105B inserted – Agreements relating to extension or grant of lease under section 105A

This section is inserted and enables the Minister for Lands to agree in writing to the extension of the term, or extension via replacement grant, of a pastoral lease under new section 105A(1) subject to the conditions specified in the agreement.

Subsection (2) confirms that the agreement may include a condition requiring compliance with the *Native Title Act 1993* (Cth), so that the extension or new lease may be validly done under that Act. An example is a condition requiring the pastoral lessee to negotiate and register an Indigenous Land Use Agreement prior to the Minister extending the term of a lease or re-granting the lease under new section 105A.

New subsections (3) and (4) operate such that if the Minister is satisfied that the pastoral lessee has complied with the conditions in the agreement and that any *Native Title Act 1993* requirements have been satisfied, then the Minister must extend the term of the lease or re-grant in accordance with the terms of the agreement. This is intended to provide certainty to the pastoral lessee that an extended term or re-grant lease will occur, before undertaking a potentially lengthy and costly native title process.

Clause 50 Section 107 amended – Improvements must be kept in good condition

This section is amended by the deletion of subsections (1) and (2) as these are now captured by new section 108A and the amendment of subsection (3) to ensure consistency with the rest of Part 7 by referring to a *pastoral* lessee.

Clause 51 Section 108 amended – Pastoral lessee’s duties as to leased land

This section is amended to replace the definition of stock in subsection (6) with the new definition of permitted stock in section 93.

Clause 52 Sections 108A to 108C inserted – Pastoral lease management plans, and monitoring requirements

Section 108A inserted – Board may direct pastoral lessee to submit management plan

This section is inserted. It enables the Pastoral Lands Board to direct a pastoral lessee to provide a management plan, which can cover a broad range of issues that could affect land condition.

Section 107 currently gives the Board the power to require the pastoral lessee to submit a development plan. However, this only relates to the development of improvements on the land, does not meet current public policy, and is not an adequate mechanism for the Board to require a pastoral lessee to address land condition management issues.

This section is inserted to enable the Board to direct a pastoral lessee to provide a comprehensive management plan to address land conditions or other issues associated with the pastoral lessee’s obligations under the Act, particularly under section 108. This will achieve better land condition outcomes.

Subsection (1) enables the Pastoral Lands Board to direct the pastoral lessee to provide a management plan where the pastoral lessee is not managing the land or stock thereon in the manner required under Part 7; or is in breach of the lease in relation to such matters.

Subsection (2) details the matters that the management plan may relate to.

Section 108B inserted – Submission, approval and implementation of management plan

This section is inserted. New subsection (1) provides that where the Pastoral Lands Board directs a pastoral lessee to provide a management plan under subsection 108A(2), the pastoral lessee must submit the plan by the date specified.

Subsection (2) provides that the Pastoral Lands Board may then approve the management plan or require the pastoral lessee to amend and resubmit the plan.

Subsection (4) obliges the pastoral lessee to implement the management plan that was approved by the Pastoral Lands Board.

Subsection (5) obliges the pastoral lessee to provide a report to the Pastoral Lands Board on implementation in accordance with the management plan or as directed by the Board.

Section 108C inserted – Board may direct pastoral lessee to monitor and report land condition

This section is inserted. It enables the Pastoral Lands Board to direct a pastoral lessee to monitor and assess the condition of the land under its pastoral lease and to submit a report on the land condition to the Board. The regulations will prescribe the monitoring and assessing activities that a pastoral lessee may be required to undertake, which may differ for different regions of Western Australia. This may be in accordance with a management plan under section 108A.

One of the objectives of the amendments is to see ongoing improvement in the condition of the pastoral estate. An important aspect of good land management and condition is monitoring the total grazing pressure on the land to ensure that livestock and feral animals are not overgrazing particular areas of land under a pastoral lease.

Subsection (1) provides that the Pastoral Lands Board can direct the pastoral lessee to undertake monitoring where the pastoral lessee is not managing the land or stock on the land in accordance with Part 7; or is in breach of the lease in relation to such matters.

Subsection (2) provides that the Pastoral Lands Board can direct the pastoral lessee to monitor and assess the land condition in accordance with the regulations and to submit an annual report relating to the condition of the land.

Subsection (3) confirms that the Pastoral Lands Board can enforce monitoring and reporting requirements irrespective of whether the requirement is part of a management plan under section 108A (2) or is a separate requirement under section 108C.

Subsection (4) requires the pastoral lessee to comply with the direction.

Subsections (5) and (6) provide that a pastoral lessee who fails to submit a report or knowingly provides false or misleading advice, commits an offence.

Clause 53 Section 111 amended – Pests and prohibited stock on leased land

This section is amended consequentially because of new section 111A, and by the deletion of subsection (2) to remove the requirement for a pastoral lessee to obtain the Pastoral Lands Board's permission before stock may be agisted on a pastoral lease.

The total grazing pressure on the land determines the land condition of a pastoral lease. Under the terms of its lease and the Act, the pastoral lessee is responsible for the land condition. In this context, it is irrelevant whether the stock is owned by the pastoral lessee or by another person and agisted on the pastoral lease with the pastoral lessee's agreement. In some cases, short-term agistment arrangements assist the industry in managing drought and other extreme weather events. The requirement

to obtain the Pastoral Lands Board's permission is an administrative burden for pastoral lessees and the Department, with little or no public benefit.

Subsection (2) is deleted to allow for adjustment of stock, without requiring permission from the Pastoral Lands Board.

Subsection (5) is deleted as it is redundant, the date having passed.

Subsection (6) is consequentially amended, and (7) deleted, given the new definition of permitted stock in section 93.

Subsection (8) is deleted as it is redundant, the date having passed.

Clause 54 Sections 111A and 111B inserted

Section 111A inserted – Board may make determinations and directions as to number and distribution of stock

This section is inserted. It enables the Pastoral Lands Board to direct a pastoral lessee to remove a specified number of stock from the lease by a set date, with evidence of that removal to be provided to the Board's satisfaction under new section 111B. This complements the existing Board power to require a lessee to reduce stock numbers to a certain number.

Section 108 requires pastoral lessees to use methods of best pastoral and environmental management practice, for the management of stock and for the management, conservation and regeneration of pasture for grazing. The reduction of a specified number of stock is easier to demonstrate (for example, via a waybill) than remaining stock numbers on a lease. In some cases, removing a specified number of stock can be an effective means of quickly addressing animal welfare concerns or land condition issues.

Subsection (1) retains the Pastoral Lands Board's existing power to determine minimum and maximum stock numbers and the distribution of stock to be carried on a pastoral lease.

Subsection (2) confirms that the Pastoral Lands Board must give the pastoral lessee written notice of the determination.

Subsection (3) provides the head of power for the Pastoral Lands Board to direct a pastoral lessee to remove a specified number of permitted stock from a pastoral lease by the date specified in the direction. Evidence of that removal must be provided to the Board's satisfaction under new section 111B.

Subsection (4) confirms that the determination or direction under subsections (1) or (3) must be based on the Pastoral Lands Board's assessment of the sustainable carrying capacity of the land and have regard to seasonal factors.

Subsection (5) confirms that unless there is a relevant soil conservation notice issued, the pastoral lessee has to comply with a determination notice or direction.

Section 111B inserted – Board may require evidence of compliance with section 111A

This section is inserted. It relates to section 111A and enables the Pastoral Lands Board to direct a pastoral lessee to provide evidence of the pastoral lessee's compliance with a direction to remove a specified number of stock from the pastoral lease under section 111A(3).

Subsections (2) and (3) provide that non-compliance or knowingly providing false or misleading information attracts a penalty.

Clause 55 Section 112 amended – Effect of soil conservation notice on determinations and directions under section 111A and permits under Division 5

This section is amended to confirm that a pastoral lessee's obligation to comply with a determination or direction under section 111A, or the operation of a diversification permit, is suspended by a soil conservation notice to the extent of any inconsistency.

Subsection (3) is removed as it now appears in section 112A.

Clause 56 Section 113 replaced – Pastoral lessee to submit annual return

This section is replaced with new section 112A and an amended 113.

Section 112A inserted – Effect on rent if reduction in stock numbers

This section is inserted. It enables the Minister for Lands to reduce the rent for a pastoral lease in proportion to the reduction in permitted stock, in the circumstances specified, on the advice of the Pastoral Lands Board. This is an expansion of current section 112(3).

Section 113 replaced – Pastoral lessee to submit annual return

This section is amended to change the date by which pastoral lessees are required to submit annual returns, to the end of the calendar year or other date prescribed in the regulations.

