



Western Australia

Consultation draft of marked-up amendments

This document shows amendments proposed
by the draft *Land and Public Works
Legislation Amendment Bill 2022* Parts 2
and 3 to the *Land Administration Act 1997* and
the *Public Works Act 1902* in track changes.

Land and Public Works Legislation Amendment Bill 2022

Contents

Part 2 — *Land Administration* *Act 1997* amended

Part 1 — Preliminary

1.	Short title	1
2.	Commencement	1
3.	Terms used	1
3A.	Location or lot	9
4.	Crown bound	10
5.	Rights to minerals, petroleum, geothermal energy etc., application of Act to	10
5A.	Position on Earth, determining	10
6.	Divisions of State (Sch. 1)	11
6B.	Certain rights of way vested in local governments, status of etc.	11

Part 2 — General administration

Division 1 — General role of Minister

7.	Minister for Lands (body corporate), status of etc.	12
8.	International Program, powers as to; International Program Trust Account	12
9.	Delegation by Minister and chief executive officer of Department	14
10.	General powers of Minister in relation to land	16
11.	Minister may acquire land in the public interest	17
11A.	Minister may hold and deal with alienated land	18
11B.	Powers of Minister in relation to administration and management of land	18

12.	Powers and duties of Minister restricted in relation to managed reserves and mall reserves	19
13.	Ministerial orders, registration of etc.	19
14.	Minister to consult local governments before exercising certain powers in relation to Crown land	20
	Division 2 — Covenants and conditions and their enforcement	
15.	Covenants as to use, subdivision etc. of certain land	21
16.	Land held on conditional fee simple (s. 75(1)), memorial of charge to secure performance of conditions	25
	Division 3 — General	
17.	Hazards etc. affecting land, warnings as to on certificates of title etc.	26
18.	Crown land transactions that need Minister's approval	27
18A.	Carbon rights etc. affecting Crown land, Minister's powers as to	29
19.	Dealings etc. as to Crown land not effective until registered etc.	29
19A.	Encumbrances on fee simple in Crown land, application of TLA to	30
20.	Certain interests in Crown land, caveats as to	30
21.	Caveat for State or person under disability, Minister may lodge	30
22.	Interest or caveat to continue despite change in status of Crown land	32
23.	Adjustment of boundaries of Crown land for purposes of survey or resurvey	33
24.	Minerals, petroleum and geothermal energy etc. are reserved to Crown	34
25.	Mortgage of interest in Crown land, effect of	34
26.	Land districts and townsites, constitution etc. of	35
26A.	Names of roads and areas in new subdivision	35
27.	Subdivision and development of Crown land	37
29.	Certificates etc. of Crown land title, creation and registration of	39
30.	Authorised land officers, appointing etc.	40

31.	Public service officer of Department, restrictions on as to acquiring Crown land	41
32.	Plans of survey and sketch plans to be approved	41
33.	Approved plans of survey and sketch plans, evidentiary status of	41
34.	Entry to Crown land by Minister, powers as to	42
35.	Breach of condition or covenant applying to Crown or freehold land, Minister's powers in case of	42
36.	Breach of condition or covenant applying to Crown or freehold land, Minister's powers exercisable with consent of interest holder	47
Part 3 — Appeals to Governor		
37.	Lodging an appeal with Minister, manner of	49
38.	Minister's role on receipt of notice of appeal	49
39.	Governor to determine appeals	49
40.	Outcome of appeal, Minister to notify appellant of	49
Part 4 — Reserves		
41.	Reserving Crown land, Minister's powers as to	50
42.	Class A reserves, creating, changing etc.	50
43.	Certain changes to class A reserves, national parks etc., parliamentary procedure as to	51
44.	Easements in class A reserves	53
45.	Certain land subject to <i>Conservation and Land Management Act 1984</i> or <i>Swan and Canning Rivers Management Act 2006</i> , Minister's powers as to	54
46.	Care, control and management of reserves	55
46A.	Consultation with management body	59
47.	Lease of unmanaged reserve for reserve's purpose, Minister's powers to grant	59
48.	Lease etc. of unmanaged reserve for other purposes, Minister's powers to grant	59
49.	Plan for managed reserve	60
50.	Management order, revocation of	61
51.	Minister's powers to cancel, change purpose of or otherwise affect reserve	63
51AA.	Compensation provisions	64

51A.	Certain prescribed land taken to be reserved under s. 41	65
52.	Local government may ask Minister to acquire as Crown land certain land in district	65

Part 5 — Roads

Division 1 — Conventional roads

53.	Highways and main roads, effect of <i>Main Roads Act 1930</i> as to	69
55.	Property in and management etc. of roads	69
56.	Dedication of land as road	71
57.	Leases in relation to roads	73
58.	Closure of road at request of local government	73
58A.	Closure of road on Minister's own initiative	74

Division 2 — Mall reserves

59.	Creation and management of mall reserves	77
60.	Public utility services in mall reserve, when suppliers of to be consulted	79
61.	By-laws for management etc. of mall reserve	79
62.	Cancelling mall reserve and revoking management order	80

Division 3 — Public access routes

63.	Terms used	81
64.	Declaring etc. public access route through Crown land	81
65.	Nature, signposting and routes of public access route	82
66.	Liability of Minister etc. in respect of public access route restricted	83
67.	Temporary closure of public access route	83
68.	Fence across public access route, crossing of to be provided	84
69.	Right to use public access route	84
70.	Certain effects of public access routes	84
71.	Offences	85

Part 6 — Sales, leases, licences, etc. of Crown land

Division 1 — General

72.	Terms used	86
-----	------------	----

73.	Advisory panel, appointment of	86
	Division 2 — Sale of Crown land	
74.	Minister's powers as to sale of Crown land	87
75.	Transfer of Crown land in fee simple subject to conditions	88
76.	Mortgagee of conditional tenure land, duties of in case of mortgagor's default	91
77.	Mortgagee's sale under s. 76, application of purchase moneys from	92
78.	Development etc. of Crown land, Minister may enter into joint venture for	92
	Division 3 — Leasing of Crown land	
79.	Minister's powers as to lease of Crown land	93
80.	Conditional purchase leases	94
81.	Surrender of lease of Crown land	95
81A.	Removal of expired registered leases from certificate of Crown land title	96
	Division 4 — Provisions not restricted to either sale or leasing of Crown land	
82.	Revesting land held by Crown in fee simple in Crown	97
83.	Transfer etc. of Crown land to advance Aboriginal people	97
84.	Auctioneers of Crown land, functions of	98
85.	Sale etc. of Crown land subject to condition etc. it be subdivided	98
86.	Sale etc. of Crown land by private treaty to Commonwealth etc.	99
87.	Sale etc. of Crown land for amalgamation with adjoining land	99
88.	Option to purchase or lease Crown land, grant of	102
89.	Certain lessees of Crown land may purchase, or purchase options to purchase, the land	102
90.	Overlap of lease or easement and mining tenement, effect of	103
91.	Licences and profits à prendre over Crown land, grant of	103
92.	Improvements to leased etc. Crown land vest in Crown	104

	Part 6A — Diversification leases	
	Division 1 — Application of Part	
92A.	Leases to which this Part applies	106
	Division 2 — Grant of diversification lease	
92B.	Minister's powers as to grant of diversification lease	106
	Division 3 — Conditions of diversification lease	
92C.	Provisions that can be included in diversification lease	106
92D.	Non-exclusive possession of land under diversification lease	107
92E.	Reservation in favour of Aboriginal persons	107
92F.	Diversification lessee's duties as to leased land	107
	Division 4 — Forfeiture of diversification lease	
92G.	Issue of forfeiture notice	107
92H.	Criminal liability not affected by forfeiture	108
	Division 5 — Relations between Minister and Commissioner	
92I.	Commissioner to notify Minister of certain soil conservation notices	108
	Part 7 — Pastoral leases	
	Division 1 — Introductory	
93.	Terms used	109
	Division 2 — The Pastoral Lands Board	
94.	Board established	110
95.	Functions of Board	110
96.	Minister may give directions to Board	111
97.	Members of Board, appointment of etc.	111
98.	Procedure of Board; quorum	113
99.	Particular duties of members	113
100.	Protection from personal liability for members	114
	Division 2A — Standards, guidelines and accreditation systems	
100A.	Land condition standards and land management guidelines	115
100B.	Regard to standards and guidelines in performance of functions under this Part	116

100C.	Minister may approve land management accreditation systems	117
100D.	Status of land condition standards, land management guidelines and approved land management accreditation systems	118
	Division 3 — Grant of a pastoral lease	
101.	Grant of pastoral lease, Minister's powers as to	118
102.	Public offers etc. of pastoral leases to be made before grant	119
	Division 4 — Conditions of a pastoral lease	
103.	Terms etc. that can be included in pastoral lease	120
104.	Aboriginal people's right to enter parts of pastoral leases	120
105.	Duration of pastoral lease	120
105A.	Extension of pastoral lease or grant of pastoral lease for greater term	121
105B.	Agreements relating to extension or grant of lease under s. 105A	122
106.	Leased land to be used for pastoral purposes unless otherwise permitted	123
107.	Improvements must be kept in good condition	123
108.	Pastoral lessee's duties as to leased land	124
108A.	Board may direct pastoral lessee to submit management plan	124
108B.	Submission, approval and implementation of management plan	125
108C.	Board may direct pastoral lessee to monitor and report land condition	126
109.	No clearing of leased land unless permitted	127
110.	Non-indigenous pasture not to be sown etc. on leased land without permit	128
111.	Stock and pests on leased land	128
111A.	Board may make determinations and directions as to number and distribution of stock	130
111B.	Board may require evidence of compliance with s. 111A	130
112.	Effect of soil conservation notice on determinations and directions under s. 111A and on permits under Division 5	131
112A.	Effect on rent if reduction in stock numbers	132

113.	Pastoral lessee to submit annual return	132
114.	Compensation for improvements payable on expiry of certain leases	135
	Division 5 — Permits	
115.	Fees for permits	136
116.	Permit may be issued despite lease's terms	137
117.	Environmental conservation requirements to be complied with	137
118.	Clearing land, permit for	138
119.	Non-indigenous pastures, permit to sow etc.	138
120.	Non-pastoral agricultural activity, permit for	139
121.	Tourist activity, permit for	139
122.	Non-pastoral use etc. of enclosed or improved land, permit for	139
122A.	Prohibited stock, permit to keep etc.	140
122B.	Board's power to amend permit	140
122C.	Renewal of permit	140
122D.	Suspension of permit	141
122E.	Cancellation of permit	142
122F.	Permit not personal property for <i>Personal Property Securities Act 2009</i> (Commonwealth)	143
122G.	Terms used	143
122H.	Minister to determine annual rent	144
122I.	Minister to determine permit rent if pastoral lease subject to permit	146
123.	Valuer-General to determine annual rent at 10 yearly intervals	147
123A.	Minister may request Valuer-General to make interim determination of annual rent	148
123B.	Determining annual rent when new pastoral lease granted	149
	Division 6 — Rent for a pastoral lease	
124A.	Phasing in increases to rent due to s. 123 determination	151
124.	Annual rent if permit issued	152
125.	Payment of rent	154
126.	Objections to and review of rent or value of improvements	155
127.	Amalgamated leases, rent for	155

128.	Payment of rent may be delayed, reduced or waived in certain cases	155
	Division 7 — Defaults, offences, forfeiture and abandoned leases	
128A.	Board may direct pastoral lessee	158
129.	Default notice, when can be issued etc.	159
130.	Not complying with default notice, offence	160
131.	Forfeiture, when lease is liable to	160
132.	Criminal liability not affected by forfeiture	161
133.	Abandoned lease, Minister's powers in case of	161
	Division 8 — Transfers of pastoral holdings or shares	
134.	Transfer, mortgage etc. of lessee's interest, ministerial approval of	162
134A.	Transfer of permits	165
135.	Company holding lease, restrictions on transfer etc. of shares etc. in	165
136.	Maximum area of leased land a person may hold	166
	Division 9 — Relations between the Pastoral Board and the Commissioner	
137.	Commissioner and Board to exchange information	167
138.	Commissioner to notify Board of certain soil conservation notices	167
	Division 10 — Miscellaneous and transitional	
139.	Board's powers to investigate compliance by lessees	168
140.	Renewal of lease, request by lessee for offer of etc.	168
141.	Boundaries between leases, Minister's powers to change	169
142.	Amalgamation of leases, Minister's powers as to	169
142A.	Pastoral business units, creation of etc.	170
143.	Leases in force at 30 Mar 1998, transitional provisions for	171
	Part 8 — Easements	
143A.	Term used: grantee	175
144.	Easements over Crown land, Minister's powers to grant etc.	175
145.	Cancelling s. 144 easements	176

146.	Effect of easements granted under s. 144	177
147.	Easements in gross may be granted under s. 144 and transferred	177
148.	Conditional tenure land, grant of easement by holder of	178
149.	Holder of interest in Crown land with right to acquire fee simple, grant of easement by	178
150.	Easements no longer serving any purpose, cancelling	178

Part 9 — Compulsory acquisition of interests in land

Division 1 — Preliminary

Subdivision 1 — Interpretation

151.	Terms used	180
------	------------	-----

Subdivision 2 — Provisions relating to native title

152.	Objective of this Part and Part 10 as to NTA	182
153.	Giving notice under NTA to native title holders if no approved determination of native title, effect of for this Act	183
154.	Giving notice under NTA to native title holders if NTA Part 2 Div. 3 Subdiv. P applies, effect of for this Act	184
155.	Native title rights and interests, effect of taking under this Part	185
156.	Claims for compensation for native rights and interests, determining etc.	185
157.	Claims for compensation for native title rights and interests, who may make	185
158.	Compensation paid for native title rights and interests, recovery of if purpose of taking is cancelled	185

Subdivision 3 — Delegation

159.	Delegation by Minister to certain other Ministers	186
160.	Subdelegation of power or duty delegated under s. 159	187

Division 2 — Taking interests in land

Subdivision 1 — Land required for a public work

161.	Interests in land may be taken etc.	189
------	-------------------------------------	-----

162.	Underground land, interests in may be taken etc.	190
163.	Certain materials and interests in land not to be taken without consent of Minister or principal proprietor	191
164.	Mineral, petroleum and geothermal energy rights may be excluded from taking order	191
	Subdivision 2 — Land required for the purpose of conferring interests	
165.	Interests in land may be taken etc.	192
166.	Application of this Part and Part 10 to taking authorised, and interests taken, under s. 165	193
167.	Agreement as to payment of compensation etc. by person who will get grant for which s. 165 taking is authorised	193
	Division 3 — Procedure for taking interests in land and designating for a public work	
	Subdivision 1 — Procedure for taking interests in land by agreement	
168.	Agreement to purchase or consent to take required interest, acquiring authority's powers as to	194
169.	Purchase price in agreement to purchase	195
	Subdivision 2 — Procedure for taking interests in land without agreement	
170.	Notice of intention to take required interest, issue of etc.	195
171.	Notice of intention, content and validity of	197
172.	No transaction affecting required land without Minister's consent	198
173.	No improvements to be made to required land without Minister's approval	199
174.	Minister's consent under s. 172 to transaction, Registrar of Titles may require evidence of	200
175.	Objections to proposed taking of interests in land	200
176.	Proprietor may require acquiring authority to also take small remainders of land	201
177.	Taking order, Minister's powers to make etc.	202
178.	Taking order, content of	203
	Subdivision 3 — Effect of taking order	
179.	Registration of taking order, effect of	205
180.	Taking order may be annulled or amended	206

181.	Compensation if taking order annulled or amended	207
	Division 4 — Entry on to land	
182.	Entry for feasibility study	207
183.	Land for railway identified in special Act, entry of etc.	208
184.	Land in notice of intention, entry of for inspection, surveys etc.	209
185.	Land may be occupied temporarily to construct etc. public work	209
186.	Entry etc. before land taken in certain circumstances	210
	Division 5 — Use and disposal of land designated for a public work	
187.	Interest in land not required for public work may have designation changed or cancelled	212
188.	Transactions affecting designated interests in land, application of proceeds of	212
189.	Interest in land less than fee simple not required for public work, landowner to get option to purchase	213
190.	Fee simple in land not required for public work, previous owner etc. entitled to option to purchase	213
191.	Person who would be entitled to s. 189 or 190 option may require Minister to say if interest is required for public work	216
192.	Land not presently wanted etc. for public work may be leased	216
193.	Easement over land designated for public work, grant of	217
194.	Timber, stone etc. on land designated for public work, sale of etc.	217
	Division 6 — General provisions	
195.	Easement in gross in favour of State etc., creation of etc.	217
196.	Public access easement, creation of etc.	218
197.	Person refusing to give up possession etc. of land, Minister's powers in case of	219
198.	Fences, removal of by acquiring authority restricted	219

199.	Obstructing workers, causing damage etc., offence etc.	219
200.	Compulsory acquisition in progress at 30 Mar 1998 etc., transitional provisions for	220
201.	Delegations in force at 30 Mar 1998, preservation of	221
Part 10 — Compensation		
Division 1 — Persons entitled to compensation		
202.	Owners of interests in land taken, entitlement of	223
203.	Person suffering damage from entry to land, entitlement of	223
204.	Management body, entitlement of for loss of use of structures etc.	224
205.	Mine, compensation for damage to etc.	224
206.	Limitation on compensation if taking done under Part 9 could have been done under another Act	225
Division 2 — The claim		
207.	Time limit for making claim for compensation	225
208.	Who can claim compensation	226
209.	Principal Registrar to be guardian etc. in certain cases	226
210.	Potential claimant absent from State or an infant etc., procedure in case of	226
211.	Content and service of claim	227
212.	Non-monetary compensation, requests for	228
213.	Service of claim etc., manner of	228
214.	Acquiring authority may require further particulars	229
215.	Time limit for acquiring authority to dispute title	229
216.	Claimant whose title is disputed may apply to Supreme Court	229
Division 3 — Dealing with the claim		
217.	Offer of compensation if title not in dispute, when to be made	230
218.	Claim and offer, amending	231
219.	Rejection of offer, time limit for; effect of not rejecting offer	231
220.	Rejected offer, how compensation determined in case of	231

221.	If offer not made within time limit, claimant may commence proceedings	232
222.	Claimant failing to commence proceedings after rejecting offer	233
223.	Court action for compensation, commencing and procedure on	234
224.	SAT claim for compensation, referring and procedure on	235
225.	Assessor's consent to act required etc.	237
	Division 4 — The State Administrative Tribunal	
226.	Constitution of SAT for compensation claims	237
227.	Assessor not member of SAT may sit on SAT	238
229.	SAT may hear other claims by consent	238
230.	Assessor, objecting to etc.	239
231.	Assessor member dying or unable to act etc., replacing	239
	Division 5 — Assessing compensation	
241.	How compensation to be determined	240
242.	Rates and taxes, apportionment of	244
243.	Acts by claimant to make land less suitable for public work to be taken into account	245
244.	One sum or separate sums may be awarded and conditions attached	245
	Division 6 — Payment of compensation	
248.	Payments pending settlement of claim	246
249.	When title doubtful, compensation or purchase-money to be paid into Supreme Court	246
250.	Investment of compensation money by Principal Registrar	247
251.	Mortgage debts, application of compensation to	247
252.	Land sold with payment by instalments, application of compensation for	248
253.	Land subject to rent-charge etc., application of compensation in case of	248
254.	Reducing rent if part of rented land is taken	249
255.	Easement etc. in lieu of compensation or purchase-money, grant of by Minister	249
256.	Easement etc. in lieu of compensation, powers of court or SAT as to	249

257.	Grant of Crown land in lieu of compensation, Minister's powers as to	257
258.	Source of compensation etc.	257

Part 10A — Information

Division 1 — Sharing of information

258A.	Terms used	251
258B.	Designation of authorised officers	256
258C.	Sharing of relevant information between Board and Department	256
258D.	Sharing of relevant information with information sharing agencies	256
258E.	Sharing of information about Crown land interest holders with designated authorities and other persons	257
258F.	Guidelines relating to sharing of relevant information	258
258G.	Regulations relating to sharing of relevant information	258

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

258H.	Confidentiality	259
258I.	Authorised recording, use or disclosure of information	259

Part 11 — General

259.	Protection from personal liability	261
260.	Improvements on Crown land, valuing for s. 35 and 92	261
261.	Interest in Crown land of insolvent person available for benefit of creditors	261
262.	Death or mental incapacity of holder of interest in Crown land occurring before conditions as to improvements fulfilled	262
263.	Death of holder of interest in Crown land with right to acquire fee simple	263
264.	Limited liability of Crown or management body for damage, injury or loss suffered on, or emanating from, certain land	264

265.	<i>Prescription Act 1832</i> (UK) not applicable to Crown land	265
266.	Land no longer required for railway to become Crown land	265
267.	Offences on Crown land and proceedings for them	265
268.	Survey marks and surveyors etc., offences as to	268
269.	Contravening etc. condition or covenant as to Crown land, offence	269
270.	Unauthorised structures on Crown land	270
271.	Extensions of time for s. 270	272
272.	Appeal against s. 270 notice	273
273.	Delegation by Minister and chief executive officer of Department of s. 270 and 271 functions	273
274.	Giving documents	274
275.	Regulations generally	279
276.	Regulations about fees	280
277.	Regulations about s. 73 advisory panel	281
278.	Forms, approval of etc.	281
279.	Review of Act	281

**Part 12 — Repeals, transitional,
savings and validation related to
Land Act 1933**

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

**Part 14 — Transitional provisions for
the *Land and Public Works
Legislation Amendment Act 2022***

285.	Returns by pastoral lessees	283
286.	Annual rent for pastoral leases	283

Schedule 1 — Divisions of State

**Schedule 2 — Transitional, savings
and validation provisions related
to *Land Act 1933***

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

**Part 3 — *Public Works Act 1902*
amended**

Part I — Preliminary

1.	Short title	286
2.	Terms used	286
2A.	Governor may declare public work	290
4.	Governor may make regulations for conduct of officers	290
5.	Minister for Works	290
5A.	Delegation by Minister	291
5B.	Subdelegation of delegated power or duty	293
6.	Contracts etc. of Minister to devolve on Minister's successor	294
7.	Appointment of engineers and other officers	295

**Part IA — Western Australian
Building Management Authority**

9A.	Terms used	296
9B.	Western Australian Building Management Authority continued as body corporate	296
9C.	Functions and powers of Building Management Authority	297
9D.	Use of staff and facilities of departments, agencies and instrumentalities	299
9E.	Funds of Building Management Authority	300
9F.	Delegation by Building Management Authority	302

9G.	<i>Financial Management Act 2006 and Auditor General Act 2006, application of</i>	302
9I.	Regulations	303
	Part II — Authorising public works	
10.	Entry on land required for a public work	304
11.	Governor may authorise railways	304
28.	Power may be exercised after initiation of a public work	305
	Part IV — Surveys	
82.	Powers of entry on lands etc. for survey purposes	306
83.	Penalty for destroying survey marks etc.	306
	Part IVA — Investigations for water	
83A.	Terms used; power of entry	308
83B.	Offences	309
83C.	Compensation	309
	Part V — Roads, rivers, and bridges	
84.	Term used: road	311
85.	Roads vested in the Crown	311
86.	Construction and repair of roads and declaration of Government roads	311
87.	Government roads under exclusive care of Minister	312
88.	Local laws	312
90.	Breach of local law	313
91.	Governor may vest control of any bridge etc. in local authority	313
92.	Stopping or diverting of road	315
93.	Improvement of rivers and other watercourses	316
94.	Construction, repair and maintenance of bridges and culverts	316
	Part VI — Railways	
95.	Term used: railway	317
96.	Railways to be made only under special Act	317
99.	Powers to make railways, railway stations etc.	318
100.	Rights-of-way and traffic where railway made along or across road	319

101.	Compensation where road interfered with or wholly closed	320
102.	Government to make crossings to give access to land	321
103.	Maintenance of public roads at railway crossings and near railway stations	321
104.	Alterations in roads, drains, pipes etc. to be made without detriment to the public or to owners	322
106.	Conversion of railway bridge to combined road and railway bridge	322
107.	Right-of-way and closure of combined road and railway bridges	323
108.	Tree dangerous to railway to be removed	323
109.	Penalties for trespassing on railway in course of construction	323
110.	Crown may elect to erect and maintain fences along boundaries of railways	324
111.	Impounding animals trespassing on railway in course of construction	324

Part VIA — Miscellaneous

112.	Waste management operations at Mt Walton	326
113.	Delegation of powers and duties under section 112	327

Part VII — General provisions

113A.	Property in things placed on the land	328
115.	Governor may execute instruments	328
118.	Moneys due by local authority may be deducted from moneys payable to it by Government	328
120.	Penalty for obstruction, interference, destruction and similar acts; and recovery of costs	329
122.	Works authorised or anything commenced under repealed enactments	329
123.	Public works under previous Acts to be deemed constructed under this Act	330

Schedule 1 — Classes of public work

Part 2 — *Land Administration Act 1997* amended

[The following text comprises various provisions of the *Land Administration Act 1997* showing proposed amendments in track changes.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Land Administration Act 1997*.

2. Commencement

(1) Subject to subsection (2), this Act comes into operation on such day as is fixed by proclamation.

(2) Subject to section 22 of the *Interpretation Act 1984*, this Act is not to come into operation until all the provisions of the *Transfer of Land Amendment Act 1996* have come into operation.

3. Terms used

(1) In this Act, unless the contrary intention appears —
adjoining, in relation to parcels of Crown land, includes only separated by —

(a) roads; or

(b) railways; or

(c) watercourses or other natural features of such a character as to be insufficient to prevent the passage of stock; or

(d) reserves or unallocated Crown land;

alienated land means land held in freehold;

appointed day means day fixed under section 2(1);

approved form means form for the time being approved under section 278;

authorised land officer means a person appointed under section 30 to be an authorised land officer;

s. 3

- 1 **Board** means the Board established by section 94;
2 **carbon covenant** and **carbon right** have the same respective
3 meanings as they have in the *Carbon Rights Act 2003*;
4 **caveat** means caveat lodged under section 20 or 21, as the case
5 requires;
6 **certificate of Crown land title** means certificate of Crown land
7 title (being a certificate of the radical title of the Crown)
8 referred to in section 29 and showing the interests, dealings or
9 caveats granted, entered in to or lodged in respect of a parcel of
10 Crown land, and, except in that section, includes any subsidiary
11 certificate of Crown land title —
12 (a) created in relation to part of that parcel; and
13 (b) referred to in that certificate of Crown land title; and
14 (c) showing the particular interests, dealings or caveats
15 granted, entered into or lodged in respect of that part;
16 **certificate of title** has the same meaning as it has in the TLA;
17 **class A reserve** means reserve classified as a class A reserve
18 under section 42;
19 **Commissioner** means the Commissioner of Soil and Land
20 Conservation appointed under the *Soil and Land Conservation*
21 *Act 1945*;
22 **Commissioner of Main Roads** means Commissioner of Main
23 Roads holding office under the *Main Roads Act 1930*;
24 **condition** includes limitation, restriction and, when used in the
25 sense of a stipulation, term;
26 **condition of land**, in relation to land under a pastoral lease or a
27 diversification lease, includes the condition of the soil
28 comprising the land and the condition of the vegetation on the
29 land;
30 **covenant** means covenant referred to in section 15;
31 **Crown land**, subject to subsections (2), (3), (4) and (5), means
32 all land, except for alienated land;
33 **Crown lease** has the same meaning as it has in the TLA;

1 **dealing**, when used as a noun, means —

2 (a) document that when registered creates, effects, cancels
3 or alters interests in, or status orders in respect of,
4 Crown land; or

5 (b) order;

6 **Department** means department principally assisting the Minister
7 in the administration of this Act;

8 **DBNGP corridor** has the meaning given in the *Dampier to*
9 *Bunbury Pipeline Act 1997* section 27(1);

10 **diversification lease** has the meaning given in section 92B(1);

11 **diversification lessee** means the holder of a diversification
12 lease;

13 **external Territory** has the same meaning as it has in section 17
14 of the *Acts Interpretation Act 1901* of the Commonwealth;

15 **high water mark**, in relation to tidal waters, means ordinary
16 high water mark at spring tides;

17 **instrument**, except in relation to a delegation to, or the
18 appointment of, a person, has the same meaning as it has in the
19 TLA;

20 **interest**, in relation to Crown land, means, except in Parts 9 and
21 10, charge, Crown lease, easement, lease, mortgage, profit à
22 prendre or other interest, including such interests as are lawfully
23 granted or entered into by a management body, and their
24 counterparts under the repealed Act, but does not include —

25 (a) care, control and management of a reserve, mall reserve
26 or road; or

27 (b) caveat; or

28 (c) licence; or

29 (d) mining, petroleum or geothermal energy right;

30 **inundated land** means alienated land that, through the
31 excavation of that land or other land, has become inundated by
32 tidal waters;

s. 3

1 **land** means —

2 (a) all land within the limits of the State; and

3 (b) all marine and other waters within the limits of the State;
4 and

5 (c) all coastal waters of the State as defined by section 3(1)
6 of the *Coastal Waters (State Powers) Act 1980* of the
7 Commonwealth; and

8 (d) the sea-bed ~~and subsoil~~ beneath, and all islands and
9 structures within, the waters referred to in
10 paragraphs (b) ~~and (c); and~~ ~~and (e);~~

11 (e) the airspace above, and subsoil beneath, anything
12 referred to in paragraphs (a) to (d);

13 **land administration expertise** includes expertise and services
14 in —

15 (a) the compilation, storage and use of land information;
16 and

17 (b) land surveying; and

18 (c) land mapping; and

19 (d) land registration;

20 **land district** means land district constituted under section 26;

21 **lease** means lease of Crown land granted under this Act or
22 under an order made under section 46(3) or 59(5)(b);

23 **leasehold scheme** has the meaning given in the *Strata Titles*
24 *Act 1985* section 3(1);

25 **licence** means licence granted under section 91(1);

26 **location or lot** has the meaning given in section 3A(1);

27 ~~**location or lot** means parcel of Crown land which is shown on a~~
28 ~~plan of survey or sketch plan approved by an authorised land~~
29 ~~officer;~~

30 **mall reserve** means land reserved under section 59(1) as read
31 with section 59(4)(a)(i);

1 **managed reserve** means reserve the care, control and
2 management of which are placed under section 46 or 59;

3 **management body** means person or persons with whom or
4 which the care, control and management of a reserve or mall
5 reserve are placed under section 46(1) or 59(4);

6 **management order** means order by which the care, control and
7 management of a reserve are placed under section 46(1) or
8 59(4);

9 **management plan** has the meaning given in section 108A(2);

10 **mining, petroleum or geothermal energy right** means —

11 (a) mining tenement within the meaning of the *Mining*
12 *Act 1978*; or

13 (b) drilling reservation, lease, licence, permit, pipeline
14 licence, special prospecting authority, access authority
15 or other right under the *Petroleum and Geothermal*
16 *Energy Resources Act 1967*, the *Petroleum Pipelines*
17 *Act 1969* or the *Petroleum (Submerged Lands) Act 1982*;

18 **Minister** means Minister in [the Minister's](#) ~~his or her~~ capacity as
19 the body corporate continued under section 7(1);

20 **order** means order made by the Minister under this Act in an
21 approved form;

22 **pastoral lease** means lease which is a pastoral lease of Crown
23 land granted under section 101 or continued under section 143;

24 **pastoral lessee** means holder of a pastoral lease;

25 **Planning Commission** means Western Australian Planning
26 Commission established under the *Planning and Development*
27 *Act 2005*;

28 **positive covenant**, in relation to land, means positive covenant
29 complying with any relevant scheme and registrable under
30 section 15, or covenant which complies with any relevant
31 scheme and which imposes obligations —

32 (a) concerning the matters referred to in section 15(4)(a) to
33 (e); or

s. 3

- 1 (b) requiring the provision of public utility services or other
2 services on or to the land or other land in its vicinity; or
- 3 (c) requiring the maintenance, repair or insurance of any
4 structure or work on the land,
- 5 or imposes any condition with respect to the performance of or
6 failure to perform any such obligation;
- 7 ***private road*** means alley, court, lane, road, street, thoroughfare
8 or yard on alienated land, or a right of way created under
9 section 167A(1) of the TLA, which —
- 10 (a) is not dedicated, whether under a written law or at
11 common law, to use as such by the public; and
- 12 (b) is shown on a plan or diagram deposited or in an
13 instrument lodged with the Registrar,
- 14 and which —
- 15 (c) forms a common access to land, or premises, separately
16 occupied; or
- 17 (d) once formed or was part of a common access to land, or
18 premises, separately occupied, but no longer does so; or
- 19 (e) is accessible from an alley, court, lane, road, street,
20 thoroughfare, yard or public place that is dedicated,
21 whether under a written law or at common law, to use as
22 such by the public; or
- 23 (f) once was, but is no longer, accessible from an alley,
24 court, lane, road, street, thoroughfare, yard or public
25 place that was dedicated, whether under a written law or
26 at common law, to use as such by the public;
- 27 ***profit à prendre*** means profit à prendre granted under
28 section 91(1);
- 29 ***public access route*** means public access route declared under
30 section 64(1);
- 31 ***public service officer*** has the same meaning as it has in the
32 *Public Sector Management Act 1994*;

public utility services means drainage, electricity, gas, sewerage, telephone or water services or such other services as are prescribed for the purposes of this definition;

public work has the meaning given in the *Public Works Act 1902* section 2;

qualified certificate of Crown land title means qualified certificate of Crown land title referred to in section 29 or clause 44(2) of Schedule 2 and showing the interests, dealings or caveats granted, entered into or lodged in respect of a parcel of Crown land, and, except in that section, includes any subsidiary certificate of Crown land title —

- (a) created in relation to part of that parcel; and
- (b) referred to in that qualified certificate of Crown land title; and
- (c) showing the particular interests, dealings or caveats granted, entered into or lodged in respect of that part;

recorded means recorded under Part IIIB of the TLA;

Register has the same meaning as it has in the TLA;

registered means registered under Part IIIB of the TLA;

Registrar or **Registrar of Titles** means Registrar of Titles referred to in section 7 of the TLA;

remuneration has the same meaning as it has in the *Salaries and Allowances Act 1975*;

repealed Act means *Land Act 1933*;

reservation means order retaining in the radical title of the Crown any right or interest in land as a condition of —

- (a) a conveyance or transfer of Crown land in fee simple; or
- (b) the grant or entering into of an interest in Crown land;

reserve means Crown land for the time being reserved under section 41;

road ~~means, subject to section 54,~~ land dedicated at common law or reserved, declared or otherwise dedicated under an Act as an alley, bridge, court, lane, road, street, thoroughfare or yard for the passage of pedestrians or vehicles or both;

s. 3

1 *scheme* has the same meaning as it has in the *Environmental*
2 *Protection Act 1986*;

3 ~~*State instrumentality* includes organizations within the meaning~~
4 ~~of the *Public Sector Management Act 1994* and any other bodies~~
5 ~~corporate established under written laws;~~

6 *soil conservation notice* means a soil conservation notice issued
7 under the *Soil and Land Conservation Act 1945*;

8 *State instrumentality* —

9 (a) includes an organisation as defined in the *Public Sector*
10 *Management Act 1994* section 3(1) and any other body
11 corporate established under a written law; but

12 (b) does not include a local government or a regional local
13 government;

14 *status order* means order other than an order that creates an
15 interest;

16 *stock* means birds, crustaceans, fish, mammals or reptiles or
17 other animals of any kind whatsoever which are farmed, kept or
18 managed;

19 *subsidiary certificate of Crown land title* means subsidiary
20 certificate of Crown land title referred to in section 29;

21 *TLA* means *Transfer of Land Act 1893*;

22 *townsite* means townsit e referred to in section 26(1);

23 *transitional period* means period of 5 years beginning on the
24 appointed day;

25 *unallocated Crown land* means Crown land —

26 (a) in which no interest is known to exist, but in which
27 native title within the meaning of the *Native Title*
28 *Act 1993* of the Commonwealth may or may not exist;
29 and

30 (b) which is not reserved, declared or otherwise dedicated
31 under this Act or any other written law;

32 *unmanaged reserve* means reserve the care, control and
33 management of which are not placed with a management body.

- 1 (2) All land below high water mark, including the beds and banks
2 of tidal waters, is Crown land unless that land is inundated land
3 or other alienated land.
- 4 (3) When tidal waters form the boundary of a parcel of land or a
5 person holds the ~~freehold in~~ freehold of parcels of land adjoining
6 tidal waters —
- 7 (a) the land below high water mark (except for land which
8 was alienated land immediately before the appointed
9 day) is Crown land; and
- 10 (b) if the line of the high water mark shifts over time by
11 gradual and imperceptible degrees, the boundaries of the
12 parcel or parcels of land shift with the high water mark.
- 13 (4) No act to occupy, use, build or carry out works or remove
14 material, with or without lawful authority, is capable of causing
15 land below high water mark to cease to be Crown land.
- 16 (5) Land that becomes raised above high water mark, whether
17 gradually or imperceptibly or otherwise, because of the building
18 or carrying out of works, is Crown land.
- 19 (6) A reference in this Act to the sale of Crown land is, unless the
20 contrary intention appears, to be construed as a reference to the
21 transfer of the Crown land in fee simple for consideration.
- 22 (7) A reference in this Act to the freehold in any land is a reference
23 to the fee simple, whether absolute, conditional or otherwise, of
24 that land.
- 25 *[Section 3 amended: No. 59 of 2000 s. 4; No. 56 of 2003 s. 4;*
26 *No. 38 of 2005 s. 6; No. 28 of 2006 s. 375; No. 60 of 2006*
27 *s. 139; No. 35 of 2007 s. 98(2) and (3); No. 30 of 2018 s. 145.]*

28 **3A. Location or lot**

- 29 (1) A *location* or *lot* is a parcel of Crown land that is shown on a
30 plan of survey or sketch plan approved by an authorised land
31 officer.

s. 4

1 (2) A plan of survey or sketch plan may specify that a location or
2 lot shown on it has —

3 (a) a two-dimensional configuration consisting of —

4 (i) length; and

5 (ii) width;

6 or

7 (b) a three-dimensional configuration consisting of —

8 (i) length; and

9 (ii) width; and

10 (iii) height or depth or both.

11 **4. Crown bound**

12 This Act binds the Crown.

13 **5. Rights to minerals, petroleum, geothermal energy etc.,**
14 **application of Act to**

15 (1) This Act does not —

16 (a) apply to the registration of rights over Crown land in
17 respect of minerals, petroleum, geothermal energy or
18 geothermal energy resources; or

19 (b) prevent or otherwise affect the system of registration
20 under other Acts of mining, petroleum or geothermal
21 energy rights in respect of Crown land.

22 (2) In subsection (1) —

23 *geothermal energy* and *geothermal energy resources* have the
24 same meanings as they have in the *Petroleum and Geothermal*
25 *Energy Resources Act 1967*.

26 *[Section 5 amended: No. 35 of 2007 s. 98(4).]*

27 **5A. Position on Earth, determining**

28 (1) If for the purposes of this Act it is necessary to determine the
29 position on the surface of the Earth of a point, line or area, that

1 position is to be determined by reference to the prescribed
2 Australian datum.

3 (2) Regulations that prescribe a datum for the purposes referred to
4 in subsection (1), or amend that datum or prescribe another
5 datum to replace that datum, may make any transitional or
6 savings provisions that are necessary or convenient to be made.

7 (3) Regulations referred to in subsection (2) may modify or
8 otherwise affect the operation of this Act.

9 *[Section 5A inserted: No. 54 of 2000 s. 4.]*

10 **6. Divisions of State (Sch. 1)**

11 For the purposes of this Act, the State is divided into the
12 Divisions described in Schedule 1.

13 *[6A. Has not come into operation ¹.]*

14 **6B. Certain rights of way vested in local governments, status of**
15 **etc.**

16 To avoid doubt, it is declared that if —

- 17 (a) land was or is taken or resumed and vested in a local
18 government for the purpose of a right of way or a right
19 of way and recreation, and not a road; and
20 (b) the land comprising the right of way or right of way and
21 recreation has not been or is not dedicated as a road
22 under a written law,

23 the land —

- 24 (c) is and since it was vested in the local government has
25 remained a right of way; and
26 (d) the common law relating to the creation of a public right
27 of way by way of dedication and acceptance has never
28 applied and does not apply to the land so as to dedicate
29 the land as a public right of way.

30 *[Section 6B inserted: No. 59 of 2000 s. 5.]*

Part 2 — General administration

Division 1 — General role of Minister

7. Minister for Lands (body corporate), status of etc.

- (1) The body corporate established under the repealed Act under the name of the Minister for Lands is continued as a body corporate under this Act under that name and consists of the Minister to whom the administration of this Act is from time to time committed by the Governor.
- (2) The Minister has perpetual succession and a common seal.
- (3) Proceedings may be taken by or against the Minister in [the Minister's](#)~~his or her~~ corporate name.
- (4) The Minister is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown.

8. International Program, powers as to; International Program Trust Account

- (1) In this section —
- Account** means the International Program Trust Account established under subsection (3);
- Program** means the International Program established to initiate and advance the provision and sale to the Commonwealth or an external Territory, or to any instrumentality of either, or to any country outside Australia, of land administration expertise.
- (2) The Minister is to carry out the Program and may for that purpose —
- (a) invite persons in the private sector within Australia or elsewhere to participate in the establishment, development and completion of international projects for the provision and sale to the Commonwealth or an external Territory, or to an instrumentality of either, or

- 1 to any country outside Australia, of land administration
2 expertise, and to negotiate and conclude agreements,
3 including joint venture agreements, with those persons
4 for the purpose of that participation; and
- 5 (b) raise such fees and charges in respect of that provision
6 and sale, and under those agreements, as the Minister
7 considers appropriate.
- 8 (3) The Minister may, with the prior approval of the Treasurer,
9 establish under section 16 of the *Financial Management*
10 *Act 2006* an agency special purpose account called the
11 International Program Trust Account for the purposes of the
12 Program.
- 13 (4) There are to be placed to the credit of the Account —
- 14 (a) moneys generated by the carrying out of the Program,
15 including fees and charges raised under
16 subsection (2)(b); and
- 17 (b) moneys appropriated by Parliament; and
- 18 (c) any other moneys lawfully received by, made available
19 to or payable to the Minister in respect of the Program.
- 20 (5) The funds standing to the credit of the Account are to be applied
21 in payment of —
- 22 (a) expenditure incurred by the Minister in the carrying out
23 of the Program; and
- 24 (b) any other expenditure lawfully incurred by the Minister
25 in respect of the Program.
- 26 (6) The Account is to be operated solely for the purposes of the
27 Program and is to be administered by the Minister.
- 28 (7) The provisions of the *Financial Management Act 2006* and the
29 *Auditor General Act 2006* regulating the financial
30 administration, audit and reporting of departments apply to and
31 in relation to the Account.

s. 9

- 1 (8) The administration of the Account is for the purposes of
2 section 52 of the *Financial Management Act 2006* to be
3 regarded as a service under the control of the department of the
4 Public Service principally assisting in the administration of the
5 Program.

6 *[Section 8 amended: No. 28 of 2006 s. 376; No. 77 of 2006*
7 *Sch. 1 cl. 93(1)-(3).]*

8 **9. Delegation by Minister and chief executive officer of**
9 **Department**

10 (1) The Minister may delegate any power or duty of the Minister
11 under another provision of this Act to —

- 12 (a) the chief executive officer of the Department; or
13 (b) another public service officer of the Department; or
14 (c) the holder for the time being of an office in the
15 Department; or
16 (d) a prescribed person or a person belonging to a
17 prescribed class of persons.

18 (2) The Minister can delegate under subsection (1) a power or duty
19 to convey or transfer the fee simple in Crown land only in
20 accordance with the regulations.

21 (3) A person to whom a power or duty is delegated under
22 subsection (1)(b), (c) or (d) cannot delegate that power or duty.

23 (4) The chief executive officer of the Department may delegate to a
24 person referred to in subsection (1)(b), (c) or (d) any power or
25 duty that is delegated to the chief executive officer under
26 subsection (1)(a).

27 (5) A person to whom a power or duty is delegated under
28 subsection (4) cannot delegate that power or duty.

29 (6) A delegation under this section must be in writing signed by the
30 Minister or the chief executive officer of the Department (as the
31 case requires).

1 (7) A person exercising or performing a power or duty that has been
2 delegated to the person under this section is taken to do so in
3 accordance with the terms of the delegation unless the contrary
4 is shown.

5 (8) Nothing in this section limits the ability of the Minister or the
6 chief executive officer of the Department to perform a function
7 through an officer or agent.

8 (9) This section is subject to Part 9 Division 1 Subdivision 3 and
9 section 273.

10 **~~9. Delegation by Minister~~**

11 ~~— (1) Subject to subsections (2) and (3) and to Part 9 and section 273,~~
12 ~~the Minister may, either generally or as otherwise provided by~~
13 ~~the instrument of delegation, by writing signed by him or her~~
14 ~~delegate to —~~

15 ~~— (a) a public service officer of the Department, being a~~
16 ~~public service officer named; or~~

17 ~~— (b) a person for the time being holding an office in the~~
18 ~~Department, being an office specified; or~~

19 ~~— (c) a prescribed person, or a person belonging to a class of~~
20 ~~prescribed persons, specified,~~

21 ~~— in the instrument of delegation, any of his or her powers (other~~
22 ~~than this power of delegation) or duties under this Act.~~

23 ~~— (2) The Minister may, in accordance with the regulations, delegate~~
24 ~~under subsection (1) a power conferred or duty imposed by this~~
25 ~~Act to convey or transfer the fee simple in Crown land.~~

26 ~~— (3) When the Minister delegates a power or duty under~~
27 ~~subsection (1), that delegation is to be made by instrument~~
28 ~~published in the *Gazette*.~~

29 ~~— (4) A power or duty delegated under subsection (1) must, if~~
30 ~~exercised or performed by the delegate, be exercised or~~
31 ~~performed in accordance with the instrument of delegation.~~

s. 10

~~(5) Nothing in this section prevents or limits the application of sections 58 and 59 of the Interpretation Act 1984 to a delegation made under subsection (1).~~

10. General powers of Minister in relation to land

(1) The Minister may, in the name and on behalf of the State —

- (a) exercise powers and perform duties in relation to land in accordance with this Act; and
- (b) provide land administration expertise to the private and public sectors within Australia and elsewhere, and raise such fees and charges in respect of that provision as the Minister considers appropriate.

(2) The Minister may, when exercising powers or performing duties in relation to land under subsection (1)(a), require the land to be used for such purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument.

(3) Subject to this Act, the~~The~~ Minister may exercise powers or perform duties in relation to land under subsection (1)(a) despite the existence of interests in, or caveats in respect of, the land if the Minister does so —

- (a) without adversely affecting any such interest or caveat; or
- (b) with the consent of the holder of any such interest or of the relevant caveator,

and those interests or caveats continue to apply to the land despite any such exercise or performance.

(4) When a consent referred to in subsection (3)(b) is given, the Minister may in accordance with that consent by exercising a power conferred on the Minister~~him or her~~ by another provision of this Act extinguish the interest or caveat in respect of which that consent was given.

- 1 (5) Subject to this Act and to section 60(2)(b)(i) of the
2 *Contaminated Sites Act 2003*, any proceeds received by the
3 Minister from exercising powers or performing duties in
4 relation to land, or providing land administration expertise and
5 services, under subsection (1) are —
6 (a) for the purposes of the *Financial Management Act 2006*,
7 to be taken to be moneys lawfully received by the
8 Department; and
9 (b) subject to section 23 of that Act, to be credited to the
10 Consolidated Account.

11 *[Section 10 amended: No. 60 of 2003 s. 100; No. 74 of 2003*
12 *s. 72(2); No. 77 of 2006 s. 4 and Sch. 1 cl. 93(4).]*

13 **11. Minister may acquire land in the public interest**

- 14 (1) Subject to subsection (2), the Minister may, in the name and on
15 behalf of the State, acquire an estate, interest or other right in or
16 to land in the public interest from any person —
17 (a) by purchase; or
18 (b) by exchange, and may make or receive any payment that
19 is necessary because of any difference in value between
20 the pieces of land exchanged; or
21 (c) by accepting the surrender of land held in fee simple or
22 a less estate or interest; or
23 (d) by taking it in the manner provided by Part 9; or
24 (e) by forfeiture to the State under section 35; or
25 (f) by acquiring it in any other manner provided for by this
26 Act.
27 (2) The Minister may, in the name and on behalf of the State,
28 acquire an estate, interest or other right in or to land in the
29 public interest from the Commonwealth, another State, a
30 Territory or another country —
31 (a) by purchase; or

s. 11A

- 1 (b) by exchange, and may make or receive any payment that
2 is necessary because of any difference in value between
3 the pieces of land exchanged; or
- 4 (c) by accepting the surrender of land held in fee simple or
5 a less estate or interest.
- 6 (3) The Minister must, after consulting the Valuer-General,
7 determine the value of any estate, interest or other right in or to
8 land —
- 9 (a) to be purchased under this section; or
- 10 (b) to be acquired by exchange under this section, and the
11 value of the estate, interest or other right in or to land to
12 be transferred in exchange for the estate, interest or
13 other right to be so acquired.

14 **11A. Minister may hold and deal with alienated land**

- 15 (1) The Minister may, in the name and on behalf of the State, hold
16 the freehold in land.
- 17 (2) The Minister may, in the name and on behalf of the State, deal
18 with and dispose of land held in freehold by the Crown, the
19 State or the Minister.
- 20 (3) Without limiting subsection (2), the Minister may —
- 21 (a) undertake, plan, provide for, promote or coordinate the
22 subdivision, amalgamation, improvement, development,
23 alteration or management of land referred to in that
24 subsection; and
- 25 (b) carry out an investigation, survey, exploration or
26 feasibility study on, or in relation to, that land.

27 **11B. Powers of Minister in relation to administration and**
28 **management of land**

- 29 (1) The Minister may do all things necessary or convenient to be
30 done for or in connection with the administration and

management of Crown land and land referred to in section 11A(2).

(2) Without limiting subsection (1), the Minister may enter into a contract or arrangement with any person or body in respect of the administration or management of land referred to in that subsection.

12. Powers and duties of Minister restricted in relation to managed reserves and mall reserves

(1) The Minister must not exercise a power or~~The Minister must not exercise a power (other than a power conferred by section 50(1) or (2)) or~~ perform a duty under section 10(1) in respect of the care, control or management of Crown land in a managed reserve or mall reserve without the consent of the relevant management body.

(2) Subsection (1) does not apply to —

(a) the exercise of a power conferred by section 42(3), 43(1)(a) or (c), 45(2), 50(1) or (2) or 51(2); or

(b) the performance of a duty imposed by section 42(4) or 45(4); or

(c) the exercise of a power, or the performance of a duty, that is necessary as a consequence of the exercise of a power referred to in paragraph (a); or

(d) the exercise of a power conferred by, or the performance of a duty imposed by, Part 9.

13. Ministerial orders, registration of etc.

(1) The Minister must, when ~~the Minister~~~~he or she~~ makes an order, lodge the order with the Registrar for registration.

(2) An order is not subsidiary legislation within the meaning of the *Interpretation Act 1984*.

s. 14

- 1 (3) If a minor error or omission has occurred in respect of an order,
2 the Minister may, if to do so will not prejudice any person
3 affected by the order, by subsequent order amend the order.
- 4 (4) An order amended under subsection (3) is to be treated as
5 having been made in its amended form.
- 6 (5) An order becomes effective on registration.
- 7 (6) An order revoked or replaced under section 165(4) ceases to
8 have effect from the day the order revoking it or replacing it is
9 registered.
- 10 (7) An order amended under section 165(4) is to be treated as
11 having been made in its amended form from the day the order
12 amending it is registered.

13 *[Section 13 amended: No. 59 of 2000 s. 6.]*

14 **14. Minister to consult local governments before exercising**
15 **certain powers in relation to Crown land**

16 (1) Before ~~Before~~ exercising in relation to
17 Crown land any power conferred by this Act (other than
18 Part 5), ~~Act~~, the Minister must, unless it is impracticable to do
19 so, consult the local government within the district of which the
20 Crown land is situated concerning the proposed exercise of
21 power. ~~that exercise.~~

22 (2) For the purposes of subsection (1), the Minister consults the
23 local government if the Minister —

24 (a) gives written notice of the proposed exercise of power to
25 the local government; and

26 (b) in the notice invites the local government to provide
27 comments on the proposed exercise of power within
28 42 days after the date of the notice; and

29 (c) considers any comments received within the 42-day
30 period referred to in paragraph (b) or any longer period
31 allowed under subsection (3).

(3) The Minister may, on application by the local government, allow a longer period for comments in response to a notice given under subsection (2).

Division 2 — Covenants and conditions and their enforcement

15. Covenants as to use, subdivision etc. of certain land

(1) This section applies to land which is —

- (a) Crown land; or
- (b) alienated land that is the subject of an agreement relating to the use of the alienated land and that is entered into between —
 - (i) the Minister; and
 - (ii) the person who is the holder of the freehold in the alienated land,before the alienated land was transferred by the Minister in fee simple to that holder.

(2) In this section —

agreement land means alienated land referred to in subsection (1)(b);

registered, in relation to —

- (a) Crown land, means registered under Part IIIB of the TLA; or
- (b) agreement land, means registered under the TLA otherwise than under Part IIIB of the TLA,

and **registrable** has a corresponding meaning.

(3) Subject to subsection (5), a covenant described in subsection (4) in favour of the Minister as covenantee —

- (a) may be registered —
 - (i) if that covenant relates to Crown land, by order against the relevant certificate of Crown land

s. 15

- 1 title or qualified certificate of Crown land title;
2 or
3 (ii) if that covenant relates to agreement land, by
4 instrument against the relevant certificate of title,
5 subject to that covenant; and
6 (b) runs with that Crown land or agreement land, as the case
7 requires; and
8 (c) is enforceable against the covenantor and the
9 covenantor's ~~this or her~~ successors in title even if that
10 covenant is not annexed to land in which the Minister
11 has an estate or interest.
- 12 (4) A covenant registrable under subsection (3) may be a positive
13 covenant or restrictive covenant and may, without limiting the
14 generality of this subsection, include one or more of the
15 following —
16 (a) provision in respect of the use of land subject to that
17 covenant, the use of a building on or to be erected on
18 that land or the payment of the purchase price of that
19 land;
20 (b) the requirement that land —
21 (i) is to be built on in accordance with that
22 covenant; or
23 (ii) is not to be built on except in accordance with
24 that covenant; or
25 (iii) is not to be built on;
26 (c) the requirement that land —
27 (i) is not to be subdivided except in accordance with
28 that covenant; or
29 (ii) is not to be subdivided;
30 (d) the requirement that parcels of that land designated in
31 that covenant and registered under one or more titles are
32 not to be sold or otherwise transferred separately;

- 1 (e) provision in respect of the conditions subject to which
2 the fee simple of, or an interest in, Crown land is to be
3 transferred, granted or entered into.
- 4 (5) The Minister must, before a positive covenant referred to in
5 subsection (4) is registered in respect of —
- 6 (a) Crown land the subject of an interest, status order or
7 caveat, obtain the consent of the holder of the interest, of
8 the management body or other person affected by the
9 status order or of the caveator; or
- 10 (b) agreement land, obtain the consent of the holder of the
11 freehold in the agreement land,
12 to that registration.
- 13 (6) A covenant described in subsection (7) —
- 14 (a) may impose an obligation on the covenantor to be
15 performed to the satisfaction of —
- 16 (i) the Minister, a State instrumentality or a local
17 government; or
- 18 (ii) such other person as is prescribed,
19 as covenantee; and
- 20 (b) may be registered —
- 21 (i) if that covenant relates to Crown land, by order
22 against the relevant certificate of Crown land
23 title or qualified certificate of Crown land title;
24 or
- 25 (ii) if that covenant relates to agreement land, by
26 instrument against the relevant certificate of title,
27 subject to that covenant; and
- 28 (c) runs with that Crown land or agreement land, as the case
29 requires; and
- 30 (d) is enforceable against the covenantor and the
31 covenantor'~~this or her~~ successors in title even if that

s. 15

- 1 covenant is not annexed to land in which the covenantee
2 has an estate or interest.
- 3 (7) A covenant registrable under subsection (6) may be a positive
4 covenant or restrictive covenant and may include one or more of
5 the following —
- 6 (a) any provision or requirement referred to in
7 subsection (4)(a), (b), (c), (d) or (e);
- 8 (b) the requirement that land or a specified amenity in
9 relation to it be protected, preserved, conserved,
10 maintained, enhanced, restored or kept in its natural or
11 existing state in accordance with, and to the extent
12 provided in, that covenant.
- 13 (8) For the purposes of subsection (7) —
- 14 **amenity** includes natural, historical, heritage, cultural, scientific,
15 architectural, environmental, wildlife or plant life value relating
16 to the land that is subject to the relevant covenant.
- 17 (9) A covenant registered under this section —
- 18 (a) indemnifies the covenantee against any matter agreed to
19 by the covenantor and covenantee and provides for the
20 due performance of the obligations under that covenant
21 by the holders of interests, or the holder of the freehold,
22 in the relevant land; and
- 23 (b) constitutes a charge on the relevant land.
- 24 (10) Section 110 of the TLA does not apply to a charge referred to in
25 subsection (9)(b).
- 26 (11) If an order or other instrument contains a covenant registrable
27 under this section, that covenant, while registered, is binding on
28 the covenantor and the covenantor's ~~this or her~~ successors in title.
- 29 (12) A person who enters into a covenant under this section is not
30 liable for a breach of the covenant which occurs after that
31 person ceases to hold —
- 32 (a) an interest in the relevant Crown land; or

- 1 (b) the freehold in the relevant agreement land,
2 as the case requires.
- 3 (13) A covenant referred to in subsection (9) may be —
4 (a) modified by agreement between the covenantor or the
5 covenantor'~~his or her~~ successor in title and the
6 covenantee; or
7 (b) discharged by the covenantee.
- 8 (14) In relation to Crown land, the Minister may be the covenantor
9 of a covenant registered under subsection (3) or (6).
- 10 (15) If a covenant is registered under subsection (3) or (6) against
11 Crown land by an instrument against the relevant certificate of
12 Crown land title or qualified certificate of Crown land title, the
13 covenant is by operation of this subsection transferred to, and
14 applies to, the fee simple when the Crown land is transferred in
15 fee simple in all respects as if the fee simple had been referred
16 to in the covenant.
17 *[Section 15 amended: No. 59 of 2000 s. 7.]*
- 18 **16. Land held on conditional fee simple (s. 75(1)), memorial of**
19 **charge to secure performance of conditions**
- 20 (1) If the Minister transfers Crown land in fee simple under
21 section 75(1) subject to the condition that the due performance
22 of other conditions by the holder of the freehold in the relevant
23 land is to be secured by a charge on that land registered under
24 this section, the Minister may lodge a memorial in an approved
25 form with the Registrar.
- 26 (2) When the Registrar has registered a memorial and noted the
27 Register accordingly, the due performance of conditions
28 referred to in subsection (1) is a charge on the subject land for
29 the benefit of the Minister.
- 30 (2A) If the charge secures the due performance of conditions
31 concerning a specified use under section 75(1) and those

s. 17

- 1 conditions are varied under that section, the charge is to be
2 taken to secure the performance of the conditions as so varied.
- 3 (3) If a registered memorial referred to in subsection (2) —
4 (a) states that no dealings or other instruments are to be
5 registered in respect of the subject land while that
6 memorial remains registered under this section, that
7 memorial has effect accordingly; or
8 (b) does not so state, that memorial is merely notice of its
9 contents to those concerned with the subject land.
- 10 (4) If any default is made in respect of the performance referred to
11 in subsection (2) while the relevant memorial remains
12 registered, the Minister has the same powers of sale over the
13 subject land as are given by the TLA to a mortgagee under a
14 mortgage in respect of which default has been made in the
15 payment of principal.
- 16 (5) If the Minister determines that a charge in respect of which a
17 memorial referred to in subsection (2) is registered is no longer
18 required, the Minister may request the Registrar to cancel that
19 memorial.
- 20 (6) On receiving a request made under subsection (5), the Registrar
21 must cancel the relevant memorial and by doing so remove the
22 charge from the subject land.
- 23 (7) In this section —
24 *subject land* means land referred to in subsection (1).
25 [Section 16 amended: No. 30 of 2018 s. 146.]

