

Western Australia

Land Act 1933

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Land Act 1933

CONTENTS

Part I — Introductory and general provisions

1.	Short title and commencement	2
3.	Interpretation	2
4.	Repeal and savings	5
6.	Minister for Lands	5
6A.	General power of delegation of Minister	6
7.	Crown lands may be disposed of under the provisions of this Act	6
8.	Governor may acquire land by purchase or exchange	7
9.	Grant or lease to Aborigines	8
10.	Districts and townsites may be defined	8
11.	Resumptions	8
12.	Authentication and recording of Crown grants	9
13.	Signature on other instruments	9
15.	Reservations in grants	10
15A.	Reservations relating to marketable timber	11
15B.	Cessation of marketable timber reservations to the Crown	12
16.	All applications subject to approval of Minister	12
17.	Minister may order surveys of Crown land and lands reserved for town and suburban lots	13
18.	Loss of leases, etc., and amendment of defective description	13

19.	If the survey varies from the application, how to be dealt with	15
20.	Minister may insert special clauses and grant limited right to timber	16
21.	Right to enter upon lands to make surveys	16
22.	Land of insolvents to be for benefit of creditors	16
23.	Forfeiture for non-compliance with conditions	17
24.	Forfeited land, how dealt with	18
25.	Restrictions upon public officers acquiring Crown lands	18
26.	Restriction as to age	18
27.	Appeal to Governor	19

Part II — Divisions of the State

28.	Divisions	20
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Part III — Reserves

29.	Governor may make reserves	22
30.	Reserves to be notified in <i>Gazette</i>	22
31.	Classification of reserves	22
31A.	Restriction on abolition of national parks	24
32.	Power to the Minister to lease reserves	24
33.	Vesting leasing, etc. of reserves	25
34.	By-laws	27
34A.	Management plans	28
34B.	Revocation of certain orders	29
36.	Temporary reserves	30
37. ⁷	Power to cancel or change the purpose of reserves	30
37AA.	Continuation of estates or interests or caveats on cancellation, or change of purpose of, reserves	31
37A.	Power to trustees to surrender or exchange certain lands	31
37B.	Limitation of this Part	32

Part IV — Town and suburban lands

38.	Town and suburban lands to be sold by auction	34
40.	Terms and conditions of sale to be read	34
41.	Payment of purchase money	35
41A.	Lots unsold at auction may be sold at upset price	36
42.	Conditions relating to suburban lands	36
42A.	Power of Minister to refund purchase money or portion thereof in certain circumstances	37
43.	Licence to occupy	38
44.	Lessee of town or suburban land may acquire fee simple	38
45.	Grants of land for the purposes of the <i>Housing Act 1980</i>	38
45A.	Minister may dispense with requirements under this Part as to certain sales	39
45B.	Power to sell town and suburban land by advertisement	39

Part V — Agricultural and grazing land

Division (1) — Conditional purchase

46.	Land may be declared open for selection	41
47.	Conditional purchase with residence	41
49.	Conditional purchase without residence	47
50.	Additional land where lessee has not acquired the maximum area	48
51.	Cost of survey of land not surveyed before selection	48
52.	Selector may be required to accelerate payments for existing improvement made by a prior lessee	49
53.	Accelerated completion of conditional purchase	50
54.	Land for vineyards, orchards and gardens	53
57.	Discount for payment of purchase money in advance	55
58.	Portion of improvements may be dispensed with in certain cases	56
60.	Subdivision of holdings	56
61.	Special improvement conditions	56

62.	Inclusion of closed roads in adjoining land held under conditional purchase lease	57
63.	Devisees, etc.	57
63A.	Price may be reduced and rent may be deferred	58
63B.	When a lease has already expired Minister may grant extension of time to pay balance of rent	59
	Division (2) — Free homestead farms	
64.	Lands open for selection	61
65.	Application for homestead farm	61
66.	Occupation certificate	61
67.	Conditions as to taking possession and residence	62
68.	In case of illness and other valid reason absence allowed	63
69.	Improvements before issue of Crown grant	63
70.	Forfeiture for non-compliance with conditions	65
71.	Certain assignments before issue of Crown grants void	65
72.	When and on what conditions a Crown grant shall issue	65
73.	Crown grants may be obtained after 12 months' residence on certain conditions	66
74.	Applicant for homestead farm may apply for C.P. land	66
75.	Improvements on land applied for under this Division to be paid for	66
76.	Power to cancel abandoned applications for homestead farms	67
77.	Area of free homestead farms granted under a scheme of group settlement may be increased	67
78.	Grants of holdings to group settlers	67
79.	Application of section 51 (cost of survey) and of s.47 (4) (f)	68
	Division (3) — Working men's blocks	
80.	Governor may set apart certain lands for working men's blocks	68

81.	Certain persons entitled to leases of working men's blocks	68
82.	Minister may waive forfeiture for non-residence in case of illness, etc.	70
83.	In certain cases leases may be transferred or mortgaged with Minister's approval	71
Division (4) — Special settlement lands		
84.	Governor may declare lands open for selection as special settlement lands	71
85.	Minister may improve lands within special settlement area	72
86.	Conditions of selection of land within special settlement area	72
87.	Power to throw open land for special selection	73
88.	Group settlement	73
89.	Special settlement	74
89A.	Governor may set apart farm reconstruction areas	74
89B.	Disposal of farm reconstruction areas to The Rural and Industries Bank	75
89C.	Disposal of war service land no longer required for the purpose	75
89D.	Governor may authorize Ministers to enter into agreements for disposal of areas of Crown land	76

Part VI — Pastoral leases

89E.	Interpretation	78
90.	Pastoral leases may be granted	78
91.	Application	78
97.	Position and boundaries of leases	79
98.	Term and rent	80
98A.	Pastoral Board may call and examine witnesses on oath	86
99.	Review of assessment of rent	87
100.	Review of re-assessment	87
101A.	Minister may grant relief from payment of rent in certain cases	88

101B.	Minister may extend relief from payment of rent in certain cases	89
102.	Improvement conditions	89
103.	Penalty for non-stocking	91
104.	Re-appraisal of pastoral leases on transfer, etc., of portion	93
105.	Pastoral lessees have no right to soil or timber	93
106.	Reservations	94
107.	Permission for clearing and penalty for unauthorized clearing	95
109.	Power to resume land from pastoral leases for agricultural settlement	96
110.	Payment for improvements in certain cases	96
113.	Maximum area	97
114.	Lessees may surrender lease and apply for a new lease	102
115.	Transfer of pastoral lease	106
115A.	Restrictions on transfer of shares in certain companies	107

Part VII — Special leases and licences

116.	Minister may grant leases for special purposes	109
117.	Town, suburban or village lands may be leased	110
117A.	Lease or licence under or over streets for construction and maintenance of subways and bridges	110
117AA.	Lessee may apply for fee simple	111

Part VIIA — Alienation of closed roads, etc.

118A.	Provisions for vesting of land in closed roads	113
118B.	Vesting of land in former rabbit proof fence reserve	114
118C.	Vesting of land in reserves of discontinued railways and deviations	115
118CA.	Vesting of Crown land unsuitable for retention as separate lot or for division and retention as separate lots	115

118D.	Vesting of additional Crown land to adjust boundaries	117
118E.	Land to be vested for estate similar to that of adjoining land	118
118F.	Vested land to be incorporated with adjoining land <i>Ibid.</i> s.7.	118
118G.	Vested land to be subject to encumbrances on land with which it is incorporated. <i>Ibid.</i> s.8.	120
118H.	Provision for increase of purchase price of land under contract of sale in certain cases. <i>Ibid.</i> s.10.	121

Part VIII — Agricultural lands purchase

119.	Funds	122
120.	Land Purchase Board	122
121.	Land may be surrendered	123
122.	Land Purchase Board to report	123
123.	Governor may purchase lands	124
124.	Disposal of land acquired under this Act	124
125.	Minister may improve lands purchased	124
126.	Reserves for public purposes, roads, etc.	124
127.	Price and conditions on which land is to be sold	125
128.	Power to reduce selling price	126
129.	Deferment of rent payable by discharged soldiers	127
130.	Application of s.127 (4) and (5) to existing leases	128
131.	Interim cropping leases	129
132.	Appropriation of receipts when debentures are issued	129
133.	Separate account to be kept by Treasurer	130
134.	Report to be presented to Parliament	130

Part VIIIA — Easements

134A.	Interpretation	131
134B.	Easements may be granted	131
134C.	Proposed easement to be recorded	133
134D.	Easement to be recorded	133
134E.	Cancellation	134

134F.	Easement to subsist	135
134G.	Easements over land dedicated to a purpose	135
134H.	Easement in anticipation of grant of fee simple	136
134I.	Easement in gross	136
134J.	Abandonment	137
134K.	Production of instruments	138
134L.	Evidence	139
134M.	Land under Transfer of Land Act	139
134N.	Tabling of report of grant of certain easements	139

