

South Australia

**PASTORAL LAND MANAGEMENT AND CONSERVATION ACT 1989**

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An Act to make provision for the management and conservation of pastoral land; and for other purposes.

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*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **24 November 2003**.*

*Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.*

**PASTORAL LAND MANAGEMENT AND CONSERVATION ACT 1989**

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Pastoral Land Management and Conservation Act 1989  
No. 51 of 1989 [Assented to 7 September 1989]<sup>1</sup>

as amended by

Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]<sup>2</sup>

Pastoral Land Management and Conservation (Board Membership) Amendment Act 1996 No. 9 of 1996 [Assented to 4 April 1996]

Statutes Amendment (Water Resources) Act 1997 No. 35 of 1997 [Assented to 19 June 1997]<sup>3</sup>

Pastoral Land Management and Conservation (Board Procedures, Rent, etc.) Amendment Act 1998 No. 64 of 1998 [Assented to 10 September 1998]

**Statute Law Revision Act 2003 No. 44 of 2003 [Assented to 23 October 2003]<sup>4</sup>**

<sup>1</sup> Came into operation (except s. 12(2)-(8)) 7 March 1990; s. 12(2)-(8) came into operation 7 March 1996: s. 2.

<sup>2</sup> Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.

<sup>3</sup> Part 5 (ss. 22-24) came into operation 2 July 1997: *Gaz.* 26 June 1997, p. 3052.

<sup>4</sup> **Schedule 1 came into operation 24 November 2003: *Gaz.* 13 November 2003, p. 4048.**

*NOTE:*

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

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LEGISLATIVE HISTORY**

The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### Short title

1. This Act may be cited as the *Pastoral Land Management and Conservation Act 1989*.

\* \* \* \* \*

### Interpretation

3. In this Act, unless the contrary intention appears—

"**Aboriginal people**" means the people who inhabited Australia before European colonisation;

"**Aborigine**" means a descendant of the Aboriginal people who is accepted as a member by a group in the community who claim descent from the Aboriginal people;

"**authorised officer**" means—

(a) a member of the police force; or

(b) a person appointed by the Minister as an authorised officer for the purposes of this Act;

"**the Board**" means the *Pastoral Board* established under this Act;

"**Crown land**" means land held by the Crown that has not been alienated in fee simple and is not part of a reserve under the *National Parks and Wildlife Act 1972* or subject to any lease (other than a mining lease), agreement to purchase or dedication;

"**degradation**" of land means a decline in the quality of the natural resources of the land resulting from human activities on the land, and "**degraded**" has a corresponding meaning;

"**motor vehicle**" means any vehicle capable of being driven or ridden that is propelled by means of an engine;

"**pastoral land**" means land comprised in a pastoral lease;

"**pastoral lease**" means a lease granted under this Act over Crown land for pastoral purposes;

"**pastoral purposes**" means the pasturing of stock and other ancillary purposes;

"**rehabilitation**" of degraded land means to bring the land back to at least the condition it was in before its degradation, having particular regard to its capacity to carry stock and its level of soil stability;

"**the repealed Act**" means the *Pastoral Act 1936* repealed by this Act;

"**stock**" means any species of animal permitted by the terms of a pastoral lease to be pastured by the lessee on the land as part of the commercial enterprise under the lease;

"**the Tribunal**" means the *Pastoral Land Appeal Tribunal* established under this Act;

"**unimproved value**", in relation to land, means unimproved value as defined in the *Valuation of Land Act 1971*;

"**variation**" of conditions includes an addition, deletion or substitution, and "**to vary**" has a corresponding meaning.

## Part 2—Objects and duties

### Objects of this Act

4. The objects of this Act are as follows:

- (a) to ensure that all pastoral land in the State is well managed and utilised prudently so that its renewable resources are maintained and its yield sustained; and
- (b) to provide for—
  - (i) the effective monitoring of the condition of pastoral land; and
  - (ii) the prevention of degradation of the land and its indigenous plant and animal life; and
  - (iii) the rehabilitation of the land in cases of damage; and
- (c) to provide a form of tenure of Crown land for pastoral purposes that is conducive to the economic viability of the pastoral industry; and
- (d) to recognise the right of Aborigines to follow traditional pursuits on pastoral land; and
- (e) to provide the community with a system of access to and through pastoral land that finds a proper balance between the interests of the pastoral industry and the interests of the community in enjoying the unique environment of the land.

### Duty of the Minister and the Board

5. The Minister and the Board, in administering this Act and in exercising any other power or discharging any other function in relation to pastoral leases—

- (a) must act consistently with and seek to further the objects of this Act; and
- (b) must have regard to plans or guidelines established by Government agencies, soil conservation authorities and planning authorities that are applicable to pastoral land.

### Assessment of land

6. (1) Assessment of the condition of land pursuant to this Act—

- (a) must be thorough; and
- (b) must include an assessment of the capacity of the land to carry stock; and
- (c) must be conducted in accordance with recognised scientific principles; and
- (d) must be carried out by persons who are qualified and experienced in land assessment techniques.

(2) On completing an assessment of the condition of land, the Board must forward a copy of the assessment to the lessee.

(3) The Board cannot take any action under this Act pursuant to an assessment unless—

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- (a) the lessee has been given at least 60 days in which to consider and comment on the assessment; and
- (b) the Board has given consideration to such comments as the lessee may have made during that period.

**General duty of pastoral lessees**

7. It is the duty of a lessee throughout the term of a pastoral lease—

- (a) to carry out the enterprise under the lease in accordance with good land management practices; and
- (b) to prevent degradation of the land; and
- (c) to endeavour, within the limits of financial resources, to improve the condition of the land.

**Pastoral land not to be freeholded**

8. Despite any Act or law to the contrary—

- (a) the Minister cannot enter into any agreement or arrangement for transferring an estate in fee simple in pastoral land to the lessee of that land, except pastoral land that the Governor has determined is to be used for some purpose other than pastoral purposes;
- (b) a pastoral lease is the only form of tenure that can be granted over Crown land that is to be used wholly or principally for pastoral purposes.

**Pastoral Land Management Fund**

9. (1) The Minister must establish a fund to be entitled the *Pastoral Land Management Fund* (in this section referred to as "**the Fund**").

(2) The Fund will consist of—

- (a) a prescribed percentage (being not less than 5 per cent or more than 15 per cent) of the amount received each year by way of rent paid under pastoral leases as reduced by the administrative costs attributable to administering those leases; and
- (b) any money provided by Parliament for the purposes of the Fund; and
- (c) any money paid into the Fund pursuant to any other Act; and
- (d) any accretions arising out of investment of the money of the Fund.

(3) The amount to be paid into the Fund in respect of a particular year pursuant to subsection (2)(a) must be paid into the Fund no later than 30 June of the next ensuing year.

(4) The money in the Fund may be invested in such manner as the Minister thinks fit.

(5) The Fund must be applied in such manner as the Minister, on the recommendation of the Board, thinks fit for the following purposes and in the following order of priority:

- (a) research into techniques for pastoral land management, for prevention or minimisation of pastoral land degradation and for rehabilitation of degraded pastoral land;
- (b) the publication of research findings and dissemination of information relating to those techniques;
- (e) experimentation with and practical development of those techniques;
- (d) such other projects relating to the management and conservation of pastoral land as the Minister thinks fit.

## **Part 3—Administration**

### **Division 1—The Minister**

#### **Power of Minister to delegate**

**10.** (1) The Minister may delegate any of the Minister's powers or functions under this Act (except for this Part)—

- (a) to the Board; or
- (b) to any particular person or body; or
- (c) to the person for the time being occupying a particular office or position.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Minister to act in any matter; and
- (d) is revocable at will by the Minister.

#### **Appointment of authorised officers**

**11.** (1) The Minister may appoint such persons to be authorised officers for the purposes of this Act as the Minister thinks fit.