Division 3 — General

- 27 **17. Hazards etc. affecting land, warnings as to on certificates of**
28 **title etc.**
- 29 (1) When the Minister wishes the certificate of title of land the fee
30 simple of which has been transferred under this Act to be
31 endorsed with a statement warning of hazards or other factors

- 1 affecting, or likely to affect, the use or enjoyment of that land,
2 the Minister may, with the consent of the holder of that fee
3 simple, lodge with the Registrar a memorial in an approved
4 form containing that statement.
- 5 (2) When the Minister wishes the certificate of Crown land title of a
6 parcel of Crown land an interest in which has been or is to be
7 granted or entered into under this Act to be endorsed with a
8 statement warning of hazards or other factors affecting, or likely
9 to affect, the use or enjoyment of that parcel, the Minister may
10 lodge with the Registrar a memorial in an approved form
11 containing that statement.
- 12 (3) On the lodging of a memorial under subsection (1) or (2), the
13 Registrar must —
- 14 (a) endorse on the relevant certificate of title or certificate
15 of Crown land title; and
- 16 (b) note on the Register,
17 a memorandum of the memorial.
- 18 (4) The Minister may, at any time after the lodging of a memorial
19 under subsection (1) or (2), request the Registrar to remove —
- 20 (a) the relevant endorsement from the certificate of title or
21 certificate of Crown land title; and
- 22 (b) the relevant note from the Register,
23 and the Registrar must comply with that request.
- 24 **18. Crown land transactions that need Minister's approval**
- 25 (1) A person must not without authorisation under subsection (7)
26 assign, sell, transfer or otherwise deal with interests in Crown
27 land or create or grant an interest in Crown land.
- 28 (2) A person must not without authorisation under subsection (7) —
- 29 (a) grant a lease or licence under this Act, or a licence under
30 the *Local Government Act 1995*, in respect of Crown
31 land in a managed reserve; or

s. 18

- 1 (b) being the holder of such a lease or licence, grant a
2 sublease or sublicence in respect of the whole or any
3 part of that Crown land.
- 4 (3) A person must not without authorisation under subsection (7)
5 mortgage a lease of Crown land.
- 6 (4) A lessee of Crown land must not without authorisation under
7 subsection (7) sell, transfer or otherwise dispose of the lease in
8 whole or in part.
- 9 (5) The Minister may, before giving approval under this section, in
10 writing require —
- 11 (a) an applicant for that approval to furnish the Minister
12 with such information concerning the transaction for
13 which that approval is sought as the Minister specifies in
14 that requirement; and
- 15 (b) information furnished in compliance with a requirement
16 under paragraph (a) to be verified by statutory
17 declaration.
- 18 (6) An act done in contravention of subsection (1), (2), (3) or (4) is
19 void.
- 20 (7) A person or lessee may make a transaction under subsection (1),
21 (2), (3) or (4) —
- 22 (a) with the prior approval in writing of the Minister; or
- 23 (b) if the transaction is made in circumstances, and in
24 accordance with any condition, prescribed for the
25 purposes of this paragraph.
- 26 (8) This section does not apply to a transaction relating to an
27 interest in Crown land if —
- 28 (a) that land is set aside under, dedicated or vested for the
29 purposes of an Act other than this Act, and the
30 transaction is authorised under that Act; or

- 1 (b) that interest may be created, granted, transferred or
2 otherwise dealt with under an Act other than —
3 (i) this Act; or
4 (ii) a prescribed Act;
5 or
6 (c) an agreement, ratified or approved by another Act, has
7 the effect that consent to the transaction was not
8 required under section 143 of the repealed Act; or
9 (d) the transaction is a lease, sublease or licence and the
10 approval of the Minister is not required under
11 section 46(3b).

12 *[Section 18 amended: No. 59 of 2000 s. 8(1)-(5)².]*

13 **18A. Carbon rights etc. affecting Crown land, Minister's powers**
14 **as to**

15 The Minister may —

- 16 (a) apply for the State to be registered as the proprietor of a
17 carbon right in respect of Crown land; or
18 (b) enter into a carbon covenant —
19 (i) that benefits a carbon right in respect of Crown
20 land; or
21 (ii) that burdens Crown land;
22 or
23 (c) deal with —
24 (i) a carbon right in respect of Crown land; or
25 (ii) a carbon covenant referred to in paragraph (b)(i)
26 or (ii).

27 *[Section 18A inserted: No. 56 of 2003 s. 5.]*

28 **19. Dealings etc. as to Crown land not effective until registered**
29 **etc.**

30 Subject to section 68 of the TLA, a dealing or caveat in respect
31 of Crown land created or lodged under this Act or the TLA does

s. 19A

1 not become effective until that dealing is registered or that
2 caveat is recorded, as the case requires.

3 **19A. Encumbrances on fee simple in Crown land, application of**
4 **TLA to**

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

14 *[Section 19A inserted: No. 59 of 2000 s. 9.]*

15 **20. Certain interests in Crown land, caveats as to**

16 (1) Subject to subsection (2), a person claiming an interest in land
17 the subject of a certificate of Crown land title or a qualified
18 certificate of Crown land title may lodge a caveat with the
19 Registrar under Part V of the TLA.

20 (2) A caveat can only be lodged under subsection (1) in respect
21 of —

- 22 (a) a registered interest; or
23 (b) an interest approved by the Minister under section 18,
24 but not registered; or
25 (c) an interest referred to in section 18(8).

26 *[Section 20 amended: No. 59 of 2000 s. 10.]*

27 **21. Caveat for State or person under disability, Minister may**
28 **lodge**

29 (1) Part V of the TLA does not apply to or in relation to this
30 section.

- 1 (2) The Minister may lodge with the Registrar, and direct the
2 Registrar to record against the relevant certificate of Crown land
3 title, a caveat on behalf of —
- 4 (a) the State; or
- 5 (b) any person who is a minor, has a mental disability as
6 defined in the *Guardianship and Administration*
7 *Act 1990* section 3(1), is absent from the State or is
8 otherwise under a disability,
- 9 to forbid absolutely the registration of —
- 10 (c) any transfer in fee simple of, or any disposal of an
11 interest in, or other dealing with, Crown land in which
12 the State claims, or that person appears to have a claim
13 to, an interest; or
- 14 (d) any grant of or entry into, or other dealing with, an
15 interest in Crown land —
- 16 (i) in any case in which it appears that an error has
17 been made by misdescription or otherwise in any
18 order or other instrument; or
- 19 (ii) for the purpose of preventing any fraud or
20 improper dealing.
- 21 (3) The Minister may —
- 22 (a) lodge with the Registrar a caveat on behalf of the State
23 or a person to protect an interest in Crown land and
24 direct the Registrar to endorse a memorandum of the
25 caveat on the Register accordingly; or
- 26 (b) direct the Registrar to remove, wholly or in part, a
27 caveat lodged under this subsection and amend or delete
28 the relevant memorandum accordingly.
- 29 (4) The Registrar must comply with a direction given under
30 subsection (2) or (3).
- 31 *[Section 21 amended: No. 25 of 2014 s. 71.]*

s. 22

1 **22. Interest or caveat to continue despite change in status of**
2 **Crown land**

3 (1) In this section —

4 **reserve excision order** means an order made under
5 section 42(3), 43(1)(a) or (c), 45(2) or 51(1) or (2) that excises
6 an area from a reserve.

7 (2) An interest or caveat to which Crown land is subject continues
8 if the Crown land —

9 (a) is, or ceases to be, reserved under section 41; or

10 (b) is, or ceases to be, dedicated, reserved, set apart or
11 vested under another written law.

12 (3) Despite subsection (2), if Crown land ceases to be reserved
13 under section 41 as the result of a reserve excision order, an
14 interest or caveat to which the Crown land is subject is
15 extinguished, on registration of the reserve excision order,
16 unless —

17 (a) the interest or caveat only applies to the Crown land;
18 and

19 (b) the reserve excision order specifies that the interest or
20 caveat continues.

21 (4) If a lease continues under this section, the Minister may, with
22 the consent of the lessee, vary the terms of the lease and must, if
23 the Minister does so, lodge that variation with the Registrar.

24 (5) The continuation of an interest or caveat under this section is
25 subject to the other provisions of this Act.

26 ~~**22. Crown land ceasing to be reserved etc., interests in etc.**~~
27 ~~**continue**~~

28 ~~(1) When any Crown land is subject to an interest or caveat and~~
29 ~~ceases to be —~~

30 ~~(a) reserved under Part 4; or~~

1 ~~—— (b) dedicated, reserved, set apart or vested under another~~
2 ~~written law; or~~

3 ~~—— (c) subject to a management order,~~

4 ~~—— that interest or caveat continues.~~

5 ~~—— (2) If a lease is continued under subsection (1), the Minister may,~~
6 ~~with the consent of the lessee, vary the terms of the lease and~~
7 ~~must, if he or she does so, lodge that variation with the~~
8 ~~Registrar.~~

9 **23. Adjustment of boundaries of Crown land for purposes of**
10 **survey or resurvey**~~Subdivision etc. of Crown land the~~
11 ~~subject of interests etc.~~

12 (1) If the Minister proposes to survey or resurvey the internal or
13 external boundaries (or both) ~~of, or to subdivide under~~
14 ~~section 27,~~ Crown land the subject of any interests or caveats,
15 the Minister may, with or without the consent of the holders of
16 the interests, or of the relevant caveators, by order make any
17 adjustment to those boundaries the Minister considers
18 necessary, in accordance with a plan of survey or sketch plan
19 specified in the order, without any obligation to make or pay
20 compensation.~~incorporating a plan of survey or sketch plan or~~
21 ~~revised plan of survey or sketch plan make such adjustments to~~
22 ~~those boundaries as —~~

23 ~~—— (a) the Minister considers necessary; and~~

24 ~~—— (b) accord with any proposed plan of subdivision approved under~~
25 ~~the *Planning and Development Act 2005*,~~

26 ~~—— without any obligation to make or pay compensation.~~

27 (2) On the registration of an order referred to in subsection (1),
28 ~~approval by an authorised land officer of a plan of survey or~~
29 ~~sketch plan or revised plan of survey or sketch plan referred to~~
30 ~~in subsection (1) and the registration of the order with reference~~
31 ~~to that plan of survey or sketch plan or revised plan of survey or~~

1 ~~sketch plan~~, the internal or external boundaries (or both) of the
2 relevant Crown land are adjusted accordingly —

- 3 (a) despite the existence of any interests registered or
4 caveats lodged in respect of that Crown land; and
5 (b) with or without the consent of the holders of those
6 interests or of the relevant caveators.

7 (3) The Minister must ensure that an adjustment made under
8 subsection (2) is made in conformity with sound planning and
9 land management principles so as to cause as little detriment as
10 possible to any interest or caveat affected by that adjustment.

11 (4) On the adjustment under subsection (2) of the internal or
12 external boundaries (or both) of Crown land subject to interests
13 or caveats, the interests or caveats apply to the relevant
14 locations or lots within those boundaries and not to the Crown
15 land referred to in the instruments which created those interests
16 or caveats.

17 [*Section 23 amended: No. 38 of 2005 s. 7.*]

18 **24. Minerals, petroleum and geothermal energy etc. are**
19 **reserved to Crown**

20 Minerals within the meaning of the *Mining Act 1978* and
21 petroleum within the meaning of the *Petroleum and Geothermal*
22 *Energy Resources Act 1967* or the *Petroleum (Submerged*
23 *Lands) Act 1982* and geothermal energy resources and
24 geothermal energy within the meaning of the *Petroleum and*
25 *Geothermal Energy Resources Act 1967* in Crown land are
26 reserved to the Crown and remain so reserved after the Crown
27 land is transferred in fee simple under this Act.

28 [*Section 24 amended: No. 35 of 2007 s. 98(5).*]

29 **25. Mortgage of interest in Crown land, effect of**

30 Subject to sections 76 and 77, a mortgage of an interest in
31 Crown land has the same effect in relation to that interest as a

1 mortgage has under Division 3 of Part IV of the TLA in relation
2 to land referred to in that Division.

3 **26. Land districts and townsites, constitution etc. of**

4 (1) In this section —

5 ***townsite*** —

- 6 (a) means townsite constituted under subsection (2); and
7 (b) except in subsection (2)(a), includes land referred to in
8 clause 37 of Schedule 9.3 to the *Local Government*
9 *Act 1995*.

10 (2) Subject to section 26A, the Minister may by order —

- 11 (a) constitute land districts and townsites; and
12 (b) define and redefine the boundaries of, name, rename and
13 cancel the names of, and, subject to this section, abolish
14 land districts and townsites; and
15 (c) name, rename and cancel the name of any topographical
16 feature, road or reserve.

17 (3) An order made under subsection (2) may include such matters
18 enabled to be effected under an order made under another
19 provision of this Act as the Minister thinks fit.

20 *[Section 26 amended: No. 38 of 2005 s. 8.]*

21 **26A. Names of roads and areas in new subdivision~~New~~**
22 **~~subdivisions, names of roads and areas in~~**

23 (1) If a person delivers a plan of survey or sketch plan~~diagram or~~
24 ~~plan of survey~~ of a subdivision of land approved by the
25 Planning Commission to a local government, and the proposed
26 subdivision includes the provision of a road for use by the
27 public, that person must also deliver to the local government the
28 name proposed to be given to the road.

s. 26A

- 1 (2) The local government may require the person so subdividing the
2 land —
- 3 (a) to propose a name for the proposed road or, if a name
4 has already been proposed, to alter that name; and
- 5 (b) to propose a name for the area the subject of the
6 proposed subdivision, or if a name has already been
7 proposed, to alter that name.
- 8 (3) If the local government approves a name proposed under
9 subsection (1) or (2), the local government is to forward the
10 proposal to the Minister.
- 11 (4) The Minister may —
- 12 (a) approve the proposed name; or
- 13 (b) direct the local government to reconsider the proposed
14 name, having regard to such matters as the Minister may
15 mention in the direction; or
- 16 (c) refuse to approve the proposed name.
- 17 (5) A person must not —
- 18 (a) assign a name to the area or road unless the name is first
19 approved by the Minister;
- 20 (b) alter or change a name that has been so assigned,
21 whether initially or from time to time, to the area or road
22 unless the Minister first approves of the alteration or
23 change of that name.
- 24 Penalty for this subsection:
- 25 (a) a fine of \$2 000;
- 26 (b) a daily penalty of a fine of \$200 for each day or part
27 of a day during which the offence continues.
- 28 ~~Penalty: \$1 000 and a daily penalty of \$100.~~
- 29 [Section 26A inserted: No. 38 of 2005 s. 9.]

27. Subdivision and development of Crown land~~Crown land,
subdivision and development of~~

(1) The Minister may —

(a) subdivide, develop, or subdivide and develop, Crown land; and

(b) cause funds to be expended on —

(i) that subdivision, development, or subdivision and development; and

(ii) marketing, planning, surveying and related activities for the purposes of that subdivision, development, or subdivision and development.

~~— (1) The Minister may, subject to this section —~~

~~(a) subdivide, in accordance with the whole or any part of a plan of survey or sketch plan, and develop Crown land; and~~

~~(b) cause funds to be expended on that development and on marketing, planning, surveying and related activities for the purposes of any such subdivision and development.~~

(2) Without limiting the generality of subsection (1)(a), the Minister may for the purposes of that subsection —

(a) cause any parcel of Crown land to be surveyed into locations or lots; and

(b) decide on the shape and size of those locations or lots and on the width and direction of each road within that parcel.

(3) The Minister may, by order —

(a) for the purposes of subsection (1)(a), subdivide Crown land in accordance with the whole or any part of a plan of survey or sketch plan that shows a proposed subdivision of the land and is specified in the order; and

(b) dedicate as a road any Crown land delineated and shown on the plan of survey or sketch plan referred to in

1 paragraph (a) as a new road or an extension or widening
2 of a road.

3 (4) Land subdivided under subsection (3)(a) or dedicated under
4 subsection (3)(b) is subject to any encumbrances specified in the
5 order.

6 ~~— (3) The Minister may, with the consent of each person having any~~
7 ~~interest or other right, or a power, in or over Crown land~~
8 ~~affected by any proposed subdivision shown in a plan of survey~~
9 ~~or sketch plan referred to in subsection (1) to the~~
10 ~~extinguishment of that interest, right or power, by order to~~
11 ~~which that plan of survey or sketch plan is annexed subdivide~~
12 ~~that land in accordance with the whole or any part of that plan~~
13 ~~of survey or sketch plan.~~

14 ~~— (4) When a consent referred to in subsection (3) is given, the~~
15 ~~Minister may by exercising a power conferred on him or her by~~
16 ~~another provision of this Act extinguish the interest, right or~~
17 ~~power in respect of which that consent was given.~~

18 ~~[(5) deleted]~~

19 (6) For the purposes of this section, the boundaries of Crown land
20 adjoining tidal waters or other waters are to be limited whenever
21 practicable by straight lines as near to high water mark as an
22 authorised land officer decides.

23 *[Section 27 amended: No. 38 of 2005 s. 10.]*

24 **~~28. Subdivisions of Crown land, dedication etc. of roads in~~**

25 ~~— (1) When the Minister causes a parcel of Crown land within the~~
26 ~~district of a local government to be surveyed into locations or~~
27 ~~lots under section 27 and the plan of that survey is approved by~~
28 ~~an authorised land officer, any land delineated and shown on~~
29 ~~that plan as a new road, or an extension or widening of a road,~~
30 ~~is, subject to subsection (2) —~~

31 ~~— (a) by force of this subsection dedicated as a road; and~~

- 1 ~~— (b) placed under the care, control and management of the~~
2 ~~local government.~~
- 3 ~~— (2) To be dedicated under subsection (1), land must at the time of~~
4 ~~dedication be —~~
- 5 ~~— (a) unallocated Crown land; and~~
6 ~~— (b) designated on the relevant plan of survey as having the~~
7 ~~purpose of a road.~~

8 **29. Certificates etc. of Crown land title, creation and**
9 **registration of**

- 10 (1) Subject to this section, the Minister may apply to the Registrar
11 for the creation and registration of a certificate of Crown land
12 title or qualified certificate of Crown land title in an approved
13 form in relation to a parcel of Crown land or part of such a
14 parcel, as the case requires, shown on —
- 15 (a) the relevant plan of survey or sketch plan referred to in
16 [section 27\(3\)\(a\)](#)~~section 27(1)~~ on the registration of that
17 plan of survey or sketch plan; or
- 18 (b) a plan of survey or sketch plan used by the department
19 of the Public Service through which the repealed Act
20 was administered.
- 21 (2) The Minister may apply to the Registrar for the creation and
22 registration of a subsidiary certificate of Crown land title in an
23 approved form in relation to one or more interests in a reserve
24 or lease (the *additional interests*) when the number of existing
25 interests in the reserve or lease is such that it would be
26 impracticable to record the additional interests on the certificate
27 of Crown land title or qualified certificate of Crown land title
28 created in respect of the reserve or lease.
- 29 (3) A subsidiary certificate of Crown land title referred to in
30 subsection (2) must be cross-referenced to the relevant
31 certificate of Crown land title or qualified certificate of Crown
32 land title.

s. 30

- 1 (4) An application made under subsection (2) is to be accompanied
2 by a sketch plan of internal interests, that is to say, a sketch plan
3 showing each interest to which the subsidiary certificate of
4 Crown land title is to relate and each area of Crown land the
5 subject of such an interest.
- 6 (5) A certificate of Crown land title, a qualified certificate of Crown
7 land title and a subsidiary certificate of Crown land title are to
8 be created in the name of the State of Western Australia and to
9 evidence interests, reserves or other dealings, or caveats, in
10 respect of the parcel of Crown land or part of such a parcel, as
11 the case requires, to which they relate.
- 12 (6) Subject to subsection (2), a certificate of Crown land title,
13 qualified certificate of Crown land title or subsidiary certificate
14 of Crown land title may be created and registered in respect of
15 unsurveyed Crown land as a result of an application under
16 subsection (1) or (2) if the certificate of Crown land title,
17 qualified certificate of Crown land title or subsidiary certificate
18 of Crown land title is endorsed with the words “Subject to
19 survey”.

20 **30. Authorised land officers, appointing etc.**

- 21 (1) The Minister may by notice published in the *Gazette* —
22 (a) appoint a person employed in or by a [relevant](#) public
23 authority who is a licensed surveyor within the meaning
24 of the *Licensed Surveyors Act 1909* to be an authorised
25 land officer and to perform such functions as are
26 conferred or imposed on an authorised land officer by
27 this Act or any other Act; and
28 (b) exercise in relation to such an appointment any power
29 conferred by section 52(1) of the *Interpretation*
30 *Act 1984*.

31 (2) In this section —

32 [relevant public authority](#) means —

33 (a) a department of the Public Service; or

1 (b) an organisation as defined in the *Public Sector*
2 *Management Act 1994* section 3(1).

3 ~~(2) In this section —~~

4 ~~**public authority** means —~~

5 ~~(a) a department of the Public Service; or~~

6 ~~(b) a body, whether corporate or unincorporate, established~~
7 ~~for a public purpose under a written law.~~

8 [Section 30 amended: No. 28 of 2006 s. 377.]

9 **31. Public service officer of Department, restrictions on as to**
10 **acquiring Crown land**

11 (1) Subject to subsection (2), a public service officer of the
12 Department must not, without the permission of the Minister,
13 acquire an interest in Crown land.

14 (2) Subsection (1) does not apply to an acquisition of an interest in
15 Crown land if that acquisition is made by the relevant public
16 service officer —

17 (a) through public auction; or

18 (b) on behalf of the Minister.

19 **32. Plans of survey and sketch plans to be approved**

20 A plan of survey or sketch plan produced for the purposes of
21 this Act must be approved, in whole or in part, by an authorised
22 land officer.

23 **33. Approved plans of survey and sketch plans, evidentiary**
24 **status of**

25 A plan of survey or sketch plan approved under section 32 is
26 evidence in any court or before any person acting judicially of
27 the boundaries shown on that plan of survey or sketch plan.

s. 34

34. Entry to Crown land by Minister, powers as to

- (1) Subject to subsection (2), the Minister, or a person authorised in writing by the Minister for the purpose, may enter any Crown land in order to make any examination, inspection or survey of that Crown land for the purposes of this Act.
- (2) Nothing in subsection (1) empowers the Minister or a person referred to in that subsection to enter a dwelling house on Crown land without the prior agreement of the occupier of the dwelling house.
- (3) This section does not apply to Crown land —
- (a) which is dedicated, reserved, set apart or leased under another written law; and
 - (b) the care, control or management of which is placed with a State instrumentality.

35. Breach of condition or covenant applying to Crown or freehold land, Minister's powers in case of

- (1) If in the opinion of the Minister there has been a breach of any condition or covenant subject to which —
- (a) an interest in Crown land is held, the Minister must, if the Minister intends to cause the forfeiture of that interest under this section, give to the holder of that interest; or
 - (b) the freehold in~~freehold of~~ any land transferred in fee simple under section 75(1) is held, the Minister must, if the Minister intends to cause the forfeiture of that freehold under this section, give to the holder of that freehold,
- (the *respondent*) notice of the nature of that breach and of that intention.
- (2) A respondent may, within the period of 30 days after the respondent is given~~giving to him or her of~~ notice under subsection (1) or such longer period as the Minister in special

1 circumstances allows, lodge an appeal against the proposed
2 forfeiture with the Minister under Part 3.

3 (3) If no appeal is lodged within the period referred to in
4 subsection (2) or an appeal is lodged within that period but
5 subsequently lapses, is withdrawn or is dismissed, the Minister
6 may by order cause the relevant interest or freehold to be
7 forfeited.

8 (4) On the registration of an order made under subsection (3) in
9 respect of an interest in Crown land, the interest is forfeited to
10 the State.

11 (4A) On the registration of an order made under subsection (3) in
12 respect of the freehold in land (other than land to which
13 subsection (4B) applies) —

14 (a) the freehold is forfeited to the State; and

15 (b) at the election of the Minister —

16 (i) the freehold in the land is held by the Minister, in
17 the name of the State; or

18 (ii) the land becomes Crown land.

19 (4B) On the registration of an order made under subsection (3) in
20 respect of the freehold in land that is subdivided by a leasehold
21 scheme —

22 (a) the freehold is forfeited to the State; and

23 (b) the land remains subdivided; and

24 (c) the freehold reversion in the land is held by the Minister,
25 in the name of the State, until the termination of the
26 leasehold scheme, when, at the election of the
27 Minister —

28 (i) the freehold in the land is held by the Minister, in
29 the name of the State; or

30 (ii) the land becomes Crown land.

s. 35

- 1 (4C) On the registration of an order made under subsection (3) —
2 (a) any moneys paid to the Minister in respect of the
3 relevant interest or freehold cannot be recovered by the
4 respondent; and
5 (b) any improvements made by the respondent on the land
6 to which the relevant interest or freehold relates become
7 the property of the Crown.
- 8 ~~— (4) — On the registration of an order made under subsection (3) —~~
9 ~~— (a) — the interest or freehold to which that order relates is~~
10 ~~forfeited to the State and the relevant land —~~
11 ~~— (i) — becomes unallocated Crown land; or~~
12 ~~— (ii) — if a sublease, caveat or other interest continues to~~
13 ~~have effect under an exemption granted under~~
14 ~~subsection (5)(a)(i), becomes or remains Crown~~
15 ~~land; or~~
16 ~~— (iii) — if it is land referred to in subsection (1)(b)~~
17 ~~subdivided by a leasehold scheme, remains so~~
18 ~~subdivided and the freehold reversion in the land~~
19 ~~is held by the Minister until the termination of~~
20 ~~the leasehold scheme, when the land becomes~~
21 ~~Crown land;~~
- 22 ~~and~~
- 23 ~~— (b) — any moneys paid to the Minister in respect of that~~
24 ~~interest or freehold cannot be recovered by the~~
25 ~~respondent; and~~
- 26 ~~— (c) — any improvements made by the respondent on the land~~
27 ~~to which that interest or freehold relates become the~~
28 ~~property of the Crown.~~
- 29 (5) Despite the forfeiture of an interest or freehold under this
30 section —
- 31 (a) the Minister may —
- 32 (i) by order exempt from that forfeiture any existing
33 sublease, other interest or caveat~~caveat or other~~

- 1 ~~interest~~ relating to the land the subject of the
2 interest or freehold, and a sublease, other interest
3 or caveat~~caveat or other interest~~ so exempted
4 continues to have effect; and
- 5 (ii) cause any improvements made by the former
6 holder of the interest or freehold to be valued by
7 agreement with the former holder or, failing any
8 such agreement, by arbitration under the
9 *Commercial Arbitration Act 2012* to enable the
10 value of improvements, less any moneys owing
11 to the Minister by that holder, to be paid to that
12 former holder if the Minister thinks fit;
- 13 and
- 14 (b) the respondent remains liable to pay any moneys
15 payable to the Minister in respect of the interest or
16 freehold before the date of that forfeiture.
- 17 (6) A sublease or other interest which —
- 18 (a) continues to have effect under an exemption granted
19 under subsection (5)(a)(i); and
- 20 (b) is not already registered,
- 21 must be registered against the parcel of ~~Crown~~-land concerned
22 as soon as practicable after the granting of that exemption.
- 23 (7) Despite the terms of the exemption under subsection (5)(a)(i)
24 under which a sublease or other interest continues to have
25 effect, the Minister may, with the consent of the sublessee or
26 interest holder, by order vary the terms of the sublease or other
27 interest.
- 28 (8) The Minister may —
- 29 (a) charge the respondent interest at the same rate as the rate
30 prescribed under section 8(1)(a) of the *Civil Judgments*
31 *Enforcement Act 2004* at the date of the forfeiture under
32 subsection (4), (4A)(a) or (4B)(a)~~subsection (4)(a)~~ of the
33 relevant interest or freehold, compounded in respect of

s. 35

- 1 each completed period of 6 months during which any of
2 the moneys concerned remain unpaid, on any moneys
3 payable to the Minister in respect of that interest or
4 freehold before the date of that forfeiture but remaining
5 unpaid; and
- 6 (b) recover from the respondent as a debt due to the
7 Minister by action in a court of competent jurisdiction
8 the amount of any unpaid interest charged under this
9 subsection.
- 10 (9) The acceptance or demand by the Minister of an amount less
11 than the total amount of any unpaid moneys referred to in
12 subsection (8)(a) does not constitute a waiver of the
13 Minister's ~~by the Minister of his or her~~ right —
- 14 (a) to receive payment of the balance of those unpaid
15 moneys; or
- 16 (b) to enforce the observance of any condition or covenant
17 subject to which the relevant interest or freehold was
18 held before it was forfeited under this section.
- 19 (10) If the land the subject of an interest or freehold forfeited under
20 this section is not required for any public purpose, that land
21 may, unless it is subdivided by a leasehold scheme or any
22 sublease, other interest or caveat ~~caveat or other interest~~ that
23 continues to have effect under an exemption granted under
24 subsection (5)(a)(i), be dealt with under this Act in the same
25 way that any other alienated land or unallocated Crown land, as
26 the case requires, ~~unallocated Crown land~~ may be dealt with.
- 27 (10A) If the freehold reversion in land forfeited under this section is
28 held by the Minister, as referred to in subsection (4B)(c),
29 ~~subsection (4)(a)(iii),~~ then nothing in this Act, or any other law,
30 affects the capacity of the Minister under the *Strata Titles*
31 *Act 1985* to be, and to exercise all rights and functions as —
- 32 (a) the owner of a leasehold scheme; and
- 33 (b) if the Minister, as owner of a leasehold scheme,
34 re-enters a lot in a leasehold scheme under the *Strata*

Titles Act 1985 — the owner of a lot in a leasehold scheme.

- (11) If there are any improvements on land referred to in subsection (10), the Minister may ascertain the value of those improvements and add that value to the price payable for an interest in, or the freehold ~~in, of,~~ that land.

- (12) An order —

- (a) made under subsection (3) in respect of an interest in Crown land; and
- (b) registered,

is equivalent to a re-entry and recovery of possession by or on behalf of the Crown within the meaning of any provision for re-entry expressed in, or implied by, the relevant lease or other instrument.

[Section 35 amended: No. 8 of 2009 s. 83(2); No. 23 of 2012 s. 45; No. 30 of 2018 s. 147.]

36. Breach of condition or covenant applying to Crown or freehold land, Minister's powers exercisable with consent of interest holder

If in the opinion of the Minister there has been a breach of any condition or covenant subject to which —

- (a) an interest in any Crown land the subject of a contract for sale; or
- (b) the freehold in any land transferred in fee simple under section 75(1),

is held, the Minister may —

- (c) without giving —
 - (i) the holder of that interest notice under section 35(1), by agreement with that holder terminate the contract for sale and arrange for that holder to remove any caveat registered against the relevant Crown land title; or

s. 36

- 1 (ii) the holder of that freehold notice under
2 section 35(1), by agreement with that holder
3 arrange for the removal of any encumbrances to
4 which that freehold is subject and the
5 conveyance of that freehold to the State,
6 and
7 (d) if the Minister thinks fit in the case of a contract for sale
8 referred to in paragraph (a), cause to be refunded to the
9 purchaser the amount already paid towards the purchase
10 price of the land, less an amount which represents 10%
11 of that purchase price.

Part 3 — Appeals to Governor

37. Lodging an appeal with Minister, manner of

(1) A person to whom this subsection applies and who wishes to lodge an appeal with the Minister under this Part must do so by serving on the Minister notice in writing of the appeal setting out the grounds of the appeal.

(2) Subsection (1) applies to a person empowered to lodge an appeal under section 35(2), 133(2), 145(2), 190(10) or 272(1).

38. Minister's role on receipt of notice of appeal

On receiving notice of an appeal, the Minister must cause a document setting out —

(a) the background relating to the appeal, including the grounds set out in the notice of appeal and the comments of the Minister on those grounds; and

(b) the recommended determination of the appeal,

to be delivered to the Governor.

39. Governor to determine appeals

(1) On receiving a document delivered under section 38, the Governor may dismiss or uphold the appeal and must notify the Minister in writing accordingly.

(2) In considering whether to dismiss or uphold an appeal under subsection (1), the Governor may receive advice from such persons as the Governor ~~he or she~~ chooses.

40. Outcome of appeal, Minister to notify appellant of

The Minister must, on receiving notification under section 39(1), notify the appellant in writing of the outcome of the appeal and take such action as is necessary to give effect to that outcome.

Part 4 — Reserves

41. Reserving Crown land, Minister's powers as to

Subject to section 45(6), the Minister may by order reserve Crown land to the Crown for one or more purposes in the public interest.

42. Class A reserves, creating, changing etc.

(1) The Minister may by order classify a reserve as a class A reserve.

(2) A class A reserve retains a purpose specified in the relevant order made under section 41 until that purpose is changed under this section.

(3) Subject to [subsections \(5\) and \(6\)](#), ~~subsection (5)~~, the Minister may by order —

- (a) add Crown land to a class A reserve; or
- (b) amend a class A reserve for the purpose of correcting one or more unsurveyed boundaries of the class A reserve in such a manner that the area of the class A reserve, if reduced at all, is reduced by not more than 5%; or
- (c) excise 5% or one hectare, whichever is the less, of the area of a class A reserve for the purpose of public utility services; or
- (d) redescribe locations or lots, or adjust the areas of locations or lots, in a class A reserve if the external boundaries of the class A reserve remain unchanged; or
- (e) amalgamate 2 or more class A reserves which have similar purposes and the same management body.

- 1 (4) Subject to [subsections \(5\) and \(6\)](#)~~subsection (5)~~ and section 45,
2 if the Minister proposes —
- 3 (a) to reduce the area of, or excise an area from, a class A
4 reserve for a purpose other than a purpose referred to in
5 subsection (3)(b) or (c); or
- 6 (b) to excise an area from a class A reserve for the purpose
7 of creating a road; or
- 8 (c) to cancel, or change the purpose or classification of, a
9 class A reserve,
- 10 the Minister must cause that proposal to be laid before each
11 House of Parliament and section 43(1) then applies.
- 12 (5) The Minister must, not less than 30 days before acting under
13 subsection (3) or (4) in relation to a class A reserve, advertise
14 [the Minister's](#)~~his or her~~ intention so to act in a newspaper
15 circulating throughout the State.
- 16 [\(6\) Before acting under subsection \(3\) or \(4\) in relation to a](#)
17 [managed reserve, the Minister must consult the management](#)
18 [body of the reserve in accordance with section 46A.](#)

19 **43. Certain changes to class A reserves, national parks etc.,**
20 **parliamentary procedure as to**

- 21 (1) If, after a proposal is laid before each House of Parliament
22 under section 42(4), 44(1) or 45(4) notice of a resolution
23 disallowing the proposal —
- 24 (a) is not given in either House of Parliament within
25 14 sitting days of that House after the proposal was laid
26 before it, the proposed reduction, excision, cancellation,
27 change, grant or permission may be implemented by
28 order after the last day of the later of those periods of
29 14 sitting days; or
- 30 (b) is given in either or both of the Houses of Parliament
31 within 14 sitting days of that House, or each of those
32 Houses, after the proposal was laid before it, but that

s. 43

- 1 resolution is not lost in that House or each of those
2 Houses within 30 sitting days after the proposal was laid
3 before it, the proposed reduction, excision, cancellation,
4 change, grant or permission lapses; or
- 5 (c) is given in either or both of the Houses of Parliament
6 within 14 sitting days of that House, or each of those
7 Houses, after the proposal was laid before it, but that
8 resolution is lost in that House or each of those Houses
9 within 30 sitting days after the proposal was laid before
10 it, the proposed reduction, excision, cancellation,
11 change, grant or permission may be implemented by
12 order after that loss or after the later of those losses, as
13 the case requires.
- 14 (2) It does not matter whether or not the period of 14 sitting days
15 referred to in subsection (1) or some of them occur during —
- 16 (a) the same session of Parliament; or
17 (b) the same Parliament,
- 18 as that in which the relevant proposal is laid before the House of
19 Parliament concerned.
- 20 (3) If the notice of a resolution referred to in subsection (1) is given
21 to a House and that resolution is not lost but, before the period
22 of 30 sitting days mentioned in subsection (1)(b) and (c)
23 expires, Parliament is prorogued or that House is dissolved or
24 expires —
- 25 (a) the relevant proposal does not lapse but, subject to
26 paragraph (b)(iii), it cannot be implemented; and
- 27 (b) on the commencement of the next session of
28 Parliament —
- 29 (i) the Minister may cause the proposal to be laid
30 before that House again; and
- 31 (ii) notice of a resolution disallowing the proposal
32 may be given again in that House; and

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

- 7 (4) In subsection (3)(b)(iii) —
8 ***remaining sitting days*** means the number of sitting days equal
9 to the portion of the period of 30 sitting days mentioned in
10 subsection (1)(b) and (c) that remained unexpired when
11 Parliament was prorogued, or the relevant House was dissolved
12 or expired, as referred to in subsection (3).

13 *[Section 43 amended: No. 59 of 2000 s. 11.]*

14 **44. Easements in class A reserves**

- 15 (1) Subject to subsection (2), if the Minister proposes —
16 (a) to grant an easement under section 144; or
17 (b) to permit the creation of an easement for the purposes of
18 section 148,

19 in, on, over, through or under Crown land which is classified
20 under section 42 as a class A reserve, the Minister must cause
21 that proposal to be laid before each House of Parliament and
22 section 43(1) then applies.

- 23 (2) The Minister must, not less than 30 days before acting under
24 subsection (1) in relation to a class A reserve, advertise [the](#)
25 [Minister's](#) ~~his or her~~ intention so to act in a newspaper
26 circulating throughout the State.

1 **45. Certain land subject to *Conservation and Land Management***
2 ***Act 1984 or Swan and Canning Rivers Management Act 2006,***
3 **Minister's powers as to**

4 (1) In this section —

5 *class A nature reserve* means nature reserve which is a class A
6 reserve;

7 *conservation park*, *national park* and *nature reserve* have the
8 same respective meanings as they have in the *Conservation and*
9 *Land Management Act 1984*.

10 (2) Subject to subsections (5) and (5A), if land is reserved under
11 section 41 for the purpose of a conservation park, national park
12 or class A nature reserve, the Minister may, with the consent of
13 the Minister to whom the administration of the *Conservation*
14 *and Land Management Act 1984* is for the time being
15 committed by the Governor, by order —

16 (a) add Crown land to such a reserve; or

17 (b) amend such a reserve for the purpose of correcting one
18 or more unsurveyed boundaries of that reserve in such a
19 manner that the area of that reserve, if reduced at all, is
20 reduced by not more than 5%; or

21 (c) excise 5% or one hectare, whichever is the less, of the
22 area of such a reserve for the purpose of public utility
23 services; or

24 (d) redescribe locations or lots, or adjust the areas of
25 locations or lots, in such a reserve if the external
26 boundaries of that reserve remain unchanged; or

27 (e) amalgamate 2 or more such reserves which have similar
28 purposes and the same management body.

29 (3) Subject to subsection (2), land that is reserved under section 41
30 for the purpose of a conservation park, national park or class A
31 nature reserve remains so reserved for that purpose until, by an
32 Act in which that land is specified, it is otherwise enacted.

1 (4) Subject to [subsections \(5\) and \(5A\)](#), ~~subsection (5)~~, if the
 2 Minister proposes to excise an area from a reserve referred to in
 3 subsection (2) for the purpose of creating a road, the Minister
 4 must cause that proposal to be laid before each House of
 5 Parliament and section 43(1) then applies.

6 (5) The Minister must, not less than 30 days before acting under
 7 subsection (2) or (4) in relation to a reserve referred to in that
 8 subsection, advertise [the Minister's](#) ~~his or her~~ intention so to act
 9 in a newspaper circulating throughout the State.

10 [\(5A\) Before acting under subsection \(2\) or \(4\) in relation to a](#)
 11 [managed reserve, the Minister must consult the management](#)
 12 [body of the reserve in accordance with section 46A.](#)

13 (6) In respect of land in the development control area or Riverpark
 14 as defined in the *Swan and Canning Rivers Management*
 15 *Act 2006*, the Minister must consult the Swan River Trust
 16 before —

- 17 (a) any such land is reserved under section 41; or
- 18 (b) the purpose of any such land that is a reserve is
 19 cancelled or changed, or the area of that land is altered
 20 otherwise than by addition thereto, under this Part.

21 *[Section 45 amended: No. 52 of 2006 s. 6.]*

22 **46. Care, control and management of reserves**

23 (1) The Minister may by order place with any one person or jointly
 24 with any 2 or more persons the care, control and management of
 25 a reserve for the same purpose as that for which the relevant
 26 Crown land is reserved under section 41 and for purposes
 27 ancillary or beneficial to that purpose and may in that order
 28 subject that care, control and management to such conditions as
 29 the Minister specifies.

30 (2) The Minister may, with the consent of the management body of
 31 a reserve and of the holders of any interests within the [reserve to](#)
 32 [which this subsection applies](#), ~~reserve~~, by order vary any
 33 condition to which the care, control and management of the
 34 reserve is subject.

- 1 (2A) Subsection (2) applies to an interest within a reserve if the
2 interest —
3 (a) was granted by the management body of the reserve; or
4 (b) resulted from a transaction to which the management
5 body of the reserve was a party.
- 6 (3) The Minister may —
7 (a) by order confer on a management body power, subject
8 to section 18, to grant a lease or sublease or licence over
9 the whole or any part of the Crown land within the
10 reserve in question for the purposes referred to in
11 subsection (1); and
12 (b) approve a mortgage of any such lease.
- 13 (3a) The Minister may by order —
14 (a) without the consent of the management body of a
15 reserve, vary —
16 (i) an order made under subsection (3)(a); or
17 (ii) an order made under section 33 of the repealed
18 Act or section 42 or 43 of the *Land Act 1898*⁴
19 that subsists as an order made under
20 subsection (3)(a),
21 in relation to whether or not prior approval in writing of
22 the Minister is required to a grant of a lease, sublease, or
23 licence; or
24 (b) with the consent of the management body of a reserve,
25 vary any other condition to which —
26 (i) an order made under subsection (3)(a); or
27 (ii) an order made under section 33 of the repealed
28 Act or section 42 or 43 of the *Land Act 1898*⁴
29 that subsists as an order made under
30 subsection (3)(a),
31 is subject.

- 1 (3b) The Minister's approval under section 18 is not required for the
2 exercise of a power conferred under subsection (3)(a) unless —
- 3 (a) the person on whom the power is conferred is —
- 4 (i) a body corporate that is constituted for a public
5 purpose under an enactment and is an agency of
6 the Crown in right of the State; or
- 7 (ii) a person referred to in subsection (10)(b),
8 and the order provides that the Minister's approval
9 under section 18 is required; or
- 10 (b) the person on whom the power is conferred is a person
11 other than a person referred to in paragraph (a).
- 12 (4) If an unmanaged reserve is the subject of —
- 13 (a) a lease granted under section 47; or
- 14 (b) a licence, or a lease or profit à prendre, granted under
15 section 48,
- 16 or of any other interest in the unmanaged reserve, the Minister
17 may under subsection (1) place the care, control and
18 management of that reserve with a management body subject to
19 that licence, lease or profit à prendre or other interest, the term
20 of which continues unbroken by that placing.
- 21 (5) An order made under subsection (1), (2), (3) or (3a) does not
22 create any interest in Crown land in the relevant reserve in
23 favour of the management body of that reserve.
- 24 (6) If Crown land reserved under section 41 for the purpose of
25 recreation is leased or subleased under a power conferred under
26 subsection (3), the lessee or sublessee may, unless the terms of
27 the management order or the lease or sublease otherwise
28 provide, restrict public access to the area leased.
- 29 (7) A person with whom the care, control and management of a
30 reserve is placed by order under subsection (1) has, by virtue of
31 this subsection, the capacity, functions and powers to hold and
32 deal with the reserve in a manner consistent with the order, any

s. 46

- 1 order conferring power on that person under subsection (3)(a)
2 and this Act to the extent that the person does not already have
3 that capacity or those functions and powers.
- 4 (8) Subsection (7) does not authorise a management body to
5 perform a function or exercise a power if another enactment
6 expressly prevents the person from performing that function or
7 exercising that power, or expressly authorises another person to
8 perform that function or exercise that power.
- 9 (9) Any instrument in relation to the care, control and management
10 of a reserve entered into or given by a person holding an office
11 referred to in subsection (10)(b)(i) or (iii) is taken to have been
12 entered into or given by the person for the time being holding
13 that office.
- 14 (10) In subsection (1), a reference to a person is a reference to —
15 (a) a person having perpetual succession;
16 (b) a person not having perpetual succession who is —
17 (i) a Minister to whom the Act specified in the
18 relevant order is for the time being committed by
19 the Governor; or
20 [(ii) *deleted*]
21 (iii) a person holding a prescribed office.
- 22 (11) If an order made under section 33 of the repealed Act subsists
23 under clause 16(1) of Schedule 2 as if it were a management
24 order under section 46(1), the Minister may by order vary that
25 order to place the care, control and management of the reserve
26 the subject of the order with a person referred to in
27 subsection (10).
- 28 (12) An order made under section 46(1) before the coming into
29 operation of section 12 of the *Land Administration Amendment*
30 *Act 2000* may be varied by the Minister by order to place the

care, control and management of the reserve the subject of the order with a person referred to in subsection (10).

[Section 46 amended: No. 59 of 2000 s. 12(1)-(3)⁵; No. 28 of 2015 s. 76.]

46A. Consultation with management body

(1) For the purposes of sections 42(6), 45(5A) and 51(3), the Minister must —

(a) give written notice of the proposed action to the management body; and

(b) in the notice invite the management body to make submissions on the proposed action within 42 days after the date of the notice; and

(c) consider any submission received within the 42-day period referred to in paragraph (b) or any longer period allowed under subsection (2).

(2) The Minister may, on application by the management body, allow a longer period for submissions in response to a notice given under subsection (1).

47. Lease of unmanaged reserve for reserve's purpose, Minister's powers to grant

(1) The Minister may grant a lease in respect of Crown land in an unmanaged reserve for a purpose which is in accordance with the purpose of the unmanaged reserve.

(2) A lease granted under subsection (1) may be mortgaged.

48. Lease etc. of unmanaged reserve for other purposes, Minister's powers to grant

(1) The Minister may grant leases, licences or profits à prendre in respect of Crown land in an unmanaged reserve for a purpose which is different from that or those of the unmanaged reserve but which is compatible with or ancillary to the current use or

1 intended future use of that Crown land for the purpose or
2 purposes of the unmanaged reserve.

3 (2) A lease granted under subsection (1) cannot be mortgaged.

4 (3) If a licence granted under subsection (1) is transferable by the
5 licensee, in accordance with the *Personal Property Securities*
6 *Act 2009* (Commonwealth) section 10 the definition of **licence**
7 paragraph (d), the licence is declared not to be personal property
8 for the purposes of that Act.

9 [Section 48 amended: No. 42 of 2011 s. 80.]

10 **49. Plan for managed reserve~~Management plan for managed~~**
11 **~~reserve~~**

12 (1) A management body may submit to the Minister for the
13 Minister's ~~his or her~~ approval a plan for the development,
14 management and use of the Crown land in its managed reserve
15 for the purpose of that managed reserve.

16 (2) The Minister may request a management body or proposed
17 management body to submit to the Minister in an approved
18 form, within such period as is specified in that request, for the
19 Minister's ~~his or her~~ approval a plan for the development,
20 management and use of the Crown land in the managed reserve
21 of the management body for the purpose of that managed
22 reserve.

23 (3) A management body must, before submitting a plan to the
24 Minister under subsection (1) or in response to a request under
25 subsection (2) —

26 (a) consider any conservation, environmental or heritage
27 issues relevant to the development, management or use
28 of the Crown land in its managed reserve for the purpose
29 of that managed reserve; and

30 (b) incorporate in the plan a statement that it has considered
31 those issues in drawing up the plan.

- 1 (4) If a management body submits a plan to the Minister under
2 subsection (1) or in response to a request under subsection (2)
3 and the Minister approves that plan and notifies the
4 management body of that fact, the management body may
5 develop, manage and use the Crown land concerned —
6 (a) in accordance with the plan; or
7 (b) if the Minister approves a variation of the plan, in
8 accordance with the plan as varied.

9 **50. Management order, revocation of**

- 10 (1) When a management body —
11 (a) agrees that its management order should be revoked; or
12 (b) does not comply with its management order or with a
13 plan approved under section 49(4) that applies to its
14 managed reserve or does not submit a plan~~management~~
15 ~~plan which applies to its managed reserve or does not~~
16 ~~submit a management plan~~ in compliance with a request
17 made under section 49(2),

18 the Minister may by order revoke that management order.

- 19 (2) In the absence of agreement or non-compliance referred to in
20 subsection (1), the Minister may by order revoke a management
21 order if the Minister considers that the revocation is —

- 22 (a) in the public interest; or
23 (b) necessary for the purposes of a public work.

- 24 (3) Despite the revocation of a management order under
25 subsection (1) or (2), an interest in, or caveat in respect of, the
26 reserve to which the management order applied continues,
27 subject to this Act, if the order revoking the management order
28 specifies that the interest or caveat continues.

- 29 (4) An interest in, or caveat in respect of, a reserve that is not
30 continued under subsection (3) is extinguished on registration of
31 the order revoking the management order.

- 1 (4A) In subsections (3) and (4) —
2 interest includes —
3 (a) an interest as defined in section 151(1) (other than
4 native title rights and interests as defined in that
5 provision); and
6 (b) an interest under the *Public Works Act 1902*.
7 ~~— (2) If, in the absence of agreement or non-compliance referred to in~~
8 ~~subsection (1), the Minister considers that it is in the public~~
9 ~~interest to revoke a management order, the Minister may by~~
10 ~~order revoke the management order.~~
11 ~~— (3) On the revocation of a management order or an order made~~
12 ~~under section 33 of the repealed Act or section 42 or 43 of the~~
13 ~~*Land Act 1898*⁴ that subsists as if it were a management order~~
14 ~~under subsection (2), the former management body may claim~~
15 ~~compensation under Part 10 for any improvement made on the~~
16 ~~relevant reserve in accordance with the management order or an~~
17 ~~order made under section 33 of the repealed Act or section 42~~
18 ~~or 43 of the *Land Act 1898*⁴ that subsists as if it were a~~
19 ~~management order as if that revocation were a taking under~~
20 ~~Part 9.~~
21 ~~— (4) Despite the revocation of a management order —~~
22 ~~— (a) under subsection (1), if the Minister so specifies in the~~
23 ~~revocation order; or~~
24 ~~— (b) under subsection (2);~~
25 ~~— an interest (including an interest under Part 9 or under the~~
26 ~~*Public Works Act 1902*) which existed in, or any caveat which~~
27 ~~existed in respect of, the relevant land immediately before that~~
28 ~~revocation continues, irrespective of any subsequent creation of~~
29 ~~interests in or use of that land but subject to this Act, so to exist.~~
30 (5) Despite anything in an order revoking a management order, the
31 Minister may, with the consent of the management lessee, vary
32 the terms of a management lease continued under
33 subsection (3) ~~in existence by subsection (4).~~

- 1 (6) In subsection (5) —
 2 *management lease* means lease granted or a lease that subsists
 3 as if it were a lease granted under a power conferred under
 4 section 46(3);
 5 *management lessee* means person to whom a management lease
 6 is granted.
- 7 (7) In subsections (1), (2), (3), (4) and (5) —
 8 *management order* includes an order made under
 9 section 46(3)(a) or an order made under section 33 of the
 10 repealed Act or section 42 or 43 of the *Land Act 1898*⁴ that
 11 subsists as if it were a management order or an order made
 12 under section 46(3)(a).
 13 [Section 50 amended: No. 59 of 2000 s. 13.]
- 14 **51. Minister's powers to cancel, change purpose of or otherwise**
 15 **affect reserve**~~Cancelling, changing etc. reserves, Minister's~~
 16 ~~powers as to~~
- 17 (1) Subject~~Subject~~ to sections 42, 43 and 45, the Minister
 18 may by order cancel, change the purpose of, reduce the area of,
 19 excise an area from~~purpose of~~ or amend the boundaries of, or
 20 the locations or lots comprising, a reserve.
- 21 (2) Without limiting subsection (1), the Minister may by order
 22 excise an area from a managed reserve (other than a class A
 23 reserve or a reserve referred to in section 45(2)) if the Minister
 24 considers that the excision is —
 25 (a) in the public interest; or
 26 (b) necessary for the purposes of a public work.
- 27 (3) Before acting under subsection (2) in relation to a managed
 28 reserve, the Minister must consult the management body of the
 29 reserve in accordance with section 46A.

s. 51AA

1 **51AA. Compensation provisions**

2 (1) In this section —

3 *excision order* means an order made under section 42(3),
4 43(1)(a) or (c), 45(2) or 51(2) that excises an area from a
5 managed reserve;

6 *relevant interest* means —

7 (a) in relation to an excision order — an interest that is
8 extinguished under section 22(3) on registration of the
9 excision order; or

10 (b) in relation to a revocation order — an interest that is
11 extinguished under section 50(4) on registration of the
12 revocation order;

13 *revocation order* means an order made under section 50(2).

14 (2) On the registration of an excision order in relation to a reserve,
15 the management body of the reserve may, unless it is a State
16 instrumentality, claim compensation under section 204(1) for
17 any structure erected or improvement made, in accordance with
18 the terms of the management order, by the management body on
19 the land excised from the reserve, as if the excision order were a
20 taking order under Part 9.

21 (3) On the registration of a revocation order in relation to a reserve,
22 the former management body of the reserve may, unless it is a
23 State instrumentality, claim compensation under section 204(1)
24 for any structure erected or improvement made, in accordance
25 with the terms of the revoked management order, by the former
26 management body on the reserve, as if the revocation order
27 were a taking order under Part 9.

28 (4) On the registration of an excision order or revocation order, the
29 holder of a relevant interest may claim compensation for the
30 interest under section 202 as if the excision order or revocation
31 order were a taking order under Part 9 in respect of the interest.

32 (5) A management body, former management body or holder of a
33 relevant interest is not otherwise entitled to compensation in

[respect of the excision of an area from a managed reserve or the revocation of a management order.](#)

[\(6\) Part 10 applies, with all necessary changes, to a claim for compensation authorised by this section.](#)

51A. Certain prescribed land taken to be reserved under s. 41

- (1) The regulations may prescribe land that has been reserved to the Crown for one or more purposes in the public interest —
- (a) by or under a written law other than section 41; and
 - (b) before 30 March 1998.
- (2) Land prescribed by regulations referred to in subsection (1) is, by virtue of this subsection, to be regarded as having been reserved to the Crown under section 41 —
- (a) for the purpose or purposes for which it was reserved by or under the other written law; and
 - (b) with the classification, if any, given by or under the other written law.
- (3) A reference in section 42(2) to the relevant order made under section 41 is, in relation to land prescribed by regulations referred to in subsection (1), a reference to the written law, or to the instrument under the written law, by which the land was reserved, as is relevant to the case.

[Section 51A inserted: No. 76 of 2003 s. 4.]

52. Local government may ask Minister to acquire as Crown land certain land in district

- (1) Subject to this section, a local government may request the Minister to acquire as Crown land —
- (a) any alienated land designated for a public purpose on a plan of survey or sketch plan lodged with the Registrar; or
 - (b) any private road; or

s. 52

- 1 (c) any alienated land in a townsite which the Minister
2 proposes to abolish under section 26,
3 within the district of the local government (in this section called
4 the *subject land*).
- 5 (2) A request made under subsection (1) is to be accompanied by —
- 6 (a) a plan of survey or sketch plan —
- 7 (i) showing the subject land; and
- 8 (ii) approved by the Planning Commission;
9 and
- 10 (b) copies of all objections lodged with the local
11 government during the period referred to in
12 subsection (3)(b)(i) or (ii), as the case requires.
- 13 (3) Before making a request under subsection (1), a local
14 government must —
- 15 (a) take all reasonable steps to give notice of that request
16 to —
- 17 (i) the holder of the freehold in the subject land
18 unless the local government holds that freehold;
19 and
- 20 (ii) the holders of the freehold in land adjoining the
21 subject land unless the local government holds
22 that freehold; and
- 23 (iii) all suppliers of public utility services to the
24 subject land;
25 and
- 26 (b) in the case of —
- 27 (i) alienated land referred to in subsection (1)(a) or a
28 private road referred to in subsection (1)(b), state
29 in the notice a period of not less than 30 days
30 from the day of that notice during which period
31 persons may lodge objections with it against the
32 making of that request; or

- 1 (ii) any land referred to in subsection (1)(c),
2 advertise or take such steps as may be prescribed
3 to notify interested persons of an intention to
4 make the request and state in the notification a
5 period of not less than 30 days from the day of
6 that notification during which period persons
7 may lodge objections with it against the making
8 of that request.
- 9 (4) The Minister may, on receiving a request made under
10 subsection (1), the accompanying plan of survey or sketch plan
11 referred to in subsection (2)(a) and copies of all objections
12 referred to in subsection (2)(b) —
- 13 (a) by order grant that request; or
14 (b) direct the local government to reconsider that request,
15 having regard to such matters as the Minister~~he or she~~
16 thinks fit to mention in that direction; or
17 (c) refuse to grant that request.
- 18 (5) On the registration of an order made under subsection (4)(a), the
19 subject land —
- 20 (a) ceases to belong to the holder of its freehold; and
21 (b) is freed from all encumbrances; and
22 (c) becomes Crown land.
- 23 (6) Subject to subsection (7), compensation is payable under
24 Part 10 to any holder of the freehold in the subject land who
25 suffers loss on the registration of an order referred to in
26 subsection (5) as if that loss resulted from a taking under Part 9.
- 27 (7) A person with an interest in land that is a private road (including
28 a person who has the benefit of an easement created under
29 section 167A of the TLA) the subject of an order under
30 subsection (4)(a) who suffers loss on the registration of the
31 order is not entitled to compensation under Part 10.
- 32 (8) Sections 188, 189, 190 and 191 do not apply to a private road or
33 an interest in land that is a private road if the land is the subject

s. 52

1 of an order under subsection (4)(a) and the land was taken or
2 resumed or purportedly taken or resumed under a written law
3 for the purpose of a right of way or a right of way and
4 recreation.

5 *[Section 52 amended: No. 59 of 2000 s. 14.]*

Part 5 — Roads

Division 1 — Conventional roads

53. Highways and main roads, effect of *Main Roads Act 1930* as to

To the extent that there is in the case of a road which is a highway or main road within the meaning of the *Main Roads Act 1930* an inconsistency between this Act and that Act, that Act prevails.

~~54. Dimensional configuration and situation of roads~~

~~A road may have —~~

~~(a) a 2 dimensional configuration consisting of —~~

~~(i) length; and~~

~~(ii) width;~~

~~or~~

~~(b) a 3 dimensional configuration consisting of —~~

~~(i) length; and~~

~~(ii) width; and~~

~~(iii) height or depth or both,~~

~~as specified in the relevant plan of survey or sketch plan lodged with the Registrar and may be situated in airspace or waters or on the surface of or below the ground (including the bed of waters) or in any combination of 2 or more of these situations.~~

55. Property in and management etc. of roads

- (1) Subject to this section and to section 57, the absolute property in land comprising a road is by this [subsection revested in the Crown](#). ~~subsection —~~

~~(a) revested in the Crown; and~~

1 ~~— (b) in the case of land under the operation of the TLA or the~~
2 ~~Registration of Deeds Act 1856, removed from that operation~~
3 ~~and so revested.~~

4 (2) Subject to the *Main Roads Act 1930* and the *Public Works*
5 *Act 1902*, the local government within the district of which a
6 road is situated has the care, control and management of the
7 road.

