

South Australia

## **Crown Land Management Bill 2008**

A BILL FOR

An Act to make provision for the disposal, management and conservation of Crown land; to make related amendments to certain other Acts; to repeal the *Crown Lands Act 1929*, the *Discharged Soldiers Settlement Act 1934*, the *Irrigation (Land Tenure) Act 1930*, the *Marginal Lands Act 1940*, the *Monarto Legislation Repeal Act 1980*, the *Port Pirie Laboratory Site Act 1922* and the *War Service Land Settlement Agreement Act 1945*; and for other purposes.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Crown Land Management Act 2008*.

#### 2—Commencement

5 This Act will come into operation on a day to be fixed by proclamation.

#### 3—Interpretation

(1) In this Act, unless the contrary intention appears—

*allotment* has the same meaning as in Part 19AB of the *Real Property Act 1886*;

*authorised officer* means—

- 10 (a) a police officer; or  
 (b) a person appointed as an authorised officer under this Act;

*condition* includes a covenant or provision of any kind;

*Court* means—

- 15 (a) in section 26—the Supreme Court; and  
 (b) in sections 38, 41 and 67—the Land and Valuation Court; and  
 (c) in section 68—the Administrative and Disciplinary Division of the District Court;

*Crown agency* means—

- 20 (a) a Minister of the Crown; or  
 (b) an officer or agent of the Crown; or  
 (c) a person or body subject to control or direction by the Crown or a Minister of the Crown; or  
 (d) a body—

- (i) of which the members or a majority of the members are appointed by the Governor or a Minister of the Crown; or
- (ii) that has a governing body of which the members or a majority of the members are appointed by the Governor or a Minister of the Crown; or
- (e) a body constituted by or under an Act and declared by proclamation to be a Crown agency for the purposes of this Act;

**Crown condition agreement** means an agreement relating to the use and management of land to which the agreement applies;

**Crown land** means—

- (a) unalienated Crown land; or
- (b) dedicated land; or
- (c) Crown leasehold land; or
- (d) land owned by, or under the control of, the Minister;

**Crown land register**—see section 72(1);

**Crown leasehold land** means land subject to a lease granted under this Act;

**custodian** means a person or body under whose care, control and management dedicated land has been placed;

**dedicated land** means land that has been dedicated for a purpose in accordance with section 18;

**Department** means the administrative unit for the time being charged with the administration of this Act;

**easement** includes a right-of-way;

**improvements** means houses and buildings, fixtures and other building improvements of any kind, fences, bridges, roads, tanks, wells, dams, fruit trees, bushes, shrubs and other plants planted or sown, whether for trade or other purposes, site improvements of any kind and any other actual improvements;

**land** includes an interest in, or right in respect of, land;

**Land and Valuation Court** means the Land and Valuation Court constituted under the *Supreme Court Act 1935*;

**land under the control of a Crown agency** means land placed under the care, control and management of a Crown agency under this or any other Act (but does not include land under the control of the Minister);

**land under the control of the Minister** means—

- (a) land placed under the care, control and management of the Minister under this or any other Act; or
- (b) land of a Crown agency if the agency has requested the Minister to assume, or has consented to the Minister assuming, control of the land; or
- (c) dedicated land not under the care, control and management of some other person or body;

***Murray-Darling Basin*** has the same meaning as in the *Murray-Darling Basin Act 1993*;

***pastoral lease*** means a lease under the *Pastoral Land Management and Conservation Act 1989*;

5 ***perpetual lease*** means a lease granted in perpetuity;

***registered***, in relation to Crown land that is not under the *Real Property Act 1886*, means registered or noted in the Crown land register;

***saleable improvements*** means improvements that—

- 10 (a) are capable of being removed from land; and  
(b) when removed from land, have a market value that exceeds the cost of removal;

***statutory encumbrance*** has the same meaning as in Part 19AB of the *Real Property Act 1886*;

***unalienated Crown land*** means all the land of the State other than the following:

- 15 (a) land granted, or contracted to be granted, in fee simple;  
(b) dedicated land;  
(c) Crown leasehold land;  
(d) land owned by, or under the control of, the Minister;  
(e) land owned by, or under the control of, a Crown agency,

20 and includes land that has reverted to the status of unalienated Crown land in accordance with this Act;

***variation*** of terms or conditions includes an addition or substitution, and to ***vary*** has a corresponding meaning;

25 ***waterfront land*** means Crown land that is comprised in an allotment that includes or abuts—

- (a) the high water mark on the seashore; or  
(b) the edge of any other navigable waterway or navigable body of water in the State.
- (2) For the purposes of this Act, land will be taken to have been ***declared surplus*** if the Minister has, by written instrument, declared that the land is no longer required for any government purpose.
- (3) Subject to subsection (4) if, under a provision of this Act, land reverts to the status of unalienated Crown land, that reversion operates to free the land of all encumbrances and claims and to cancel any easements appurtenant to the land.
- 35 (4) Subsection (3) does not operate so as to discharge—
- (a) any statutory encumbrances; or  
(b) any easements over the land or other encumbrances or claims (of any kind) that the Minister resolves to preserve under this subsection.

#### 4—Objects

The objects of this Act are as follows:

- (a) to provide administrative procedures for the efficient handling of Crown land transactions;
- (b) to encourage fair and transparent decision making in the allocation of unalienated Crown land;
- (c) to provide a system for the management of Crown land that achieves a balance between the social, economic and environmental needs of the community.

#### 5—Principles of Crown land management

(1) In exercising discretions under this Act, the Minister and other persons involved in the administration of this Act must give due consideration to the following principles of Crown land management:

- (a) that principles of ecologically sustainable land management be observed in the management and administration of Crown land;
- (b) that the objects and objectives of other relevant legislation be given due weight;
- (c) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

(2) For the purposes of this Act, the following are declared to be principles of ecologically sustainable land management:

- (a) that the use, development and protection of the environment should be managed in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being and for their health and safety while—
  - (i) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
  - (ii) safeguarding the life-supporting capacity of air, water, land and ecosystems; and
  - (iii) avoiding, remedying or mitigating any adverse effects of activities on the environment;
- (b) that proper weight should be given to both long-term and short-term economic, environmental, social and equity considerations in deciding all matters relating to environmental protection, restoration and enhancement.

#### 6—Act does not derogate from Mining Act, Opal Mining Act or Petroleum Act

Nothing in this Act derogates from the operation of the *Mining Act 1971*, the *Opal Mining Act 1995* or the *Petroleum Act 2000* or of a lease or licence granted under any of those Acts.

#### 7—Inconsistency with *Real Property Act 1886*

Where the provisions of this Act are inconsistent with the *Real Property Act 1886*, this Act prevails to the extent of the inconsistency.



## 8—Application of Act to pastoral leases

Except as provided in this Act, this Act does not apply to land subject to a pastoral lease.

## Part 2—Functions and powers of the Minister

### 9—Functions of the Minister

The functions of the Minister are—

- (a) to exercise control over, and grant interests in, unalienated Crown land and maintain a general oversight of the use of all Crown land; and
- (b) to monitor the operation and administration of this Act and keep administrative procedures under review to ensure that they are streamlined and efficient; and
- (c) to manage—
  - (i) all unalienated Crown land; and
  - (ii) all land owned by, or under the control of, the Minister,and to carry out work that is necessary or desirable for the development or conservation of that land; and
- (d) to monitor the condition of Crown leasehold land and land subject to a licence or Crown condition agreement under this Act and take appropriate action to ensure observance of the conditions of the lease, licence or agreement; and
- (e) at the request of a Crown agency, to provide management, advisory or other services to the agency in relation to its land; and
- (f) to carry out any other functions assigned to the Minister by or under this Act.

### 10—Advisory committees

- (1) The Minister may establish committees to provide advice on any matter affecting the administration of this Act.
- (2) A member of an advisory committee holds office on terms and conditions determined by the Minister.
- (3) The procedures to be observed in relation to the conduct of business of an advisory committee will be—
  - (a) as determined by the Minister; or
  - (b) insofar as the procedure is not determined under paragraph (a), as determined by the relevant committee.

### 11—Management committees

- (1) Subject to this section, the Minister may, by notice in the Gazette—
  - (a) constitute a management committee, in accordance with a constitution set out in the notice, to undertake the management of Crown land; and
  - (b) vary the constitution of such a committee; and

- (c) abolish such a committee and give directions for the disposal of its property.
- (2) A management committee constituted under subsection (1)—
  - (a) is a body corporate with the powers conferred on it by its constitution; and
  - (b) is subject to the direction and control of the Minister.
- 5 (3) The Minister must not constitute a management committee to undertake the management of Crown leasehold land or land that has a custodian other than the Minister without the consent of the lessee or custodian.