The penalties are updated in line with the penalty increases through the Act, to take account of Consumer Price Index changes since the *Land Administration Act 1997* was enacted.

Pastoral lessees are currently required to submit an annual return, after 30 June in each year and not later than 31 December in that year, including stock numbers on 30 June. Subsections (1) and (2) oblige the pastoral lessee to submit an annual return no later than 31 March for the preceding calendar year or for such other period as prescribed.

The amendment will better align with pastoral business practices and so will provide more accurate and useful reporting on stock numbers. It will also give the Government an accurate indication of the livestock numbers carried over the wet season in the north of the State and over the summer in the south of the State, which is important from a land management perspective.

Clause 57 Section 115 amended – Fees for permits

This section is amended to reflect changes to Part 7, Division 5 so that fees may be prescribed in the regulations to be charged for the renewal, transfer and amendment of a diversification permit.

Clause 58 Section 117 replaced – Environmental conservation requirements to be complied with

This section is amended to enable the Pastoral Lands Board to issue diversification permits when the listed environmental conservation requirements have been complied with, or for the permit to be issued subject to a condition that no permit activity may be carried out before

those environmental conservation requirements are complied with. This clause rectifies the potentially circular operation of this section.

Clause 59 Sections 122B to 122F inserted

Section 122B inserted – Board's power to amend permit

This section is inserted. It enables the Pastoral Lands Board, with the consent of the diversification permit holder, to amend the terms and conditions of a diversification permit issued under Part 7, Division 5.

The current administrative process to amend permit conditions is inefficient as it involves the surrender and reissue of the permit.

This section allows administrative efficiencies, for example, to vary the insurance amounts for public liability in line with industry practice, or to include new plant species or facilities, without going through a lengthy re-consultation process on settled permit conditions.

Section 122C inserted – Renewal of permit

This section is inserted to provide a power to renew diversification permits. This will allow for administrative efficiencies for the Department and for pastoral lessees, and in the longer term will provide greater security for pastoral lessees in developing new permit operations, and expanding existing activities on their lease.

Subsection (1) enables a pastoral lessee to apply for the renewal of an expiring diversification permit.

Subsection (2) provides that a pastoral lessee must apply for the renewal of an expiring diversification permit not more than 12 months and not less than 6 months before the expiry of the permit.

Subsection (3) provides that the Pastoral Lands Board may renew the expiring permit for a period and on conditions at its discretion.

Section 122D inserted – Suspension of permit

This section is inserted. It enables the Pastoral Lands Board to suspend a diversification permit if it is satisfied there has been a breach of the permit conditions or information contained in the permit application was materially false or misleading.

Subsection (2) requires the Pastoral Lands Board to first give the permit holder notice in writing prior to suspending the permit and give the permit holder a reasonable opportunity to respond.

Subsection (3) requires that the Pastoral Lands Board must give written notice of the decision to suspend or not suspend. The notice will include the date on which the suspension takes effect, the period of the suspension (which may be extended by further notice), any conditions the permit holder must continue to comply with during that period (for example, a condition to have public liability insurance in place), and any action the permit holder must take in order to have the suspension lifted.

Subsection (4) confirms that the Pastoral Lands Board may lift the suspension of a permit by written notice.

Subsection (5) provides that the Pastoral Lands Board may extend the suspension period by written notice to the permit holder.

Subsection (6) confirms that the pastoral lease rent is still payable during a permit suspension.

Section 122E inserted – Cancellation of permit

This section is inserted. This amendment resolves historical uncertainty around the Pastoral Lands Board's power to cancel a permit. It provides an additional way of resolving breaches of permit conditions, which in many cases will be more efficient and appropriate than the current mechanism of issuing a default notice that affects the whole of the pastoral lease.

Subsection (1) enables the Pastoral Lands Board to cancel a diversification permit if it is satisfied there has been a breach of the permit conditions or information contained in the permit application was materially false or misleading.

Subsection (2) requires the Pastoral Lands Board to give written notice to the permit holder of the grounds on which the Board intends to cancel the permit and afford the permit holder a reasonable opportunity to respond.

Subsection (3) then requires the Pastoral Lands Board to give the permit holder notice of the decision to cancel or not cancel the permit, and in the latter case, the day the cancellation takes effect.

Subsection (4) confirms that the amount of rent payable for the lease will be adjusted in accordance with Part 7 Division 6 if the permit is cancelled.

Section 122F inserted – Permit not personal property for *Personal Property Securities Act 2009*

This section is inserted. It confirms that a permit that is transferable under new section 134A is not personal property for the purposes of the *Personal Property Securities Act 2009* (Cth). Diversification permits need to be excluded from the operation of that Act, as these are now transferable pursuant to new section 134A.

Clause 60 Section 123 replaced – Annual rent, determining

The Valuer-General under section 123 currently reviews pastoral lease rent every five years. A process of annual Consumer Price Index (CPI) rent reviews, with a ten yearly market rent review, is replacing this. The amendments will work as follows:

- assuming the amendments commence prior to 31 December 2023, the Minister for Lands will calculate a base annual rent for all pastoral leases on that date. This base annual rent will be the *lower of*:
 - the current rent for the pastoral lease, or
 - the average rent for that pastoral lease over the market rent determinations applying to it since 1999 (section 122H)
- the base annual rent will be CPI adjusted by the rate of change in the Perth All Groups CPI over the preceding year

- that base rate process will be applied to all pastoral leases and will be the starting rent for the purposes of the new rent review process, commencing from 1 July 2024
- after that first CPI rent review by the Minister under section 122H, pastoral lease rents will be CPI adjusted on 31 December of each year, and that rent will take effect on the following 1 July
- in each 10th year, starting 2028, there will be a market rent review by the Valuer-General, rather than a CPI review (section 123)
- diversification permit rent will be CPI adjusted in a similar fashion (section 122I)
- the Minister will also be able to ask the Valuer-General to make an interim determination of annual rent due to changes in the pastoral lease area or other material changes since the most recent previous rent determination (section 123A), and can ask the Valuer-General to determine the annual rent when a new pastoral lease is granted (section 123B)
- the ability of the Minister to make regulations to phase in rent increases is retained, but the maximum phase in period is extended from three years to five years given that the market rent review period is extending from five years to ten years (section 124A).

Section 122G inserted – Terms used

This section is inserted and contains definitions for the new terms used in ‘Division 6 – Rent for a pastoral lease’ to reflect the new process for determining pastoral lease rentals.

Section 122H inserted – Minister to determine annual rent

This section is inserted and provides for how the Minister for Lands will determine the base rent for the first Consumer Price Index (CPI) review after the amendments come into force, and changes the pastoral lease rent review methodology to an annual CPI review model in order to improve transparency and reduce volatility.

An example of how this provision will operate once enacted is set out below:

- assuming the commencement day for the amendments is before 31 December 2023, the first CPI determination date will be 31 December 2023 (section 122G)
- on that day, the Minister will determine the annual rent for each pastoral lease, in accordance with the formula in section 122H(3)
 - this formula requires the base annual rent (B) to be calculated, and multiplied by a CPI number
 - the figure to be used as the base annual rent is determined by applying section 122H(4)(a)
 - the base annual rent will be whichever is the lowest of the amount that was last determined by the Valuer-General under section 123(4) in 2019
 - in this example, for Lease A say \$10,000 per annum or the average of the Valuer-General’s determinations under section 123(4) for Lease A in 1999, 2004, 2009, 2014 and 2019 (in this example, say

\$9,000 per annum). Applying section 122H(4)(a), the base annual rent will be the lower of \$10,000 and \$9,000 (that is, \$9,000)

- for the purposes of the first CPI determination day on 31 December 2023, it is likely that the most recent quarter ending before 31 December 2023 for which a CPI number is available would be the September 2023 quarter. Say, for example's sake, that the CPI number for the September 2023 quarter was 105. The corresponding quarter would therefore be the September 2022 quarter. Again, for arguments sake, say that the CPI number for the September 2022 quarter was 100
- therefore, in the example above, on 31 December 2023 the Minister would calculate the annual rent for Lease A under section 122H(3) as follows:
$$\$9,000 \times (105/100) = \$9,450$$
- under section 122H(5)(a), the \$9,450 amount would come into effect on 1 July 2024 (that is, the 1 July following the making of the determination).

This will allow the Department to review the rent for all 490 pastoral leases on the legislated date and then give sufficient time for it to undertake various administrative actions to occur in time for the reviewed rent to come into effect on the following 1 July. It will also provide pastoral lessees with at least six months' notice of the rent that will be applicable from that date.