8 (3) The operation of subsection (1) —

9 (a) suspends, until the relevant road is closed under
10 section 58, any rights to mine for minerals within the
11 meaning of the *Mining Act 1978* excepted from the
12 acquisition of the land reserved, declared or dedicated as
13 that road; but

14 (b) does not affect —

15 (i) the functions of a local government in respect of
16 a road of which it has the care, control and
17 management; or

18 (ii) any encumbrances to which land comprising a
19 road is subject under section 27(4) or 56(3A) or
20 the *Planning and Development Act 2005*
21 section 168(10).

22 ~~— (b) does not affect the functions of a local government in~~
23 ~~respect of a road of which it has the care, control and~~
24 ~~management.~~

25 (4) If land comprising a ~~private~~ road is revested in the Crown under
26 this section, a person with an interest in that land (including a
27 person who has the benefit of an easement created under
28 section 167A of the TLA) is not entitled to compensation
29 because of that revesting.

30 (5) If land comprising a road is in the DBNGP corridor, the
31 operation of subsections (1) and (2) does not affect State

[corridor rights or other rights conferred under the *Dampier to Bunbury Pipeline Act 1997* in respect of that land.](#)

[Section 55 amended: No. 59 of 2000 s. 15.]

56. Dedication of land as road

(1) If in the district of a local government —

- (a) land is reserved or acquired for use by the public, or is used by the public, as a road under the care, control and management of the local government; or
- (b) in the case of land comprising a private road constructed and maintained to the satisfaction of the local government —
 - (i) the holder of the freehold in that land applies to the local government, requesting it to do so; or
 - (ii) those holders of the freehold in rateable land abutting the private road, the aggregate of the rateable value of whose land is greater than one half of the rateable value of all the rateable land abutting the private road, apply to the local government, requesting it to do so;

or

- (c) land comprises a private road of which the public has had uninterrupted use for a period of not less than 10 years,

and that land is described in a plan of survey, sketch plan or document, the local government may request the Minister to dedicate that land as a road.

(2) If a local government resolves to make a request under subsection (1), it must —

- (a) in accordance with the regulations prepare and deliver the request to the Minister; and

- 1 (b) provide the Minister with sufficient information in a
2 plan of survey, sketch plan or document to describe the
3 dimensions of the proposed road.
- 4 (3) On receiving a request ~~delivered to him or her~~ under
5 subsection (2), the Minister must consider the request and may
6 then —
- 7 (a) subject to subsection (5), by order grant the request; or
8 (b) direct the relevant local government to reconsider the
9 request, having regard to any matters the Minister
10 specifies~~such matters as he or she thinks fit to mention~~
11 in that direction; or
12 (c) refuse the request.
- 13 (3A) Land dedicated under subsection (3)(a) is subject to any
14 encumbrances specified in the order.
- 15 (4) On the Minister granting a request under subsection (3), the
16 relevant local government is liable to indemnify the Minister
17 against any claim for compensation (not being a claim for
18 compensation in respect of land referred to in subsection (6)) in
19 an amount equal to the amount of all costs and expenses
20 reasonably incurred by the Minister in considering and granting
21 the request.
- 22 (5) To be dedicated under subsection (3)(a), land must immediately
23 before the time of dedication be —
- 24 (a) ~~unallocated~~ Crown land or, in the case of a private road,
25 alienated land; and
26 (b) designated in the relevant plan of survey, sketch plan or
27 document as having the purpose of a road.
- 28 (6) If land ~~referred to in subsection (1)(b) or (c)~~ is dedicated under
29 subsection (3)(a), a person with an interest in that land
30 (including a person who has the benefit of an easement created

under section 167A of the TLA) is not entitled to compensation because of that dedication.

[Section 56 amended: No. 59 of 2000 s. 16.]

57. Leases in relation to roads

(1) The Minister may —

- (a) grant a lease in respect of land above or below a road; or
- (b) with the consent of the relevant local government, the Commissioner of Main Roads, or the Minister responsible for the administration of the *Public Works Act 1902*, as the case requires, grant a lease in respect of land comprising a road, if —
 - (i) there are structures above the road; or
 - (ii) the purpose of that lease is consistent with the use of the road by the public.

(2) When a lease is granted under subsection (1)(b) in respect of land comprising a road and the road is closed under section 58 [or 58A](#) during the subsistence of the lease, the lease continues to subsist as an interest in Crown land until it terminates in accordance with law.

[Section 57 amended: No. 59 of 2000 s. 17.]

58. Closure of road at request of local government

(1) If a local government considers that a road in its district should be closed permanently, the local government may, in accordance with the regulations, request the Minister to close the road.

(2) After receiving a request under subsection (1), the Minister may —

- (a) by order grant the request; or
- (b) direct the local government to reconsider the request, having regard to any matters the Minister specifies in the direction; or

s. 58A

- 1 (c) refuse the request.
- 2 (3) If the Minister makes an order under subsection (2)(a) in
3 relation to a road —
- 4 (a) the road is closed on and from the day on which the
5 closure order is registered; and
- 6 (b) any rights suspended under section 55(3)(a) cease to be
7 so suspended.
- 8 (4) The closure of a road under this section does not affect —
- 9 (a) any encumbrances to which the land that comprised the
10 road was subject when the road was closed; or
- 11 (b) if the land that comprised the road is in the
12 DBNGP corridor — State corridor rights or other rights
13 conferred under the *Dampier to Bunbury Pipeline*
14 Act 1997 in respect of that land.
- 15 (5) The regulations may —
- 16 (a) prescribe procedures to be followed by a local
17 government before making a request under
18 subsection (1), including procedures for the publication
19 of a proposed request and consultation; and
- 20 (b) require a request under subsection (1) to include
21 prescribed information; and
- 22 (c) require a request under subsection (1) to be
23 accompanied by prescribed information or a prescribed
24 document.
- 25 **58A. Closure of road on Minister's own initiative**
- 26 (1) The Minister may by order close a road in the district of a local
27 government if the Minister considers that the road should be
28 closed permanently.
- 29 (2) Before making an order under subsection (1) the Minister
30 must —

- 1 (a) give written notice of the proposed closure to the local
2 government and in the notice invite the local
3 government to make submissions on the proposed
4 closure within 35 days after the date of the notice; and
5 (b) advertise the proposed closure in the prescribed manner
6 and in the advertisement invite members of the public to
7 make submissions on the proposed closure within
8 35 days after the date of the advertisement; and
9 (c) consider submissions received within the 35-day period
10 referred to in paragraphs (a) and (b), or any longer
11 period allowed under subsection (3).
- 12 (3) The Minister may, on application by the local government or a
13 member of the public (as the case requires), allow a longer
14 period for submissions in response to a notice given under
15 subsection (2)(a) or an advertisement under subsection (2)(b).
- 16 (4) If the Minister makes an order under subsection (1) in relation
17 to a road —
18 (a) the road is closed on and from the day on which the
19 closure order is registered; and
20 (b) any rights suspended under section 55(3)(a) cease to be
21 so suspended.
- 22 (5) The closure of a road under this section does not affect —
23 (a) any encumbrances to which the land that comprised the
24 road was subject when the road was closed; or
25 (b) if the land that comprised the road is in the
26 DBNGP corridor — State corridor rights or other rights
27 conferred under the *Dampier to Bunbury Pipeline*
28 Act 1997 in respect of that land.

29 **~~58. Closing roads~~**

- 30 ~~(1) When a local government wishes a road in its district to be~~
31 ~~closed permanently, the local government may, subject to~~
32 ~~subsection (3), request the Minister to close the road.~~

s. 58

- 1 ~~— (2) When a local government resolves to make a request under~~
2 ~~subsection (1), the local government must in accordance with~~
3 ~~the regulations prepare and deliver the request to the Minister.~~
- 4 ~~— (3) A local government must not resolve to make a request under~~
5 ~~subsection (1) until a period of 35 days has elapsed from the~~
6 ~~publication in a newspaper circulating in its district of notice of~~
7 ~~motion for that resolution, and the local government has~~
8 ~~considered any objections made to it within that period~~
9 ~~concerning the proposals set out in that notice.~~
- 10 ~~— (4) On receiving a request delivered to him or her under~~
11 ~~subsection (2), the Minister may, if he or she is satisfied that the~~
12 ~~relevant local government has complied with the requirements~~
13 ~~of subsections (2) and (3) —~~
- 14 ~~— (a) by order grant the request; or~~
15 ~~— (b) direct the relevant local government to reconsider the~~
16 ~~request, having regard to such matters as he or she~~
17 ~~thinks fit to mention in that direction; or~~
18 ~~— (c) refuse the request.~~
- 19 ~~— (5) If the Minister grants a request under subsection (4) —~~
20 ~~— (a) the road concerned is closed on and from the day on~~
21 ~~which the relevant order is registered; and~~
22 ~~— (b) any rights suspended under section 55(3)(a) cease to be~~
23 ~~so suspended.~~
- 24 ~~— (6) When a road is closed under this section, the land comprising~~
25 ~~the former road —~~
- 26 ~~— (a) becomes unallocated Crown land; or~~
27 ~~— (b) if a lease continues to subsist in that land by virtue of~~
28 ~~section 57(2), remains Crown land.~~
- 29 ~~— [Section 58 amended: No. 59 of 2000 s. 18(1)⁶.]~~

Division 2 — Mall reserves**59. Creation and management of mall reserves**

- (1) Subject to this section, a local government may request the Minister to reserve under section 41 any Crown land within its district described in a plan of survey or sketch plan for the purpose of passage through that land by —
- (a) pedestrians; and
 - (b) vehicles used by the holders of the freehold in, and occupiers of, land adjoining that land; and
 - (c) other vehicles permitted access to that land under local laws made under the *Local Government Act 1995*,
- and for any other compatible purpose.
- (2) Before making a request under subsection (1), a local government must —
- (a) advertise the purpose and details of the request in the prescribed manner; and
 - (b) send copies of that advertisement to the holders of the freehold in, and occupiers of, land adjoining the land in question, to suppliers of public utility services on the land in question and to the Planning Commission,
- and specify in that advertisement a period of not less than 35 days from the day of that advertisement during which submissions relating to the request may be lodged with the local government.
- (3) After the expiry of the period referred to in subsection (2), the local government must send to the Minister its request, together with copies of any submissions lodged with it during that period and its comments on those submissions.
- (4) The Minister may, after receiving and considering a request and any accompanying submissions and comments sent to the Minister under subsection (3) —
- (a) by order —
 - (i) grant the request; and

- 1 (ii) place the care, control and management of the
2 mall reserve with the relevant local government
3 or a State instrumentality;
4 or
5 (b) direct the relevant local government to reconsider the
6 request, having regard to such matters as ~~the Minister~~
7 ~~or she~~ thinks fit to mention in that direction; or
8 (c) refuse the request.
- 9 (5) On the registration of an order made under subsection (4)(a) —
10 (a) any road within the mall reserve is closed and
11 ~~section 58(4)~~~~section 58(6)~~ applies to any such road as if
12 that road had been closed under section 58; and
13 (b) the Minister may by order confer on the management
14 body of the relevant mall reserve power to grant a lease
15 or licence over, or to mortgage, the whole or any part of
16 that mall reserve for the purpose referred to in
17 subsection (1), and a person leasing land from a
18 management body on which that power has been
19 conferred may, if that lease so provides, sublease the
20 whole or any part of the land so leased for that purpose.
- 21 (6) An order made under subsection (4)(a) or (5)(b) does not create
22 any interest in Crown land in the relevant mall reserve in favour
23 of the management body of that mall reserve.
- 24 (7) For the purposes of —
25 (a) obtaining access to land adjoining a mall reserve; or
26 (b) installing, maintaining or removing public utility
27 services within a mall reserve,
28 the land within the mall reserve is to be treated as if it were a
29 road.

1 **60. Public utility services in mall reserve, when suppliers of to**
2 **be consulted**

3 If a supplier of public utility services has public utility services
4 in a mall reserve, and the management body of the mall reserve
5 proposes to create, place or erect any landscape improvement or
6 structure in such a position that access to those public utility
7 services may be affected, that management body must consult
8 that supplier before that creation, placement or erection occurs.

9 **61. By-laws for management etc. of mall reserve**

10 (1) The management body of a mall reserve may, after
11 consulting —

12 (a) the holders of the freehold in, and occupiers of, land
13 who use or depend on the mall reserve for access to that
14 land; and

15 (b) any supplier of public utility services having public
16 utility services on that land,

17 make, subject to subsection (3), by-laws for the care, control
18 and management of the mall reserve.

19 (2) Without limiting the generality of subsection (1), by-laws
20 referred to in that subsection may —

21 (a) adopt, with or without modification, such provisions of a
22 road law as defined in the *Road Traffic (Administration)*
23 *Act 2008* section 4 as may facilitate the control and
24 management of traffic within the relevant mall reserve
25 as if that mall reserve were a road as defined in that
26 section; and

27 (b) provide for conditions subject to which the relevant
28 management body may, if it is empowered by an order
29 made under section 59(5) to grant leases or licences in
30 respect of land in that mall reserve, grant leases or
31 licences that are capable of affecting the interests of the
32 holders of the freehold in, or occupiers of, land
33 adjoining that mall reserve.

s. 62

- 1 (3) If a management body referred to in subsection (1) is a local
2 government, the power to make by-laws conferred on that
3 management body by that subsection is to be construed as a
4 power to make local laws under the *Local Government Act 1995*
5 for the purposes for which by-laws may be made under this
6 section.

7 *[Section 61 amended: No. 8 of 2012 s. 117.]*

8 **62. Cancelling mall reserve and revoking management order**

- 9 (1) Subject to this section, the management body of a mall reserve
10 may request the Minister to cancel the mall reserve.
- 11 (2) Section 59(2) and (3) applies, with any necessary modifications,
12 to a request made under subsection (1) as if that request were a
13 request made under section 59(1) and the requesting
14 management body were a local government.
- 15 (3) The Minister may, after receiving and considering a request and
16 any accompanying submissions and comments sent to the
17 Minister under section 59(3) as read with subsection (2) —
- 18 (a) by order grant the request; or
19 (b) direct the management body to reconsider the request,
20 having regard to such matters as the Minister thinks fit
21 to mention in that direction; or
22 (c) refuse the request.
- 23 (4) On the registration of an order made under subsection (3)(a) in
24 respect of a mall reserve —
- 25 (a) the relevant local government or State instrumentality
26 ceases to be the management body of the mall reserve;
27 and
28 (b) the mall reserve is cancelled and the land the subject of
29 the mall reserve is by virtue of this subsection dedicated
30 as a road; and
31 (c) any by-laws made by the former management body
32 under section 61 are repealed.

Division 3 — Public access routes**63. Terms used**

In this Division —

relevant local government, in relation to any subject Crown land, means local government within the district of which the subject Crown land is situated;

subject Crown land means Crown land through which the route of a public access route passes or is intended to pass.

64. Declaring etc. public access route through Crown land

- (1) Subject to this section, the Minister may, for the purpose of providing members of the public with access through Crown land to an area of recreational or tourist interest, by order delivered after all necessary consents have been obtained under subsection (3)(a) or after the expiry of the period referred to in subsection (3)(b), whichever is the later, to —

- (a) the Registrar; and
- (b) each holder of an interest in the subject Crown land; and
- (c) the relevant local government,

declare a route —

- (d) shown on a [plan of survey or sketch plan specified](#)~~diagram or plan incorporated~~ in that order and indicating the width of that route; and
- (e) giving access through the subject Crown land to that area,

to be a public access route, and may by order delivered to the persons referred to in paragraphs (a), (b) and (c) vary or cancel a declaration made under this subsection.

- (2) A declaration, or a variation or cancellation of a declaration, made under subsection (1) comes into operation on the day on which the relevant order is registered.

s. 65

- 1 (3) Before making, or varying or cancelling, a declaration under
2 subsection (1), the Minister must —
- 3 (a) consult each holder of an interest in the subject Crown
4 land concerning, and obtain the holder's~~his or her~~
5 consent in writing to, the proposed declaration, variation
6 or cancellation; and
- 7 (b) cause to be published once in a newspaper circulating
8 generally in the State a copy of the proposed declaration,
9 variation or cancellation, together with an invitation to
10 members of the public to comment in writing to the
11 Minister on that declaration, variation or cancellation
12 within such period of not less than 3 months after that
13 publication as is specified in that invitation.
- 14 **65. Nature, signposting and routes of public access route**
- 15 (1) A public access route is, subject to this Division, to be treated as
16 an easement granted by the Minister under section 144 in favour
17 of members of the public generally.
- 18 (2) The Minister may cause the route of each public access route to
19 be signposted so as —
- 20 (a) to enable members of the public using that public access
21 route to follow it; and
- 22 (b) to inform those members of the public in general terms
23 of the contents of section 66 and that they use that
24 public access route entirely at their own risk.
- 25 (3) If the actual route of a public access route differs from the route
26 of the public access route as shown on the plan of survey or
27 sketch plan specified~~diagram or plan incorporated~~ in the
28 relevant order delivered under section 64(1), that actual route is
29 to be taken to be the route of the public access route.

1 **66. Liability of Minister etc. in respect of public access route**
2 **restricted**

- 3 (1) This section applies to a person who is or at the relevant time
4 was the Minister, the relevant local government, any holder of
5 an interest in the subject Crown land or any other person acting
6 under the authority or direction of the Minister, the relevant
7 local government or that holder.
- 8 (2) Subject to this Division, a person to whom this section applies is
9 neither —
- 10 (a) obliged to perform any construction or maintenance in
11 respect of a public access route; nor
- 12 (b) an occupier of premises in respect of a public access
13 route for the purposes of the *Occupiers' Liability*
14 *Act 1985*.
- 15 (3) An action in tort does not lie against a person to whom this
16 section applies for anything that that person has in good faith
17 done in the performance or purported performance of a function
18 under this Division.
- 19 (4) The protection given by subsection (3) applies even though the
20 thing done in the performance or purported performance of a
21 function under this Division may have been capable of being
22 done whether or not this Division had been enacted.
- 23 (5) In subsections (3) and (4), a reference to the doing of any thing
24 includes a reference to the omission to do any thing.
- 25 (6) Members of the public use a public access route entirely at their
26 own risk.

27 **67. Temporary closure of public access route**

28 The Minister may, after consulting the relevant local
29 government —

- 30 (a) by notice published once in a newspaper circulating
31 generally in the State, close the whole or any part of a
32 public access route for such period as is specified in that
33 notice; and

- 1 (b) cause such signs and barriers to be placed on or near the
2 public access route or part of the public access route
3 closed under this subsection as are necessary to warn
4 members of the public of that closure and of the duration
5 of that closure.

6 **68. Fence across public access route, crossing of to be provided**

7 If the route of a public access route intersects with the line of a
8 fence, the Minister must provide, or arrange with the relevant
9 holder of an interest in the subject Crown land at the expense of
10 the Minister to provide, a grid or other means of passage
11 through or over that fence at the point of that intersection.

12 **69. Right to use public access route**

13 Subject to this Division, a person may travel by any means
14 along the whole or part of a public access route which is not
15 closed under section 67.

16 **70. Certain effects of public access routes**

17 (1) Subject to this Division —

- 18 (a) the rights and obligations of the holder of an interest in
19 the subject Crown land under that interest continue to
20 apply in respect of the subject Crown land despite the
21 existence of the public access route; and
22 (b) the holder of an interest in the subject Crown land is not
23 entitled to any compensation for any reduction in the
24 value of that interest resulting from the declaration
25 under section 64(1) of a public access route through the
26 subject Crown land, but such a reduction may be taken
27 into account by the Minister when determining or
28 re-determining any amount payable to the Minister in
29 respect of the subject Crown land.

30 (2) Nothing in this Division affects or prevents the continuance of
31 any mortgage, charge, security or other encumbrance with
32 which the subject Crown land is burdened.

71. Offences

- (1) A person must not without reasonable excuse create or place any obstruction across or on a public access route which, or the relevant part of which, is not closed under section 67.

Penalty for this subsection~~Penalty: a fine of \$4 000~~~~\$2 000.~~

- (2) A person using a public access route must not hinder or obstruct the proper care, control or management of the subject Crown land.

Penalty for this subsection~~Penalty: a fine of \$4 000~~~~\$2 000.~~

- (3) A person using a public access route must not camp —

(a) on the public access route; or

(b) without the consent of the holder of an interest in the subject Crown land, elsewhere on the subject Crown land.

Penalty for this subsection~~Penalty: a fine of \$2 000~~~~\$1 000.~~

1 **Part 6 — Sales, leases, licences, etc. of Crown land**

2 **Division 1 — General**

3 **72. Terms used**

4 In this Part —

5 ***conditional tenure land*** means land transferred in fee simple
6 subject to conditions referred to in section 75(1), which land
7 remains subject to those conditions;

8 ***employee*** has the same meaning as it has in the *Public Sector*
9 *Management Act 1994*;

10 ***owner of a leasehold scheme*** has the meaning given in the
11 *Strata Titles Act 1985* section 3(1);

12 ***resolution without dissent*** has the meaning given in the *Strata*
13 *Titles Act 1985* section 3(1);

14 ***scheme by-laws*** has the meaning given in the *Strata Titles*
15 *Act 1985* section 3(1);

16 ***strata company*** has the meaning given in the *Strata Titles*
17 *Act 1985* section 3(1);

18 ***strata lease*** has the meaning given in the *Strata Titles Act 1985*
19 section 3(1).

20 *[Section 72 amended: No. 30 of 2018 s. 148.]*

21 **73. Advisory panel, appointment of**

22 The Minister may appoint an advisory panel to advise [the](#)
23 [Minister](#)~~him or her~~ in respect of the exercise of the powers, and
24 the performance of the duties, conferred or imposed on the
25 Minister by this Part.

Division 2 — Sale of Crown land

74. Minister's powers as to sale of Crown land

- (1) The Minister may sell Crown land and may, without limiting the generality of that power —
- (a) invite expressions of interest in Crown land; and
 - (b) invite public tenders for the purchase of Crown land; and
 - (c) offer for sale or re-offer for sale Crown land at any time; and
 - (d) withdraw Crown land from offer for sale at any time before acceptance of that offer; and
 - (e) lodge positive covenants or restrictive covenants or memorials concerning the performance of conditions of sale of Crown land; and
 - (f) sell Crown land by public auction, public tender or private treaty; and
 - (g) sell Crown land subject to easements or reservations; and
 - (h) sell Crown land by way of terms contracts requiring instalment payments.
- (2) Subject to this Part, the Minister may in relation to Crown land —
- (a) determine, and alter at any time before sale, conditions and covenants on title, prices, reserve prices, terms, conditions, interest rates and penalty interest rates; and
 - (b) require a performance bond in respect of any such sale; and
 - (c) select by ballot successful applicants for the purchase of Crown land; and
 - (d) pay a commission to a person acting on behalf of the Minister in the sale of Crown land.

- 1 (3) The Minister is not obliged to disclose any reserve price
2 determined in relation to Crown land under subsection (2).

3 **75. Transfer of Crown land in fee simple subject to conditions**

- 4 (1) The Minister may transfer Crown land in fee simple subject to
5 such conditions concerning the use of the land (the *specified*
6 *use*) as the Minister determines.
- 7 (2) For the purposes of this section and of section 76, the
8 unimproved value of conditional tenure land must be calculated
9 as if the use of the land were not subject to any conditions.
- 10 (3) The fee simple of conditional tenure land may be transferred
11 under subsection (1) for a nominal price or a discounted price
12 because of the community benefit to be provided by the
13 proposed development of the conditional tenure land for the
14 specified use.
- 15 (3A) Conditional tenure land cannot be subdivided except by a
16 leasehold scheme and with the written permission of the
17 Minister.
- 18 (3B) If conditional tenure land is subdivided by a leasehold scheme –
19 (a) strata leases of lots in the scheme, and the scheme
20 by-laws, are invalid to the extent that they are
21 inconsistent with the conditions concerning the specified
22 use; and
23 (b) a strata lease of a lot in the scheme is taken to contain a
24 condition (contravention of which may lead to forfeiture
25 of the lot to the owner of the leasehold scheme) that the
26 lot must not be used for a purpose that is inconsistent
27 with the conditions concerning the specified use; and
28 (c) if the owner of the leasehold scheme or the strata
29 company refuses or fails to take action to enforce a
30 strata lease or the scheme by-laws after being given a
31 reasonable opportunity to do so, the Minister may take
32 that action as if the Minister were the owner of the

leasehold scheme or the strata company, as the case requires.

(4) If there is a breach of the conditions concerning the specified use of conditional tenure land —

(a) the conditional tenure land is liable to be forfeited under section 35; or

(b) the Minister may recover from the holder of the freehold in the conditional tenure land —

(i) if the fee simple in the conditional tenure land was transferred under subsection (1) for a nominal price, an amount equal to the unimproved value of the conditional tenure land at the time of that recovery; or

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

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

where —

A is the amount the Minister may recover from the holder of the freehold in the conditional tenure land;

P is the unimproved value of the conditional tenure land at the time the discounted price was paid;

DP is the discounted price;

R is the unimproved value of the conditional tenure land at the time of the recovery,

by action in a court of competent jurisdiction as a debt due to the Crown.

(4A) If the holder of the freehold in conditional tenure land fails to use that land for the specified use and the Minister considers

1 that the failure is unreasonable in all the circumstances,
2 subsection (4) applies as if the failure were a breach of the
3 conditions concerning the specified use of that land.

4 (5) Neither the fee simple, nor any other estate or interest, in
5 conditional tenure land can be transferred without the written
6 permission of the Minister, which may be given subject to
7 conditions.

8 (6) Conditional tenure land cannot become the subject of any lease,
9 licence, mortgage, charge, security or other encumbrance
10 without the written permission of the Minister, which may be
11 given subject to conditions.

12 (6A) Subsection (6) does not apply -

- 13 (a) to an individual lot in a leasehold scheme (rather than to
14 the parcel of land subdivided by the scheme); or
15 (b) in circumstances prescribed in the regulations.

16 (6B) The Minister may, by order, on the application of the holder of
17 the freehold in conditional tenure land, vary the conditions
18 concerning the specified use.

19 (6C) The Minister may charge the holder an amount for variation of
20 the conditions concerning the specified use, being the difference
21 between the unimproved value of the conditional tenure land, as
22 determined by the Minister on the advice of the Valuer-General,
23 if it were transferred at the time of the variation subject to the
24 conditions as varied and the price that was paid for the
25 conditional tenure land when it was transferred to the holder or
26 a predecessor of the holder under subsection (1).

27 (6D) Subject to the regulations, an application for variation of the
28 conditions concerning the specified use must be accompanied
29 by —

- 30 (a) the written consent of each person with a lease, licence,
31 mortgage, charge, security or other encumbrance over
32 the conditional tenure land (disregarding any such lease,
33 licence, mortgage, charge, security or encumbrance over

- 1 an individual lot in a leasehold scheme rather than over
2 the parcel of land subdivided by the scheme); and
- 3 (b) if the land is subdivided by a leasehold scheme,
4 evidence to the satisfaction of the Minister that the strata
5 company has passed a resolution without dissent in
6 favour of the variation.
- 7 (7) The Minister may by order, on the application of the holder of
8 the freehold in conditional tenure land accompanied, subject to
9 subsection (7a), by payment to the Minister of the relevant
10 amount referred to in subsection (4)(b)(i) or (ii), cancel the
11 conditions to which the use of the conditional tenure land is
12 subject.
- 13 (7a) The Minister may in prescribed circumstances, with the prior
14 approval of the Treasurer, waive in whole or part the payment
15 of the relevant amount referred to in subsection (4)(b)(i) or (ii),
16 subject to such conditions as the Minister determines.
- 17 (8) The rule against perpetuities does not apply to conditions
18 referred to in subsection (1).
- 19 *[Section 75 amended: No. 59 of 2000 s. 19; No. 30 of 2018*
20 *s. 149.]*
- 21 **76. Mortgagee of conditional tenure land, duties of in case of**
22 **mortgagor's default**
- 23 (1) If the holder of the freehold in conditional tenure land subject to
24 a mortgage defaults under the mortgage, the mortgagee must
25 give the Minister notice in writing not less than 28 days before
26 the mortgagee exercises any power under the mortgage in
27 respect of that default.
- 28 (2) Subject to subsection (3), the mortgagee must not exercise [the](#)
29 [mortgagee's](#) ~~his or her~~ power of sale under the mortgage until
30 the Minister has been paid the relevant amount referred to in
31 section 75(4)(b)(i) or (ii) in respect of the conditional tenure
32 land.

s. 77

1 (3) The Minister may allow the mortgagee to exercise the power of
2 sale referred to in subsection (2) before payment of the relevant
3 amount referred to in that subsection if the mortgagee gives the
4 Minister security to the satisfaction of the Minister for the
5 payment of that amount on completion of that exercise.

6 (4) When the fee simple of the conditional tenure land is sold by the
7 mortgagee in accordance with this section, the land ceases to be
8 subject to the conditions referred to in section 75(1).

9 **77. Mortgagee's sale under s. 76, application of purchase**
10 **moneys from**

11 The proceeds of a sale by a mortgagee in accordance with
12 section 76 are to be applied —

- 13 (a) first, in payment of the amount referred to in
14 section 75(4)(b)(i) or (ii) if payment of that amount has
15 not already been made under section 76; and
16 (b) second, in payment of any amount owed by the
17 mortgagor under the mortgage; and
18 (c) third, in payment of the expenses of and incidental to
19 that sale; and
20 (d) fourth, in payment of amounts outstanding in respect of
21 all subsequent encumbrances in respect of the land
22 concerned; and
23 (e) fifth, in payment of any remaining surplus to the
24 beneficial holder of the freehold.

25 **78. Development etc. of Crown land, Minister may enter into**
26 **joint venture for**

27 (1) The Minister may in accordance with the regulations enter into
28 a joint venture with another person for the purpose of
29 developing and selling Crown land.

30 (2) The expenses and income of a joint venture entered into under
31 subsection (1) may be shared between the Minister and the other
32 joint venturer by agreement.

Division 3 — Leasing of Crown land

79. Minister's powers as to lease of Crown land

(1) ~~The Subject to Part 7, the~~ Minister may grant leases of Crown land for any purpose and may, without limiting the generality of that power —

- (a) grant leases of Crown land by public auction, public tender or private treaty; and
- (b) fix the duration of any such lease; and
- (c) determine rentals, premiums, conditions and penalties in respect of any such lease; and
- (d) require a performance bond in respect of any such lease.

(2) The Minister may pay a commission to a person acting on behalf of the Minister in the granting of leases of Crown land.

(3) Without limiting the generality of conditions referred to in subsection (1)(c), those conditions include —

- (a) options for renewal of leases granted; and
- (b) options to purchase the fee simple of the Crown land leased,

under subsection (1), and conditions for the variation of those conditions.

(4) The Minister may at any time extend the term, or vary the provisions, of ~~term of a lease, other than a pastoral lease, having effect under this Act or vary the provisions of such~~ a lease.

(5) Any sublease or other interest granted under a lease —

- (a) the term of which is extended; or
- (b) the provisions of which are varied,

under subsection (4) continues to have effect insofar as it is permitted to do so by that extension or variation.

(6) The operation of this section is subject to Parts 6A and 7.

80. Conditional purchase leases

(1) In this section —

conditional purchase lease means conditional purchase lease granted under subsection (2).

(2) The Minister may grant to an applicant a conditional purchase lease of any Crown land.

(3) A conditional purchase lease may be granted —

- (a) for such term and subject to the payment of such rental, instalments and interest as the Minister thinks fit; and
- (b) on condition that improvements specified in the conditional purchase lease are made within the period so specified; and
- (c) on such other conditions and subject to such covenants, reservations or exemptions as the Minister thinks fit or as are prescribed.

(4) When the Minister is satisfied that the lessee under a conditional purchase lease —

- (a) has made improvements specified in the conditional purchase lease under subsection (3)(b); and
- (b) has complied with all conditions, covenants, reservations and exemptions to which the conditional purchase lease is subject,

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

- (c) if a purchase price was fixed when the conditional purchase lease was granted, on payment to [the Minister](#) ~~him or her~~ of the full purchase price, whether or not paid by rental that the conditional purchase lease provides or the Minister agrees may be offset against the purchase price, together with any other outstanding rental or outstanding interest as the Minister may require the

- 1 lessee to pay before the Crown land is transferred to the
2 lessee; or
- 3 (d) if a purchase price was not fixed when the conditional
4 purchase lease was granted, on payment to the Minister
5 ~~him or her~~ of the full purchase price, which price is to be
6 fixed by the Minister or calculated in accordance with the
7 terms of the conditional purchase lease, together with any
8 other outstanding rental or outstanding interest as the
9 Minister may require the lessee to pay before the Crown
10 land is transferred to the lessee.
- 11 (5) In determining whether under subsection (4)(c) or (d) the full
12 purchase price has been paid, the Minister is to offset against
13 the price fixed by the Minister ~~him or her~~ or calculated in
14 accordance with the terms of the conditional purchase lease any
15 rental payment that the conditional purchase lease provides or
16 the Minister agrees may be offset against the purchase price.
- 17 (6) If the lease is mortgaged, is affected by another interest or is
18 subject to a caveat and the lessee, during the continuance of the
19 mortgage, other interest or caveat, becomes entitled under
20 subsection (4), the mortgage, other interest or caveat is by
21 operation of this subsection transferred to the fee simple and
22 applies to the fee simple when transferred in all respects as if
23 the fee simple had been referred to in the mortgage, other
24 interest or caveat and has the same effect in respect of the fee
25 simple as if it were a mortgage, other interest or caveat under
26 the TLA.
- 27 *[Section 80 amended: No. 59 of 2000 s. 20.]*

28 **81. Surrender of lease of Crown land**

- 29 (1) The Minister may accept the surrender of a lease from the lessee
30 of the relevant Crown land in respect of the whole or any part of
31 the area to which the lease applies.
- 32 (2) On the acceptance of the surrender of a lease of Crown land
33 under subsection (1), any sublease under that lease, and any

s. 81A

1 interest or caveat dependent on such a sublease, continue to
2 subsist unless that sublease is forfeited under section 35 or
3 otherwise terminates according to law.

4 (3) The Minister may by order, with the consent of the relevant
5 sublessee, vary the conditions to which a sublease which
6 continues to subsist by virtue of subsection (2) is subject.

7 (4) Subsections (2) and (3) do not apply to the surrender of a
8 pastoral lease.

9 **81A. Removal of expired registered leases from certificate of**
10 **Crown land title**

11 (1) In this section —
12 *term*, in relation to a registered lease, includes any period for
13 which the lease was extended under section 79(4) or renewed
14 under an option to renew.

15 (2) This section applies if —

16 (a) at least 12 months have passed since the expiry of the
17 term of a registered lease; and

18 (b) the Minister is satisfied that —

19 (i) the former lessee is no longer in occupation of
20 the land that was the subject of the lease; and

21 (ii) there is no ongoing tenancy arrangement
22 between the former lessor and the former lessee;
23 and

24 (iii) the former lessor is no longer collecting rent
25 from the former lessee; and

26 (iv) any other requirements prescribed for the
27 purposes of this paragraph have been met.

28 (3) The Minister may direct the Registrar to remove from the
29 certificate of Crown land title or qualified certificate of Crown
30 land title on which the lease is registered —

31 (a) the lease; and

1 (b) any encumbrance registered in respect of the lease.

2 (4) The Registrar must comply with a direction given under
3 subsection (3).

4 **Division 4 — Provisions not restricted to either sale or leasing**
5 **of Crown land**

6 **82. Revesting land held by Crown in fee simple in Crown**

7 (1) The Minister may by order revest in the Crown, with or without
8 existing encumbrances, land held by the Crown in fee simple.

9 (2) Land revested under subsection (1) is Crown land and may be
10 dealt with accordingly by the Minister under this Act.

11 **83. Transfer etc. of Crown land to advance Aboriginal people**

12 (1) The Minister may for the purposes of advancing the interests of
13 any Aboriginal person or persons —

14 (a) transfer Crown land in fee simple; or

15 (b) grant a lease of Crown land, whether for a fixed term or
16 in perpetuity,

17 to that person or those persons, or to an approved body
18 corporate, on such conditions as the Minister thinks fit in the
19 best interests of the person or persons concerned.

20 (2) Subsection (1) does not limit the right of any Aboriginal person,
21 or a body corporate, to apply for and acquire an interest in or the
22 fee simple of Crown land under any other provision of this Act.

23 (3) In subsection (1) —

24 *approved body corporate* means a body corporate that the
25 Minister is satisfied —

26 (a) is to hold the land or the lease in trust for the Aboriginal
27 persons concerned; or

s. 84

- 1 (b) has a membership that comprises only the Aboriginal
2 persons concerned.

3 *[Section 83 inserted: No. 61 of 1998 s. 5.]*

4 **84. Auctioneers of Crown land, functions of**

- 5 (1) If Crown land is to be sold in fee simple or leased by public
6 auction on behalf of the Minister by —
- 7 (a) an employee, the employee may so sell or lease without
8 being the holder of a licence under the *Auction Sales*
9 *Act 1973*; or
- 10 (b) a person who is not an employee, that person must be
11 the holder of a licence under the *Auction Sales Act 1973*
12 and may so sell or lease on a commission basis.
- 13 (2) A person acting as auctioneer for the purposes of the sale in fee
14 simple or lease of any Crown land on behalf of the Minister
15 may —
- 16 (a) set the monetary levels at which bids may be made; and
17 (b) negotiate that sale or lease with the highest bidder if the
18 bidding does not reach the reserve price for the fee
19 simple or lease of that Crown land.

20 **85. Sale etc. of Crown land subject to condition etc. it be**
21 **subdivided**

- 22 (1) The Minister may —
- 23 (a) sell the fee simple in; or
24 (b) lease with option to purchase,
- 25 Crown land subject to conditions, or to any regulations,
26 requiring the purchaser to subdivide and develop the land
27 concerned.
- 28 (2) If the relevant conditions or regulations referred to in
29 subsection (1) have been complied with or, in the case of those
30 conditions, security has been given to the satisfaction of the
31 Minister for the purpose of ensuring compliance with those

1 conditions, the Minister may, with the approval of the Planning
2 Commission, permit the staged transfer in fee simple of Crown
3 land sold under that subsection.

4 **86. Sale etc. of Crown land by private treaty to Commonwealth**
5 **etc.**

6 The Minister may sell by private treaty the fee simple in, or
7 lease, Crown land —

- 8 (a) to the Commonwealth or to another State or to a
9 Territory; and
10 (b) to any instrumentality of the Commonwealth or of a
11 State or Territory empowered to purchase land; and
12 (c) subject to the *Local Government Act 1995*, to any local
13 government.

14 **87. Sale etc. of Crown land for amalgamation with adjoining**
15 **land**

16 (1) In this section —

17 *adjoining land* means the land referred to in subsection (2)(b)
18 or (3)(b), as the case requires.

19 (2) Whenever the Minister considers that a parcel of Crown land
20 is —

- 21 (a) unsuitable for retention as a separate location or lot, or
22 for subdivision and retention as separate locations or
23 lots, because of its geographical location, potential use,
24 size, shape or any other reason based on good land use
25 planning principles; but
26 (b) suitable for —
27 (i) conveyance in fee simple to the holder of the fee
28 simple; or

- 1 (ii) disposal by way of lease to the holder of a lease
2 granted by the Minister under this Act,
3 of land adjoining that parcel,
4 the Minister may, with the consent of that holder and on
5 payment to the Minister of the price, or of the initial instalment
6 of rent, as the case requires, agreed with that holder, by order
7 convey that parcel in fee simple or lease that parcel to that
8 holder and amalgamate that parcel with the adjoining land.
- 9 (3) If —
- 10 (a) a parcel of land comprised in a road that is closed,
11 whether under this Act or the repealed Act, is Crown
12 land; and
- 13 (b) part of the land through which that closed road passes or
14 which it adjoins is taken under Part 9 for the purpose of
15 a road to replace that closed road; and
- 16 (c) as a result of that taking, the person holding the fee
17 simple of, or a lease granted by the Minister under this
18 Act in respect of, the adjoining land (the **landholder**) is
19 entitled to compensation under [Part 10](#)~~that Part~~ from the
20 person who took that part (the **taker**),
- 21 the Minister may, with the consent of the landholder and the
22 taker and on payment to the Minister of any price, or of any
23 initial instalment of rent, as the case requires, agreed with the
24 landholder, by order —
- 25 (d) convey to the landholder in fee simple or lease to the
26 landholder, as the case requires, by way of satisfaction
27 or part satisfaction of the compensation payable to the
28 landholder, so much of that parcel as is, in the opinion
29 of the Minister, equivalent in value to the whole or the
30 relevant part of that compensation; and
- 31 (e) amalgamate the land so conveyed or leased with the
32 adjoining land.
- 33 (4) When land has been conveyed or leased under subsection (3)(d),
34 the taker must, if required by the Minister to do so, pay to the

- 1 Minister forthwith the amount of the compensation in
2 satisfaction of which that land has been so conveyed or leased.
- 3 (5) On the amalgamation under subsection (2) or (3) of the whole or
4 part of a parcel of Crown land with the adjoining land —
- 5 (a) that parcel or part becomes, if the adjoining land is —
- 6 (i) land held in freehold, part of the adjoining land
7 and held in the same freehold; or
- 8 (ii) Crown land held under lease, part of the
9 adjoining land and held under the same lease,
- 10 and, if the adjoining land is subject to any encumbrance,
11 that parcel or part becomes subject to that encumbrance
12 as if it had been part of the adjoining land when that
13 encumbrance was created; and
- 14 (b) the Registrar must alter the certificate of title or the
15 certificate of Crown land title and the Register so as to
16 show that that parcel or part forms part of the adjoining
17 land.
- 18 (6) If the freehold or lease of the adjoining land is, at the time of the
19 amalgamation of the adjoining land with the whole or part of a
20 parcel of Crown land under subsection (2) or (3), in the course
21 of being sold under a contract of sale and the purchaser under
22 that contract consents —
- 23 (a) the purchase price or consideration set out in that
24 contract is to be taken to be increased by an amount
25 equal to the unimproved value of that whole or part; and
- 26 (b) the conditions of that contract are taken to apply to that
27 whole or part as if that whole or part had been part of
28 the adjoining land when that contract was entered into.
- 29 (7) Despite anything in subsection (6), that subsection does not
30 affect the rights of any person in respect of a claim that has
31 before the amalgamation referred to in that subsection been
32 settled or decided.

88. Option to purchase or lease Crown land, grant of

(1) The Minister may —

- (a) grant an option to purchase the fee simple in, or lease, any Crown land; and
- (b) fix the consideration to be paid for any such option; and
- (c) impose conditions on the exercise of any such option.

(2) A purchaser or lessee under an option granted under subsection (1) may, with the permission of the Minister, offset the whole or any portion of the relevant consideration fixed under that subsection against the purchase price or rent payable in respect of the land concerned.

89. Certain lessees of Crown land may purchase, or purchase options to purchase, the land

(1) The holder of a lease, other than a [diversification lease or pastoral lease](#), of any Crown land may apply to the Minister to purchase —

- (a) the fee simple of the Crown land; or
- (b) an option to purchase that fee simple.

(2) The Minister may grant or refuse to grant an application made under subsection (1).

(3) If the Minister grants an application under subsection (1), the applicant is entitled, on payment of a price fixed by the Minister for the sale of —

- (a) the fee simple and on compliance with such conditions, if any, as are prescribed, to obtain in lieu of the lease the fee simple of the relevant Crown land; or
- (b) the option and on compliance with such conditions, if any, as are prescribed, to obtain an option to purchase the fee simple of the relevant Crown land.

(4) If the lease is mortgaged, is affected by another interest or is subject to a caveat and the lessee, during the continuance of the

1 mortgage, other interest or caveat, becomes entitled under
2 subsection (3), the mortgage, other interest or caveat is by
3 operation of this subsection transferred to and applies to the fee
4 simple when purchased in all respects as if the fee simple had
5 been referred to in the mortgage, other interest or caveat and has
6 the same effect in respect of the fee simple as if it were a mortgage,
7 other interest or caveat under the TLA.

8 *[Section 89 amended: No. 59 of 2000 s. 21.]*

9 **90. Overlap of lease or easement and mining tenement, effect of**

10 If an area to which a lease or easement proposed to be granted
11 under this Act relates coincides or overlaps with the area to
12 which an existing mining tenement within the meaning of the
13 *Mining Act 1978* relates, that lease or easement has effect
14 without that mining tenement having to be surrendered wholly
15 or in part under section 95 of that Act.

16 **91. Licences and profits à prendre over Crown land, grant of**

- 17 (1) The Minister may grant a licence or profit à prendre in respect
18 of Crown land for any purpose.
- 19 (2) The Minister may —
20 (a) fix or extend the duration of; or
21 (b) determine fees and conditions in respect of; or
22 (c) review; or
23 (d) with the consent of its holder, amend the provisions of,
24 any licence or profit à prendre granted under subsection (1).
- 25 (3) The Minister may on the breach of any condition to which a
26 licence granted under subsection (1) is subject, terminate that
27 licence.
- 28 (4) The Minister may accept the surrender of a profit à prendre
29 granted under subsection (1) from its holder in respect of the
30 whole or any part of the area to which that profit à prendre
31 applies.

s. 92

- 1 (5) Nothing in this Act prevents the simultaneous existence on the
2 same area of Crown land of —
3 (a) a licence or profit à prendre granted under
4 subsection (1); and
5 (b) a mining, petroleum or geothermal energy right,
6 if the Minister to whom the administration of the relevant Act
7 referred to in the definition of **mining, petroleum or geothermal**
8 **energy right** in section 3(1) is for the time being committed by
9 the Governor, or a public service officer of the department that
10 is principally assisting in the administration of the relevant Act,
11 who is authorised in writing by that Minister to do so, approves
12 of that area being used both for the purposes of that licence or
13 profit à prendre and the purposes of the mining, petroleum or
14 geothermal energy right.
- 15 (6) If a licence granted under subsection (1) is transferable by the
16 licensee, in accordance with the *Personal Property Securities*
17 *Act 2009* (Commonwealth) section 10 the definition of **licence**
18 paragraph (d), the licence is declared not to be personal property
19 for the purposes of that Act.
- 20 (7) The operation of this section is affected by the *Land*
21 *Administration (South West Native Title Settlement) Act 2016*
22 Part 4.
- 23 [Section 91 amended: No. 35 of 2007 s. 98(6); No. 8 of 2010
24 s. 13; No. 42 of 2011 s. 81; No. 10 of 2016 s. 28.]

92. Improvements to leased etc. Crown land vest in Crown

- 26 (1) When a lease or licence ~~granted under this Part~~ terminates, the
27 property in any improvements made on the relevant Crown land
28 vests in the Crown.
- 29 (2) Subsection (1) does not apply to a lease if —
30 (a) the lease is a pastoral lease; or
31 (aa) the lease contains express provision to the contrary; or
32 ~~(a) there is an option to renew the lease; or~~

- 1 (b) the lease is renewed under an option to renew the lease;
2 or
3 (c) the relevant Crown land is transferred in fee simple to
4 the lessee; or
5 (d) immediately after the termination of the lease, a new
6 lease held by the same lessee commences over the
7 relevant Crown land.
8 ~~(e) there is an agreement between the Minister and the~~
9 ~~lessee to transfer the relevant Crown land in fee simple~~
10 ~~to the lessee.~~
- 11 (3) On the termination of a lease to which subsection (1) applies,
12 the former lessee may, with the permission of the Minister —
13 (a) remove all fixtures from the relevant Crown land within
14 a period of 3 months after that termination; or
15 (b) cause improvements to the relevant Crown land made by
16 that lessee to be valued to enable the price of those
17 improvements to be paid to that lessee by any incoming
18 lessee of, or any purchaser of the fee simple in, that
19 Crown land.

1 **Part 6A — Diversification leases**

2 **Division 1 — Application of Part**

3 **92A. Leases to which this Part applies**

4 This Part does not apply to a lease unless the lease specifies that
5 it is granted under section 92B.

6 **Division 2 — Grant of diversification lease**

7 **92B. Minister's powers as to grant of diversification lease**

8 (1) The Minister may grant a lease (a *diversification lease*) over
9 Crown land in accordance with Part 6 and this Part.

10 (2) A diversification lease may be granted for any purpose or
11 purposes.

12 **Division 3 — Conditions of diversification lease**

13 **92C. Provisions that can be included in diversification lease**

14 (1) The Minister may include in a diversification lease any terms,
15 reservations, conditions, covenants or penalties not inconsistent
16 with this Act.

17 (2) A diversification lease may include 1 or more options to renew
18 the lease.

19 (3) A diversification lease cannot include an option to purchase the
20 fee simple of the Crown land leased.

21 (4) The Minister may, when granting a diversification lease or at
22 any time during the term of a diversification lease, identify in
23 the diversification lease any land under the lease for the
24 purposes of the *Mining Act 1978* section 20(5AA).

25 (5) Subsection (4) does not limit the power of the Minister under
26 section 79(4) to vary the provisions of a diversification lease.

92D. Non-exclusive possession of land under diversification lease

A diversification lease does not confer a right of exclusive possession on the diversification lessee.

92E. Reservation in favour of Aboriginal persons

Aboriginal persons may at all times enter upon any unenclosed and unimproved parts of the land under a diversification lease to seek their sustenance in their accustomed manner.

92F. Diversification lessee's duties as to leased land

(1) A diversification lessee must, to the satisfaction of the Minister, manage the land under the lease using methods of best environmental management practice appropriate to the area where the land is situated, having regard to the permitted use or uses of the land.

(2) Without limiting subsection (1), a diversification lessee must, to the satisfaction of the Minister —

(a) maintain the condition of land under the lease; and

(b) take measures to prevent or mitigate the effects of land degradation (as defined in the *Soil and Land Conservation Act 1945* section 4) on land under the lease.

Division 4 — Forfeiture of diversification lease

92G. Issue of forfeiture notice

If the Minister is satisfied that a diversification lessee has failed to comply with a provision of this Act or of the lease, the lease is liable to forfeiture under section 35 as if that failure to comply were the breach of a condition or covenant referred to in that section.

s. 92H

92H. Criminal liability not affected by forfeiture

(1) The liability of any person to be prosecuted for an offence against this Act or the *Soil and Land Conservation Act 1945* is not affected by the forfeiture of a diversification lease to which the offence related.

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

Division 5 — Relations between Minister and Commissioner

92I. Commissioner to notify Minister of certain soil conservation notices

Without affecting or limiting the powers of the Commissioner in relation to diversification leases, before issuing a soil conservation notice that relates to land under a diversification lease the Commissioner must notify the Minister in writing of the terms of the proposed notice.

Part 7 — Pastoral leases

Division 1 — Introductory

93. Terms used

In this Part —

approved land management accreditation system means a land management accreditation system approved by the Minister under section 100C(2);

authorised stock means stock, or its produce, that is prescribed;

~~*Board* means the Board established by section 94;~~

certified pastoral lessee means a pastoral lessee who is currently certified under an approved land management accreditation system that applies to the lease;

~~*Commissioner* means the Commissioner of Soil and Land Conservation appointed under the *Soil and Land Conservation Act 1945*;~~

company has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

land condition standards has the meaning given in section 100A(1);

land management accreditation system has the meaning given in section 100C(1);

land management guidelines has the meaning given in section 100A(3);

pastoral purposes means the purposes of —

- (a) the commercial grazing of authorised stock; and
- (b) agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of authorised stock, including the production of stock feed; and
- (c) activities ancillary to the activities mentioned in paragraphs (a) and (b);

s. 94

- 1 permitted stock means —
2 (a) authorised stock; and
3 (b) prohibited stock for which a permit has been issued
4 under section 122A;
5 *prohibited stock* means stock, or its produce, other than
6 authorised ~~stock~~ stock;
7 ~~*soil conservation notice* means a soil conservation notice issued~~
8 ~~*under the Soil and Land Conservation Act 1945.*~~
9 [Section 93 amended: No. 59 of 2000 s. 22; No. 10 of 2001
10 s. 220.]

11 **Division 2 — The Pastoral Lands Board**

12 **94. Board established**

13 This section establishes a Board under the name of the Pastoral
14 Lands Board of Western Australia.

15 **95. Functions of Board**

16 The functions of the Board are —

- 17 (a) to advise the Minister on policy relating to the pastoral
18 industry and the administration of pastoral leases; and
19 (b) to administer pastoral leases in accordance with this
20 Part; and
21 (c) to ensure that pastoral leases are managed on an
22 ecologically sustainable basis; and
23 (d) to develop policies to prevent the degradation of
24 rangelands; and
25 (e) to develop policies to rehabilitate degraded or eroded
26 rangelands and to restore their pastoral potential; and
27 (f) to consider applications for the subdivision of pastoral
28 land and make recommendations to the Minister in
29 relation to them; and

- 1 (g) to establish and evaluate a system of pastoral land
2 monitoring sites; and
- 3 (h) to monitor the numbers and the effect of stock and feral
4 animals on pastoral land; and
- 5 (i) to conduct or commission research into any matters that
6 it considers are relevant to the pastoral industry; and
- 7 (j) to provide such other assistance or advice as the
8 Minister may require in relation to the administration of
9 this Part; and
- 10 (k) to exercise or perform such other functions as it may be
11 given under this or any other Act.

12 **96. Minister may give directions to Board**

- 13 (1) The Minister may give directions in writing to the Board with
14 respect to the exercise or performance of its functions, either
15 generally or in relation to a particular matter, and the Board is to
16 give effect to any such direction.
- 17 (2) The text of any direction given under subsection (1) is to be
18 included in the annual report submitted by the accountable
19 authority of the Department under Part 5 of the *Financial*
20 *Management Act 2006*.
- 21 *[Section 96 amended: No. 5 of 2005 s. 42; No. 77 of 2006*
22 *Sch. 1 cl. 93(5).]*

23 **97. Members of Board, appointment of etc.**

- 24 (1) The Board consists of a chairperson appointed by the Minister
25 and 7 other members, of whom —
- 26 (a) 3 are to be appointed by the Minister from among
27 persons who hold, or have held, an interest in a pastoral
28 lease, or are, or have been, shareholders in a company
29 with a beneficial interest in a pastoral lease; and
- 30 (b) one is to be the chief executive officer of the department
31 principally assisting in the administration of the
32 *Biosecurity and Agriculture Management Act 2007*, or

s. 97

- 1 that chief executive officer's~~his or her~~ appointee from
2 time to time; and
- 3 (c) one is to be the chief executive officer of the
4 Department, or that chief executive officer's~~his or her~~
5 appointee from time to time; and
- 6 (d) one is to be appointed by the Minister on the
7 recommendation of the Minister administering the
8 Environmental Protection Act 1986, and is to be a
9 person~~from among persons~~ with expertise in the field of
10 flora, fauna or land conservation management; and
- 11 (e) one is to be appointed by the Minister on the
12 recommendation of the Minister administering the
13 Aboriginal Affairs Planning Authority Act 1972, and is
14 to be an Aboriginal person~~from among Aboriginal~~
15 ~~persons~~ with experience in pastoral leases.
- 16 (1a) In this section the chairperson and the members referred to in
17 subsection (1)(a), (d), and (e) are called the ***appointed members***.
- 18 (2) The Minister may appoint, for each appointed member except
19 the chairperson, a deputy with the same qualifications.
- 20 (3) A deputy may take the place of the member to whom they are~~he~~
21 ~~or she is~~ appointed deputy at any meeting of the Board at which
22 the member is not present, and for the purpose of acting at the
23 meeting has the powers and entitlements of the member.
- 24 (4) An appointed member is to be appointed for such term, not
25 exceeding 3 years, as is specified in the instrument of
26 appointment, and may be re-appointed.
- 27 (5) The Minister may terminate the appointment of an appointed
28 member or deputy and, in that event or in the event of the death
29 or resignation of such a member or deputy, may appoint another
30 qualified person to the vacancy in accordance with this section.
- 31 (6) An appointment as deputy does not terminate by reason only
32 that the member in respect of whom the deputy was appointed
33 has ceased to hold office; and in that event the deputy may

1 attend meetings under subsection (3) while the vacancy
2 continues.

3 (7) The regulations may specify terms and conditions of
4 appointment of appointed members and their deputies.

5 (8) The terms and conditions of appointment of an appointed
6 member or the member's ~~his or her~~ deputy, if not specified in
7 this Act or the regulations, are as specified in the instrument of
8 appointment or as varied thereafter by the Minister in writing.

9 (9) An appointed member or deputy receives such remuneration as
10 may be determined by the Minister on the recommendation of
11 the Public Sector Commissioner.

12 *[Section 97 amended: No. 59 of 2000 s. 23; No. 24 of 2007*
13 *s. 11; No. 39 of 2010 s. 89.]*

14 **98. Procedure of Board; quorum**

15 (1) The Board may adopt its own rules of procedure not
16 inconsistent with this Act or the regulations.

17 (2) At a meeting of the Board —

18 (a) 5 members constitute a quorum; and

19 (b) if the chairperson is absent, the members present are to
20 appoint one of their number to preside at the meeting.

21 **99. Particular duties of members**

22 (1) A member of the Board must at all times act honestly and
23 diligently in exercising or performing the member's ~~his or her~~
24 functions under this Part.

25 (2) If a matter is before a meeting for consideration and a member
26 ~~person~~ present at the meeting has a direct or indirect pecuniary
27 interest in the matter —

28 (a) the member must disclose to the other members present
29 at the meeting, as soon as possible after the relevant

s. 100

- 1 facts have come to ~~the member's~~^{his or her} knowledge,
2 that ~~the member~~^{he or she} has an interest; and
- 3 (b) the disclosure is to be recorded in the minutes of the
4 meeting; and
- 5 (c) the member must not subsequently be present during
6 any consideration or discussion of, and may not vote on
7 any determination of, the matter.
- 8 ~~— (3) A member must not disclose any information acquired by virtue~~
9 ~~of the exercise or performance of any function under this Act~~
10 ~~unless the disclosure is made in connection with the carrying~~
11 ~~out of this Act or under a legal duty.~~
- 12 ~~— (4) A member must not make use of any information acquired by~~
13 ~~virtue of the exercise or performance of his or her functions to~~
14 ~~gain, directly or indirectly, an improper advantage for himself or~~
15 ~~herself or to cause detriment to any person.~~
- 16 (5) A member who commits a breach of any provision of this
17 section —
- 18 (a) is liable to the Crown for any profit made by ~~the~~
19 ~~member~~^{him or her} as a result of the breach of that
20 provision; and
- 21 (b) commits an offence and is liable to a fine of \$10 000.
- 22 (6) This section is in addition to and not in derogation of any other
23 law relating to the duty or liability of the holder of a public
24 office.

100. Protection from personal liability for members

- 26 (1) An action in tort does not lie against a member of the Board for
27 anything that the member has done in good faith in the exercise
28 or performance, or purported exercise or performance, of a
29 function under this Part.
- 30 (2) The protection given by this section applies even if the thing
31 done in the performance or purported performance of a function

1 under this Act might have been capable of being done if this
2 Part had not been enacted.

3 (3) This section does not relieve the Crown of any liability that it
4 might have for the doing of anything by a member of the Board.

5 (4) In this section, a reference to the doing of anything includes a
6 reference to the omission to do anything.

7 **Division 2A — Standards, guidelines and accreditation systems**

8 **100A. Land condition standards and land management guidelines**

9 (1) The Board may issue standards (*land condition standards*)
10 setting out benchmarks and objectives in relation to the
11 condition of land held under pastoral leases.

12 (2) The Board must consult the Commissioner before —

13 (a) issuing land condition standards; or

14 (b) amending or revoking land condition standards.

15 (3) The Board may issue guidelines (*land management guidelines*)
16 that provide guidance on best practice for the management of
17 land held under pastoral leases.