## **12—Management plans**

- 10 (1) Subject to this section, the Minister may develop, after appropriate public consultation, plans for the management of Crown land.
- (2) A management plan—
  - (a) should seek to promote the principles of ecologically sustainable land management; and
  - 15 (b) must be consistent with any relevant regional NRM plan adopted under the *Natural Resources Management Act 2004*.
- (3) A management plan developed under this section—
  - (a) may only relate to Crown leasehold land or land that has a custodian other than the Minister if the lessee or custodian consents to the plan relating to that land; and
  - 20 (b) must not require or permit the Minister to carry out work on such land except at the request, or with the consent, of the lessee or custodian.
- (4) The Minister will, in administering this Act, seek to implement the management plans developed under this section.

## **13—Minister's powers of acquisition**

- 25 (1) The Minister may, for the purposes of this or any other Act, acquire land by agreement or compulsorily.
- (2) The *Land Acquisition Act 1969* applies to the compulsory acquisition of land under this section.
- 30 (3) If the Minister acquires land subject to a Crown condition agreement, any determination of compensation must take into account—
  - (a) the conditions of the agreement; and
  - (b) the amount (if any) paid in consideration of the grant of the land.
- (4) The Minister may, for the purposes of this Act, acquire personal property located on land that is subject to acquisition under this section by agreement or compulsorily.
- 35 (5) The compulsory acquisition of personal property must be carried out in the prescribed manner.
- (6) An agreement for the acquisition of land or personal property by the Minister under this section may provide that the land or property is to be acquired by the Minister for no consideration.

#### **14—Minister's power to dispose of surplus lands of a Crown agency**

- (1) If land owned by a Crown agency has been declared surplus, the Minister may dispose of the land by transfer of the fee simple (and Part 3 Division 3 applies to such a transfer as if the land were Crown land).
- 5 (2) The Minister may execute any assurance, contract, deed or instrument that may be necessary to effect a transfer under this section.

#### **15—Authorised officers**

- (1) The Minister may appoint a person to be an authorised officer for the purposes of this Act.
- 10 (2) An appointment under this section may be made subject to conditions limiting the period during which, the area within which or the purposes for which the appointee may exercise the powers of an authorised officer.
- (3) Each authorised officer must be issued an identity card—
- (a) containing a photograph of the authorised officer; and
- 15 (b) stating any conditions of appointment limiting the authorised officer's appointment.
- (4) An authorised officer must produce the identity card for inspection before exercising the powers of an authorised officer under this Act in relation to any person.
- (5) The Minister may, at any time, revoke an appointment under this section, or vary or
- 20 revoke a condition of such an appointment or impose a further such condition.

#### **16—Delegation of Ministerial powers**

- (1) The Minister may delegate to a person (including a person for the time being holding or acting in a specified office or position) or body a function or power of the Minister under this or any other Act.
- 25 (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.
- 30 (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **Part 3—Dealing with Crown land**

#### **Division 1—Minister's land**

##### **17—Land owned by the Minister**

- 35 Except as specifically provided, nothing in this Part derogates from or affects the Minister's power to deal with land owned by the Minister.

## **Division 2—Dedication**

### **18—Dedicated land**

- (1) The Minister may, by instrument in writing, dedicate unalienated Crown land for a purpose specified in the instrument.
- 5 (2) The Minister must not dedicate land subject to a licence unless the Minister is satisfied that the dedication will not substantially detract from the licensee's use or occupation of the land.
- (3) If dedicated land is to be placed under the care, control and management of a person or body other than the Minister, the Minister must consult with that person or body  
10 before effecting the dedication.
- (4) The Minister may, by instrument in writing, alter the purpose for which land has been dedicated under this section.
- (5) The Minister must, before altering the purpose for which land has been dedicated  
15 under this section, consult with any person who has an interest in, or rights in relation to, the land.
- (6) The Minister must not grant an interest or rights in relation to dedicated land if the grant of the interest or rights would have the effect of preventing the land being used for the purpose for which it is dedicated.

### **19—Revocation of dedication**

- 20 (1) Subject to this section, the Minister may, by instrument in writing, revoke (in whole or in part) a dedication of land, whether the land has been dedicated under this or any other Act.
- (2) If land has been dedicated under another Act, the Minister must not revoke the  
25 dedication under this section unless there is no other legislative power providing for revocation.
- (3) If the Minister revokes a dedication of land in whole or in part, the land, or that part of the land, reverts to the status of unalienated Crown land.

### **20—Care, control and management of dedicated land**

- 30 (1) The Minister may, by instrument in writing, place dedicated land under the care, control and management of a person or body specified in the instrument subject to such conditions as the Minister specifies in the instrument.
- (2) The Minister may, by instrument in writing—
  - 35 (a) vary or revoke the conditions on which dedicated land was placed under to the care, control and management of a person or body; or
  - (b) withdraw the land from the care, control and management of that person or body.
- (3) The Minister must not exercise powers under this section in relation to land that is under the care, control and management of a person or body except after consultation (where practicable) with the person or body.

## **21—Notice of instruments**

The Minister must cause notice of any instrument under this Division to be published in the Gazette as soon as practicable after it is made.

## **22—Lease of dedicated land**

- 5 (1) A lease granted by a person other than the Minister in relation to dedicated land is of no effect unless the Minister has consented, in writing, to the grant of the lease.
- (2) The consent of the Minister under this section may be subject to such conditions as the Minister thinks fit and specifies in the written consent.
- (3) The Minister may refuse consent to the grant of a lease if the grant of the lease—
- 10 (a) would detract from any existing public use and enjoyment of the land; or
- (b) would prevent the land being used for the purpose for which it was dedicated; or
- (c) would otherwise, in the opinion of the Minister, be improper or undesirable.

## **Division 3—Disposal of land**

### **23—Application of Division**

This Division applies to—

- (a) Crown land that is owned by the Minister; and
- (b) unalienated Crown land.

### **24—Minister may dispose of Crown land to which Division applies**

- 20 (1) Subject to this Act, the Minister may dispose of Crown land to which this Division applies by transfer or grant of the fee simple (whether on the payment of consideration or not).
- (2) The Minister must not dispose of land under this Division unless—
- (a) the land is being disposed of to a Crown agency; or
- 25 (b) the land has been declared surplus.

### **25—Disposal by transfer or grant of fee simple**

- (1) A disposal of Crown land by transfer or grant of the fee simple must be by public auction, public tender or such other open competitive process as the Minister may determine, unless—
- 30 (a) the land is disposed of to the owner of adjacent land to be merged with the adjacent land; or
- (b) the land is disposed of to the custodian, or former custodian, of the land and that custodian or former custodian has constructed or made significant improvements on the land; or
- 35 (c) the land is disposed of to a Crown agency or a Commonwealth Crown agency; or

- (d) the land is valued at less than an amount prescribed by regulation for the purposes of this paragraph; or
- (e) the land is disposed of in circumstances prescribed by regulation; or
- (f) the Minister is satisfied special circumstances exist justifying disposal by private sale.

(2) The Minister must not dispose of Crown land under this Division for less than the market value of the Crown's interest in the land or for no consideration, unless—

- (a) the land is disposed of to a Crown agency or Commonwealth Crown agency; or
- (b) the land is disposed of on condition that the purchaser or donee enter into a Crown condition agreement; or
- (c) the land is offered for sale by public auction or competitive tender and is disposed of for the highest bid or tender; or
- (d) the Minister and the Treasurer are satisfied special circumstances exist justifying disposal of the land for less than the market value of the Crown's interest in the land or for no consideration.

(3) If, during a financial year, the Minister—

- (a) disposes of Crown land other than by public auction, public tender or other open competitive process on the basis that he or she is satisfied that special circumstances exist in accordance with subsection (1)(f); or
- (b) disposes of Crown land for less than the market value of the Crown's interest in the land or for no consideration on the basis that he or she, and the Treasurer, are satisfied that special circumstances exist in accordance with subsection (2)(d),

the Minister must ensure that details of the disposal (including a description of the land, the market value of the Crown's interest in the land and the consideration, if any, for the disposal) are set out in the annual report presented by the Department to the Minister under Part 2 Division 2 of the *Public Sector Management Act 1995* in relation to that financial year.