(2) An appointment under this section—

- (a) will be for a period stated in the instrument of appointment; and
- (b) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of an authorised officer.

(3) A person appointed as an authorised officer must be issued with an identity card in a form approved by the Minister.

### **Division 2—The Board**

#### **Establishment of the Pastoral Board**

**12.** (1) The *Pastoral Board* is established.

(2) The Board consists of 6 members appointed by the Governor, of whom—

- (a) one, being a person who has, in the opinion of the Minister, wide experience in administration of pastoral leases, will be appointed on the nomination of the Minister; and
- (b) one, being a person who has, in the opinion of the Minister for Environment and Heritage, a wide knowledge of the ecology, and experience in the management, of the pastoral land of this State, will be appointed on the nomination of that Minister; and

- (c) one, being a person who, in the opinion of the Minister for Primary Industries, Natural Resources and Regional Development, has had wide experience in the field of land and soil conservation of pastoral land, will be appointed on the nomination of that Minister; and
  - (d) one will be selected by the Minister from a list of 3 persons who produce beef cattle on pastoral land outside the dog fence, submitted by the South Australian Farmers Federation; and
  - (e) one will be selected by the Minister from a list of 3 persons who produce sheep on pastoral land inside the dog fence, submitted by the South Australian Farmers Federation; and
  - (f) one will be selected by the Minister from a list of 3 persons submitted by the Conservation Council of South Australia Inc.
- (3) At least one member must be a woman and one a man.
- (4) The Governor will appoint a member of the Board to preside at meetings of the Board.
- (5) The Governor must appoint a deputy to each member of the Board.
- (6) A person who is to be the deputy of a member appointed under subsection (2)(d), (e) or (f) must be appointed in the same manner as the member was appointed to the Board.
- (7) Where the appointments of a member under subsection (2)(d), (e) or (f) and of that member's deputy are being made at the same time, both must be selected from the one panel of names.
- (8) A deputy may, in the absence of the member, act as a member of the Board.

**Conditions of office**

**13.** (1) A member of the Board will be appointed for a term not exceeding three years and will, on the expiration of a term of office, be eligible for reappointment.

- (2) The Governor may remove a member of the Board from office—
- (a) for misconduct; or
  - (b) for neglect of duty; or
  - (c) for incompetence; or
  - (d) for mental or physical incapacity to carry out the duties of office satisfactorily.
- (3) The office of a member becomes vacant if the member—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice addressed to the Minister; or

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(d) is removed from office by the Governor under subsection (2).

(4) Upon the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

**Allowances and expenses**

**14.** A member of the Board is entitled to such allowances and expenses as the Governor may determine.

**Procedure at meetings**

**15.** (1) A meeting of the Board will be chaired by the member appointed to preside at meetings or, in the absence of that person, by a member chosen by the members present from amongst their own number.

(2) Subject to subsection (3), the Board may act despite there being vacancies in its membership.

(3) Four members constitute a quorum of the Board and no business may be transacted at a meeting of the Board unless a quorum is present.

(4) Each member present at a meeting of the Board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(5) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Board.

(5a) A conference by telephone or other electronic means between members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the Board for that purpose; and

(b) each participating member is capable of communicating with every other participating member during the conference.

(5b) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—

(a) a notice of the proposed resolution is given to all members in accordance with procedures determined by the Board; and

(b) a majority of the members expresses concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the proposed resolution.

(5c) The Board must cause accurate minutes of its meetings to be kept.

(6) Subject to this Act, the proceedings of the Board may be conducted as it thinks fit.

**Conflict of interest**

16. (1) A member of the Board has an interest in a matter before the Board if—

- (a) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment; or
- (b) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment

(not, in the case of a member who is a pastoralist, being a benefit or detriment that would be enjoyed or suffered in common by all or a substantial proportion of pastoralists).

(2) A person is closely associated with a member of the Board if that person is—

- (a) a body corporate of which the member is a director or a member of the governing body; or
- (b) a proprietary company in which the member is a shareholder; or
- (c) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee; or
- (d) a partner of the member; or
- (e) an employer or an employee of the member; or
- (f) the spouse, parent or child of the member.

(3) A member of the Board who has an interest in a matter before the Board must disclose the existence of that interest to the Board.

Maximum penalty: \$5 000 or imprisonment for 1 year.

(4) A disclosure made under subsection (1) must be recorded in the minutes of the Board.

(5) A member of the Board who has an interest in a matter before the Board—

- (a) must not take part in any discussion by the Board relating to that matter; and
- (b) must not vote in relation to that matter; and
- (c) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$5 000 or imprisonment for 1 year.

(6) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her interest in the matter.

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(7) The fact that a member has failed to comply with this section in relation to a matter does not, of itself, invalidate a resolution or decision on that matter, but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the Board, the Minister or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary orders as it thinks fit.

**Functions of Board**

**17.** (1) The Board is responsible to the Minister for the administration of this Act and, in carrying out that function, is subject to the control and direction of the Minister.

(2) The other functions of the Board are as follows:

- (a) to advise the Minister on the policies that should govern the administration of pastoral land;
- (b) to advise the Minister on any other matter referred to the Board by the Minister;
- (c) to perform the other functions assigned to the Board by or under this Act or by the Minister.

**Delegation by Board**

**18.** (1) The Board may, with the consent of the Minister, delegate any of its powers or functions (other than the function of advising the Minister on the policies that should govern the administration of pastoral land)—

- (a) to a member of the Board; or
- (b) to any particular person or body; or
- (c) to the person for the time being occupying a particular office or position.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Board to act in any matter; and
- (d) is revocable at will by the Board.

**Annual report**

**18A.** (1) The Board must, no later than 30 September in each year, furnish the Minister with a report of its operations during the preceding financial year.

(2) The Minister must, within 12 sitting days of receiving a report, have copies of it laid before both Houses of Parliament.

## Part 4—Pastoral leases

### Grant of leases

19. (1) Subject to this Act, the Minister may grant pastoral leases over Crown land.

(2) Where the Minister proposes to make Crown land available for lease for pastoral purposes, the process for taking a lease must be an open competitive process.

(3) Subsection (2) does not apply—

- (a) if the Minister is satisfied that special circumstances exist justifying the addition of the land to the holding of an existing lease; or
- (b) if the land was subject to a pastoral lease that was surrendered upon condition that a further such lease be granted to the same lessee or a nominee of the lessee; or
- (c) if the Minister is satisfied, on the recommendation of the Board, that for any other good and proper reason it would be just and equitable to offer the land to a particular person.

### Assessment of land prior to grant of lease

20. The Minister cannot grant a pastoral lease over Crown land—

- (a) if the Governor has determined that the land should be set aside or used for some other more appropriate purpose; or
- (b) unless—
  - (i) the Board is satisfied that the land is suitable for pastoral purposes; and
  - (ii) an assessment has been made of the condition of the land.

### Execution of leases

21. Where—

- (a) a document intended to constitute a pastoral lease is sent to the prospective lessee for execution; and
- (b) the document is not returned duly executed, together with such fees or other amounts as may be required, within a period (which must be at least 30 days) specified in an accompanying notice,

the Minister may decline to enter into the lease and forfeit any deposit or other money paid in connection with it.