Part IX — Miscellaneous provisions

135.	Priority of application	140
136.	Applications	141
137.	Applications for surveyed lands	142
138.	Fractions of an acre of holdings under Part V	142
139.	Rents	142
139A.	Minister may defer rent payable by lessee who has served with H.M. Forces	144
139B.	Definition of “discharged member of the forces”	144
140.	Improvements	148
141.	Restriction of right of resumption without compensation	149
142.	Fee on Crown grants	149
143.	Transfers etc., to be approved by Minister	150
144.	Transfer of leases and licences	152
145.	Leases and licences may be mortgaged	153
146.	Effect of mortgage	153
147.	Right of mortgagee	153
148.	Transfer on sale	154
149.	Mortgages of leases or licences to be transferred to Crown grant	154
149A.	Transfer of estates, interests and caveats to Crown Grants	155
149B.	Matters ancillary to transfer of estates, interests and caveats to Crown Grants	158
150.	Minors may hold and deal with land	163

151.	Instruments not effectual until registered	164
152.	Caveat may be lodged	164
153.	Notice of caveat to be given	165
154.	No entry to be made in registry book while caveat in force	166
155.	Compensation for lodging caveat without cause	167
156.	Notification of caveats	167
157.	Caveat on behalf of a beneficiary under a will or settlement not to bar registration	167
158.	Power to Under Secretary for Lands to enter caveats	168
159.	Executions against land	168
160.	Power to Minister to register transmission where no administration of a deceased's estate	169
161.	Where death or lunacy occurs before completion of fencing and improvements	170
161A.	Crown grant may issue in name of deceased holder	170
162.	Acceptance of rent not to be deemed waiver of breach of covenant	170
163.	<i>Gazette</i> notice equivalent to re-entry	171
164.	Offences on public lands	171
164A.	Removal of unauthorized structures from public lands	173
164AA.	Application by owner or occupier of unauthorized structure for extension of time	175
164B.	Delegation	176
165.	Proof of residence and improvements	176
166.	Returns of stock and improvements	177
167.	Statutory declarations	177
168.	Communications to be addressed to the chief executive officer of the Department	177
169.	Auctioneer may sell without licence	178
170.	Service of notices	178
171.	Repayment of expenditure from loan funds by Consolidated Fund	178
172.	Regulations	179

Part X — Survey and mapping

173.	Authorized land officers	180
175.	Plans of surveys	180

Schedules

NOTES

Western Australia

Land Act 1933

An Act to consolidate and amend Enactments relating to Crown Lands.

[Assented to 4 January 1934]

Be it enacted —

Part I — Introductory and general provisions

1. Short title and commencement

This Act may be cited as the *Land Act 1933* and shall come into operation on a date to be fixed by proclamation.

[2. *Repealed by No. 78 of 1982 s.2.*]

3. Interpretation

(1) In this Act, subject to the context —

“**Adjoining**” when used with respect to holdings under this Act, or any Act hereby repealed, extends to holdings which are only separated by a road or roads, or by a railway, or by a watercourse or other natural feature of such a character as to be insufficient to prevent the passage of stock.

“**authorized land officer**” means officer of the Department appointed under section 173 to be an authorized land officer.

“**Bed**” with reference to a water-course means the land over which the water of the water-course normally flows, whether permanently or intermittently; but does not include land that is from time to time temporarily covered by flood waters of the watercourse.

“**Conditional Purchase**” means any area of land held under conditional terms of purchase from the Crown.

“**Crown Grant**” means a deed of grant issued in the name of Her Majesty, conveying to the grantee some portion of Crown land in fee simple.

“**Crown Lands**” means and includes (subject to section 4 (2)) all lands of the Crown vested in Her Majesty, except land which is, for the time being, reserved for or dedicated to any public purpose, or granted or lawfully contracted to be granted in fee simple or with the right of purchase under this Act or any Act hereby repealed, and includes all lands

between high and low water mark on the seashore and on the banks of tidal waters, and includes, for the purposes of sections 116 and 118², all lands below low water mark on the seashore and on the banks of tidal waters and all lands being the beds of water-courses.

“Department” means the Department of the Public Service of the State through which the Minister administers this Act.

“Fence” means any substantial fence, not being a brush fence, proved to the satisfaction of the Minister to be sufficient to resist the trespass of—

- (a) great stock; or
- (b) great and small stock, including sheep, but not including pigs or goats,

as the Minister may determine:

Provided that where by this Act a person is required to fence a fractional part of his land, it shall be sufficient if he erects a fence on the outer boundary of his land extending along a corresponding fractional part of such outer boundary.

“Frontage” means abuttal on or frontage to any sea-coast, lake, inlet, river, creek, stream, water-course, railway, tramway, or road, or intended or designed railway, tramway, or road, which the Minister shall consider necessary to be considered a frontage.

“High Water Mark,” when applied to tidal waters, means the ordinary high water at spring tides, and when applied to other waters, means the ordinary high water mark at winter level.

“Minister” or **“Minister for Lands”** means the responsible Minister of the Crown for the time being charged with the administration of this Act.

“Occupation Certificate” means a certificate authorizing the occupation of land as a free homestead farm.

“Owner” means beneficial owner.

“Pastoral Lease” means the lease of an area of Crown land granted under Part VI to any person for grazing purposes.

“Pastoral Lessee” means the holder of a pastoral lease.

“Prescribed” means prescribed by this Act or any regulations made thereunder.

“Public purpose” includes any purpose declared by the Governor, by notification in the *Gazette*, to be a public purpose within the meaning of this Act.

“Quarter” in reference to a year means the period of 3 months beginning 1 January, 1 April, 1 July, and 1 October respectively.

“Representatives” means the executors or administrators of the person with reference to whom the word is used, and includes all persons in whom the estate or interest of such person is vested on his death.

“Selector” means an applicant for, or occupier of, land under Part V., VI., VII., or VIII.

“Water-course” means a river, stream or creek in which water flows in a natural channel whether permanently or intermittently.

- (2) For removing doubts, it is hereby declared that the expression “Crown Lands” in subsection (1) includes and is deemed to have always included all lands between high and low water mark on the seashore and the banks of tidal waters, and for the purposes of sections 116 and 118² of this Act all lands below low water mark on the seashore and on the banks of tidal waters and all lands being the beds of water-courses.
- (3) An order made under this Act is subsidiary legislation within the meaning of the *Interpretation Act 1984*.

[Section 3 amended by No. 41 of 1956 s.2; No. 60 of 1963 s.3; No. 97 of 1980 s.3; No. 77 of 1982 s.4; No. 79 of 1982 s.3; No. 126 of 1987 s.52; No. 5 of 1995 s.4.]

4. Repeal and savings

[Subsection (1) and proviso omitted by No. 13 of 1984 s.7 (4) (f)]

- (2) Nothing in this Act shall affect, or be construed to derogate from the operation of the *Mining Act 1904*³ the *Forests Act 1918*, the *Discharged Soldiers Settlement Act 1918*, the *Group Settlement Act 1925*, or the *Closer Settlement Act 1927*.
- (3) Any reference to the *Agricultural Lands Purchase Act 1909*, in any other Act shall be deemed to refer to the corresponding provisions of Part VIII.

[5. Repealed by No. 79 of 1982 s.4.]

[5A. Inserted by No. 35 of 1946 s.2; repealed by No. 58 of 1950 s.3.]

6. Minister for Lands

- (1) The Minister for Lands shall be charged with the administration of this Act and the Department.
- (2) The Minister for Lands shall, under that name, be a body corporate, shall have perpetual succession and a common seal, and shall be capable of suing and being sued, and of holding and disposing of real or personal property.
- (3) All property and rights of property heretofore or hereafter vested in any Minister for Lands by his individual name on behalf of the Crown shall by force of this Act vest in the Minister in his corporate capacity.

[Section 6 amended by No. 47 of 1934 s.2⁴.]

s. 6A

6A. General power of delegation of Minister

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to —
- (a) an officer of the Department, being an officer named; or
 - (b) the person for the time being occupying a position in the Department, being a position specified,

in the instrument of delegation, any of his powers or duties under this Act, the *Local Government Act 1995* or the *Local Government (Miscellaneous Provisions) Act 1960*, other than this power of delegation.

- (2) A power or duty delegated under subsection (1) shall, 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).

[Section 6A inserted by No. 126 of 1987 s.53; amended by No 14 of 1996 s.4.]

7. Crown lands may be disposed of under the provisions of this Act

- (1) The Governor is authorized, in the name and on behalf of Her Majesty, to dispose of the Crown lands within the State, in accordance with the provisions of this Act.
- (2) All grants and other instruments disposing of any portion of Crown lands in fee simple or for any less estate made in accordance with this Act shall be valid and effectual in law to transfer to and vest in possession in the purchasers the land described in such grants or other instruments for the estate or interest therein mentioned.

- (3) The Governor is authorized to make such grants and other instruments, upon such terms and conditions as to resumption of the land or otherwise as to him shall seem fit.
- (4) The Governor is authorized to agree with the Governor General of the Commonwealth or other appropriate authority of the Commonwealth for the sale or lease of any Crown lands to the Commonwealth and to execute any instruments or assurance for granting, conveying or leasing the land to the Commonwealth.