Pursuant to section 122H(2), the rent will be CPI reviewed annually, unless a market rent review (section 123) or an interim determination by the Valuer-General (section 123A) occurs.

Section 122H does not apply to land under a permit (section 122H(8)). Permit rent is determined separately under section 122I.

Section 122I inserted – Minister to determine permit rent if pastoral lease subject to permit

This section is inserted. It deals with the annual Consumer Price Index (CPI) review of rent for diversification permits. Section 124 provides for additional permit rent to be charged where a diversification permit is issued. That amount is to be CPI reviewed on the first CPI determination day and on each 31 December after that day (section 122I).

Subsection (5) provides that a CPI review under section 122I(2) comes into effect on the next 1 July and applies until a new CPI determination is made under subsection (2) or a market review of the permit rent comes into effect (section 124(3)).

A market review of the permit rent must be made at least once every 5 years (section 124(4)). In a market review year, a CPI adjustment will not be made to the permit rent.

Section 123 inserted – Valuer-General to determine annual rent at 10 yearly intervals

This replacement section requires the Valuer-General to determine the market rent for all pastoral leases at ten yearly intervals. The next market determination will be provided to the Minister for Lands on or before 31 December 2028 to take effect on 1 July 2029.

Market rents are currently determined every five years by the Valuer-General. No changes are proposed to the factors the Valuer-General takes into account in determining market value under section 123.

The Valuer-General will continue to be required to determine the annual rent payable for a pastoral lease as the amount of ground rent that the land might reasonably be expected to realise in good condition for a long-term lease for pastoral purposes under which all normal outgoings are paid by the pastoral lessee.

In determining the annual rent payable for a pastoral lease under section 123(1)(a), the Valuer-General must consult the Pastoral Lands Board about the economic state of the pastoral industry (as is currently the case).

The Valuer-General will no longer be required to determine the rent for each pastoral lease on the day it takes effect, as this is administratively impossible. Instead, the rent for each pastoral lease is to:

- be determined as at 1 July in the rent review year
- be provided to the Minister for Lands on or before 31 December
- take effect on the 1 July following and applies until either a Consumer Price Index adjustment is made (section 122H(1)) or interim determination is made (section 123A(4)(b)).

This will provide pastoral lessees with at least six months' notice of the new rent, give the Minister for Lands time to consider proclaiming regulations to phase in the new rent under section 124A, and provide the Department with adequate time to undertake the various administrative actions in time for the reviewed rent to come into effect on the following 1 July.

Section 123A inserted – Minister may request Valuer-General to make interim determinations of annual rent

This section is inserted and enables the Minister for Lands to ask the Valuer-General to make an interim determination of rent if the Minister is satisfied that it is necessary or expedient to do so because of a change in the pastoral lease area (e.g. land is surrendered from the pastoral lease) or any other change in relation to the pastoral lease that may materially affect the rent.

Subsections (2) and (3) provide that when asked to make an interim rent determination, the Valuer-General will determine the rent as at the “previous Valuer-General determination date” (defined in section 122G), the land might reasonably be expected to realise in good condition for a long-term lease for pastoral purposes under which all normal outgoings are paid by the pastoral lessee.

Subsection (4) ensures equity with other pastoral lessees, to provide that the new rent will be adjusted to take account of Consumer Price Index (CPI) changes between the previous Valuer-General determination date and the date the new rent comes into effect.

Subsection (5) confirms that the new rent comes into effect from the day the Minister for Lands determines, provided that it cannot be earlier on which the change to the pastoral lease occurred (e.g. the date land was surrendered from the pastoral lease).

As an example of how this section will operate:

- the Valuer-General will determine the market rent for all pastoral leases under section 123 and will provide this to the Minister on or before 31 December 2028. The rent for Lease B is determined to be \$10,000
- on 1 July 2030 and 1 July 2031, the rent for Lease B is adjusted by CPI. Say this results in a total 5 per cent adjustment. The rent for Lease B on 1 July 2031 is thus \$10,500
- on 1 August 2031, 20 per cent of the area of Lease B is excised for a conservation reserve
- the Minister may ask the Valuer-General to make an interim determination of rent for Lease B under section 123A
- the Valuer-General must calculate the appropriate rental as at the date of the last market valuation, being 31 December 2028. For the sake of this example, say the amount is \$8,000
- the \$8,000 is then adjusted to take into account CPI changes since that date i.e. a 5 per cent adjustment in this example. The new annual rental is thus \$8,400
- Lease B will not be subject to a further CPI adjustment on 31 December 2031 (section 122H(2)(b)).

Where lease rentals are being phased in under section 124A and an interim valuation subsequently occurs, the interim valuation will not necessarily supersede the phased in rental amounts. The interim valuation only comes into effect on a day determined by the Minister. Where the rent is already being phased in, the new rent could coincide with the end of the phase in period. Policy will be established to guide the Minister's decision.

Section 123B inserted – Determining annual rent when new pastoral lease granted

This section is inserted and confirms that where the Minister proposes to grant a new pastoral lease under section 101, the Valuer-General must determine a rent for that lease.

Subsection (2) confirms that consistent with existing pastoral leases, the rent is the amount of ground rent, as at the previous Valuer-General determination date (defined in section 122G), the land might reasonably be expected to realise in good condition for a long-term lease for pastoral purposes under which all normal outgoings are paid by the pastoral lessee.

Subsection (3) provides that that rent will be CPI adjusted as from the previous Valuer-General determination date for equity with other pastoral leases. This figure will be the starting rent for the new pastoral lease (subsection (4)).

Clause 61 Section 124A amended – Phasing in increases to rent due to section 123 determination

This section is inserted. It increases the maximum phasing in period under regulations, from three years to five years.

Currently, regulations may permit the phasing in of Valuer-General market increased pastoral lease rental over a maximum of three years.

That maximum period is now extended to five years after a market rent determination by the Valuer-General under section 123, to reflect the increase in time between each market rent determination from five to ten years.

Subsection (4) is inserted and provides that the regulations must have the effect that at the end of the phase in period, the annual rent payable for the pastoral lease is an amount equal to the market rent determination made by the Valuer-General adjusted for Consumer Price Index (CPI) during the phase in period (subsection (4)).

Subsection (5) is inserted and confirms that rents being phased in will not be subject to an annual CPI adjustment under section 122H(1).

Permit rent will not be capable of being phased in, as is the current situation.

Clause 62 Section 124 amended – Annual rent if permit issued

This section is amended consequentially to take into account the change to the pastoral rent review methodology.

The annual rent payable for a pastoral lease in respect of which a permit is issued may include an additional rent determined by the Valuer-General under subsection (3) or the Minister for Lands under section 122I(2) in relation to the permit area.

Clause 63 Section 125 amended – Payment of rent

This section is amended consequentially because of the change to the pastoral rent review methodology.

The objection process by which a pastoral lessee may challenge a determination of rent is unchanged.

Clause 64 Section 126 amended – Objections to and review of rent or value of improvements

This section is amended consequentially to take account of the changes to the pastoral rent review methodology.

Consumer Price Index adjustments cannot be objected to under section 126.

Clause 65 Section 128 replaced – Payment of rent may be delayed, reduced or waived in certain cases

This replacement section expands the situations in which the Minister for Lands can postpone, reduce or waive the payment of pastoral lease rent.

Currently, the Minister can on a case-by-case basis, allow the delay, reduction or waiver of rent payments in the event of a natural disaster or hardship caused by poor economic conditions in the pastoral industry. This is, however, only upon application by a pastoral lessee, and subsequent recommendation from the Pastoral Lands Board.

Pastoral lessees may continue to apply for rent relief, but subsection (2) now also permits the Minister to grant relief on the Minister's own initiative or on the recommendation of the Board. Rent relief will also be available in circumstances that can be prescribed in regulation.

The relief can apply case-by-case, or to a class of pastoral leases, such as a region or pastoral leases that predominantly run sheep. This allows the Minister to act on the Minister's own volition in wide reaching situations rather than requiring individual applications from pastoral lessees and a case-by-case assessment in all instances.

Subsection (3) confirms that where the Minister is acting on the Minister's own initiative, the Minister must first consult the Pastoral Lands Board. However, the Minister will not be bound by the Board's advice.

Subsection (4) replicates existing subsection (3).

Subsection (5) confirms that for applications for rent relief from pastoral lessees, if the Pastoral Lands Board is satisfied that the pastoral lessee's application is reasonable in the circumstances, the Pastoral Lands Board must recommend to the Minister that relief be granted.

Under subsection (6), where pastoral lessees apply for rent relief, the Pastoral Lands Board may require the pastoral lessee to provide evidence and subsection (7) confirms that the Board may require the production of accounts and records and for the pastoral lessee to verify the evidence via a statutory declaration.