### Conditions of pastoral leases

22. (1) A pastoral lease will be granted subject to conditions and reservations providing for the following matters (but no others):

- (a) *general conditions* providing for—
  - (i) the area of land subject to the lease;

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- (ii) the term of the lease;
  - (iii) the payment of rent annually in arrears;
  - (iv) the lessee's obligation to pay in the due manner all rates, taxes and other government charges in relation to the land;
  - (v) the lessee's obligation to comply with the following Acts and any regulations under those Acts to the extent that they apply in relation to the land:
    - (A) the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*; and
    - (B) the *Dog Fence Act 1946*; and
    - (C) the *Mining Act 1971*; and
    - (D) the *Petroleum Act 1940*; and
    - (E) the *Soil Conservation and Land Care Act 1989*; and
    - (F) the *Water Resources Act 1997*; and
    - (G) any other prescribed Act;
  - (vi) the lessee's obligation not to hinder or obstruct any person who is exercising a right of access to the land pursuant to this Act or any other Act;
- (b) *land management conditions* providing for—
- (i) the lessee's obligation not to pasture (as part of the commercial enterprise under the lease) any species of animal on the land other than the species specified in the lease, except with the prior approval of the Board;
  - (ii) the lessee's obligation to ensure that numbers of stock on the land or a particular part of the land do not exceed the maximum levels specified in the lease, except with the prior approval of the Board;
  - (iii) the lessee's obligation not to use the land for any purpose other than pastoral purposes, except with the prior approval of the Board;
  - (iv) the lessee's obligation to maintain existing fencing in a stockproof condition;
  - (v) the lessee's obligation to maintain existing constructed stock watering points in proper working order;
  - (vi) the lessee's obligation to close off specified areas on the land, or to close or move specified access points on the land, for the purposes of rehabilitation of degraded land;
- (c) *reservations* providing for—

- (i) the property in minerals, petroleum, underground waters and live or dead standing timber on or under the land to be vested in the Crown;
- (ii) the right of the Commissioner of Highways to establish public roads across the land.

(2) The form of a pastoral lease and any matters (such as maximum stock levels) to be specified in the conditions of a lease will be determined by the Board.

(3) The only conditions of a pastoral lease that can be varied by the Board pursuant to this Act are the land management conditions.

(4) Nothing in this Act prevents a lessee and the Board from entering into an agreement for the variation of a condition of the lease.

### **Rent**

**23.** (1) The rent payable to the Crown under a pastoral lease—

- (a) is the amount from time to time determined under this section to be the annual rent for the lease; and
- (b) is payable annually in arrears.

(2) The annual rent for a pastoral lease is to be determined as follows:

- (a) the Valuer-General will from time to time determine the unimproved value of the land in accordance with the *Valuation of Land Act 1971*, taking into account, in addition to any other matters taken into account under that Act, the following matters:
  - (i) the purposes, whether authorised under the lease or by the Board, for which the land is used and the inherent capacity of the land to be used for those purposes; and
  - (ii) any prevailing climatic conditions currently affecting the productivity of the land; and
  - (iii) the proximity and accessibility of markets and other facilities to the extent that they affect the profitability of the lessee's enterprise; and
  - (iv) any views as to land condition factors expressed by the soil conservation authority within whose area the land is situated (and the Valuer-General must seek those views before making the determination); and
  - (v) the views of any consultative committee established by the Minister for the purpose of assisting in the determination of pastoral lease rents;
- (b) the Valuer-General will, on making a determination under paragraph (a), fix the annual rent for the lease as a percentage of the unimproved value of the land, being a percentage—

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- (i) that represents, in the Valuer-General's opinion, the appropriate rate of return for the land, taking into account the purposes for which the land is being used; and
- (ii) that may vary from lease to lease according to the various purposes for which land is being used.

(3) The Valuer-General must make a determination of the rents for all pastoral leases at the same time.

(4) The Valuer-General—

- (a) may make such a determination at any time; and
- (b) must do so on direction by the Minister,

but, in any event, must make such a determination at least every 5 years.

(5) On completing a determination of the annual rent for a pastoral lease, the Valuer-General must give to the Board a notice of the determination that includes a statement of the unimproved value of the land and the percentage on which the rent is based.

(6) The Minister may, on the recommendation of the Board, and if the Minister is satisfied—

- (a) that some factor exists affecting the profitability of the enterprise under a pastoral lease that has arisen since the Valuer-General last determined the annual rent for the lease; or
- (b) that the lessee has, under an agreement with the Minister, carried out work on the land on behalf of the Minister for which the lessee has not been recompensed; or
- (c) that the lessee has, on his or her own initiative, undertaken special measures to remedy or prevent degradation of the land,

reduce by an appropriate amount the rent that would otherwise be payable under the lease in respect of any particular year.

(7) The Board is responsible for issuing and sending to lessees annual rent accounts.

(8) The Board may, for the purposes of administrative efficiency, fix a common day by which the rent under all pastoral leases must be paid in each year and, for that purpose, rent accounts for a period greater or less than a year may be sent to lessees.

(9) A rent account must be accompanied by or include—

- (a) a copy of the Valuer-General's notice of determination if a new determination has been made since the last rent account sent to the lessee; and
- (b) an explanation of any debits or credits shown on the account; and
- (c) a statement of the reasons for any reduction, waiver or deferment of rent pursuant to this section.

(10) The Minister may, on the recommendation of the Board, and if the Minister is satisfied that a case of hardship exists, waive or defer payment of any amount of the rent due and payable under a pastoral lease, subject to such conditions (if any) as the Board recommends.

**Term of pastoral leases**

**24.** (1) Subject to subsection (2), a pastoral lease will be granted for a term of 42 years.

(2) Where a lessee surrenders two or more pastoral leases for the purposes of merger of the leases, the term of the lease to be granted to the lessee will be such term as the Board, having regard to the terms of the surrendered leases, thinks appropriate.

**Extension of term of pastoral leases**

**25.** (1) Subject to this Act, the Board will, by notice in writing given to the lessee in the last year of each 14 year period of the term, extend the term of a pastoral lease by a period of 14 years.

(2) The Board must cause an assessment of the condition of the land comprised in a pastoral lease to be carried out before commencing to consider the extension of the term of the lease.

(3) The Board has a discretion not to extend the term of a pastoral lease if satisfied—

- (a) that there has been a wilful breach of a condition of the lease resulting in, or likely to result in, degradation of the land; or
- (b) that the lessee has, without reasonable excuse, failed to discharge a duty imposed by section 7.

(4) If the Board refuses to extend the term of a pastoral lease, the lessee may at any time apply to the Board for extension of the term of the lease.

(5) If the Board is satisfied on an application under subsection (4) that grounds for refusal no longer exist, it may extend the term of the lease by such period as will bring the balance of the term to 42 years.

**Variation of land management conditions**

**26.** (1) The Board may, by notice in writing to the lessee, vary the land management conditions of a pastoral lease to take effect at the commencement of the next 14 year period of the term of lease.

(2) The Board cannot vary the conditions of a lease pursuant to subsection (1) unless—

- (a) the assessment of the condition of the land required by this Act has been completed; and
- (b) the notice to the lessee is given at least four months before the variation will take effect; and
- (c) the lease conditions as varied by the Board are accepted by the lessee.

(3) If the lessee does not accept the variation of the lease conditions, the term of the pastoral lease will not be extended.

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(4) Any variation of the conditions of a pastoral lease must accord with the terms of any property plan that has been approved in respect of the lease.

**Exemption from stamp duty**

27. The grant of a pastoral lease or extension of the term of a lease is exempt from stamp duty.

**Dealing with pastoral leases**

28. (1) Subject to the conditions of the lease, the interest of the lessee under a pastoral lease cannot be transferred, assigned, mortgaged, sublet or otherwise dealt with without the consent of the Minister.

(2) The Minister must not unreasonably or capriciously refuse or withhold consent under subsection (1).

(3) Where a lessee transfers or assigns his or her interest under a pastoral lease, all accrued and accruing liabilities pass to the transferee or assignee.

(4) Any such liabilities that had accrued before the date of the transfer or assignment may be enforced against the transferor or assignor (who will be regarded as jointly and severally liable with the transferee or assignee).

(5) A pastoral lease can be wholly or partially surrendered with the consent of the Minister (which may be unconditional or subject to conditions) and, subject to subsection (6), the consent of all persons who have a registered interest in or caveat over the lease.

(6) If it appears to the Minister that a consent has been unreasonably withheld, the Minister may accept the surrender despite the absence of that consent.