18 (4) The purpose of land condition standards and land management
19 guidelines is —

20 (a) to assist the Board and the Minister in the performance
21 of functions under this Part; and

22 (b) to provide information and guidance to pastoral lessees
23 and other persons or bodies that might be affected by, or
24 have an interest in, decisions under this Part; and

25 (c) to assist in the development of land management
26 accreditation systems to be approved by the Minister
27 under section 100C.

s. 100B

- 1 (5) Without limiting subsections (1) and (3), land condition
2 standards and land management guidelines may —
3 (a) apply to all pastoral leases or to pastoral leases in a
4 particular region of the State or of a particular class; or
5 (b) make different provision in relation to pastoral leases in
6 different regions of the State or pastoral leases of
7 different classes.
- 8 (6) The powers conferred on the Board under subsection (1) to
9 issue land condition standards and under subsection (3) to issue
10 land management guidelines include the power to amend or
11 revoke those standards and guidelines.
- 12 (7) Land condition standards and land management guidelines, and
13 any amendment to or revocation of those standards or
14 guidelines, must be published in the prescribed way.
- 15 **100B. Regard to standards and guidelines in performance of**
16 **functions under this Part**
- 17 (1) Subject to subsection (2), the Board and the Minister may have
18 regard to land condition standards and land management
19 guidelines in performing functions under this Part.
- 20 (2) The Board must have regard to land condition standards and
21 land management guidelines in performing functions under
22 sections 108C, 109(2) and 111A(1).
- 23 (3) Nothing in subsection (1) or (2) —
24 (a) derogates from the duty of the Board or Minister to
25 exercise their discretion in a particular case; or
26 (b) precludes the Board or Minister from having regard to
27 matters not set out in land condition standards or land
28 management guidelines; or
29 (c) requires the Board or Minister to have regard to land
30 condition standards or land management guidelines that
31 are inconsistent with a provision of this Act.

- 1 **100C. Minister may approve land management accreditation**
2 **systems**
- 3 (1) For the purposes of this Part, a *land management accreditation*
4 *system* is a system, participation in which is voluntary, the
5 purpose of which is to —
- 6 (a) improve the condition and management of land held
7 under pastoral leases by encouraging best practice in the
8 management of the land; and
- 9 (b) give pastoral lessees the opportunity to formally
10 demonstrate best practice in the management of land, by
11 providing for a process under which pastoral lessees
12 can, if they meet the requirements of the system, receive
13 and maintain certification under the system.
- 14 (2) The Minister may approve one or more land management
15 accreditation systems.
- 16 (3) The Minister must not approve a land management accreditation
17 system unless the Minister is satisfied that the system is
18 consistent with land condition standards and land management
19 guidelines.
- 20 (4) The power conferred on the Minister under subsection (2) to
21 approve a land management accreditation system includes the
22 power to revoke that approval.
- 23 (5) The following must be published in the prescribed way —
- 24 (a) notice of the approval of a land management
25 accreditation system and a document setting out the
26 approved system;
- 27 (b) notice of the revocation of an approval of a land
28 management accreditation system.

s. 100D

100D. Status of land condition standards, land management guidelines and approved land management accreditation systems

(1) Land condition standards, land management guidelines and approved land management accreditation systems are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(2) If there is an inconsistency between a provision of this Act and a provision of land condition standards, land management guidelines or an approved land management accreditation system, the provision of this Act prevails.

Division 3 — Grant of a pastoral lease

101. Grant of pastoral lease, Minister's powers as to

(1) The Minister may grant a lease (a *pastoral lease*) over any Crown lands in accordance with Part 6 and this Part.

(2) Subject to this section, if land under a pastoral lease proposed to be granted includes improvements, the grant of the lease may be subject to the payment of a sale price.

~~(3) Subsection (2) does not apply in relation to a grant or renewal of a lease offered under section 140.~~

(4) The Minister must act under this section in consultation with the Board, which is to offer its advice on the setting of the sale price, conditions and procedures for any of the release processes, and the evaluation of applicants under section 102.

(5) A pastoral lease must not be granted unless —

- (a) the Board is satisfied that the land under the lease will be capable, when fully developed, of carrying sufficient authorised stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit; or

- 1 (b) the lease is to be amalgamated with an adjoining
2 pastoral lease; or
- 3 (c) the lease is to become, together with an adjoining
4 pastoral lease or part of an adjoining pastoral lease, a
5 pastoral business unit under section 142A, the creation
6 of which has been approved under section 142A(1).

7 (6) Subsections (2) and (5) do not apply in relation to the
8 following —

- 9 (a) a renewal or grant of a lease offered under section 140;
10 (b) a grant of a lease in the circumstances referred to in
11 section 105A(1)(b).

12 *[Section 101 amended: No. 59 of 2000 s. 24.]*

13 **102. Public offers etc. of pastoral leases to be made before grant**

- 14 (1) Before granting a pastoral lease, the Minister must by
15 advertisement in a daily newspaper circulating throughout the
16 State or by any other method that is prescribed —~~State~~
17 (a) offer the pastoral lease for sale; or
18 (b) invite expressions of interest in the lease; or
19 (c) invite tenders for the lease; or
20 (d) offer the lease for auction.

21 (1A) Subsection (1) does not apply in relation to the following —
22 (a) a renewal or grant of a lease offered under section 140;
23 (b) a grant of a lease in the circumstances referred to in
24 section 105A(1)(b).

- 25 (2) An offer or invitation under this section may be withdrawn at
26 any time, and another offer or invitation made at any time.
- 27 (3) An application in response to an offer or invitation under this
28 section must be in an approved form.

1 **Division 4 — Conditions of a pastoral lease**

2 **103. Terms etc. that can be included in pastoral lease**

3 The Minister may, in consultation with the Board, include in a
4 pastoral lease any terms, reservations, conditions, covenants or
5 penalties not inconsistent with this Act.

6 **104. Aboriginal people's right to enter parts of pastoral leases**

7 Aboriginal persons may at all times enter upon any unenclosed
8 and unimproved parts of the land under a pastoral lease to seek
9 their sustenance in their accustomed manner.

10 **105. Duration of pastoral lease**

11 (1) The term of a pastoral lease —

12 (a) must be specified in the lease; and

13 (b) cannot exceed 50 years, including any extension under
14 section 105A(1)(a).

15 (2) A renewal or grant of a lease offered under section 140 in
16 relation to a pastoral lease (the *expiring lease*) cannot be for a
17 term greater than the term of the expiring lease (including any
18 extension granted in relation to the expiring lease under
19 section 105A(1)(a)).

20 ~~— (1) The term of a pastoral lease must be specified in the grant and~~
21 ~~may not exceed 50 years.~~

22 ~~— (2) If a pastoral lease is granted over land which has already been~~
23 ~~subject to a pastoral lease, the term of the new lease may not be~~
24 ~~greater than the term of the most recent previous lease, as~~
25 ~~expressed in that lease; in particular, a pastoral lease that expires~~
26 ~~on 30 June 2015 may be renewed for a term which commences~~
27 ~~on 1 July 2015 and runs for the same length of time as the~~
28 ~~expiring lease.~~

- 1 (3) For the purposes of subsection (2), if the ~~expiring lease~~^{most}
2 ~~recent previous lease referred to in that subsection~~ was the lease
3 resulting from an amalgamation of leases —
4 (a) the date of commencement of the amalgamated lease is
5 deemed to be the date of commencement of the last to
6 commence of the leases that were amalgamated; and
7 (b) the expiry date of the amalgamated lease is deemed to
8 be the expiry date of the first to expire of the leases that
9 were amalgamated, unless the amalgamation order
10 specifies an earlier expiry date.

11 **105A. Extension of pastoral lease or grant of pastoral lease for**
12 **greater term**

- 13 (1) If the term of a pastoral lease is less than 50 years, on
14 application by the lessee the Minister may in writing —
15 (a) extend the term of the lease; or
16 (b) accept the surrender of the lease (the *surrendered lease*)
17 and grant under section 101 a new lease to the lessee —
18 (i) for a term greater than the term of the
19 surrendered lease; and
20 (ii) over the whole or part of the land that was held
21 under the surrendered lease; and
22 (iii) on the conditions referred to in subsection (2).
23 (2) For the purposes of subsection (1)(b)(iii), the new lease is to be
24 granted —
25 (a) on the standard pastoral lease conditions prescribed
26 under section 275(1)(ga) as at the date that the new lease
27 is granted; or
28 (b) if no standard pastoral lease conditions are prescribed,
29 on the same conditions as the conditions of the
30 surrendered lease or on different conditions.

s. 105B

1 (3) The Minister must have regard to whether a pastoral lessee is a
2 certified pastoral lessee in exercising the Minister's powers
3 under this section.

4 (4) The Minister must obtain the advice of the Board before
5 exercising the Minister's powers under this section.

6 (5) If the term of a pastoral lease is extended under
7 subsection (1)(a), any sublease or other interest granted under
8 that lease continues to have effect to the extent specified in the
9 extension.

10 **105B. Agreements relating to extension or grant of lease under**
11 **s. 105A**

12 (1) The Minister may agree in writing with a pastoral lessee to
13 extend the term of a lease under section 105A(1)(a), or to grant
14 a new lease under section 105A(1)(b), subject to the lessee
15 complying with conditions specified in the agreement.

16 (2) The conditions specified in the agreement may include
17 conditions related to ensuring that the extension of the term of
18 the lease or the grant of the new lease (as the case requires) is a
19 valid future act under, and otherwise complies with, the *Native*
20 *Title Act 1993* (Commonwealth).

21 (3) Subsection (4) applies if the Minister is satisfied that —

22 (a) the pastoral lessee has complied with the conditions
23 specified in the agreement; and

24 (b) the extension of the term of the lease or the grant of the
25 new lease (as the case requires) is a valid future act
26 under, and otherwise complies with, the *Native Title*
27 *Act 1993* (Commonwealth).

28 (4) The Minister must extend the term of lease under
29 section 105A(1)(a) or grant a new lease under
30 section 105A(1)(b) (as the case requires), in accordance with the
31 terms of the agreement.

106. Leased land to be used for pastoral purposes unless otherwise permitted

- (1) A pastoral lessee must not use land under the pastoral lease for purposes other than pastoral purposes except in accordance with a permit issued under Division 5.

Penalty for this subsection~~Penalty: a fine of \$20 000~~\$10 000.

- (2) A pastoral lessee must not sell any product of a non-pastoral use of the land except in accordance with a permit issued under section 119, 120, 122 or 122A.

Penalty for this subsection~~Penalty: a fine of \$20 000~~\$10 000.

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

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

[Section 106 amended: No. 59 of 2000 s. 25.]

107. Improvements must be kept in good condition~~Development plan for pastoral lease, when required etc.~~

~~—(1)— If the Board is of the opinion that the reasonable development of the land under the lease for pastoral purposes requires improvements to be made, it may require the lessee to submit a development plan, satisfactory to the Board, for the progressive achievement of those improvements to a specified timetable.~~

~~—(2)— The lessee must make improvements to the land under the lease in accordance with any development plan approved by the Board.~~

s. 108

- 1 (3) ~~A pastoral~~ The lessee must maintain in good condition, and if
2 necessary restore, renew or replace, all lawful improvements to
3 the lease, to the satisfaction of the Board.

4 **108. Pastoral lessee's duties as to leased land**

- 5 (1) A pastoral lessee must, to the satisfaction of the Board, at all
6 times manage and work the land under the lease to its best
7 advantage as a pastoral property.
- 8 (2) The lessee must use methods of best pastoral and environmental
9 management practice, appropriate to the area where the land is
10 situated, for the management of permitted stock and for the
11 management, conservation and regeneration of pasture for
12 grazing.
- 13 (3) Except with the written permission of the Board, the land under
14 a pastoral lease must be worked as a single pastoral unit.
- 15 (4) The lessee must maintain the indigenous pasture and other
16 vegetation on the land under the lease to the satisfaction of the
17 Board.
- 18 (5) In satisfying itself for the purposes of subsection (4), the Board
19 must seek and have regard to the advice and recommendations
20 of the Commissioner on the matter.

21 ~~(6) In subsection (2) —~~

22 ~~stock means —~~

23 ~~(a) authorised stock; and~~

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

26 *[Section 108 amended: No. 59 of 2000 s. 26.]*

27 **108A. Board may direct pastoral lessee to submit management**
28 **plan**

- 29 (1) This section applies if the Board is satisfied that a pastoral
30 lessee —

- 1 (a) is not managing the land under the lease, or permitted
2 stock on that land, in accordance with this Part, in
3 particular section 108; or
- 4 (b) has contravened any condition of the lease that relates to
5 the use or management of land or the management of
6 permitted stock under the lease.
- 7 (2) If this section applies, the Board may give a written direction to
8 the lessee to submit to the Board a plan (a *management plan*) in
9 relation to any of the following —
- 10 (a) the improvement of the condition of land under the
11 lease;
- 12 (b) the implementation of specified pastoral and
13 environmental management practices;
- 14 (c) any monitoring and assessment of the condition of land
15 under the lease the lessee is directed to undertake under
16 section 108C(2);
- 17 (d) the control of any declared pest, in accordance with the
18 *Biosecurity and Agriculture Management Act 2007*;
- 19 (e) the remediation and management of soil erosion;
- 20 (f) the construction, repair and maintenance of
21 improvements;
- 22 (g) the management of permitted stock on the land.
- 23 **108B. Submission, approval and implementation of management**
24 **plan**
- 25 (1) If the Board directs a pastoral lessee under section 108A(2) to
26 submit a management plan to the Board, the lessee must submit
27 the management plan by the date specified in the direction.
- 28 (2) The Board may —
- 29 (a) approve the management plan; or
- 30 (b) require the lessee to make specified amendments to the
31 management plan and resubmit it to the Board.

s. 108C

- 1 (3) The lessee must comply with a requirement made under
2 subsection (2)(b).
- 3 (4) The lessee must implement the management plan approved by
4 the Board.
- 5 (5) The lessee must submit to the Board a report on the lessee's
6 implementation of the management plan —
7 (a) in the manner and within the timeframes set out in the
8 management plan; and
9 (b) at other times directed by the Board.
- 10 (6) The Board may, with the agreement of the lessee, approve
11 amendments to the management plan.
- 12 **108C. Board may direct pastoral lessee to monitor and report land**
13 **condition**
- 14 (1) This section applies if the Board is satisfied that a pastoral
15 lessee —
16 (a) is not managing the land under the lease, or permitted
17 stock on that land, in accordance with this Part, in
18 particular section 108; or
19 (b) has contravened any condition of the lease that relates to
20 the use or management of land or the management of
21 permitted stock under the lease.
- 22 (2) If this section applies, the Board may give a written direction to
23 the lessee —
24 (a) to monitor and assess the condition of land under the
25 lease in accordance with the regulations; and
26 (b) to submit to the Board, on or before the date or dates in
27 each year specified in the direction, a report relating to
28 the condition of land under the lease that —
29 (i) contains the information specified in the
30 direction; and

- 1 (ii) presents that information in the manner specified
2 in the direction.
- 3 (3) A direction under subsection (2) may be given in conjunction
4 with a direction under section 108A(2) or at any other time.
- 5 (4) A pastoral lessee must comply with a direction given to the
6 lessee under subsection (2).
- 7 (5) A pastoral lessee must not, without reasonable excuse, fail to
8 submit a report referred to in subsection (2)(b) in accordance
9 with a direction given to the lessee under subsection (2).
- 10 Penalty for this subsection:
- 11 (a) a fine of \$4 000;
- 12 (b) a daily penalty of a fine of \$400 for each day or part
13 of a day during which the offence continues.
- 14 (6) A pastoral lessee must not provide information in a report
15 referred to in subsection (2)(b) knowing the information to be
16 false or misleading in a material particular.
- 17 Penalty for this subsection: imprisonment for 12 months or a
18 fine of \$15 000.

19 **109. No clearing of leased land unless permitted**

- 20 (1) A pastoral lessee must not remove trees or otherwise clear land
21 under the lease or disturb or affect its soil except —
- 22 (a) as permitted under the lease; or
- 23 (b) as necessary for the construction of improvements
24 permitted under the lease; or
- 25 (c) in accordance with a permit issued under Division 5.
- 26 Penalty for this subsection~~Penalty: a fine of \$20 000~~\$10 000.
- 27 (2) A pastoral lessee who contravenes subsection (1) must restore
28 the land and vegetation to the satisfaction of the Board.
- 29 (3) If a pastoral lessee fails to satisfy the Board under
30 subsection (2), the Board may, whether or not the lease has been

s. 110

1 forfeited, take such steps as are necessary to restore the land and
2 vegetation.

3 (4) The costs of any action by the Board under subsection (3) are
4 recoverable by the Minister from the lessee, or former lessee if
5 the lease has been forfeited, in a court of competent jurisdiction
6 as a debt due to the Crown.

7 **110. Non-indigenous pasture not to be sown etc. on leased land**
8 **without permit**

9 (1) A pastoral lessee must not sow or cultivate non-indigenous
10 pasture on land under the lease except in accordance with a
11 permit issued under Division 5.

12 Penalty for this subsection~~Penalty: a fine of \$20 000~~\$10 000.

13 (2) A pastoral lessee must not sell fodder or other produce from
14 non-indigenous pasture, other than the products of animals
15 grazed on it, except in accordance with a permit issued under
16 section 119, 120 or 122.

17 Penalty for this subsection~~Penalty: a fine of \$20 000~~\$10 000.

18 **111. Stock and pests on leased land**~~**Stock numbers etc. and pests**~~
19 ~~**etc. on leased land**~~

20 ~~— (1) The Board may from time to time determine the minimum and~~
21 ~~maximum numbers and the distribution of stock to be carried on~~
22 ~~land under a pastoral lease, based on its assessment of the~~
23 ~~sustainable carrying capacity of the land and having regard to~~
24 ~~seasonal factors, and the pastoral lessee must comply with such~~
25 ~~a determination.~~

26 ~~— (2) A pastoral lessee must not cause or allow the agistment on land~~
27 ~~of stock of any kind, except with the permission in writing of~~
28 ~~the Board.~~

29 ~~— Penalty: \$5 000, and a daily penalty of \$500.~~

1 (3) A pastoral lessee must control declared pests on the land under
2 the lease in compliance with the *Biosecurity and Agriculture*
3 *Management Act 2007* and to the satisfaction of the Board.

4 (4) A pastoral lessee must not —
5 (a) keep prohibited stock on land under a pastoral lease; or
6 (b) sell prohibited stock,
7 except in accordance with a permit to do so issued under
8 Division 5.

9 Penalty for this subsection~~Penalty: a fine of \$20 000~~\$10 000.

10 ~~—(5) If stock being kept on a pastoral lease by a pastoral lessee on the~~
11 ~~commencement day is prohibited stock, subsection (4) does not~~
12 ~~apply to that person until 6 months after the commencement~~
13 ~~day.~~

14 (6) If authorised stock being kept on a pastoral lease by a pastoral
15 lessee becomes prohibited stock~~stock after the commencement~~
16 ~~day~~, subsection (4) does not apply to that person until 6 months
17 after the day on which the stock became prohibited stock or
18 such other period as may be prescribed but which period is not
19 to be less than one month.

20 ~~—(7) In subsection (1)—~~

21 ~~—stock means—~~

22 ~~—(a) authorised stock; and~~

23 ~~—(b) stock for which a permit has been issued under~~
24 ~~section 122A.~~

25 ~~—(8) In subsections (5) and (6)—~~

26 ~~—commencement day means the day on which section 27 of the~~
27 ~~Land Administration Amendment Act 2000 comes into~~
28 ~~operation.~~

29 [Section 111 amended: No. 59 of 2000 s. 27; No. 24 of 2007
30 s. 90(2).]

s. 111A

111A. Board may make determinations and directions as to number and distribution of stock

(1) The Board may from time to time determine the minimum and maximum numbers and the distribution of permitted stock to be carried on land under a pastoral lease.

(2) The Board must give the pastoral lessee written notice of a determination under subsection (1).

(3) The Board may give a written direction to a pastoral lessee to remove a specified number of permitted stock from land under the pastoral lease by the day specified in the direction.

(4) A determination under subsection (1) or direction under subsection (3) must be based on the Board's assessment of the sustainable carrying capacity of the land and have regard to seasonal factors.

(5) Unless section 112(1) applies, a pastoral lessee must comply with —

(a) a determination notice of which is given to the lessee under subsection (2); and

(b) a direction given to the lessee under subsection (3).

111B. Board may require evidence of compliance with s. 111A

(1) The Board may give a written direction to a pastoral lessee to provide, by the day specified in the direction, any evidence of the lessee's compliance with section 111A(5) that is specified in the direction.

(2) A pastoral lessee must not, without reasonable excuse, fail to comply with a direction given to the lessee under subsection (1).

Penalty for this subsection:

(a) a fine of \$4 000;

(b) a daily penalty of a fine of \$400 for each day or part of a day during which the offence continues.

1 (3) A pastoral lessee must not provide information in accordance
2 with a direction given to the lessee under subsection (1)
3 knowing the information to be false or misleading in a material
4 particular.

5 Penalty for this subsection: imprisonment for 12 months or a
6 fine of \$15 000.

7 **112. Effect of soil conservation notice on determinations and**
8 **directions under s. 111A and on permits under**
9 **Division 5~~Soil conservation notice, effect of on s. 111~~**
10 **~~determination etc.~~**

11 (1) If a soil conservation notice is issued as to the numbers or
12 distribution of permitted stock on land under a pastoral lease,
13 the notice has the effect while it is in force of suspending the
14 following to the extent of any inconsistency —

15 (a) a determination notice of which is given to the lessee
16 under section 111A(2);

17 (b) a direction given to the lessee under section 111A(3);

18 (c) the operation of a permit issued under Division 5.

19 ~~—(1)— If a soil conservation notice is issued as to the numbers or~~
20 ~~distribution of stock on land under a pastoral lease, the notice~~
21 ~~has the effect, while it is in force, of suspending any~~
22 ~~determination under section 111 and the operation of any permit~~
23 ~~issued under Division 5 to the extent of any inconsistency.~~

24 (2) The issue of a soil conservation notice in relation to land under
25 a pastoral lease does not release a pastoral lessee from the
26 obligation to control declared pests on the land under
27 section 111(3).

28 ~~—(3)— If the stock numbers to be carried on land under a lease are~~
29 ~~reduced by a soil conservation notice or by a variation in a~~
30 ~~determination of the Board under section 111, the Minister, on~~
31 ~~the advice of the Board, may reduce the rent in proportion to the~~
32 ~~reduction in stock.~~

s. 112A

[Section 112 amended: No. 59 of 2000 s. 28; No. 24 of 2007
s. 90(3).]

112A. Effect on rent if reduction in stock numbers

(1) This section applies if the numbers of permitted stock to be
carried on land under a pastoral lease are reduced —

(a) by a soil conservation notice; or

(b) by a determination notice of which is given to the lessee
under section 111A(2); or

(c) by a direction given to the lessee under section 111A(3);
or

(d) in accordance with a management plan approved under
section 108B.

(2) The Minister, on the advice of the Board, may reduce the rent
for the pastoral lease in proportion to the reduction in permitted
stock.

113. Pastoral lessee to submit annual return

(1) In this section —

due date means —

(a) 31 March; or

(b) if the regulations prescribe a different date, that date;

return end date means —

(a) 31 December; or

(b) if the regulations prescribe a different date, that date;

return period, for a pastoral lease, means —

(a) 12 months ending on the return end date; or

(b) if the lease is granted in that period, the period
commencing on the date the lease is granted and ending
on the return end date; or

(c) if the regulations prescribe a different period, that
period.

- 1 (2) A pastoral lessee must, on or before the due date in each year,
2 submit to the Board a return that relates to the land under the
3 lease, and the activities on the land, during the preceding return
4 period.
- 5 Penalty for this subsection:
- 6 (a) a fine of \$4 000;
7 (b) a daily penalty of a fine of \$400 for each day or part
8 of a day during which the offence continues.
- 9 (3) The return must be in an approved form and contain the
10 following information —
- 11 (a) permitted stock numbers on the return end date;
12 (b) full particulars, including costs, of all improvements
13 effected on the land under the lease in the return period;
14 (c) full particulars of the use, in the return period, of each
15 area of land affected by a permit issued under
16 Division 5;
17 (d) any other information the form requires.
- 18 (4) A pastoral lessee must not, without reasonable excuse, fail to
19 provide in a return any information required under
20 subsection (3).
- 21 Penalty for this subsection:
- 22 (a) a fine of \$4 000;
23 (b) a daily penalty of a fine of \$400 for each day or part
24 of a day during which the offence continues.
- 25 (5) A pastoral lessee must not provide information in a return
26 knowing the information to be false or misleading in a material
27 particular.
- 28 Penalty for this subsection: imprisonment for 12 months or a
29 fine of \$15 000.

s. 113

1 **~~113.— Annual return by lessee required~~**

2 ~~— (1) A pastoral lessee must, after 30 June in each year (the **return**~~
3 ~~**date**) and not later than 31 December in that year, submit to the~~
4 ~~Board a return in an approved form of any information required~~
5 ~~by the Board relating to the land under the lease or the activities~~
6 ~~on the land.~~

7 ~~— (2) The return is to include —~~

8 ~~— (a) information as to stock numbers on the return date; and~~

9 ~~— (b) full particulars, including costs, of all improvements~~
10 ~~effected on land under the lease in the period of~~
11 ~~12 months before the return date, or, if the lease was~~
12 ~~granted during that period, between the commencement~~
13 ~~of the lease and the return date; and~~

14 ~~— (c) full particulars of the use of each area of land affected~~
15 ~~by a permit issued under Division 5.~~

16 ~~— Penalty: \$2 000 and a daily penalty of \$200.~~

17 ~~— (3) A pastoral lessee must not —~~

18 ~~— (a) knowingly provide false information; or~~

19 ~~— (b) without reasonable excuse, fail to provide any~~
20 ~~information required,~~

21 ~~— in a return under this section.~~

22 ~~— Penalty: \$8 000 or imprisonment for 12 months.~~

23 ~~— (4) In subsection (2) —~~

24 ~~**stock** means —~~

25 ~~— (a) authorised stock; and~~

26 ~~— (b) stock for which a permit has been issued under~~
27 ~~section 122A.~~

28 ~~— [Section 113 amended: No. 59 of 2000 s. 29.]~~

- 1 **114. Compensation for improvements payable on expiry of**
2 **certain leases**
- 3 (1) In this section —
- 4 *continuing lease* means a pastoral lease that —
- 5 (a) was granted before the appointed day; or
- 6 (b) is a continuation, by means of a renewal or grant
- 7 effected under —
- 8 (i) section 140 of this Act; or
- 9 (ii) section 98(11) of the repealed Act as read with
- 10 section 143 of this Act,
- 11 of a pastoral lease that was granted before the appointed
- 12 day.
- 13 (2) If a continuing lease expires and is not further continued, the
- 14 lessee is entitled to receive from the Minister as compensation
- 15 an amount determined by the Valuer-General to be the market
- 16 value on the date of expiry of any lawful improvements existing
- 17 on the land under the lease.
- 18 (3) If a continuing lease expires and is continued by the grant of a
- 19 lease, offered under section 140 of this Act or under
- 20 section 98(11) of the repealed Act as read with section 143 of
- 21 this Act, over part only of the land, subsection (2) applies in
- 22 relation to improvements existing on the land not under the
- 23 newly granted lease.
- 24 (4) If a pastoral lease other than a continuing lease expires, the
- 25 lessee is not entitled to any compensation for improvements.
- 26 (4a) Despite subsection (4) and section 143(5a) or (6c) —
- 27 (a) if the Minister is not satisfied that the land subsisting in
- 28 a lease is capable, when fully developed, of carrying
- 29 sufficient authorised stock to enable it to be worked as
- 30 an economically viable and ecologically sustainable
- 31 pastoral business unit; and

s. 115

- 1 (b) the land subsisting in the lease is a part only of the land
2 that was in the lease when it was granted; and
3 (c) the lease is not to be amalgamated with an adjoining
4 pastoral lease; and
5 (d) the lease is not to become, together with an adjoining
6 pastoral lease or part of an adjoining pastoral lease, a
7 pastoral business unit,
- 8 the Minister may by order cancel a grant or extension of a lease
9 in relation to that land that is to commence immediately upon
10 the expiration of the lease concerned, and the lessee is entitled
11 to receive from the Minister as compensation an amount
12 determined by the Valuer-General to be the market value on the
13 date of cancellation of any lawful improvements existing on the
14 land subsisting under the lease.
- 15 (5) If a pastoral lease is forfeited under this Act, the lessee is
16 entitled to remove such improvements made —
17 (a) during the term of the lease; or
18 (b) in the case of a continuing lease, since the
19 commencement of the original lease,
20 as are of a kind easily capable of being removed.
- 21 (6) Compensation under this section is to be paid out of moneys
22 appropriated by Parliament for the purpose.
23 *[Section 114 amended: No. 59 of 2000 s. 30.]*

24 **Division 5 — Permits**

25 **115. Fees for permits**

- 26 (1) The regulations may prescribe fees to be charged for the issue,
27 renewal, transfer and amendment ~~issue~~ of a permit under this
28 Division.
29 (2) A fee under this section is not part of the rent for the lease.

116. Permit may be issued despite lease's terms

A permit under this Division authorises the activity specified in the permit, despite any provision to the contrary contained in a lease granted under the repealed Act.

117. Environmental conservation requirements to be complied with

The Board must not issue a permit under this Division unless —

(a) the Board is satisfied that any requirements that apply under the following written laws in relation to the activity proposed to be carried out under the permit have been complied with —

(i) the Biodiversity Conservation Act 2016;

(ii) the Biosecurity and Agriculture Management Act 2007;

(iii) the Environmental Protection Act 1986;

(iv) the Soil and Land Conservation Act 1945;

(v) any other written law relating to environmental conservation that is applicable to the land under the lease;

or

(b) the permit is subject to a condition that any requirements that apply under the written laws referred to in paragraph (a) will be complied with before any activity is carried out under the permit.

~~117. Environmental conservation requirements to be satisfied before permit can be issued~~

~~The Board must not issue a permit under this Division unless it is satisfied that any requirements in relation to the proposal arising from the operation of —~~

~~(a) the Biosecurity and Agriculture Management Act 2007;
or~~

s. 118

1 ~~——— (b) the *Environmental Protection Act 1986*; or~~
2 ~~——— (c) the *Soil and Land Conservation Act 1945*; or~~
3 ~~——— (d) the *Biodiversity Conservation Act 2016*; or~~
4 ~~——— (e) any other written law relating to environmental~~
5 ~~conservation which is applicable to the land under the~~
6 ~~lease;~~
7 ~~——— have been complied with.~~
8 ~~——— [Section 117 amended: No. 24 of 2007 s. 90(4); No. 24 of 2016~~
9 ~~s. (2)(a).]~~

10 **118. Clearing land, permit for**

- 11 (1) The Board may, on an application in writing from a pastoral
12 lessee, issue a permit for the lessee to remove specified trees or
13 clear specified areas of scrub or other vegetation for the purpose
14 of promoting the growth of indigenous pasture or otherwise
15 facilitating or improving the working of the lease.
- 16 (2) The Board must consult the Commissioner before issuing a
17 permit under this section.
- 18 (3) A permit under this section may be issued for any period and
19 subject to any conditions the Board thinks fit.

20 **119. Non-indigenous pastures, permit to sow etc.**

- 21 (1) The Board may, on an application in writing from a pastoral
22 lessee, issue a permit for the lessee to sow and cultivate
23 non-indigenous pasture on specified land under the lease.
- 24 (2) An application must specify the varieties of non-indigenous
25 pasture proposed and the areas of land proposed to be sown or
26 cultivated.
- 27 (3) A permit under this section —
28 (a) may include a permit for the sale of any produce of the
29 pasture permitted; and

- 1 (b) may be issued for any period and subject to any
2 conditions the Board thinks fit.

3 **120. Non-pastoral agricultural activity, permit for**

- 4 (1) The Board may, on an application in writing from a pastoral
5 lessee, issue a permit for the lessee to use specified land under
6 the lease for crop, fodder, horticultural or other specified kind of
7 agricultural production if it is satisfied that the proposed use is
8 reasonably related to the pastoral use of the land.
- 9 (2) An application must specify the non-pastoral activity proposed
10 and the areas of land proposed to be used for the activity.
- 11 (3) A permit under this section —
- 12 (a) may include a permit for the sale of any produce arising
13 from an activity permitted; and
- 14 (b) may be issued for any period and subject to any
15 conditions the Board thinks fit.

16 **121. Tourist activity, permit for**

- 17 (1) The Board may, on an application from a pastoral lessee, issue a
18 permit for the lessee to use specified land under the lease for
19 pastoral-based tourist activities of a specified kind, if it is
20 satisfied that the activities will be purely supplementary to
21 pastoral activities on the land.
- 22 (2) An application must specify the tourist activity proposed, any
23 facility proposed to be constructed, and the areas of land
24 proposed to be used.
- 25 (3) A permit under this section may be issued for any period and
26 subject to any conditions the Board thinks fit.

27 **122. Non-pastoral use etc. of enclosed or improved land, permit**
28 **for**

- 29 (1) The Board may, on the application of a pastoral lessee, issue a
30 permit for the lessee to use specified land under the lease for

s. 122A

- 1 any non-pastoral purposes if the land has been enclosed or
2 improved.
- 3 (2) An application must specify the use proposed, any facility
4 proposed to be constructed, and the areas of land proposed to be
5 used.
- 6 (3) A permit under this section —
- 7 (a) may include a permit for the sale of any produce arising
8 from an activity permitted; and
- 9 (b) may be issued for any period and subject to any
10 conditions the Board thinks fit.

11 **122A. Prohibited stock, permit to keep etc.**

- 12 (1) The Board may, on an application in writing from a pastoral
13 lessee, issue a permit for the lessee to do either or both of the
14 following —
- 15 (a) keep prohibited stock on land under a pastoral lease;
16 (b) sell prohibited stock.
- 17 (2) A permit under this section —
- 18 (a) may include a permit for the sale of any produce arising
19 from an activity permitted; and
- 20 (b) may be issued for any period and subject to any
21 conditions the Board thinks fit.

22 *[Section 122A inserted: No. 59 of 2000 s. 31.]*

23 **122B. Board's power to amend permit**

24 The Board may, with the consent of the permit holder, amend
25 the terms and conditions of a permit issued under this Division.

26 **122C. Renewal of permit**

- 27 (1) The holder of a permit (the *expiring permit*) under this Division
28 may apply in writing to the Board for the expiring permit to be
29 renewed.

1 (2) An application under subsection (1) must be made not more
2 than 12 months, and not less than 6 months, before the expiry of
3 the expiring permit.

4 (3) The Board may renew the expiring permit —
5 (a) for the same period as the period of the expiring permit
6 or a different period; and
7 (b) on the same conditions as the conditions of the expiring
8 permit or on different conditions.

9 **122D. Suspension of permit**

10 (1) The Board may suspend a permit issued under this Division if
11 the Board is satisfied that —
12 (a) there has been a breach of a condition to which the
13 permit is subject; or
14 (b) information contained in, or provided in support of, the
15 application for the permit was false or misleading in a
16 material particular.

17 (2) Before suspending a permit, the Board must —
18 (a) give written notice to the permit holder of the grounds
19 on which the Board intends to suspend the permit; and
20 (b) give the permit holder a reasonable opportunity to
21 provide any information that the permit holder thinks is
22 relevant to the decision to suspend the permit.

23 (3) The Board must give a permit holder written notice of the
24 following —
25 (a) the Board's decision to suspend, or not suspend, the
26 permit;
27 (b) if the permit is to be suspended —
28 (i) the day on which the suspension takes effect and
29 the period of the suspension;

s. 122E

- 1 (ii) any conditions of the permit that the permit
2 holder must continue to comply with during the
3 period of the suspension;
4 (iii) any action that the permit holder must take in
5 order for the suspension to be lifted.
6 (4) The Board may lift the suspension of a permit by notice in
7 writing given to the permit holder.
8 (5) The Board may extend the period of the suspension of a permit
9 by notice in writing given to the permit holder.
10 (6) The suspension of a permit does not affect the application or
11 operation of section 125 in relation to the permit holder.
12 (7) The permit holder must comply with a notice under
13 subsection (3) to the extent that it is given under
14 subsection (3)(b)(ii).

15 **122E. Cancellation of permit**

- 16 (1) The Board may cancel a permit issued under this Division if the
17 Board is satisfied that —
18 (a) there has been a breach of a condition to which the
19 permit is subject (including a condition mentioned in
20 section 122D(3)(b)(ii)); or
21 (b) information contained in, or provided in support of, the
22 application for the permit was false or misleading in a
23 material particular.
24 (2) Before cancelling a permit, the Board must —
25 (a) give written notice to the permit holder of the grounds
26 on which the Board intends to cancel the permit; and
27 (b) give the permit holder a reasonable opportunity to
28 provide any information that the permit holder thinks is
29 relevant to the decision to cancel the permit.
30 (3) The Board must give a permit holder written notice of the
31 following —

- 1 (a) the Board's decision to cancel, or not cancel, the permit;
2 (b) if the permit is to be cancelled — the day on which the
3 cancellation takes effect.

- 4 (4) If a permit is cancelled under this section, the amount of rent
5 payable for the lease must be adjusted in accordance with
6 Division 6.

7 **122F. Permit not personal property for *Personal Property***
8 ***Securities Act 2009* (Commonwealth)**

9 If a permit issued under this Division is transferable by the
10 permit holder, in accordance with paragraph (d) of the definition
11 of *licence* in the *Personal Property Securities Act 2009*
12 (Commonwealth) section 10, the permit is declared not to be
13 personal property for the purposes of that Act.

14 **122G. Terms used**

15 In this Division —

16 *commencement day* means the day on which the *Land and*
17 *Public Works Legislation Amendment Act 2022* section 60
18 comes into operation;

19 *corresponding quarter*, in relation to a determination under
20 section 122H(1) or 122I(2), means the quarter in the calendar
21 year immediately preceding the calendar year in which the
22 determination is made that corresponds to the previous quarter;

23 *CPI number* means the Consumer Price Index, All Groups
24 index number for Perth published by the Australian Bureau of
25 Statistics established by the *Australian Bureau of Statistics*
26 *Act 1975* (Commonwealth) section 5(1);

27 *first CPI determination day* means —

- 28 (a) if commencement day is on or before
29 31 December 2023 — 31 December 2023; or
30 (b) otherwise — 31 December next following
31 commencement day;

s. 122H

- 1 permit rent, in relation to a pastoral lease, has the meaning
- 2 given in section 124(1);
- 3 previous quarter, in relation to a determination under
- 4 section 122H(1) or 122I(2), means the most recent quarter
- 5 ending before the determination is made for which a CPI
- 6 number is available;
- 7 previous Valuer-General determination date means —
- 8 (a) in relation to a determination under section 123A(2) or
- 9 123B(1) made on or before 31 December 2028 — 1 July
- 10 in the most recent calendar year in which the
- 11 Valuer-General determined rents under section 123(4)
- 12 (as in force immediately before commencement day); or
- 13 (b) in relation to a determination under section 123A(2) or
- 14 123B(1) made after 31 December 2028 — 1 July in the
- 15 most recent rent review year before the calendar year in
- 16 which the determination is made;
- 17 rent review year means —
- 18 (a) 2028; or
- 19 (b) every 10th calendar year after that year.
- 20 **122H. Minister to determine annual rent**
- 21 (1) Subject to subsection (2) and section 124A(5), on the first CPI
- 22 determination day and on each 31 December after that day the
- 23 Minister must determine in accordance with subsection (3) the
- 24 annual rent payable for each pastoral lease.
- 25 (2) The Minister must not make a determination under
- 26 subsection (1) —
- 27 (a) in a rent review year; or
- 28 (b) in respect of a lease in a calendar year in which the
- 29 Valuer-General makes a determination under
- 30 section 123A(2) in respect of the lease.

1 (3) For the purposes of subsection (1), the annual rent payable for a
2 pastoral lease must be determined using the following
3 formula —

4
$$AR = B \times \left(\frac{CPI_r}{CPI_{r-4}} \right)$$

5 where —

6 AR is the annual rent;

7 B is the base annual rent as referred to in
8 subsection (4);

9 CPI_r is the CPI number for the previous quarter;

10 CPI_{r-4} is the CPI number for the corresponding quarter.

11 (4) For the purposes of subsection (3), the base annual rent is —

12 (a) for a determination made on the first CPI determination
13 day, the lower of the following amounts —

14 (i) the annual rent for the pastoral lease that applies
15 immediately before the determination is made;

16 (ii) the average of the annual rents for the pastoral
17 lease determined by the Valuer-General under
18 section 123(4) (as in force immediately before
19 commencement day) as at 1 July 1999 and as at
20 the 1 July of each 5th year after that date;

21 and

22 (b) for any other determination — the annual rent for the
23 pastoral lease that applies immediately before the
24 determination is made.

25 (5) A determination under subsection (1) of the annual rent payable
26 for a pastoral lease —

27 (a) unless subsection (6) applies, comes into effect on 1 July
28 next following the making of the determination; and

s. 122I

- 1 (b) applies to the lease until a new determination under
2 subsection (1) or section 123(1)(a) or 123A(4)(b) comes
3 into effect in respect of the lease.
- 4 (6) A determination under subsection (1) of the annual rent payable
5 for a pastoral lease does not come into effect under
6 subsection (5)(a) if, in the period between the making of the
7 determination and 1 July next following, a determination under
8 section 123A(4)(b) comes into effect in respect of the lease.
- 9 (7) Subsection (5) is subject to sections 112A(2), 127, 134(8),
10 141(3) and 254.
- 11 (8) A reference in this section to the annual rent for a pastoral lease
12 does not include any permit rent determined in respect of the
13 lease by the Minister under section 122I(2) or by the
14 Valuer-General under section 124(3) (whether before or after
15 commencement day).
- 16 **122I. Minister to determine permit rent if pastoral lease subject to**
17 **permit**
- 18 (1) This section applies if a pastoral lessee is the holder of a permit
19 issued under Division 5 that is subject to a condition of the kind
20 referred to in section 124(1) (whether that condition was
21 imposed before or after commencement day).
- 22 (2) Subject to subsection (3), on the first CPI determination day and
23 on each 31 December after that day the Minister must determine
24 in accordance with subsection (4) the permit rent payable in
25 respect of the lease.
- 26 (3) The Minister must not make a determination under
27 subsection (2) in respect of the lease in a calendar year in which
28 the Valuer-General makes a determination under section 124(3)
29 in respect of the lease.
- 30 (4) For the purposes of subsection (2), the permit rent payable in
31 respect of the lease must be determined using the following
32 formula —

$$PR = B \times \left(\frac{CPI_r}{CPI_{r-4}} \right)$$

where —

PR is the permit rent;

B is the permit rent that applies immediately before the determination is made;

CPI_r is the CPI number for the previous quarter;

CPI_{r-4} is the CPI number for the corresponding quarter.

(5) A determination under subsection (2) of the permit rent payable in respect of a pastoral lease —

(a) unless subsection (6) applies, comes into effect on 1 July next following the making of the determination; and

(b) applies in addition to, and does not affect, a determination under section 122H(1), 123(1)(a), 123A(4)(b) or 123B(3)(b); and

(c) applies until a new determination under subsection (2) or section 124(3) comes into effect in respect of the lease.

(6) A determination under subsection (2) of the permit rent payable in respect of a pastoral lease does not come into effect under subsection (5)(a) if, in the period between the making of the determination and 1 July next following, a determination under section 124(3) comes into effect in respect of the lease.

123. Valuer-General to determine annual rent at 10 yearly intervals

(1) In each rent review year, the Valuer-General must —

(a) determine the annual rent payable for each pastoral lease in accordance with subsection (2); and

(b) on or before 31 December (the *determination day*) in that year give the determination to the Minister.

s. 123A

1 (2) For the purposes of subsection (1)(a), the annual rent payable
2 for a pastoral lease is the amount of ground rent that, as at 1 July
3 in the rent review year, the land might reasonably be expected
4 to realise in good condition for a long-term lease for pastoral
5 purposes under which all normal outgoings are paid by the
6 lessee.

7 (3) A determination under subsection (1)(a) of the annual rent
8 payable for a pastoral lease —

9 (a) comes into effect on 1 July next following the
10 determination day; and

11 (b) applies until a new determination under section 122H(1)
12 or 123A(4)(b) comes into effect in respect of the lease.

13 (4) Subsection (3) is subject to sections 112A(2), 124A, 127,
14 134(8), 141(3) and 254.

15 (5) In determining the annual rent payable for a pastoral lease under
16 subsection (1)(a), the Valuer-General must consult the Board
17 about the economic state of the pastoral industry.

18 **123A. Minister may request Valuer-General to make interim**
19 **determination of annual rent**

20 (1) The Minister may, at any time, request the Valuer-General to
21 make a determination under this section in relation to a pastoral
22 lease if the Minister is satisfied that it is necessary or expedient
23 to do so because of —

24 (a) a change in the area of the land under the lease since the
25 annual rent for the lease was last determined under this
26 Division; or

27 (b) any other change in relation to the lease, since the
28 annual rent for the lease was last determined under this
29 Division, that the Minister considers may materially
30 affect that determination.

- 1 (2) If the Minister makes a request under subsection (1) in relation
2 to a pastoral lease, the Valuer-General must in accordance with
3 subsection (3) determine a rent for the lease.
- 4 (3) For the purposes of subsection (2), the rent for the lease is the
5 amount of ground rent that, as at the previous Valuer-General
6 determination date, the land might reasonably be expected to
7 realise in good condition for a long-term lease for pastoral
8 purposes under which all normal outgoings are paid by the
9 lessee.
- 10 (4) After the Valuer-General determines a rent for the lease under
11 subsection (2), the Minister must —
- 12 (a) adjust the rent in accordance with the regulations to take
13 into account changes in CPI numbers since the previous
14 Valuer-General determination date; and
- 15 (b) determine that the rent so adjusted is the annual rent
16 payable for the lease.
- 17 (5) A determination under subsection (4)(b) of the annual rent
18 payable for a pastoral lease —
- 19 (a) comes into effect on a day determined by the Minister,
20 which cannot be a day that is earlier than the day on
21 which the change referred to in subsection (1)(a) or (b)
22 (as the case requires) took effect; and
- 23 (b) applies until a new determination under
24 subsection (4)(b), section 122H(1) or 123(1)(a) comes
25 into effect in respect of the lease.
- 26 (6) Subsection (5) is subject to sections 112A(2), 127, 134(8),
27 141(3) and 254.

28 **123B. Determining annual rent when new pastoral lease granted**

- 29 (1) If the Minister proposes to grant a pastoral lease under
30 section 101, the Valuer-General must in accordance with
31 subsection (2) determine a rent for the lease.

s. 123

- 1 (2) For the purposes of subsection (1), the rent for the lease is the
2 amount of ground rent that, as at the previous Valuer-General
3 determination date, the land might reasonably be expected to
4 realise in good condition for a long-term lease for pastoral
5 purposes under which all normal outgoings are paid by the
6 lessee.
- 7 (3) After the Valuer-General determines a rent for the lease under
8 subsection (1), the Minister must —
- 9 (a) adjust the rent in accordance with the regulations to take
10 into account changes in CPI numbers since the previous
11 Valuer-General determination date; and
- 12 (b) determine that the rent so adjusted is the annual rent
13 payable for the lease.
- 14 (4) A determination under subsection (3)(b) of the annual rent
15 payable for a pastoral lease —
- 16 (a) comes into effect on the day on which the lease is
17 granted; and
- 18 (b) applies until a new determination under
19 section 122H(1), 123(1)(a) or 123A(4)(b) comes into
20 effect in respect of the lease.
- 21 (5) Subsection (4) is subject to sections 112A(2), 127, 134(8),
22 141(3) and 254.

Division 6 — Rent for a pastoral lease

~~123. — Annual rent, determining~~

- 25 ~~— (1) Subject to sections 124A and 124, the annual rent payable for a~~
26 ~~pastoral lease is the amount, as determined by the~~
27 ~~Valuer-General, of ground rent that the land might reasonably~~
28 ~~be expected to realize in good condition, for a long term lease~~
29 ~~for pastoral purposes under which all normal outgoings are paid~~
30 ~~by the lessee.~~

- 1 ~~— (2) In determining the annual rent for a pastoral lease, the~~
2 ~~Valuer General is to consult the Board concerning the economic~~
3 ~~state of the pastoral industry.~~
- 4 ~~— (3) The Valuer General must determine the rent for a lease~~
5 ~~proposed to be issued if no valuation in relation to the land~~
6 ~~under the lease has been made under this section within the~~
7 ~~previous 5 years.~~
- 8 ~~— (4) The Valuer General must determine rents of all pastoral leases~~
9 ~~as at 1 July 1999, and as at the 1 July of each fifth year~~
10 ~~thereafter.~~
- 11 ~~— (5) A determination under subsection (4) applies from the date~~
12 ~~referred to in that subsection until a new valuation is made~~
13 ~~under this section or section 124.~~
- 14 ~~———— [Section 123 amended: No. 32 of 2009 s. 4.]~~

15 **124A. Phasing in increases to rent due to s. 123 determination**

- 16 (1) In this section —
17 annual rent, for a pastoral lease, means the annual rent
18 determined by the Valuer-General under section 123(1)(a);
19 ~~annual rent~~, for a pastoral lease, includes the rent determined
20 ~~under section 123 for the purposes of section 124(1)(a);~~
21 ~~determination~~ means a determination by the Valuer General
22 ~~under section 123;~~
23 *determined annual rent* means the annual rent for a pastoral
24 lease that may be phased in by regulations made for the
25 purposes of subsection (2).
- 26 (2) The regulations may provide for the phasing in of the annual
27 rent for a pastoral lease that, as the result of a determination by
28 the Valuer-General under section 123(1)(a),~~determination~~, is
29 greater than the annual rent for the lease that applied
30 immediately before the Valuer-General's determination came
31 into effect.~~determination.~~

s. 124

- 1 (3) Regulations made for the purposes of subsection (2) may
2 provide that the annual rent payable for the pastoral lease is,
3 instead of the determined annual rent, an amount —
4 (a) that is less than the determined annual rent; and
5 (b) that is calculated as set out in the regulations.
- 6 (4) Regulations made for the purposes of subsection (2) must have
7 the effect that, within a period (the *phase-in period*) not greater
8 than 5 years after the day on which the determination by the
9 Valuer-General under section 123(1)(a) comes into effect in
10 respect of the pastoral lease,~~period not greater than 3 years after~~
11 ~~the determination,~~ the annual rent payable for the pastoral lease
12 is an amount equal to the determined annual rent adjusted in
13 accordance with the regulations to take into account changes in
14 CPI numbers during the phase-in period.~~rent.~~
- 15 (5) The Minister must not make a determination under
16 section 122H(1) in respect of the pastoral lease during the
17 phase-in period.
- 18 ~~—(5) Regulations made for the purposes of subsection (2) in relation~~
19 ~~to a determination as at 1 July 2009 may be expressed to have~~
20 ~~effect from that day despite that day being earlier than —~~
- 21 ~~—— (a) the day on which the regulations are published in the~~
22 ~~*Gazette*; or~~
- 23 ~~—— (b) the day on which the *Land Administration Amendment*~~
24 ~~*Act 2009* section 5 comes into operation.~~

25 *[Section 124A inserted: No. 32 of 2009 s. 5.]*

26 **124. Annual rent if permit issued**

- 27 (1) The Board may make it a condition of a permit issued under
28 Division 5 that the annual rent payable for the pastoral lease in
29 respect of which the permit is issued includes an additional rent
30 (the *permit rent*), determined by the Valuer-General under
31 subsection (3) or the Minister under section 122I(2), in relation
32 to that part of the land under the lease that is affected by the
33 permit.

- 1 ~~— (1) The Board may make it a condition of a permit issued under~~
2 ~~Division 5 that the annual rent payable for the lease is to be the~~
3 ~~sum of —~~
- 4 ~~— (a) a rent in relation to that part of the land under the lease~~
5 ~~which is not affected by the permit, determined by the~~
6 ~~Valuer-General; and~~
- 7 ~~— (b) a rent in relation to that part of the land under the lease~~
8 ~~which is affected by the permit, determined by the~~
9 ~~Valuer-General.~~
- 10 ~~— (2) The Valuer-General must determine rents for the purposes of~~
11 ~~subsection (1)(a) in accordance with section 123 as if the leases~~
12 ~~concerned applied only to the land not affected by the permit.~~
- 13 (3) The Valuer-General must determine the permit~~a~~ rent for the
14 purposes of subsection (1)~~subsection (1)(b)~~ at times requested
15 by the Minister.
- 16 (4) Determinations under subsection (3) must be made in respect of
17 each lease concerned at intervals of not less than one year and
18 not more than 5 years.
- 19 (5) A determination under subsection (3) —
- 20 (a) comes into effect on the day on which the pastoral lessee
21 is notified of the determination; and
- 22 (b) applies in addition to, and does not affect, a
23 determination under section 122H(1), 123(1)(a),
24 123A(4)(b) or 123B(3)(b); and
- 25 (c) applies until a new determination under subsection (3)
26 or section 122I(2) comes into effect in respect of the
27 lease.
- 28 ~~— (5) A determination under subsection (3) applies from the date on~~
29 ~~which the pastoral lessee is notified of the determination.~~

125. Payment of rent

(1A) In this section —

previous determination —

(a) in relation to a determination by the Valuer-General under section 123(1)(a) of the annual rent, or under section 123A(2) of a rent, for a pastoral lease — means the most recent previous determination of annual rent for the lease under this Division; and

(b) in relation to a determination by the Valuer-General under section 124(3) of the permit rent for a pastoral lease — means the most recent previous determination of the permit rent for the lease under this Division.

(1) A pastoral lessee must pay the rent determined under this Division for a pastoral lease in accordance with the lease and, if the lessee is the holder of a permit issued under Division 5 that is subject to a condition of the kind referred to in section 124(1), the permit.

~~(1) A pastoral lessee must pay the assessed rent for a pastoral lease in accordance with the lease.~~

(2) If an objection has been lodged against a determination by the Valuer-General under section 123(1)(a) of the annual rent, under section 123A(2) of a rent, or under section 124(3) of the permit rent, for a pastoral lease or a notice has been given requiring the determination ~~an assessment of rent or a notice has been given requiring the assessment~~ to be referred to the State Administrative Tribunal for a review, but the matter has not been determined at a date on which an instalment of rent becomes due, the rent is payable at the rate of the previous determination. ~~assessment.~~

(3) If a determination by the Valuer-General under section 123(1)(a) of the annual rent, under section 123A(2) of a rent, or under section 124(3) of the permit rent, for a pastoral lease ~~an assessment~~ is amended as a result of an objection or review and the pastoral lessee has paid an amount of rent at the

previous rate under subsection (2), the lessee is entitled to set off any overpayment against the future rental payments.

- (4) If a pastoral lessee fails to pay rent on the due date, interest becomes payable in respect of the amount and accrues at the prescribed rate.

[Section 125 amended: No. 55 of 2004 s. 545.]

126. Objections to and review of rent or value of improvements
~~Objections to and review of annual rent or value of improvements~~

For the purposes of objections and review in relation to —

- (a) a determination by the Valuer-General under section 123(1)(a) of the annual rent, under section 123A(2) of a rent, or under section 124(3) of the permit rent, for a pastoral lease; or

- ~~(a) an assessment of annual rent for a pastoral lease; or~~

- (b) a determination of the value of improvements under section 114,

Part IV of the *Valuation of Land Act 1978* applies, with any necessary modifications, as if the ~~assessment or~~ determination were a valuation made under that Act, and the Minister were the person required to be informed under section 34 of that Act.

[Section 126 amended: No. 55 of 2004 s. 546.]

127. Amalgamated leases, rent for

If 2 or more pastoral leases are amalgamated, the rental determination for the amalgamated lease is deemed to be the sum of the current determinations for each of the leases amalgamated.

128. Payment of rent may be delayed, reduced or waived in certain cases

- (1) The Minister may allow a payment of rent under this Division to be delayed for a specified period, reduced or waived entirely —

s. 128

- 1 (a) to take into account the occurrence of a drought, fire,
2 cyclone, flood or other disaster that affects the land
3 under 1 or more pastoral leases; or
- 4 (b) to take into account poor economic conditions in the
5 pastoral industry; or
- 6 (c) in prescribed circumstances.
- 7 (2) The Minister may exercise the power under subsection (1) —
- 8 (a) on the recommendation of the Board under
9 subsection (5) following an application by the lessee
10 under subsection (4) — in respect of a particular
11 pastoral lease; or
- 12 (b) on the Minister's own initiative or on the
13 recommendation of the Board — in respect of all
14 pastoral leases or pastoral leases of a particular class.
- 15 (3) Before exercising the power under subsection (1) on the
16 Minister's own initiative, the Minister must consult the Board.
- 17 (4) A pastoral lessee may apply to the Board for a delay, reduction
18 or waiver of a payment of rent under subsection (1).
- 19 (5) If the Board is satisfied that the pastoral lessee's application is
20 reasonable in the circumstances, the Board must recommend to
21 the Minister a delay, reduction or waiver that the Board
22 considers appropriate.
- 23 (6) If a pastoral lessee applies under subsection (4) for a delay,
24 reduction or waiver of a payment of rent, the Board may require
25 the lessee to provide any of the following that the Board thinks
26 necessary for proper consideration of the application —
- 27 (a) if the application relates to the occurrence of a disaster
28 referred to in subsection (1)(a) — evidence of the
29 disaster and its effect on the land under the pastoral
30 lease and the lessee's financial circumstances;
- 31 (b) if the application relates to the economic conditions
32 referred to in subsection (1)(b) — evidence of the effect

1 of those conditions on the lessee's financial
2 circumstances.

3 (7) For the purposes of subsection (6), the Board may —

4 (a) require the production of audited or otherwise duly
5 authenticated accounts and any other records of relevant
6 operations and transactions; or

7 (b) require the lessee, or an agent of the lessee, to verify the
8 evidence by statutory declaration.

9 ~~**128. Postponing or reducing rent if drought, financial hardship**~~
10 ~~**etc.**~~

11 ~~— (1) The Minister may, on the recommendation of the Board under~~
12 ~~this section, allow a payment of rent for a pastoral lease to be~~
13 ~~delayed for a specified period, reduced or waived entirely.~~

14 ~~— (2) A lessee —~~

15 ~~— (a) whose lease has been adversely affected by drought,~~
16 ~~fire, cyclone, flood or other disaster; or~~

17 ~~— (b) who is suffering personal financial hardship as a result~~
18 ~~of poor economic conditions in the pastoral industry;~~

19 ~~— may apply to the Board for rent relief under this section.~~

20 ~~— (3) The Board, if it is satisfied the request is reasonable in the~~
21 ~~circumstances, is to recommend to the Minister rent relief which~~
22 ~~it considers appropriate.~~

23 ~~— (4) The Board may require the lessee to provide such evidence of~~
24 ~~the disaster, its effect on the land and the lessee's financial~~
25 ~~circumstances as it thinks necessary to make a decision, and in~~
26 ~~particular may —~~

27 ~~— (a) require the production of audited or otherwise duly~~
28 ~~authenticated accounts and any other records of relevant~~
29 ~~operations and transactions; or~~

30 ~~— (b) require the lessee, or his or her agent, to verify such~~
31 ~~evidence by statutory declaration; or~~

s. 128A

- 1 ~~_____ (c) require the lessee, or his or her agent, to attend at a~~
2 ~~meeting or meetings of the Board to be examined on~~
3 ~~oath.~~
- 4 ~~_____ (5) For the purposes of subsection (4)(c), the Board may examine~~
5 ~~witnesses on oath, and such an oath may be administered by any~~
6 ~~member of the Board.~~

7 **Division 7 — Defaults, offences, forfeiture and abandoned**
8 **leases**

9 **128A. Board may direct pastoral lessee**

- 10 (1) The Board may give a written direction to a pastoral lessee to
11 comply with 1 or more of the following —
- 12 (a) a provision of this Part;
13 (b) a provision of the lease;
14 (c) a condition of a permit issued under Division 5 in
15 respect of the lease (including a condition mentioned in
16 section 122D(3)(b)(ii)).
- 17 (2) The direction may require the lessee —
- 18 (a) to do a thing in relation to any land under the lease, in
19 the manner, and by the date, specified in the direction;
20 or
21 (b) to refrain from doing a thing in relation to any land
22 under the lease.
- 23 (3) A pastoral lessee must comply with a direction given to the
24 lessee under subsection (1).
- 25 (4) A pastoral lessee must give the Board any information the
26 Board requires in order to be satisfied that the lessee has
27 complied with the direction.