The current powers for the Minister to summon witnesses and examine them on oath in subsections (4) and (5) are removed. The provision of information by statutory declaration under former section 128(4)(b) is sufficient and is replicated in subsection (7).

Clause 66 Section 128A inserted – Board may direct pastoral lessee

This section is inserted and enables the Pastoral Lands Board to direct a pastoral lessee to comply with a provision of Part 7, the pastoral lease or a diversification permit condition, in line with current administrative practice.

Subsection (2) confirms that the direction may be to take specific action by a particular date or to refrain from doing an activity.

Under subsection (3), the pastoral lessee must comply with the direction, and failure to comply will be a breach of the Act, which could lead to a default notice or forfeiture.

Subsection (4) requires the pastoral lessee to give such information, as the Minister for Lands requires to be satisfied the pastoral lessee has complied with the direction.

This will enable the Pastoral Lands Board to take action where it is satisfied that a pastoral lease is not being managed to the standard required, or the pastoral lessee is in breach of the Act, the lease or a permit. A direction may be issued, for example, where there is a specific issue to be addressed, and the use of a management plan for that purpose has failed or is not appropriate.

Clause 67 Section 129 amended – Default notice, when can be issued etc.

This section is amended consequentially to reflect the addition of the new power for the Pastoral Lands Board to give directions under section 128A and the new power to suspend permits in section 122D.

Subsection (1)(c) is amended to allow the issue of a default notice in the event the pastoral lease fails to comply with any condition set, determination made, or direction given by the Board.

Subsection (1)(ca) is amended to allow the issue of a default notice in the event of non-compliance where the pastoral lessee has been directed to continue to comply with a condition of a permit that has been suspended under section 122D(3)(b)(ii).

Subsection (2)(a),(b) and (e) are revised to modernise terminology.

Subsection (2)(c) is deleted, as it is inconsistent with paragraph (e). The latter provides for a default notice to specify a time for compliance, whereas (c) currently requires that compliance be “forthwith”. The Minister for Lands should be able to specify a reasonable time for compliance with the default notice.

Clause 68 Section 131 amended – Forfeiture, when lease is liable to

This section is amended consequentially to reflect the addition of the new power for the Pastoral Lands Board to give directions under section 128A and the power to suspend permits in section 122D.

Subsection (1)(d) is amended to confirm that a pastoral lease may be forfeited in the event of non-compliance with a condition of a suspended permit that the pastoral lessee has been directed to comply with under section 122D(3)(b)(ii).

Clause 69 Section 134A inserted – Transfer of permits

This section is inserted. It enables the transfer of diversification permits. Permits are not currently transferable.

Under Part 7 Division 5 of the *Land Administration Act 1997*, the Pastoral Lands Board may issue a diversification permit to a pastoral lessee to carry on certain activities, in conjunction with operating the pastoral lease for “pastoral purposes”. When a pastoral lessee wishes to sell and

transfer the pastoral lease, the permit falls away at the point of transfer. The lessee does not currently have the right to transfer the existing diversification permit. If the incoming pastoral lessee wishes to continue the permitted activity, it must apply for a new permit after it acquires the lease.

The current situation creates administrative delays, risk and uncertainty as to whether the incoming pastoral lessee will be issued a new diversification permit and if so on what terms. This materially affects the value of the activity undertaken under the permit and what an incoming pastoral lessee might be prepared to pay as part of the broader sale of the pastoral lease.

Subsection (1) provides that the Pastoral Lands Board must transfer a permit to the incoming pastoral lessee upon transfer of the pastoral lease if:

- the Minister for Lands approves the transfer of the pastoral lease
- the incoming pastoral lessee has requested the transfer of the permit
- the outgoing pastoral lessee is not in breach of any condition of the permit.

Subsection (3) provides that the transfer does not affect the terms and conditions of the permit.

Subsection (4) provides that if all of the conditions in subsection (1)(a) to (d) are satisfied except that the outgoing pastoral lessee is in breach of a permit condition, the Pastoral Lands Board may nevertheless issue a new permit to the incoming pastoral lessee.

Clause 70 Section 143 amended – Leases in force at 30 March 1998, transitional provisions

This section is amended by the deletion of subsection (9) as it is now a redundant transitional section aimed at putting it beyond doubt that section 143 (and not 140) applied to the 2015 renewal of pastoral leases.

Clause 71 Section 143A inserted – Term used: grantee

This section is inserted and defines the “grantee” of an easement, so that term now includes both the original grantee and any transferee of the easement.

Section 144 allows for the grant, variation or cancellation of easements over Crown land. Easements can be transferred, save for easements in gross. An easement in gross is a statutory easement that can be granted without a dominant tenement.

Amendments to this Part will enable easements in gross to be transferable, like for instance, easements in gross under the *Petroleum Pipelines Act 1969*.

The transfer of easements in gross is required, for example, where a slurry pipeline runs through land that is not part of a *Mining Act 1978* tenure. When the mining operation is sold, the easement would also be sold as part of the assets of that business. This may also arise when service assets are privatised. At present, a new easement in gross must

be granted to the new owner, which carries native title implications, and has resource and delay implications for the Department and the easement holder.

Clause 72 Section 145 amended – Cancelling section 144 easements

This section is amended by removing the current reference to easements under section 144, thereby extending the applicability of the section to both easements granted under section 144 and easements in gross transferred under section 147.

Clause 73 Section 146 replaced – Effect of easements granted under section 144

This section is amended to remove reference to section 229A of the *Transfer of Land Act 1893*, as section 229A(5) of that Act already exempts section 144 easements from its operation.

Clause 74 Section 147 amended – Easements in gross may be granted under section 144 and transferred

This section is amended to allow for easements in gross to be transferred, by order.

Subsection (3) confirms that the outgoing easement holder is not liable for any breach occurring post transfer.

Clause 75 Section 150 amended – Easements no longer serving any purpose, cancelling

This section is amended consequentially given the new definition of “grantee” of an easement in new section 143A.

Clause 76 Section 151 amended – Terms used

This section is amended by the consequential deletion of the definition of public work, which is now in section 3.

Clause 77 Section 170 amended – Notice of intention to take required interest, issue of etc.

This section is amended to modernise the means by which notice of intention to take can be given. In Parts 9 and 10 of the *Land Administration Act 1997*, reference is currently made to service by certified mail, which provides proof that the item was mailed and received. Certified mail is now known as “registered post”.

In addition, Parts 9 and 10 are updated generically to allow the use of any prescribed type of mail delivery that has some form of ability to track delivery.

Clause 78 Section 177 amended – Taking order, Minister’s powers to make etc.

This section is amended to modernise the means by which a taking order can be given by updating the reference to certified mail to modern terminology “registered post”.

Clause 79 Section 190 amended – Fee simple in land not required for public work, previous owner etc. entitled to option to purchase

This section is amended to modernise the means by which notice can be given by updating the reference to certified mail to modern terminology “registered post”. In addition, there is the ability to prescribe similar methods by which notice can be given.

Clause 80 Section 204 amended – Management body, entitlement of for loss of use of structures etc.

This section changes “an instrumentality of the State” to a “State instrumentality” to be consistent with the revised section 3 definition of State instrumentality.

Clause 81 Section 213 amended – Service of claim etc., manner of

This section is amended to modernise the means by which notice can be given under section 213 by updating the reference to certified mail to modern parlance “registered post”. In addition, there is the ability to prescribe similar methods by which notice can be given.

Clause 82 Part 10A inserted – Information

New Part 10A deals with the sharing of information and confidentiality.

Government agencies frequently liaise with each other on matters of mutual relevance and in the course of those interactions, often have to share information. There is a community expectation that government agencies share information with each other so that the Government can respond decisively and in a coordinated fashion when required. On the other hand, there is an expectation from people who deal with Government that their private or commercially sensitive information should be treated as confidential and their privacy protected.

Currently, the *Land Administration Act 1997* is largely silent on what can and cannot be shared. The only specific references to information sharing occur in section 137, whereby information is exchanged between the Pastoral Lands Board and the Commissioner of Soil and Land Conservation, and in section 275A, whereby Crown land interest holder contact details may be provided to specified persons in limited circumstances.