(7) Where the surrender of a pastoral lease is conditional on the granting of an interest in the land to the lessee or any other person, an interest or caveat registered on the lease continues in force and will be endorsed on the new lease or other documents of title, unless the holder of the interest or caveat consents to its discharge.

(8) Where the surrender of a pastoral lease is not conditional on the granting of an interest in the land to the lessee or any other person, the land reverts to the Crown freed from all encumbrances and claims.

**Agreements to deal with a lease**

29. Where an agreement is entered into under which the parties agree to transfer, assign, mortgage, sublet or otherwise deal with a pastoral lease, the agreement will expire 12 months after its execution unless the consent of the Minister to the transfer, assignment, mortgage, subletting or other dealing has been obtained.

**Consent to certain share transfers in pastoral company**

30. (1) Where a company—

(a) is a lessee under a pastoral lease; or

(b) is a party to an agreement for the transfer, assignment, mortgage or subletting of a pastoral lease to the company,

no change in the ownership of the shares of the company can be effected without the prior consent of the Minister, if the change in ownership would result in a controlling interest in the company being held by some person, or by some other person than the present holder of such an interest.

(2) Subsection (1) does not apply to a change in ownership of shares effected by a will or other testamentary disposition.

#### **Alteration of boundaries**

**31.** (1) If the Board is satisfied that the boundary of land subject to a pastoral lease does not reflect the land actually occupied by the lessee, the Minister may, by notice in writing to the lessee, alter the boundary accordingly.

(2) The Minister may, in the same notice, vary the rent payable under the lease to take into account the increase or reduction in value of the lease that results from the alteration of the boundary.

(3) On registration by the Registrar-General of a boundary alteration pursuant to this section—

(a) the alteration takes effect; and

(b) all registered interests or caveats to which the pastoral lease is subject extend over the lease as so altered.

#### **Resumption of land**

**32.** (1) The Minister may, by notice in the *Gazette*, resume any pastoral land.

(2) Before a notice is published under subsection (1), the Minister must give written notice of intention to resume to the lessee under the pastoral lease affected by the proposal.

(3) The resumption takes effect on a day specified in the notice in the *Gazette*, which must be a day falling at least six months after the date on which that notice is given.

(4) Where the whole of the land subject to a pastoral lease is resumed, the resumption operates to cancel the lease.

(5) Where part only of the land subject to a pastoral lease is resumed—

(a) the area of land resumed is excised from the area to which the lease formerly applied; and

(b) the lease continues to apply to the remainder of that land subject to—

(i) any variation of its conditions specified in the notice;

(ii) any variation of its conditions determined by the Tribunal on the application of the lessee (and any such variation may, according to the Tribunal's determination, operate in addition to or in substitution of a variation under subparagraph (i)).

#### **Abandonment of land**

**33.** If land subject to a pastoral lease has been abandoned, the Board may cancel the lease.

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**Vacation of land**

**34.** (1) Where the lessee or former lessee under a pastoral lease vacates the land leaving behind property, the Minister may, by notice in writing, require him or her to remove the property within a stipulated period.

(2) If the notice is not complied with within the stipulated period, the Minister may remove and dispose of the property.

(3) Any costs incurred by the Minister under subsection (2) that are not covered by the proceeds (if any) of the sale of the property may be recovered as a debt from the person to whom the notice under subsection (1) was given.

(4) Any surplus proceeds of the sale of the property must be paid to the lessee or former lessee.

**Penalties for late payment of rent**

**35.** (1) The Minister may, by notice in the *Gazette*—

(a) fix a scale of penalties to be paid by lessees for late payment of rent or any other amount due under pastoral leases;

(b) vary or revoke a scale previously fixed under this section.

(2) Any such penalty will be regarded as an amount that is due and payable under the pastoral lease.

(3) The Board may, for proper reasons, remit a penalty under this section in whole or part.

**Waiver**

**36.** The Board may, if it thinks special reason exists for doing so, waive a breach of, or non-compliance with, a condition of a pastoral lease unconditionally or subject to conditions.

**Cancellation of lease or imposition of fine on breach of conditions**

**37.** (1) Subject to subsection (2), the Board may—

(a) impose a fine on the lessee under a pastoral lease of an amount not exceeding \$10 000;  
or

(b) cancel a pastoral lease,

if satisfied that a breach of a condition of the lease has occurred.

(2) The Board cannot cancel a pastoral lease unless satisfied—

(a) that the lessee has been allowed a reasonable opportunity to make good the breach but has failed to do so; or

(b) that cancellation is necessary in order to prevent, arrest or minimise damage to or deterioration of the land.

(3) On cancelling a pastoral lease under this section, the Board may—

(a) order that the lessee or the holder of any registered interest in or caveat over the lease be compensated for loss suffered as a result of the cancellation to such extent as the board thinks fit (but the total amount payable under all such orders must not exceed the market value of the lessee's interest less the costs incurred by the Board in taking action under this section); or

(b) make such incidental or ancillary orders as it thinks fit.

(4) On cancellation of a pastoral lease under this section, the land is freed from all encumbrances and claims.

(5) Fines imposed under this section—

(a) are payable by the Board into the Consolidated Account; and

(b) if unpaid, may be recovered by the Board from the lessee as a debt.

#### **Cancellation of pastoral lease obtained by false statement**

**38.** The Board may cancel a pastoral lease if satisfied that the lease was obtained under this Act by a false declaration or statement.

#### **Compensation**

**39.** (1) A lessee is entitled to compensation on—

(a) resumption of pastoral land; or

(b) expiry of a lease pursuant to a refusal to extend its term under section 25 or 26.

(2) The amount of the compensation—

(a) will be determined by agreement between the Minister and the lessee or, in default of agreement, by the Land and Valuation Court; and

(b) must be based on the market value of the pastoral lease as if the lease were not being resumed or were not expiring but had been duly extended in accordance with this Act.

#### **Notice of adverse action to be given to holders of registered interests or caveats**

**40.** (1) The Board or the Minister (as the case may require) must—

(a) before resuming any pastoral land; or

(b) before cancelling a lease pursuant to this Part; or

(c) on making a decision under this Part not to extend the term of a lease,

give written notice of the action to all persons who have a registered interest in or caveat over the lease.

(2) Notice of a proposed resumption or cancellation must be given at least 14 days before the proposal is implemented.

## Part 5—Land management and protection

### Property plans

**41.** (1) If the Board is of the opinion that pastoral land has, from any cause, been damaged, or is likely to suffer damage or deteriorate, and that in order to prevent, arrest or minimise damage to or deterioration of the land, or to rehabilitate the land, it is necessary that action under this section be taken, the Board may, by notice in writing to the lessee, require the lessee—

- (a) to submit to the Board a plan (a "**property plan**") detailing the proposed management of the pastoral land over a specified period; or
- (b) to submit to the Board a revised property plan,

in accordance with the terms of the notice.

(2) The Board must not, in exercising its powers under subsection (1), act capriciously or vexatiously.

(3) A property plan must contain such information as the Board may require.

(4) The Board may—

- (a) approve, by endorsement, a property plan or revised property plan; or
- (b) refer the plan back to the lessee for modification; or
- (c) reject the plan and—
  - (i) require, by notice in writing, the lessee to submit a fresh plan; or
  - (ii) prepare (or revise, as the case may be) a property plan itself and recover the cost of doing so from the lessee as a debt.

(5) If a lessee fails to comply with a notice under subsection (1) or (4), the Board may prepare a property plan or revised property plan in respect of the pastoral land and recover the cost of doing so from the lessee as a debt.

(6) A property plan or revised property plan prepared by the Board pursuant to subsection (4) or (5) will be taken to be an approved property plan for the land to which it relates.

(7) The Board may, by endorsement, approve a property plan voluntarily submitted to the Board by a lessee.

(8) An approved property plan may, with the approval of the Board, be varied by the lessee.

(9) A property plan or revised property plan must be prepared in consultation with the soil conservation authority for the area in which the pastoral land to which the plan relates is located.