129. Default notice, when can be issued etc.

(1) If a pastoral lessee fails to comply with —

- (a) any provision of this Act; or
- (b) any provision of the lease; or
- (c) any condition set, determination made, or direction given~~set or determination made~~ by the Board under this Part; or
- (ca) a condition of a permit issued under Division 5 in respect of the lease (including a condition mentioned in section 122D(3)(b)(ii)); or~~in respect of the lease; or~~
- (d) a soil conservation notice,

the Board may issue a default notice in accordance with this section, and the lessee must comply with the notice.

(2) A default notice issued under subsection (1) must —

- (a) give details of the failure to comply; and
- (b) if the notice relates to a failure to comply with a provision of this Act or the lease, or a condition of a permit, that requires something to be done to the satisfaction of the Board — specify any action that the Board requires the lessee to take in order for the Board to be satisfied; and
- ~~(a) specify the provision, condition, determination or notice with which the lessee has failed to comply; and~~
- ~~(b) if the notice relates to a failure to comply with a provision of this Act or the lease which specifies that anything is to be done to the satisfaction of the Board, specify the actions which the Board requires the lessee to take in order to satisfy it; and~~
- ~~(c) require the lessee to comply forthwith; and~~
- (d) specify any action which the Board requires the lessee to take to remedy the effects of the failure to comply; and

s. 130

- 1 (e) specify a time or times by which any actions required
2 under paragraph (b) or (d) must~~paragraph (d) are to~~ be
3 done; and
4 (f) inform the lessee that a failure to comply with the
5 default notice could result in a fine, the forfeiture of the
6 lessee's interest in the lease, or both.

7 *[Section 129 amended: No. 59 of 2000 s. 32.]*

8 **130. Not complying with default notice, offence**

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

12 Penalty:

13 (a) a fine of \$90 000;

14 (b) a daily penalty of a fine of \$2 000 for each day or
15 part of a day during which the offence continues.

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

17 *[Section 130 inserted: No. 59 of 2000 s. 33.]*

18 **131. Forfeiture, when lease is liable to**

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

- 21 (a) a provision of this Act; or
22 (b) a provision of the lease; or
23 (c) a condition set, determination made, or direction
24 given~~set or determination made~~ by the Board under this
25 Part; or
26 (d) a condition of a permit issued under Division 5 in
27 respect of the lease (including a condition mentioned in
28 section 122D(3)(b)(ii)),~~in respect of the lease,~~

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

1 *[Section 131 inserted: No. 59 of 2000 s. 34.]*

2 **132. Criminal liability not affected by forfeiture**

3 (1) The liability of any person to be prosecuted for an offence
4 against this Act or the *Soil and Land Conservation Act 1945* is
5 not affected by the forfeiture of a pastoral lease to which the
6 offence related.

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

10 *[Section 132 amended: No. 59 of 2000 s. 35.]*

11 **133. Abandoned lease, Minister's powers in case of**

12 (1) If the Board advises the Minister that, in its opinion, land under
13 a pastoral lease has been abandoned or has otherwise been left
14 without proper care, control and management, the Minister may
15 by instrument in writing authorise the Board or its agents to
16 enter the land under the lease and assume temporary care,
17 control and management of the land until —

18 (a) the Board is satisfied that the care, control and
19 management of the land has been assumed by the lessee
20 or by some other person entitled to do so; or

21 (b) the pastoral lease has expired or been forfeited, the
22 Minister has determined that the land will not be offered
23 for another pastoral lease and pastoral operations on the
24 land have been wound up.

25 (2) A pastoral lessee who is aggrieved by the issue of an
26 authorisation under this section may lodge an appeal with the
27 Minister under Part 3.

28 (3) An appeal under subsection (2) must be lodged within 30 days
29 after the Board has entered the land under this section, or such
30 longer period as the Minister in special circumstances allows.

s. 134

- 1 (4) Any costs incurred by the Board in assuming the care, control
2 and management of land under this section are a charge against
3 the pastoral lease, with priority over all other charges against the
4 lease, and recoverable by the Minister from the lessee in a court
5 of competent jurisdiction as a debt due to the Crown.
- 6 (5) An instrument authorising entry under this section must, as soon
7 as practicable, be registered against the certificate of Crown
8 land title, but is valid from the time it is issued.

9 **Division 8 — Transfers of pastoral holdings or shares**

10 **134. Transfer, mortgage etc. of lessee's interest, ministerial**
11 **approval of**

- 12 (1) With the Minister's approval in writing, but not otherwise, a
13 pastoral lessee may —
14 (a) transfer to another person; or
15 (b) create a mortgage or charge over,
16 the lessee's interest in the pastoral lease, or any part of that
17 interest, including any sublease, licence or profit à prendre.
- 18 (2) If the interest of a pastoral lessee is transferred by operation of
19 law to the lessee's legal representative, executor or
20 administrator or trustee in bankruptcy or, in the case of a
21 company, a liquidator, administrator, receiver, receiver-manager
22 or manager of the company, subsection (1) applies to that
23 person as if that person were the pastoral lessee.
- 24 (3) The Minister must not unreasonably refuse to approve a transfer
25 or mortgage or charge.
- 26 (4) If a transfer would result in the effective division of the land
27 under the lease into parts with different occupiers, the Minister
28 must not approve the transfer unless the Board is satisfied
29 that —
30 (a) each part will be capable, when fully developed, of
31 carrying sufficient authorised stock to enable it to be

- 1 worked as an economically viable and ecologically
2 sustainable pastoral business unit; or
- 3 (b) if a part is not so capable — the lease will be divided
4 and that part amalgamated with the land of an adjoining
5 pastoral lease; or
- 6 (c) if a part is not so capable — the lease will be divided
7 and that part, together with an adjoining pastoral lease or
8 part of an adjoining pastoral lease, will become a
9 pastoral business unit under section 142A, the creation
10 of which has been approved under that section.
- 11 (4a) If a division of a lease takes place under subsection (4)(a) —
- 12 (a) subject to subsection (8), each part of the land under the
13 lease that was divided is to be held on the same
14 conditions, including the term of the lease, as it was held
15 before the division; and
- 16 (b) the provisions of this Act continue to apply in relation to
17 each part of the land under the lease that was divided, as
18 if the land in each part subsists in the lease and the lease
19 is a lease solely of that land; and
- 20 (c) without limiting paragraph (b), section 143(6) to (6i)
21 apply in relation to each part of the land under the lease
22 that was divided, as if the land in each part subsists in
23 the lease and the lease is a lease solely of that land.
- 24 (4b) If a division of a lease takes place under subsection (4)(c) —
- 25 (a) subject to subsection (8), the land remaining in the lease
26 that was divided and any land in the lease that was
27 divided and included in a pastoral business unit under
28 section 142A are to be held on the same conditions,
29 including the term of the lease, as the land was held
30 before the division; and
- 31 (b) the provisions of this Act continue to apply —
- 32 (i) in relation to the land remaining in the lease that
33 was divided, as if that land subsists in the lease
34 and the lease is a lease solely of that land; and

s. 134

- 1 (ii) in relation to any land in the lease that was
2 divided and included in a pastoral business unit
3 under section 142A, as if the land subsists in the
4 lease and the lease is a lease solely of that land;
5 and
6 (c) without limiting paragraph (b), section 143(6) to (6i)
7 apply —
8 (i) in relation to the land remaining in the lease that
9 was divided, as if that land subsists in the lease
10 and the lease is a lease solely of that land; and
11 (ii) in relation to any land in the lease that was
12 divided and included in a pastoral business unit
13 under section 142A, as if the land subsists in the
14 lease and the lease is a lease solely of that land.
- 15 (5) The Minister may refuse to approve a transfer until the return
16 under section 113 relating to the previous 30 June has been
17 submitted.
- 18 (6) For the purpose of deciding whether to approve a transfer of or
19 mortgage or charge over an interest in a pastoral lease, the
20 Minister may require any lessee, or if a lessee is a company, any
21 director, shareholder or officer of the company, to make one or
22 more statutory declarations containing such information as the
23 Minister considers necessary for the decision.
- 24 (7) If the Minister approves a transfer of an interest in a pastoral
25 lease to a body corporate ~~the Minister~~~~he or she~~ may require such
26 modifications to be made to the lease as ~~the Minister~~~~he or she~~
27 thinks fit.
- 28 (8) If a transfer results in the effective division of the land under a
29 lease into parts with different lessees, the annual rent for the
30 lease is to be apportioned between the parts of the lease in
31 proportion to the area of each part.
- 32 *[Section 134 amended: No. 59 of 2000 s. 36.]*

134A. Transfer of permits

(1) This section applies if —

(a) the Minister approves the transfer of a pastoral lessee's interest in a pastoral lease to another person (the *transferee*) under section 134; and

(b) the land to which the lessee's interest relates is affected by a permit issued to the lessee under Division 5; and

(c) the transferee has written to the Board to request that the permit be transferred to the transferee; and

(d) the lessee is not in breach of any condition of the permit.

(2) If this section applies, the Board must transfer the permit to the transferee at the time of the transfer of the lessee's interest.

(3) The transfer of a permit under subsection (2) does not affect its term or conditions.

(4) If the conditions in subsection (1)(a) to (c) are satisfied but the condition in subsection (1)(d) is not satisfied, the Board may issue a new permit under Division 5 to the transferee.

135. Company holding lease, restrictions on transfer etc. of shares etc. in

(1) If —

(a) the holder of a pastoral lease is a company; and

(b) the working of that pastoral lease, or the working of pastoral leases of which the company is the holder, constitutes the principal activity, or one of the principal activities, of the company,

the company must not register a transfer of any share in the company unless the transfer is done by means of an instrument of transfer and the instrument has been endorsed with the approval of the Minister to the transfer.

Penalty for this subsection ~~Penalty: a fine of \$20 000~~ ~~\$10 000~~.

s. 136

- 1 (2) A person who holds a beneficial interest in a share in a company
2 referred to in subsection (1) must not transfer, mortgage or
3 charge or otherwise dispose of the interest to any other person
4 except with the consent in writing of the Minister.
5 Penalty for this subsection~~Penalty: a fine of \$20 000~~~~\$10 000~~.
- 6 (3) If a company is convicted of an offence against subsection (1),
7 any pastoral lease held by the company is liable to forfeiture
8 under section 35 as if that conviction were the breach of a
9 condition or covenant referred to in that section.
- 10 (4) For the purposes of this section, a person has a beneficial
11 interest in a share if that person, either alone or together with
12 other persons, is entitled (other than as trustee for, on behalf of
13 or on account of, another person) to receive, directly or
14 indirectly, any dividends in respect of the share or to exercise,
15 or to control the exercise of, any rights attaching to the share.
- 16 **136. Maximum area of leased land a person may hold**
- 17 (1) The Minister must not —
18 (a) approve the grant of a pastoral lease to a person; or
19 (b) approve the transfer to the person of any interest in a
20 pastoral lease,
21 if the result of the grant or transfer would be that the pastoral
22 land imputed to the person under this section would exceed
23 500 000 hectares, unless the Minister is satisfied that the
24 transfer would not result in so great a concentration of control of
25 pastoral land as to be against the public interest.
- 26 (2) For the purposes of this section, pastoral land is imputed to
27 persons as follows —
28 (a) if a person is sole lessee of a pastoral lease — the area
29 of land under the lease is imputed to the person;
30 (b) if several persons are joint tenants of a pastoral lease —
31 the whole area of the land under the lease is imputed to
32 each of them;

- 1 (c) if several persons are tenants in common of a pastoral
2 lease — the area of land under the lease is imputed to
3 them in proportion to their respective shares in the lease;
- 4 (d) if a pastoral lessee is a company — the area of land
5 imputed to it under paragraph (a) or (c) is also imputed
6 to the shareholders in the proportion to the voting rights
7 represented by their shareholdings.
- 8 (3) For the purposes of subsection (2)(d), each person who, either
9 alone or together with other persons, is entitled (other than as
10 trustee for, on behalf of or on account of, another person) to
11 receive, directly or indirectly, any dividends in respect of the
12 share or to exercise, or to control the exercise of, any rights
13 attaching to a share is deemed to hold that share.

14 **Division 9 — Relations between the Pastoral Board and the**
15 **Commissioner**

16 **137. Commissioner and Board to exchange information**

- 17 (1) The Commissioner and the Board are to establish an
18 administrative mechanism to ensure that any information
19 relevant to their respective responsibilities in relation to land
20 under pastoral leases is exchanged between them.
- 21 (2) The Commissioner must, not later than 31 December in each
22 year, furnish to the Board a report on the current condition of
23 land under pastoral leases in the State, by reference to regions of
24 the State as defined by the Board for the purpose.

25 **138. Commissioner to notify Board of certain soil conservation**
26 **notices**

27 Without affecting or limiting the powers of the Commissioner in
28 relation to pastoral leases, the Commissioner must, before
29 issuing a soil conservation notice that relates to the stocking of
30 land under a pastoral lease, notify the Board in writing of the
31 terms of the proposed notice.

Division 10 — Miscellaneous and transitional

139. Board's powers to investigate compliance by lessees

- (1) The Board may investigate at any time whether the lessee of a pastoral lease is or has been complying with the conditions of the lease and with this Act.
- (2) For the purpose of an investigation, the Board may authorise in writing a person to enter on the land subject to the lease and inspect it.

140. Renewal of lease, request by lessee for offer of etc.

- (1) At any time during the period of 12 months before the date 10 years before the expiry of a pastoral lease, the lessee may apply in writing to the Minister requesting an offer of a renewal of the lease under this section.
- (2) On receiving such an application, the Minister is to request the written advice of the Board on whether the lessee should be offered a renewal of the lease, or a grant of a lease over part of the land under the existing lease.
- (3) The Minister must, not later than 8 years before the expiry of the lease, determine that —
 - (a) the lessee is not to be offered a renewal or grant, and notify the lessee accordingly; or
 - (b) determine that the lessee is to be offered a renewal of the lease, on specified conditions, and make an offer to the lessee accordingly; or
 - (c) determine that the lessee is to be offered the grant of a lease over part only of the land under the present lease, on specified conditions, and make an offer to the lessee accordingly.
- (4) A renewal or grant offered under this section commences immediately upon the expiration of the lease concerned.

1 (5) The lessee, or the successor in title to the lessee, may accept an
2 offer at any time within one year after the date that the offer is
3 made.

4 (6) The regulations may provide that specified pastoral leases will
5 not be renewed.

6 **141. Boundaries between leases, Minister's powers to change**

7 (1) On the recommendation of the Board, the Minister may by order
8 provide that any boundary between land under 2 pastoral leases
9 is changed in the way specified in the order.

10 (2) The Minister may not make an order under this section except
11 on the application of the lessees of the 2 pastoral leases and
12 payment of the prescribed fee, if any.

13 (3) The annual rent for a pastoral lease affected by an order under
14 this section is to be adjusted in proportion to any change
15 produced by the order in the stock-carrying capacity of the land
16 under the lease.

17 **142. Amalgamation of leases, Minister's powers as to**

18 (1) If —

19 (a) 2 or more pastoral leases are held by the same lessees;
20 and

21 (b) the leases are held on the same conditions, other than the
22 term of the lease; and

23 (c) the lessees hold the same proportionate shares of each
24 lease,

25 the Minister may, on the recommendation of the Board, by
26 order provide that the leases be amalgamated.

27 (2) If the lessees of pastoral leases eligible for amalgamation
28 request the Board to recommend amalgamation and have paid
29 the prescribed fee, if any, the Board must consider the request
30 and must not unreasonably refuse to recommend amalgamation
31 to the Minister.

s. 142A

- 1 (3) If a lease affected by an amalgamation order is subject to a
2 mortgage or charge, then, unless the mortgagees or chargees
3 agree and the order provides otherwise, each mortgage or
4 charge is deemed, on registration of the order, to have been
5 replaced by a mortgage or charge on the amalgamated lease
6 with the same terms and conditions, with the same priority date,
7 and secured by the same area of land as before the
8 amalgamation.
- 9 (4) An amalgamation order must specify a name for the
10 amalgamated lease.

11 **142A. Pastoral business units, creation of etc.**

- 12 (1) If —
13 (a) a pastoral lease granted under section 101(1) or a
14 pastoral lease or a part of a lease the transfer of which
15 was approved under section 134(4)(c) and an adjoining
16 lease are held by the same lessees; and
17 (b) the lessees hold the same proportionate share of each
18 lease or part of a lease,
19 the Minister may in writing approve the creation of a pastoral
20 business unit comprising those leases or parts of leases and
21 specify the name of the pastoral business unit.
- 22 (2) If the Minister gives approval under subsection (1), the Minister
23 is to lodge a memorial in an approved form with the Registrar in
24 respect of each lease or part of a lease comprising the pastoral
25 business unit stating that the lease or part of a lease is part of the
26 pastoral business unit and the name of the pastoral business unit.
- 27 (3) The Minister may in writing approve a variation of the leases or
28 parts of leases comprising a pastoral business unit and, if [the](#)
29 [Minister](#)~~he or she~~ does so, is to —
30 (a) lodge a memorial under subsection (2) in relation to any
31 lease or part of a lease which has been added to a
32 pastoral business unit; or

- 1 (b) withdraw a memorial under subsection (2) in relation to
2 any lease or part of a lease which has ceased to be part
3 of a pastoral business unit.
- 4 (4) If a memorial is lodged or withdrawn under subsection (2)
5 or (3), the Registrar is to endorse on each certificate of Crown
6 land title, or qualified certificate of Crown land title, subject to
7 the lease referred to in the memorial particulars of the memorial
8 or of a variation or withdrawal of a memorial.
- 9 (5) If a memorial is lodged under subsection (2), sections 134
10 and 136 apply to all of the leases or parts of leases comprising
11 the pastoral business unit so long as the leases or parts of leases
12 are part of the pastoral business unit as if a reference in those
13 sections to a lease were a reference to all of the leases or parts
14 of leases comprising the pastoral business unit.
- 15 (6) The Minister may in a memorial lodged under subsection (2),
16 declare that the provisions of Part 7, or any of those provisions,
17 apply to all of the leases or parts of leases comprising the
18 pastoral business unit so long as the leases or parts of leases are
19 part of the pastoral business unit as if a reference in those
20 sections to a lease were a reference to all of the leases or parts
21 of leases comprising the pastoral business unit.
- 22 (7) The Minister may in a memorial in an approved form vary a
23 memorial lodged under subsection (2) and is to lodge such a
24 memorial with the Registrar.
- 25 (8) If a memorial is lodged under subsection (7), the Registrar is to
26 endorse on each certificate of Crown land title, or qualified
27 certificate of Crown land title, subject to the lease referred to in
28 the memorial particulars of the memorial.

29 *[Section 142A inserted: No. 59 of 2000 s. 37.]*

30 **143. Leases in force at 30 Mar 1998, transitional provisions for**

- 31 (1) A pastoral lease subsisting under the repealed Act immediately
32 before the appointed day (*existing pastoral lease*) continues in

s. 143

1 existence subject to this Act, as if it had been granted under this
2 Part.

3 [(2)-(4) *deleted*]

4 (5) An application made under section 98(11) of the repealed Act
5 but not disposed of under that section before the appointed day
6 may be disposed of under that section as if the repealed Act had
7 not been repealed.

8 (5a) If an application is disposed of under section 98(11) of the
9 repealed Act either before or after the appointed day by the
10 lessee accepting the offer of a lease or an extension of a lease,
11 as the case may be, the grant or extension commences
12 immediately upon the expiration of the lease concerned in
13 relation to any land subsisting in the lease at the expiration of
14 the lease.

15 (6) If a lessee of a pastoral lease —

16 (a) was entitled under section 98(11)(a) of the repealed Act
17 to make an application at any time during 1995 but did
18 not do so; or

19 (b) was granted the lease between 1 January 1996 and
20 29 March 1998 (both inclusive),

21 the Minister may —

22 (c) treat that lessee or the successor in title as if ~~they~~^{he or}
23 ~~she~~ had made an application under that section (the
24 ***deemed application***); and

25 (d) consider and determine the matters referred to in
26 section 98(11)(a) of the repealed Act in relation to the
27 deemed application and give the lessee or the successor
28 in title notice in writing of the Minister's ~~his or her~~
29 decision not later than the day that is one year after the
30 day on which section 38 of the *Land Administration*
31 *Amendment Act 2000* comes into operation or such other
32 day as is prescribed.

- 1 (6a) A notice given to a lessee or a successor in title under
2 subsection (6)(d) is deemed to be an offer of a lease or an
3 extension of a lease, as the case may be, at the rent and on the
4 other terms and conditions specified in the notice.
- 5 (6b) The lessee or the successor in title may accept the offer referred
6 to in subsection (6a) on or before the day specified in the notice,
7 which day is not to be less than one year after the day on which
8 the notice is given.
- 9 (6c) Subject to subsection (6g), if the lessee or the successor in title
10 accepts the offer of a lease or an extension of a lease, as the case
11 may be, under subsection (6a), the grant or extension
12 commences immediately upon the expiration of the lease
13 concerned in relation to any land subsisting in the lease at the
14 expiration of the lease.
- 15 (6d) The Minister may for a public purpose exclude land from a
16 lease granted or extended under subsection (6c) by giving a
17 notice in writing under subsection (6e) to the lessee or successor
18 in title to the lease not later than 2 years after the day on which
19 section 38 of the *Land Administration Amendment Act 2000*
20 comes into operation.
- 21 (6e) The notice under subsection (6d) is to contain the following
22 information —
- 23 (a) a description of the area of land to be excluded from the
24 lease; and
- 25 (b) the reason for the land being excluded from the lease;
26 and
- 27 (c) any reduction in the rent payable under the lease as a
28 result of the exclusion of the land from the lease; and
- 29 (d) any proposed variation in the conditions of the lease as a
30 result of the exclusion of the land from the lease; and
- 31 (e) that the land is to be excluded from the lease or
32 extension concerned upon the commencement of the
33 lease or extension, as the case may be.

s. 143

- 1 (6f) If a lessee is given a notice under subsection (6d) the lessee
2 may —
- 3 (a) accept the conditions contained in the notice; or
4 (b) withdraw from the lease; or
5 (c) enter into negotiations with the Minister on the area to
6 be excluded from the lease or the rent to be paid as a
7 result of the exclusion of the land from the lease.
- 8 (6g) If agreement is not reached on the matters referred to in
9 subsection (6f)(c) by the day that is 2 years, or such longer
10 period as may be prescribed, after the day on which the notice
11 was given to the lessee (the *final day*), the lessee is to be
12 regarded as having withdrawn from the agreement to lease or to
13 extend the lease on the final day.
- 14 (6h) If land is not to be excluded from a lease granted or extended
15 under subsection (6c) for a public purpose, the Minister may
16 give notice in writing to that effect to the lessee not later than
17 2 years after the day on which section 38 of the *Land*
18 *Administration Amendment Act 2000* comes into operation.
- 19 (6i) If a notice is not given by the day specified in subsection (6d)
20 no land may be excluded from the lease under that subsection.
- 21 [(7), (8) *deleted*]
- 22 ~~—(9) Section 140 does not operate in relation to an existing pastoral~~
23 ~~lease.~~
- 24 (10) In this section —
- 25 *public purpose* means for the purpose of a public work within
26 the definition of the expression *public work* in the *Public Works*
27 *Act 1902*, conservation, a national park, a nature reserve or a
28 purpose which serves or is intended to serve the interests of the
29 public or a section of the public.
- 30 [Section 143 amended: No. 59 of 2000 s. 38; No. 32 of 2009
31 s. 6.]

Part 8 — Easements

143A. Term used: grantee

In this Part —

grantee, of an easement, means —

(a) the grantee of the easement under section 144; or

(b) if the easement is transferred under section 147(2), the person to whom the easement is transferred.

144. Easements over Crown land, Minister's powers to grant etc.

(1) Subject to this section, the Minister may —

(a) with the consent of every management body of the relevant Crown land and of every person having any interest, right, title or power in respect of that land, grant to any person an easement in, on, over, through or under that Crown land for a specified purpose or any other purpose the Minister thinks fit; and

(b) in that grant express that easement to be subject to specified conditions and the payment of specified consideration.

(2) The grantee of an easement may, with the consent of any management body or lessee of the relevant Crown land, apply to the Minister for the easement to be varied or cancelled.

(2a) 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.

(3) The Minister may, on receiving an application under subsection (2) —

(a) by order or other instrument vary or cancel the relevant easement; or

(b) refuse the application.

s. 145

- 1 (4) In this section —
2 *specified purpose* means for —
3 (a) the provision of pipes, conduits, cables, transmission
4 lines, and other services; or
5 (b) the provision of any structure, plant, or equipment; or
6 (c) the provision of access for carrying out of any works
7 and the performance of any maintenance that is
8 necessary for, or ancillary or incidental to, giving effect
9 to any of the purposes referred to in paragraph (a) or (b);
10 or
11 (d) a prescribed purpose.

12 *[Section 144 amended: No. 59 of 2000 s. 39.]*

13 **145. Cancelling s. 144 easements**

- 14 (1) The Minister may, after notice in writing in an approved form
15 has been served on the grantee of an easement ~~under section 144~~
16 and any lessee or management body of the relevant Crown land,
17 by order cancel the easement if —
18 (a) the easement has been used —
19 (i) for a purpose other than the purpose for which it
20 was granted; or
21 (ii) contrary to any right, power or privilege
22 pertaining to the easement;
23 or
24 (b) default occurs in complying with any condition, or in
25 paying any consideration, to which the easement is
26 subject; or
27 (c) that grantee in writing requests the Minister to cancel
28 the easement.
29 (2) A grantee of an easement may, within the period of 30 days
30 after the service on the grantee ~~him or her~~ of notice under
31 subsection (1) or such longer period as the Minister in special
32 circumstances allows, lodge with the Minister an appeal under

Part 3 against the proposed cancellation of the easement under subsection (1)(a) or (b).

146. Effect of easements granted under s. 144

Subject to sections 144 and 145, an easement granted under section 144 in respect of Crown land continues to have effect despite —

(a) the grant of any other interest in the land; or

(b) the transfer in fee simple of the land; or

(c) the surrender or other extinguishment of any other interest in the land.

~~146. Easements granted under s. 144, effect of~~

~~Subject to section 229A of the TLA and to sections 144 and 145, an easement granted under section 144 continues to have effect in respect of the land subject to it despite —~~

~~(a) the grant of any other interest in; or~~

~~(b) the transfer in fee simple of; or~~

~~(c) the surrender or other extinguishment of any other interest in,~~

~~that land.~~

147. Easements in gross may be granted under s. 144 and transferred~~Easements in gross may be granted under s. 144~~

(1) An~~An~~ easement may be granted under section 144 without there being a dominant tenement and there may be made appurtenant to or annexed to an easement so granted another easement or the benefit of a restriction relating to the user of the land concerned.

(2) The Minister may, by order, transfer an easement granted as described in subsection (1).

(3) If an easement is transferred under subsection (2), the person holding the easement immediately before the transfer is not

1 [liable for a breach of any condition to which the easement is](#)
2 [subject that occurs after the transfer.](#)

3 **148. Conditional tenure land, grant of easement by holder of**

4 A person holding land for an estate in fee simple transferred
5 under section 75 is not prevented from creating in favour of any
6 person an easement affecting the land only because the land is
7 to be used for a particular purpose or in accordance with a
8 particular condition, positive covenant or restrictive covenant,
9 but must not create any such easement without the permission
10 of the Minister.

11 **149. Holder of interest in Crown land with right to acquire fee**
12 **simple, grant of easement by**

13 When an interest in Crown land is granted subject to the right of
14 the holder of that interest to acquire the fee simple of the Crown
15 land, that holder is not prevented from creating in favour of any
16 person an easement affecting the Crown land only because that
17 holder has not yet acquired that fee simple, but an easement so
18 created terminates if the right to acquire that fee simple is
19 forfeited under section 35.

20 **150. Easements no longer serving any purpose, cancelling**

- 21 (1) When an easement is registered in respect of Crown land —
22 (a) any management body or lessee of the Crown land; or
23 (b) any other person having any interest or right in the
24 Crown land,

25 may request the Minister by order to cancel the easement
26 because it no longer serves any purpose.

- 27 (2) On receiving a request made under subsection (1), the Minister
28 must, if [the Minister](#)~~he or she~~ intends to comply with that
29 request, serve notice of that intention on —

- 30 (a) the grantee ~~under section 144~~ of the easement
31 concerned, or the person in whose favour it was created,
32 as the case requires; and

- 1 (b) any other person who appears to have an estate or
2 interest in land that comprises a dominant tenement
3 benefiting from the easement concerned; and
4 (c) the Registrar.
- 5 (3) A notice served under subsection (2) must be dated, and must
6 include or contain a copy of a plan of survey or sketch plan
7 showing the relevant easement.
- 8 (4) An entry made in the Register recording that a notice was
9 served under subsection (2) on a person whose address appears
10 in the Register and the date of that service is —
11 (a) admissible in evidence in any proceedings; and
12 (b) in the absence of evidence to the contrary, proof of the
13 facts so recorded.
- 14 (5) The Minister may, if ~~the Minister~~ [the Minister](#) ~~he or she~~ is satisfied after
15 making all reasonable inquiries that the easement the subject of
16 that request no longer serves any purpose —
17 (a) by order cancel that easement; and
18 (b) advise in writing each person on whom notice was
19 served under subsection (2) of the making of that order.

1 **Part 9 — Compulsory acquisition of interests in land**

2 **Division 1 — Preliminary**

3 **Subdivision 1 — Interpretation**

4 **151. Terms used**

5 (1) In this Part and Part 10 —

6 ***acquiring authority***, in relation to land, means the person or
7 body having the statutory authorisation referred to in
8 section 161 to undertake, construct or provide any public work;

9 ***claimant*** means a person entitled to claim compensation under
10 Part 10;

11 ***date of taking***, in relation to an interest in land taken under this
12 Part, means —

13 (a) the date specified in the taking order as the date of
14 taking, if a date is so specified; or

15 (b) the date of registration of the taking order, in any other
16 case;

17 ***designate***, in relation to an interest in land, means to reserve,
18 declare, covenant, dedicate, set apart or otherwise mark off for
19 use for a specified purpose by means of an annotation on or
20 instrument registered against the certificate of title or certificate
21 of Crown land title; and ***designated*** and ***designation*** are
22 construed accordingly;

23 ***holding authority***, in relation to an interest in land designated
24 for the purpose of a public work, means —

25 (a) the management body, if the interest is held by the
26 Crown and subject to a management order; or

27 (b) the holder of the interest, in any other case;

28 ***interest*** means any legal or equitable estate or interest in land,
29 including —

30 (a) native title rights and interests; and

31 (b) interests or rights created under any written law; and

- 1 (c) the rights of a management body under a management
2 order;
- 3 ***native title, native title holder*** and ***native title rights and***
4 ***interests*** have the same meaning as they have in the NTA;
- 5 ***notice of intention*** means a notice issued under section 170;
- 6 ***NTA*** means the *Native Title Act 1993* of the Commonwealth;
- 7 ***occupier***, in relation to land, means a person who, in exercise of
8 a right of possession, is in actual occupation of the land, but
9 does not include anyone who is in occupation of the land merely
10 as a member of the family or household of such a person;
- 11 ***principal proprietor***, in relation to land, means —
- 12 (a) the Minister, in the case of Crown land not subject to a
13 management order and of which no lease has been
14 granted; or
- 15 (b) the lessee, in the case of Crown land not subject to a
16 management order and of which a lease has been
17 granted; or
- 18 (c) the management body, in the case of Crown land subject
19 to a management order; or
- 20 (d) the holder of the fee simple, in any other case;
- 21 ***Principal Registrar of the Supreme Court*** has the same
22 meaning as in the *Supreme Court Act 1935*;
- 23 ***proprietor***, in relation to a portion of land, means —
- 24 (a) a person with a registered interest in the land; or
- 25 (b) the holder of any native title rights and interests in the
26 land, whether or not registered;
- 27 ~~***public work*** and ***work*** have the same meaning as in the *Public*~~
28 ~~***Works Act 1902***;~~
- 29 ***railway*** has the same meaning as in the *Public Works Act 1902*;
- 30 ***Registrar of Deeds***, in relation to land under the *Registration of*
31 *Deeds Act 1856*, means the Registrar of Deeds and Transfers
32 under that Act;

s. 152

- 1 *special Act* has the same meaning as in the *Public Works*
2 *Act 1902*;
- 3 *take, taken* and *taking* have the meaning given by
4 subsection (2);
- 5 *taking order* means an order made under section 177.
- 6 (2) For the purposes of this Part and Part 10 —
- 7 (a) a reference to the taking of an interest in land is a
8 reference to the extinguishment of the interest, or its
9 extinguishment subject to section 155, by a taking order;
- 10 (b) a reference to the taking of land is a reference to the
11 extinguishment of every interest in the land, or its
12 extinguishment subject to section 155, together with the
13 revocation of each management order in relation to the
14 land, by a taking order, subject to such exceptions as are
15 specified in the order.
- 16 (3) Terms used in Part 10 relating to members of the State
17 Administrative Tribunal have the meanings given to them in
18 section 3(1) of the *State Administrative Tribunal Act 2004*.
19 *[Section 151 amended: No. 59 of 2000 s. 40; No. 55 of 2004*
20 *s. 547; No. 47 of 2011 s. 16.]*

21 **Subdivision 2 — Provisions relating to native title**

22 **152. Objective of this Part and Part 10 as to NTA**

- 23 It is an objective of this Part and Part 10 to ensure that —
- 24 (a) if the taking of interests in land under this Part affects
25 native title, in terms of section 227 of the NTA, the
26 taking is a valid future act under sections 24MB(1)(b)
27 and 24MD(1) of the NTA;
- 28 *[(b) deleted]*
- 29 (c) this Act is consistent with the procedural requirements
30 of the NTA.
- 31 *[Section 152 amended: No. 61 of 1998 s. 6.]*

1 [152A. *Has not come into operation* ¹.]

2 **153. Giving notice under NTA to native title holders if no**
3 **approved determination of native title, effect of for this Act**

4 (1) This section applies if —

- 5 (a) this Act requires notice of any thing to be given to
6 persons who include native title holders; and
7 (b) there has been no approved determination of native title
8 within the meaning of that expression in the NTA; and
9 (c) section 154 does not apply.

10 (2) Where this section applies —

- 11 (a) the giving of notice in accordance with the NTA
12 satisfies the relevant requirement of this Act in relation
13 to native title holders; and
14 (b) if the notice relates to a taking, the subsequent service of
15 the order and forms referred to in paragraph (c) of
16 section 177(5) of this Act in accordance with the NTA,
17 as if they were a notice, satisfies the requirements of that
18 paragraph in relation to native title holders.

19 (3) In subsection (2) —

20 *in accordance with the NTA* means —

- 21 (a) if Part 5 of the *Native Title (State Provisions) Act 1998*
22 is in operation and the notice, or the order and forms,
23 relate to a taking that is a Part 5 act within the meaning
24 of that Act, in accordance with Division 2 of Part 5 of
25 that Act; or
26 (b) if paragraph (a) does not apply, in the manner provided
27 for by section 24MD(7) of the *Native Title Act 1993* of
28 the Commonwealth.

29 [Section 153 inserted: No. 61 of 1998 s. 8.]

- 1 **154. Giving notice under NTA to native title holders if NTA**
2 **Part 2 Div. 3 Subdiv. P applies, effect of for this Act**
- 3 (1) This section applies if —
- 4 (a) interests in land are intended to be taken under
5 section 161 or 165; and
- 6 (b) Part 2, Division 3, Subdivision P of the NTA is
7 applicable to the taking by virtue of section 26(1)(c)(iii)
8 of the NTA.
- 9 (2) Where this section applies —
- 10 (a) the giving of notice in accordance with the NTA satisfies
11 the requirements of section 170(5)(b) of this Act in relation
12 to native title holders; and
- 13 (b) the service of the order and forms referred to in
14 paragraph (c) of section 177(5) of this Act in accordance
15 with the NTA, as if they were a notice, satisfies the
16 requirements of that paragraph in relation to native title
17 holders.
- 18 (3) In subsection (2) —
- 19 ***in accordance with the NTA*** means —
- 20 (a) if Part 3 of the *Native Title (State Provisions) Act 1998*
21 is in operation and the taking is a Part 3 act within the
22 meaning of that Act, in accordance with Division 3 of
23 Part 3 of that Act; or
- 24 (b) if Part 4 of the *Native Title (State Provisions) Act 1998*
25 is in operation and the taking is a Part 4 act within the
26 meaning of that Act, in accordance with Division 3 of
27 Part 4 of that Act; or
- 28 (c) if paragraph (a) or (b) does not apply, in accordance
29 with section 29 of the *Native Title Act 1993* of the
30 Commonwealth.
- 31 *[Section 154 inserted: No. 61 of 1998 s. 8.]*

1 **155. Native title rights and interests, effect of taking under this**
2 **Part**

3 If any native title right or interest is taken under this Part, the
4 right or interest is extinguished to the extent permitted by
5 the NTA.

6 *[Section 155 inserted: No. 61 of 1998 s. 9.]*

7 **156. Claims for compensation for native rights and interests,**
8 **determining etc.**

9 (1) A claim for compensation by native title holders for the taking
10 of native title rights and interests is to be determined as if the
11 rights and interests —

12 (a) had been extinguished by the taking; and

13 (b) at that time had been converted into a claim for
14 compensation in accordance with section 179.

15 (2) No further claim for compensation arises under Part 10 from the
16 subsequent effect on the native title rights and interests of any
17 act that is done in giving effect to the purpose of the acquisition.

18 (3) In the determination of compensation under Part 10 for the
19 effect on native title rights and interests of the taking of interests
20 in land, account is to be taken of any compensation awarded
21 under the NTA, or any other written law, for essentially the
22 same loss.

23 **157. Claims for compensation for native title rights and interests,**
24 **who may make**

25 Any claim for compensation under Part 10 for the effect on
26 native title rights and interests of the taking of interests in land
27 under this Part is to be made by the native title holders.

28 **158. Compensation paid for native title rights and interests,**
29 **recovery of if purpose of taking is cancelled**

30 (1) If —

31 (a) an interest in land has been taken under this Part; and

s. 159

- 1 (b) compensation has been paid for the effect on native title
2 rights and interests of the taking of the interest; and
3 (c) the designation of the interest is cancelled in accordance
4 with section 187,
5 the taking of the interest, so far as it may have affected native
6 title rights and interests, wholly ceases to operate.
- 7 (2) Notice of the cancellation must be given to the native title
8 holders, and may be given in the manner provided for by
9 subsection (7) of section 24MD of the NTA as if the
10 cancellation were an act to which that subsection applies.
- 11 (3) Subject to this section, on registration of the cancellation —
12 (a) a sum equal to the amount of the monetary
13 compensation mentioned in subsection (1)(b) that has
14 been paid to any person becomes a debt due by that
15 person to the Crown; and
16 (b) the debt may be recovered by the Minister in a court of
17 competent jurisdiction.
- 18 (4) Subsection (3) does not apply to any compensation that has
19 been paid to a person, other than a trustee under the NTA, if a
20 period of 3 years or more has passed since the interest in the
21 land was taken.
- 22 (5) This section has no effect in relation to any person, not being a
23 native title holder, who had an interest that was taken.
- 24 *[Section 158 amended: No. 61 of 1998 s. 10.]*

Subdivision 3 — Delegation

[Heading amended: No. 13 of 2000 s. 97.]

159. Delegation by Minister to certain other Ministers

The Minister may, by notice published in the *Gazette*, either generally or as otherwise provided by the notice, delegate to —

(a) the Minister responsible for the administration of the *Public Works Act 1902*; or

- 1 (b) the Minister responsible for administering the
2 *Main Roads Act 1930*; or
3 (c) the Minister responsible for administering the *Energy*
4 *Operators (Powers) Act 1979*; or
5 [(d) *deleted*]
6 (da) the DBNGP Land Access Minister established by
7 section 29(1) of the *Dampier to Bunbury Pipeline*
8 *Act 1997*; or
9 (db) the Minister responsible for administering the
10 *Government Railways Act 1904*; or
11 (e) the Minister responsible for administering the
12 *Water Agencies (Powers) Act 1984*; or
13 (ea) the Minister responsible for administering the
14 *Contaminated Sites Act 2003*; or
15 (eb) the Minister responsible for administering the *Water*
16 *Services Act 2012*; or
17 (f) the Minister responsible for administering the
18 *Marine and Harbours Act 1981*; or
19 (g) the Minister responsible for administering the *Financial*
20 *Management Act 2006*,
21 any of [the Minister's](#)~~this or her~~ powers or duties under this Part
22 or Part 10.

23 [Section 159 amended: No. 53 of 1997 s. 52; No. 58 of 1999
24 s. 104(a); No. 13 of 2000 s. 98; No. 24 of 2000 s. 20(1); No. 59
25 of 2000 s. 41; No. 31 of 2003 s. 150(2); No. 60 of 2003 s. 100;
26 No. 25 of 2005 s. 34; No. 77 of 2006 Sch. 1 cl. 93(6); No. 46 of
27 2009 s. 17; No. 25 of 2012 s. 220(2).]

28 **160. Subdelegation of power or duty delegated under s. 159**

- 29 (1) A Minister or body to whom a power or duty has been delegated
30 under section 159 may, either generally or as otherwise
31 provided by the notice concerned, by notice published in the
32 *Gazette* delegate —

- 1 (a) in the case of the Minister referred to in section 159(a),
2 to the chief executive officer of the Department
3 principally assisting that Minister in the administration
4 of the *Public Works Act 1902* or to any other officer of
5 that Department;
6 (b) in the case of the Minister referred to in section 159(b),
7 to the Commissioner within the meaning of the
8 *Main Roads Act 1930* or to any officer of that
9 Commissioner;
10 (c) in the case of the Minister referred to in section 159(c),
11 to a body established by section 4(1) of the *Electricity*
12 *Corporations Act 2005*, namely —
13 (i) the Electricity Networks Corporation; and
14 (ii) the Regional Power Corporation,
15 or to an officer of such a body;
16 [(d) *deleted*]
17 (da) in the case of the DBNGP Land Access Minister
18 established by section 29(1) of the *Dampier to Bunbury*
19 *Pipeline Act 1997*, to the chief executive officer of the
20 department principally assisting the DBNGP Land
21 Access Minister in the administration of Part 4 of that
22 Act or to any other officer of that department;
23 (db) in the case of the Minister referred to in section 159(db),
24 to the Authority within the meaning of the *Government*
25 *Railways Act 1904* or to any officer of the Authority
26 within the meaning of that Act;
27 (e) in the case of the Minister referred to in section 159(e),
28 to the CEO within the meaning of the *Water Agencies*
29 *(Powers) Act 1984* or to any officer of the Department
30 within the meaning of that Act;
31 (ea) in the case of the Minister referred to in section 159(ea),
32 to the chief executive officer of the Department
33 principally assisting the Minister in the administration of
34 the *Contaminated Sites Act 2003* or to any other officer
35 of that Department;

- 1 (eb) in the case of the Minister referred to in section 159(eb),
2 to the holder of a licence granted under the *Water*
3 *Services Act 2012* section 11 or to any officer or
4 employee of the holder of the licence;
- 5 (f) in the case of the Minister referred to in section 159(f),
6 to the chief executive officer of the Department
7 principally assisting that Minister in the administration
8 of the *Marine and Harbours Act 1981* or to any other
9 officer of that Department;
- 10 (g) in the case of the Minister referred to in section 159(g),
11 to the chief executive officer of the Department
12 principally assisting that Minister in the administration
13 of the *Financial Management Act 2006* or to any other
14 officer of that Department,
- 15 the whole or any part of the power or duty.

- 16 (2) A Minister or body who exercises the power of delegation
17 conferred on ~~them~~^{him or her} by subsection (1), must as soon as
18 is practicable transmit to the Minister a copy of the notice by
19 which that power was exercised.

20 [Section 160 amended: No. 53 of 1997 s. 52; No. 58 of 1999
21 s. 104(b); No. 13 of 2000 s. 99; No. 24 of 2000 s. 14(13) and
22 20(2); No. 59 of 2000 s. 42; No. 31 of 2003 s. 150(3); No. 60 of
23 2003 s. 100; No. 18 of 2005 s. 139; No. 25 of 2005 s. 35; No. 77
24 of 2006 Sch. 1 cl. 93(7); No. 38 of 2007 s. 196; No. 46 of 2009
25 s. 17; No. 25 of 2012 s. 220(3).]

26 **Division 2 — Taking interests in land**

27 **Subdivision 1 — Land required for a public work**

28 **161. Interests in land may be taken etc.**

- 29 (1) Whenever the Crown, the Governor, the Government, any
30 Minister of the Crown, any State instrumentality or any local
31 government is authorised, by this Act, the *Public Works*
32 *Act 1902* or any other Act, to undertake, construct or provide

s. 162

- 1 any public work, and the use of any land or any interest in land
2 is required for the purposes of the work, then, unless otherwise
3 specially provided —
- 4 (a) any interest in the land held by a person other than the
5 Crown may be taken; and
- 6 (b) subject to Part 4, any designation of the land or of any
7 interest in the land may be removed; and
- 8 (c) any management order affecting the land may be
9 revoked or modified, whatever the purpose for which
10 the order had been made, whether local or general; and
- 11 (d) any interest in the land held by the Crown or taken from
12 some other person under paragraph (a) may be disposed
13 of or granted to any other person; and
- 14 (e) any interest in the land held by the Crown or taken from
15 some other person under paragraph (a) (including an
16 interest disposed of or granted under paragraph (d)) may
17 be designated for the purpose of the public work,
- 18 in accordance with this Part.

- 19 (2) The powers under subsection (1) may be exercised at any time,
20 and whether or not the powers have previously been exercised
21 for the purposes of that public work.

22 **162. Underground land, interests in may be taken etc.**

- 23 (1) For the purpose of constructing any underground work, an
24 interest in land under the surface may be taken under this Part
25 without taking any interest in the surface.
- 26 (2) In such a case no compensation is payable unless —
- 27 (a) the surface of the overlying soil is disturbed; or
- 28 (b) the support to the surface is destroyed or injuriously
29 affected; or

- 1 (c) a mine, underground working, spring, reservoir, dam, or
2 well in or adjacent to the land is injuriously affected,
3 by the construction of the work.

4 **163. Certain materials and interests in land not to be taken**
5 **without consent of Minister or principal proprietor**

6 Except for the purposes of a railway, of roads in connection
7 with such purposes, or of a work to be made under the authority
8 of a special Act, nothing in this Part authorises —

- 9 (a) the taking of any stone or other material from any
10 quarry, brickfield, or like place ordinarily used to
11 produce the material for sale; or
12 (b) the taking of any interest in land that is occupied by any
13 building, yard, garden, orchard, or vineyard, or is in
14 genuine use as a recreation park,

15 without the consent in writing of the Minister or of the principal
16 proprietor of the land.

17 **164. Mineral, petroleum and geothermal energy rights may be**
18 **excluded from taking order**

19 (1) If a taking order provides that land is to be taken, or that an
20 interest in fee simple in land is to be taken, the interest taken
21 includes —

- 22 (a) all rights to any minerals under the land; and
23 (b) the petroleum rights referred to in the *Petroleum and*
24 *Geothermal Energy Resources Act 1967*, the *Petroleum*
25 *Pipelines Act 1969*, and the *Petroleum (Submerged*
26 *Lands) Act 1982*; and
27 (c) the rights relating to geothermal energy resources and
28 geothermal energy referred to in the *Petroleum and*
29 *Geothermal Energy Resources Act 1967*,

30 unless the order provides otherwise.

s. 165

1 (2) If a claim is made for compensation in respect of the taking of
2 any right referred to in subsection (1), the acquiring authority
3 may elect either to make compensation or to re-grant the whole
4 of those rights or such part of those rights as the acquiring
5 authority thinks fit.

6 (3) If rights are re-granted to the claimant under subsection (2), no
7 compensation is payable in respect of the taking of the rights
8 re-granted.

9 *[Section 164 amended: No. 35 of 2007 s. 98(7).]*

10 **Subdivision 2 — Land required for the purpose of conferring**
11 **interests**

12 **165. Interests in land may be taken etc.**

13 (1) Whenever a written law permits the grant of any estate, interest,
14 right, power or privilege in, over or in relation to land, and any
15 land is required for the purposes of the grant, the Minister may
16 by order authorise the doing in relation to the land of any of the
17 acts permitted under section 161.

18 (2) The Minister may only exercise the power conferred by
19 subsection (1) or (4) in respect of any land if every proposed
20 grant will be for the purpose of enabling the use or development
21 of the land, or the doing of both of those things, in a way that, in
22 the opinion of the Minister, confers an economic or social
23 benefit on the State or the relevant region or locality.

24 (3) Nothing in this Subdivision affects the power under a written
25 law to make a grant of a kind referred to in subsection (1) in,
26 over or in relation to land where interests in the land have been
27 taken under Subdivision 1.

28 (4) The Minister may by order —

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

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

3 *[Section 165 amended: No. 61 of 1998 s. 11; No. 59 of 2000*
4 *s. 43.]*

5 **166. Application of this Part and Part 10 to taking authorised,**
6 **and interests taken, under s. 165**

- 7 (1) This Part and Part 10 apply in relation to a taking of interests in
8 land authorised under section 165 as if —
9 (a) the taking were for a public work; and
10 (b) a reference to the purposes of a public work were a
11 reference to the purposes of a proposed grant.

- 12 (2) This Part and Part 10 apply in relation to interests in land that
13 have been taken in accordance with an authorisation under
14 section 165(1) as if —
15 (a) the interests had been designated for the purposes of the
16 granting of the estate, interest, right, power or privilege
17 in, over or in relation to land for which the taking had
18 been authorised; and
19 (b) those purposes were the purposes of a public work.

20 **167. Agreement as to payment of compensation etc. by person**
21 **who will get grant for which s. 165 taking is authorised**

- 22 (1) If, at the request of a person, it is proposed that the taking of an
23 interest in land be authorised under section 165 for the purpose
24 of a grant to the person, the Minister and the person may enter
25 into an agreement as to the amount or the maximum amount that
26 the person will be liable to pay to the Crown in respect of the
27 taking, if it occurs, by way of reimbursement of —
28 (a) the moneys payable by way of costs or compensation
29 under section 258; and
30 (b) the value of any non-money compensation given under
31 section 212; and

s. 168

1 (c) any compensation payable under section 24MD(2)(e) or
2 (3)(b) of the NTA.

3 (2) If the proposal is carried out, the Minister may in writing
4 require the person to pay to the Crown the amount or the
5 maximum amount so agreed, and at such time or times as the
6 Minister may specify.

7 (3) An amount required to be paid by a person under this section is
8 a debt due by that person to the Crown and may be recovered by
9 the Minister in a court of competent jurisdiction.

10 *[Section 167 amended: No. 61 of 1998 s. 12.]*

11 **Division 3 — Procedure for taking interests in land and**
12 **designating for a public work**

13 **Subdivision 1 — Procedure for taking interests in land by agreement**

14 **168. Agreement to purchase or consent to take required interest,**
15 **acquiring authority's powers as to**

16 (1) If any interest in land is required for a public work, the
17 acquiring authority may, whether or not a notice of intention has
18 been registered —

19 (a) enter into an agreement to purchase the interest; or

20 (b) obtain the written consent of the person to the taking of
21 the interest, with compensation to be provided under
22 Part 10.

23 (2) On commencing negotiations with any person for such an
24 agreement, the acquiring authority must advise the person, by
25 means of a statement in an approved form, of procedures under
26 this Part and Part 10 for the taking of land, payment of purchase
27 money or compensation for land taken, rights of appeal or
28 review and rights as to the future disposition of interests in land
29 taken by agreement or compulsorily taken.

30 *[Section 168 amended: No. 55 of 2004 s. 567.]*

1 **169. Purchase price in agreement to purchase**

- 2 (1) An agreement under section 168(1)(a) may specify a purchase
3 price or other consideration for the interest in the land, or may
4 provide for it to be assessed as if for compensation under
5 Part 10.
- 6 (2) Consideration for the interest may include a grant of an interest
7 in any Crown land available for the purpose.
- 8 (3) An agreement may provide for the reimbursement of property
9 valuation costs incurred by the holder of the interest.

10 **Subdivision 2 — Procedure for taking interests in land without**
11 **agreement**

12 **170. Notice of intention to take required interest, issue of etc.**

- 13 (1) Subject to this section, if it is proposed to take interests in land
14 without agreement under this Part, the Minister must issue a
15 notice of intention to take the interests, in accordance with this
16 section.
- 17 (2) A notice of intention need not be issued if the proposed taking is
18 for the purpose of a railway authorised by a special Act.
- 19 (3) A copy of the notice must be sent to the Registrar of Titles or
20 the Registrar of Deeds, as appropriate.
- 21 (4) Upon the receipt of the notice —
22 (a) the Registrar of Titles must register the notice in the
23 document of title relating to the land; or
24 (b) the Registrar of Deeds must register a memorial of the
25 notice on the Deeds Register,
26 as appropriate.
- 27 (5) As soon as possible after the registration of the notice, the
28 Minister must —
29 (a) cause a copy of the notice to be published once in a
30 daily newspaper circulating throughout the State;

s. 170

- 1 (b) cause a copy of the notice to be served on the principal
2 proprietor of any land affected by the notice, the
3 occupier of the land and the holders of any native title
4 rights or interests, or of any mining, petroleum or
5 geothermal energy rights, in the land, either personally
6 or by registered post (or any similar type of post that is
7 prescribed) sent~~certified mail posted~~ to their last known
8 place of residence;
- 9 (c) cause a copy of the notice to be given to the Director
10 General of Mines referred to in the *Mining Act 1978*;
- 11 (d) advise the persons mentioned in paragraph (b) of the
12 procedures under this Part and Part 10 for the taking of
13 land, payment of purchase money or compensation for
14 land taken, rights of appeal or review and rights as to the
15 future disposition of land taken by agreement and
16 compulsorily taken, unless they have already been given
17 that advice.
- 18 (6) The Minister may cancel or amend the notice of intention, or
19 cancel the notice and substitute another notice of intention, by a
20 notice issued, published and distributed in the same way as the
21 original notice.
- 22 (7) The notice of intention, or substituted notice of intention,
23 remains current for 12 months, or a longer period determined
24 under subsection (8), from the date of registration, unless
25 cancelled.
- 26 (8) The Minister may, in respect of a particular notice of intention,
27 determine that a longer period applies for the purposes of
28 subsection (7).
- 29 (9) A determination under subsection (8) —
- 30 (a) must be made while the notice of intention is current;
31 and
- 32 (b) must be notified in writing to the relevant persons
33 mentioned in subsection (5)(b) and (c); and
- 34 (c) may be made more than once.

- 1 (10) Subsections (3) and (4) apply to a determination under
2 subsection (8) as if it were a notice of intention.
3 *[Section 170 amended: No. 61 of 1998 s. 13(1) and (2)⁷; No. 55*
4 *of 2004 s. 567; No. 35 of 2007 s. 98(8).]*

5 **171. Notice of intention, content and validity of**

- 6 (1) A notice of intention must include —
7 (a) a description of the land required; and
8 (b) particulars of —
9 (i) the purpose of the public work for which the land
10 is proposed to be designated;
11 (ii) the nature of the interests to be taken;
12 and
13 (c) if it is proposed to make a disposition or grant to any
14 person out of the interests proposed to be taken, a
15 statement to that effect and particulars of the disposition
16 or grant to be made; and
17 (d) particulars of —
18 (i) a place where persons interested may at any
19 reasonable time inspect a plan of the land; and
20 (ii) the reasons why the land is suitable for, or is
21 needed for, the public work; and
22 (iii) the date from which the land is likely to be
23 required; and
24 (iv) the name of a contact officer in the acquiring
25 authority; and
26 (v) an address for lodging objections;
27 and
28 (e) a statement of the effect of section 172; and
29 (f) a statement of the effect of section 173.

s. 172

- 1 (2) A notice of intention issued in good faith is not invalidated by
2 reason only that it contains an error or omission in the
3 information required by subsection (1)(d), (e) or (f).
- 4 **172. No transaction affecting required land without Minister's**
5 **consent**
- 6 (1) This section applies to a transaction affecting land which is
7 included in a current notice of intention, other than a transaction
8 mentioned in subsection (6).
- 9 (2) A person may not enter into a transaction to which this section
10 applies except with the consent in writing of the Minister.
- 11 (3) A transaction entered into in contravention of subsection (2) is
12 void.
- 13 (4) An application for the Minister's consent under this section for
14 a proposed transaction must be in writing.
- 15 (5) A person who is a party to the transaction must —
16 (a) furnish in writing such particulars of the transaction as
17 the Minister may require as being necessary to enable
18 the Minister to determine whether any party to the
19 transaction is fully aware of the implications of the
20 notice of intention to take the land; and
21 (b) to furnish such statutory declarations in support of the
22 particulars furnished under paragraph (a) as the Minister
23 may require.
- 24 (6) If the Minister is of the opinion that any party to a transaction to
25 which this section applies is not fully aware of the implications
26 of the notice of intention to take the land affected by the
27 transaction, and that the party would, if the Minister's ~~his or her~~
28 consent were given, be likely to incur loss, the Minister may
29 withhold consent to the transaction.
- 30 (7) This section does not apply to a transaction —
31 (a) to which the State or the Commonwealth, or any
32 authority of the State or Commonwealth, or a person

- 1 acting on behalf of the State, the Commonwealth or such
2 an authority, other than the Public Trustee, is a party; or
3 (b) by which an interest in land is acquired on sale under a
4 writ or warrant of execution issued out of any court; or
5 (c) by way of discharge of a mortgage or charge; or
6 (d) by way of partition between co-proprietors; or
7 (e) by way of deed of arrangement between beneficiaries
8 under a will or settlement; or
9 (f) which vests an interest in land in the personal
10 representative of a deceased person; or
11 (g) which vests an interest in land in a trustee of the estate
12 of a deceased person, a trustee in bankruptcy, or a newly
13 appointed trustee under any instrument; or
14 (h) which vests an interest in land held by a company in a
15 liquidator, administrator, receiver, receiver-manager or
16 manager of the company; or
17 (i) which is without consideration and the purpose of which
18 is to vest an interest in land in a person beneficially
19 entitled to the interest, under or by virtue of a will or
20 intestacy or by way of gift; or
21 (j) by way of a personal insolvency agreement under the
22 *Bankruptcy Act 1966* of the Commonwealth, or any Act
23 of the Commonwealth passed amending, or in
24 substitution for, that Act.

25 *[Section 172 amended: No. 18 of 2009 s. 48.]*

26 **173. No improvements to be made to required land without**
27 **Minister's approval**

28 While a notice of intention is current in relation to land, a
29 person must not cause the building or making of any
30 improvement to the land to be commenced or continued except
31 with the approval in writing of the Minister.

s. 174

1 **174. Minister's consent under s. 172 to transaction, Registrar of**
2 **Titles may require evidence of**

3 If an instrument relates to a transaction affecting land included
4 in a current notice of intention, and the instrument is presented
5 to the Registrar of Titles for registration, the Registrar must
6 require the production of the consent in writing of the Minister,
7 or such evidence as the Registrar~~he or she~~ thinks sufficient that
8 section 172 does not apply to the transaction, and may refuse to
9 register the instrument until that consent or evidence is
10 produced.

11 **175. Objections to proposed taking of interests in land**

12 (1) When a notice of intention is issued —

13 (a) any person who is —

14 (i) the principal proprietor of land affected by the
15 notice; or

16 (ii) an occupier of land affected by the notice; or

17 (iii) the holder of any mining, petroleum or
18 geothermal energy rights in land affected by the
19 notice,

20 and whose interest is affected by the proposal; or

21 (b) any management body whose management order will be
22 affected by the proposal,

23 may, alone or jointly with any other person or body so qualified,
24 serve on the Minister, at an address mentioned in the notice of
25 intention, a written objection to the taking of interests in the
26 land, not relating to compensation.

27 (2) An objection must be lodged within 60 days after the
28 registration of the notice of intention or such further time as the
29 Minister may allow.

30 (3) An objection must identify the land and specify the nature of the
31 interest of the objector in the land, the address of the objector
32 and the grounds of objection.