The framework for the modernised information sharing provisions in this new Part is as follows:

- certain Government agencies are defined to be an “information sharing agency” and other public authorities may be prescribed
- the Chief Executive Officer may appoint a Departmental employee to be an “authorised officer” for the purposes of the information sharing provisions (section 258B)
- the Chief Executive Officer must issue guidelines for the disclosure of information (section 258F) and publish them in a manner the Chief Executive Officer decides
- the Pastoral Lands Board or an “authorised officer” may disclose “relevant information” to officers of an information sharing agency in

accordance with those guidelines (section 258D). Similarly, under section 258B, the Board and the Department may disclose relevant information with each other

- “relevant information” is information that is relevant to the performance of functions under the *Land Administration Act 1997* or the administration or enforcement of that Act
- some information cannot be disclosed, except in specific circumstances to the Valuer-General (section 258D(2))
- information may be disclosed under these provisions despite any law of the State relating to secrecy or confidentiality and an officer disclosing information is protected as long as the information was disclosed in good faith
- section 258G authorises regulations designed to protect the confidentiality of disclosed information.

Division 1 – Sharing of information

Section 258A inserted – Terms used

This section is inserted and inserts definitions for the purposes of the new information sharing provisions contained within this Part.

Section 258B inserted – Designation of authorised officers

This section is inserted and enables the Chief Executive Officer to appoint a Departmental employee to be an authorised officer for the purposes of the information sharing provisions.

Section 258C inserted – Sharing of relevant information between Board and Department

This section is inserted and enables the Pastoral Lands Board to disclose “relevant information” in accordance with the guidelines published under section 258F to officers of the Department and vice versa. “Relevant information” is information that is relevant to the performance of functions under the *Land Administration Act 1997* or the administration or enforcement of that Act.

Section 258D inserted – Sharing of relevant information with information sharing agencies

This section is inserted and enables the Pastoral Lands Board, or an officer authorised under section 258B, to disclose relevant information to officers of those information sharing agencies listed in section 258A, in accordance with the guidelines published under section 258F. This section also enables the Board or authorised officer to request officers of information sharing agencies to disclose relevant information.

Subsection (2) lists information that can only be disclosed to the Valuer-General or his or her staff, being information relating to pastoral lease rent and permit rent.

Section 258E inserted – Sharing of information about Crown land interest holders with designated authorities and other persons

This section is inserted and confirms that the authorised officer appointed by the Chief Executive Officer under section 258B, may disclose the name and contact details of Crown land interest holders to officers of “designated authorities”. Designated authorities are defined in section 258A as public authorities, essential service bodies and prescribed Commonwealth agencies, the Director General of the Department of Mines in some situations, and prescribed persons. This section replaces existing section 275A.

Subsection (2) confirms that in relation to pastoral leases, the Pastoral Lands Board may also disclose to an authorised officer of the Department names and contact details from the most recent annual return under section 113. This is without limiting the other information sharing provisions.

Section 258F inserted – Guidelines relating to sharing of relevant information

This section is inserted. It requires the Chief Executive Officer of the Department to issue guidelines as to the disclosure or requesting of information under this Part. The Chief Executive Officer may also revoke or amend those guidelines.

Subsection (4) provides that the guidelines (and any amendments to those guidelines as well as notice of any revocation) will be published in the manner the Chief Executive Officer thinks appropriate.

Section 258G inserted – Regulations relating to sharing of relevant information

This section is inserted and provides for regulations relating to information sharing to be made, including in relation to the receipt, use and storage of information disclosed under this Part.

Division 2 – Confidentiality and authorised recording, use or disclosure of information

Section 258H inserted – Confidentiality

This section is inserted and prohibits a person from recording, using or disclosing information obtained by or disclosed to the person for the purposes of the *Land Administration Act 1997*, unless the disclosure, use or collection is of the nature in subsection (2) or authorised under section 258I. A penalty applies.

Subsection (2) confirms that there is no prohibition on recording, use or disclosure of information in the public domain or statistical or other information that does not identify individuals.

Section 258I inserted – Authorised recording, use or disclosure of information

This section is inserted and confirms that the recording, use or disclosure of information is authorised if done so in good faith for the purposes set out in subsection (1).

Subsection (2) confirms that where the disclosure is authorised, there is no civil or criminal liability, breach of confidentiality or secrecy under law, or a breach of professional ethics or standards.

Clause 83 Section 264 amended – Limited liability of Crown or management body for damage, injury or loss suffered on, or emanating from, certain land

This section is amended consequentially to reflect the power of the Minister for Lands to hold freehold in section 11A.

Subsection (2)(a) is amended to include reference to land held by the Crown in fee simple, so that there can also be no claim against the Crown for any damage, injury or loss occurring on Crown land held in fee simple, unless it was caused by a direct act or activity as a consequence of such an act or activity by the Crown.

Clause 84 Section 267 amended – Offences on Crown land and proceedings for them

This section is amended to modernise terminology and increase the penalty to take account of changes in the Consumer Price Index since the *Land Administration Act 1997* came into force.

Clause 85 Section 269 amended – Contravention or avoidance of condition or covenant in respect of Crown land

This section is amended to modernise terminology and to increase the penalty to take account of changes in the Consumer Price Index since the *Land Administration Act 1997* was enacted.

Clause 86 Section 270 amended – Unauthorised structures on Crown land

This section is amended to enable the powers thereunder to be able to also be exercised by a management body over its managed reserve. This will do away with the current need for formal delegation (which is administratively burdensome and can be costly), as the management body will now have those powers under the *Land Administration Act 1997*.

Clause 87 Section 271 amended – Extensions of time for s.270

This section is consequentially amended to take account of the change to section 270.

Clause 88 Sections 273 to 275A replaced

Section 273 inserted – Delegation by Minister and Chief Executive Officer of Department by section 270 and 271 functions

This section replaces former section 273 to enable the Minister for Lands to delegate powers under section 270 (unauthorised structures on

Crown land) or section 271 (extensions of time for actions under section 270) to the Chief Executive Officer of the Department, and for the Chief Executive Officer to then subdelegate to the persons in subsection (1)(b) or (c).

Section 274 inserted – Giving documents

This section modernises the service of notices and other documents under the *Land Administration Act* and allows for electronic means of service, with the detail to be prescribed in regulations.

Section 274 currently sets out how documents may be served under the Act generally, but it only allows for delivering the document personally, or sending via pre-paid post, or by facsimile if that form of service has been specified in a caveat or approved form. With advancements in technology and a reduction in paper-based mail as a method of service, the current service provisions of the Act do not provide enough flexibility.

The Act was drafted prior to the widespread use of email. Email is now in common use, whilst facsimiles are becoming obsolete. Other institutions, including the courts and Landgate, have adopted email for the service of notices in certain circumstances. Further, given the remoteness of many parts of Western Australia, there are places in which electronic service is likely to be the quickest and most assured means of service.

The proposed changes preserve the existing methods of service but allow for all documents under the *Land Administration Act 1997* after the commencement of the Bill to be served via electronic means such as by email as opposed to facsimile.

Subsection (1) inserts reference to electronic means of service.

Subsection (2) sets out what regulations may make provision for, including the delivery of documents, the time for service, and the means of satisfying delivery by electronic means.

Clause 89 Section 275 amended – Regulations generally

This section is amended to allow standard pastoral lease conditions to be prescribed and to increase the penalty to take account of Consumer Price Index changes since the *Land Administration Act 1997* was enacted.

Clause 90 Part 14 inserted – Transitional provisions for the *Land and Public Works Legislation Amendment Act 2022*

Section 285 inserted – Returns by pastoral leases

This new transitional section confirms that the first annual return to be submitted by pastoral lessees under replacement section 113 is in the second year after the amendments come into operation.

If the amendments come into effect in 2022, the first annual return under the new provisions will be due to be submitted by 31 March 2024 for the 2023 calendar year.

This is to take account of the change of the reporting period from the financial year to the calendar year, which without this transitional provision would result in pastoral lessees being required to submit two annual returns within six months.

However, in order to generate meaningful data for the purposes of the annual returns the passage of at least one full calendar year is required.

New subsection (3) provides that existing pastoral lessees are still required to submit an annual return for the financial year ending in the year in which the amendments come into operation. If the amendments come into effect in 2022, this return will be required to be lodged by 31 December 2022 in respect of the financial year expiring on 30 June 2022.

Existing pastoral lessees will not be required to submit an annual return for the six months between the changes from the financial to the calendar year reporting period. If the amendments come into effect in 2022, this will be the period from 1 July to 31 December 2022.

Section 286 inserted – Annual rent for pastoral leases

This new transitional section confirms that pastoral lessees continue to pay the annual rent that applies as at the commencement day of the Act, until the first rent determination made under either section 122H or section 123A comes into effect. This is to clarify that the current rent will continue to be payable during the interval between the commencement day and the date on which either the first Consumer Price Index (CPI) determination or interim determination takes effect.