[Section 7 amended by No. 58 of 1950 s.4; No. 41 of 1956 s.3; No. 73 of 1977 s.3.]

[7A. Repealed by No. 52 of 1995 s.17.]

8. Governor may acquire land by purchase or exchange

- (1) The Governor may, in the name of Her Majesty, acquire from any person, with his consent, any land he may deem advisable to acquire for any purpose.
- (2) Such land may be acquired by purchase or by the exchange of any Crown land of equal value or deemed by the Governor to be of approximately equal value subject, where applicable, to the payment in cash of the difference between values.
- (3) Any land so acquired shall, subject to Part VIII., become Crown land within the meaning of this Act.
- (4) The Minister shall, after consultation with the Valuer-General, determine the value of —
 - (a) any land to be purchased under this section; or
 - (b) any land to be acquired by exchange under this section, and the value of the Crown land to be granted in exchange for the land to be so acquired.
- (5) In this section “**land**” includes any interest in land.

[Section 8 amended by No. 58 of 1950 s.5; No. 12 of 1958 s.2; No. 113 of 1965 s.8; No. 126 of 1987 s.54.]

9. Grant or lease to Aborigines

Without prejudice to the provisions of this Act relating to the right of any person descended from the original inhabitants of Australia to apply for and acquire land as a selector under the provisions of this Act, the Governor may for the purposes of advancing the interests of any such person lease, whether for a fixed term or in perpetuity, or grant to any such person, upon such terms and conditions as the Governor thinks fit in the best interests of any such person, any area of Crown land.

[Section 9 inserted by No. 53 of 1948 s.3; amended by No. 5 of 1995 s.5.]

10. Districts and townsites may be defined

The Governor may, by notice in the *Gazette*—

- (1) constitute and define the boundaries of any new districts and townsites, and distinguish each townsite by name as a town;
- (2) declare that any district or townsite shall cease to exist as such;
- (3) extend or diminish the area of any district or townsite;
- (4) alter the boundaries or name of any district or townsite;
- (5) define or alter the name of any street, square, terrace, road, lane, or way;
- (6) divide any district into two or more districts and give each a distinguishing name;
- (7) set apart any Crown lands, or any lands within a townsite, as suburban lands.

11. Resumptions

- (1) The Governor may resume any portion of land held as a homestead farm, or timber lease or special lease, or leased by the Crown with a right to purchase, if in the public interest he shall deem it necessary.

- (2) Where land is to be resumed pursuant to subsection (1) or section 109 the resumption shall be effected under and subject to the *Public Works Act 1902* as if the land were required for a public work but sections 29 to 33B, inclusive, of that Act shall not apply in relation to such resumption.
- (3) Where land is resumed pursuant to section 109, every dwelling house on the land resumed shall, notwithstanding section 140, be included as a lawful improvement.
- (4) Where any portion of land held as a pastoral lease is resumed pursuant to section 109 for any public road, compensation equal to the fair value of all lawful improvements on the land resumed, or which being outside the land resumed and comprised in the pastoral lease have become lessened in value by reason of the resumption, shall be payable to the lessee but no other compensation shall be payable by reason of the resumption.
- (5) Nothing in this section affects a right reserved by the Governor to resume land under the terms and conditions of the grant or other instrument that disposed of the land or confers on any person a right to compensation in respect of any resumption under a right so reserved, but this subsection does not exclude a right of any person to compensation that would be payable under those terms and conditions or under section 140 or 141.

[Section 11 inserted by No. 94 of 1982 s.3.]

12. Authentication and recording of Crown grants

All crown grants shall be signed by the Governor, as well as by the Minister, and sealed with the seal of the State, and every grant shall be entered on record in the Department.

[Section 12 amended by No. 79 of 1982 ss.5 and 26.]

13. Signature on other instruments

All approvals to applications, permits to occupy, leases, licences, transfers, instruments, and notices required to be

s. 15

served on the Registrar of Titles, except Crown grants, disposing of Crown lands shall be signed, or signed and sealed, as the case may require, by the Minister or by an officer authorized in that behalf by the Governor.

Provided that every such document which may by this section be signed by such authorized officer, and which prior to the commencement of this proviso has been signed by an officer of the Department of Lands and Surveys not in fact authorized by the Governor, shall be as valid and effectual as if such officer had been duly authorized by the Governor under this section.

[Section 13 amended by No. 47 of 1934 s.3.]

[14. Repealed by No. 79 of 1982 s.6.]

15. Reservations in grants

- (1) All Crown grants issued under this Act shall be deemed to contain a reservation of all gold, silver, copper, tin, or other metals, ore, minerals, or other substances containing metals and all gems or precious stones, and coal, or mineral oil, and all phosphatic substances in or upon the land comprised therein, and shall be in the appropriate prescribed form, subject to the variations required to meet special circumstances.
- (2) Crown grants, leases, or licences issued under this Act may be issued for an estate in the land to a limited depth only, and reserving to the Crown all land below such depth.

Provided that, subject to the provisions of the *Rights in Water and Irrigation Act 1914*, notwithstanding such limitation of depth and reservation, the grantee shall have the right to enjoy all wells and springs of water which may at any time be upon the land, and to bore and sink wells for water through such land to any depth and to enjoy the same.

[Section 15 amended by No. 126 of 1987 s.55.]

15A. Reservations relating to marketable timber

(1) In this section —

“commencing day” means the day of the coming into operation of the *Land Act Amendment Act (No. 2) 1956*;⁵

“instrument” means an instrument of lease or of licence, issued before the commencing day, whether issued under this Act or a repealed Act, or regulations made under a repealed Act;

“limited reservation” means a reservation to the Crown of a right to take marketable timber on land the subject of an instrument but only during the term or part of the term of the instrument;

“repealed Act” means an Act repealed by this Act;

“reservation” means a reservation to the Crown of a right to take marketable timber on land the subject of an instrument.

(2) Where in an instrument issued before the commencing day no reservation was expressly reserved, or a limited reservation only was reserved, the Crown Grant of the land the subject of the instrument shall not be subject to a reservation, whether the Crown Grant was issued before that day, or issues after that day.

(3) The provisions of subsection (2) operate in respect of a Crown Grant —

(a) notwithstanding the provisions of any notice, or of any regulation, promulgated before the commencing day, whether promulgated under this Act, or a repealed Act; and

(b) notwithstanding that the Crown Grant was issued prior to the commencing day and expressly contained a reservation.

(4) This section is enacted to resolve any doubts which but for this section may arise.

s. 15B

[Section 15A inserted by No. 48 of 1956 s.3.]

15B. Cessation of marketable timber reservations to the Crown

On and after the date of coming into operation of this section, notwithstanding any other provision in or under this Act, any other Act, or any Act repealed by this Act —

- (a) there shall not be in any Crown Grant, conditional purchase lease, or conditional purchase licence issued under this Act any reservation to the Crown of a right to take marketable timber on land the subject of the Grant, lease, or licence, as the case may be;
- (b) any such reservation in a Crown Grant, conditional purchase lease, or conditional purchase licence issued before that date under this Act or any Act repealed by this Act shall be of no effect;
- (c) no permit shall be granted, and no licence shall be issued, under the *Forests Act 1919* in respect of marketable timber on land the subject of a Crown Grant, conditional purchase lease, or conditional purchase licence issued at any time under this Act or any Act repealed by this Act; and
- (d) any permit granted, or any licence issued, before that date under the *Forests Act 1918*, in respect of marketable timber on land the subject of a Crown Grant, conditional purchase lease, or a conditional purchase licence issued under this Act or any Act repealed by this Act shall be of no effect.

[Section 15B inserted by No. 55 of 1971 s.3.]

16. All applications subject to approval of Minister

- (1) All applications under this Act, shall be subject to the approval of the Minister, who may insert such conditions and reservations as to him may appear necessary in the public interest.

- (2) Access to waterholes and springs, with roads leading thereto, should such be deemed necessary, and all roads and reserves deemed necessary, shall be made by the Minister, on the survey of any land applied for before survey.
- (3) The boundaries of lands fronting on the ocean, or any sound, bay, or creek, or any part thereof affected by the ebb or flow of the tide, or on any lake, lagoon, swamp, river, or main stream, shall be limited in every case where possible by straight lines, as near to the high water mark as the Minister shall decide, and such lines shall be marked on the ground, and the land between such lines and the water shall vest in the Crown.
- (4) The Minister shall have power in the public interest, and in his discretion, subject only to an appeal to the Governor under section 27, to refuse any application made under any Part of this Act.
- (5) No lease shall be granted under this Act of an area greater than that prescribed as the maximum area which one person may lawfully hold under this Act.

[Section 16 amended by No. 47 of 1934 s.4.]

17. Minister may order surveys of Crown land and lands reserved for town and suburban lots

- (1) The Minister may direct that any Crown lands, or lands reserved or set apart, or about to be reserved or set apart as town or suburban lands, shall be surveyed into lots, and may decide upon the size and shape of such lots, and the width and direction of all streets, roads, lanes, or ways within such lands.