(9a) Where a proposed property plan (including a property plan prepared or revised by the Board) includes or will include an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Board must not approve the plan or prepare or revise it without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.

(10) If a lessee fails, without reasonable excuse—

(a) to comply with a notice under subsection (1) or (4); or

(b) to implement an approved property plan,

the failure constitutes a breach of the conditions of the pastoral lease.

### Verification of stock levels

**42.** (1) The lessee under a pastoral lease must, not later than 30 April in each year, furnish the Board with a statutory declaration as to stock levels on the pastoral land.

(2) For the purpose of ascertaining at any time the amount of stock on pastoral land, or on any particular area of pastoral land, the Board may, by notice in writing to the lessee—

(a) require the lessee to furnish the Board, within a specified time, with a statutory declaration as to stock levels on the land; or

(b) require the lessee to muster stock in accordance with the terms of the notice in order to allow a person authorised by the Minister to count the stock.

(3) A statutory declaration furnished pursuant to this section must contain such information as the Board may require.

(4) If a lessee fails to comply with a notice under subsection (2)(b), the Board may cause the muster to be carried out and, subject to subsection (5), may recover the cost of doing so from the lessee as a debt.

(5) If a muster carried out pursuant to this section verifies that the stock levels as declared by the lessee in accordance with this section were accurate, the cost of carrying out the muster will be borne by the Crown.

(6) A declaration as to stock levels will be taken to be accurate if a subsequent muster finds that the numbers of stock on the land are less than or do not exceed by more than 10 per cent the declared levels.

(7) If a lessee fails, without reasonable excuse, to comply with a requirement of, or notice under, this section, the failure constitutes a breach of the conditions of the pastoral lease.

### Notices to destock or take other action

**43.** (1) If the Board is of the opinion that pastoral land has, from any cause, been damaged, or is likely to suffer damage or deteriorate, and that in order to prevent, arrest or minimise damage to or deterioration of the land, or to rehabilitate the land, it is necessary that action under this section be taken, the Board may, by notice in writing to the lessee, require the lessee to do any one or more of the following:

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- (a) remove a specified number of stock from the land or a particular part of the land;
- (b) keep the amount of stock on the land or a particular part of the land to a specified level, or to keep no stock at all on that land;
- (c) carry out specified improvements to or land treatment works on the land;
- (d) adopt or desist from specified land management practices,

in accordance with the terms of the notice.

(2) A notice under subsection (1) may provide—

- (a) that it is to have effect for a specified period; or
- (b) that it is to have effect until the Board, on the application of the lessee, directs that the notice cease to operate.

(2a) Where the Board proposes to issue or vary a notice under subsection (1) that would require a lessee to undertake an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Board must not issue or vary the notice without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.

(3) The Board may, by notice in writing to the lessee, vary or revoke a notice under this section.

(4) If a lessee fails to comply with a notice under subsection (1), the Board may cause the required action to be carried out and may recover the cost of doing so from the lessee as a debt.

(5) If a lessee fails to comply with a notice under subsection (1), the failure constitutes a breach of the conditions of the pastoral lease.

**Reference areas**

**44.** (1) The Board may, by notice in the *Gazette*, declare a specified area of pastoral land to be a reference area for the purposes of evaluating the effect that the grazing of stock has on the land.

(2) A reference area—

- (a) cannot exceed one square kilometre in size; and
- (b) will, where necessary, be fenced by the Minister.

(3) A lessee is not obliged to maintain a reference area or its fences, subject to any agreement between the lessee and the Minister to the contrary.

(4) The lessee of pastoral land on which a reference area is established—

- (a) must not, if the area is fenced, allow any stock within the reference area; and

- (b) must, if the Board so requires, inspect the area and its fences and make reports to the Board in accordance with the directions of the Board.

Maximum penalty: \$5 000.

- (5) The Board may, by notice in the *Gazette*, vary or revoke a notice under this section.

(6) The lessee of pastoral land on which a reference area is established is not entitled to compensation for any reduction in the value of the lease resulting from the establishment of the reference area, but any such reduction in value will be taken into account when the lease is next revalued for the purposes of rent determination.

**Part 6—Access to pastoral land****Division 1—Public access routes and stock routes****Establishment of public access routes and stock routes**

**45.** (1) A public access route is a route dedicated as a public access route pursuant to this section.

(2) A stock route is a route—

- (a) delineated as a stock route on a prescribed plan; or
- (b) dedicated as a stock route pursuant to this section.

(3) The Board may, by notice in the *Gazette*—

- (a) dedicate delineated routes over pastoral land as public access routes or stock routes, or both; or
- (b) vary or revoke a notice under this section.

(4) A map in a notice published under this section must also show all public roads that cross the pastoral land, and all stock routes delineated on a prescribed plan that cross the land.

(5) A notice must not be published under this section unless—

- (a) the proposal to be implemented by the notice has been published in a newspaper circulating generally in the State inviting members of the public to comment on the proposal within a specified period of not less than three months; and
- (b) the Board has considered any such comments; and
- (c) the Board has consulted with—
  - (i) all pastoral lessees affected by the proposal; and
  - (ii) the soil conservation authority for the area within which the public access route or stock route lies; and
  - (iii) such organisations as the Board believes have an interest in the matter.

(6) Subsection (5) does not apply in relation to the temporary closure of a public access route or stock route, or any part of such a route, pursuant to subsection (7).

(7) On being satisfied, on the application of a lessee, that it is necessary to do so for the purposes of the safety of the public, the management of stock or the carrying out of rehabilitative work on land adjacent to the route, the Board may, by notice in the *Gazette*, temporarily close a public access route or a stock route, or a part of such a route and, for that purpose, may require the lessee to erect such signs or barriers as the Board thinks fit for the purpose of warning the public of the closure.

(8) If a public access route or a stock route as delineated on a prescribed plan or on a map published under this section differs from the route as it exists on the ground or as marked out on the ground, the latter prevails.

(9) On a public access route or stock route being established—

- (a) the lessee's rights under the pastoral lease over the land comprising the route cease; and
- (b) the care, control and management of the route is vested in the Minister,

but the Minister is not thereby obliged to maintain any such route.

(10) However, the Minister may, if of the opinion that an access route has suffered considerable damage as a result of it being used by members of the public, contribute towards the repair or maintenance of the route.

(11) A lessee of pastoral land over which a public access route or stock route is established is not obliged and cannot be required to keep stock off the route, and may use the route for the purposes of droving stock.

(12) The lessee of pastoral land over which a public access route or stock route is established is not entitled to compensation for any reduction in the value of the lease resulting from establishment of the route, but any such reduction in value will be taken into account when the lease is next revalued for the purposes of rent determination.

## Division 2—Travelling stock

### Travelling with stock

**46.** (1) A person may, after giving notice in accordance with the regulations to the lessee of pastoral land, travel with stock across the land.

(2) Where the predominant purpose of a person exercising the powers conferred by subsection (1) is to obtain feed for the stock from land comprised in the lease, that person is liable to pay compensation to the lessee in accordance with the regulations.

(3) A person who exercises powers conferred by this section—

(a) must—

- (i) if there is a stock route across the land—use the stock route;
- (ii) if there is no such stock route—use a route directed by the lessee;
- (iii) in the absence of a stock route and directions from the lessee—use the most direct practicable route; and

(b) must travel the stock across the land—

- (i) in the case of sheep—not less than 8 kilometres each day;
- (ii) in the case of cattle—not less than 16 kilometres each day; and

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- (c) must comply with any conditions imposed by the regulations.

Maximum penalty: \$1 250.

(4) If pastoral land is fenced, the lessee must, for the purpose of facilitating the exercise of rights conferred by this section—

- (a) provide a gate or other means of access at any point at which the fence is intersected by a stock route; and
- (b) provide such other gates or other means of access as are necessary so that the length of fence between points of access does not exceed 16 kilometres.