(4) If Crown land is disposed of under this Division to the owner of adjacent land to be merged with the adjacent land, the land vests in the owner of the adjacent land subject to such encumbrances, liens, interests, reservations, easements and trusts as were registered or noted on the certificate of title for the adjacent land immediately prior to the grant (other than encumbrances, liens, interests, reservations, easements and trusts that the Minister resolves should not extend to the land).

(5) For the purposes of this section, the market value of the Crown's interest in land will be determined by the Minister on the advice of the Valuer-General or a person who lawfully carries on business as a land valuer.

## **26—Disposal subject to Crown condition agreement**

- (1) The Minister may dispose of Crown land by transfer or grant of the fee simple on condition that the purchaser or donee enters into a Crown condition agreement.
- (2) The agreement will be registered on the title to the land and, on being so registered, is binding on the owner, for the time being, of the land.

- (3) A Crown condition agreement entered into under this section may be varied or revoked—
- (a) by agreement between the Minister and the owner of the land and on payment by the owner of such amount as the Minister may require; or
  - 5 (b) by order of the Court made on the application of the Minister or the owner.
- (4) Subject to subsection (6), the Court may, on application by the Minister—
- (a) impose a fine on the owner of an amount not exceeding \$10 000; or
  - (b) cancel the title to the land,
- if satisfied that the Crown condition agreement has been breached.
- 10 (5) The Court may, on cancelling a title—
- (a) order that the owner of the land or the holder of any registered interest in or caveat over the title be compensated for loss suffered as a result of the cancellation to such extent as the Court thinks fit (but the total amount payable under all such orders must not exceed the market value of any saleable improvements belonging to the owner on the land less costs incurred by the Minister in taking action under this section); and
  - 15 (b) make such other ancillary orders as it thinks fit.
- (6) The Court cannot cancel the title to the land unless satisfied—
- (a) that the owner has been allowed a reasonable opportunity to make good the breach but has failed to do so; or
  - 20 (b) that cancellation is necessary in order to prevent or arrest serious damage to or deterioration of the land.
- (7) Before taking any action under this section, the Minister must notify all persons who have a registered interest in or caveat over the land.
- 25 (8) On cancellation of a title under this section, the land reverts to the status of unalienated Crown land.

## **Division 4—Easements**

### **27—Application of Division**

- (1) This Division applies in relation to—
- 30 (a) land subject to a pastoral lease; and
  - (b) land that has not been dedicated under this Act but—
    - (i) is land under the control of a Crown agency; or
    - (ii) is land of a kind prescribed by regulation,as if such land were Crown land.
- 35 (2) However, the Minister must not exercise powers or functions under this Division in relation to land of a kind described in subsection (1)(b) unless the relevant Crown agency, or other person or body having care, control and management of the land, has requested the Minister to exercise those powers or functions.

## 28—Minister may grant easements

- (1) The Minister may grant to any person an easement in, or over, Crown land for any purpose the Minister thinks fit.
- (2) Subject to this section, the Minister must not grant an easement under this section unless every person having an interest in, or rights in relation to, the land consents to the grant of the easement.
- (3) Subsection (2) does not apply to the grant of a service easement within the meaning of Part 19AB of the *Real Property Act 1886*.
- (4) If the Minister believes that the consent of a person having an interest in, or rights in relation to, the land has been unreasonably withheld and is satisfied that the interests of that person would not be prejudiced by the grant of the easement, the Minister may grant the easement despite the absence of that consent.
- (5) An easement may be granted under this section despite the fact that the characteristics of the easement do not satisfy all of the characteristics that must be satisfied for an easement to be created under the common law.
- (6) The Minister may require a person requesting the grant of an easement under this section to provide the Minister with any instruments, plans or other documents necessary for the purpose of granting the easement.

## 29—Short form of grant

- (1) If, in an instrument creating an easement under this Division, a short form set out in Schedule 6 of the *Real Property Act 1886* is used to grant or create the easement, the instrument is, unless the contrary intention appears, taken to incorporate the corresponding long form of that easement set out in that Schedule.
- (2) If an instrument under this Division grants "a free and unrestricted right-of-way", the instrument is taken to include the words set out in Schedule 5 of the *Real Property Act 1886* (so far as applicable).

## 30—Creation of easement by deposit of plan

- (1) Section 223LG of the *Real Property Act 1886* applies in relation to a plan of Crown land deposited in the Lands Titles Registration Office as though it were a plan of division deposited under Part 19AB of that Act (and a reference in that section to the Register Book includes a reference to the Crown land register).
- (2) Without derogating from subsection (1), the Minister may lodge with the Registrar-General—
- (a) a plan of Crown land showing—
- (i) easements intended to be granted by the Minister in or over the land; or
- (ii) easements to be created in or over the land in accordance with some other Act or law; and
- (b) an instrument (in a form approved by the Registrar-General) relating to each such easement—
- (i) describing the land (if any) to which the easement will be appurtenant; and



- (ii) describing the land that will be subject to the easement; and
- (iii) setting out the terms of the easement.

- 5 (3) An easement shown on a plan referred to in subsection (2) is taken to have been granted by the Minister on deposit of the plan by the Registrar-General in the Lands Titles Registration Office (and the matters set out in the instrument lodged under that subsection in relation to the easement will apply to the easement so granted).

### **31—Effect of grant of easement**

10 Subject to this Act, an easement granted under this Division has effect as if it were an easement created under the *Real Property Act 1886* (and that Act applies in relation to the easement as if it had been so created, subject to the modifications (if any) prescribed by regulation).

## **Division 5—Leases**

### **32—Leases granted by Minister**

- 15 (1) The Minister may grant leases in relation to unalienated Crown land.
- (2) A lease granted by the Minister under this Division may be a perpetual lease or any other form of lease.

### **33—Interaction between Division and lease**

20 The powers of the Minister under this Division in relation to a lease are in addition to, and do not derogate from, the provisions of the lease but where a provision of the lease is inconsistent with this Act, the Act prevails to the extent of the inconsistency.

### **34—Minister to fix terms and conditions**

- 25 (1) Subject to this Act, the terms and conditions on which leases will be granted by the Minister (including the intervals at which rent will be revalued) will be as fixed by the Minister.
- (2) The Minister will fix the rent to be payable under a lease based on the current market rent (unless the Minister is satisfied special circumstances exist justifying the fixing of a lesser rent).
- 30 (3) For the purposes of this section, the current market rent will be determined by the Minister on the advice of the Valuer-General or a person who lawfully carries on business as a land valuer.
- (4) In determining the current market rent for the purposes of this section, the value of any work carried out by the lessee in relation to the land or any other improvements on the land that do not belong to the Crown must not be taken into account.
- 35 (5) The regulations may—
- (a) prescribe a minimum rent to be paid in relation to leases, or leases of a specified class; and
  - (b) fix a date for the payment of rent under leases, or leases of a specified class.
- (6) Subject to subsection (7), a regulation under subsection (5) has effect despite any provision to the contrary contained in a lease to which the regulation applies.

- (7) A regulation under subsection (5)(a) does not apply to a lease granted before the commencement of this section.

### **35—Waiver of conditions etc**

5 Despite any other provision of this Act or a provision contained in a lease, the Minister may, if satisfied that it would be reasonable in the circumstances—

- (a) waive a breach of, or compliance with, a condition of a lease unconditionally or subject to conditions; or
- (b) waive, reduce or remit an instalment of rent payable under a lease or allow an instalment, or part of an instalment, to be paid at a time other than that fixed
- 10 by regulation in accordance with section 34 or specified in the lease.

### **36—Dealing with lease**

- (1) Subject to subsection (2), if the Minister grants a lease under this Division, the interest of the lessee cannot be assigned, transferred, mortgaged, sublet or otherwise dealt with without the consent of the Minister.

- 15 (2) The interest of the lessee under a perpetual lease may be mortgaged without the consent of the Minister, unless the Minister holds a mortgage over such interest.

- (3) If a lessee transfers or assigns his or her interest under a lease granted under this Division—

- 20 (a) all accrued and accruing liabilities to the Crown pass to the transferee or assignee; and
- (b) 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).

### **37—Surrenders**

- 25 (1) A lease can be wholly or partially surrendered with the consent of the Minister and, subject to subsection (2), the consent of all persons who have a registered interest in, or caveat lodged over, the lease.

- (2) If the Minister believes that the consent of the holder of a registered interest in or caveat lodged over the lease has been unreasonably withheld and is satisfied that the interests of that person would not be prejudiced by the surrender, the Minister may
- 30 accept the surrender despite the absence of that consent.