[(2) and (3) repealed]

[Section 17 amended by No. 79 of 1982 s.7.]

18. Loss of leases, etc., and amendment of defective description

- (1) If any lease, licence, easement or occupation certificate, under this Act, is lost or destroyed, a duplicate or office copy thereof

s. 18

may be issued on payment of the prescribed fee, and on proof to the satisfaction of the Minister that the same has been lost or destroyed.

- (2) If it is found, on survey or otherwise, that the description of the boundaries or plan of the land contained in any lease, licence, easement or occupation certificate under this Act does not properly describe the land intended by the applicant to be therein comprised, or to which the lessee, licensee, person to whom that easement is granted or selector is entitled, either by reason of a want of survey, from an error in the description or survey, or from any other cause, the Minister may recall that lease, licence, easement or occupation certificate, and amend the description or plan of the holding in such a manner as not to disturb the boundaries of any lease, licence, easement or occupation certificate previously granted:

Provided that if the lessee licensee, person to whom that easement is granted or selector fails to forward, on demand, to the Minister, any lease, licence, easement or occupation certificate, or other document for correction, the Minister may cause the descriptions and the plans of the department to be amended if necessary, and shall, in such case, give notice of the amendment to the lessee, licensee, person to whom that easement is granted or selector.

- (3) Such amended descriptions and plans, or copies thereof, shall, if certified by an authorized land officer as correct, be accepted in every court of law as *prima facie* evidence of the boundaries of the land intended to be demised.
- (4) On receiving notice from the Minister of any such amendment to a lease registered as a Crown lease under the *Transfer of Land Act 1893*, and its amendments, together with a plan certified by an authorized land officer showing the original boundaries and the amended boundaries, the Registrar of Titles shall amend both the original and duplicate Crown lease in accordance with such notice and plan.

- (5) Any Crown lease which has been heretofore amended by the Registrar of Titles to conform to any amendment of boundaries made pursuant to this section, or pursuant to the provisions of the *Land Act 1898*, and its amendments, shall be deemed to have been lawfully amended.
- (6) If any lease so amended under this section is subject to any encumbrance or if an amendment has already been made in a lease as referred to in the last preceding subsection and that lease was subject to any encumbrance at the date of such amendment, then by force of this Act such encumbrance shall be deemed to attach or to have attached to the land included in the boundaries of such lease as amended as if such land had been the subject of the lease at the date of such encumbrance.

[Section 18 amended by No. 47 of 1934 s.5; No. 126 of 1987 s.56.]

19. If the survey varies from the application, how to be dealt with

- (1) If any section, when surveyed, differs in any respect from that intended by the lessee, licensee, selector, or purchaser, the Minister shall not be responsible for any loss or inconvenience which the lessee, licensee, selector, or purchaser may experience.
- (2) If the land is found to be in excess of that applied for, such excess shall be paid for by the lessee, licensee, or purchaser at the same price as the rest.
- (3) If the land is found to be less than the quantity applied for, that quantity shall be made good out of adjoining lands, if any, open to selection, but no purchase money or rent shall be returned unless the quantity of land paid for by the lessee, licensee, selector, or purchaser, cannot be made good as aforesaid, and then only to the extent of the deficiency.

s. 20

20. Minister may insert special clauses and grant limited right to timber

The Minister is authorized in his discretion to insert in any lease, licence, or occupation certificate such conditions and clauses as may seem to him to be required for the public interest; as also to insert a clause permitting the lessee, licensee, or selector to cut such timber on Crown lands as may be required for domestic uses, for the construction of buildings, fences, stockyards, or other improvements on the land so occupied, but not for any other purpose.

21. Right to enter upon lands to make surveys

Nothing in this Act or in any deed, lease, licence, or occupation certificate granted thereunder shall be held to prejudice or interrupt the right of the Minister, or of any officer authorized in that behalf by him, to go upon any land for the purpose of making any survey, inspection, or examination of the same doing as little damage as possible.

22. Land of insolvents to be for benefit of creditors

If any person holding land under conditional terms as to improvement or otherwise shall be adjudicated bankrupt or insolvent, or shall assign his estate for the benefit of his creditors, his interest in such land may, with the consent of the Minister, be sold by the assignee or trustee of such insolvent or bankrupt's estate, and it shall be lawful for any person to purchase the same, and such purchaser shall thereupon be substituted for the person so becoming bankrupt or insolvent or assigning his estate as aforesaid, and shall have the same advantages and be under the same liabilities in all respects, in regard to such land, as the original holder of the land:

Provided that no person shall be entitled to purchase as aforesaid who would not be qualified under this Act to hold such land under conditional terms or otherwise, if such land were open to selection.

23. Forfeiture for non-compliance with conditions

- (1) Subject to the provisions of this Act, if any holder of land under this Act fails or neglects to comply with, perform, or fulfil all or any of the conditions or restrictions under which he holds such land, or if at any time the rent or instalment of purchase money is not paid as prescribed, the lease or other holding and the lands therein, and all improvements thereon, as well as any rent or purchase money that may have been paid, may be forfeited.
- (2) The Minister may, for any cause he may deem sufficient —
 - (a) waive any forfeiture and reinstate any lessee or licensee as of his former estate, and on any terms and conditions as he may think fit; or
 - (b) direct the amount received by the Crown from an incoming lessee or licensee for improvements on the forfeited holding to be paid to the former lessee or licensee, or other person deemed to be entitled thereto, after deducting any rent or other moneys due to the Crown:
Provided however that in special circumstances the Minister may waive the whole or part of such rent or other moneys; or
 - (c) remit any fines incurred by a lessee or licensee for non-payment of rent or breach or non-observance or non-performance of any covenant or condition.
- (3) On receipt of notification that the Minister has waived a forfeiture and reinstated a lease, the Registrar of Titles shall thereupon endorse on the original lease in the Department within the meaning of the *Transfer of Land Act 1893* a memorandum to that effect together with a note of any terms or conditions relating to such waiver and reinstatement.

[Section 23 amended by No. 58 of 1950 s.6; No. 73 of 1977 s.4; No. 126 of 1987 s.57; No. 81 of 1996 s.153 (2).]

s. 24

24. Forfeited land, how dealt with

- (1) The land comprised in leases and licences held under this Act or any Act hereby repealed, except quarry licences, which may become forfeited either by failure of payment of the instalments of rent or purchase money, or by reason of the terms, conditions or restrictions not having been complied with, shall, if not required for any public purpose, and subject as herein provided, be made available, by notice published in a newspaper circulating in the area in which that land is situated, for re-selection.
- (2) Should any improvements exist upon the land, their value may be ascertained by the Minister and added to the price, and shall be paid for by the selector as and when the Minister directs.
- (3) Provided that if the Minister shall so order, any forfeited land shall revert, together with all improvements thereon, in Her Majesty, her heirs and successors, for her or their former estate therein.

[Section 24 amended by No. 58 of 1950 s.7; No. 73 of 1977 s.5; No. 126 of 1987 s.58.]

25. Restrictions upon public officers acquiring Crown lands

No person in the service of the Government of the State, and no surveyor who is paid by the Government by results, shall hereafter be allowed to purchase or lease Crown lands without the previous permission of the Governor in writing: Provided that this prohibition shall not apply to any town or suburban land sold by public auction.

26. Restriction as to age

- (1) No person under 16 years of age shall be eligible to select, acquire by transfer, or hold land under this Act, except in the case of land disposed of under Part IV.
- (2) The Minister may —

- (a) require any applicant for, or the transferee of, land (other than land available for disposal or disposed of under Part IV.) subject to the provisions of this Act to prove that he is not under 16 years of age; and
- (b) require any such applicant or transferee, when he is a minor to prove his actual age; and
- (c) in any case, either under paragraph (a) or paragraph (b), require the applicant or the transferee to verify his proof as to age by a statutory declaration.

[Section 26 amended by No. 36 of 1939 s.2.]

27. Appeal to Governor

If any person shall think himself aggrieved by any act or thing done or omitted to be done by the Minister or any officer of the Department, or by the exercise of any of the discretionary powers and authorities by Act conferred upon the Minister, it shall be lawful for such person, at any time within one month thereafter, or within such further time as the Minister may in special circumstances permit, to appeal to the Governor against the commission or omission of such act or thing, or the exercise of any such discretionary power or authority.

[Part IA Repealed by No. 52 of 1995 s.18.]

Part II — Divisions of the State

28. Divisions

For the purposes of this Act Western Australia is divided into 5 divisions, as follows: —

SOUTH-WEST DIVISION

Bounded by lines starting from the seashore at a point situate West from the cairn on Bompas Hill, and extending East to the Murchison River; thence South-Easterly along the said river to a point situate North from the trigonometrical station near Talling Peak; thence South to the said trigonometrical station; thence South-Easterly through the cairn on Mugga Mugga Hill to the summit of Mount Gibson; thence Easterly to trigonometrical station K83; thence East to the No. 1 line of the rabbit-proof fence; thence Southerly along the said fence to the seashore, and thence Westerly and Northerly along the seashore, including the islands adjacent, to the starting point.