Maximum penalty: \$1 250.

**Division 3—Public access**

**Rights of Aborigines**

**47.** (1) Despite this Act or any pastoral lease granted under this Act or the repealed Act, but subject to subsection (2), an Aborigine may enter, travel across or stay on pastoral land for the purpose of following the traditional pursuits of the Aboriginal people.

(2) Subsection (1) does not give an Aborigine a right to camp—

- (a) within a radius of one kilometre of any house, shed or other outbuilding on pastoral land; or
- (b) within a radius of 500 metres of a dam or any other constructed stock watering point.

**Right to travel across and camp on pastoral land**

**48.** (1) Subject to this Act, a person may travel (by any means) or camp temporarily on a public access route.

(2) Subject to this Act, a person may, on giving oral or written notice to the lessee, travel across pastoral land (otherwise than on a public access route) by any means other than a motor vehicle, a horse or a camel and, in the course of so travelling, camp temporarily on the land.

(3) Subject to this Act, a person may, with the consent of the lessee or the Minister, travel across pastoral land (otherwise than on a public access route) by means of a motor vehicle, a horse or a camel and, in the course of so travelling, camp temporarily on the land.

(4) This section does not give a person the right to camp—

- (a) within a radius of one kilometre of any house, shed or other outbuilding on the land; or
- (b) within a radius of 500 metres of a dam or any other constructed stock watering point on the land.

(5) A person who proposes to travel across or camp on pastoral land in the manner referred to in subsection (3) must first seek the lessee's consent to the proposal and the lessee may refuse that consent if of the opinion that it is necessary to do so for the purposes of the safety of the public, the management of stock or the carrying out of rehabilitative work on the land or for any other good and sufficient reason.

(6) If the lessee refuses to consent to a proposal under subsection (5), the person may seek the Minister's consent to the proposal.

(7) The Minister may, without consulting the lessee, consent to the proposal but, if the Minister consents to the proposal without consulting the lessee, the proposal cannot be carried out until the Minister has notified the lessee that consent has been given.

(8) The Minister incurs no liability by virtue of giving consent to a proposal to travel across or camp on pastoral land.

(9) For the purposes of this section, camping is temporary if it is for a period not exceeding two weeks or, if some other greater or lesser period is prescribed in respect of a particular area, that period in relation to camping in that area.

**Public access not to be obstructed**

**49.** (1) A person must not, without lawful authority, place any obstruction across a public access route or stock route.

Maximum penalty: \$1 250.

(2) If any pastoral land over which a public access route is established is fenced, the lessee—

- (a) must provide a gate or other means of access at the point of intersection; and
- (b) must keep any such gate unlocked.

Maximum penalty: \$1 250.

## **Part 7—Appeals**

### **Division 1—The Tribunal**

#### **Establishment of the Tribunal**

**50.** (1) The *Pastoral Land Appeal Tribunal* is established.

(2) The Tribunal will be constituted of—

- (a) a District Court Judge nominated by the Senior Judge as a Judge of the Tribunal; and
- (b) two experts chosen by the Judge from the panel of experts established under subsection (3).

(3) The Governor will establish, in accordance with the regulations, a panel of experts (comprising experts in such fields as the Governor considers appropriate) from which members of the Tribunal may be drawn.

(4) If a person ceases to be a member of the panel through expiry of a period of office, the person may nevertheless continue as a member of the Tribunal for the purpose of completing part-heard proceedings.

(5) There will be a Registrar of the Tribunal.

#### **Determination of questions**

**51.** (1) Any question of law or procedure arising before the Tribunal will be determined by the Judge and any other question by unanimous or majority decision of the members.

(2) The Tribunal must act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

#### **Powers and procedures of the Tribunal**

**52.** (1) The Tribunal may, for the purposes of proceedings before the Tribunal—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance of a person before the Tribunal or at a conference; or
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the production before the Tribunal of any relevant books, papers or documents; or
- (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit and makes copies of any of them or any of their contents; or
- (d) require any person to make an oath or affirmation to answer truly all questions put by a member of the Tribunal, or a person appearing before the Tribunal, relating to a matter before the Tribunal; or
- (e) require any person appearing before the Tribunal to answer any relevant questions put by a member of the Tribunal or by a person appearing before the Tribunal.

(2) Subject to subsection (3), a person who—

- (a) has been served with a summons to appear before the Tribunal or at a conference and fails, without reasonable excuse, to attend in obedience to the summons; or
- (b) has been served with a summons to produce books, papers or documents and fails, without reasonable excuse, to comply with the summons; or
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal, or interrupts the proceedings of the Tribunal; or
- (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Tribunal,

is guilty of an offence.

Maximum penalty: \$10 000.

(3) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before a District Court.

(4) The Tribunal cannot allow non-party intervention in proceedings before the Tribunal.

(5) The Registrar must give the parties to proceedings reasonable notice of the time and place of the proceedings.

(6) A party is entitled to appear before the Tribunal personally or by counsel or other representative.

(7) Counsel for the parties to proceedings are not entitled to attend a compulsory conference.

(8) A party must be allowed a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Tribunal.

(9) A witness will, unless the Tribunal otherwise determines, be allowed witness fees in accordance with a prescribed scale or, if a scale has not been prescribed, with the scale applicable to civil proceedings in the District Court.

(10) The Tribunal may make a determination in any proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear but failed to do so.

(11) The Tribunal may make orders for costs in accordance with a prescribed scale against—

- (a) the Minister or the Board; or
- (b) any other party to proceedings,

but an order cannot be made under paragraph (b) unless the Tribunal is satisfied that the party's conduct in relation to the proceedings was frivolous, vexatious or calculated to cause delay.

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(12) At the conclusion of proceedings, the Tribunal must furnish the parties with a written statement of the reasons for its decision.

**Compulsory conferences**

**53.** (1) Before the Tribunal commences to hear an appeal, the Registrar must convene a conference between the parties to the proceedings for the purpose of attempting to resolve the matters in dispute.

(2) A member of the Tribunal will preside over a conference, but the member who so presides cannot be a member of the Tribunal as constituted for the purpose of hearing the appeal.

(3) Subject to subsection (4), evidence of anything said or done in the course of a conference under this section is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.

(4) The person presiding over a conference under this section must report to the Tribunal on whether a settlement was reached at the conference and, if so, the terms of the settlement and the Tribunal may, without further inquiry, make such determination or order as may be necessary to give effect to the settlement.

**Division 2—Right of appeal to Tribunal**

**Appeal against certain decisions**

**54.** (1) A lessee who is dissatisfied with—

- (a) a decision to vary the conditions of a pastoral lease; or
- (b) a decision not to extend the term of a pastoral lease; or
- (c) a decision under section 41 (property plans); or
- (d) a decision under section 45 (establishment of access routes); or
- (e) a refusal of consent to a transfer, assignment, mortgage, subletting or other dealing with a pastoral lease; or
- (f) a decision to cancel a pastoral lease or impose a fine on a lessee for breach of lease conditions,

may appeal to the Tribunal against the decision.

(2) An appeal under this section must be instituted within three months after notification of the decision to the lessee.

(3) On an appeal, the Tribunal must review the decision the subject of the appeal and may—

- (a) confirm the decision; or
- (b) vary or revoke the decision; or
- (c) substitute its own decision.

(4) The Tribunal must, in determining an appeal, have regard to the objects of this Act.

### **Operation of certain decisions pending appeal**

**55.** (1) Subject to this section, a decision against which a right of appeal lies continues to operate despite that right of appeal or the institution of appeal proceedings.

(2) A decision to cancel a pastoral lease or to impose a fine on a lessee for breach of lease conditions cannot be implemented or enforced until the period for instituting an appeal has elapsed or, if an appeal has been instituted, the appeal has been determined or withdrawn.

(3) The operation of a decision against which an appeal has been instituted may, on the application of the lessee, be suspended by the Tribunal pending the determination of the appeal.