If the amendments come into effect in 2022, the first CPI determination day will be on 31 December 2023, and the CPI adjusted rent will come into effect on 1 July 2024. Section 286 provides that the annual rent that applies to a pastoral lease as at 31 December 2022 will continue to apply to that pastoral lease until 1 July 2024, unless an interim determination is made in that period.

Clause 91 Various penalties amended

The listed sections of the *Land Administration Act 1997* are amended to increase the penalty to take account changes in the Consumer Price Index since the Act was enacted.

Clause 92 Various references to gender removed

The listed sections are amended to adopt gender neutral language.

Part 3 *Public Works Act 1902* amended

Clause 93 Act amended

This Part amends the *Public Works Act 1902*.

Clause 94 Section 2 amended

This section is amended to:

- omit the definitions of “local work” and “Registrar” which are superfluous as they do not appear in the *Public Works Act 1902*

- update the definition of “public work” to make it applicable to the modern types of public works carried out by Government.

Section 2 contains the definition of ‘public works’ which are the purposes for which land may be taken under Part 9 of the *Land Administration Act 1997* and which is relied upon by a number of government agencies when acquiring interests in land.

The definition of ‘public work’ is an archaic list that contains a number of works that are no longer required by the State, such as mechanics or miners’ institutions. It also does not provide for public works that are now required by the State, such as early learning centres.

The definition of “public work” remains in the *Public Works Act 1902*, but the list that currently appears in section 2 of the Act is modernised and now appears in Schedule 1.

Clause 95 Section 2A inserted – Governor may declare public work

This section is inserted and modernises the process currently undertaken under section 2(y) by which the Governor forms an opinion on declaring a thing to be a public work.

The Governor may now, by order, declare a work, facility, building or other thing to be a public work.

Clause 96 Section 5 amended – Minister for Works

This amended section provides an express statement of the powers and functions of the Minister for Works in the way that more recent Acts and section 9C of the *Public Works Act 1902* provide.

Subsections (4) and (5) are inserted to contemporise and modernise that Act without changing the existing powers of the Minister for Works.

Clause 97 Section 5A amended – Delegation by Minister

This section is amended to remove the requirement that delegations be gazetted.

Clause 98 Section 5B amended – Sub delegation of delegated power or duty

This section is amended to remove the requirement that sub-delegations be gazetted.

Clause 99 Section 11 replaced – Governor may authorise railways

This section is amended to provide that the Governor may now authorise, through an order published in the *Gazette*, the Public Transport Authority to undertake, construct or provide a railway, subject to section 96 of the *Public Works Act 1902*.

The Governor’s authorisation of the Minister for Works to undertake, construct or provide any public work is no longer required due to the insertion of section 2A and the modernisation of section 5.

Clause 100 Schedule 1 inserted – Classes of public work

This new Schedule is inserted into the *Public Works Act 1902* to modernise the list of public works.

Item 1 updates the terminology used in former section 2(a).

Item 2 updates the terminology used in former section 2(b).

Item 3 updates former section 2(c) to include light railways, monorails and works for any prescribed means of public passenger transport as defined in section 3 of the *Public Transport Authority Act 2003*.

Item 4 updates former sections 2(d), 2(n) and 2(x) and includes works for conservation, protection or management of water or resources, as well as extends works for water supply to include abstraction and reticulation and works for the restoration of, or measures for the prevention of erosion of, rivers, watercourse, lakes or inlets, including deepening, widening and other alteration, disposal of silt and removal of waste or debris, and works for flood prevention or mitigation.

Item 5 updates former section 2(e) to include buildings for, or works for leased or licensed space for, Government and local government office accommodation.

Item 6 updates some of the works in former section 2(f) by listing health care facilities. Included in this definition are hospices, other medical facilities, community health care centres and residential or short-term accommodation facilities for patients and their carers or for staff.

Item 7 updates some of the works in former section 2(f) by listing community residential facilities. Included in this definition are boarding houses, refuges, aged care facilities and facilities for people with a disability or mental illness or subject to social disadvantage. Reference to hostels and institutions is removed.

Item 8 expands the modern works in former section 2(g) by listing scientific facilities. Included in this definition are research stations, environmental monitoring facilities, laboratories and scientific installations. The establishment and the extension by the Governor of agricultural research stations is removed. Item 8 and Item 18 cover this.

Item 9 updates former section 2(h) by listing educational and related facilities. Reference to 'public' schools and schools authorised to be established wholly or in part at the public cost by an Act is removed. Included in this definition are schools, teaching establishments, early learning centres, childcare centres, and kindergartens, residential accommodation facilities for students attending those facilities or for staff.

Item 10 updates former section 2(i) by listing cultural, sporting, tourism and community facilities. Mechanics' or miner's institutes, agricultural halls and schools of art are removed. Included in the definition are museums, theatres, art galleries, interpretive centres, entertainment facilities, stadiums and community centres.

Item 11 inserts a new work being facilities for the Mint.

Item 12 updates former section 2(j) by expanding the definition to include community housing and facilities and amenities as defined in section 61(2) of the *Housing Act 1980* that are related to public or

community housing. Also inserted is housing provided under the *Government Employee's Housing Act 1964*.

Item 13 updates former section 2(l) parks or gardens to include botanical gardens or zoological gardens, showgrounds and racecourses. Places for bathing has been removed and replaced with sporting grounds or facilities, recreational trails or paths.

Item 14 introduces a new work being animal pounds including cat and dog management facilities under the *Cat Act 2011* and the *Dog Act 1976* respectively.

Item 15 updates former section 2(m) by expanding the definition to include crematoriums and memorials.

Item 16 updates former section 2(o) by expanding the definition from 'cave' to 'place' which may also be of heritage, natural, environmental, aesthetic or cultural interest or value.

Item 17 updates former section 2(p) by expanding the definition to include works for the protection or preservation of wetlands, and revegetation for conservation purposes.

Item 18 updates former section 2(q) by expanding the definition to include stock saleyards and agricultural saleyards.

Item 19 updates former sections 2(k) and 2(r). Harbours and ports are updated to include other facilities for or in connection with boating operations, in addition to shipping operations. Launching ramps, landing places, ferry facilities, moorings, and lighthouses are all inserted, as well as port works as defined in section 35(9) of the *Port Authorities Act 1999*. Reference to protection of foreshores and banks is removed as this is dealt with in Item 17.

Item 20 updates former sections 2(s) and 2(t) to clarify the definition includes quarries or works for procuring timber, stone, gravel, earth or any other material required for both:

- the State for any commercial or industrial undertaking or activity, or any other undertaking or activity that is being carried on by the State under a written law
- the construction of, or for any purpose connected with, a public work.

Item 21 updates former section 2(u) and some of the works in former section 2(f) by listing facilities required for justice or emergency services purposes. Included are detention centres and ambulance depots. Terminology has also been updated e.g. changing gaols to prisons.

Item 22 updates former section 2(v) by removing reference to the Governor.

Item 23 updates former section 2(za) by expanding the definition of road to include bicycle paths, shared paths, tunnels, weighbridges, roadside testing facilities and roadside amenities.

Item 24 inserts a new work being works for or in connection with the production, generation, transmission, distribution or storage of electricity, gas or any other form or source of energy.

Item 25 inserts a new work being waste management facilities.

Item 26 inserts a new work being airstrip and airport facilities.

Item 27 inserts a new work being biosecurity facilities.

Item 28 inserts a new work being works for or in connection with an Aboriginal community or settlement, including works relating to the provision of essential services.

Item 29 expands the work in former section 2(l) to reclamation of land for the purposes of a public work.

Item 30 updates former section 2(ze).

Item 31 updates the terminology used in former section 2(zd).

Clause 101 Various references to gender removed

The listed sections are amended to adopt gender neutral language.

Part 4 Other Acts Amended

Division 1 *Barrow Island Act 2003* amended

Clause 102 Act amended

This Division amends the *Barrow Island Act 2003*.

Clause 103 Section 6 amended

Subsection (6) is amended consequentially to remove reference to *Land Administration Act 1997* section 35(4)(a)(i) as land will not automatically become unallocated Crown land on the forfeiture of an interest and that subsection is being removed.

Clause 104 Section 8 amended

Subsection (5) is amended consequentially to remove reference to *Land Administration Act 1997* section 35(4)(a)(i) as land will not automatically become unallocated Crown land on the forfeiture of an interest and that subsection is being removed. As land may remain as Crown land on the forfeiture of an interest, no further consequential amendment is required to ensure that the underlying Class A nature reserve of Barrow Island will not be affected by the forfeiture of interests.