KIMBERLEY DIVISION

All that portion of the State lying to the North of the parallel of 19° 30' South latitude.

NORTH-WEST DIVISION

Bounded by lines starting from the seashore at a point situate West from the cairn on Bompas Hill, and extending East to the Murchison River; thence South-Easterly along the said river to a point situate North from the trigonometrical station near Talling Peak; thence South to the said trigonometrical station; thence South-Easterly through the cairn on Mugga Mugga Hill to the summit of Mount Gibson; thence Easterly to trigonometrical station K83; thence East to the No. 1 line of the rabbit-proof fence; thence Northerly along the said fence to the 760-mile post; thence North to the parallel of 19° 30' South latitude; thence West to the seashore, and thence Westerly and

Southerly along the seashore, including the islands adjacent, to the starting point.

EUCLA DIVISION

Bounded by lines starting from the seashore near Wilson Bluff, at the East boundary of the State, and extending North to the parallel of 30 South latitude; thence west to the 125th meridian of East longitude; thence South to a point situate East from the summit of the granite rock near the 50-mile Soak on the Dundas-Lake Lefroy Road; thence West to the No. 1 line of the rabbit-proof fence; thence South-Easterly along the said fence to the seashore, and thence Easterly along the seashore, including the islands adjacent, to the starting point.

EASTERN DIVISION

All that portion of the State not included in the Kimberley, North-West, South-West, and Eucla Divisions already described.

Part III — Reserves

29. Governor may make reserves

- (1) The Governor may, subject to such conditions and limitations as he thinks fit, reserve to Her Majesty, or dispose of in such manner as for the public interest may seem fit, any lands vested in the Crown and the purpose for which any such lands are so reserved or disposed of shall be specified in the reservation or disposition.
- (2) Notwithstanding any other provision in this or any other Act, the Governor may, for such price and subject to such terms and conditions as he may determine, dispose of an estate in fee simple, free of all trusts, in any lands reserved under subsection (1) for the use and requirements of the Government or of any Crown instrumentality or of any local government, whether they were so reserved before or after the coming into operation of Part II of the *Acts Amendment (Reserves) Act 1982*.

[(3) repealed]

[Section 29 amended by No. 58 of 1950 s.8; No. 36 of 1958 s.2; No. 73 of 1977 s.6; No. 77 of 1982 s.6; No. 14 of 1996 s.4.]

30. Reserves to be notified in *Gazette*

A description of every such reserve, and of the purposes for which it is made, shall be published in the *Gazette*, and all reserves shall be set forth on the authenticated maps of the Department.

31. Classification of reserves

- (1) (a) Whenever the Governor has reserved or may hereafter reserve to Her Majesty any lands of the Crown for any public purpose, the Governor may, by proclamation, and subject to such conditions as may be expressed therein, classify such lands as of Class A, and if so classified, such lands shall forever remain dedicated to the purpose declared in such proclamation, until by

an Act of Parliament in which such lands are specified it is otherwise enacted.

- (b) Every classification as Class A and declaration of dedication of such land —

made prior to the commencement of the *Land Act Amendment Act 1948*, by notice of reservation published in the *Gazette*, or by any subsequent notice so published pursuant to the provisions of section 31 (1) of the *Land Act 1933*,

shall, without prejudice to the validity of such classification and declaration of dedication, by force of the *Land Act Amendment Act 1948*, be regarded as made by proclamation published at the time of the commencement of the *Land Act Amendment Act 1948*.

- (2) Whenever the Governor has reserved or may hereafter reserve to Her Majesty any lands of the Crown and such lands are not classified as of Class A, the Governor may, by proclamation, at any time he thinks fit, classify such lands as of Class B, and if so classified, such lands shall remain reserved from alienation or from being otherwise dealt with unless and until the Governor, by proclamation, cancels such reservation.

Provided that, in such case the Minister shall present a special report to both Houses of Parliament setting forth the reasons for such cancellation, and the purpose to which it is intended to devote the land; and such report shall be made to both Houses of Parliament within 14 days from the cancellation, if Parliament is then in session, and, if not, within 14 days after the commencement of the next session.

- (2a) Where before the coming into operation of Part II of the *Acts Amendment (Reserves) Act 1982* the Governor purported to classify as of Class B lands reserved to Her Majesty or cancel the reservation from alienation of any lands so classified, such classification or cancellation shall not be questioned by reason only of the form of instrument used.

s. 31A

- (3) All other reserves made under this Part shall be classified as of Class C.
- (4) Nothing in this section shall prevent the survey and declaration of any necessary roads and streets through or over any reserve; or, in case of any reserve being made before the land is surveyed, shall prevent the amendment of the boundaries and area in such manner as may be found necessary on survey, but so that the total area shall not be reduced by more than one-twentieth part thereof.

[Section 31 amended by No. 53 of 1948 s.4; No. 58 of 1950 s.9; No. 77 of 1982 s.7.]

31A. Restriction on abolition of national parks

- (1) Land that, after the commencement of the *Acts Amendment (Conservation and Land Management) Act 1984*, is reserved under section 29 for the purpose of a national park shall, by force of this section, remain a national park until, by an Act in which the land is specified, it is otherwise enacted.
- (2) Land that is reserved under section 29 for the purpose of a conservation park shall, by force of this section, remain a conservation park until, by an Act in which the land is specified, it is otherwise enacted.

[Section 31A inserted by No. 112 of 1984 s.17; amended by No. 20 of 1991 s.57.]

32. Power to the Minister to lease reserves

- (1) When in the opinion of the Minister any reserve is not immediately required for the purpose for which it was made, the Minister may grant a lease or leases thereof, for not exceeding 10 years, for any purpose, at such rent and subject to such conditions as he may think fit: Provided no lease for a term exceeding one year shall be granted unless applications are called for by notice published in a newspaper circulating in the area in which the reserve is situated.

- (2) When land is reserved pursuant to the provisions of this Act for the purpose of parks or for the recreation or amusement of the inhabitants, if the land is not vested in, granted in fee simple to, or placed under the control and management of any person, the Minister may, notwithstanding that the land is being used for the purpose for which it is reserved, grant a lease or licence thereof in the prescribed form to any person for a term of one year for the purpose of depasturing stock on the land.
- (3) The Minister may from time to time renew the term of any lease or licence granted under subsection (2) for a further period of one year, subject to a condition that any term so extended may be determined by any party to the lease or licence giving to the other party 90 days' notice in writing so determining it.
- (4) The Minister may insert in the lease or licence such terms, conditions and limitations as he thinks fit to ensure that the land is, during the currency of the lease or licence, available for the purpose for which it is reserved.

[Section 32 amended by No. 6 of 1960 s.2; No. 126 of 1987 s.59.]

33. Vesting leasing, etc. of reserves

- (1) In this section, unless the contrary intention appears —
 - “**land**” means land reserved under this Act;
 - “**the designated purpose**” means the purpose for which land is reserved under this Act and any purpose ancillary, and beneficial, to that purpose.
- (1a) An order made under this section shall —
 - (a) describe the land affected by that order;
 - (b) specify the purpose for which the land affected by that order is reserved under this Act, or may be leased or granted in fee simple;
 - (c) name the person —

s. 33

- (i) in whom the land affected by that order is directed to be vested; or
 - (ii) to whom a lease of, or the fee simple in, the land affected by that order is directed to be granted, by that order; and
- (d) specify the conditions and limitations subject to which the Governor by that order —
 - (i) directs the vesting of the land affected by that order or the grant of a lease of, or the fee simple in, that land; or
 - (ii) confers any power to lease or sub-lease the land affected by that order.
- (2) By Order the Governor may direct that any land shall vest in and be held by any person for the designated purpose, subject to such conditions and limitations as the Governor shall deem necessary to ensure that the land is used for the designated purpose, and by the same or any subsequent Order the Governor may, subject to such conditions and limitations as the Governor shall deem necessary to ensure that the land is used for the designated purpose, confer upon that person, power to lease for the designated purpose the whole or any part of the land.
- (3) (a) By Order the Governor may direct that any land shall be leased for the designated purpose, by instrument of lease in accordance with the prescribed form to any person.
- (3a) The person to whom the land is leased under subsection (3) may, with the consent of the Governor, sublet, for the designated purpose, the whole or part of the land, or mortgage for the designated purpose, the whole of the land.