## **Division 3—Review of valuation and right of appeal to Land and Valuation Court**

### **Right of review or appeal**

**56.** (1) A lessee who is dissatisfied with a determination by the Valuer-General of the annual rent for his or her pastoral lease may, within 3 months of receiving a copy of the notice of determination—

- (a) apply to the Valuer-General for review of the determination; or
- (b) appeal to the Land and Valuation Court against the determination.

(1a) The Valuer-General must, on the written request of a lessee who is dissatisfied with a determination of annual rent, endeavour to resolve the matter informally by conferring with the lessee, whether or not the lessee has lodged an application for review under subsection (1).

(2) An application under subsection (1)(a) must be made, and will be dealt with, in accordance with the *Valuation of Land Act 1971*, as if it were an application for review of a valuation under that Act.

(3) If a lessee or the Valuer-General is dissatisfied with the decision of a land valuer on a review under subsection (2), he or she may, within one month of receiving notification of the decision, appeal to the Land and Valuation Court against the decision.

(4) An appeal under this section must be instituted in accordance with rules of court.

(5) On an appeal under this section, the Land and Valuation Court must review the determination or decision the subject of the appeal and may—

- (a) confirm the determination or decision; or
- (b) vary or revoke the determination or decision; or
- (c) substitute its own determination or decision,

and may make such orders in relation to incidental or ancillary matters as it thinks fit.

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**Part 8—Miscellaneous**

**Misuse of pastoral land**

**57.** (1) A person who, without lawful authority or excuse—

- (a) occupies pastoral land; or
- (b) brings animals onto pastoral land or causes or permits animals (for which the person is responsible) to enter or remain on pastoral land; or
- (c) damages or interferes with pastoral land, or anything on pastoral land; or
- (d) cuts down, lops branches from or otherwise damages any living tree or bush on pastoral land; or
- (e) pollutes any water on the land, whether stored or a natural source of water; or
- (f) deposits litter or abandons any goods on pastoral land; or
- (g) erects or places any structure on pastoral land; or
- (h) hunts or shoots on pastoral land,

is guilty of an offence.

Maximum penalty: \$10 000.

Expiation fee: \$315.

(2) In proceedings for an offence against subsection (1), the onus of proving lawful authority or excuse lies on the defendant.

**Notice to be given of cattle muster**

**58.** (1) Subject to subsection (2), a person must not muster cattle on pastoral land outside the dog fence unless at least 14 but not more than 28 days notice in writing of the proposed muster has been given to the occupiers of adjacent land.

(2) Subsection (1) does not require notice to be given to a particular occupier of adjacent land if an agreement, approved by the Board, for the giving of some other form or period of notice exists between the person proposing to muster and that occupier.

Maximum penalty: \$1 250.

**Right to take water**

**59.** (1) A person exercising a right of access to or through pastoral land pursuant to this Act—

- (a) may take water from any natural source or storage point on the land, but only so much as is sufficient for his or her personal or domestic needs; and
- (b) in the case of a person travelling with stock, may permit the stock access to water on the land, subject to compliance with such directions as the lessee may give.

(2) The holder of a mining tenement over pastoral land may, with the approval of the Board, take reasonable quantities of water from any natural source or storage point on the land for mining, personal or domestic purposes, but not so as to deprive the lessee of the water necessary for all of the lessee's purposes.

(3) A person who takes water pursuant to subsection (2) is liable to pay compensation to the lessee in accordance with the regulations.

(4) Subsections (1) and (2) do not entitle a person to take water from a domestic rainwater tank.

(5) This section is subject to the *Water Resources Act 1997*.

### Policing powers

**60.** (1) An authorised officer may—

- (a) require any person who is on pastoral land without lawful authority or excuse to leave the land;
- (b) require any person reasonably suspected of having committed an offence in relation to pastoral land to state his or her name and address;
- (c) arrest any person on pastoral land who is reasonably suspected of having committed an offence in relation to pastoral land.

(2) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.

Maximum penalty: \$2 500.

(3) A person arrested under this section must be taken as soon as practicable to the nearest police station.

### Powers of entry etc

**61.** (1) Subject to this section, an authorised officer, a member of the Board, the Minister or any other person authorised by the Minister for the purpose may, at any reasonable time, exercise any of the following powers in relation to pastoral land:

- (a) enter the land;
- (b) carry out an inspection of the land;
- (c) take samples from the land;
- (d) take photographs;
- (e) carry out work authorised by the Board pursuant to this Act on the land.

(2) A person cannot exercise powers under subsection (1) unless reasonable notice has been given to the lessee, orally or in writing, but no such notice need be given in the following circumstances:

- (a) where it is not practicable to do so; or

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(b) where the person believes on reasonable grounds that an offence has been, is being or is about to be committed on the land, or that a breach of the conditions of the pastoral lease has occurred or is occurring.

(3) An authorised officer or person may seize any animals found trespassing on pastoral land.

(4) Any such animals will be impounded, sold or destroyed in accordance with policies determined by the Minister.

(5) A person exercising powers under this section may be accompanied by such assistants as are reasonably necessary in the circumstances.

(6) An authorised officer or other person must at the request of the lessee, or an agent of the lessee, produce for the inspection of that person a certificate or other proof of his or her authority to exercise the powers conferred by this section.

**Act does not derogate from Mining Act, Opal Mining Act or Petroleum Act**

**62.** Nothing in this Act derogates from the operation of the *Mining Act 1971*, the *Opal Mining Act 1995* or the *Petroleum Act 1940* or of a tenement granted under any of those Acts.

**Offence of hindering or obstructing person exercising powers under this Act**

**63.** (1) A person who intentionally hinders or obstructs a person acting in the exercise of powers conferred by this Act is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(2) A person who addresses offensive language to a person acting in the exercise of powers conferred by this Act is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(3) A person who assaults a person acting in the exercise of powers conferred by this Act is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

**Protection from personal liability**

**64.** (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against the person, lies instead against the Crown.

**Duty of Registrar-General**

**65.** (1) The Registrar-General will—

(a) issue such pastoral leases; or

(b) cancel such pastoral leases; or

- (c) make such endorsements on pastoral leases or other instruments,

as may be necessary or expedient for the purposes of the administration of this Act.

(2) The reference in this section to the issuing of a pastoral lease extends to any process (including an electronic process) under which a pastoral lease is brought into existence.

#### **Certain debts are charges over leases**

**66.** Where pursuant to this Act the Board may recover from a lessee the costs incurred by the Board in taking action under this Act, the amount from time to time due and payable by the lessee is a charge over the pastoral lease, ranking in priority before all other charges or mortgages (other than a charge or mortgage in favour of the Crown or a Crown instrumentality).

#### **Service of notices**

**67.** A written notice required or authorised by this Act to be given to a person may be given as follows:

- (a) by personal service on the person or an agent of the person;
- (b) by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years;
- (c) by serving it by post on the person or an agent of the person;
- (d) if the whereabouts of the person is unknown—by affixing it in a prominent position on the land to which it relates, or publishing a copy of it in a newspaper circulating generally throughout the State.

#### **Evidentiary provision**

**68.** In any proceedings—

- (a) a certificate apparently signed by the Minister or the Chief Executive of the Department responsible to the Minister for the administration of this Act that specified land is or is not—
- (i) pastoral land; or
- (ii) a public access route; or
- (iii) a stock route; or
- (iv) a reference area,

will be accepted, in the absence of proof to the contrary, as proof of the matter certified;

- (b) a map or plan apparently signed by or on behalf of the Surveyor-General will be accepted, in the absence of proof to the contrary, as an accurate map or plan of the land to which it relates;

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- (c) a certificate of value apparently signed by or on behalf of the Valuer-General will be accepted, in the absence of proof to the contrary, as proof of the value of the pastoral lease to which it relates as at the date of the certificate;
- (d) a certificate as to a delegation apparently signed by a body or person who has a power of delegation under this Act will be accepted, in the absence of proof to the contrary, as proof of the delegation;
- (e) a document appearing to be a copy of an order of the Tribunal and signed by the Registrar of the Tribunal will be accepted, in the absence of proof to the contrary, as a true copy of the order.