- 1 (4) The Minister must consider any objections and any other
2 representations by the objectors.
- 3 (5) After considering the objections and representations, the
4 Minister is to —
- 5 (a) determine that the notice of intention is to stand
6 unchanged; or
- 7 (b) cancel or amend the notice of intention, or cancel the
8 notice and substitute another notice of intention, in
9 accordance with section 170(6).
- 10 (6) If a notice of intention is amended, or cancelled and another
11 notice substituted, under subsection (5)(b), the amended or
12 substituted notice is to be treated as a new notice of intention for
13 the purpose of allowing objections under this section, unless —
- 14 (a) the changes to the notice of intention do not affect any
15 interests in land apart from those of persons who have
16 already objected; and
- 17 (b) each objector has agreed to the change in writing.

18 *[Section 175 amended: No. 35 of 2007 s. 98(9).]*

19 **176. Proprietor may require acquiring authority to also take**
20 **small remainders of land**

- 21 (1) Subject to this section, if it is proposed to take, under this Part,
22 all the interests in an area of land and the result of the taking
23 would be that —
- 24 (a) the land taken is excised from a portion of land (the
25 *original portion*);
- 26 (b) the remainder is divided into non-contiguous portions,
27 of which at least one has an area of less than
28 1 000 square metres (a *small portion*),
- 29 the proprietors of the fee simple, a lease of Crown land or native
30 title rights and interests in the original portion may require the
31 acquiring authority to take any or all of the small portions in
32 addition to the other land taken.

s. 177

- 1 (2) This section does not apply if the original portion —
2 (a) is situated in land referred to in clause 37 of
3 Schedule 9.3 to the *Local Government Act 1995*; or
4 (b) is built upon; or
5 (c) has an area of 4 000 square metres or less.
- 6 (3) If the proprietors referred to in subsection (1) also hold the same
7 interest in other contiguous land with which a small portion
8 referred to in that subsection may conveniently be amalgamated,
9 the acquiring authority may, instead of taking the small portion,
10 cause it to be amalgamated with the contiguous land.

11 **177. Taking order, Minister's powers to make etc.**

- 12 (1) If —
13 (a) a notice of intention has been registered in relation to
14 land; and
15 (b) the Minister either —
16 (i) has received no objections from any proprietor or
17 occupier within 60 days after the registration or
18 within such further time as is allowed by the
19 Minister; or
20 (ii) has determined that the objections received in
21 that time do not warrant the cancellation,
22 amendment or cancellation and substitution of
23 the notice of intention; or
24 (iii) is satisfied that every objector concerned has
25 consented in writing to the purchase or taking of
26 the objector's interest,
- 27 the Minister may make a taking order consistent with the notice
28 of intention.
- 29 (2) If a special Act has been passed authorising the construction of
30 a railway, the Minister may make a taking order consistent with
31 that Act.

- 1 (3) If an agreement has been concluded in accordance with
2 section 168, the Minister may make a taking order in relation to
3 the interest the subject of the agreement.
- 4 (4) The Minister, when making a taking order under this section,
5 may also make such other orders under this Act as are necessary
6 to give effect to the purpose of the taking.
- 7 (5) As soon as possible after the registration of the order, the
8 Minister must —
- 9 (a) cause an extract from the order, in the approved form, to
10 be published once in a daily newspaper circulating
11 throughout the State; and
- 12 (b) cause a copy of the order to be given to the
13 Director-General of Mines referred to in the *Mining*
14 *Act 1978*; and
- 15 (c) cause a copy of the order together with forms for the
16 claiming of compensation under Part 10 to be served on
17 each proprietor and each occupier of the land and each
18 holder of any mining, petroleum or geothermal energy
19 rights in the land, or such of them as can with reasonable
20 diligence be ascertained at the time of the making of the
21 order, either personally or by registered post (or any
22 similar type of post that is prescribed) sent~~certified mail~~
23 ~~posted~~ to their last known place of residence; and
- 24 (d) advise the persons mentioned in paragraph (c) of the
25 procedures under Part 10 for compensation for interests
26 taken, unless they have already been given that advice.

27 [Section 177 amended: No. 61 of 1998 s. 14; No. 35 of 2007 s.
28 98(10).]

29 **178. Taking order, content of**

- 30 (1) A taking order must —
- 31 (a) identify the land affected by the order; and
- 32 (b) either —

s. 178

- 1 (i) identify any registered or unregistered interest to
2 be taken; or
- 3 (ii) specify that the land is taken, subject to any
4 provision made under subsection (2)(a);
- 5 and
- 6 (c) specify that, subject to any provisions made under
7 subsection (2)(d), any interest taken is to be held as
8 Crown land in the name of the State of Western
9 Australia; and
- 10 (d) designate appropriately any land or interests in land
11 required for the purpose of the public work; and
- 12 (e) if the land, or interests in the land, required for the
13 public work will be held by a person other than the
14 Crown — specify any covenants in favour of the public
15 work that will apply to the land or the interests; and
- 16 (f) if land affected by the order is not under the *Transfer of*
17 *Land Act 1893* — provide that it will be registered under
18 that Act.
- 19 (2) A taking order may, as necessary —
- 20 (a) provide that specified interests are to be preserved in
21 land affected by the order;
- 22 (b) provide that any existing designation of the land is to be
23 cancelled;
- 24 (c) vary an existing management order;
- 25 (d) provide that specified interests are to be disposed of or
26 granted in land affected by the order to specified
27 persons;
- 28 (e) provide that land will be excised from an existing
29 portion or portions of land;
- 30 (f) provide as necessary for the cancellation, amendment or
31 issue of certificates of Crown land or certificates of title.
- 32 (3) The interests which may be disposed of or granted under
33 subsection (2)(d) include the fee simple, a lease of Crown land
34 or any easement or obligation.

- Subdivision 3 — Effect of taking order**

21 On the registration of a taking order in relation to land —

- ## Consultation draft showing track changes

s. 180

- 1 (i) each interest declared by the order to be taken is
2 extinguished and each person who formerly held
3 such an interest has that holding converted into a
4 claim for compensation under Part 10; and
5 (ii) every unregistered interest in the land
6 inconsistent with the effect and purpose of the
7 taking order is also extinguished to the extent of
8 the inconsistency, and each person who formerly
9 held such an interest has that part of the holding
10 which was extinguished converted into a claim
11 for compensation under Part 10.

12 **180. Taking order may be annulled or amended**

- 13 (1) A taking order may, at any time within 90 days after its
14 registration, be annulled or amended by the registration of an
15 order to that effect.
- 16 (1a) As soon as possible after the registration of an order under
17 subsection (1) the Minister must cause a copy of the order to be
18 published once in a daily newspaper circulating throughout the
19 State.
- 20 (2) Section 177(5)(b) and (c) apply to the order annulling or
21 amending the taking order as if it were a taking order.
- 22 (3) Subject to this section —
23 (a) an order so annulled; and
24 (b) if an order is so amended — any part of the earlier order
25 that is inconsistent with the order as amended,
26 is void *ab initio*.
- 27 (4) No person is to be prejudiced in respect of any interest in the
28 land or in any right arising from such an interest by reason of
29 having, in consequence of or in reliance on the earlier order,
30 done or omitted any act or thing, or failed to enforce or act upon
31 any right, or comply with any obligation in respect of the
32 interest or right.

1 (5) Except as provided in section 181, no person has any right of
2 action or claim against the Crown, the Minister, or an acquiring
3 authority for anything done in good faith done under the taking
4 order before it was annulled or amended.

5 (6) This section does not limit the power of the Minister to take, by
6 any subsequent order, any interest in the land described in any
7 order annulled or amended.

8 *[Section 180 amended: No. 61 of 1998 s. 15.]*

9 **181. Compensation if taking order annulled or amended**

10 (1) When a taking order, or an amended taking order, is annulled or
11 amended, any claimant who would otherwise have been entitled
12 to compensation is entitled to compensation for reasonable costs
13 incurred, in relation to the taking, up to and including the date
14 of taking and, if the land has been entered under Division 4, for
15 actual damage to the land.

16 (2) A claim under this section must be made to the acquiring
17 authority within 60 days after the date of registration of the
18 annulling or amending order, or within such longer period as the
19 Minister may allow.

20 (3) Compensation under this section is to be paid by the acquiring
21 authority.

22 (4) If the parties fail to agree on the amount of the compensation,
23 the amount may be determined in accordance with Part 10.

24 **Division 4 — Entry on to land**

25 **182. Entry for feasibility study**

26 (1) If it appears to the Minister that it may be necessary to use any
27 land for a proposed public work for which the Minister is
28 authorised to take interests in land, the Minister may authorise a
29 person —

30 (a) to enter on that land; and

s. 183

1 (b) to do anything necessary in order to study the feasibility
2 of the proposed public work.

3 (2) The Minister or person authorised must, before entering on any
4 land under this section, give to the principal proprietor, the
5 occupier, and to the holders of any native title rights and
6 interests, not less than 30 days notice in writing, giving a
7 description of the area of the land to be entered upon, a
8 description of what is proposed to be done for the feasibility
9 study, and the time that it is expected to take.

10 **183. Land for railway identified in special Act, entry of etc.**

11 (1) If a special Act has been passed authorising the construction of
12 a railway, the Minister may authorise a person to enter on the
13 land between the authorised limits of deviation and do anything
14 that under the special Act or the *Public Works Act 1902* is
15 authorised to be done for the purposes of constructing the
16 railway and any ancillary public works, in all respects as if the
17 necessary taking order had been made for the purposes of the
18 railway.

19 (2) The Minister or person authorised must, as far as is practicable,
20 before entering on any land under this section —

21 (a) give to the principal proprietor, the occupier, and to the
22 holders of any native title rights and interests, not less
23 than 7 days notice in writing, giving a description of the
24 area of the land to be entered on, a description of what is
25 proposed to be done, and the time that it is expected to
26 take; and

27 (b) advise the persons mentioned in paragraph (a) of the
28 effect of this section and the procedures under this Part
29 and Part 10 for the taking of land, payment of purchase
30 money or compensation for land taken, rights of appeal
31 or review and rights as to the future disposition of land

1 taken by agreement or compulsorily taken, unless they
2 have already been given that advice.

3 *[Section 183 amended: No. 31 of 2003 s. 167(2); No. 55 of 2004*
4 *s. 567.]*

5 **184. Land in notice of intention, entry of for inspection, surveys**
6 **etc.**

7 (1) At any time after the registration of a notice of intention, a
8 person authorised in writing by the Minister may at all
9 reasonable times enter on land included in the notice for the
10 purpose of inspecting the land or making an assessment of
11 compensation payable for the taking of interests in the land.

12 (2) At any time after the registration of a notice of intention, a
13 person authorised in writing by the Minister may at all
14 reasonable times enter on land included in the notice and do
15 anything necessary or convenient for the surveying of the land
16 for the purposes of the public work.

17 (3) The Minister or person authorised must, as far as is practicable,
18 before entering on any land under this section give to the
19 principal proprietor, the occupier, and to the holders of any
20 native title rights and interests, not less than 48 hours notice in
21 writing, describing the area of land to be entered on and the
22 purpose of the entry.

23 **185. Land may be occupied temporarily to construct etc. public**
24 **work**

25 (1) The Minister may authorise a person to occupy and use any land
26 temporarily for the purpose of constructing or repairing any
27 public work, and a person so authorised may —

- 28 (a) take stone, gravel, earth and other materials from the
29 land; and
30 (b) deposit any such material on the land; and
31 (c) make and use temporary roads; and
32 (d) manufacture bricks or other materials; and

s. 186

- 1 (e) erect temporary workshops, sheds and other buildings.
- 2 (2) Property in anything deposited, made or erected under this
3 section remains with the Minister.
- 4 (3) Subject to subsection (4), the Minister or person authorised
5 must, before the land is used or occupied under this section,
6 give to the principal proprietor or occupier of the land, and to
7 the holders of any native title rights and interests in the land, not
8 less than 7 days notice in writing, and must state in the notice
9 the use proposed to be made of the land and an approximate
10 period during which the use is expected to continue.
- 11 (4) If the Minister is satisfied that the situation is sufficiently
12 urgent, the notice period may be shortened or the land may be
13 occupied before notification has been given.

14 **186. Entry etc. before land taken in certain circumstances**

- 15 (1) If the Minister is satisfied that —
- 16 (a) it is necessary to use any land for a proposed public
17 work for which the Minister is authorised to take
18 interests in land; and
- 19 (b) because of the urgency of the work or the difficulty in
20 tracing the proprietors of the land, it is unreasonable or
21 impractical to delay entry onto the land until the land
22 has been taken in accordance with this Part,
- 23 the Minister may authorise a person —
- 24 (c) to enter on the land; and
- 25 (d) to do anything necessary in order to study the feasibility
26 of the proposed public work; and
- 27 (e) to do anything necessary as preliminary or ancillary to
28 the undertaking, constructing, or providing of the public
29 work; and
- 30 (f) to carry out the public work,

- 1 in all respects as if the necessary taking order had been made for
2 the purposes of the public work.
- 3 (2) This section applies whether or not a notice of intention has
4 been issued in relation to the land, and whether or not the land
5 has been entered on under any other section.
- 6 (3) The Minister or person authorised must, as far as is practicable,
7 before entering on any land under this section —
- 8 (a) give to the principal proprietor, the occupier, and to the
9 holders of any native title rights and interests, not less
10 than 7 days notice in writing, giving a description of the
11 area of the land to be entered upon, a description of what
12 is proposed to be done, and the time that it is expected to
13 take; and
- 14 (b) advise the persons mentioned in paragraph (a) of the
15 effect of this section and the procedures under this Part
16 and Part 10 for the taking of land, payment of purchase
17 money or compensation for land taken, rights of appeal
18 or review and rights as to the future disposition of land
19 taken by agreement or compulsorily taken, unless they
20 have already been given that advice.
- 21 (4) As soon as practicable after any land has been entered on under
22 this section, the Minister must determine the interests in the land
23 which it is necessary to take.
- 24 (5) On the making of a determination under subsection (4), the
25 Minister may make an appropriate taking order in relation to the
26 land as if section 177 had been satisfied, and as if the
27 determination were a notice of intention.
- 28 *[Section 186 amended: No. 55 of 2004 s. 567.]*

(1) Subject to this section, if an interest in land has been designated for a public work, and the Minister is satisfied that the interest is not required for the public work, or is not exclusively required for the public work, the Minister may by order —

- (a) designate the interest, or a part of it, for another public work; or
- (b) cancel the designation.

- (2) The Minister must not proceed under this section in relation to land to which section 189 or 190 applies unless those sections have been complied with and all persons entitled to exercise an option to purchase under those sections have declined to do so.

- (3) If a designation of an interest in land is cancelled in good faith under this section —

- (a) neither the cancellation nor any subsequent transaction affecting the interest is invalidated by a failure to comply with section 189 or 190; and
- (b) no person has any right of action or claim against the Crown, the Minister, or an acquiring authority in relation to the cancellation or disposal.

**188. Transactions affecting designated interests in land,
application of proceeds of**

- (1) Subject to any other written law, if an interest in land has been designated for a public work under this Part, and a transaction is entered into which affects the interest, then any proceeds of the transaction which derive from that interest are to be paid into the fund out of which the payment for the public work was made, or, if no such fund can be identified, into the Consolidated Account.

- 1 (2) If the designation is cancelled and the interest is held at the time
2 of the cancellation by a person other than the Crown, this
3 section continues to apply to any transaction affecting the
4 interest up to and including the disposal of the interest by the
5 person.

6 *[Section 188 amended: No. 77 of 2006 s. 4.]*

7 **189. Interest in land less than fee simple not required for public**
8 **work, landowner to get option to purchase**

- 9 (1) If an interest in land less than the fee simple has been
10 designated for a public work, and the Minister is satisfied that
11 the interest is not required for the public work, the holding
12 authority must notify the holder of the fee simple and grant the
13 holder an option to purchase the interest.
- 14 (2) The purchase price under the option is to be the current market
15 value of the interest as determined by the holding authority on
16 the advice of the Valuer-General.

17 **190. Fee simple in land not required for public work, previous**
18 **owner etc. entitled to option to purchase**

- 19 (1) This section applies if —
- 20 (a) the fee simple in land was taken or resumed without
21 agreement under this or another Act and either —
- 22 (i) the taking or resumption was done less than
23 10 years previously; or
- 24 (ii) the land has not been used for any public work;
- 25 and
- 26 (b) the Minister proposes to cancel the designation of the
27 fee simple under section 187, or to designate it for the
28 purpose of a public work other than one ancillary or
29 incidental to the purpose for which it was originally
30 taken; and
- 31 (c) the land is not a small portion taken at the request of the
32 holder under section 176; and

s. 190

- 1 (d) the land has not been substantially improved since the
2 taking; and
- 3 (e) either —
- 4 (i) the land as a separate lot complies with the
5 requirements of the *Planning and Development*
6 *Act 2005*; or
- 7 (ii) the land can be amalgamated with adjoining land
8 whose fee simple is owned by a qualified person
9 in such a way as to comply with those
10 requirements.
- 11 (2) For the purposes of this section, a person is *qualified* if the
12 person —
- 13 (a) held the fee simple in the land immediately before the
14 taking; or
- 15 (b) is the legal representative of a deceased individual who
16 held the fee simple in the land immediately before the
17 taking.
- 18 (3) If this section applies, the holding authority must —
- 19 (a) cause a notice to be published once in a daily newspaper
20 circulating throughout the State to the effect that the
21 land is no longer required for the purposes of the work
22 for which it was taken; and
- 23 (b) cause a copy of the notice to be served on each person
24 who appears to it to be qualified, either personally or by
25 registered post (or any similar type of post that is
26 prescribed) sent, ~~certified mail posted~~, in the case of an
27 individual, to the person's last known place of abode, or,
28 in the case of a corporation, to the corporation's
29 registered office.
- 30 (4) The service of a notice under subsection (3) does not imply an
31 acknowledgment by the holding authority of any right in the
32 person or persons to be granted an option under this section.

- 1 (5) A qualified person who wishes to be given an option to
2 purchase the fee simple must apply in writing to the holding
3 authority within 30 days, or such extended period as the
4 Minister may approve, after the publication of the notice
5 referred to in subsection (3).
- 6 (6) The holding authority must grant an option to purchase the fee
7 simple to any applicant that the authority is satisfied is qualified,
8 and notify any applicant of its decision within 60 days after the
9 end of the period or extended period referred to in
10 subsection (5).
- 11 (7) The purchase price under the option is to be the current market
12 value of the fee simple as determined by the holding authority
13 on the advice of the Valuer-General.
- 14 (8) If more than one qualified person applies, the holding authority
15 may determine such order or priority for the exercise of options
16 granted as it thinks reasonable.
- 17 (9) An option is to be granted on such terms and conditions as the
18 holding authority thinks reasonable and may include a condition
19 prohibiting the option holder from assigning the option.
- 20 (10) A person aggrieved by a decision of the holding authority in
21 refusing to grant an option under this section, in ordering the
22 priorities of options, or in setting the purchase price or other
23 terms and conditions of an option may lodge an appeal with the
24 Minister under Part 3.
- 25 (11) An appeal under subsection (10) must be lodged within 21 days
26 after receipt of the notice of the decision concerned, or such
27 longer period as the Minister in special circumstances allows.
- 28 *[Section 190 amended: No. 38 of 2005 s. 11.]*

s. 191

- 1 **191. Person who would be entitled to s. 189 or 190 option may**
2 **require Minister to say if interest is required for public**
3 **work**
- 4 (1) Subject to this section, if an interest in land designated for the
5 purpose of a public work is not being used for the work, a
6 person who would, if section 189 or 190 applied, be entitled to
7 an option to purchase under that section, may by notice in
8 writing require the Minister to determine whether the interest is
9 required for the purpose of the public work.
- 10 (2) A person who obtains a determination under this section is not
11 entitled to require another determination in respect of that
12 interest for a period of 12 months after being notified of the
13 determination.
- 14 (3) If the Minister determines that the interest is not required for the
15 public work, the Minister must notify the holding authority, and
16 the authority must proceed in accordance with section 189 or
17 190, as appropriate.
- 18 **192. Land not presently wanted etc. for public work may be**
19 **leased**
- 20 (1) If —
21 (a) any interest in land has been designated for a public
22 work; and
23 (b) the holding authority is satisfied that the land is not
24 presently required for the public work, or is not
25 exclusively required for the public work,
26 the authority may grant a lease in the interest or any suitable
27 part of it.
- 28 (2) This section does not derogate from Part 6.
- 29 (3) The lease is to be on such terms as the holding authority thinks
30 fit.

- 1 (4) A lease granted under this section must not be mortgaged,
2 assigned or charged for any purpose unless the consent in
3 writing of the holding authority has been first obtained.

4 **193. Easement over land designated for public work, grant of**

- 5 (1) If an interest in land has been designated for a public work,
6 whether or not it is held by the Crown, the Minister may grant
7 to any person any easement in relation to the interest subject to
8 such conditions and payment of such consideration to the holder
9 of the interest as the Minister thinks fit.

- 10 (2) An easement granted under this section may be granted subject
11 to revocation, without compensation, at any time when the
12 Minister requires it, or on a breach of any of the conditions
13 under which it was granted.

14 **194. Timber, stone etc. on land designated for public work, sale**
15 **of etc.**

- 16 (1) If an interest in land designated for the purpose of a public work
17 is subject to a management order, the Minister may authorise
18 the management body to sell or to contract to sell and remove
19 any timber, stone, mineral, metal, or other substance upon or
20 under the land, to the extent of the interest, for the work or for
21 another public work.

- 22 (2) This section does not limit the liability of the management body
23 for damage to persons or property by reason of the removal of
24 the timber, stone, mineral, metal, or other substance.

25 **Division 6 — General provisions**

26 **195. Easement in gross in favour of State etc., creation of etc.**

27 It is possible, and is deemed always to have been possible —

- 28 (a) to create in favour of the State of Western Australia or
29 in favour of a State instrumentality, statutory body
30 corporate or local government, an easement without a
31 dominant tenement; and

s. 196

- 1 (b) to annex to or make appurtenant to an easement, another
2 easement or the benefit of a restriction as to the user of
3 land.

4 **196. Public access easement, creation of etc.**

- 5 (1) An easement created under section 195 may be specified to be a
6 public access easement.
- 7 (2) A public access easement is a right of way for the use and
8 benefit of the public at large.
- 9 (3) An interest in land cannot be taken under this Part for the
10 purpose only of creating a public access easement.
- 11 (4) Subject to subsection (3), a public access easement is a public
12 work for the purposes of this Part and Part 10.
- 13 (5) A public access easement may be limited in any way, including,
14 for example —
- 15 (a) limitations on use by vehicles;
- 16 (b) limitations by time, so that the right may only be
17 exercised between particular hours, at particular times of
18 year, or on the occurrence of particular events.
- 19 (6) A public access easement is not a public right of way for the
20 purposes of section 68 of the *Transfer of Land Act 1893*.
- 21 (7) For the purposes of the *Occupiers' Liability Act 1985*, the
22 Crown is not, and a local government is not, an occupier of the
23 land over which a public access easement is granted.
- 24 (8) Any covenants in a deed creating a public access easement are
25 binding on successors in title to the covenantor, unless the deed
26 provides otherwise.
- 27 (9) A public access easement in favour of the State of Western
28 Australia may be varied or surrendered on behalf of the State by
29 a deed made by the Minister responsible for the administration
30 of the *Planning and Development Act 2005*.
- 31 [Section 196 amended: No. 38 of 2005 s. 12.]

197. Person refusing to give up possession etc. of land, Minister's powers in case of

- (1) If the Minister is authorised because of a taking order or under Division 4 to enter on, take possession of or use any land, and the proprietor or occupier of the land, or any other person, refuses to give up possession or hinders the Minister or any person appointed in writing by the Minister~~him or her~~, the Minister may issue a warrant to the sheriff to deliver possession of the land to the person appointed in the warrant to receive possession, and, on receipt of the warrant, the sheriff must deliver possession of any such land accordingly.
- (2) The costs of the issue and execution of such a warrant, to be determined by the sheriff, must be paid by the person refusing to give possession, and —
- (a) if any compensation is payable to the person, the amount of the costs are to be deducted from the compensation; and
- (b) any excess costs remaining after the application of paragraph (a) which are not paid by the person on demand are to be levied by distress upon the goods and chattels of the person.
- (3) A warrant must be issued by any Justice of the Peace for the purposes of subsection (2)(b) upon application by any person appointed for the purpose by the Minister.

198. Fences, removal of by acquiring authority restricted

Nothing in this Act permits an acquiring authority to remove any fences without making adequate provision for the security of the land fenced, except by agreement.

199. Obstructing workers, causing damage etc., offence etc.

- (1) A person must not wilfully and without lawful excuse —
- (a) obstruct or interfere with any engineer, architect, surveyor, overseer, worker~~workman~~, or other person in

s. 200

1 the performance of any duty or in doing any work which
2 ~~they have~~~~he or she has~~ authority to do under this Part; or

3 (b) obstruct, interfere with, damage, destroy or remove
4 anything constructed, provided or done, under this Part;
5 or

6 (c) damage, destroy or remove any fence on land entered on
7 or occupied under this Part.

8 Penalty for this subsection~~Penalty: a fine of \$2 000~~~~\$1 000~~.

9 (2) The cost of any repair or reinstatement or the clearing of any
10 obstruction necessitated by an action referred to in
11 subsection (1) is recoverable by the Minister from the person in
12 a court of competent jurisdiction.

13 **200. Compulsory acquisition in progress at 30 Mar 1998 etc.,**
14 **transitional provisions for**

15 (1) If, immediately before the appointed day, a notice of intention
16 under section 17(2)(b) of the *Public Works Act 1902* was
17 current in relation to any land —

18 (a) that Act, as it stood immediately before the appointed
19 day, continues to apply in relation to the land until the
20 end of the period of 30 days referred to in
21 section 17(2)(e) of that Act; and

22 (b) if, at the end of that period, the requirements of that
23 provision have been fulfilled, the Minister may make a
24 taking order consistent with the notice of intention as if
25 it had been a notice of intention issued under this Part;
26 and

27 (c) a taking order made under paragraph (b) is to be treated
28 as having been duly made under this Part, and the rights
29 of any person, to compensation and otherwise, arising
30 under this Part and Part 10 are to be assessed as if any
31 act done under that Act had been duly done under this
32 Act.

- 1 (2) Subject to subsection (1), if, immediately before the appointed
2 day, a procedure had been begun but not completed under a
3 provision of the *Public Works Act 1902* (the **first Act**)
4 subsequently amended or repealed by the *Acts Amendment*
5 (*Land Administration*) *Act 1997* (the **second Act**), the procedure
6 may be continued and completed as if the first Act had not been
7 amended by the second Act.
- 8 (3) Without limiting subsection (2), if —
- 9 (a) any proceedings for relief in respect of any alleged act
10 or omission done or omitted by or on behalf of the
11 Crown in respect of any land compulsorily taken or
12 resumed under the first Act (including an appeal from a
13 decision made in any such proceedings) were pending
14 immediately before the appointed day; and
- 15 (b) any relief sought in those proceedings is granted,
- 16 the person who instituted those proceedings may make any
17 application, or take any other action, under the first Act in
18 respect of that land as if the first Act had not been amended by
19 the second Act, and the first Act as it existed before its
20 amendment by the second Act applies to and in relation to any
21 such application or other action.
- 22 (4) This section is in addition to, and does not derogate from the
23 application to the first Act, the second Act or this Act of, the
24 *Interpretation Act 1984*.
- 25 **201. Delegations in force at 30 Mar 1998, preservation of**
- 26 If a delegation was made under section 5A or 5B of the *Public*
27 *Works Act 1902* and is in force immediately before the
28 appointed day, then, insofar as it delegates powers or duties
29 which are essentially the same as powers or duties which —
- 30 (a) could be exercised or performed under this Part or
31 Part 10; and
- 32 (b) could be delegated to those persons under section 159
33 or 160,

s. 201

- 1 a delegation of those powers or duties is deemed to have been
2 duly made under this Part to those delegates.

Part 10 — Compensation

Division 1 — Persons entitled to compensation

202. Owners of interests in land taken, entitlement of

(1) Every person having any interest in land which is taken under Part 9 is entitled, subject to this Part, to compensation for the interest from the acquiring authority.

(2) A person whose interest in the land —

(a) is not a native title interest; and

(b) is not duly registered or notified in the Department or Registry of Deeds,

is not entitled to any compensation under this section if —

(c) another person has applied for and obtained compensation in respect of the same land; and

(d) at the time the compensation was awarded, the acquiring authority had not received written notice of the unregistered interest from the person compensated or some other person.

(3) No compensation is payable under this section for land transferred under section 75 other than in respect of —

(a) lawful improvements made to the land since the transfer; or

(b) consideration paid for the transfer of the land.

(4) In subsection (2)(b) —

Department means the department of the Public Service principally assisting in the administration of the TLA.

[Section 202 amended: No. 28 of 2006 s. 378.]

203. Person suffering damage from entry to land, entitlement of

(1) A person holding any interest in any land, or lawfully occupying the land, who suffers damage by reason of any entry on or

s. 204

1 occupation of the land, or the removal of any material, under
2 Division 4 of Part 9, is entitled, subject to this Part, to
3 compensation for the damage from the acquiring authority if the
4 land is not subsequently taken.

5 (2) No compensation is payable under this section in respect of any
6 entry or occupation under Division 4 of Part 9 unless some
7 person having an interest in the land gives notice in writing to
8 the acquiring authority during the entry or occupation concerned
9 that the person will require compensation.

10 (3) Compensation paid under this section in respect of any land
11 must not exceed the amount that would have been payable in
12 respect of the land had the land been taken.

13 **204. Management body, entitlement of for loss of use of**
14 **structures etc.**

15 (1) If —

16 (a) a taking order includes land subject to a management
17 order and the management body is not [a State](#)
18 [instrumentality; and](#)~~an instrumentality of the State; and~~

19 (b) as a result of the order, the management body will lose
20 the use of structures erected or improvements made by
21 the management body on the land in accordance with
22 the terms of the management order,

23 the management body is entitled to compensation from the
24 acquiring authority for the depreciated value of those structures
25 and improvements.

26 (2) A management body is not otherwise entitled to compensation
27 for the revocation or variation of the management order by the
28 taking order.

29 **205. Mine, compensation for damage to etc.**

30 If an interest in land taken under Part 9 is held under any Act
31 relating to the use of land for mining purposes, the holder of the
32 interest is only entitled to claim compensation for actual loss

1 sustained by reason of the taking through damage to a mine on
2 the land, or the works connected with a mine.

3 **206. Limitation on compensation if taking done under Part 9**
4 **could have been done under another Act**

5 (1) If any interest in land is taken under Part 9, and the interest
6 could have been taken or resumed for the same purpose under
7 any other written law or instrument, no compensation is payable
8 under section 202 which would not have been payable if the
9 land had been taken or resumed under that other written law or
10 instrument.

11 (2) If an interest in land taken under Part 9 exceeds the interest
12 which could have been taken or resumed under the other written
13 law or instrument, subsection (1) does not apply in respect of
14 the excess.

15 (3) If any act is done under Part 9, and the act could have been done
16 under another written law or instrument, no compensation is
17 payable under section 203 which would not have been payable
18 if the act had been done under that other written law or
19 instrument.

20 **Division 2 — The claim**

21 **207. Time limit for making claim for compensation**

22 (1) Unless a direction for the hearing of a claim is made by the
23 State Administrative Tribunal under section 210, a person is not
24 entitled to make a claim for compensation under this Part more
25 than 6 months after —

26 (a) the registration of the relevant taking order, for a claim
27 under section 202 or 204; or

28 (b) the commission of the acts complained of, for a claim
29 for compensation under section 203.

30 (2) The time limit (whether it has expired or not) under this section
31 may, on the application of a person who wishes to make a

s. 208

1 claim, be extended if the Minister is satisfied that the
2 application is reasonable and made in good faith.

3 (3) When the time limit, or the time limit as extended, has expired,
4 no action or proceeding lies against the acquiring authority in
5 respect of any claim for compensation.

6 *[Section 207 amended: No. 55 of 2004 s. 548.]*

7 **208. Who can claim compensation**

8 (1) A claim for compensation may be made by any person entitled
9 to compensation under this Part, or by the person's executor or
10 administrator, whether or not the person has the power to sell
11 and convey the interest on which the right to compensation
12 depends.

13 (2) Any claim on behalf of beneficiaries of trusts, wards or
14 incapable persons may be made by their trustees or guardians.

15 **209. Principal Registrar to be guardian etc. in certain cases**

16 In the case of an infant or incapable person, not having a
17 guardian within the State, and known to the Minister or
18 acquiring authority, the Principal Registrar of the Supreme
19 Court is deemed, for the purposes of this Part, to be the legal
20 guardian of the person.

21 **210. Potential claimant absent from State or an infant etc.,**
22 **procedure in case of**

23 (1) If a claim is not made within the time limit and it appears to the
24 acquiring authority that a person entitled to claim compensation
25 is absent from the State, or an infant or an incapable person, the
26 authority must offer an amount in compensation and apply to
27 the State Administrative Tribunal for a direction.

28 (2) The State Administrative Tribunal may direct either that the
29 offer is to be accepted on behalf of the claimant or that the claim
30 is to be heard and determined by the State Administrative
31 Tribunal.

- 1 (3) If the State Administrative Tribunal directs that the claim is to
2 be heard by it, it is to appoint an assessor on behalf of the absent
3 person.
- 4 (4) The State Administrative Tribunal may proceed in the
5 examination of the claim, as in ordinary cases where the
6 claimant is present.
- 7 (5) The Principal Registrar of the Supreme Court, or some person
8 nominated by [the Principal Registrar](#)~~him or her~~, is to represent
9 the person entitled to claim, and may act on the person's behalf
10 in all matters relating to the claim or the hearing.
- 11 (6) Any moneys payable as compensation are to be paid into the
12 Supreme Court, and are to remain there subject to section 249.
13 *[Section 210 amended: No. 55 of 2004 s. 549, 568 and 569.]*

14 **211. Content and service of claim**

- 15 (1) A claim for compensation under this Part must be in an
16 approved form, stating —
- 17 (a) the particulars identifying the land in respect of which
18 the claim is made; and
- 19 (b) the nature and particulars of the claimant's interest in
20 the land; and
- 21 (c) if the land or the interest is charged, leased, or subject to
22 any easement — particulars of the charge, lease, or
23 easement; and
- 24 (d) each matter on account of which compensation is
25 claimed, with particulars of the nature and extent of the
26 claim; and
- 27 (e) the claimant's full name and address for service.
- 28 (2) The claim must be served on the acquiring authority and
29 accompanied by —
- 30 (a) all deeds and documents necessary to establish the
31 claimant's title to the interest which are in the claimant's
32 custody, possession, or power; and

s. 212

1 (b) an abstract or certified copy of all such deeds or
2 documents as are not in the claimant's custody,
3 possession, or power.

4 (3) A reference in this Part to the serving of a claim includes a
5 reference to the serving of the documents referred to in
6 subsection (2).

7 **212. Non-monetary compensation, requests for**

8 (1) A claimant may request that the claim be satisfied, in whole or
9 in part, by compensation in a form other than money (for
10 example by the transfer of property or the provision of goods or
11 services).

12 (2) If such a request is made the acquiring authority must —

13 (a) consider the request; and

14 (b) negotiate in good faith in relation to it.

15 **213. Service of claim etc., manner of**

16 A claim or other document required to be served on an
17 acquiring authority under this Act may be served —

18 (a) if a notice of intention has been issued, by —

19 (i) delivery at the office of that authority specified
20 in the notice of intention; or

21 (ii) registered post (or any similar type of post that is
22 prescribed)~~certified mail~~ addressed to the
23 acquiring authority at that office;

24 or

25 (b) if no notice of intention has been issued, by —

26 (i) delivery at the Department; or

27 (ii) registered post (or any similar type of post that is
28 prescribed)~~certified mail~~ addressed to the
29 Minister at the Department;

30 or

1 (c) in any other manner specified in a notice to the claimant.

2 **214. Acquiring authority may require further particulars**

3 (1) If the claimant does not give full particulars of any matter
4 mentioned in section 211(1), the acquiring authority may, by
5 notice in writing, require the claimant~~him or her~~ to furnish the
6 particulars within 30 days after receiving the notice.

7 (2) If the particulars required under this section are not furnished
8 within 60 days after the claimant receives the notice, or such
9 extended time as the State Administrative Tribunal constituted
10 by a judicial member may, on an application under this
11 subsection, allow, the claim is absolutely barred.

12 *[Section 214 amended: No. 55 of 2004 s. 550.]*

13 **215. Time limit for acquiring authority to dispute title**

14 (1) If the acquiring authority disputes a claimant's title to the
15 interest in land, or to some part of the interest, it must serve on
16 the claimant a notice in an approved form within 60 days after
17 the service of the claim, or, if further particulars were
18 demanded, within 60 days after the particulars were furnished.

19 (2) If no notice disputing the title of the claimant is served in
20 accordance with this section, the acquiring authority is deemed
21 to have admitted the claimant's title.

22 **216. Claimant whose title is disputed may apply to Supreme**
23 **Court**

24 (1) A claimant may, on being served with a notice disputing the
25 claimant's~~his or her~~ title to the whole or any part of the interest
26 in land, after giving 8 days notice in writing to the acquiring
27 authority, apply to a judge of the Supreme Court for an order —

28 (a) for a trial of any issues of fact the finding of which will
29 be necessary to determine the question of title; and

30 (b) that any question of law arising from the dispute as to
31 the claimant's~~his or her~~ title to the interest may be set

s. 217

1 down for argument in order to obtain the opinion of the
2 Court.

3 (2) A trial of the issues of fact is to be conducted and judgment
4 given as upon the trial of the issues in a cause and with the same
5 effect, and on an argument as to a question of law, a declaratory
6 judgment may be drawn up in the same manner as a declaratory
7 judgment in a cause and with the same effect.

8 (3) In a trial or argument under this section, the claimant may not,
9 without the acquiring authority's consent, adduce any deed or
10 document in evidence of title which was not furnished with the
11 claim or the further particulars, or included in the abstract
12 accompanying the claim or particulars.

13 **Division 3 — Dealing with the claim**

14 **217. Offer of compensation if title not in dispute, when to be**
15 **made**

16 (1) If a claim is made under this Part and the acquiring authority
17 does not dispute the claimant's title to the interest in land, or
18 disputes it only in part, the authority must, within 90 days after
19 the service of the claim or, if further particulars were required,
20 within 90 days after the particulars were furnished, cause the
21 claim to be examined, and a report made as to the value of the
22 interest as to which no dispute exists and as to the damage
23 sustained by the claimant by reason of the taking.

24 (2) If a judgment of the Supreme Court under section 216 confirms,
25 in whole or in part, a claimant's title to an interest in land under
26 dispute, the authority must, within 90 days after the judgment of
27 the Court, cause the claim to be examined, and a report made as
28 to the value of the interest in land in relation to which the
29 claimant's title was confirmed and as to the damage sustained
30 by the claimant by reason of the taking.

31 (3) As soon as possible after a report under subsection (1) or (2) is
32 received by the acquiring authority, it must serve on the
33 claimant in an approved form an offer of compensation with

1 respect to the interest in the land or the part of the interest in
2 question.

3 (4) The offer must include a statement of the effect of section 219.

4 (5) An offer under this section is an admission by the authority of
5 the claimant's title to the interest in land in respect of which it is
6 made.

7 **218. Claim and offer, amending**

8 At any time before a claim for compensation is settled in full, if
9 proceedings for determination of the amount of compensation
10 have not been commenced in any court or before the State
11 Administrative Tribunal, the claimant may with notice to the
12 acquiring authority amend the claim only as to the amount
13 claimed and the authority may with notice to the claimant
14 amend the offer of compensation.

15 *[Section 218 amended: No. 55 of 2004 s. 551.]*

16 **219. Rejection of offer, time limit for; effect of not rejecting offer**

17 (1) A claimant who wishes to reject an offer or amended offer of
18 compensation must serve on the acquiring authority, within
19 60 days after service of the offer or amended offer, a notice in
20 an approved form rejecting the offer.

21 (2) If notice of rejection is not given within that time, the offer or
22 amended offer, as the case may be, is deemed to have been
23 accepted.

24 **220. Rejected offer, how compensation determined in case of**

25 If a notice rejecting an offer or amended offer of compensation
26 is served on an acquiring authority, the compensation payable to
27 the claimant may be determined by any one of the following
28 methods —

29 (a) by agreement between the acquiring authority and the
30 claimant;

s. 221

- 1 (b) by an action for compensation by the claimant against
2 the acquiring authority in accordance with this Part;
3 (c) by reference of the claim to the State Administrative
4 Tribunal in accordance with this Part.

5 *[Section 220 amended: No. 55 of 2004 s. 569.]*

6 **221. If offer not made within time limit, claimant may commence**
7 **proceedings**

- 8 (1) If an acquiring authority fails to serve on a claimant an offer of
9 compensation within 120 days after the relevant day, the
10 claimant may either —
11 (a) institute an action for compensation against the
12 acquiring authority; or
13 (b) refer the claim for the compensation to the State
14 Administrative Tribunal.
- 15 (2) For the purposes of this section, the relevant day is —
16 (a) if no notice disputing the claim was served — the latest
17 of —
18 (i) the day of service of the claim; or
19 (ii) the day of service of any amendment to the
20 claim; or
21 (iii) the day of compliance with any requirement for
22 further particulars;
23 or
24 (b) if the title of claimant was disputed and the Supreme
25 Court upheld the claimant's title in whole or in part
26 under section 216 — the day of the judgment.

27 *[Section 221 amended: No. 55 of 2004 s. 569.]*

222. Claimant failing to commence proceedings after rejecting offer

(1) If a claimant —

- (a) rejects an offer or amended offer in accordance with section 219; and
- (b) does not, within 6 months after service of the notice of rejection, institute an action for compensation against the acquiring authority or refer the claim for compensation to the State Administrative Tribunal,

the acquiring authority may, after giving 30 days notice to the claimant, apply to the State Administrative Tribunal for a direction.

(2) The State Administrative Tribunal may direct either that the offer is to be accepted by the claimant or that the claim is to be heard and determined by the State Administrative Tribunal.

(3) An application must be accompanied by the rejected offer and the claim for compensation.

[(4) deleted]

(5) If the State Administrative Tribunal determines that the claim is to be heard by it and the claimant fails to make a valid appointment of an assessor, the President of the State Administrative Tribunal may, in specifying who is to constitute the Tribunal, choose any consenting person as if the person had been appointed as an assessor by the claimant.

(6) If the claimant, after due notice, fails to attend the hearing, the Principal Registrar of the Supreme Court, or some person nominated by [the Principal Registrar](#)~~him or her~~, is to represent the claimant, and may act on the claimant's behalf in all matters relating to the claim or the hearing.

(7) Any moneys payable as compensation are to be paid into the Supreme Court, and are to remain there subject to section 249.

[Section 222 amended: No. 55 of 2004 s. 552, 568 and 569.]

s. 223

223. Court action for compensation, commencing and procedure on

- (1) A claimant may not commence or maintain an action for compensation except as provided in section 220 or 221.
- (2) A claimant may not commence proceedings unless the claimant~~he or she~~ has given the acquiring authority 30 days notice.
- (3) If a person is entitled to bring an action for compensation under this Part, the action may be commenced and maintained in a court of competent jurisdiction and is to be heard and determined in the same manner as ordinary actions, with ordinary rights of appeal in regard to the amount of compensation awarded or to any question of law or fact or of mixed law and fact, except that no question is to be determined by a jury.
- (4) If an action for compensation has been instituted in respect of the taking of an interest in any portion of land, the court may, on the application of the defendant, by order direct any other person claiming compensation in respect of the taking of any interest in that portion of land, or who appears to have had, at the date of the taking, an interest in that portion of land, to join as a plaintiff in the action within a time specified in the order.
- (5) If a person so ordered fails to join as a plaintiff in the action within the time specified in the order, the person~~he or she~~ is absolutely debarred thereafter from instituting an action for compensation against the defendant or from referring to the State Administrative Tribunal any claim for compensation in respect of that portion of land.
- (6) If, because of the joinder of a new plaintiff or for any other reason, the total compensation claimed in an action for compensation exceeds the jurisdiction of the court concerned —
- (a) that court is to refrain from proceeding further with the action; and

- 1 (b) the action may, on application by any party to a court of
2 competent jurisdiction, be removed to that court and is
3 to proceed in that court as if it had been instituted in that
4 court.
- 5 (7) If the title of the claimant to an interest or part of an interest is
6 being disputed, the proceedings under this section, unless the
7 claimant admits the objection to the claimant's~~his or her~~ title,
8 are to be adjourned pending the judgment of the Supreme Court
9 on that issue under section 216.
- 10 (8) On the trial of the action, the court is to —
11 (a) determine the amount of compensation payable by the
12 defendant to the plaintiff in respect of the taking of the
13 interest in land, having regard solely to the provisions of
14 this Part and in particular to the matters prescribed in
15 Division 5 and section 256; and
16 (b) if 2 or more persons are entitled to share the
17 compensation — determine the amount payable to each
18 person and the manner in which it is to be paid.
- 19 (9) The costs of the action are at the discretion of the court.
20 *[Section 223 amended: No. 55 of 2004 s. 569.]*

21 **224. SAT claim for compensation, referring and procedure on**

- 22 (1) A claimant who rejects an offer and wishes to refer their~~his or~~
23 ~~her~~ claim to the State Administrative Tribunal under section 220
24 must, with or after the service of the notice rejecting the offer,
25 serve on the acquiring authority notice in an approved form of
26 the appointment of an assessor together with copies of the
27 assessor's consent and declaration.
- 28 (2) A claimant who wishes to refer their~~his or her~~ claim to the State
29 Administrative Tribunal under section 221 must serve on the
30 acquiring authority notice in an approved form of the
31 appointment of an assessor together with copies of the
32 assessor's consent and declaration.

s. 224

- 1 (3) Within 30 days after being served with a notice of the
2 appointment of an assessor, the acquiring authority must —
- 3 (a) appoint an assessor and serve on the claimant a copy of
4 the appointment in an approved form; or
- 5 (b) serve on the claimant an offer of compensation, or, if an
6 offer has already been made, an amendment to the offer
7 increasing the amount of compensation offered.
- 8 (4) If the acquiring authority has not complied with subsection (3)
9 within 30 days after being served with the notice of the
10 appointment of an assessor by the claimant, the claimant may
11 request the President of the State Administrative Tribunal, in
12 specifying who is to constitute the Tribunal for the purpose of
13 determining the claim, to choose a consenting person as if the
14 person had been appointed as an assessor by the acquiring
15 authority and the President is to act accordingly, and notify the
16 authority and the claimant.
- 17 (5) When either —
- 18 (a) assessors have been appointed by or on behalf of both
19 the claimant and the acquiring authority; or
- 20 (b) an agreement under section 228 has been executed,
- 21 the President of the State Administrative Tribunal is to specify
22 who is to constitute the Tribunal for the purpose of determining
23 the amount of compensation to be paid.
- 24 (5a) For the purposes of subsection (5)(a), the claimant or the
25 acquiring authority is to be regarded as having appointed a
26 person as an assessor if circumstances have arisen in which the
27 President of the State Administrative Tribunal may, in
28 specifying who is to constitute the Tribunal, choose any
29 consenting person as if the person had been appointed as an
30 assessor by the claimant or the acquiring authority, as the case
31 requires.
- 32 (6) Upon receiving notice of the appointment of an assessor by the
33 acquiring authority or notice that the President of the State

Administrative Tribunal has chosen a person as if the person had been appointed as an assessor by the acquiring authority, the claimant must at once file a copy of the claim and of all notices and other particulars in the State Administrative Tribunal.

- (7) If the offer is for part only of the interest in land taken, the title to the rest being disputed, the assessment of the compensation, unless the claimant admits the objections to the claimant's~~his or her~~ title, is to be adjourned pending the judgment of the Court under section 216.

[Section 224 amended: No. 55 of 2004 s. 553 and 569.]

225. Assessor's consent to act required etc.

- (1) No appointment of an assessor is valid unless the person appointed signs a consent and declaration in approved form.
- (2) A consent and declaration must be filed in the State Administrative Tribunal, and a copy appended to the notice of appointment of the assessor.

[Section 225 amended: No. 55 of 2004 s. 554.]

Division 4 — The State Administrative Tribunal

[Heading amended: No. 55 of 2004 s. 569.]

226. Constitution of SAT for compensation claims

- (1) Except as otherwise stated in this section, when the State Administrative Tribunal is dealing with a claim for compensation under this Part, it is to be constituted by —
- (a) a judicial member or a senior member who is a qualified person; and
 - (b) the person appointed as an assessor by the claimant; and
 - (c) the person appointed as an assessor by the acquiring authority.

s. 227

- 1 (2) If the claimant and the acquiring authority agree in writing, the
2 State Administrative Tribunal may be constituted solely by a
3 judicial member or a senior member who is a qualified person.
- 4 (3) The agreement may be limited according to who is to be the
5 member by whom the State Administrative Tribunal is to be
6 constituted.
- 7 (4) When dealing with an application under section 222(1), the
8 State Administrative Tribunal is to be constituted by a judicial
9 member or a senior member who is a qualified person.
- 10 *[Section 226 inserted: No. 55 of 2004 s. 555.]*
- 11 **227. Assessor not member of SAT may sit on SAT**
- 12 (1) The President may specify a person appointed as an assessor by
13 the claimant or the acquiring authority to be one of the persons
14 by whom the State Administrative Tribunal is to be constituted
15 even though the person does not hold office as a member of the
16 State Administrative Tribunal.
- 17 (2) For the purposes of dealing with the matter for which the person
18 was appointed as an assessor, the person is to be regarded as
19 being an ordinary member and the *State Administrative*
20 *Tribunal Act 2004* applies to the person as if, when acting in
21 that capacity, the person were an ordinary member.
- 22 *[Section 227 inserted: No. 55 of 2004 s. 555.]*
- 23 *[228. Deleted: No. 55 of 2004 s. 556.]*
- 24 **229. SAT may hear other claims by consent**
- 25 The State Administrative Tribunal constituted to hear any claim
26 under this Part may, by consent in writing of the claimant and
27 acquiring authority in any other claim in respect of the same or
28 of any other interest in land, hear and determine that other claim
29 as though the State Administrative Tribunal had been
30 constituted to hear and determine that other claim.
- 31 *[Section 229 amended: No. 55 of 2004 s. 557.]*

230. Assessor, objecting to etc.

- (1) If either party objects to the appointment of an assessor, the President of the State Administrative Tribunal may, unless the objection appears to be frivolous or unreasonable, upon the application of the party objecting, require the party appointing the assessor to appoint another assessor instead.
- (2) Unless the party required to appoint another assessor does so within 10 days after being required to do so, the President of the State Administrative Tribunal may, in specifying who is to constitute the Tribunal, choose any consenting person as if the person had been appointed as an assessor by the person to whom the requirement was given.

[Section 230 amended: No. 55 of 2004 s. 558.]

231. Assessor member dying or unable to act etc., replacing

If, for the purpose of dealing with a claim, the State Administrative Tribunal is constituted by persons any of whom was appointed as an assessor by one of the parties (an **assessor member**) and, before the award is given, an assessor member dies or becomes incapable of acting, or resigns or refuses to act, the assessor member's place is to be taken by a person specified by the President of the State Administrative Tribunal on the appointment of the party who had appointed the assessor member or, if that party fails to make such an appointment within 10 days, by any other person whom the President of the State Administrative Tribunal may specify as if the person had been appointed by that party, and the matter is to proceed as if no change in constitution had taken place.

[Section 231 inserted: No. 55 of 2004 s. 559.]

[232-240. Deleted: No. 55 of 2004 s. 560.]

Division 5 — Assessing compensation

241. How compensation to be determined

(1) In determining the amount of compensation (if any) to be offered, paid, or awarded for an interest in land taken under Part 9, regard is to be had solely to the matters referred to in this section.

(2) Regard is to be had to the value of the land with any improvements, or the interest of the claimant in the land, assessed as on —

(a) in the case of an interest taken for a railway or other work authorised by a special Act — the first day of the session of Parliament in which the Act was introduced; or

(b) in the case of an interest taken by agreement under section 168 — the date of the execution of the agreement, unless the agreement provides otherwise; or

(c) in the case of an interest to which paragraphs (a) and (b) do not apply — the date of the taking,

and discounting any increase or decrease in value attributable to the proposed public work.

(3) If a notice of intention was registered in relation to the interest on a date before the date referred to in subsection (2), and a transaction relating to the land made between those dates affected the value of the interest, regard may be had to the value of the interest assessed as at the date referred to in subsection (2) and discounting the effect of the transaction.

(4) No regard is to be had to the value of any improvements made without the consent of the Minister after the registration of a notice of intention.

- 1 (5) Subject to subsection (4), in the case of a railway or other work
2 authorised by a special Act, the value of any improvements
3 made after the first day of the session of Parliament in which the
4 Act was introduced but before the registration of the taking
5 order are to be allowed, not exceeding their actual cost.
- 6 (6) Regard is to be had to the loss or damage, if any, sustained by
7 the claimant by reason of —
- 8 (a) removal expenses; or
9 (b) disruption and reinstatement of a business; or
10 (c) the halting of building works in progress at the date
11 when the interest is taken and the consequential
12 termination of building contracts; or
13 (d) architect's fees or quantity surveyor's fees actually
14 incurred by the claimant in respect of proposed
15 buildings or improvements which cannot be commenced
16 or continued in consequence of the taking of the interest;
17 or
18 (e) any other facts which the acquiring authority, the court,
19 or the State Administrative Tribunal considers it just to
20 take into account in the circumstances of the case.
- 21 (7) If the fee simple in land is taken from a person who is also the
22 holder in fee simple of adjoining land, regard is to be had to the
23 amount of any damage suffered by the claimant —
- 24 (a) due to the severing of the land taken from that adjoining
25 land; or
26 (b) due to a reduction of the value of that adjoining land,
27 however, if the value of any land held in fee simple by the
28 person is increased by the carrying out of, or the proposal to
29 carry out, the public work for which the land was taken, the
30 increase is to be set off against the amount of compensation that
31 would otherwise be payable under paragraph (b).
- 32 (8) If the interest in land is taken without agreement, an amount
33 considered by the court or the State Administrative Tribunal or,

s. 241

- 1 for the purposes of making an offer, by the acquiring authority,
2 appropriate to compensate for the taking without agreement
3 may be added to the award or offer.
- 4 (9) The additional amount under subsection (8) must not be more
5 than 10% of the amount otherwise awarded or offered, unless
6 the court or the State Administrative Tribunal, or, for the
7 purposes of making an offer, the acquiring authority, is satisfied
8 that exceptional circumstances justify a higher amount.
- 9 (10) If the interest in land taken produces any rent or profits, then at
10 the option of the acquiring authority, either —
- 11 (a) the amount of the rent or profits received by the
12 acquiring authority, less the reasonable cost of
13 collection, for the period from the date of registration of
14 the taking order to the date of the payment of
15 compensation or the date of the award, whichever is
16 earlier, is to be added to the compensation payable; or
- 17 (b) interest is to be paid on the amount of compensation for
18 the same period, at the rate of 6% per annum, or such
19 higher rate as the acquiring authority, the court, or the
20 State Administrative Tribunal considers adequate having
21 regard to the circumstances of each case,
- 22 but if the interest in land ceases to produce any rent or profits
23 after the taking, interest is to be paid in accordance with
24 paragraph (b).
- 25 (11) If the interest in land taken does not produce any rents or
26 profits, interest is to be paid at the rate prescribed under
27 section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* as
28 at the date of entry for construction or carrying out of the work
29 or the date of registration of the taking order, whichever is
30 earlier, and the interest is payable from —
- 31 (a) the date of the service of the claim on the acquiring
32 authority; or
- 33 (b) the date of entry for construction or carrying out of the
34 work,

- 1 whichever is earlier, to the date —
- 2 (c) when the offer was served on the claimant, if the
- 3 compensation awarded by the State Administrative
- 4 Tribunal or the court of competent jurisdiction is not
- 5 more than the amount offered by the acquiring authority;
- 6 or
- 7 (d) of settlement of the claim, in any other case.
- 8 (12) Subject to subsections (10) and (11) —
- 9 (a) when any amount representing an advance payment of
- 10 compensation is paid to a claimant, interest on the total
- 11 amount of compensation is payable only to the date of
- 12 the first payment, and interest is payable thereafter only
- 13 on the balance outstanding from time to time; and
- 14 (b) when any amount is offered by the acquiring authority
- 15 as an advance payment of compensation under
- 16 section 248 and the offer is not accepted by the claimant
- 17 within 30 days of the day on which it was made, no
- 18 interest is payable thereafter in respect of the amount so
- 19 offered.
- 20 (13) If —
- 21 (a) the amount of any purchase money or compensation, or
- 22 any payment on account, is payable under this Part or
- 23 Part 9; and
- 24 (b) the acquiring authority causes a notice to be published
- 25 once in a daily newspaper circulating throughout the
- 26 State stating that the authority intends to make the
- 27 payment; and
- 28 (c) 3 months after the publication of the notice, no person
- 29 has been able, or being able has not agreed, to give a

s. 242

1 sufficient discharge and receipt in respect of that
2 amount, or any portion of that amount,
3 the acquiring authority may cause the moneys to be paid into the
4 Supreme Court and dealt with under section 249, and thereafter
5 is not liable for any further interest payment on the moneys.
6 *[Section 241 amended: No. 74 of 2003 s. 72(4); No. 55 of 2004*
7 *s. 561 and 569; No. 8 of 2009 s. 83(3).]*

8 **242. Rates and taxes, apportionment of**

- 9 (1) If land affected by a taking order was not occupied by, on behalf
10 of or through a claimant on the date of taking, all rates and taxes
11 which, under the provisions of any Act, are a charge on the land
12 and are payable or paid by the claimant are to be apportioned
13 between the claimant and acquiring authority as at that date.
- 14 (2) If the land was occupied by, on behalf of or through the
15 claimant on the date of taking, the rates and taxes referred to in
16 subsection (1) are to be apportioned between the claimant and
17 acquiring authority as at the date when possession was given up
18 by the claimant to the acquiring authority or when by agreement
19 with the acquiring authority the claimant ceased to be
20 responsible for the payment of rates and taxes.
- 21 (3) On the apportionment of rates and taxes under subsection (1) —
- 22 (a) the aggregate amount, if any, due by the claimant as
23 rates and taxes at the date as at which the rates and taxes
24 are required to be apportioned, if not paid by the
25 claimant, are to be deducted from the amount of the
26 compensation;
- 27 (b) the aggregate amount, if any, paid by the claimant as
28 rates and taxes in respect of any period subsequent to the
29 date as at which the rates and taxes are required to be
30 apportioned, are to be added to the amount of
31 compensation.

243. Acts by claimant to make land less suitable for public work to be taken into account

If the State Administrative Tribunal or the court hearing an action for compensation under section 202 is of the opinion that the claimant has, at any time after the date of registration of the relevant notice of intention, or, if no notice of intention was issued, of the date of taking, done anything upon or under the land with the effect of making the land less suitable for the purpose of the public work for which it is taken, the State Administrative Tribunal or the court is to take that into account, by way of deduction from the amount of compensation, and if, in its opinion, the action so increases the cost of executing the public work that the increase in cost exceeds the value of the land taken, the award is to be for the payment by the claimant to the acquiring authority of the amount of the excess, and the costs of inquiry.

[Section 243 amended: No. 55 of 2004 s. 562 and 569.]

244. One sum or separate sums may be awarded and conditions attached

- (1) The State Administrative Tribunal or the court hearing the action for compensation may award one aggregate amount as compensation for a whole claim, or may divide the claim into several items and award a separate amount for each item.
- (2) The State Administrative Tribunal or the court may determine that no compensation is payable in respect of the whole claim or in respect of any item.
- (3) The State Administrative Tribunal or the court may attach conditions to the payment of the whole of the compensation or to the payment of the amount awarded for any item.

[Section 244 amended: No. 55 of 2004 s. 563 and 569.]

[245-247. Deleted: No. 55 of 2004 s. 564.]