- (ii) The consent of the Governor may be given under subsection (3) (a) subject to such conditions and limitations as the Governor shall deem necessary to ensure that the land is used for the designated purpose and the consent shall be endorsed on the instrument of sub-lease or mortgage, as the case may be.
- (4) (a) By Order the Governor may direct that any land shall be granted in fee simple to any person subject to the condition that the person shall not lease or mortgage the whole or any part of the land without the consent of the Governor and subject to such other conditions and limitations as the Governor shall deem necessary to ensure that the land is used for the designated purpose.
- (b) The consent of the Governor may be given subject to such conditions and limitations as the Governor shall deem necessary to ensure that the land is used for the designated purpose.
- (5) When the mortgagee of any land mortgaged with the consent of the Governor, whether before or after the commencement of the *Land Act Amendment Act 1948*, completes the exercise of the power of sale or foreclosure pursuant to the mortgage, the land shall by force of this enactment be freed from any trust, condition, limitation, or other restriction, created or imposed in relation to the designated purpose.
- (6) The provisions of this section shall apply in respect of all land reserved pursuant to the provisions of this Act prior to or after the commencement of the *Land Act Amendment Act 1948*.

[Section 33 inserted by No. 53 of 1948 s.5; amended by No. 77 of 1982 s.8; No. 126 of 1987 s.60.]

34. By-laws

Where pursuant to an Order in Council made under section 34 as in force before the coming into operation of section 9 of the *Acts Amendment (Reserves) Act 1982* (in this section referred to as “**the repealing section**”) a person has the control of a

s. 34A

reserve as a board of management with power to make, repeal, or alter by-laws in relation to the reserve —

- (a) any such by-laws then in force shall, subject to section 36 of the *Interpretation Act 1918*⁶, continue in force until repealed under this section or until the control of the reserve is divested under section 34B, whichever first occurs; and
- (b) the person having the control of the reserve may make, repeal, or alter by-laws in relation to the reserve as if, and with effect as if, the repealing section had not been enacted.

[Section 34 inserted by No. 77 of 1982 s.9.]

34A. Management plans

The Minister may require —

- (a) any person in whom land has, whether before or after the coming into operation of Part II of the *Acts Amendment (Reserves) Act 1982*, been, is, or is proposed to be, vested under section 33 (2); or
- (b) any person having the control of land pursuant to section 34 as in force before the coming into operation of Part II of the *Acts Amendment (Reserves) Act 1982*,

to submit a plan to the satisfaction of the Minister for the development, management and use of the land and, where the Minister approves any such plan and notifies the person in whom the land is for the time being vested or for the time being having control of the land, the land shall be developed, managed, and used in accordance with the plan or, where the Minister has approved a variation of the plan, in accordance with the plan as so varied.

[Section 34A inserted by No. 77 of 1982 s.10.]

34B. Revocation of certain orders

(1) The Governor may, by Order in Council published in the *Gazette*, revoke an Order in Council made under section 33 (2), whether before or after the coming into operation of Part II of the *Acts Amendment (Reserves) Act 1982*, and upon such publication every person in whom land is vested pursuant to the Order in Council revoked is thereby divested of the land but any estate or interest lawfully granted over or caveat lodged in respect of the whole or any part of the land shall continue, in the case of land which —

- (a) remains reserved under this Act;
- (b) becomes Crown land; or
- (c) having become Crown land, is subsequently reserved under this Act,

subject to and in accordance with the terms of that estate or interest or subject to that caveat as if —

- (d) that land not being vested in another person under an Order made under section 33 (2), Her Majesty; or
- (e) that land being vested in another person under an Order made under section 33 (2), the other person,

were the person in whom that land was so vested at the time when that estate or interest was created or the estate or interest claimed by that caveat was created, as the case requires.

(2) The Governor may, by Order in Council published in the *Gazette*, revoke an Order in Council referred to in section 34 and upon such publication every person having the control of the reserve to which the Order in Council revoked relates is thereby divested of the control of the reserve and any right to the use of the reserve lawfully conferred by each such person on any other person shall, in the case of land which —

- (a) remains reserved under this Act;
- (b) becomes Crown land; or

s. 36

- (c) having become Crown land, is subsequently reserved under this Act,

be enforceable, subject to its terms, as if it had been conferred directly —

- (d) that land not being vested in another person under an Order made under section 33 (2), by Her Majesty; or
- (e) that land being vested in another person under an Order made under section 33 (2), by the other person.

[Section 34B inserted by No. 77 of 1982 s.10; amended by No. 33 of 1992 s.4.]

[35. Repealed by No. 77 of 1982 s.11.]

36. Temporary reserves

The Minister may temporarily reserve land for any purpose specified in the reservation, and if such temporary reserve be not confirmed by the Governor making the land a reserve, within 12 months from the date at which such temporary reserve was made, such land shall thereupon cease to be so reserved.

[Section 36 amended by No. 77 of 1982 s.12.]

37.⁷ Power to cancel or change the purpose of reserves

Subject to sections 31 and 31A, the Governor may cancel or amend the boundaries of any reserve not classified as of Class A, and may change the purpose for which any reserve not so classified was made:

Provided that notice of such cancellation, amendment of boundaries, or change of purpose shall be published in the *Gazette*.

[Section 37 amended by No. 112 of 1984 s.19.]

37AA. Continuation of estates or interests or caveats on cancellation, or change of purpose of, reserves

- (1) When the reservation under this Act, or the dedication to the purposes of, or the vesting under, another Act, of any land is cancelled, any estate or interest or caveat lawfully granted over or lodged in respect of the whole or any part of that land shall continue in the case of land which —
- (a) becomes Crown land; or
 - (b) having become Crown land, is subsequently reserved under this Act,

subject to and in accordance with the terms of that estate or interest or subject to that caveat as if —

- (c) that land not being vested in a person under an Order made under section 33 (2), Her Majesty; or
- (d) that land being vested in a person under an Order made under section 33 (2), the person,

were the person in whom that land was so vested at the time when that estate or interest was created or the estate or interest claimed by the caveat was created, as the case requires.

- (2) When the purpose to which any land reserved under this Act is dedicated or for which any land is reserved under this Act is changed, any estate or interest lawfully granted over or caveat lodged in respect of the whole or any part of that land shall continue, subject to and in accordance with the terms of that estate or interest or subject to that caveat, as if Her Majesty were the person in whom that land was vested at the time when that estate or interest was created or the estate or interest claimed by that caveat was created, as the case requires.

[Section 37AA inserted by No. 33 of 1992 s.5.]

37A. Power to trustees to surrender or exchange certain lands

- (1) Any trustee holding land, whether for an estate in fee simple or leasehold, granted or demised by the Crown in trust for any

s. 37B

public purpose, may, with the approval of the Minister, surrender such land to Her Majesty in whole or in part.

- (2) The Governor may grant or demise to such trustee, by way of exchange for land surrendered under the last preceding subsection, other land to be held in trust for the same public purpose as the land so surrendered.
- (3) Ordinance 16 Victoriae No. 17 is repealed.

[Section 37A inserted by No. 58 of 1950 s.10; amended by No 77 of 1982 s.13.]

37B. Limitation of this Part

- (1) This Part is subject to —
 - (a) subsections (2), (2a), (3) and (5) of section 7 of the *Conservation and Land Management Act 1984*, and no land that is reserved under this Part and referred to in those subsections and thereby vested in the Authority constituted under that Act shall be vested or disposed of under this Part;
 - (b) subsection (4) of section 7 of that Act, and no land that is reserved under this Part and referred to in that subsection and thereby vested in the Authority constituted under that Act either solely or jointly with some other body or bodies shall be vested or disposed of or the vesting amended, under this Act, otherwise than in relation to the interest of the other body or bodies therein;
 - (c) section 8 and 10 of that Act, and no land shall be reserved under this Part as a State forest or timber reserve;
 - (d) section 17 of that Act, and the purpose for which land to which that section applies was reserved, shall not be cancelled or amended, or the boundaries of that land altered other than by addition thereto, except in accordance with that section;

- (e) sections 19 (3) and 22 (3) of that Act; and
 - (f) Part V of that Act, and the Minister shall not exercise the power conferred on him by section 34A in respect of land to which that Act applies.
- (2) Section 32 shall not apply to a national park, conservation park, nature reserve, marine nature reserve or marine park within the meaning of the *Conservation and Land Management Act 1984* or any land referred to in section 5 (g) of that Act.
- (3) Where land is vested by order under this Act as mentioned in section 5 (g) of the *Conservation and Land Management Act 1984*, a power to lease shall not be conferred by the order on either the Commission or the Authority constituted under that Act.
- (4) In respect of land in the management area of the Swan River Trust, within the meaning of the *Swan River Trust Act 1988*, the Minister shall consult with that body before —
- (a) any such land is reserved under this Part; or
 - (b) the purpose of any such land that is a reserve under this Part is cancelled, amended, or the boundary thereof is altered, otherwise than by an addition thereto, under this Part.

[Section 37B inserted by No. 112 of 1984 s.20; amended No. 20 of 1988 s.8; No. 20 of 1991 s.57.]