- (3) The surrender of a lease, or part of a lease, may be absolute or may be conditional on the granting of a lease or a fee simple title to the lessee or another person.

- (4) If the surrender of the lease, or part of the lease, is absolute, the land reverts to the
- 35 status of unalienated Crown land.

- (5) If the surrender of the lease, or part of the lease, is conditional on the granting of a lease or a fee simple title to the lessee or another person—

- (a) an interest registered on, or caveat lodged over, the lease, or that part of the lease—

- 40 (i) continues in force and extends to all land included in the new lease or title; and

(ii) will be endorsed on the new lease or on the documents of title (as the case may require),

unless the holder of the interest or caveat consents to its discharge; and

(b) any easements in or over the land included in the lease, or that part of the lease—

(i) continue in force as easements to which the land is subject; and

(ii) will be endorsed on the new lease or on the documents of title (as the case may require),

unless the Minister determines otherwise; and

(c) any easements appurtenant to the land included in the lease, or that part of the lease, continue in force as easements appurtenant to the land included in the new lease or title.

### **38—Resumption of land**

(1) The Minister may, by notice in the Gazette, resume Crown leasehold land (in whole or in part).

(2) Before a notice is published under subsection (1), the Minister must give written notice of his or her intention to resume to the lessee.

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

(4) If Crown leasehold land is resumed under this section—

(a) the resumption operates to cancel the lease and the land subject to the lease reverts to the status of unalienated land; and

(b) if part only of the land subject to the lease is resumed—

(i) the Minister must grant a new lease in respect of the remainder of the land; and

(ii) an interest that was, immediately before the cancellation of the lease, registered on the lease, or a caveat lodged over the lease—

(A) continues in force; and

(B) will be endorsed on the new lease,

unless the holder of the interest or caveat consents to its discharge; and

(iii) any easements in or over the remainder of the land immediately before cancellation of the lease—

(A) continue in force as easements to which the land is subject; and

(B) will be endorsed on the new lease,

unless the Minister determines otherwise; and

(iv) any easements appurtenant to the remainder of the land immediately before cancellation of the lease continue in force as easements appurtenant to that land.

- 5
- (5) The lessee is entitled to compensation for a resumption under this section.
  - (6) The amount of the compensation will be determined by agreement between the Minister and the lessee or, in default of agreement, by the Court.
  - (7) A determination of compensation under this section must give effect to the conditions (if any) of the lease that provide for compensation on resumption.

### **39—Abandonment**

- 10
- (1) Subject to subsection (3), if the Minister is satisfied that Crown leasehold land has been abandoned, the Minister may cancel the lease.
  - (2) For the purposes of this section, Crown leasehold land has been abandoned by a lessee if the lessee has ceased to occupy the land.
  - (3) The Minister must not cancel a lease under this section unless—
    - (a) the lessee has advised the Minister (whether orally or in writing) that he or she has ceased to occupy the land; or
    - (b) the Minister has published a notice in a newspaper circulating throughout the State—
      - (i) identifying the land subject to the lease; and
      - (ii) specifying that the Minister intends to cancel the lease unless the lessee, within the period of 1 month after the date of publication of the notice, satisfies the Minister that he or she has not abandoned the land.
- 15
- 20

### **40—Penalties for late payment of instalments**

- 25
- (1) The Minister may, by notice in the Gazette—
    - (a) fix a scale of penalties to be paid by lessees for late payment of instalments of rent under the lease; and
    - (b) vary or revoke a scale previously fixed under this section.
  - (2) If the Minister fixes a scale of penalties in accordance with subsection (1), a lessee who is late in paying an instalment of rent is liable to pay the penalty (if any) applicable under the scale and any such penalty will be regarded as an amount that is due and payable under the lease.
  - (3) The Minister may, for proper reasons, remit a penalty under this section in whole or part.
  - (4) This section does not derogate from section 41.
- 30

### **41—Cancellation of lease on breach of conditions**

- 35
- (1) The Minister may, if satisfied that a breach of a condition of the lease has occurred (including a condition as to the payment of rent), cancel the lease.
  - (2) The Minister must not, however, cancel a 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 or arrest serious damage to, or deterioration of, the land.

(3) If the Minister cancels a lease under this section, the lessee or the holder of any registered interest in, or caveat over, the lease may apply to the Court for an order requiring the Minister to pay compensation for loss suffered as a result of the cancellation to such extent as the Court thinks fit (but the total amount payable under all such orders must not exceed the market value of any saleable improvements belonging to the lessee on the land less costs incurred by the Minister in taking action under this section).

(4) The Court may, when making an order under this section, make such ancillary orders as the Court thinks fit.

#### **42—Cancellation of lease obtained by false statement**

The Minister may cancel a lease if satisfied that it was obtained by false statement.

#### **43—Notification of proposed cancellation**

Before a lease is cancelled under this Division, the Minister must give written notice to all persons who have a registered interest in, or caveat over, the lease.

#### **44—Effect of cancellation**

On cancellation of a lease under this Division, the land reverts to the status of unalienated Crown land.

### **Division 6—Licences**

#### **45—Application of Division to pastoral land**

This Division applies in relation to land subject to a pastoral lease as if it were Crown land.

#### **46—Minister may grant licences**

The Minister may grant licences in relation to Crown land.

#### **47—Interaction between Division and licence**

The powers of the Minister under this Division in relation to a licence are in addition to, and do not derogate from, the provisions of the licence but where a provision of the licence is inconsistent with this Act, the Act prevails to the extent of the inconsistency.

#### **48—Minister to fix terms and conditions**

- (1) Subject to this Act, the terms and conditions on which licences will be granted or renewed under this Act (including the licence fees payable under licences) will be as fixed by the Minister.
- (2) A licence (other than a licence granted to a Crown agency) may not be granted or renewed under this Act for a term exceeding 10 years.
- (3) In determining the licence fees payable under a licence, the Minister must not take into account the value of any work carried out by the licensee in relation to the land or any other improvements on the land that do not belong to the Crown.

- (4) The Minister may at any time, by written notice to the licensee, vary the terms and conditions of a licence (including the licence fees payable under the licence).
- (5) The regulations may fix a date for the payment of licence fees under licences generally or under licences of a specified class (and such a regulation has effect despite any provision to the contrary contained in a licence to which the regulation applies).

#### **49—Waiver of conditions etc**

Despite any other provision of this Act or a provision contained in a licence, the Minister may, if satisfied that it would be reasonable in the circumstances—

- (a) waive a breach of, or compliance with, a condition of a licence unconditionally or subject to conditions; or
- (b) waive, reduce or remit any licence fees payable under a licence or may allow any licence fee, or part of a licence fee, to be paid at a time other than that fixed by regulation in accordance with section 48 or specified in the licence.

#### **50—Dealing with licence**

- (1) A licence granted under this Act cannot be transferred or otherwise dealt with without the consent of the Minister.
- (2) If the licensee transfers the licence—
- (a) all accrued and accruing liabilities to the Crown pass to the transferee; and
- (b) any such liabilities that had accrued before the date of the transfer may be enforced against the transferor (who will be regarded as jointly and severally liable with the transferee).

#### **51—Cancellation of licences**

- (1) The Minister may cancel a licence—
- (a) if a condition of the licence has been breached—by notice in writing to the licensee; or
- (b) in any other case—by not less than 1 month's notice in writing to the licensee.
- (2) Subject to the regulations, no compensation is payable by the Crown in respect of the cancellation of a licence under this section.

#### **52—Renewal of licence without application or on late application**

- (1) If, on the expiry of a licence under this Act, the licensee continues to exercise rights under the licence as if the licence were still in force, the Minister may, of his or her own initiative and without application by the licensee, renew the licence for a term of 12 months or for such other term as the Minister, by written notice, advises the licensee (and the conditions fixed by the Minister in relation to the renewed licence, including any conditions relating to licence fees, apply to the licensee as if the renewal had been made on the application of the licensee).
- (2) The Minister may renew a licence on a late application despite the fact that the licence has expired.
- (3) A licence renewed under this section has effect from the end of the term for which the licence was previously granted or renewed.

### 53—Exemption from stamp duty

The grant or renewal of a licence under this Act is exempt from stamp duty.

### 54—Special provisions relating to Murray-Darling Basin and River Murray Protection Areas

- 5 (1) If a proposed licence or renewal of a licence relates to an area within the Murray-Darling Basin, the Minister must, in considering whether to grant or renew the licence, take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.
- 10 (2) If a proposed licence or renewal of a licence relates to a River Murray Protection Area under the *River Murray Act 2003* and is within a class of licences prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of all such licences), the Minister must, before deciding whether to grant or renew the licence—
- 15 (a) consult with the Minister to whom the administration of that Act is committed; and
- (b) comply with the Minister's directions (if any) in relation to the licence (including a direction that the licence not be granted or renewed, or that if it is granted or renewed, then the licence be subject to conditions specified by the Minister).