Division 6 — Payment of compensation

248. Payments pending settlement of claim

- (1) If a person has claimed compensation under this Part from an acquiring authority, the authority may offer to the claimant —
- (a) to pay an amount as an advance payment, pending settlement of the claim; or
 - (b) whether or not an advance payment is offered, to carry out any rectification work in respect to damage to land for which the person is entitled to claim compensation, pending settlement of the claim,

and if the person accepts, may pay the amount or carry out the work.

- (2) If the acquiring authority has made an offer of compensation under section 217, and the claimant has not accepted an offer of rectification work, the claimant may require the authority to pay an amount of not more than 90% of the offer as an advance payment, pending settlement of the claim.

- (3) The payment of an amount or the performance of rectification work under this section does not prejudice the rights of the claimant under this Part.

249. When title doubtful, compensation or purchase-money to be paid into Supreme Court

- (1) If any doubt or dispute arises as to the right or title of any person to receive any compensation awarded under this Part, or any purchase-money or compensation agreed to be paid by an acquiring authority under Part 9 or this Part —
- (a) in the case of compensation awarded by the State Administrative Tribunal or a court hearing an action for compensation under section 202, the acquiring authority may, within the period of 30 days after the award is made, pay the sum awarded into the Supreme Court; and

- 1 (b) in the case of purchase-money, or compensation agreed
2 to be paid, the acquiring authority may pay the moneys
3 into the Supreme Court.
- 4 (2) The Supreme Court, on the application of any person interested,
5 is to make such orders as to the distribution of the moneys as it
6 thinks just and equitable, and the Principal Registrar of the
7 Supreme Court is to deal with and pay the moneys in
8 accordance with the order.
- 9 (3) In the hearing of an application under subsection (2), the
10 Supreme Court may make any order in relation to any costs that
11 have been incurred in relation to the claim, whether before the
12 State Administrative Tribunal, the court hearing an action for
13 compensation, or the Supreme Court, that seems just and
14 equitable to the Court, and may vary or revoke any order as to
15 costs previously made by the State Administrative Tribunal or a
16 court hearing an action for compensation.
- 17 *[Section 249 amended: No. 55 of 2004 s. 565, 568 and 569.]*

18 **250. Investment of compensation money by Principal Registrar**

19 Until any compensation paid into the Supreme Court under this
20 Part is distributed in accordance with an order of the Court, the
21 Principal Registrar of the Supreme Court is to invest it in the
22 manner in which any moneys in the Supreme Court may by law
23 be invested, and is to pay the annual proceeds to the party for
24 the time being entitled to the rents and profits of the lands in
25 respect of which compensation was awarded.

26 **251. Mortgage debts, application of compensation to**

- 27 (1) If an interest in the land in respect of which compensation is
28 payable or awarded is subject to a mortgage, the compensation,
29 or so much of it as is required for the purpose, upon the
30 application of the mortgagee, is to be paid towards the discharge
31 of the mortgage debt, so far as the compensation will go.

s. 252

1 (2) In this section —
2 *mortgage debt* includes the interest payable on the mortgage
3 concerned up to 6 months after the date of the taking.

4 **252. Land sold with payment by instalments, application of**
5 **compensation for**

6 If the purchase price of an interest in land in respect of which
7 compensation is payable or awarded was at the date of taking
8 being paid by instalments, the compensation or so much of it as
9 is required for the purpose, upon the application of the vendor,
10 is to be paid in discharge —

- 11 (a) of the balance of the purchase price owing; and
12 (b) of interest, if any, payable in respect of the purchase
13 price up to the amount of interest accrued during the
14 period of 12 months commencing on the day after the
15 date of taking.

16 **253. Land subject to rent-charge etc., application of**
17 **compensation in case of**

18 If an interest in land in respect of which compensation is
19 payable or awarded is subject to any rent-charge or annuity, the
20 State Administrative Tribunal or the court hearing an action for
21 compensation under section 202 is to determine —

- 22 (a) if the interest is part only of the interest subject to the
23 rent-charge or annuity — what proportion of the
24 rent-charge or annuity is to be redeemed so that the
25 remaining interest constitutes as good a security for the
26 remaining rent-charge or annuity as the whole of the
27 interest constituted for the whole of the charge or
28 annuity; and
29 (b) what part of the compensation is to be paid to the party
30 entitled in redemption of the rent-charge or annuity.

31 *[Section 253 amended: No. 55 of 2004 s. 569.]*

254. Reducing rent if part of rented land is taken

If an interest in land in respect of which compensation is payable or awarded is part of an interest in land in respect of which any rent is payable, the State Administrative Tribunal or the court hearing an action for compensation under section 202 is to determine what part of that rent ceases to be payable, so that the rent ceasing to be payable bears the same proportion to the whole rent as the value of the interest in respect of which compensation is awarded bears to the value of the whole interest.

[Section 254 amended: No. 55 of 2004 s. 569.]

255. Easement etc. in lieu of compensation or purchase-money, grant of by Minister

If the amount of compensation or purchase-money to be paid to any person is determined by agreement, the Minister may agree to grant to the person any easement, right of way, right of occupation, or any other interest, or any right, privilege, or concession in relation to the land designated for the public work, or any part of it, in satisfaction or part satisfaction of the compensation claimed by the person.

256. Easement etc. in lieu of compensation, powers of court or SAT as to

If the amount of compensation to be paid to any claimant is determined by the State Administrative Tribunal or a court hearing an action for compensation —

- (a) the acquiring authority may offer, and the State Administrative Tribunal or the court may award to the claimant, any easement, right of way, right of occupation, or any other interest, or any right, privilege, or concession in relation to the land designated for the public work, or any part of it, in satisfaction or part satisfaction of the compensation claimed by the person; and

s. 257

- 1 (b) the State Administrative Tribunal or the court may, by
2 its award, declare which (if any) of the easements,
3 interests, rights, privileges, or concessions so offered are
4 to be granted to the claimant in satisfaction, or part
5 satisfaction, or mitigation of the claim to compensation.

6 *[Section 256 amended: No. 55 of 2004 s. 566 and 569.]*

7 **257. Grant of Crown land in lieu of compensation, Minister's**
8 **powers as to**

- 9 (1) The Minister may, with the consent of the claimant, in
10 satisfaction, or in part satisfaction, for any interest in land which
11 is taken or purchased under Part 9, grant to the person or
12 persons from whom the land has been taken or purchased, any
13 interest in Crown land available to be granted or disposed of.
- 14 (2) The value of the interest, together with any money
15 compensation, must not exceed the amount which it appears to
16 the Minister would probably have to be paid if compensation
17 were made wholly in money in the usual way.

18 **258. Source of compensation etc.**

19 Moneys payable as compensation or as costs under this Part, or
20 on the apportionment of rates and taxes under section 242 —

- 21 (a) if payable by the Minister — are to be paid out of
22 moneys appropriated by Parliament for the works in
23 respect of which the claim for compensation arises;
- 24 (b) if payable by an acquiring authority other than the
25 Minister — are to be paid out of the funds of the
26 acquiring authority available for such purposes,

27 but neither the Minister nor any member of an acquiring
28 authority are personally liable for any compensation or costs
29 which may become payable under this Part.

Part 10A — Information

Division 1 — Sharing of information

258A. Terms used

In this Division —

animal welfare information means —

(a) information relating to the welfare, safety and health of stock and other animals on land that is under a pastoral lease, diversification lease or other lease; or

(b) information relating to a contravention, or suspected contravention, by the holder of a pastoral lease, diversification lease or other lease, of a provision of the *Animal Welfare Act 2002* in relation to stock and other animals on land that is under the lease; or

(c) information relating to any enforcement or other action taken, or proposed to be taken, under the *Animal Welfare Act 2002* in relation to a contravention or suspected contravention referred to in paragraph (b);

authorised officer means —

(a) the chief executive officer of the Department; or

(b) a person designated under section 258B for the purposes of this Division or for the purposes of the provision of this Division in which the term is used;

contact details includes postal address, telephone number, facsimile number and email address;

Crown land interest holder means the holder of —

(a) an interest in relation to Crown land; or

(b) a licence;

designated authority means —

(a) a public authority (other than a Minister of the State); or

s. 258A

- 1 (b) a body that provides to members of the public water
2 services, drainage services, gas services, electricity
3 services or ambulance or other emergency services; or
4 (c) a prescribed agency of the Commonwealth;
5 **guidelines** means guidelines issued under section 258F(1);
6 **information sharing agency** means any of the following —
7 (a) the department of the Public Service principally
8 assisting in the administration of the *Aboriginal Affairs*
9 *Planning Authority Act 1972*;
10 (b) the department of the Public Service principally
11 assisting in the administration of the *Aboriginal Cultural*
12 *Heritage Act 2021*;
13 (c) the department of the Public Service principally
14 assisting in the administration of the *Animal Welfare*
15 *Act 2002*;
16 (d) the department of the Public Service principally
17 assisting in the administration of the *Aquatic Resources*
18 *Management Act 2016*;
19 (e) the department of the Public Service principally
20 assisting in the administration of the *Biodiversity*
21 *Conservation Act 2016*;
22 (f) the department of the Public Service principally
23 assisting in the administration of the *Biosecurity and*
24 *Agriculture Management Act 2007*;
25 (g) the department of the Public Service principally
26 assisting in the administration of the *Bush Fires*
27 *Act 1954*;
28 (h) the department of the Public Service principally
29 assisting in the administration of the *Dampier to*
30 *Bunbury Pipeline Act 1997*;
31 (i) the department of the Public Service principally
32 assisting in the administration of the *Environmental*
33 *Protection Act 1986*;

- 1 (j) the department of the Public Service principally
2 assisting in the administration of the *Heritage Act 2018*;
3 (k) the department of the Public Service principally
4 assisting in the administration of the *Local Government*
5 *Act 1995*;
6 (l) the department of the Public Service principally
7 assisting in the administration of the *Marine and*
8 *Harbours Act 1981*;
9 (m) the department of the Public Service principally
10 assisting in the administration of the *Mining Act 1978*;
11 (n) the department of the Public Service principally
12 assisting in the administration of the *Planning and*
13 *Development Act 2005*;
14 (o) the department of the Public Service principally
15 assisting in the administration of the *Rights in Water*
16 *and Irrigation Act 1914*;
17 (p) the department of the Public Service principally
18 assisting in the administration of the *Soil and Land*
19 *Conservation Act 1945*;
20 (q) the Commissioner of Main Roads;
21 (r) the Valuer-General;
22 (s) the Land Information Authority;
23 (t) a public authority prescribed for the purposes of this
24 paragraph;
25 **Land Information Authority** means the Western Australian
26 Land Information Authority established by the *Land*
27 *Information Authority Act 2006* section 5;
28 **land management information** —
29 (a) means information relating to the use, management or
30 condition of land that is under a pastoral lease,
31 diversification lease or other lease; and
32 (b) includes the following —

s. 258A

- 1 (i) information contained in a management plan
2 (whether or not that management plan has been
3 approved by the Board under
4 section 108B(2)(a));
- 5 (ii) information contained in a report submitted
6 under section 108B(5) or 108C(2)(b);
- 7 (iii) information relating to activities carried out
8 under a permit issued under Part 7 Division 5;
- 9 (iv) information relating to improvements on the
10 land, and the condition of those improvements;
- 11 (v) information relating to stock numbers (if any) or
12 the management and condition of stock;
- 13 (vi) information relating to declared pests (as defined
14 in the *Biosecurity and Agriculture Management*
15 *Act 2007* section 6), feral animals or other
16 invasive species;
- 17 (vii) information relating to a contravention, or
18 suspected contravention, by the holder of the
19 lease of a provision of a land management law
20 that relates to the use, management or condition
21 of the land;
- 22 (viii) any enforcement or other action taken, or
23 proposed to be taken, under a land management
24 law in relation to a contravention or suspected
25 contravention referred to in subparagraph (vii);
- 26 **land management law** means any of the following —
- 27 (a) the *Biodiversity Conservation Act 2016*;
- 28 (b) the *Biosecurity and Agriculture Management Act 2007*;
- 29 (c) the *Environmental Protection Act 1986*;
- 30 (d) the *Soil and Land Conservation Act 1945*;
- 31 **officer**, in relation to an information sharing agency or
32 prescribed authority —
- 33 (a) means —

- 1 (i) an officer of the agency or authority; or
2 (ii) a person employed in, by or for the purposes of
3 the agency or authority;
4 and
5 (b) if the agency or authority is the holder of an office, post
6 or position established or continued under a written
7 law — includes that holder;
8 **public authority** means —
9 (a) a Minister of the State; or
10 (b) a department of the Public Service; or
11 (c) a State instrumentality; or
12 (d) a local government or a regional local government;
13 **relevant information** —
14 (a) means information that is, or is likely to be, relevant
15 to —
16 (i) the performance by a person of a function under
17 this Act; or
18 (ii) the administration or enforcement of this Act;
19 and
20 (b) includes the following —
21 (i) animal welfare information;
22 (ii) land management information;
23 (iii) valuation information;
24 **valuation information** means information that is, or is likely to
25 be, relevant to —
26 (a) a determination by the Valuer-General under
27 section 123(1)(a), 123A(2), 123B(1) or 124(3); or
28 (b) the performance by the Valuer-General of any other
29 function under this Act; or
30 (c) the valuation of Crown land by the Valuer-General.

s. 258B

258B. Designation of authorised officers

The chief executive officer of the Department may, in writing, designate a public service officer of the Department to be an authorised officer —

- (a) generally for the purposes of this Division; or
- (b) for the purposes of a provision of this Division specified in the designation.

258C. Sharing of relevant information between Board and Department

- (1) The Board may, in accordance with the guidelines, disclose relevant information to a public service officer of the Department.
- (2) A public service officer of the Department may, in accordance with the guidelines, disclose relevant information to the Board.

258D. Sharing of relevant information with information sharing agencies

- (1) Subject to subsection (2), the Board or an authorised officer may, in accordance with the guidelines, disclose relevant information to an officer of an information sharing agency.
- (2) The following information must not be disclosed under subsection (1), except to the Valuer-General or a person employed in or by the Land Information Authority who assists in the performance of the Valuer-General's functions —
 - (a) information relating to the amount of rent payable under a pastoral lease (including any permit rent as defined in section 124(1)) that could reasonably be expected to lead to the identification of the pastoral lessee by whom the rent is payable;
 - (b) information relating to a failure to pay rent under a pastoral lease (including any permit rent as defined in section 124(1)) that could reasonably be expected to

1 lead to the identification of the pastoral lessee who has
2 failed to pay the rent.

3 (3) The Board or an authorised officer may, in accordance with the
4 guidelines, request an officer of an information sharing agency
5 to disclose to the Board or the authorised officer relevant
6 information that is held by the agency.

7 (4) A person to whom a request is made under subsection (3) may
8 disclose the relevant information to the Board or the authorised
9 officer (as the case requires).

10 **258E. Sharing of information about Crown land interest holders**
11 **with designated authorities and other persons**

12 (1) An authorised officer may disclose the name and contact details
13 of a Crown land interest holder to —

14 (a) an officer of a designated authority for use in the
15 performance of the designated authority's functions; or

16 (b) the Director General of Mines, as defined in the *Mining*
17 *Act 1978* section 8(1), for providing the information
18 to —

19 (i) applicants for, or holders of, mining tenements,
20 as defined in that provision; or

21 (ii) any other person who is required, under that Act,
22 to give notice to a Crown land interest holder;

23 or

24 (c) a prescribed person, in the circumstances, and on the
25 conditions, that may be prescribed.

26 (2) For the purposes of this section, the Board may disclose to an
27 authorised officer the name and contact details of a pastoral
28 lessee from the most recent return submitted by the pastoral
29 lessee under section 113.

30 (3) This section does not limit or otherwise affect the operation of
31 section 258C or 258D.

s. 258F

258F. Guidelines relating to sharing of relevant information

- (1) The chief executive officer of the Department must issue guidelines as to the disclosure of relevant information under sections 258C and 258D(1) and the requesting of relevant information under section 258D(3).
- (2) The power conferred on the chief executive officer of the Department under subsection (1) to issue guidelines includes the power to amend or revoke those guidelines.
- (3) To the extent that there is an inconsistency between guidelines issued under subsection (1) and regulations made for the purposes of section 258G, the regulations prevail.
- (4) The following must be published in a manner the chief executive officer of the Department considers appropriate —
- (a) guidelines;
 - (b) amendments made to guidelines;
 - (c) notice of the revocation of guidelines.
- (5) Guidelines are not subsidiary legislation for the purposes of the Interpretation Act 1984.

258G. Regulations relating to sharing of relevant information

The regulations may provide for —

- (a) the circumstances in which relevant information may be disclosed under section 258C or 258D(1) or (4); and
- (b) the conditions subject to which relevant information may be disclosed under those provisions; and
- (c) the receipt, use and storage of relevant information disclosed under those provisions; and
- (d) the restriction of access to relevant information disclosed under those provisions; and
- (e) the maximum period for which relevant information disclosed under those provisions may be retained; and

- 1 (f) the circumstances in which relevant information
2 disclosed under those provisions must be destroyed.

3 **Division 2 — Confidentiality and authorised recording, use or**
4 **disclosure of information**

5 **258H. Confidentiality**

- 6 (1) A person must not (whether directly or indirectly) record, use or
7 disclose —

8 (a) information obtained because of the person's office,
9 position, employment or engagement under or for the
10 purposes of this Act; or

11 (b) information disclosed to the person under or for the
12 purposes of this Act.

13 Penalty for this subsection: a fine of \$10 000.

- 14 (2) Subsection (1) does not apply in relation to the recording, use or
15 disclosure of information that is —

16 (a) already in the public domain; or

17 (b) statistical or other information that could not reasonably
18 be expected to lead to the identification of any person to
19 whom it relates.

- 20 (3) A person does not commit an offence under subsection (1) if the
21 recording, use or disclosure of the information is authorised
22 under section 258I(1).

23 **258I. Authorised recording, use or disclosure of information**

- 24 (1) For the purposes of this Act, the recording, use or disclosure of
25 information is authorised if the information is recorded, used or
26 disclosed in good faith —

27 (a) for the purposes of, or in connection with, performing a
28 function under this Act or another law; or

29 (b) in connection with the administration or enforcement of
30 this Act or another law; or

s. 258I

- 1 (c) as required or allowed under this Act or another law; or
2 (d) for the purposes of any legal proceedings arising under
3 this Act or another law; or
4 (e) under an order of a court or other person or body acting
5 judicially; or
6 (f) with the written consent of the person to whom the
7 information relates; or
8 (g) in other circumstances prescribed by the regulations.
9 (2) If the recording, use or disclosure of information is authorised
10 under subsection (1) —
11 (a) no civil or criminal liability is incurred in respect of the
12 recording, use or disclosure; and
13 (b) the recording, use or disclosure is not to be regarded as a
14 breach of any duty of confidentiality or secrecy imposed
15 by law; and
16 (c) the recording, use or disclosure is not to be regarded as a
17 breach of professional ethics or standards or as
18 unprofessional conduct.

Part 11 — General

259. Protection from personal liability

- (1) In this section, a reference to the doing of anything includes a reference to the omission to do anything.
- (2) An action in tort does not lie against a person for anything that the person has, in good faith, done in the exercise or performance or purported exercise or performance of a function under this Act.
- (3) The protection given by this section applies even though the thing done in the exercise or performance or purported exercise or performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- (4) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.
- [Section 259 amended: No. 28 of 2006 s. 379; No. 8 of 2010 s. 14.]*

260. Improvements on Crown land, valuing for s. 35 and 92

When it is necessary for the value of an improvement on Crown land to be known for the purposes of section 35 or 92, the Minister must be satisfied that that improvement was made bona fide for the purpose of improving the Crown land.

261. Interest in Crown land of insolvent person available for benefit of creditors

- (1) If a person holding an interest in Crown land under conditions relating to improvements or other matters is —
- (a) an individual who is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, that interest may, with the permission of the Minister, be sold by the trustee of that person; or

s. 262

- 1 (b) a corporation within the meaning of the *Corporations*
2 *Act 2001* of the Commonwealth —
- 3 (i) the property of which is in the possession of, or
4 under the control of, a receiver, or a receiver and
5 manager; or
- 6 (ii) which is under administration; or
- 7 (iii) which has executed a deed of company
8 arrangement that is not yet terminated; or
- 9 (iv) which is a party to a compromise or arrangement
10 made with any other person or persons and
11 currently being administered; or
- 12 (v) which is being wound up,
- 13 that interest may, with the permission of the Minister, be
14 sold by the person entitled under the *Corporations*
15 *Act 2001* of the Commonwealth to sell that interest,
- 16 to a purchaser who would be qualified under this Act to hold the
17 Crown land under those conditions.
- 18 (2) The purchaser of an interest sold under subsection (1) is
19 substituted for the individual or corporation referred to in that
20 subsection and has the same rights and obligations in relation to
21 the relevant Crown land as that individual or corporation had.
- 22 (3) In subsection (1)(a) —
- 23 *trustee* has the same meaning as it has in the *Bankruptcy*
24 *Act 1966* of the Commonwealth and includes the person
25 corresponding to the trustee under the law of an external
26 Territory or of a country other than Australia.
- 27 [Section 261 amended: No. 10 of 2001 s. 220.]
- 28 **262. Death or mental incapacity of holder of interest in Crown**
29 **land occurring before conditions as to improvements fulfilled**
- 30 (1) If the holder of an interest in Crown land dies or is declared to
31 be an incapable person under the *Mental Health Act 1962*³
32 before the fulfilment of the prescribed conditions of

improvements relating to that interest, that interest may, with the approval of the Minister and subject to this section, be held by the legal representative of that holder or the person having charge of ~~the holder's~~^{his or her} estate.

(2) An interest in Crown land is not to be held under subsection (1) by the legal representative of a person or the person having charge of the estate of the first-mentioned person unless all unfulfilled conditions, except residence, are fulfilled in trust for, and for the benefit of, the persons entitled to that interest.

(3) A legal representative or person having charge of an estate referred to in subsection (1) must apply in writing to the Minister for permission to enter into occupation of the relevant Crown land within 12 months after the relevant death or declaration as an incapable person of the holder of the interest in that Crown land.

(4) If a legal representative or person having charge of an estate does not apply under subsection (3) within the relevant period of 12 months, the relevant Crown land may be forfeited under section 35 as if that failure to apply were the breach of a condition referred to in that section.

263. Death of holder of interest in Crown land with right to acquire fee simple

(1) If an interest in Crown land has been granted under the repealed Act or is granted under this Act, subject in either case to the right of the holder of that interest to acquire the fee simple of that Crown land, and that holder dies, the Minister may, on the application of the executor or administrator of the estate of that holder, transfer the fee simple in that Crown land to that executor or administrator.

(2) The fee simple in Crown land transferred under subsection (1) to an executor or administrator forms part of the estate of the deceased holder and may be dealt with accordingly.

s. 264

264. Limited liability of Crown or management body for damage, injury or loss suffered on, or emanating from, certain land

~~Damage emanating from certain Crown land, limited liability of Crown etc. for~~

(1) This section is in addition to, and not in derogation of, section 66.

(2) Despite any other written law, the liability of the Crown in respect of damage, injury or loss suffered by a person on, or from a cause emanating from —

(a) an unmanaged reserve, unallocated Crown land or land held by the Crown in fee simple~~reserve or unallocated Crown land~~ is limited to damage, injury or loss caused by, or the cause of which is a direct consequence of, an act of the Crown or an activity undertaken by the Crown; or

(b) Crown land which —

(i) is transferred in fee simple, or an interest in which is granted, under this Act; or

(ii) has been disposed of by Crown grant or otherwise under the repealed Act,

does not include liability in respect of damage, injury or loss caused by a hazard or other factor of which warning is given in a statement contained in a memorial a memorandum of which is endorsed under section 17 on the certificate of title or certificate of Crown land title relating to that land.

(3) Despite any other written law, the liability of the Crown and a management body in respect of damage, injury or loss suffered by a person on, or from a cause emanating from, Crown land which is —

(a) within the relevant managed reserve; and

(b) unimproved,

is limited to damage, injury or loss caused by, or the cause of which is a direct consequence of, an act of the management

1 body, or an activity undertaken by the management body,
2 otherwise than in accordance with its management order.

3 (4) In this section —

4 **Crown** includes a State agency or State instrumentality or an
5 officer or employee of the Crown or of a State agency or State
6 instrumentality.

7 **265. Prescription Act 1832 (UK) not applicable to Crown land**

8 (1) The *Prescription Act 1832* does not apply, and never has
9 applied, to Crown land.

10 (2) In subsection (1), the reference to the *Prescription Act 1832* is a
11 reference to the Imperial Act (2 & 3 Will. IV., c. 71) now
12 known by that name⁸.

13 **266. Land no longer required for railway to become Crown land**

14 When under an Act a railway has been discontinued or the line
15 of a railway has been deviated and as a result of that
16 discontinuance or deviation land dedicated for the railway is no
17 longer required for that purpose, that land becomes by virtue of
18 this section Crown land free of —

19 (a) any rights to minerals or petroleum; and

20 (b) any estates, rights, titles, interests, claims or demands,
21 of persons to or in respect of that land.

22 **267. Offences on Crown land and proceedings for them**

23 (1) In this section —

24 **plant** includes spore, seed or other product of the reproductive
25 cycle of a plant;

26 **structure** includes —

27 (a) building; and

28 (b) post, pile, stake, pipe, chain, wire or other thing that is
29 fixed to the soil or to anything fixed to the soil; and

s. 267

- 1 (c) materials, objects and fixtures in the area of the
2 structure.
- 3 (2) A person commits an offence if the person,~~who,~~ without either
4 the permission of the Minister or reasonable excuse —
- 5 (a) resides on Crown land; or
6 (b) constructs roads or tracks, or erects any structure, on
7 Crown land; or
8 (c) clears, encloses, cultivates or causes or allows stock to
9 graze on Crown land; or
10 (d) excavates Crown land or reclaims Crown land below
11 high water mark; or
12 (e) collects, drills for or stores water on, or takes water
13 from, Crown land; or
14 (f) removes from Crown land any plant (whether alive or
15 dead) or such other thing of any kind as is prescribed; or
16 (g) deposits or leaves any thing of any kind on Crown land;
17 or
18 (h) discharges any firearm or other weapon on Crown
19 land.~~land,~~
- 20 ~~— commits an offence and is liable to a penalty of \$10 000 and, in~~
21 ~~the case of an offence of a continuing nature, to a daily penalty~~
22 ~~of \$200.~~
- 23 Penalty for this subsection:
- 24 (a) a fine of \$20 000;
- 25 (b) a daily penalty of a fine of \$400 for each day or part
26 of a day during which the offence continues.
- 27 (3) If a continuing state of affairs is created by an offence under
28 subsection (2) and that state of affairs continues after —
29 (a) a person is convicted of that offence; and

- 1 (b) the court considers that that state of affairs could
2 reasonably have been discontinued by the person,
3 the person commits an additional offence and is liable to an
4 additional penalty of ~~\$200~~^{\$400} for each day on which the
5 additional offence so continues.
- 6 (4) Subject to subsection (5), a prosecution for an offence under
7 subsection (2) must be commenced within 10 years after the
8 date on which the offence is alleged to have been committed.
- 9 (5) If an offence under subsection (2) is of a continuing nature, a
10 prosecution for the offence may be commenced at any time
11 during the continuance of that offence.
- 12 (6) In addition to any penalty imposed for an offence under
13 subsection (2) or (3), a person convicted of that offence is liable
14 to pay such amount by way of compensation or reimbursement
15 for the reinstatement or rehabilitation of any Crown land and the
16 cost of inspection, harvesting of crops or removal of stock or
17 any other cost incurred in relation to that reinstatement or
18 rehabilitation as the court convicting that person specifies.
- 19 (7) A person required under subsection (6) to pay an amount
20 specified under that subsection must pay that amount to the
21 clerk of the relevant court for transmission by that clerk to the
22 Minister.
- 23 (8) An amount required under subsection (6) to be paid may be
24 recovered by the Minister as a judgment debt by action in a
25 court of competent jurisdiction.
- 26 (9) Nothing in this section affects any other provision of this Act or
27 any provision of another written law so far as that provision
28 would, but for this section, have effect in relation to a reserve,
29 but a person is not liable to be punished more than once for an
30 act or omission that constitutes an offence both under this
31 section and any other such provision.

s. 268

- 1 (10) In proceedings for an offence under subsection (2), the accused
2 has the onus of proving in relation to the act or omission giving
3 rise to that offence that —
- 4 (a) the Minister permitted that act or omission or that the
5 accused had a reasonable excuse for that act or
6 omission; or
- 7 (b) the land on which that offence is alleged to have been
8 committed was not at the relevant time Crown land.
- 9 *[Section 267 amended: No. 59 of 2004 s. 141; No. 84 of 2004*
10 *s. 82.]*

11 **268. Survey marks and surveyors etc., offences as to**

- 12 (1) A person must not wilfully and without lawful excuse destroy,
13 mutilate, deface, take away or alter a survey mark placed, sunk
14 or set up for the purposes of this Act.

15 Penalty for this subsection:

16 (a) for a first offence, a fine of \$2 000;

17 (b) for a subsequent offence, a fine of \$4 000.

18 ~~Penalty: \$1 000 for a first offence and \$2 000 for any~~
19 ~~subsequent offence.~~

- 20 (2) A person must not wilfully and without lawful excuse obstruct a
21 person —

22 (a) placing, sinking or setting up a survey mark; or

23 (b) carrying out a survey,

24 for the purposes of this Act.

25 Penalty for this subsection~~Penalty: a fine of \$2 000~~~~\$1 000.~~

- 26 (3) In this section —

27 **survey mark** means cairn, beacon, structure, trigonometrical
28 station, post, peg, block, plug, tube, pipe, spike, pole or other
29 survey mark of whatsoever material composed.

269. Contravening etc. condition or covenant as to Crown land, offence

(1) A person must not —

(a) contravene a condition or covenant imposed in respect of Crown land under this Act; or

(b) directly or indirectly enter into a transaction relating to Crown land under this Act for the purposes of avoiding a condition or covenant referred to in paragraph (a).

Penalty for this subsection:

(a) a fine of \$2 000;

(b) a daily penalty of a fine of \$200 for each day or part of a day during which the offence continues.

~~(1) A person who —~~

~~(a) contravenes; or~~

~~(b) directly or indirectly, enters into a transaction relating to Crown land under this Act for the purpose of avoiding,~~

~~a condition or covenant imposed in respect of Crown land under this Act commits an offence and is liable to a penalty of \$1 000 and a daily penalty of \$100.~~

(2) In any proceedings for an offence under subsection (1)(b), a certificate of the Minister certifying that the purpose of the transaction in question is to avoid a condition or covenant —

(a) imposed in respect of Crown land under this Act; and

(b) set out in that certificate,

is prima facie evidence of that purpose.

(3) When a person is convicted of an offence under subsection (1)(b), that conviction constitutes a breach of a condition or covenant for the purposes of section 35 and that section applies to the Crown land in question accordingly.

s. 270

270. Unauthorised structures on Crown land~~Unauthorised structures on Crown land, Minister's powers as to etc.~~

(1) In this section and in sections 271 and 272 —

alleged unauthorised structure, in relation to a responsible entity, means a structure that the responsible entity considers to be an unauthorised structure;

~~alleged unauthorised structure means structure which the Minister considers to be an unauthorised structure;~~

notice means notice referred to in subsection (2);

responsible entity —

(a) for a managed reserve, means the Minister or the management body of the reserve; or

(b) for any other Crown land, means the Minister;

unauthorised structure means structure the erection of which —

(a) was not, at the time of its erection, authorised under any Act or other law; or

(b) has ceased, since the time of its erection, to be authorised by any Act or other law.

(2) A responsible entity for Crown land ~~The Minister~~ may by notice published in a newspaper circulating in the locality of an alleged unauthorised structure that is on the Crown land direct the owner of, or any person occupying, that alleged unauthorised structure to remove it, its contents and any fixtures, materials and objects in its vicinity permanently from the Crown land before the day specified in that notice, being a day not less than 90 days after the day of publication of that notice in that newspaper.

(3) A notice may be directed to —

(a) the owners or occupiers of all alleged unauthorised structures that are on any Crown land specified in the notice; or

- 1 (b) the owner or occupier of each of one or more alleged
2 unauthorised structures specified in the notice that are
3 on any Crown land.
- 4 (4) The responsible entity ~~Minister~~ must, within 14 days after the
5 publication of a notice under subsection (2), cause a copy of the
6 notice to be served on the owner or occupier of each alleged
7 unauthorised structure to which the notice relates.
- 8 (5) For the purposes of subsection (4), and without limiting
9 section 274 of this Act or section 76 of the *Interpretation*
10 *Act 1984*, a notice is duly served on the owner or occupier of an
11 alleged unauthorised structure if a copy of the notice is —
- 12 (a) served on any person in occupation or apparently in
13 occupation of the alleged unauthorised structure; or
14 (b) is affixed to the alleged unauthorised structure in a
15 conspicuous place.
- 16 (6) If —
- 17 (a) a notice has been published under subsection (2) and a
18 copy of the notice has been served under subsection (4);
19 and
20 (b) no appeal is lodged under section 272(1) or, if an appeal
21 is so lodged, the appeal is dismissed; and
22 (c) the whole or any part of an alleged unauthorised
23 structure or an unauthorised structure, as the case
24 requires, to which the notice relates, any contents of that
25 structure or any fixtures, materials or objects remaining
26 in the vicinity of that structure has or have not been
27 removed from the Crown land by the day specified in
28 the notice or, if an extension has been granted under
29 section 271(3), by the day fixed by that extension,
30 that structure and those contents, fixtures, materials and objects
31 become the property of the Crown and may be removed,
32 destroyed or disposed of in such manner as the responsible
33 entity ~~Minister~~ thinks fit.

s. 271

- 1 (7) No compensation is payable to any person in respect of the
2 removal, destruction or disposal under subsection (6) of any
3 alleged unauthorised structure or unauthorised structure, or any
4 contents, fixtures, materials or objects.

5 **271. Extensions of time for s. 270**

- 6 (1) The owner or occupier of an alleged unauthorised structure to
7 which a notice published under section 270(2) relates may
8 apply, in accordance with subsection (2), to the responsible
9 entity that published the notice~~apply to the Minister under~~
10 ~~subsection (2)~~ for the extension of the period within which the
11 alleged unauthorised structure, its contents and the fixtures,
12 materials and objects in its area are to be removed.
- 13 (2) An application under subsection (1) is to be —
14 (a) made in writing and is to set out the grounds on which
15 the extension is sought; and
16 (b) served on the responsible entity ~~Minister~~ not later than
17 21 days before the day specified in the relevant notice.
- 18 (3) The responsible entity ~~Minister~~ may extend the period referred
19 to in subsection (1) by not more than 45 days after the day
20 specified in the relevant notice and must grant that extension
21 only if the responsible entity ~~Minister~~ is satisfied that the
22 applicant —
23 (a) is unable to remove the alleged unauthorised structure,
24 contents, fixtures, materials and objects from the Crown
25 land before the day specified in that notice; but
26 (b) intends, and is able, to remove the alleged unauthorised
27 structure, contents, fixtures, materials and objects from
28 the Crown land within the extended period if that
29 extension is granted.
- 30 (4) If an appeal is lodged under section 272(1), an extension of the
31 period referred to in subsection (1) is to be taken to have been
32 granted under subsection (3) extending that period by
33 45 days —

- 1 (a) after the day on which the appeal is dismissed; or
2 (b) the appeal having been dismissed, after the day specified
3 in the relevant notice,
4 whichever is the later.

5 **272. Appeal against s. 270 notice**

- 6 (1) Subject to subsection (2), a person on whom a copy of a notice
7 has been served under section 270(4), or any person aggrieved
8 by the notice, may within 21 days after that service or such
9 longer period as the Minister in special circumstances allows
10 lodge an appeal against the notice with the Minister under
11 Part 3.
12 (2) An appeal can only be lodged under subsection (1) on the
13 grounds that the structure to which the notice relates is not an
14 unauthorised structure.

15 **273. Delegation by Minister and chief executive officer of**
16 **Department of s. 270 and 271 functions**

- 17 (1) The Minister may delegate any power or duty of the Minister
18 under section 270 or 271 to —
19 (a) the chief executive officer of the Department; or
20 (b) an employee of a local government; or
21 (c) an employee within the meaning of the *Public Sector*
22 *Management Act 1994*.
23 (2) A person to whom a power or duty is delegated under
24 subsection (1)(b) or (c) cannot delegate that power or duty.
25 (3) The chief executive officer of the Department may delegate to a
26 person referred to in subsection (1)(b) or (c) any power or duty
27 that is delegated to the chief executive officer under
28 subsection (1)(a).
29 (4) A person to whom a power or duty is delegated under
30 subsection (3) cannot delegate that power or duty.

s. 274

1 (5) A delegation under this section must be in writing signed by the
2 Minister or the chief executive officer of the Department (as the
3 case requires).

4 (6) A person exercising or performing a power or duty that has been
5 delegated to the person under this section is taken to do so in
6 accordance with the terms of the delegation unless the contrary
7 is shown.

8 (7) Nothing in this section limits the ability of the Minister or the
9 chief executive officer of the Department to perform a function
10 through an officer or agent.

11 **274. Giving documents**

12 (1) In this section —
13 *electronic means* includes —

- 14 (a) an electronic database or document system; and
15 (b) any other means by which a document can be accessed
16 electronically.

17 (2) The regulations may make provision for or in relation to the
18 following —

- 19 (a) the giving of a document required or permitted to be
20 given under this Act (including the giving of the
21 document by electronic means);
22 (b) the time at which the document is taken to have been
23 given;
24 (c) the means of satisfying a requirement under this Act in
25 relation to a document in writing (for example, a
26 requirement that the original of a document be given or
27 that a document be signed) if the document is given by
28 electronic means.

29 (3) This section applies to a requirement or permission to give a
30 document whether the term “give”, “issue”, “send” or “serve”,
31 or any other similar term, is used.

~~273.— Delegation by Minister of s. 270 and 271 functions~~

~~(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her delegate any of his or her powers and duties under section 270 or 271 to—~~

~~(a) an employee of a local government; or~~

~~(b) an employee within the meaning of the *Public Sector Management Act 1994*; or~~

~~(c) any management body or other person responsible for the care, control and management of a reserve.~~

~~(2) A power or duty delegated under subsection (1) must, if exercised or performed by the delegate, be exercised or performed in accordance with the instrument of delegation.~~

~~(3) Nothing in this section prevents or limits the application of sections 58 and 59 of the *Interpretation Act 1984* to a delegation made under subsection (1).~~

~~274.— Service of documents for Act~~

~~(1) For the purposes of this Act, service of a document on a person may be effected—~~

~~(a) by delivering the document to the person personally; or~~

~~(b) by sending the document by letter (by pre paid post) to the address of the person; or~~

~~(c) if a person has specified in a caveat or approved form that documents under this Act may be served on him or her by facsimile transmission to the number of his or her facsimile machine, by facsimile transmission to that number.~~

~~(2) For the purposes of subsection (1)(b)—~~

~~address in relation to a person means—~~

~~(a) address specified by the person in a caveat or in an approved form as the address to which documents addressed to the person are to be sent;~~

s. 274

- 1 ~~———— (b) — if an address has not been specified under paragraph (a),~~
2 ~~address entered in the Register as the address of the~~
3 ~~person;~~
- 4 ~~———— (c) — if, in the case of an individual, an address has not been~~
5 ~~specified under paragraph (a) or entered in the Register,~~
6 ~~last known address of that person;~~
- 7 ~~———— (d) — if, in the case of a person who is not an individual, an~~
8 ~~address has not been specified under paragraph (a) or~~
9 ~~entered in the Register —~~
- 10 ~~———— (i) — registered office (if any) within the meaning of~~
11 ~~the *Corporations Act 2001* of the~~
12 ~~Commonwealth, the principal place of business~~
13 ~~or the principal office in the State of that person;~~
14 ~~or~~
- 15 ~~———— (ii) — address of the office of any administrator,~~
16 ~~manager, receiver, receiver and manager or~~
17 ~~liquidator appointed under the *Corporations*~~
18 ~~*Act 2001* of the Commonwealth in relation to~~
19 ~~that person if that address is the most recent~~
20 ~~address to be lodged with the Australian~~
21 ~~Securities and Investments Commission for that~~
22 ~~administrator, receiver, receiver and manager or~~
23 ~~liquidator.~~
- 24 ~~———— (3) — Unless the contrary is proved, in relation to service by or on~~
25 ~~behalf of the Minister —~~
- 26 ~~———— (a) — service by letter is to be taken to be effected at the time~~
27 ~~when the letter would have been delivered in the~~
28 ~~ordinary course of post; and~~
- 29 ~~———— (b) — service by facsimile transmission is to be taken to be~~
30 ~~effected at the time when a facsimile machine at the~~
31 ~~office of the Department prints a statement showing~~
32 ~~that —~~
- 33 ~~———— (i) — that transmission has been made to another~~
34 ~~facsimile machine; and~~

- 1 ~~————— (ii) the other facsimile machine has received that~~
 2 ~~transmission.~~
- 3 ~~————— (4) For the purposes of subsection (3)(a), a letter is to be taken to be~~
 4 ~~delivered in the ordinary course of post —~~
- 5 ~~————— (a) to an address in the metropolitan region on the next~~
 6 ~~business day after the letter is posted; or~~
- 7 ~~————— (b) to an address outside the metropolitan region, but in the~~
 8 ~~State, on the second business day after the letter is~~
 9 ~~posted; or~~
- 10 ~~————— (c) to an address outside the State, but in Australia, on the~~
 11 ~~third business day after the letter is posted; or~~
- 12 ~~————— (d) to an address outside Australia on the 14th business day~~
 13 ~~after the letter is posted.~~
- 14 ~~————— (5) If the Minister attempts to serve a document by sending it in a~~
 15 ~~letter which is returned by the post office because the letter~~
 16 ~~cannot, for any reason, be delivered to the person to whom it is~~
 17 ~~addressed, the Minister may if, in the circumstances and having~~
 18 ~~regard to the provisions of this Act, the Minister thinks fit —~~
- 19 ~~————— (a) direct any further document to be served; or~~
- 20 ~~————— (b) direct substituted service of the document; or~~
- 21 ~~————— (c) proceed without the document being served.~~
- 22 ~~————— (6) In this section —~~
- 23 ~~————— *metropolitan region* has the same meaning as it has in the~~
 24 ~~*Planning and Development Act 2005.*~~
- 25 ~~————— [Section 274 amended: No. 26 of 1999 s. 90; No. 10 of 2001~~
 26 ~~s. 220; No. 38 of 2005 s. 13.]~~
- 27 **275A. Information about Crown land interest holders, disclosing**
- 28 ~~————— (1) In this section —~~
- 29 ~~————— *contact details* includes postal address, telephone number,~~
 30 ~~facsimile number and email address;~~
- 31 ~~————— *Crown land interest holder* means the holder of —~~

s. 275A

- 1 ~~———— (a) — a pastoral lease or other lease; or~~
2 ~~———— (b) — a licence; or~~
3 ~~———— (c) — an interest in relation to Crown land;~~
4 ~~———— **public authority** means —~~
5 ~~———— (a) — a department of the Public Service; or~~
6 ~~———— (b) — a State instrumentality; or~~
7 ~~———— (c) — a local government; or~~
8 ~~———— (d) — a body that provides to members of the public water,~~
9 ~~drainage, gas, electricity or ambulance or other~~
10 ~~emergency services; or~~
11 ~~———— (e) — a prescribed agency of the Commonwealth.~~
12 ~~———— (2) — The chief executive officer of the Department may disclose the~~
13 ~~name and contact details of a Crown land interest holder to —~~
14 ~~———— (a) — an officer or employee of a public authority for use in~~
15 ~~the performance of the public authority's functions; or~~
16 ~~———— (b) — the Director General of Mines, as defined in the *Mining*~~
17 ~~*Act 1978* section 8(1), for providing the information to~~
18 ~~applicants for, or holders of, mining tenements, as~~
19 ~~defined in that section, or to any other person who is~~
20 ~~required, under that Act, to give notice to a Crown land~~
21 ~~interest holder; or~~
22 ~~———— (c) — a prescribed person, in the circumstances and on such~~
23 ~~conditions as may be prescribed.~~
24 ~~———— (3) — For the purposes of this section, the Pastoral Lands Board may~~
25 ~~disclose the name and contact details of a pastoral lessee to the~~
26 ~~chief executive officer of the Department from the most recent~~
27 ~~return submitted by the pastoral lessee under section 113.~~
28 ~~———— (4) — Information may be disclosed under subsection (2) or (3), or~~
29 ~~provided under subsection (2)(b), despite any written law~~
30 ~~relating to confidentiality or secrecy.~~
31 ~~———— (5) — If information is disclosed, in good faith, under subsection (2)~~
32 ~~or (3), or provided under subsection (2)(b) (the *disclosure*) —~~

- 1 ~~— (a) no civil or criminal liability, or liability to be punished~~
 2 ~~for a contempt of court, is incurred in respect of the~~
 3 ~~disclosure; and~~
 4 ~~— (b) the disclosure is not to be regarded as a breach of any~~
 5 ~~duty of confidentiality or secrecy imposed by law; and~~
 6 ~~— (c) the disclosure is not to be regarded as a breach of~~
 7 ~~professional ethics or standards or as unprofessional~~
 8 ~~conduct.~~
 9 ~~— [Section 275A inserted: No. 8 of 2010 s. 15.]~~

10 **275. Regulations generally**

- 11 (1) The Governor may make regulations prescribing all matters that
 12 are required or permitted by this Act to be prescribed, or are
 13 necessary or convenient to be prescribed for giving effect to the
 14 purposes of this Act, and, in particular —
 15 (a) providing for fees generally; and
 16 (b) creating offences and providing a penalty not exceeding
 17 \$2 000~~\$1 000~~ for any offence so created; and
 18 (c) providing for the delegation under section 9(1) of
 19 powers conferred or duties imposed by this Act to
 20 convey or transfer the fee simple in Crown land; and
 21 (d) determining how improvements are to be valued for the
 22 purposes of section 35(5)(a)(ii); and
 23 (e) setting out any procedures to be followed by a local
 24 government before making a request under
 25 section 52(1); and
 26 (f) providing for the manner in which surveys of land for
 27 the purposes of this Act are to be carried out; and
 28 (g) setting out procedures to be followed by the Minister for
 29 the purposes of sections 74, 79 and 86(c); and
 30 (ga) setting out standard pastoral lease conditions; and
 31 (h) amending or supplementing, with effect from a time
 32 which is not earlier than the appointed day, the

s. 276

- 1 provisions set out in Schedule 2 for the purpose of
2 providing an effective and efficient transition from the
3 operation of the repealed Act to the operation of this
4 Act; and
- 5 (i) amending or supplementing, with effect from a time
6 which is not earlier than the appointed day, the
7 provisions set out in Schedule 3 for the purpose of
8 providing an effective and efficient transition of the
9 matters referred to in those provisions to the operation
10 of this Act.
- 11 (2) Subsection (1)(h) expires 5 years after it commences.
- 12 (3) Subsection (1)(i) expires 5 years after section 44 of the *Land*
13 *Administration Amendment Act 2000* commences.
14 [*Section 275 amended: No. 59 of 2000 s. 44.*]
- 15 **276. Regulations about fees**
- 16 Regulations may be made under section 275 prescribing fees
17 payable when application is made for —
- 18 (a) the conveyance or transfer in fee simple of, or a lease,
19 licence or profit à prendre, or the creation of a reserve,
20 over, Crown land not at the time of that application
21 released for conveyance or transfer in fee simple, lease,
22 licence, profit à prendre or creation of a reserve; or
- 23 (b) easements over Crown land; or
- 24 (c) land to be dedicated as a road; or
- 25 (d) the amalgamation of any land; or
- 26 (e) the reinstatement of any Crown land title; or
- 27 (f) such other procedure as is prescribed; or
- 28 (g) any other purpose under this Act,
- 29 and, in particular, prescribing fees payable in respect of the
30 preparation of maps, plans or other documents of any kind for
31 the purpose of any such application.

1 **277. Regulations about s. 73 advisory panel**

2 Regulations may be made under section 275 —

- 3 (a) providing for the constitution of the advisory panel
4 referred to in section 73 and requiring consultation by
5 the Minister with persons in relation to the appointment
6 of the members of that panel; and
- 7 (b) providing for the appointment or election of the
8 chairperson of that panel; and
- 9 (c) prescribing matters relating to the practice and
10 procedure of that panel; and
- 11 (d) making provision for the appointment or other provision
12 of staff for that panel; and
- 13 (e) making provision concerning remuneration payable to
14 members and staff of that panel.

15 **278. Forms, approval of etc.**

16 (1) Subject to subsection (2), the chief executive officer of the
17 Department may in writing —

- 18 (a) approve forms for the purposes of this Act and of
19 Part IIIB of the TLA; or
- 20 (b) withdraw such an approval.

21 (2) The chief executive officer of the Department must, before
22 acting under subsection (1) in respect of forms for the purposes
23 of Part IIIB of the TLA, consult the Registrar.

24 **279. Review of Act**

- 25 (1) The Minister is to carry out a review of the operation and
26 effectiveness of this Act as soon as is practicable after the
27 expiry of 5 years from the appointed day but in any event within
28 5 years and 6 months after the appointed day.
- 29 (2) The Minister is to prepare a report based on the review and is to
30 cause the report to be laid before each House of Parliament
31 within 6 years and 6 months after the appointed day.

1 **Part 12 — Repeals, transitional, savings and validation**
2 **related to *Land Act 1933***

3 [\[There are no amendments to this Part\]](#)

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

6 [\[There are no amendments to this Part\]](#)

**Part 14 — Transitional provisions for the Land and
Public Works Legislation Amendment Act 2022**

285. Returns by pastoral lessees

(1) In this section —

commencement day means the day on which the *Land and
Public Works Legislation Amendment Act 2022* section 56
comes into operation;

commencement year means the year in which the *Land and
Public Works Legislation Amendment Act 2022* section 56
comes into operation;

existing pastoral lease means a pastoral lease in existence
immediately before commencement day;

former section 113 means section 113 as in force immediately
before commencement day;

new section 113 means section 113 as amended by the *Land
and Public Works Legislation Amendment Act 2022* section 56.

(2) The first return required to be submitted under new section 113
by the lessee under an existing pastoral lease is the return to be
submitted on or before the due date, as defined in subsection (1)
of that section, in the second year after the commencement year.

(3) Despite the *Land and Public Works Legislation Amendment
Act 2022* section 56, former section 113 continues to apply so as
to require a return to be submitted by the lessee under an
existing pastoral lease in relation to, and to the period of
12 months before, 30 June in the commencement year.

286. Annual rent for pastoral leases

(1) In this section —

commencement day means the day on which the *Land and
Public Works Legislation Amendment Act 2022* section 60
comes into operation;

s. 286

- 1 (2) The annual rent for a pastoral lease that applies immediately
2 before commencement day continues to apply to the lease until
3 a new determination under section 122H(1) or 123A(4)(b)
4 comes into effect in respect of the lease.
- 5 (3) Subsection (2) is subject to sections 112A(2), 127, 134(8),
6 141(3) and 254.
- 7 (4) A determination under section 124(3) that applies to a pastoral
8 lease immediately before commencement day —
- 9 (a) is taken to be the permit rent (as defined in
10 section 124(1)) for the lease; and
- 11 (b) continues to apply to the lease until a new determination
12 under section 122I(2) or 124(3) comes into effect in
13 respect of the lease.

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Schedule 1 — Divisions of State

[Section 6]

[\[There are no amendments to this Schedule\]](#)

**Schedule 2 — Transitional, savings and validation
provisions related to *Land Act 1933***

[Section 281(2)]

[\[There are no amendments to this Schedule\]](#)

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

[Heading inserted: No. 59 of 2000 s. 47.]

[s. 284]

[\[There are no amendments to this Schedule\]](#)

Part 3 — Public Works Act 1902 amended

[The following text comprises various provisions of the Public Works Act 1902 showing proposed amendments in track changes.]

Part I — Preliminary

[Heading inserted: No. 19 of 2010 s. 43(3)(a).]

1. Short title

This Act may be cited as the *Public Works Act 1902*¹.

[Section 1 inserted: No. 123 of 1984 s. 3; amended: No. 52 of 1995 s. 5; No. 31 of 1997 s. 39.]

[Heading deleted: No. 19 of 2010 s. 43(3)(b).]

2. Terms used

In this Act, if not inconsistent with the context —

Crown land means and includes all land of the Crown, whether designated for any public purpose or not, except land granted or agreed to be granted in fee simple, or held or occupied under the Crown by lease or licence, or for any other estate or interest, or land reserved and classified as a class A reserve under the *Land Administration Act 1997*, or any national park referred to in section 6(3)(b) of the *Conservation and Land Management Act 1984* or land in relation to which native title exists;

Government work means any work constructed or intended to be constructed by or under the control of the Crown, or the Governor, or the Government of Western Australia, or any Minister of the Crown;

hospital has the meaning given in the *Health Services Act 2016* section 6;

judge means a judge of the Supreme Court;

local authority means any local government or any other persons or body, however designated, having authority under any statute to undertake the construction of any public work;

- 1 ~~local work means a work constructed or intended to be~~
2 ~~constructed by or under the control of a local authority;~~
- 3 *Minister* as regards all public works other than railways, means
4 the Minister of the Crown for the time being administering this
5 Act but as regards railways, *Minister* means the Minister of the
6 Crown for the time being administering the *Government*
7 *Railways Act 1904*;
- 8 *public reserve* means a reserve under the *Land Administration*
9 *Act 1997*;
- 10 *Public Transport Authority* means the Public Transport
11 Authority of Western Australia established by the *Public*
12 *Transport Authority Act 2003* section 5;
- 13 public work means a work, facility, building, structure or other
14 thing that is —
- 15 (a) declared, or of a class declared, under section 2A to be a
16 public work; or
- 17 (b) of a class described in Schedule 1;
- 18 ~~public work and work mean and include —~~
- 19 ~~(a) every work which the Crown, or the Governor, or the~~
20 ~~Government of Western Australia, or any Minister of~~
21 ~~the Crown, or any local authority is authorised to~~
22 ~~undertake under this or any other Act;~~
- 23 ~~(b) any railway authorised by special Act or any work~~
24 ~~whatsoever authorised by any Act;~~
- 25 ~~(c) tramways;~~
- 26 ~~(d) any works for or in connection with the supply of water~~
27 ~~to, or for or in connection with the sewerage of, any city,~~
28 ~~town, or district, including all reticulations;~~
- 29 ~~(e) buildings for the occupation of either or both of the~~
30 ~~Houses of Parliament or for public offices;~~
- 31 ~~(f) hospitals, medical clinics, hostels and institutions~~
32 ~~including residences for staff, court houses, gaols,~~
33 ~~watch houses, lock ups, police barracks, or quarters;~~

s. 2

- 1 ~~— (g) observatory;~~
2 ~~— (h) public schools or any other schools authorised to be~~
3 ~~established wholly or in part at the public cost by any~~
4 ~~Act in force for the time being, universities, colleges,~~
5 ~~technical and other educational institutions, including~~
6 ~~residences or hostels for teachers or students, and~~
7 ~~play grounds;~~
8 ~~— (i) public libraries, mechanics' or miners' institutes,~~
9 ~~agricultural halls, or schools of art;~~
10 ~~— (j) public housing;~~
11 ~~— (k) wharves, ferries, piers, jetties and bridges;~~
12 ~~— (l) parks or gardens or grounds for public recreation or~~
13 ~~places for bathing, and for the reclamation of land for or~~
14 ~~in connection therewith;~~
15 ~~— (m) public cemeteries;~~
16 ~~— (n) public wells or works for the conservation of water;~~
17 ~~— (o) the protection and preservation of any cave or place of~~
18 ~~scientific or historical interest;~~
19 ~~— (p) the protection and preservation of indigenous flora and~~
20 ~~fauna;~~
21 ~~— (q) the establishment of public abattoirs;~~
22 ~~— (r) harbours and ports, including the provision of storage,~~
23 ~~handling and wharfrage areas and other facilities~~
24 ~~normally ancillary to the conduct of shipping operations,~~
25 ~~break waters, leading marks, navigational aids, docks,~~
26 ~~slips, the alteration or improvement of channels,~~
27 ~~waterways and rivers, the protection of foreshores and~~
28 ~~banks, the provision of new channels and related works,~~
29 ~~including the landing and disposal of silt;~~
30 ~~— (s) quarries or works for procuring stone, gravel, earth, or~~
31 ~~any other material required for the construction of, or~~
32 ~~any purpose connected with any public work as~~
33 ~~aforesaid;~~

- 1 ~~——— (t) the procuring from land (other than Crown lands and~~
2 ~~public reserves) of timber, stone, gravel, earth and any~~
3 ~~other material required by or for the State for or in~~
4 ~~connection with the carrying on of any industrial or~~
5 ~~other undertaking or activity which is being carried on~~
6 ~~by or for the State under any law authorising the same;~~
- 7 ~~——— (u) buildings and structures required for fire brigade~~
8 ~~purposes;~~
- 9 ~~——— (v) the establishment and the extension by the Governor of~~
10 ~~sites for towns;~~
- 11 ~~——— (w) the establishment and the extension by the Governor of~~
12 ~~agricultural research stations;~~
- 13 ~~——— (x) drainage works in connection with any city, town, or~~
14 ~~district, and the improvement of rivers, watercourses,~~
15 ~~lakes, or inlets, including deepening, widening,~~
16 ~~straightening or otherwise altering, and disposal of silt;~~
- 17 ~~——— (y) any building or structure of whatsoever kind which, in~~
18 ~~the opinion of the Governor, is necessary for any public~~
19 ~~purpose;~~
- 20 ~~——— (za) any road, stock route, viaduct, or canal;~~
- 21 ~~——— (zb) any work incidental to any of the aforesaid works;~~
- 22 ~~——— (zc) any land required for or in connection with any work as~~
23 ~~aforesaid;~~
- 24 ~~——— (zd) any survey in connection with any proposed public~~
25 ~~work;~~
- 26 **railway:** see section 95;
- 27 ~~——— **Registrar** means the Registrar of Titles under the *Transfer of*~~
28 ~~*Land Act 1893*;~~
- 29 **river** means a river, stream, creek, or watercourse, in which
30 water flows permanently or intermittently;
- 31 **road:** see section 84;

s. 2A

1 *special Act* means any Act of the Parliament of Western
2 Australia with which this Act is incorporated, authorising the
3 construction of a public work;

4 *surveyor* means a surveyor licensed under the *Licensed*
5 *Surveyors Act 1909*.

6 *[Section 2 amended: No. 35 of 1933 s. 3; No. 41 of 1945 s. 2;*
7 *No. 48 of 1953 s. 3; No. 19 of 1972 s. 2; No. 27 of 1974 s. 19;*
8 *No. 67 of 1979 s. 35; No. 112 of 1984 s. 27; No. 7 of 1991 s. 3;*
9 *No. 103 of 1994 s. 18; No. 52 of 1995 s. 6; No. 14 of 1996 s. 4;*
10 *No. 79 of 1996 s. 28; No. 31 of 1997 s. 40; No. 31 of 2003*
11 *s. 160; No. 28 of 2006 s. 334; No. 19 of 2010 s. 51; No. 11 of*
12 *2016 s. 300.]*

13 **2A. Governor may declare public work**

14 (1) The Governor may, by order, declare a work, facility, building,
15 structure or other thing specified in the order, or of a class
16 specified in the order, to be a public work.

17 (2) An order under subsection (1) is subsidiary legislation for the
18 purposes of the *Interpretation Act 1984*.

19 [3. Omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]

20 **4. Governor may make regulations for conduct of officers**

21 The Governor may make regulations for the conduct of all
22 persons employed by the Government under this Act, or in or
23 about any works which may be constructed by the Government
24 under the authority thereof.