Part IV — Town and suburban lands

38. Town and suburban lands to be sold by auction

- (1) Subject to this Act, town and suburban land, after being surveyed into lots and notified in a newspaper circulating in the area in which that land is situated as open for sale shall be disposed of—
 - (a) by sale at public auction at such upset prices as are determined by the Minister; and
 - (b) subject to such conditions and restrictions as may be determined by the Minister and are set out in the conditions of sale.
- (2) Land referred to in subsection (1) may be put up for sale at such times and places as the Minister thinks fit, and the Minister may withdraw from sale any lot referred to in that subsection at any time prior to that lot being actually offered for sale bid for.
- (3) Any person may apply to the Minister to put up any lot for sale and shall deposit with his application 10% of the upset price, which amount shall be refunded in the event of the applicant being outbid at auction. Such application shall be in the prescribed form.

[Section 38 amended by No. 73 of 1977 s.7; No. 79 of 1982 s.8; No. 126 of 1987 s.38.]

[39. Repealed by No. 126 of 1987 s.62.]

40. Terms and conditions of sale to be read

Any person authorized by the Minister may conduct sales by auction under this Act, without having an auctioneer's licence, and shall, before the commencement of the sale, read the terms and conditions of sale, and all persons bidding and all persons on whose behalf bids are made shall be bound by the terms and conditions so read.

[Section 40 amended by No. 73 of 1977 s.9.]

41. Payment of purchase money

- (1) At all such sales by auction the purchaser shall, on the fall of the hammer, pay a deposit at the rate of 10% upon the total amount of the purchase money, unless he has already paid a sufficient deposit on application, and any such deposit shall be considered as payment of the purchase money so far as the same will extend.
- (2) The balance of purchase money shall be paid as provided by regulations under this Act, save that the balance of purchase money and any fees payable may be paid at an earlier date if the purchaser so desires.
- (3) In any case where the value of improvements on a lot is added to the upset price, and the lot is knocked down to any person other than the owner of such improvements, the value of the same shall be paid to the Minister or his agent immediately after the sale.
- (4) Where the Minister is satisfied that —
 - (a) the final instalment of the purchase money and the fees have been paid;
 - (b) the fencing and improvements and the conditions imposed in relation to the lot by and under this Act have been complied with and maintained; and
 - (c) any applicable restrictions have been observed,

a Crown grant shall be issued in relation to that lot on the payment of such fee is as is prescribed.

[Section 41 amended by No. 58 of 1950 s.11; No. 65 of 1965 s.2; No. 113 of 1965 s.8; No. 73 of 1977 s.10; No. 65 of 1980 s.3.]

s. 41A

41A. Lots unsold at auction may be sold at upset price

- (1) Any town or suburban lot put up, for sale by public auction but passed in as unsold shall, on application lodged or received through the post, be available for purchase at the upset price.
- (1a) Notwithstanding anything in subsection (1), the Minister may at any time withdraw from sale any lot referred to in that subsection.
- (2) The application shall be accompanied by a deposit of 10 per centum of the purchase money, and shall be deemed to be an application for land under this Act for the purposes of section 135.
- (3) Where the application is approved, the sale of the lot shall, except in relation to the payment of the deposit, proceed in like manner and in all other respects as though the lot had been sold by auction.
- [(4) repealed]*
- (5) Where an application is lodged or received under subsection (1) in respect of a lot that has been withdrawn from sale by the Minister under subsection (1a), the deposit that accompanied the application shall be refunded to the applicant named therein.

[Section 41A inserted by No. 58 of 1950 s.12; amended by No. 30 of 1967 s.2; No. 55 of 1969 s.3; No. 126 of 1987 s.63.]

42. Conditions relating to suburban lands

- (1) In addition to any other conditions imposed under this Act but subject to the regulations made under this Act, suburban land shall be sold on condition that each lot shall within two years from the date of sale, be fenced on the surveyed boundaries with a fence of the prescribed description, and in default thereof the land shall be forfeited, together with all purchase money and fees which may have been paid:

Provided that the Minister may dispense with the division fences between two or more adjoining lots purchased by one person, or may accept other substantial improvements of equal value in lieu of fencing.

- (2) Regulations may —
- (a) prescribe and name different classes of suburban lands;
 - (b) prescribe fencing requirements for each class or for suburban land in different localities;
 - (c) confer upon the Minister a power to approve or reject any fencing or to release the purchaser from the whole or part of his obligations with respect to fencing;
 - (d) require the purchaser to expend in prescribed improvements on each lot a sum equal to double the amount of purchase money.

[Section 42 amended by No. 58 of 1950 s.13; No. 73 of 1977 s.11.]

42A. Power of Minister to refund purchase money or portion thereof in certain circumstances

Where the purchase money for land comprising a lot is forfeited pursuant to section 23 or 42 because the purchaser has failed to comply with a condition of the sale or has failed to pay an instalment of purchase money as prescribed the Minister may —

- (a) refund to the purchaser up to 90% of the purchase money so forfeited; or
- (b) if he is satisfied that such failure by the purchaser was due to circumstances that could not be foreseen by him or to circumstances beyond his control, refund to the purchaser the whole of the purchase money so forfeited.

[Section 42A inserted by No. 55 of 1969 s.4; inserted by No. 65 of 1980 s.4.]

s. 43

43. Licence to occupy

On payment by the purchaser of town or suburban lands of the first prescribed instalment of the purchase money, a licence in the prescribed form may be issued on application entitling the holder to occupy the land, and such licence may be mortgaged or transferred in the manner prescribed by this Act.

[Section 43 amended by No. 126 of 1987 s.64.]

44. Lessee of town or suburban land may acquire fee simple

Any lessee of town or suburban land acquired at public auction under this Act, whether before or after the commencement of the *Land Act Amendment Act 1950*, may, subject to the regulations, apply to purchase the fee simple of the land. The Governor shall thereupon fix the price for the sale of the fee simple, and, upon payment thereof and of the Crown grant fee, and on performance of the prescribed improvements, if any, the lessee may surrender his lease and obtain in lieu thereof a grant in fee simple of his holding.

[Section 44 inserted by No. 58 of 1950 s.14.]

45. Grants of land for the purposes of the *Housing Act 1980*

Notwithstanding anything contained in the preceding sections of this Part of this Act, the Minister —

- (a) may grant town and suburban land to the State Housing Commission to be dealt with by the Commission under the provisions of the *Housing Act 1980*, and the Governor may make regulations prescribing the terms and conditions under which such land may be held and disposed of by the said Commission;

[(b) and (c) deleted]

[Section 45 amended by No. 126 of 1987 s.65.]

45A. Minister may dispense with requirements under this Part as to certain sales

- (1) Notwithstanding anything contained in the preceding sections of this Part (Part IV.), the Minister may dispense with the requirements thereof as to sale of town and suburban lands by public auction and may approve of any lot being town or suburban lands being offered for sale in fee simple or for leasing for a term not exceeding 99 years upon such conditions, including conditions in regard to the effecting of improvements, at such prices in the case of sale, and at such rentals in the case of leasing (including provision for re-assessment of rental at intervals of not less than 10 years) as the Minister may direct or as may be prescribed.
- (2) Upon the Minister signifying approval pursuant to subsection (1), in respect of any such land the same may, by notice published in a newspaper circulating in the area in which that land is situated and subject to this section, be offered for sale or leasing as the case may be and the provisions of section 135 shall apply,
- (3) The provisions of section 44 shall not apply in respect of any land leased under the provisions of this section but upon the expiration of the term of the lease thereof the application of the lessee shall be entitled to preference in priority to that of any other applicant in the event of such land being offered for leasing in pursuance of this section.

[Section 45A inserted by No. 35 of 1946 s.3; No. 126 of 1987 s.66.]

45B. Power to sell town and suburban land by advertisement

- (1) Notwithstanding anything contained in the preceding sections of this Part, the Minister may, by notice published in a newspaper circulating in the area in which the suburban or town land concerned is situated —

s. 45B

- (a) invite applications for the purchase in fee simple of any suburban or town land specified in that invitation; and
 - (b) specify in the invitation referred to in paragraph (a) a period within which applications may be made and a place at which applications may be lodged or to which applications may be sent through the post.
- (2) An application made under this section —
- (a) shall be made in the prescribed form;
 - (b) shall be accompanied by the prescribed deposit; and
 - (c) shall be granted, subject to subsection (3), according to the order of its being lodged at or received through the post at the place specified under subsection (1) (b).
- (3) When two or more applications for the purchase of the same land are so lodged or so received on the same day, those applications shall be deemed to have been so lodged or so received at the same time, and in such case the Minister shall nominate the method of determining which of those applications shall be granted.

[Section 45B inserted by No. 55 of 1969 s.5; amended by No. 79 of 1982, s.9; No. 126 of 1987 s.67.]

Part V — Agricultural and grazing land

Division (1) — Conditional purchase

46. Land may be declared open for selection

- (1) The Minister may, by notice in the *Gazette*, declare any Crown land as open for selection under and subject to the provisions of this Part; and may, in like manner, withdraw any such land from being open for selection:

Provided, that in the case of lands which do not exceed 500 acres in extent the applications may be restricted at the discretion of the Minister to persons who are the holders of a leasehold estate in adjoining lands under the provisions of Part V. or an estate in fee simple in such adjoining lands.