## 20 Part 4—Protection of land

### Division 1—Application of Part

#### 55—Minister may make declaration in relation to land

- 25 (1) The Minister may, with the concurrence of the Minister responsible for the administration of the *National Parks and Wildlife Act 1972*, by notice in the Gazette, declare that—
- 30 (a) provisions of this Part specified in the notice will not apply to specified Crown land (not being land constituted as a reserve under the *National Parks and Wildlife Act 1972*) for a period specified in the notice (which must be not longer than 2 years); and
- (b) provisions of the *National Parks and Wildlife Act 1972* specified in the notice apply to the specified land, during the specified period, as if it were a reserve constituted under that Act.
- (2) A notice under this section may not relate to land occupied by a person other than—
- 35 (a) the Minister; or
- (b) the Minister responsible for the administration of the *National Parks and Wildlife Act 1972*.
- (3) A notice under this section may be varied or revoked by subsequent notice in the Gazette made by the Minister with the concurrence of the Minister responsible for the administration of the *National Parks and Wildlife Act 1972* (and may be varied so as to extend the specified period beyond 2 years).
- 40

- (4) A copy of a notice under this section must—
- (a) be published in a newspaper circulating throughout the State; and
  - (b) except in the case of a notice of revocation, be displayed on a sign affixed on the land the subject of the notice.

5 **Division 2—General Ministerial responsibilities**

**56—General Ministerial responsibilities**

The Minister must, to the extent allowed by available financial resources, carry out work, or cause work to be carried out, for the conservation, protection and rehabilitation of unalienated Crown land.

10 **Division 3—Remediation of land and financial assurances**

**57—Minister's power to require remediation of land**

- (1) If the Minister is satisfied that a person granted an interest in, or right in relation to, Crown land under this Act has caused or contributed to a condition on or of the land that requires remediation, the Minister may serve a remediation notice on the person under this section.
- (2) Without limiting subsection (1), a condition on or of land will be taken to require remediation if the condition—
- (a) is unsightly or offensive; or
  - (b) presents a risk to—
    - (i) the environment; or
    - (ii) the health or safety of any person; or
    - (iii) any property; or
  - (c) is likely to have the effect of reducing the market value of the land.
- (3) The Minister must not serve a remediation notice under this section in relation to a condition on or of land—
- (a) that is a reasonable consequence of the undertaking of an activity that the Crown has specifically authorised or required to be undertaken on the land; or
  - (b) that is of a type prescribed by regulation or that has been caused in circumstances prescribed by regulation.
- (4) A remediation notice must—
- (a) be in writing; and
  - (b) describe the land and the condition to which the notice applies; and
  - (c) specify the action to be taken by the person to remediate the condition and the time within which such action must be taken (which must be reasonable).
- (5) The Minister may, by written notice served on a person to whom a remediation notice has been issued, vary or revoke the notice.



- (6) A person to whom a remediation notice is issued must comply with the notice.  
Maximum penalty: \$50 000.
- (7) If a person to whom a remediation notice has been issued fails to comply with the notice, the Minister may take any action required by the notice and may recover the reasonable costs of taking such action as a debt from the person to whom the notice was issued.

### **58—Power to require payment of financial assurance**

- (1) Subject to this section, the Minister may, by conditions imposed on the grant of an interest in, or right in relation to, Crown land under this Act, require the grantee to lodge with the Minister a financial assurance in the form of a bond (supported by security approved by the Minister), or a specified pecuniary sum, the discharge or repayment of which is conditional on the grantee—
- (a) not committing any contravention of specified conditions of the grant during a specified period; or
  - (b) taking specified action within a specified period to achieve compliance with conditions of the grant.
- (2) The Minister may not impose conditions requiring the lodgement of a bond or pecuniary sum unless satisfied that imposition of the conditions is justified in view of the degree of risk of remediation being required if conditions of the grant are contravened or not complied with.
- (3) The Minister may not, by conditions under subsection (1), require the lodgment of a bond or a pecuniary sum of an amount greater than the amount that, in the opinion of the Minister, represents the total of the likely costs that might be incurred if the Minister took action to remediate a condition on or of the land resulting from a failure by the grantee to satisfy the conditions of discharge or repayment of the bond or pecuniary sum.
- (4) The amount of a pecuniary sum that has not been repaid or forfeited to the Crown in accordance with this section must, on satisfaction of the conditions of repayment, be repaid to the grantee together with an amount representing interest calculated in accordance with the regulations.
- (5) If the grantee fails to satisfy the conditions of discharge or repayment of a bond or pecuniary sum lodged with the Minister, the Minister—
- (a) may determine that the whole or part of the amount of the bond or pecuniary sum is forfeited to the Crown; and
  - (b) may apply any money so forfeited in payments for or towards the costs, expenses, loss or damage incurred or suffered by the Crown, a public authority or other person as a result of the failure by the grantee; and
  - (c) may, in the case of a pecuniary sum, when satisfied that there is no reasonable likelihood of any or further valid claims in respect of costs, expenses, loss or damage incurred or suffered as a result of the failure of the grantee, repay any amount of the pecuniary sum that has not been repaid or forfeited to the Crown.

## Division 4—Waterfront land

### 59—Waterfront land cannot be leased or disposed of without public consultation

- 5 (1) Subject to subsection (3), if the Minister proposes to lease waterfront land or to dispose of waterfront land by grant in fee simple, the Minister must cause to be published in the Gazette, in a newspaper circulating throughout the State and in a newspaper circulating in the area in which the land is situated, a notice that—
- (a) sets out—
    - 10 (i) the location of the land; and
    - (ii) the fact that it is proposed to lease or to dispose of the land; and
    - (iii) such other information as the Minister thinks fit; and
  - (b) invites members of the public to provide the Minister with written submissions in relation to the proposal within the period (not being less than 21 days) specified in the notice.
- 15 (2) The Minister must, in deciding whether to lease or to dispose of the land, have regard to all submissions made pursuant to a notice referred to in subsection (1).
- (3) This section does not apply if—
- 20 (a) the lease or disposal is made to a Crown agency for the purposes of another Act or law; or
  - (b) the lease or disposal is, in the opinion of the Minister, subject to adequate consultation requirements under some other Act or law.

## Division 5—Offences and powers of authorised officers

### 60—Application of Division

- 25 (1) Subject to subsection (2), this Division does not apply to Crown leasehold land or to dedicated land that has a custodian.
- (2) If dedicated land has a custodian, the Minister may, at the written request of the custodian, by notice in the Gazette, declare that this Division applies to the land.
- (3) A notice under subsection (2) may be varied or revoked by subsequent notice in the Gazette made by the Minister.
- 30 (4) A copy of a notice under this section must—
- (a) be published in a newspaper circulating throughout the State; and
  - (b) except in the case of a notice of revocation, be displayed on a sign affixed on the land the subject of the notice.

### 61—Misuse of Crown land

- 35 (1) A person who, without lawful authority or excuse—
- (a) occupies Crown land for longer than any period prescribed by regulation; or

- (b) cultivates Crown land or causes or permits animals (for which the person is responsible) to enter or remain on Crown land; or
- (c) drives a motor vehicle (within the meaning of the *Motor Vehicles Act 1959*) on Crown land, other than on an established road or track or in circumstances prescribed by regulation; or
- (d) damages or removes fossils from Crown land; or
- (e) excavates or otherwise damages or interferes with Crown land, or anything on Crown land; or
- (f) cuts down, lops branches from or otherwise damages any tree or bush (whether alive or dead) on Crown land; or
- (g) erects any structure or fixture or carries out any works, on Crown land; or
- (h) deposits litter or abandons property on Crown land; or
- (i) closes off or obstructs (whether by fences, gates or any means) a road or track on Crown land,

is guilty of an offence.

Maximum penalty: \$20 000.

Expiation fee: \$315.

- (2) Without limiting what might otherwise constitute lawful authority for the purposes of subsection (1), the consent in writing of the Minister constitutes, for the purposes of that subsection, lawful authority for any act to which the consent relates.