**General defence**

**69.**

\* \* \* \* \*

(2) In any proceedings for an offence against this Act it is a defence for the defendant to prove that, in the circumstances of the case, there was no failure on his or her part to take reasonable care to avoid commission of the offence.

**Regulations**

**70.** (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prohibit, regulate or restrict a specified activity or a specified class of activity on pastoral land generally, or on a specified area of pastoral land, or on public access routes or stock routes generally, or on a specified route or specified part of a route;
- (b) fix standard conditions or reservations for pastoral leases;
- (c) prescribe fees and provide for their recovery or waiver by the Minister;
- (d) prescribe fines, not exceeding \$1 250, for contravention of the regulations.

## Schedule—Transitional provisions

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4. A reference to "the Pastoral Board" in any Act or instrument will be taken (where the context admits) to be a reference to the Pastoral Board established under this Act.

5. (1) Subject to clause 6, a lease in force under the repealed Act immediately prior to the commencement of this Act becomes, on that commencement, and continues in force as, a pastoral lease under this Act with a term of 42 years running from that commencement.

(2) The conditions (including covenants) and reservations of such a lease are not affected by its conversion to a pastoral lease pursuant to subclause (1), with the following exceptions:

- (a) rent is payable in accordance with this Act;
- (b) no species of animal other than sheep or beef cattle can be pastured on the land as part of the commercial enterprise under the lease without the prior approval of the Board;
- (c) the reservations relating to aboriginal persons and access to the land will be taken to have been revoked.

(3) Despite sections 25 and 26 of the Act—

- (a) the question of the first extension of the term of a pastoral lease to which this clause applies and the variation (if at all) of its land management conditions must be dealt with, in accordance with those sections, no later than 31 December 2000; and
- (b) any such extension must be for such period as will bring the balance of the term of the lease to 42 years.

6. (1) Clause 5 does not apply to a lease in force under the repealed Act if—

- (a) the Governor has determined that the land subject to the lease should be set aside or used for some other more appropriate purpose; or
- (b) the Minister is satisfied that the land subject to the lease is no longer suitable for pastoral purposes,

and written notice has been given by the Minister to the lessee proposing resumption of the land or offering some other form of tenure of the land.

(2) An offer of alternative tenure, if not accepted by the lessee, lapses two years after it is made.

(3) The following provisions apply in relation to a lease referred to in subclause (1):

- (a) the lease continues in force despite the repeal of the repealed Act and will, subject to this Act, continue in force until expiry of its term;
- (b) this Act applies in relation to the lease as if it were a pastoral lease under this Act, but—
  - (i) the term of the lease cannot be extended; and
  - (ii) the conditions of the lease cannot (except by agreement with the lessee) be varied by the Board;
- (c) rent is payable in accordance with this Act;
- (d) the reservations in the lease relating to aboriginal persons and access to the land will be taken to have been revoked.

(4) On expiry of a lease to which this clause applies—

- (a) the lessee is entitled to compensation;

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- (b) compensation will be based on the market value of the lease as if the lessee were the holder of a pastoral lease; and
- (c) the amount of the compensation will be determined by agreement between the Minister and the lessee or, in default of agreement, by the Land and Valuation Court.

## APPENDIX

### LEGISLATIVE HISTORY

#### Repeals

The *Pastoral Land Management and Conservation Act 1989* repealed the following:

*Pastoral Act 1936*

#### Legislative History

*(entries in bold type indicate amendments incorporated since the last reprint)*

Long title:	amended by 64, 1998, s. 8 (Sched.)
Section 2:	repealed by 64, 1998, s. 8 (Sched.)
Section 3:	definition of "the Minister" repealed by 64, 1998, s. 8 (Sched.) definition of "unimproved value" inserted by 64, 1998, s. 2
Section 8:	amended by 64, 1998, s. 8 (Sched.)
Section 12(2):	amended by 9, 1996, s. 2(a)-(d); 64, 1998, s. 8 (Sched.)
Section 12(6):	amended by 9, 1996, s. 2(e)
Section 12(7):	amended by 9, 1996, s. 2(f)
Section 15(2):	amended by 64, 1998, s. 8 (Sched.)
Section 15(4):	substituted by 64, 1998, s. 3(a)
Section 15(5a) - (5c):	inserted by 64, 1998, s. 3(b)
Section 16(3):	amended by 64, 1998, s. 8 (Sched.)
Section 16(5):	amended by 64, 1998, s. 8 (Sched.)
Section 18A:	inserted by 64, 1998, s. 4
Section 22(1):	amended by 64, 1998, s. 8 (Sched.)
Section 23:	substituted by 64, 1998, s. 5
Section 28(6):	amended by 64, 1998, s. 8 (Sched.)
Section 37(5):	amended by 64, 1998, s. 8 (Sched.)
Section 41(9a):	inserted by 35, 1997, s. 22
Section 43(2a):	inserted by 35, 1997, s. 23
Section 44(4):	amended by 64, 1998, s. 8 (Sched.)
Section 45(10):	amended by 64, 1998, s. 8 (Sched.)
Section 46(3) and (4):	amended by 64, 1998, s. 8 (Sched.)
Section 47(1):	amended by 64, 1998, s. 8 (Sched.)
Section 49(1) and (2):	amended by 64, 1998, s. 8 (Sched.)
Section 52(2):	amended by 64, 1998, s. 8 (Sched.)
Section 55(1):	amended by 64, 1998, s. 8 (Sched.)
Section 56(1):	substituted by 64, 1998, s. 6(a)
Section 56(1a):	inserted by 64, 1998, s. 6(a)
Section 56(3):	amended by 64, 1998, s. 6(b)
Section 56(5):	amended by 64, 1998, s. 6(c), (d)
Section 57(1):	amended by 71, 1992, s. 3(1) (Sched.); 64, 1998, s. 8 (Sched.)
Section 58(2):	amended by 64, 1998, s. 8 (Sched.)
Section 59(5):	inserted by 35, 1997, s. 24
Section 60(2):	amended by 64, 1998, s. 8 (Sched.)
Section 62:	amended by 64, 1998, s. 8 (Sched.)
Section 63(1) and (2):	amended by 71, 1992, s. 3(1) (Sched.); 64, 1998, s. 8 (Sched.)
Section 63(3):	amended by 64, 1998, s. 8 (Sched.)
Section 68:	amended by 64, 1998, s. 8 (Sched.)

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Section 69(1):	repealed by 64, 1998, s. 8 (Sched.)
Section 70(2):	amended by 64, 1998, s. 8 (Sched.)
<b>Schedule</b>	
<b>Heading:</b>	<b>substituted by 44, 2003, s. 3(1) (Sched. 1)</b>
Divisions 1 and 2:	repealed by 64, 1998, s. 8 (Sched.)
<b>Division 3 heading:</b>	<b>repealed by 44, 2003, s. 3(1) (Sched. 1)</b>
Clause 3:	repealed by 64, 1998, s. 8 (Sched.)
Clause 2:	redesignated as cl. 4 by 64, 1998, s. 8 (Sched.)
Clause 4:	redesignated as cl. 5 by 64, 1998, s. 8 (Sched.)
Clause 5(1):	amended by 64, 1998, s. 8 (Sched.)
(previously clause 4(1))	
Clause 5(3):	amended by 64, 1998, ss. 7, 8 (Sched.)
(previously clause 4(3))	
Clause 5:	redesignated as cl. 6 by 64, 1998, s. 8 (Sched.)
Clause 6(1):	amended by 64, 1998, s. 8 (Sched.)
(previously clause 5(1))	
Clause 6(3):	amended by 64, 1998, s. 8 (Sched.)
(previously clause 5(3))	