Division 2 *Conservation and Land Management Act 1984* amended

Clause 105 Act amended

This Division amends the *Conservation and Land Management Act 1984*.

Clause 106 Section 3 amended

This section is amended to incorporate definitions for pastoral and diversification leases.

Clause 107 Section 4 amended

This section is amended in subsection (3) to include a reference to a diversification lease, so that if land under a diversification lease is reserved for a State forest under section 8 of the *Conservation and Land Management Act 1984* and is therefore situated within the boundaries of a State forest, the lease will be surrendered to the Crown and the diversification lessee has an option to acquire a forest lease, in the same way as for a pastoral lessee.

Subsection (4) is also amended to include a reference to a diversification lease, so that nothing in that Act affects a right in a diversification lease to such timber as may be required for domestic purposes, for the construction of buildings, fences, stockyards, or other improvements on the land occupied under the lease, in the same way as applies to pastoral leases.

Clause 108 Section 8A amended

This section is amended in subsection (15) to include a reference to a diversification lease, so that if an agreement is entered into with the “Chief Executive Officer” under the *Conservation and Land Management Act 1984* to manage land under a diversification lease which includes grazing as a purpose, the diversification lessee remains entitled to use the land for grazing except to the extent the management agreement provides otherwise. This is the same as for a pastoral lease.

Clause 109 Section 11 amended

This section is amended by the insertion of section 11(ca) so that the definition of “Crown land” for the purposes of section 8 and section 10 includes land held under a diversification lease subject to the rights of the lessee to graze stock if that is a purpose of the diversification lease. The inclusion of a diversification lease in the definition means that it may be reserved as a State Forest under section 8 or as a timber reserve under section 10. This is consistent with the amendment to section 4(3) in clause 107, and is the same as for a pastoral lease.

Clause 110 Section 81 amended

This section is amended to include a reference to a diversification lease, so that the definition of “public land” includes a diversification lease for the purposes of Part VII dealing with the control and eradication of forest diseases, in the same way as applies to pastoral leases.

Clause 111 Section 96 amended

This clause is amended by the substitution of subsection (4)(a) to include a reference to a diversification lease, so that any permit, licence or contract in relation to forest produce applies to land under a diversification lease as well as a pastoral lease. The holders of a permit, licence or contract in relation to forest produce may enter onto such land and take forest produce where the diversification lease does not confer that right on the lessee.

Division 3 *Duties Act 2008* amended

Clause 112 Act amended

This Division amends the *Duties Act 2008* to ensure the appropriate duty treatment of diversification leases.

Clause 113 Section 3 amended

This section is amended to incorporate definitions for a diversification lease and diversification lessee.

Clause 114 Section 3A amended

This section is amended to make it clear that a diversification lease, or an interest of a lessee under a diversification lease, is considered land for duty purposes.

Section 3A(1)(f) is amended to clarify that anything fixed to land includes land the subject of a diversification lease.

Clause 115 Section 11 amended

This section is amended to ensure transfers of diversification leases are dutiable even if there is no consideration for the transfer by amending section 11(4) to provide that section 11(2)(b) does not apply to diversification leases. This mirrors duty treatment for pastoral leases.

Clause 116 Section 17 amended

This section is amended to make it clear that a diversification lease, or an interest under a diversification lease, is not new dutiable property if there is no consideration for the grant of the lease.

Clause 117 Section 18 amended

This section is amended to exclude a diversification lease as special dutiable property if the lessor provides consideration for the surrender. As the lessor of a diversification lease, the Crown is unlikely to provide consideration for the surrender of a diversification lease. In any event, if the Crown did provide consideration for the surrender, the transaction would be exempt under section 93 of the *Land Administration 1997*.

However, the surrender of a diversification lease (or pastoral lease) in whole or in part is special dutiable property under this section if:

- the surrender is in contemplation of, or part of an agreement that, a diversification or pastoral lease be granted to another person
- consideration is provided to the outgoing lessee to surrender their lease, and
- the grant of the new lease is not subject to the payment of a sale price in the case of a pastoral lease or consideration in the case of a diversification lease.

The person to whom the new lease will be granted is liable to pay the duty.

Existing section 18(f) achieves a similar outcome for mining tenements that are surrendered so that another tenement can be granted.

Clause 118 Section 28 amended

This section is amended to include two new subsections.

New subsection (3A) provides that the dutiable value of a dutiable transaction that is the surrender of a diversification or pastoral lease in certain circumstances is the consideration for the surrender of the lease.

New subsection (4B) provides that the dutiable value of a dutiable transaction that is the grant of a diversification lease is the amount of any consideration for the grant of the lease. Consequentially, subsection (4) is excluded from applying to a diversification lease.

Clause 119 Schedule 1 amended

Schedule 1, column 4 is amended in the item for section 11(1)(g) to provide that the person liable to pay duty on the surrender of a diversification or pastoral lease is the person to whom the diversification or pastoral lease is granted in accordance with the agreement.

Division 4 *Environmental Protection Act 1986* amended

Clause 120 Act amended

This Division of the Bill amends the *Environmental Protection Act 1986*.

Clause 121 Schedule 6 amended

Schedule 6 item 13 is amended to include a diversification lease as one of the circumstances in which a clearing permit under that Act is not required for the grazing of stock. A diversification lease is included so that clearing caused by the grazing of stock under a diversification lease is clearing for which a permit is not required in the same way as for pastoral leases. The exemption will apply only to the grazing use, not to any other use for which a diversification lease is granted.

Reference is also included to a direction of the Pastoral Lands Board, so that the exemption for a clearing permit will not apply to a pastoral lease if there is a breach of any relevant condition set, determination made or direction given by the Pastoral Lands Board under Part 7 of the Act.

Division 5 *Forrest Place and City Station Development Act 1985* amended

Clause 122 Act amended

This Division of the Bill amends the *Forrest Place and City Station Development Act 1985*.

Clause 123 Section 11 amended

This section is consequentially amended in subsections (2) and (3) to incorporate the amendments made to section 58 of the *Land Administration Act 1997*, so that the local government may close a street notwithstanding the process set out in that Act, and the closure of the street does not affect any rights conferred under the *Dampier to Bunbury Pipeline Act 1997* or any encumbrance, to which the street may have been subject.

It also amends the terminology to reflect modern practice to lodge the relevant order with the Registrar of Titles for registration.

Division 6 *Land Administration (South West Native Title Settlement) Act 2016* amended

Clause 124 Act amended

This division amends the *Land Administration (South West Native Title Settlement) Act 2016*.

Clause 125 Section 12 amended

Section 12(2) is consequentially amended to remove reference to section 50(3) of the *Land Administration Act 1997* which was deleted and instead refer to section 51AA(3) in which the procedure was replicated.

Division 7 *Land Tax Assessment Act 2002* amended

Clause 126 Act amended

This Division amends the *Land Tax Assessment Act 2002* to ensure the appropriate land tax treatment of diversification leases.

Clause 127 Section 8 amended

This section of the Act deems a person leasing Crown land as the owner of the land and liable for land tax. A diversification lease would be liable for land tax unless the diversification lessee qualifies for an exemption under Part 3 of this Act for specific uses of the land.

This section is amended such that where a person holds a diversification lease over land that is subject to a mining tenement held by a different owner, only the diversification lessee (and not the holder of the mining tenement) is the owner of the land the subject of the diversification lease.

For example, in the simple case where there is one diversification lessee and one holder of the mining tenement and those people are different persons, the amended section will operate so that only the diversification lessee would be liable for land tax (assuming no other exemption applied).

In another example, say there are multiple diversification lessees and tenement holders, with two of those persons (A and B) being both a diversification lessee and a tenement holder and one person (C) being a diversification lessee only. Persons A, B and C will be taken to be the owners of the land for the purposes of section 7 of this Act. That is (assuming the land under the lease was not covered by an exemption), Persons A, B and C would be jointly and severally liable for land tax as per section 7(4).

Clause 128 Section 35 replaced

Currently, land is exempt from land tax under this section if a mining tenement is in force for the land (unless it is owned in fee simple). As it will be possible for a mining tenement and a diversification lease to apply over the same land, the tax treatment should reflect each specific use of the land.

This section is deleted and replaced with a new section to provide that where land is the subject of a diversification lease and a mining tenement, the mining tenement exemption does not apply to the land, or part of the land, that is the subject of a diversification lease regardless of whether the diversification lessee and the holder of the mining tenement are the same person.

As a result, the portion of land subject to the diversification lease will be taxable if an exemption (other than the exemption for mining tenements) does not apply to the use of the land.

Clause 129 Glossary amended

The Glossary clause 1 is amended to incorporate definitions for a diversification lease, diversification lessee and mining tenement (the definition for which should always have been included but was not).