## 62—Policing powers

- (1) An authorised officer may—
- (a) require any person who is on Crown land without lawful authority or excuse to leave the land; or
- (b) require any person reasonably suspected of having committed an offence in relation to Crown land—
- (i) to state his or her name and address; and
- (ii) if the authorised officer suspects on reasonable grounds that the name or address stated is false—to produce evidence of his or her name and address.
- (2) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.
- Maximum penalty: \$2 500.
- (3) If an authorised officer reasonably suspects that a vehicle has been used in contravention of this Act, the officer may apply to the Registrar of Motor Vehicles for the name and address of the registered owner of the vehicle.

## 63—Power of arrest

- (1) An authorised officer may, without warrant, arrest any person on Crown land—
- (a) who is reasonably suspected of having committed an offence in relation to Crown land; or

(b) who hinders an authorised officer in the exercise of powers or functions under this Act.

(2) If an authorised officer arrests a person under this section, the authorised officer must, as soon as possible, take the person, or have the person taken, to the nearest police station at which facilities are continuously available for the care and custody of the person arrested.

## **64—Powers of entry, seizure etc**

(1) Subject to this section, an authorised officer may for the purposes of the administration or enforcement of this Act—

(a) enter, and remain on, land;

(b) carry out an inspection of land;

(c) bring any equipment or other thing onto land, and use that equipment or thing on the land;

(d) take samples from land;

(e) take photographs, films, audio, video or other recordings;

(f) carry out work on land authorised by the Minister under this Act;

(g) seize and retain anything that the authorised officer reasonably suspects may constitute evidence of a breach of this Act.

(2) An authorised officer may seize any animals found trespassing on Crown land.

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

(4) In exercising powers under this section, an authorised officer may be accompanied by such assistants as are reasonably necessary in the circumstances.

## **Part 5—Appeals and reviews**

### **Division 1—Ministerial review**

#### **65—Applications to Minister for review**

(1) The following applications for review may be made to the Minister:

(a) the holder of a lease may apply for a review of a determination as to the current market rent applicable in relation to the lease or the market value of any improvements made to the land subject to the lease;

(b) the owner of personal property may apply for a review of a determination of the Minister under section 13 to acquire the property compulsorily;

(c) a person who has applied for the consent of the Minister under section 22 may apply for a review of a determination of the Minister to refuse consent;

(d) the holder of a lease may apply for a review of—

(i) a determination of the Minister to cancel the lease or to resume land subject to the lease; or

- 
- (ii) the terms and conditions of a new lease granted by the Minister in accordance with section 38(4)(b) following a resumption of land;
- (e) a person served a remediation notice under section 57 may apply for a review of the notice;
- 5 (f) a person required to lodge with the Minister a financial assurance under section 58 may apply for a review of that requirement;
- (g) a person required to remove property or fixtures by notice under section 74(1) may apply for a review of the notice.
- (2) An application for a review under this section—
- 10 (a) must be in writing; and
- (b) must be made within 28 days after the day on which notice of the matter the subject of the review was given to the applicant or within such further time as the Minister may allow.
- (3) The Minister may establish an advisory committee in accordance with section 10 to provide advice in relation to the subject matter of any review.
- 15 (4) The Minister may determine a review as the Minister thinks fit.
- (5) A review must be determined within 28 days of the application being lodged with the Minister.
- (6) If a review is not determined within that period, the Minister is to be taken to have confirmed the determination or other matter the subject of the review.
- 20

## Division 2—Valuation reviews and appeals

### 66—Valuation reviews

- (1) Subject to subsection (2), a lessee who has applied for a review under section 65(1)(a) and who is dissatisfied with the determination made, or taken to have been made, on the review may apply to the Minister for a valuation review in accordance with this section.
- 25 (2) No application for a valuation review may be made under this section if the objection to the valuation involves a question of law.
- (3) An application for a review under this section—
- 30 (a) must be in writing; and
- (b) must be instituted—
- (i) if the review under section 65(1)(a) was not determined within 28 days of the application being lodged with the Minister—within 21 days after the day on which the Minister is to be taken to have confirmed the determination the subject of that review; or
- 35 (ii) in any other case—within 21 days after notice of the determination on the review under section 65(1)(a) is given to the applicant.
- (4) On receipt of an application under this section, the Minister must—
- (a) refer the application to the Valuer-General for the conduct of a valuation review; or
- 40

(b) constitute a review panel in accordance with subsection (6) and refer the application to the review panel for the conduct of a valuation review.

5 (5) The Minister must not refer an application to the Valuer-General for the conduct of a valuation review if the valuation to which the application relates was determined by the Minister on the advice of the Valuer-General.

(6) A review panel constituted by the Minister for the purposes of this section must consist of 3 members, appointed by the Minister, each of whom is a person who lawfully carries on business as a land valuer (and none of whom provided advice to the Minister in relation to the valuation to which the application relates).

10 (7) The members of a review panel constituted by the Minister for the purposes of this section are entitled to such allowances as may be determined by the Minister.

(8) A valuation review may be conducted under this section in such manner as the reviewer thinks fit (but the applicant must be afforded a reasonable opportunity to make representations on the subject matter of the review either personally, by a land valuer acting on behalf of the applicant or by any other representative).

15 (9) Subject to subsection (10), the reviewer must, upon the determination of the review, confirm, increase or decrease the valuation.

(10) The reviewer must not make any alteration to a valuation under subsection (9) which has the effect of increasing or decreasing the valuation by a proportion of one-tenth or less.

20 (11) In this section—

*reviewer* means—

(a) in relation to a review being conducted by the Valuer-General—the Valuer-General; or

25 (b) in relation to a review being conducted by a review panel constituted by the Minister—the review panel.

## **67—Valuation appeals**

(1) A lessee who has applied for a review under section 65(1)(a) and who is dissatisfied with—

30 (a) the determination made, or taken to have been made, on the review; or

(b) the determination on a valuation review under section 66,

may appeal to the Court against the determination.

(2) On an appeal under subsection (1), the Court—

35 (a) may confirm, increase or decrease the valuation to which the appeal relates; and

(b) may make any consequential or ancillary order or direction that it considers necessary or expedient.

(3) An order for costs cannot be made against an appellant unless the Court is satisfied that the appellant's conduct in relation to the proceedings was frivolous, vexatious or calculated to cause delay.

## Division 3—Other appeals

### 68—Other appeals to Court

- 5 (1) A person who has applied for a review under section 65 (other than a review under section 65(1)(a)) and who is dissatisfied with the determination made, or taken to have been made, on the review may appeal against the determination to the Court.
- (2) Subject to subsection (3), an appeal under this section must be instituted—
- 10 (a) if the review under section 65 was not determined within 28 days of the application being lodged with the Minister—within 21 days after the day on which the Minister is to be taken to have confirmed the determination or other matter the subject of the review; or
- (b) in any other case—within 21 days after notice of the determination on the review under section 65 is given to the applicant.
- 15 (3) If the reasons of the Minister are not given to the applicant in writing at the time of making the determination and the applicant (within the period specified in subsection (2) as the time within which an appeal may be instituted) requires the Minister to state the reasons in writing—
- (a) the Minister must state in writing the reasons for the determination; and
- (b) the time for instituting an appeal runs from the time at which that person receives the written statement of those reasons.
- 20 (4) An order for costs cannot be made against an appellant unless the Court is satisfied that the appellant's conduct in relation to the proceedings was frivolous, vexatious or calculated to cause delay.

## Part 6—Miscellaneous

### 69—Minister may determine that land reverts to unalienated Crown land in certain circumstances

- 25 If—
- (a) land is transferred to the Crown or the Crown otherwise becomes entitled to land; and
- (b) the land does not vest by law in a particular Crown agency,
- 30 the land will, if the Minister so determines, revert to the status of unalienated Crown land.

### 70—Public maps

- (1) For the purposes of any Act or law, a map or plan is a *public map* if it delineates any Crown land and—
- 35 (a) is deposited or filed in the Lands Titles Registration Office; or
- (b) has been prepared under the direction of, and certified by, the Surveyor-General or Deputy Surveyor-General.

- (2) Any land shown on a public map as an allotment will be taken to be an allotment for the purposes of any Act or law.
- (3) Any land shown on a public map as a street, road or thoroughfare will, despite any other Act or law, be taken to be a public road (and, if the land is situated within the area of a council, will be taken to be a *public road* within the meaning of the *Local Government Act 1999*).
- (4) All land shown on a public map and taken to be a public road under this section—
- (a) is subject to such easements (excluding rights-of-way) as are indicated on the public map; and
  - (b) is free of all other estates and interests.
- (5) An easement that is appurtenant to land shown on a public map and taken to be a public road under this section ceases to be appurtenant to that land on deposit of the map in the Lands Titles Registration Office unless the map shows that the easement will remain appurtenant to that land.