25 **5. Minister for Works**

26 *[(1), (2) deleted]*

27 (3) The Minister of the Crown for the time being administering this
28 Act shall for the purposes of this Act become and continue to be
29 a body corporate under the name of the “Minister for Works”
30 with perpetual succession and a common seal; and by that name

shall be capable of suing and being sued, acquiring, holding, letting and taking land on lease, and alienating real and personal property, and of doing and suffering all such other acts and things as may be necessary or expedient for carrying out the purposes of this Act.

(4) The functions of the Minister are —

(a) to undertake, construct, provide, alter, protect, repair or manage any public work; and

(b) for the purposes of paragraph (a) —

(i) to acquire, hold, take on lease, exchange, amalgamate, subdivide, alter, develop, improve or dispose of land; and

(ii) to lease, or grant easements or other interests in or rights over, land acquired, held or taken on lease under subparagraph (i);

and

(c) any other functions conferred on the Minister under this Act or any other Act.

(5) The Minister has power to do all things necessary or convenient for or in connection with the performance of the Minister's functions.

[Section 5 amended: No. 35 of 1933 s. 4; No. 41 of 1945 s. 3; No. 27 of 1974 s. 20.]

5A. Delegation by Minister

The Minister may, in writing and either generally or as otherwise provided by the instrument of delegation,~~either generally or as otherwise provided by the notice concerned, by notice published in the *Gazette*~~ delegate to —

(a) any officer of the Public Service of the State under the administrative control of the Minister and assisting the Minister~~him~~ in the administration of this Act; or

s. 5A

- 1 (b) the Minister of the Crown to whom the administration of
2 the *Land Administration Act 1997* is for the time being
3 committed by the Governor; or
- 4 (c) the Minister of the Crown to whom the administration of
5 the *Main Roads Act 1930* is for the time being
6 committed by the Governor; or
- 7 (d) the Minister of the Crown to whom the administration of
8 the *Electricity Corporations Act 2005* is for the time
9 being committed by the Governor; or
- 10 [(da) *deleted*]
- 11 (db) the DBNGP Land Access Minister established by
12 section 29(1) of the *Dampier to Bunbury Pipeline*
13 *Act 1997*; or
- 14 (e) the Minister of the Crown to whom the administration of
15 the *Water Services Act 2012* is for the time being
16 committed by the Governor; or
- 17 (ea) the Minister of the Crown to whom the administration of
18 the *Water Agencies (Powers) Act 1984* is for the time
19 being committed by the Governor; or
- 20 (f) the Treasurer; or
- 21 (g) the Minister of the Crown to whom the administration of
22 the *Marine and Harbours Act 1981* is for the time being
23 committed by the Governor,
- 24 any of [the Minister's](#)~~his~~ powers or duties under this Act, except
25 this power of delegation.
- 26 [Section 5A inserted: No. 126 of 1987 s. 38; amended: No. 7 of
27 1991 s. 4; No. 32 of 1994 s. 19; No. 59 of 1994 s. 3; No. 89 of
28 1994 s. 109; No. 73 of 1995 s. 188; No. 31 of 1997 s. 41 and
29 141; No. 53 of 1997 s. 52; No. 58 of 1999 s. 107(a); No. 24 of
30 2000 s. 35(1); No. 18 of 2005 s. 139; No. 38 of 2007 s. 198(2);
31 No. 25 of 2012 s. 225(2).]

5B. Subdelegation of delegated power or duty

(1) A Minister of the Crown to whom a power or duty has been delegated under section 5A may, in writing and either generally or as otherwise provided by the instrument of delegation, ~~either generally or as otherwise provided by the notice concerned, by notice published in the *Gazette*~~ delegate —

(a) in the case of the Minister of the Crown referred to in section 5A(b), to the chief executive officer of the department principally assisting that Minister of the Crown in the administration of the *Land Administration Act 1997* or to any other officer of that department; or

(b) in the case of the Minister of the Crown referred to in section 5A(c), to the Commissioner within the meaning of the *Main Roads Act 1930* or to any officer of that Commissioner; or

(c) in the case of the Minister of the Crown referred to in section 5A(d), to a body established by the *Electricity Corporations Act 2005* section 4(1) or to an officer of such a body; or

[(ca) *deleted*]

(cb) in the case of the DBNGP Land Access Minister established by section 29(1) of the *Dampier to Bunbury Pipeline Act 1997*, to the chief executive officer of the department principally assisting the DBNGP Land Access Minister in the administration of Part 4 of that Act or to any other officer of that department; or

(d) in the case of the Minister of the Crown referred to in section 5A(e), to the holder of a licence granted under the *Water Services Act 2012* section 11 or to any officer or employee of the holder of the licence; or

(da) in the case of the Minister of the Crown referred to in section 5A(ea), to the chief executive officer of the department principally assisting that Minister in the administration of the *Water Agencies (Powers) Act 1984* or an officer of that department; or

s. 6

- 1 (db) in the case of the Minister of the Crown referred to in
 2 section 5A(f), to the chief executive officer of the
 3 department principally assisting that Minister in the
 4 administration of the *Financial Management Act 2006*
 5 or to any other officer of that department; or
 6 (e) in the case of the Minister of the Crown referred to in
 7 section 5A(g), to the chief executive officer of the
 8 department principally assisting that Minister of the
 9 Crown in the administration of the *Marine and*
 10 *Harbours Act 1981* or to any other officer of that
 11 department,

12 the whole or any part of the power or duty.

- 13 (2) A Minister of the Crown shall as soon as is practicable after
 14 exercising the power of delegation conferred ~~on him~~ by
 15 subsection (1) transmit to the Minister a copy of the instrument
 16 ~~notice~~ by which that power was exercised.

17 [Section 5B inserted: No. 126 of 1987 s. 38; amended: No. 59 of
 18 1994 s. 4; No. 89 of 1994 s. 109; No. 73 of 1995 s. 188; No. 31
 19 of 1997 s. 141; No. 53 of 1997 s. 52; No. 58 of 1999 s. 107(b);
 20 No. 24 of 2000 s. 14(13) and 35(4); No. 18 of 2005 s. 139;
 21 No. 77 of 2006 Sch. 1 cl. 140(1); No. 38 of 2007 s. 198(3);
 22 No. 25 of 2012 s. 225(3); No. 25 of 2013 s. 45.]

23 **6. Contracts etc. of Minister to devolve on Minister's**
 24 **successor** ~~Contracts etc. of Minister to devolve on his~~
 25 ~~successor~~

26 Where the Minister enters into any contract or agreement, under
 27 seal or otherwise, or makes any lease or grants any easement,
 28 under this or any other Act, all the rights and liabilities in
 29 respect thereof, and all benefit and advantage thereunder, or
 30 interest therein, shall vest in and be enforceable by and against
 31 the Minister's ~~his~~ successor or successors in office, without the
 32 necessity of any transfer or assignment whatsoever.

1 **7. Appointment of engineers and other officers**

2 (1) The Governor may create such offices, and appoint such
3 engineers, architects, clerks, and other officers and persons as
4 may be necessary for the administration of this Act, and for the
5 execution of all Government works; and may assign such
6 functions as ~~the Governor~~^{he} shall think fit to such persons
7 respectively, all of whom shall hold office at the Governor's
8 pleasure, and shall receive such salaries as Parliament
9 determines.

10 (2) Notwithstanding anything in subsection (1), to the extent that
11 there is in the case of a person who is appointed under that
12 subsection to be an engineer, architect, clerk or other officer or
13 other person and who is a member of the Senior Executive
14 Service within the meaning of the *Public Sector Management*
15 *Act 1994* an inconsistency between this Act and that Act that
16 Act shall prevail.

17 *[Section 7 amended: No. 113 of 1987 s. 32.]*

18 **[8, 9.** *Deleted: No. 98 of 1985 s. 3.]*

1 **Part IA — Western Australian Building Management**
2 **Authority**

3 *[Heading inserted: No. 123 of 1984 s. 4; amended: No. 59 of*
4 *1994 s. 9.]*

5 **9A. Terms used**

6 In this Part, unless the contrary intention appears —

7 **Account** means the Western Australian Building Management
8 Authority Account continued in existence by section 9E(1);

9 **authorised buildings** means buildings or structures which are
10 public works and works ancillary to any such buildings or
11 structures;

12 **borrow** includes —

- 13 (a) reborrow; and
14 (b) obtain credit; and
15 (c) arrange for financial accommodation;

16 **Building Management Authority** means the body corporate
17 called the Western Australian Building Management Authority
18 continued in existence by section 9B(1).

19 *[Section 9A inserted: No. 123 of 1984 s. 4; amended: No. 59 of*
20 *1994 s. 5.]*

21 **9B. Western Australian Building Management Authority**
22 **continued as body corporate**

23 (1) From the commencement of the *Public Works Amendment*
24 *Act 1994*¹, the Western Australian Building Authority
25 previously established by this section continues in existence as a
26 body corporate but is called the Western Australian Building
27 Management Authority.

28 (1a) The change of name of the body corporate does not affect its
29 legal identity.

- 1 (2) The Building Management Authority —
- 2 (a) consists of the Minister for Works referred to in
- 3 section 5(3); and
- 4 (b) under its corporate name —
- 5 (i) has perpetual succession and a common seal; and
- 6 (ii) may sue and be sued in any court; and
- 7 (iii) subject to this Part, is capable of doing and
- 8 suffering all such acts and things as bodies
- 9 corporate may lawfully do and suffer.
- 10 (3) The common seal of the Building Management Authority
- 11 shall —
- 12 (a) be kept in such custody as the Building Management
- 13 Authority directs; and
- 14 (b) not be used except as authorised by the Building
- 15 Management Authority.
- 16 (4) When a document purporting to bear the common seal of the
- 17 Building Management Authority is produced before any court,
- 18 judge or person acting judicially, that court, judge or person
- 19 shall, unless the contrary is proved, presume that —
- 20 (a) that document bears that common seal; and
- 21 (b) that common seal was duly affixed to that document.
- 22 (5) The Building Management Authority is an agent of the Crown
- 23 in right of the State and, except as provided in section 9C(7),
- 24 enjoys the status, immunities and privileges of the Crown.
- 25 *[Section 9B inserted: No. 123 of 1984 s. 4; amended: No. 59 of*
- 26 *1994 s. 6 and 9.]*

27 **9C. Functions and powers of Building Management Authority**

- 28 (1) The functions of the Building Management Authority are —
- 29 (a) to acquire, hold, lease, take on lease, dispose of,
- 30 exchange, provide, construct, alter, protect or manage

s. 9C

- 1 authorised buildings, and to acquire, hold, take on lease
2 or dispose of land for that purpose; and
- 3 (b) to borrow moneys for the purpose of the acquisition,
4 provision, construction, alteration, protection or
5 management of authorised buildings and for the purpose
6 of acquiring, holding or taking on lease land in
7 connection with that acquisition, provision, construction,
8 alteration, protection or management; and
- 9 (c) generally to develop land acquired, held or taken on
10 lease by it for the purposes of this Part.
- 11 (2) Subject to this Part, the Building Management Authority may,
12 with the approval of the Treasurer, borrow moneys from any
13 person in the performance of the functions of the Building
14 Management Authority on such terms and conditions and in
15 such manner as the Treasurer approves.
- 16 (3) The Treasurer may, in the name and on behalf of the Crown in
17 right of the State, guarantee —
- 18 (a) repayment of; and
19 (b) payment of interest on, and of brokerage, commission,
20 fees and other expenses incurred in respect of,
- 21 moneys borrowed by the Building Management Authority under
22 subsection (2), and any liability of the Crown arising out of any
23 such guarantee is to be charged to moneys in the Consolidated
24 Account, which to the necessary extent is hereby appropriated
25 accordingly.
- 26 (4) A guarantee given under subsection (3) shall be in such form
27 and subject to such terms and conditions as the Treasurer
28 determines and, without limiting the generality of the foregoing,
29 shall be subject to a condition that the lender shall not, without
30 the consent in writing of the Treasurer, assign or encumber the
31 benefit of the guarantee.

- 1 (5) The Building Management Authority may —
- 2 (a) subdivide, and grant easements and other interests in or
- 3 rights over; and
- 4 (b) provide, arrange for the provision of or cause to be
- 5 provided energy resources, roads, sewerage, drainage or
- 6 water or any other resource or service conducive to the
- 7 development of,
- 8 land acquired, held or taken on lease by it in the performance of
- 9 its functions.
- 10 (6) The Building Management Authority has power to do all things
- 11 necessary or convenient for or in connection with the
- 12 performance of its functions.
- 13 (7) Nothing in this Part is to be read as conferring on the Building
- 14 Management Authority in the performance of its functions any
- 15 immunity from the operation of any written law.
- 16 *[Section 9C inserted: No. 123 of 1984 s. 4; amended: No. 6 of*
- 17 *1993 s. 11; No. 59 of 1994 s. 7 and 9; No. 49 of 1996 s. 64;*
- 18 *No. 77 of 2006 s. 4.]*

19 **9D. Use of staff and facilities of departments, agencies and**

20 **instrumentalities**

- 21 The Building Management Authority may by arrangement made
- 22 between it and the Minister concerned, and on such terms and
- 23 conditions as may be mutually arranged by it with that Minister
- 24 and, if appropriate, with the Public Sector Commissioner, make
- 25 use, either full-time or part-time, of —
- 26 (a) the services of any person for the time being holding or
- 27 acting in any office under Part 3 of the *Public Sector*
- 28 *Management Act 1994* or in a State agency or
- 29 instrumentality or otherwise in the service of the Crown
- 30 in right of the State; or

s. 9E

- 1 (b) any facilities of a department or of a State agency or
2 instrumentality.

3 *[Section 9D inserted: No. 123 of 1984 s. 4; amended: No. 113*
4 *of 1987 s. 32; No. 32 of 1994 s. 19; No. 59 of 1994 s. 9; No. 39*
5 *of 2010 s. 89.]*

6 **9E. Funds of Building Management Authority**

7 (1) From the commencement of the *Public Works Amendment*
8 *Act 1994*¹, the Western Australian Building Authority Account
9 previously established by this section continues in existence but
10 is called the Western Australian Building Management
11 Authority Account.

12 (2) The funds available for the purpose of enabling the Building
13 Management Authority to perform its functions under this Part
14 consist of —

- 15 (a) moneys from time to time appropriated by Parliament;
16 and
17 (b) all moneys borrowed by the Building Management
18 Authority under this Part; and
19 (c) the proceeds of sales by the Building Management
20 Authority of any of its assets; and
21 (d) rents derived from authorised buildings of the Building
22 Management Authority leased by it to other persons; and
23 (e) interest earned on moneys temporarily invested under
24 subsection (5); and
25 (f) any moneys, other than moneys referred to in
26 paragraphs (a), (b), (c), (d) and (e), lawfully received by,
27 made available to or payable to the Building
28 Management Authority.

29 (3) The funds referred to in subsection (2) shall be credited to the
30 Account.

- 1 (4) The Building Management Authority shall pay from the funds
2 standing to the credit of the Account —
- 3 (a) interest on and repayments of moneys borrowed by the
4 Building Management Authority under this Part, and
5 brokerage, commission, fees and other expenses
6 incurred in connection with that borrowing; and
- 7 (b) to be credited to the Consolidated Account, an amount
8 equal to the amount of any moneys charged to the
9 Consolidated Account in meeting any liability of the
10 Crown referred to in section 9C(3); and
- 11 (c) the expense of acquiring, holding, taking on lease,
12 providing, constructing, altering, protecting or managing
13 authorised buildings and of acquiring, holding or taking
14 on lease land or any interest therein for the purpose of
15 that acquisition, provision, alteration, protection or
16 management; and
- 17 (d) all expenditure, other than expenditure referred to in
18 paragraphs (a), (b) and (c), lawfully incurred by the
19 Building Management Authority in the performance of
20 its functions under this Part.
- 21 (5) The Building Management Authority may, with the approval of
22 the Treasurer, temporarily invest any moneys standing to the
23 credit of the Account which are not immediately required for
24 the purposes of this Part in one or more of the ways in which
25 moneys standing to the credit of the Public Bank Account may
26 be invested under the *Financial Management Act 2006*.
- 27 (6) Moneys standing to the credit of the Account shall be applied by
28 the Building Management Authority only for the purposes of
29 this Part.
- 30 (7) The Treasurer shall in each financial year include in the
31 Consolidated Account Estimates of Revenue and Expenditure in

s. 9F

1 respect of the Building Management Authority a sum of money
2 (whether nominal or otherwise) for the purposes of this Part.

3 *[Section 9E inserted: No. 123 of 1984 s. 4; amended: No. 98 of*
4 *1985 s. 3; No. 6 of 1993 s. 11; No. 59 of 1994 s. 8 and 9; No. 49*
5 *of 1996 s. 64; No. 28 of 2006 s. 335; No. 77 of 2006 s. 4*
6 *and Sch. 1 cl. 140(2).]*

7 **9F. Delegation by Building Management Authority**

8 (1) The Building Management Authority may, either generally or as
9 otherwise provided by the instrument of delegation, by writing
10 signed by it delegate to any person for the time being holding or
11 acting in an office referred to in section 9D(a) of whose services
12 it ~~he~~ makes use under section 9D all or any of the functions
13 imposed on the Building Management Authority by this Part.

14 (2) For the purposes of this Part, the performance of a function by a
15 delegate under this section shall be deemed to be the
16 performance of the function by the Building Management
17 Authority.

18 *[Section 9F inserted: No. 123 of 1984 s. 4; amended: No. 59 of*
19 *1994 s. 9.]*

20 **9G. Financial Management Act 2006 and Auditor General**
21 **Act 2006, application of**

22 The provisions of the *Financial Management Act 2006* and the
23 *Auditor General Act 2006* regulating the financial
24 administration, audit and reporting of statutory authorities apply
25 to and in respect of the Building Management Authority and its
26 operations.

27 *[Section 9G inserted: No. 98 of 1985 s. 3; amended: No. 59 of*
28 *1994 s. 9; No. 77 of 2006 Sch. 1 cl. 140(3).]*

1 *[9H. Deleted: No. 98 of 1985 s. 3.]*

2 **9I. Regulations**

3 The Governor may make regulations prescribing all matters that
4 are required or permitted by this Part to be prescribed, or are
5 necessary or convenient to be prescribed, for giving effect to the
6 purposes of this Part.

7 *[Section 9I inserted: No. 123 of 1984 s. 4.]*

8 *[Part IB (s. 9J-9S) deleted: No. 31 of 1997 s. 42.]*

9

Part II — Authorising public works

[Heading amended: No. 31 of 1997 s. 43.]

[Heading deleted: No. 74 of 2003 s. 98.]

10. Entry on land required for a public work

- (1) Division 4 of Part 9 of the *Land Administration Act 1997* (dealing with the entry on land required for a public work) applies as if a reference in that Division to “the Minister” were a reference to the Minister responsible for the administration of this Act.

- (2) Part 10 of the *Land Administration Act 1997* (dealing with compensation) applies in relation to an act done under subsection (1) as if it had been done under that Act.

[Section 10 inserted: No. 31 of 1997 s. 44.]

11. Governor may authorise railways

- (1) The Governor may, by order published in the *Gazette*, authorise the Public Transport Authority to undertake, construct or provide a railway.

- (2) The authorisation conferred by an order under subsection (1) is subject to section 96.

- (3) The Governor may, by order published in the *Gazette*, amend or revoke an order under subsection (1).

- (4) An order under subsection (1) or (3) is not subsidiary legislation for the purpose of the *Interpretation Act 1984*.

~~**11. Governor may authorise works**~~

~~The Governor, by Order in Council, may authorise the Minister to undertake, construct, or provide any public work except as to railways, in which case the authorisation may be given to the Public Transport Authority and is subject to section 96, and~~

~~such authorisation shall be deemed an authority given by and under this Act.~~

~~[Section 11 amended: No. 31 of 2003 s. 161.]~~

[Heading deleted: No. 31 of 1997 s. 45(2).]

[12-24. Deleted: No. 31 of 1997 s. 45(1).]

[Heading deleted: No. 31 of 1997 s. 45(2).]

[25. Deleted: No. 31 of 1997 s. 45(1).]

[Heading deleted: No. 31 of 1997 s. 45(2).]

[26. Deleted: No. 31 of 1997 s. 45(1).]

[Heading deleted: No. 31 of 1997 s. 45(2).]

[27. Deleted: No. 31 of 1997 s. 45(1).]

[Heading deleted: No. 31 of 1997 s. 46(2).]

28. Power may be exercised after initiation of a public work

A power under this Act that may be exercised in relation to a public work, including a power to close a road or street, may be exercised at any time when it is found convenient or desirable to exercise it for the construction, or during the existence, of the public work concerned.

[Section 28 inserted: No. 31 of 1997 s. 46(1).]

[Heading deleted: No. 31 of 1997 s. 47(2).]

[29-33B. Deleted: No. 31 of 1997 s. 47(1).]

[Part IIA: s. 33G-33L deleted: No. 52 of 1995 s. 10;
s. 33C-33F deleted: No. 31 of 1997 s. 48.]

[Part III: s. 40 deleted: No. 19 of 1972 s. 7;
s. 34-39, 41-81 deleted: No. 31 of 1997 s. 49.]

Part IV — Surveys

82. Powers of entry on lands etc. for survey purposes

(1) For all the purposes of this Act the Minister, the Minister for the time being administering the *Land Administration Act 1997*, or any local authority, or any person authorised either specially or generally by any such person or authority —

- (a) may enter or re-enter from time to time upon any land, with such assistants as the person or authority ~~he~~-thinks fit, for the purpose of making any survey;
- (b) may fix or set up therein trigonometrical stations, survey pegs, marks, or poles, and the same from time to time alter, remove, inspect, reinstate, and repair;
- (c) may dig and bore into the land so as to ascertain the nature of the soil, and set out the lines of any works thereon;
- (d) may do all things necessary for such survey in accordance with any regulations for the time being, or for any inspection, repair, or alteration thereof.

(2) When practicable, 48 hours' notice shall be given to the owner or occupier of the land of the intention to enter thereon, and the authority under which the person entering claims to enter or has entered on such land shall, if required by such owner or occupier, be produced and shown.

[Section 82 amended: No. 27 of 1974 s. 21; No. 31 of 1997 s. 141.]

83. Penalty for destroying survey marks etc.

Every person who, without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any surveyor, or other person under the authority of the last preceding section, shall be liable, on summary conviction, for the first offence to a penalty not exceeding \$40, and for any

1 subsequent offence to a penalty not exceeding \$200; and every
2 person who wilfully obstructs any such surveyor or other person
3 or ~~his~~ their assistants in carrying on such survey shall, for every
4 such offence, be liable to a penalty not exceeding \$100.

5 *[Section 83 amended: No. 41 of 1966 s. 11.]*

Part IVA — Investigations for water

[Heading inserted: No. 48 of 1953 s. 6.]

83A. Terms used; power of entry

(1) In this Part —

authorised person means —

- (a) the Minister, a Minister for the time being administering any Act relating to water supply, and any local authority; and
- (b) a person authorised, whether generally or specially to carry out testing work, by one of those Ministers or a local authority;

testing work means work which in the opinion of an authorised person is necessary for general investigation for water supply purposes, and includes, without limiting the generality of the foregoing, the carrying out of tests, gaugings, borings, the construction of gauging weirs, the sinking of shafts, the digging of trenches and other incidental work and things used for or in connection with that work.

(2) An authorised person may from time to time lawfully enter upon land with such assistants and things as the authorised person ~~he~~-thinks fit for the purpose and carry out testing work and alter, remove, inspect, reinstate and repair testing work upon the land.

(3) Where an authorised person intends to enter upon land the authorised person ~~he~~-shall, if it is practicable, give to the owner or occupier of the land at least 48 hours' notice of their ~~his~~ intention, and if required by the owner or occupier shall produce to the owner or occupier their ~~him his~~-authority to enter the land.

[Section 83A inserted: No. 48 of 1953 s. 6; amended: No. 27 of 1974 s. 22.]

83B. Offences

- (1) A person who wilfully and unlawfully interferes with, alters, takes, injures, or destroys, testing work or part of it commits an offence.

Penalty: \$40 for a first offence; and \$200 for a subsequent offence.

- (2) A person who wilfully and unlawfully obstructs an authorised person or the authorised person's ~~his~~ assistants in doing anything which the authorised person ~~he~~ is authorised under this Part to do commits an offence.

Penalty: \$100.

[Section 83B inserted: No. 48 of 1953 s. 6; amended: No. 41 of 1966 s. 12; No. 19 of 2010 s. 51.]

83C. Compensation

- (1) An authorised person or the authorised person's ~~his~~ assistants shall do as little damage as is practicable in exercising the powers conferred by this Part.

- (2) Where within one year of the exercise of a power conferred by this Part, a person suffers damage of which the exercise of the power is the proximate cause, the person ~~he~~ is entitled to compensation for the damage from the Minister or the local authority by whom, or by whose direction, the power is exercised, if within 30 days of the occurrence or commencement of the damage or within 12 months where notice of intention to enter the land was not given to the owner or occupier as required by section 83A(3) the person ~~he~~ serves on the Minister or local authority a written claim for compensation for the damage.

- (3) Subject to subsection (2), a claim shall be made and compensation assessed in accordance with Part 10 of the *Land Administration Act 1997* as if a reference in that Part to the acquiring authority were a reference to the Minister or local authority.

s. 83C

- 1 (4) The Minister or local authority shall offer to negotiate with the
2 occupier of, or the proprietor of any interest in, the land affected
3 by an act under this Act for the payment of compensation for
4 any damage caused, or expected to be caused, by the act, and a
5 person who enters into such an agreement shall not be entitled
6 to claim compensation for that damage under subsection (2).

7 *[Section 83C inserted: No. 48 of 1953 s. 6; amended: No. 31 of*
8 *1997 s. 50; No. 31 of 2003 s. 162.]*

Part V — Roads, rivers, and bridges

84. Term used: road

Throughout this Act, the word **road** means a public highway, whether carriage-way, bridle-path, or footpath, and unless repugnant to the context, includes all roads which have been or may hereafter be set apart, defined, proclaimed, or declared roads under any law or authority for the time being in force, and all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging, upon, and within the limits of the road, and includes arable soil of every road.

85. Roads vested in the Crown

The soil of all roads is hereby declared to be and is hereby vested in the Crown, including, in the case of Government roads, all materials and things of which such roads are composed, or which are capable of being used for the purpose thereof, and are placed or laid upon any such roads.

86. Construction and repair of roads and declaration of Government roads

- (1) The Minister may construct or repair any road within any part of the State, but such road shall not, by reason of such construction or repair, become a Government road if at the time of such construction or repair it is within the limits of a local government district.
- (2) The Governor may, by Order in Council duly gazetted, declare that any road or part thereof shall be, or cease to be, a Government road, and such road or part thereof shall become or, as the case may be, shall cease to be a Government road accordingly.
- (3) The Governor may in like manner declare that any Government road or any part thereof shall be under the control of any local government, and thereupon such road or part thereof shall cease to be a Government road.

s. 87

1 (4) The powers hereby conferred may be exercised from time to
2 time, and any Order in Council made hereunder may be revoked
3 or altered, and any road declared to be a Government road may
4 again be declared to be within the control of a local government,
5 and any such road may again be declared to be a Government
6 road, as often as occasion shall require.

7 (5) For the purpose of making or repairing any Government or
8 other road the Minister shall have all the powers and authorities
9 which, by the *Roads Act 1902*², are given to or conferred upon a
10 road board, and shall also have power to close any road pending
11 repairs or in the interests of public safety.

12 [Section 86 amended: No. 14 of 1996 s. 4.]

13 **87. Government roads under exclusive care of Minister**

14 (1) Government roads shall be under the exclusive control and
15 management of the Minister.

16 (2) In respect of all Government roads, and of all bridges and other
17 public works connected therewith, the Minister may make all
18 such local laws as any local government may for the time being
19 have power to make in connection with any road within its
20 district, and may impose a penalty not exceeding \$40 for the
21 neglect or breach of any such local law.

22 [Section 87 amended: No. 41 of 1966 s. 13; No. 14 of 1996
23 s. 4.]

24 **88. Local laws**

25 In respect to local laws made under the last preceding section
26 the following provisions shall apply:

- 27 (a) A copy of the *Government Gazette* containing any such
28 local law shall be evidence in all courts of the same
29 having been duly made under the authority of this Act.
30 (b) A copy of all local laws having special reference to
31 bridges and jetties shall be conspicuously displayed and
32 maintained, in a clearly legible condition, at each and

1 every bridge and jetty to which such local laws have
2 reference.

3 (c) Printed copies of all local laws having reference to the
4 traffic on roads generally or on any one road in
5 particular shall be on sale to every person applying for
6 the same, at a price of not more than 10 cents.

7 *[Section 88 amended: No. 41 of 1966 s. 14; No. 57 of 1997*
8 *s. 78(1) and (2).]*

9 *[89. Deleted: No. 7 of 1991 s. 5.]*

10 **90. Breach of local law**

11 Nothing in this Act, nor in any local law made thereunder, shall
12 relieve any person from any penalty, punishment, or action to
13 which the person ~~he~~ would otherwise be liable in respect of
14 anything done by the person ~~him~~ in breach of any such local
15 law; and the Minister may sue any person for any damage done
16 to any road or bridge or other works in contravention of any
17 local law made under this Act, in addition to recovering the
18 amount of the penalty for the breach of the local law.

19 *[Section 90 amended: No. 57 of 1997 s. 78(2).]*

20 **91. Governor may vest control of any bridge etc. in local**
21 **authority**

22 (1) For the purpose of this section, the words **bridge**, **ferry**, and
23 **ford**, respectively, include such approaches to a bridge, ferry, or
24 ford, and such protection works in connection therewith as may
25 by any notice under this section be defined to be part of the
26 bridge, ferry, or ford.

27 (2) The Governor may, by notice in the *Government Gazette*, and in
28 some newspaper circulating in the district, direct that any bridge
29 already constructed or which may hereafter be constructed, and
30 any ferry or ford already established or which may hereafter be
31 established, over or across any river or arm of the sea
32 respectively shall, from and after a date to be fixed in such

s. 91

- 1 notice, be under the exclusive care, control, and management of
2 the Minister, or of such local authority as shall be mentioned in
3 that behalf in such notice.
- 4 (3) The Governor may by any subsequent notice publicly notified in
5 the same way from time to time vary or alter such care, control,
6 and management.
- 7 (4) The Governor may by such notice as aforesaid fix and
8 determine whether all or any, and if so, what part of the cost,
9 whether incurred or to be incurred, of maintaining, repairing,
10 improving, or reconstructing any such bridge, or of managing or
11 maintaining any such ferry or ford, and the machinery and
12 appliances used therewith, is to be provided and paid by any
13 local authority or local authorities (if more than one), and if so,
14 by what local authority or authorities (if more than one).
- 15 (5) The Governor may by any such notice as aforesaid direct how,
16 when, and to whom any such payment is to be made; and every
17 payment so directed to be made shall be made as directed by
18 such notice, and unless so made may be deducted from any
19 subsidies or moneys at any time payable by the Crown to such
20 local authority, and may also be recovered in any court of
21 competent jurisdiction at the suit of the Minister or local
22 authority, as the case may be, as a debt due to the Crown or to
23 the local authority to which such payment ought to be made.
- 24 (6) In fixing and apportioning the cost of maintaining, repairing,
25 improving, or constructing any such bridge, or of managing or
26 maintaining any such ferry or ford, and the machinery and
27 appliances used therewith, the Governor shall take into account
28 the net revenue (if any) derived from or incident to the use of
29 such bridge, ferry, or ford by the Minister or by the local
30 authority, as the case may be, having the care, control,
31 management, or maintenance thereof.
- 32 (7) If any local authority or authorities shall refuse or neglect to
33 maintain, work, improve, or repair any bridge, ferry, or ford
34 (including the working of swing or lifting-spans in bridges

where such have been provided) under its or their care, control, and management, or to reconstruct any such bridge, ferry, or ford when requisite, the Minister may undertake such maintenance, repairs, improvement, or reconstruction in the place of the local authority or local authorities so refusing or neglecting as aforesaid, and may provide for the care, working, and management of such bridge, ford, or ferry, and may recover all costs, charges, and expenses attending or incidental to [the Minister's](#) ~~his~~ so doing from such local authority or local authorities as a debt due to the Crown, in any court of competent jurisdiction.

(8) In the exercise of the authority conferred upon [the Minister](#) ~~him~~ by this section, the Minister and any and every person authorised by [the Minister](#) ~~him~~ shall have all the powers and authorities which under any law are or may be vested in or could be exercised by the local authority or authorities in the place of which the Minister shall be acting.

(9) Any proclamation, instrument, or notice heretofore issued, made, or published, vesting the control of any bridge, ferry, or ford, may be revoked, altered, or varied by the Governor from time to time as [the Governor](#) ~~he~~ may deem expedient, subject to the provisions of this Act.

[Section 91 amended: No. 31 of 1997 s. 51; No. 46 of 2009 s. 17.]

92. Stopping or diverting of road

No road shall be stopped or diverted by the Minister unless and until a way to the lands in the vicinity is left or provided, unless the owners of such lands give consent in writing to such stoppage or diversion.

[Heading deleted: No. 19 of 2010 s. 44(3).]

s. 93

1 **93. Improvement of rivers and other watercourses**

2 The Minister and also the local authority may deepen, widen,
3 straighten, and otherwise improve, any river, and may, without
4 limiting the generality of the foregoing power remove from any
5 river, stream, or watercourse, or from the bed thereof, any earth
6 or stone, and all weeds, refuse, and other growth, and all
7 driftwood, logs, trees, branches, and other timber which may be
8 lodged in the bed or against the banks thereof and be calculated
9 to impede the free flow of water therein in its natural or
10 deepened, widened, straightened, or otherwise improved,
11 channel, and may dispose of the same respectively towards
12 recouping the cost of such removal: And for the purpose
13 aforesaid the Minister and every such local authority shall, by
14 its servants, have the free right of ingress or egress, and regress
15 on any land on the banks of any such river, stream, or
16 watercourse.

17 *[Section 93 amended: No. 48 of 1953 s. 7.]*

18 **94. Construction, repair and maintenance of bridges and**
19 **culverts**

20 The Minister may erect any bridge or culvert upon and across
21 the bed of any river or stream, and may repair and maintain such
22 bridge or culvert, whether erected before or after the passing of
23 this Act.

24 *[Section 94 amended: No. 8 of 1906 s. 5.]*

25 *[Part VA (s. 94A-94I) deleted: No. 89 of 1994 s. 109.]*

Part VI — Railways

95. Term used: railway

The word *railway* includes the land upon which any railway is made or authorised to be made, and all buildings and erections of every kind thereon, and all land taken, purchased, or acquired for railway purposes; and, except where inconsistent with the context, such word, when used in this Act, also includes all works, wharves, and jetties the property of the Crown, whether of a permanent or a temporary nature, used for the purposes of or in connection with such railway, and all materials and things of which such railway, buildings, erections, works, wharves, or jetties is or are composed, or which are being used for the purposes thereof, and are erected, placed, or laid upon any such land.

[Heading deleted: No. 19 of 2010 s. 44(3).]

96. Railways to be made only under special Act

- (1) Every railway shall be made only under the authority of a special Act which shall state as nearly as may be the line of the railway and the 2 termini thereof; but it shall be lawful to deviate from such line at a distance of 1.6 km on either side thereof, or such other distance as may be provided in any special Act.
- (2) Before the second reading of the special Act in the Legislative Council and Legislative Assembly respectively, the Minister shall cause a map, to be referred to in the special Act, showing the course to be taken by, and the middle line of, the railway, to be laid upon the table of the House.
- (3) On the passing of the Act, the map, signed for the purpose of identification by the Clerk of the Parliaments, shall be deposited by [the Clerk of the Parliaments](#) ~~him~~ in the Central Office of the Supreme Court, and shall be open to public inspection at any reasonable hour free of charge, and shall be admitted in all

s. 99

1 courts for all purposes as evidence of the line authorised by the
2 special Act.

3 *[Section 96 amended: No. 94 of 1972 s. 4 (as amended: No. 19*
4 *of 1973 s. 3); No. 67 of 1979 s. 38.]*

5 *[97, 98. Deleted: No. 31 of 1997 s. 52.]*

6 **99. Powers to make railways, railway stations etc.**

7 (1) The Public Transport Authority may do the following things in
8 respect of any railway authorised by a special Act:

9 (a) Enter upon and make the railway upon, over, or under
10 any land necessary for the construction thereof, lying
11 along the middle line defined in the map referred to in
12 the Act, or within the authorised limits of deviation, and
13 for this purpose may construct works of every kind and
14 of every material necessary to the making thereof; and
15 locomotive engines, machines, carriages, trucks,
16 wagons, and vehicles of all kinds may be used upon and
17 run over any land entered upon or taken or acquired for
18 a railway lying within the limits aforesaid; and any kind
19 of fuel may be used for any such locomotive engine or
20 machine:

21 (b) Make any part of such line of railway on and along any
22 part of any road or street:

23 (c) Make the railway upon, across, over, or under any road,
24 street, railway, tramway, or public reserve along such
25 line, and may alter the level of any road, street, railway,
26 tramway, or public reserve for such purpose:

27 (d) Make the railway across any arm of the sea, river,
28 stream, or navigable water:

29 (e) Alter the course or the level of any river not navigable,
30 or of any stream, watercourse, ditch, or drain:

31 (f) Make drains or conduits on or under any land adjacent
32 to and for the purpose of carrying water from or to the

- 1 railway; and may at all times maintain the same in good
2 repair:
- 3 (g) Remove or alter any drain or sewer, or any pipe or other
4 material for the supply of water or of gas belonging to
5 any company or person within or beyond the limits of
6 the railway:
- 7 (h) Make or construct all such buildings, stations, engines,
8 machinery, piers, wharves, roads, approaches, water
9 supply works, gas works, electric works, telegraph,
10 telephone, and other works in connection with the
11 railway, as may be thought necessary:
- 12 (i) Do all acts necessary for making, equipping,
13 maintaining, altering, repairing, and using the railway.
- 14 (2) The powers by this section conferred upon the Public Transport
15 Authority may be exercised at any time, whether before, during,
16 or after the construction of the railway, and shall extend to
17 additional lands beyond those on which it has previously
18 entered.
- 19 (3) The provisions of this section shall, subject to the provisions of
20 Part 10 of the *Land Administration Act 1997*, be deemed to have
21 applied and shall apply to all railways constructed under
22 any Act heretofore in force relating to the construction of public
23 works, or in course of construction, or hereafter to be
24 constructed.
- 25 *[Section 99 amended: No. 31 of 1997 s. 53; No. 31 of 2003*
26 *s. 166(1) and (2).]*

27 **100. Rights-of-way and traffic where railway made along or**
28 **across road**

- 29 (1) Where any part of a road or street, except where it crosses a
30 railway on a level, is used or occupied for a railway under the
31 powers conferred by the last preceding section, such part of the
32 road or street shall thereafter cease to be a highway.

s. 101

1 (2) Where a road, street, or thoroughfare crosses a railway on a
2 level, the public right of way at such crossing shall cease
3 whenever any engine or carriage on the railway is approaching
4 and within a distance of 400 m from such crossing; and shall at
5 all other times extend only to the right of crossing the line of
6 railway with all convenient speed, but not stopping or
7 continuing thereon.

8 (3) Whenever a railway is constructed upon or across a road, or
9 street, upon the same level, the Public Transport Authority may
10 carry on and conduct the working and management of such
11 railway in every respect upon or across such road or street: the
12 Public Transport Authority may also, if it so desires, erect and
13 maintain gates across such road or street on each side of the
14 railway, and may keep such gates closed across such road or
15 street on both sides of the railway, except when passengers on
16 foot or with horses, cattle, and carriages passing along the same
17 shall have the right, under subsection (2), to cross the railway,
18 and may safely do so.

19 *[Section 100 amended: No. 94 of 1972 s. 4 (as amended: No. 19*
20 *of 1973 s. 3); No. 31 of 2003 s. 166(1) and (3).]*

21 **101. Compensation where road interfered with or wholly closed**

22 (1) No compensation shall be payable in respect of the use or
23 occupation of any part of any road or street for any railway,
24 under the powers conferred by the 2 last preceding sections, or
25 for or in respect of any inconvenience or damage to any lands
26 fronting or adjoining any such road or street arising out of the
27 exercise of the said powers or the construction of the railway
28 upon such part of such road or street.

29 (2) No compensation shall be payable in respect of any road or
30 street being wholly closed under the powers conferred by this
31 Act, or in respect of the use or occupation thereof for any
32 railway, or for or in respect of any such inconvenience or
33 damage as mentioned in the last subsection, if reasonable and
34 sufficient access to the nearest road or street crossing over such

1 railway be afforded by some other road or street, whether such
2 last-mentioned road or street has been provided or constructed
3 by the Public Transport Authority or not.

- 4 (3) If any question arises as to whether such other reasonable and
5 sufficient access as aforesaid is afforded, the same shall be
6 determined in such manner as shall be agreed upon between the
7 local authority having the control of roads or streets in the
8 district and the Public Transport Authority; or if they disagree,
9 as shall be determined upon by some independent person
10 appointed by the Governor; and every such determination shall
11 be conclusive as to the rights or claims of all persons affected.

12 *[Section 101 amended: No. 31 of 2003 s. 166(1); No. 19 of 2010*
13 *s. 51.]*

14 **102. Government to make crossings to give access to land**

15 Where the making of a railway line has cut off all access by
16 road to land other than Crown land, the Public Transport
17 Authority shall make such crossing or crossings as may be
18 necessary to give access to such land.

19 *[Section 102 amended: No. 31 of 2003 s. 166(1).]*

20 **103. Maintenance of public roads at railway crossings and near**
21 **railway stations**

- 22 (1) Where a road or a street crosses a railway on the level, the
23 Public Transport Authority shall, until the railway is opened for
24 traffic, maintain the road and crossing on the railway, and for a
25 distance on each side of 10 m outside the railway so crossed;
26 but the local authority having charge of the roads or streets in
27 the district shall maintain and metal the same when the railway
28 is open for traffic.

- 29 (2) Where a road or street crosses over or passes under any railway
30 by means of a bridge or subway, such bridge or subway shall,
31 until the railway is opened for traffic, be maintained by the
32 Public Transport Authority; but when the railway is open for

s. 104

1 traffic, shall be maintained by the local authority having charge
2 of the roads or streets in the district, but in case of decay from
3 any cause other than the default of the local authority, the same
4 shall be repaired, or reinstated by the Public Transport
5 Authority.

6 (3) Where a road or street is constructed by the Public Transport
7 Authority to lead to a railway station, or otherwise for railway
8 purposes, such road or street shall be, until the railway is opened
9 for traffic, maintained by the Public Transport Authority, except
10 so far as and until the management thereof is handed over to a
11 local authority or it is closed as herein provided.

12 *[Section 103 amended: No. 94 of 1972 s. 4 (as amended: No. 19*
13 *of 1973 s. 3); No. 31 of 2003 s. 166(1).]*

14 **104. Alterations in roads, drains, pipes etc. to be made without**
15 **detriment to the public or to owners**

16 Where it is found necessary for the construction of a railway to
17 alter any public work, or any road, street, tramway, watercourse,
18 sewer, drain, water-pipe or gas-pipe for the supply of water or
19 gas belonging to a private person or company, such alterations
20 shall be made at the request and cost of the Public Transport
21 Authority and in such manner as to interfere as little as possible
22 with the work so altered.

23 *[Section 104 amended: No. 31 of 2003 s. 166(1).]*

24 *[105. Deleted: No. 31 of 1997 s. 54.]*

25 **106. Conversion of railway bridge to combined road and railway**
26 **bridge**

27 (1) The Public Transport Authority may convert any railway bridge
28 into a combined road and railway bridge. Any local authority is
29 hereby authorised to pay the cost of such conversion, and also to
30 pay annually to the Public Transport Authority such further
31 amount as may be necessary to maintain the roadway of the said
32 bridge, and any approaches, gates, or other works or structures

1 in connection therewith, and also to pay the wages of one or
2 more caretakers to the said bridge.

3 (2) All moneys hereby authorised to be paid by a local authority
4 shall be paid out of the fund under its control, and charged
5 accordingly.

6 *[Section 106 amended: No. 31 of 2003 s. 166(1).]*

7 **107. Right-of-way and closure of combined road and railway**
8 **bridges**

9 Where a bridge is used for railway and ordinary traffic jointly,
10 the public right-of-way on such bridge shall extend only so far
11 as shall be defined in any by-law or local law made under
12 any Act relating to the management of railways open for traffic.
13 The Public Transport Authority may at any time close such
14 bridge to public traffic during repairs or whilst the bridge is in
15 its opinion dangerous.

16 *[Section 107 amended: No. 57 of 1997 s. 78(3); No. 31 of 2003*
17 *s. 166(1) and (4).]*

18 **108. Tree dangerous to railway to be removed**

19 If the Public Transport Authority is of the opinion that any tree
20 on private land adjacent to a railway is likely, by falling or
21 otherwise, to obstruct the traffic or endanger the travellers
22 thereon, it may cause the tree to be removed.

23 *[Section 108 amended: No. 31 of 2003 s. 166(1) and (5).]*

24 **109. Penalties for trespassing on railway in course of**
25 **construction**

26 (1) Any person trespassing upon any railway in the course of
27 construction, or upon any land occupied or temporarily
28 occupied for the purpose of such construction under the powers
29 hereby given, shall be liable to a penalty not exceeding \$4.

s. 110

1 (2) Any person riding or driving any animal or vehicle upon such
2 railway or land without lawful authority shall be liable to a
3 penalty not exceeding \$10.

4 (3) Any such person refusing to leave such railway or land, or to
5 remove such animal or vehicle therefrom, when warned so to do
6 by the overseer, contractor, or any other person in charge of or
7 employed upon such railway, may be seized and detained by
8 such overseer or other person who shall as soon as practicable
9 take [the person](#) ~~him~~ to a police officer or arrange for a police
10 officer to attend.

11 [Section 109 amended: No. 41 of 1966 s. 16; No. 59 of 2006
12 s. 73.]

13 **110. Crown may elect to erect and maintain fences along**
14 **boundaries of railways**

15 The Governor may, by notice published in the *Government*
16 *Gazette*, declare that any fences constructed or intended to be
17 constructed by or on behalf of the Crown for separating land
18 taken for the use of any railway in such notice mentioned from
19 the adjoining lands not taken, shall, to such extent as is
20 mentioned in such notice be thereafter maintained, or erected
21 and maintained as the case may require, at the cost of the Crown
22 during such time as the railway may continue to be used by or
23 on behalf of the Government of the State; and such fences shall
24 thereafter be maintained, or erected and maintained as the case
25 may require, by the Public Transport Authority accordingly.

26 [Section 110 amended: No. 31 of 2003 s. 166(1).]

27 **111. Impounding animals trespassing on railway in course of**
28 **construction**

29 Any person employed on or about any railway in the course of
30 construction may impound animals trespassing upon such
31 railway; and any act or matter required under the *Cattle*
32 *Trespass, Fencing, and Impounding Act 1882*³, and any Acts
33 amending or extending the same, to be done by the owner or

1 occupier of land, may be done in respect of a railway by any
2 person authorised generally or specially for that purpose by or
3 on behalf of the Public Transport Authority.

4 *[Section 111 amended: No. 31 of 2003 s. 166(1).]*

Part VIA — Miscellaneous

[Heading inserted: No. 36 of 2007 Sch. 4 cl. 5.]

112. Waste management operations at Mt Walton

(1) In this section —

waste has the meaning given by the *Waste Avoidance and Resource Recovery Act 2007*;

waste management operation means an operation for the collection, transport, receipt, storage, treatment or disposal of waste, or for 2 or more of those activities.

(2) Subject to the *Waste Avoidance and Resource Recovery Act 2007*, the *Environmental Protection Act 1986* and any other written law relating to the treatment and disposal of waste, the Minister may, but is not obliged to —

(a) carry on waste management operations at or in relation to the intractable waste disposal facility operated at Mt Walton East, Shire of Coolgardie; and

(b) do all things necessary or convenient to be done for or in connection with the performance of functions under paragraph (a).

(3) Without limiting subsection (2), the Minister may, for the purpose of performing any function under this section —

(a) enter into any contract or arrangement, including a contract or arrangement with any person for —

(i) the performance of the function by that person on behalf of the Minister; or

(ii) the supply of equipment or services;

and

(b) charge for the use of services or facilities.

[Section 112 inserted: No. 36 of 2007 Sch. 4 cl. 5.]

[112A. Deleted: No. 31 of 1997 s. 55.]

1 **113. Delegation of powers and duties under section 112**

2 (1) In this section —

3 *public authority* means —

- 4 (a) a Minister of the State;
- 5 (b) an agency, authority or instrumentality of the State; or
- 6 (c) a local government; or
- 7 (d) a body, whether corporate or unincorporate, that is
- 8 established or continued for a public purpose under a
- 9 written law.

10 (2) Without limiting sections 5A and 5B, the Minister may delegate

11 any power or duty of the Minister under section 112 to —

- 12 (a) a public authority or an officer or employee of a public
- 13 authority; or
- 14 (b) any other person.

15 (3) Notice of the delegation is to be published in the *Gazette*.

16 (4) A person exercising or performing a power or duty that has been

17 delegated to the person under this section is taken to do so in

18 accordance with the terms of the delegation unless the contrary

19 is shown.

20 (5) Nothing in this section limits the ability of the Minister to

21 perform a function through an officer or agent.

22 *[Section 113 inserted: No. 36 of 2007 Sch. 4 cl. 5.]*

1 **Part VII — General provisions**

2 **113A. Property in things placed on the land**

3 Where in exercise of a power conferred by this Act the Minister
4 or the Public Transport Authority (the *relevant person*) causes
5 anything to be placed in, on, over, or under, land, it is deemed to
6 be the property of the relevant person unless the relevant person
7 certifies otherwise.

8 *[Section 113A inserted: No. 19 of 1972 s. 13; amended: No. 31*
9 *of 2003 s. 163.]*

10 *[114. Deleted: No. 24 of 2011 s. 170.]*

11 **115. Governor may execute instruments**

12 The Governor may execute any deed or instrument for the
13 purpose of granting and confirming any land, easement, right,
14 privilege, concession, payment, or satisfaction which may have
15 been or may hereafter be agreed to be granted or awarded under
16 this or any other Act empowering such grant or award.

17 *[116. Deleted: No. 31 of 2003 s. 164.]*

18 *[117. Deleted: No. 14 of 1996 s. 4.]*

19 **118. Moneys due by local authority may be deducted from**
20 **moneys payable to it by Government**

21 In all cases where, under this Act or any Act hereby repealed,
22 any money is authorised to be recovered from any local
23 authority as a debt due to the Crown, the Treasurer may deduct
24 the same or any portion thereof from any subsidies or other
25 moneys (if any) that may be payable by or on behalf of the
26 Crown, from time to time, to such local authority under any law
27 for the time being in force, but without prejudice to the right of
28 the Minister to recover the unsatisfied balance (if any) of such
29 debt from such local authority as a debt due to the Crown in any
30 court of competent jurisdiction.

1 *[119. Deleted: No. 31 of 1997 s. 57.]*

2 **120. Penalty for obstruction, interference, destruction and**
3 **similar acts; and recovery of costs**~~Penalty for obstructing~~
4 ~~workmen or destroying survey marks, fences etc.~~

5 Every person who wilfully and unlawfully obstructs or
6 interferes with any engineer, architect, surveyor, overseer,
7 ~~worker~~workman, or other person in the performance of any duty
8 or in doing any work which they have~~he has~~ lawful authority to
9 do under the provisions of this Act, or obstructs, injures,
10 interferes with, alters, or removes anything, constructed,
11 provided, or done, under those provisions or cuts down, breaks,
12 removes, or destroys any fence in or upon any land taken under
13 the provisions of this Act shall be liable to a penalty not
14 exceeding \$100 for every such offence and the cost of repairing
15 or reinstating it, or clearing it of obstruction is recoverable by
16 the Minister, or as to railways by the Public Transport
17 Authority, from the person in a court of competent jurisdiction.

18 *[Section 120 amended: No. 48 of 1953 s. 9; No. 41 of 1966*
19 *s. 17; No. 31 of 2003 s. 165.]*

20 *[121. Deleted: No. 59 of 2004 s. 141.]*

21 **122. Works authorised or anything commenced under repealed**
22 **enactments**

23 (1) Any public work authorised by any Act now in force, or by any
24 Act repealed by this or by any former Act, may be continued,
25 executed, carried out, enforced, and completed under the
26 provisions of this Act.

27 (2) Provided that, where in the opinion of the Governor the
28 provisions of this Act are not applicable to such work, land, or
29 thing, then, for the purpose of carrying out and completing such
30 public work, land, or thing, the said repealed provisions shall be
31 deemed to be in full force and operation.

32 *[Section 122 amended: No. 31 of 1997 s. 58.]*

s. 123

1 **123. Public works under previous Acts to be deemed constructed**
2 **under this Act**

3 (1) Subject to the provisions of the last preceding section, all
4 railways and public works of every kind constructed, and all
5 things done under any Act now in force, or under any Act
6 repealed by this or any former Act, shall be deemed to have
7 been constructed or done under this Act.

8 (2) And all proclamations, Orders in Council, notices, by-laws,
9 regulations and appointments issued, published, or made under
10 any Act hereby repealed and subsisting at the commencement of
11 this Act shall be deemed respectively to have been issued,
12 published, or made under this Act, and shall have effect
13 accordingly.

14 *[Section 123 amended: No. 31 of 1997 s. 59.]*

15 *[124. Deleted: No. 73 of 1995 s. 188.]*

16 *[125-126. Deleted: No. 25 of 1985 s. 368.]*

17 *[First Schedule omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]*

18 *[Second Schedule deleted: No. 98 of 1985 s. 3.]*

19 *[Third to Ninth Schedules deleted: No. 31 of 1997 s. 60.]*

Schedule 1 — Classes of public work

[s. 2]

<u>Item</u>	<u>Description</u>
<u>1.</u>	<u>Works that the Crown, the Governor, the Government of Western Australia, a Minister of the Crown or a local authority is authorised to undertake, construct or provide under this Act or any other Act.</u>
<u>2.</u>	<u>Railways authorised under a special Act or any other works authorised under an Act.</u>
<u>3.</u>	<u>Tramways, light railways, monorails and works for any prescribed means of public passenger transport as defined in the Public Transport Authority Act 2003 section 3.</u>
<u>4.</u>	<u>(a) Works for or in connection with the conservation, protection or management of water or water resources.</u> <u>(b) Works for or in connection with any of the following —</u> <u> (i) water supply, including abstraction and reticulation;</u> <u> (ii) drainage, including reticulation;</u> <u> (iii) the restoration or improvement of, or measures for the prevention of erosion of, rivers, watercourses, lakes or inlets, including deepening, widening and other alteration, disposal of silt and removal of waste or debris;</u> <u> (iv) flood prevention or mitigation;</u> <u> (v) sewerage, including reticulation.</u>
<u>5.</u>	<u>(a) Buildings for occupation by either or both Houses of Parliament.</u> <u>(b) Buildings for State government or local government office accommodation.</u>

<u>Item</u>	<u>Description</u>
	<u>(c) Works for or in connection with space leased or licensed for State government or local government office accommodation.</u>
<u>6.</u>	<u>Health care facilities, including hospitals, hospices, medical clinics, other medical facilities, community health care centres and residential or short-term accommodation facilities for patients and their carers or for staff.</u>
<u>7.</u>	<u>Community residential facilities, including boarding houses, refuges, aged care facilities and facilities for people with a disability or mental illness or subject to social disadvantage.</u>
<u>8.</u>	<u>Scientific facilities, including observatories, research stations, environmental monitoring facilities, laboratories and scientific installations.</u>
<u>9.</u>	<u>Educational and related facilities, including schools, universities, colleges, technical and other educational institutions, teaching establishments, early learning centres, childcare centres, kindergartens, playgrounds and residential accommodation facilities for students attending those facilities or for staff.</u>
<u>10.</u>	<u>Cultural, sporting, tourism and community facilities, including libraries, museums, theatres, art galleries, interpretive centres, entertainment facilities, stadiums and community centres.</u>
<u>11.</u>	<u>Facilities for the Western Australian Mint.</u>
<u>12.</u>	<u>(a) Public or community housing and community facilities and amenities, as defined in the <i>Housing Act 1980</i> section 61(2), that are related or incidental to public or community housing.</u> <u>(b) Housing provided under the <i>Government Employees' Housing Act 1964</i>.</u>

<u>Item</u>	<u>Description</u>
<u>13.</u>	<p>(a) <u>Parks and gardens, including botanical gardens and zoological gardens.</u></p> <p>(b) <u>Recreational or sporting grounds or facilities, including recreational paths or trails.</u></p> <p>(c) <u>Showgrounds.</u></p> <p>(d) <u>Racecourses.</u></p>
<u>14.</u>	<u>Animal pounds (including cat management facilities under the <i>Cat Act 2011</i> and dog management facilities under the <i>Dog Act 1976</i>).</u>
<u>15.</u>	<u>Cemeteries, crematoriums and memorials.</u>
<u>16.</u>	<u>Works for or in connection with the protection or preservation of a place of scientific, heritage, historical, natural, geological, environmental, aesthetic or cultural interest or value.</u>
<u>17.</u>	<p><u>Works for or in connection with any of the following —</u></p> <p>(a) <u>the protection or preservation of indigenous flora or fauna;</u></p> <p>(b) <u>the protection or preservation of wetlands;</u></p> <p>(c) <u>revegetation for conservation purposes.</u></p>
<u>18.</u>	<u>Abattoirs, stock saleyards and agricultural saleyards.</u>
<u>19.</u>	<p>(a) <u>Harbours and ports, including storage, handling or wharfage areas and other facilities for or in connection with shipping or boating operations.</u></p> <p>(b) <u>Wharves, docks, ferry facilities, piers, jetties, bridges, launching ramps, landing places, slips and moorings.</u></p> <p>(c) <u>Breakwaters, leading marks, navigational aids and lighthouses.</u></p> <p>(d) <u>Works for or in connection with the provision, improvement or alteration of channels, including the landing and disposal of silt.</u></p>

<u>Item</u>	<u>Description</u>
	(e) <u>Port works as defined in the <i>Port Authorities Act 1999</i> section 35(9).</u>
<u>20.</u>	<u>Quarries or works for procuring timber, stone, gravel, earth or any other material required —</u> <u>(a) by or for the State for or in connection with the carrying on of any commercial or industrial undertaking or activity, or any other undertaking or activity, that is being carried on by or for the State under the authority of a written law; or</u> <u>(b) for the construction of, or for any purpose connected with, a public work.</u>
<u>21.</u>	<u>Facilities required for justice or emergency services purposes, including courthouses, prisons, detention centres, watch houses, lock-ups, police stations and other police facilities, fire stations and ambulance depots.</u>
<u>22</u>	<u>Works for or in connection with the establishment or extension of sites for towns.</u>
<u>23.</u>	<u>Roads, bicycle paths, shared paths, stock routes, viaducts, canals, tunnels, weighbridges, roadside testing facilities and roadside amenities.</u>
<u>24.</u>	<u>Works for or in connection with the production, generation, transmission, distribution or storage of electricity, gas or any other form or source of energy.</u>
<u>25.</u>	<u>Waste management facilities, including refuse tips, waste transfer stations, waste storage facilities, incinerators and recycling centres and depots.</u>
<u>26.</u>	<u>Airstrip and airport facilities, including runways, taxiways, apron areas, passenger terminals, control towers, security facilities, walkways, busways, car parks, passenger transit facilities, passenger pick-up and set-down areas and servicing facilities.</u>

<u>Item</u>	<u>Description</u>
<u>27.</u>	<u>Biosecurity facilities, including barrier fences and quarantine inspection stations.</u>
<u>28.</u>	<u>Works for or in connection with an Aboriginal community or settlement, including works relating to the provision of essential services (for example, electricity, water or sewerage services), administrative services or emergency services.</u>
<u>29.</u>	<u>Works for or in connection with the reclamation of land for the purposes of a public work.</u>
<u>30.</u>	<u>Surveys and other investigative works for or in connection with a public work.</u>
<u>31.</u>	<u>Works, facilities, buildings, structures and other things that are incidental or ancillary to, or otherwise connected with, a public work.</u>

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