Division 8 Mining Act 1978 amended

Clause 130 Act amended

This Division amends the *Mining Act 1978* to reflect the new form of tenure, being a diversification lease.

Clause 131 Section 8 amended

This section is amended in subsection (1):

- to include a definition of “pastoral lease” and “diversification lease”
- to include a diversification lease in the definition of “Crown land”
- to exclude a diversification lease from the definition of “private land”

for the purposes of the *Mining Act 1978*, so that in effect the rights to access land for mining activity on a diversification lease is essentially the same as that for a pastoral lease. Given the size and broad scale nature of a diversification lease it is considered appropriate that access for mining activity is the same as for a pastoral lease.

Section 16(3) requires the Minister for Mines’ approval to the grant of a lease, transfer or other disposition of Crown land in a mineral field.

This is a long-entrenched provision that ensures that mining and other resource interests are properly considered and, in appropriate cases, interest holders are consulted, before there is a change of tenure. This provision and the supporting processes will be applied in the same way to a proposal for the grant of a diversification lease.

Subsection (5) is amended to confirm that a lease for the purpose of the social, cultural or economic benefit of Aboriginal persons is Crown land under the *Mining Act 1978*, as is the case for leases for the use and benefit of Aboriginal people. The former is the modern formulation used for broad scale leases with a general purpose for the “use and benefit of Aboriginal people”.

Clause 132 Section 16 amended

This section is amended to insert subsections (4) and (5).

Subsection (4) inserts a new category of approval so that a variation of the purpose of a diversification lease will require the approval of the Minister for Mines. Given the diversity of possible uses under a diversification lease over the term of the lease, a change in use could potentially affect mining activity and should be referred for consideration.

Subsection (5) links to section 92C(4) of the *Land Administration Act 1997* which provides that the protection afforded by section 20(5AA) of the *Mining Act 1978* will only apply to land on which a substantial structure is located on a diversification lease, where that is identified in the lease. In practice this will be in the lease sketch. The Minister for Mines' approval is required to that lease sketch.

Clause 133 Section 20 amended

This section is amended in (5) by inserting two new subclauses (da) and (db) in the provision which protects certain areas of Crown land from mining activity without the written consent of the occupier.

New subclause (da) provides that mining may not occur within 100 metres of a permanent electrical or fibre optic cable. This is intended to cover ground based electrical lines to distinguish from electrical cords of a domestic nature.

New subclause (db) provides that mining may not occur within 100 metres of the site of a substantial structure on a diversification lease that is being erected, or then commissioned, or which has been erected and is being used. The restriction on access does not apply to mining infrastructure erected by persons other than the lessee.

Mining activity can occur within these buffer zones with the consent of the occupier. In the case of cabling, but not substantial structures, the Warden can direct otherwise.

This provision incorporates the new concept of a "substantial structure" to encompass the variety of infrastructure that may be erected on a diversification lease given the diversity of possible uses under this type of lease. The structure must be man-made as it must be erected or being erected, but it may be something other than a building or house or the other types of infrastructure referred to in section 20. For example, it might include wind turbines or solar panels.

As with other subsections the concept of "and is used" is included in new subsection (db)(ii). This is to distinguish from infrastructure that has been abandoned and has ceased to be used on a permanent basis. A substantial structure may be "used" in this context on a periodical or intermittent basis such as seasonally or as the permitted use or purpose of the diversification lease allows.

Section 20(5)(e) is also amended to include a reference to a diversification lease, so that areas of water works described in the provision on a diversification lease are protected from mining activity in the same way as they are for a pastoral lease.

Section 20(5)(f)(iv) is amended to include reference to permanent electrical and fibre optic cabling and a substantial structure that is being

erected or commissioned or that has been erected and is used, so that the restriction on passing and repassing over the land in restricted areas to get to other land for mining purposes is also applied to land occupied by these things.

Subsection (5AA) is inserted to confirm that the protection afforded under section 20 to land on which substantial structures are located on a diversification lease only applies where the land is identified in the lease.

Clause 134 Section 118 amended

This section is amended to include reference to a diversification lease, so that if an application for a mining tenement is over a diversification lease, notice is required to be served on a diversification lessee. This mirrors current notice requirements for mining tenements applied for over a pastoral lease.

Clause 135 Section 123 amended

This section is amended to include a reference to a diversification lease, so that the same matters giving rise to compensation for a pastoral lessee in respect of mining activity over a pastoral lease will also apply to mining activity over a diversification lease.

Division 9 *Mining Rehabilitation Fund Act 2012* amended

Clause 136 Act amended

This Division amends the *Mining Rehabilitation Fund Act 2012*.

Clause 137 Section 10 amended

This section is amended in subsection (4) to include reference to a diversification lease, so that notice of intended entry and consent by the diversification lessee is required before exercising powers to enter and carry out rehabilitation work, in the same way as they are for a pastoral lessee.

Division 10 *Petroleum and Geothermal Energy Resources Act 1967* amended

Clause 138 Act amended

This Division amends the *Petroleum and Geothermal Energy Resources Act 1967*.

Clause 139 Section 5 amended

This section is amended in subsection (1):

- to include a definition of “pastoral lease” and “diversification lease”
- to include a diversification lease in the definition of “Crown land”
- to exclude a diversification lease from the definition of “private land”

for the purposes of the *Petroleum and Geothermal Energy Resources Act 1967*, so that in effect the right to access land for petroleum or geothermal exploration or operations on a diversification lease is the essentially the same as that for a pastoral lease.

Given the small footprint of such activities there is no need to incorporate any further areas over which activity should be restricted than currently exist.

Subsection (6A) is amended to confirm that a lease for the purpose of the social, cultural or economic benefit of Aboriginal persons is Crown land under the *Mining Act 1978*, as is the case for leases for the use and benefit of Aboriginal people. The former is the modern formulation used for broad scale leases with a general purpose for the “use and benefit of Aboriginal people”.

Clause 140 Section 21 amended

This section is amended in subsection (1) to include a reference to a diversification lease, so that the matters for which compensation is payable, being damage to improvements, to a diversification lessee are the same as for a pastoral lessee.

Clause 141 Section 24 amended

This section is amended in subsection (1) to include a reference to a diversification lease, so that compensation is not payable to a diversification lessee for the matters specified, generally relating to deprivation of possession and damage to the surface of land, and for which compensation is not payable to a pastoral lessee.

Division 11 *Planning and Development Act 2005* amended

Clause 142 Act amended

This Division amends the *Planning and Development Act 2005*.

Clause 143 Section 4 amended

This section is amended to delete the definition of the “LAA Department”, which is removed by amendments to section 168, and to update the reference in the public work definition to the section in the *Public Works Act 1902*.

Clause 144 Section 168 amended

This section is amended in subsections (2) and (7) to provide that where a local government has the care, control and management of the road, the power is subject to the *Main Roads Act 1930* and the *Public Works Act 1902*. This ensures that the local government does not have the care, control and management of the road where it is declared a main road, highway, or government road under the respective Acts.

Subsection (6) is amended by the deletion of “LAA Department” as the Department no longer registers deposited plans.

Subsection (9) is amended to include reference to subsection (5), so that land which is transferred to the Crown or a local government and dedicated under section 168(5) does not form part of a parcel comprised in a scheme plan that is registered under the *Strata Titles Act 1985*.

Subsection (10) is inserted to provide that land dedicated as a road by subsections (1), (3), (5) or (6) may be dedicated subject to any existing

encumbrance specified in a direction of the Minister for Lands, or an authorised person. The direction is to be lodged with the Registrar of Titles at or before the time the Registrar of Titles registers a scheme plan, or the new certificates of titles are issued, or the registration of the document accompanying the plan, as the case may be.

Clause 145 Section 191 amended

This section is amended in subsection (1) to update the reference to the public work definition.

Clause 146 Section 195 amended

This section is amended in subsection (2) to update the reference to the public work definition.

Clause 147 Section 197A amended

This section is amended in subsection (3) to update the reference to the public work definition.

Division 12 *Transfer of Land Act 1893* amended

Clause 148 Act amended

This Division amends the *Transfer of Land Act 1893*.

Clause 149 Section 81T amended

This section is amended by the deletion of subsection (3)(b) as the Minister's power to extinguish a Crown lease or other lease under section 27(4) of the *Land Administration Act 1997* has been removed.

Division 13 *Wittenoom Closure Act 2022* amended

Clause 150 Act amended

This Division amends the *Wittenoom Closure Act 2022*.

Clause 151 Section 6 amended

This section is amended to update the reference to the public work definition.