## 71—Constitution, alteration and abolition of counties, hundreds and towns

- (1) The Minister may, by lodging a plan with the Registrar-General, after consultation with the Surveyor-General—
- (a) constitute a county, hundred or town; or
  - (b) alter the boundaries of a county, hundred or town; or
  - (c) abolish a county, hundred or town,

provided that such plan only has effect on deposit of the plan by the Registrar-General in the Lands Titles Registration Office.

- (2) If land ceases to be comprised in a town in consequence of a plan deposited under subsection (1), the Minister may, by the same plan or by a subsequent plan lodged with the Registrar-General—
- (a) close roads on that land; and
  - (b) merge any allotments on that land; and
  - (c) by notation on the plan, cause the whole of, or any portions of, that land to revert to the status of unalienated Crown land,

provided that such plan only has effect on deposit of the plan by the Registrar-General in the Lands Titles Registration Office.

- (3) A road closure under this section has effect despite any other Act or law.
- (4) In this section—

*road* has the same meaning as in the *Roads (Opening and Closing) Act 1991*.

## 72—Duties of Registrar-General

- (1) The Registrar-General must, in addition to the Register of Crown Leases maintained under the *Real Property Act 1886*, maintain such other registers as the Registrar-General thinks fit for the purpose of recording instruments under—
- (a) this Act; and



(b) other Acts dealing with land of the Crown that is not registered under the *Real Property Act 1886*,

(and such registers will be collectively referred to as the *Crown land register*).

5 (2) The Crown land register may be wholly or partly in the form of a computer data base, in documentary form, or in another form the Registrar-General considers appropriate.

(3) The Registrar-General will, at the request of the Minister, take such action for or in connection with—

(a) the issue, alteration, correction or cancellation of certificates or other documents of title; or

10 (b) the deposit of any plan in the Lands Titles Registration Office; or

(c) the making, recording, alteration, correction or cancellation of entries or endorsements in the Crown land register or in the Register Books,

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

15 (4) If the Minister requests the Registrar-General to take action under this section to give effect to a determination or action of the Minister, the Minister will, if required by the Registrar-General—

(a) furnish the Registrar-General with any map or plan required by the Registrar-General to give effect to the determination or action; or

20 (b) furnish the Registrar-General with a certificate certifying the determination or action.

(5) No fees are payable by the Minister in respect of any action taken by the Registrar-General at the request of the Minister under this Act.

### **73—Failure to execute documents**

(1) If—

25 (a) documents for the grant of a lease or other right relating to Crown land under this Act have been delivered to a person, but are not returned duly executed and with the fees and any other amounts payable to the Minister within 30 days (or such greater period as the Minister may allow) after delivery; or

30 (b) delivery of such documents has not been effected because the whereabouts of the person are unknown,

the Minister may cancel the person's entitlement to be granted the lease or other right and forfeit any money paid to the Minister in connection with the proposed lease or other right.

35 (2) The Minister must, if the whereabouts of a person referred to in subsection (1) are known, give written notice to the person of the exercise of a power under that subsection.

### **74—Disposal of property etc on vacated land**

40 (1) If a person granted an interest in, or right in relation to, Crown land under this Act vacates the land leaving behind property or fixtures that were not on the land at the time the interest or right was so granted, the Minister may—

(a) take possession of the property or fixtures; or

(b) by written notice, require the person to remove the property or fixtures within a specified period.

(2) If a notice under subsection (1)(b) is not complied with within the specified period, the Minister may remove and dispose of the property or fixtures.

5 (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 or fixtures may be recovered as a debt from the person to whom the notice under subsection (1)(b) was given.

### **75—Service**

10 A notice or document 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;

15 (d) if the person's whereabouts are 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;

(e) in a manner prescribed by regulation.

### **76—Evidentiary provision**

20 In any proceedings—

(a) a certificate apparently signed by the Minister, or a delegate of the Minister, that on a specified date, or during a specified period, specified land was or was not—

(i) Crown land; or

25 (ii) unalienated Crown land; or

(iii) dedicated land; or

(iv) subject to a particular kind of interest or right under this Act; or

(v) subject to a Crown condition agreement; or

(vi) land to which Part 4 Division 5 applied,

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

(b) a map or plan apparently signed by the Surveyor-General or an officer 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; and

35 (c) a certificate of value apparently signed by the Valuer-General or an officer of the Valuer-General will be accepted, in the absence of proof to the contrary, as proof of the value of the land, lease, improvements or other thing to which it relates as at the date of valuation specified in the certificate; and

- 
- (d) a certificate as to a delegation apparently signed by a 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.

### 77—Protection from personal liability

- 5 (1) A person engaged in the administration of this Act incurs no civil liability for an act or omission in good faith 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.
- 10 (3) This section does not prejudice rights of action of the Crown in respect of an act or omission not in good faith.

### 78—Liability of the Crown

- (1) Despite any Act or law to the contrary—
- 15 (a) the liability of the Crown in respect of injury, damage or loss suffered by a person on, above or below unoccupied Crown land or from a cause emanating from unoccupied Crown land is limited to injury, damage or loss caused by, or the cause of which is a direct consequence of, an act of, or an activity undertaken by, the Crown or a Crown agency; and
- 20 (b) the Crown has no duty to maintain any fixtures, structures and equipment (including pipes, wires, cables, fittings and other objects) installed on, above or below unoccupied Crown land by a person other than the Crown or a Crown agency unless the Crown has agreed to maintain such fixtures, structures and equipment.
- (2) In this section—
- 25 ***unoccupied Crown land*** means Crown land that is not being used by the Crown or a Crown agency.
- (3) The Crown or a Crown agency will not be taken to be using Crown land by virtue only of the fact that the Crown or a Crown agency—
- 30 (a) has, at some former time, used the land; or
- (b) has granted a lease or licence to a person to enter onto or occupy the land; or
- (c) has granted an easement over the land; or
- (d) has dedicated the land for any purpose; or
- (e) has constituted the land as—
- 35 (i) a forest reserve or a native forest reserve under the *Forestry Act 1950*; or
- (ii) a reserve under the *National Parks and Wildlife Act 1972*; or
- (iii) a wilderness protection area or wilderness protection zone under the *Wilderness Protection Act 1992*; or
- (f) has dealt with the land in any other manner prescribed by regulation.

### 79—Recovery of native title compensation

Without limiting any other civil right of action of the Crown, if the Crown is liable to pay compensation in respect of acts extinguishing or affecting native title by a custodian or other person granted a right in respect of, or interest in, land under this Act, the Crown is entitled to recover the amount of the compensation from the custodian or person (as the case may be).

### 80—Offence of hindering or obstructing administration of this Act etc

(1) A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act or otherwise in the administration of this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer,

is guilty of an offence.

Maximum penalty: \$5 000.

(2) A person who impersonates an authorised officer, or a person assisting an authorised officer, is guilty of an offence.

Maximum penalty: \$10 000.

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

Maximum penalty: \$10 000 or imprisonment for 2 years.

### 81—Regulations

(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), the regulations may do any of the following:

- (a) prohibit, regulate or restrict a specified activity or a specified class of activity on Crown land or on a specified area of Crown land;
- (b) provide that a person undertaking a specified activity, or an activity of a specified class, or proposing to undertake a specified activity, or an activity of a specified class on Crown land or on a specified area of Crown land, comply with any prescribed requirement or condition;
- (c) prohibit, restrict or regulate access to Crown land or specified areas of Crown land;
- (d) provide for the impounding, removal or disposal of any vehicle or other property on Crown land;
- (e) prescribe fees to be paid with respect to a matter under this Act and provide for their recovery or waiver or reduction by the Minister;
- (f) prescribe expiation fees (not exceeding \$315) for alleged offences against the regulations;
- (g) prescribe fines (not exceeding \$5 000) for offences against the regulations.

- (3) Regulations under this Act—
- (a) may be of general application or limited application;
  - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
  - 5 (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations;
  - 10 (d) may apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another prescribed body.
- (4) A regulation under this Act may make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or specified regulations.
- 15 (5) A provision referred to in subsection (4) may, if the regulations so provide, take effect from a day that is earlier than the day on which the regulation is made but, in such a case, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the Crown), the rights of that person existing before the date of publication of the regulation; or
  - 20 (b) to impose liabilities on any person (other than the Crown) in respect of any thing done or omitted to be done before the date of publication of the regulation.

## **Schedule 1—Related amendments, repeals and transitional provisions**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Related amendment to *National Parks and Wildlife Act 1972***

#### **2—Amendment of section 44—Establishment of sanctuaries**

- (1) Section 44(3), definition of *owner*—delete the definition and substitute:

*owner* in relation to private land means—

- 35 (a) in the case of private land that is held in fee simple—the holder of the estate in fee simple; or

- (b) in the case of private land that is subject to a lease granted under the *Crown Land Management Act 2008* or the *Pastoral Land Management and Conservation Act 1989*—the lessee under that lease.

5 (2) Section 44—after subsection (3) insert:

- (4) If, before the commencement of Schedule 1 Part 2 of the *Crown Land Management Act 2008*—

- (a) a declaration was purportedly made under this section in relation to land subject to a lease under the *Crown Lands Act 1929* or the *Pastoral Land Management and Conservation Act 1989*; and
- (b) the lessee under that lease consented to the making of the declaration,

10  
15 the declaration will not be taken to be invalid by reason only that the consent of the owner of the land (as defined under subsection (3) as in force before the commencement of Schedule 1 Part 2 of the *Crown Land Management Act 2008*) was not obtained before the making of the declaration.

### **Part 3—Related amendment to the *Petroleum Act 2000***

#### **3—Amendment of section 80—Grant, resumption etc of Crown and pastoral land**

20 Section 80(1)—delete "Governor may, on the recommendation of the Minister responsible for the administration of the *Crown Lands Act 1929*," and substitute:

25 Minister responsible for the administration of the *Crown Land Management Act 2008* may

### **Part 4—Related amendment to the *Rates and Land Tax Remission Act 1986***

#### **4—Amendment of section 3—Interpretation**

Section 3, definition of *rates*, (b)—delete paragraph (b)

### **Part 5—Related amendment to the *Real Property Act 1886***

#### **5—Amendment of section 93—Execution and registration of Crown Lease**

Section 93—after subsection (3) insert:

- (4) Subject to the *Crown Land Management Act 2008*, a registered Crown Lease may be transferred, mortgaged and dealt with for the purposes of this Act as if it had been granted by a registered proprietor and registered in the Register Book in the ordinary way (except that any entries which ordinarily would be required to be made in the Register Book will instead be made in the Register of Crown Leases).

## Part 6—Related amendment to the *Upper South East Dryland Salinity and Flood Management Act 2002*

### 6—Amendment of section 3—Interpretation

5 Section 3(1), definition of *Crown land*, (a)—delete "land held under a Crown lease under the *Crown Lands Act 1929* or" and substitute:

Crown leasehold land under the *Crown Land Management Act 2008* or a pastoral lease under

## Part 7—Repeals

### 7—Repeals

10 The following Acts are repealed:

- (a) the *Crown Lands Act 1929*;
- (b) the *Discharged Soldiers Settlement Act 1934*;
- (c) the *Irrigation (Land Tenure) Act 1930*;
- (d) the *Marginal Lands Act 1940*;
- 15 (e) the *Monarto Legislation Repeal Act 1980*;
- (f) the *Port Pirie Laboratory Site Act 1922*;
- (g) the *War Service Land Settlement Agreement Act 1945*.

## Part 8—Transitional provisions

### 8—Interpretation

20 In this Part—

*relevant Acts* means—

- (a) the Acts repealed by clause 7 of this Schedule; and
- (b) a *repealed Act* within the meaning of the *Crown Lands Act 1929*.

### 9—References to Crown land and Land Board

- 25 (1) A reference to Crown lands or Crown land in any Act or instrument passed or made before the commencement of this clause will, unless the contrary intention appears, be taken to be a reference to unalienated Crown land.
- (2) A reference to the Land Board in any Act or instrument will be taken (if the context allows) to be a reference to the Minister.

### 10—Land dedicated prior to commencement

- 30 (1) Any Crown land that is, immediately before the commencement of this clause, under the care, control and management of a person or body under any of the relevant Acts will, on the commencement of this clause, be taken to be land dedicated for the purposes of the person or body and placed under the care, control and management of  
35 the person or body under this Act.

- (2) Any land that is, immediately before the commencement of this clause, dedicated for a purpose under any of the relevant Acts will, on the commencement of this clause, be taken to continue to be land dedicated for that purpose under this Act.

### **11—Grant of fee simple prior to commencement**

- 5 (1) If, before the commencement of this clause, the fee simple in land was granted conditionally under any of the relevant Acts, the title conferred by the grant will be taken to be subject to a Crown condition agreement under this Act.
- 10 (2) If, before the commencement of this clause, the fee simple in land was granted under any of the relevant Acts subject to a trust, the title conferred by the grant will be taken to be subject to a Crown condition agreement under this Act (the conditions of the agreement being those of the former trust).
- 15 (3) On the commencement of this clause, land held in fee simple for a particular purpose in pursuance of a grant under section 241 of the *Crown Lands Act 1929* will be taken to be land subject to a Crown condition agreement (the condition of the agreement being that the land continue to be used for the purposes of the grant).
- (4) If, immediately before the commencement of this clause, a person is the holder of a Treasury receipt, or land grant, in respect of land, the person will, on the commencement of this clause, be taken to be the holder of the fee simple in the land.
- 20 (5) Any condition of a grant in fee simple made under any of the relevant Acts requiring the consent of the Minister for a transfer, assignment, lease, mortgage or encumbrance is void.

### **12—Agreements under relevant Acts**

- 25 (1) The Minister may exercise powers and functions under this Act in relation to an agreement to purchase land (an *agreement*) entered into under any of the relevant Acts as if the agreement were a lease granted under this Act.
- (2) Despite the conditions of an agreement, the purchaser under such an agreement is entitled to obtain, at any time, a grant of the fee simple of the land subject to the agreement if the purchaser has complied with the conditions of the agreement and pays the balance of the purchase price and the interest payable up to that time.

### **13—Preservation of easements**

30 A right in relation to Crown land created under any of the relevant Acts and in force immediately before the commencement of this clause continues in force and may, if it could have been created under this Act by the grant of an easement in or over the Crown land, be treated for all purposes as if it were created by the grant of an  
35 easement under this Act.

### **14—Leases and licences under relevant Acts**

- 40 (1) A lease or licence granted under any of the relevant Acts and in force immediately before the commencement of this clause continues as a lease or licence under this Act (and the provisions of this Act relating to leases and licences apply as if the lease or licence had been granted under this Act).
- (2) Nothing in this clause affects any liability (including a liability to pay rent or any other amount) arising under a lease or licence prior to the commencement of this clause.



### **15—Surrender of certain leases**

A surrender of a lease that was granted under section 78B of the *Crown Lands Act 1929* (and that continued as a lease under this Act in accordance with clause 14) cannot be made conditional on the granting of an interest in the land to the lessee or any other person.

### **16—Perpetual leases granted by Commissioner of Educational Lands**

- (1) A perpetual lease granted by the former Commissioner of Educational Lands and in force immediately before the commencement of this clause continues as a perpetual lease under this Act (and the provisions of this Act relating to leases apply as if the lease had been granted under this Act).
- (2) Nothing in this clause affects any liability (including a liability to pay rent or any other amount) arising under a lease prior to the commencement of this clause.

### **17—Conditions**

- (1) Any condition as to insurance that was, by virtue of any of the relevant Acts, to be implied in a lease or agreement granted or made before the commencement of this clause continues to apply to the lease or agreement despite the repeal of the relevant Act.
- (2) Any condition of a lease or agreement granted or entered into under any of the relevant Acts—
  - (a) requiring or providing for the preservation or clearance of timber, scrub or vegetation on the land subject to the lease or agreement; or
  - (b) requiring that the lessee or purchaser reside on the land subject to the lease or agreement,is of no effect.

### **18—Transfer of assets, rights and liabilities of Lyrup Village Association**

On the commencement of clause 7, all assets, rights and liabilities of the Lyrup Village Association (continued in existence under section 85 of the *Crown Lands Act 1929*) are transferred to the Lyrup Village Settlement Trust Incorporated (constituted under the *Irrigation Act 1994*).

### **19—Validation of certain administrative acts**

Despite the provisions of section 9(1) of the *Irrigation (Land Tenure) Act 1930*, all real property to which that section refers will be taken, on the commencement of that section, to have reverted to being Crown lands within the meaning of the *Crown Lands Act 1929* as in force at the commencement of that section (and an administrative act prior to the commencement of this clause involving such land will not be invalidated by reason of the land being dealt with as if it were such Crown lands).