In this proviso the term “**adjoining lands**” includes not only such lands as are actually adjacent to the lands open for selection but land which may be separated therefrom by any public road or way and also land which is so situated in relation to the lands open for selection that the Minister is of opinion that the land and lands open for selection may be conveniently worked as one holding.

- (2) An incorporated company is not eligible to select or acquire any lands under this Division.

[Section 46 amended by No. 36 of 1939 s.3; No. 65 of 1965 s.3; No. 55 of 1969 s.6.]

47. Conditional purchase with residence

Land declared open for selection under this Part may be disposed of subject to the following conditions: —

- (1) (a) A person shall not be competent to acquire either as lessee or transferee, an area of land exceeding in the aggregate 5 000 acres; but on the recommendation of the Minister and with the approval of the Governor, it shall be competent for a

person to acquire an area of land in one or more parcels exceeding 5 000 acres, but not in any event exceeding 10 000 acres, in any case where the Minister is satisfied that a holding requires an area greater than 5 000 acres in order to be of a standard deemed by the Minister an economic farm unit.

Provided that the Governor may reduce the maximum area that may be acquired in prescribed localities.

- (b) Where land is held in the joint names of two or more persons, each person shall, for the purposes of this subsection be deemed, unless the contrary is expressed, to hold a proportionate part of the acreage of the joint holding in ratio to the number of such persons:

Provided that husband and wife shall not be competent to acquire jointly an area of land in excess of the area that either of them may lawfully acquire:

Provided also, that the wife or husband of any person who acquires land under this Part, shall not be qualified to acquire land thereunder so far as the acreage of their holdings would exceed the maximum area that may be lawfully acquired by either of them.

- (c) Land acquired by any person on conditional purchase under Parts V., VI., or VIII. of the Land Act 1898, and so held at the commencement of this Act shall, for the purpose of computing the area that may be acquired under this Act, be deemed to have been acquired under this Act.

- (2) (a) The price shall be fixed by the Governor, but shall not be less than 20 cents per acre.

In fixing the price consideration shall be given to the quality and productiveness of the land; its distance from a railway, market, or port; the prevalence of indigenous poison plants or the harmful species of wodjil as a dominant growth; and other circumstances.

Such price shall be exclusive of the cost of survey, and the value of improvements, if any: Provided that when the prevalence of indigenous poison plants or any harmful species or wodjil as a dominant growth is taken into consideration in fixing the price of the land, the Crown grant for the land shall not issue until the Minister is satisfied that the same has been eradicated.

- (b) The value of any existing improvements on or affecting any land applied for, or authorized and in course of construction or intended to be constructed, shall be determined by the Minister, and (subject to section 52) the price of the land shall be increased by the value so determined of such improvements, with interest thereon at the prescribed rate, to the intent that the price of the land as increased by the value of such improvements, shall be paid by the selector by half-yearly instalments at such times and in such manner as the price of the land if unimproved would have been payable.
- (c) If the land was surveyed before selection the prescribed cost of survey shall be deemed an improvement within the meaning of paragraph (b).
- (3) The application shall be in the prescribed form.
- (4) On approval of an application a lease in the prescribed form shall be issued to the applicant for the term, at the rent, and subject to the conditions hereinafter prescribed, that is to say: —
 - (a) The term shall be 25 years from the first day of the quarter next preceding the date of such approval unless extended to not exceeding 30 years under paragraph (b) (ii).
 - (b) The rent shall be fixed at such sum per annum as will, if duly paid during the currency of the lease, amount to the price of the land, and shall be payable by the lessee in equal half-yearly instalments in advance.
Such rent shall not exceed 5 cents per acre per annum:
Provided —

- (i) that for each of the first 5 years of the term the rent shall be a sum equal, or as nearly equal as may be practicable, to the interest at the prescribed rate on the cost of survey, and on the value of the improvements, if any, but not less than \$1 per annum; and the annual rent for the remainder of the term shall be proportionately increased;
- (ii) that if the price of the land exceeds \$1 per acre, the Minister may, so far as necessary to reduce the annual rent to 5 cents per acre, extend the term of the lease to not exceeding 30 years;
- (iii) that if the price of the land would not, at the rate of 5 cents per acre per annum, be fully paid within 30 years from the commencement of the lease, the rent payable after the first 5 years of the term shall be increased so far as necessary to provide for the payment of the land within such 30 years;
- (iv) notwithstanding anything to the contrary contained elsewhere in this proviso, if the annual rent as payable after the first 5 years, when calculated in accordance with this subsection amounts to a sum less than \$2, the amount of annual rent calculated as aforesaid shall be disregarded, and after the first 5 years aforesaid the annual rent payable in respect of the lease shall be \$2 until the price of the land shall, by means of the payment of such annual rent, have been paid in full.

- (c) (i) The lessee shall, within 2 years from the date of the approval of application for the lease, take in his own person possession of the land, and shall reside upon it and make it his usual home without any other habitual residence, during at least 6 months in each year for the following 3 years of the lease, and if possession is not taken as aforesaid the lease shall be forfeited:

Provided that, if the lessee is already the beneficial owner of rural land for an estate of freehold or of land under conditional purchase, or is the holder of a lease of any such lands from the owner, or is the holder of a homestead farm within 50 miles of the land applied for, residence on such freehold, or conditional purchase land or homestead farm shall be sufficient residence under this paragraph:

Provided also that the residence of the wife or a parent of the lessee, or a child of the lessee of the age of over 16 years, or other near relative approved by the Minister, may be accepted in lieu of the personal residence of the lessee:

Provided also that the Minister may grant to the lessee permission to absent himself from his holding for such time as the Minister may think fit, but the Crown grant shall not be issued until the holder has performed in the aggregate the residence conditions required to be performed.

- (ii) The Minister may, notwithstanding the first 5 years of the term have expired, require satisfactory evidence of residence to be adduced by the lessee, and, failing such evidence, may require expenditure on improvements to the extent of not exceeding double the amount which otherwise would have sufficed, before the issue of a Crown grant.
- (iii) Notwithstanding anything contained in this subsection to the contrary, the Governor may prescribe that personal residence by the lessee shall be obligatory.

- (d) If the Minister is satisfied that any land acquired under this section is suitable only for grazing, or more suitable for grazing than cultivation, he may permit residence by the servant or agent of the lessee in lieu of residence as hereinbefore prescribed, but in such case such residence by a servant or agent must be for not less than 9 months in each year of the first 5 years of the term of the lease.
- (e) Where land held jointly by 2 or more lessees is subject to the condition of residence, it shall suffice if, with the Minister's approval, the residence condition is fulfilled by one of the joint lessees.
- (f) The lessee —
- (i) shall provide an adequate water supply within the first 2 years of the term of the lease, if required by the Minister to do so, but where the lease is issued after the coming into operation of the *Land Act Amendment Act (No. 2) 1969* the lessee if required by the Minister to do so shall provide an adequate water supply before a Crown grant is issued to the lessee under subsection (5);
 - (ii) shall effect improvements by way of progressively sowing to pasture or crop, or to both, such that by the end of 2 years from the date of approval of the application for the lease at least 10% of the total area of the land is or has been so sown, by the end of 5 years from that date at least 20% of the total area of the land is or has been so sown, and by the end of 11 years from that date at least 50% of the total area of the land is or has been so sown. Provided that the Minister in his discretion may vary either or both the percentage or type of improvements required to be effected within any time.

[(iii) deleted]

It shall be obligatory on the part of the lessee to commence within 6 months from the date of approval of the application for

the lease and thereafter to continue and maintain the improvements to the satisfaction of the Minister.

If from any cause deemed by the Minister to be sufficient, a lessee has been prevented from improving his land within the time prescribed, the Minister may, with the approval of the Governor, grant an extension of such time, not exceeding 12 months, to complete such improvements.

- (5) At the expiration of the lease, or at any time after 5 years from its commencement, if the conditions in respect of the total period of the lease have been complied with, the improvements maintained, and the price of the land fully paid, rent being deemed payments on account of the price, a Crown grant of the land shall be issued to the lessee in the prescribed form on payment of the prescribed fee:

Provided that any portion of the land lawfully resumed prior to the issue of the grant may be excluded therefrom.

[Section 47 amended by No. 39 of 1937 s.2; No. 36 of 1939 s.4; No. 58 of 1950 s.15; No. 41 of 1962 s.3; No. 60 of 1963 s.4; No. 65 of 1965, s.4; No. 113 of 1965 s.8; No. 55 of 1969 s.7; No. 73 of 1977 s.12; No. 79 of 1982 s.10; No. 14 of 1986 s.4; No. 126 of 1987 s.68.]

[48. Repealed by No. 36 of 1939 s.5.]

49. Conditional purchase without residence

- (1) Land may be leased under section 47 without the condition of residence but subject to all other conditions therein prescribed:

Provided that the lessee shall expend on improvements (in addition to an adequate water supply if required by the Minister to provide the same) an amount not exceeding double the amount which, under section 47, a lessee subject to residence conditions is required to expend.

- (2) Any lessee of conditional purchase land subject to the condition of residence may, on application to the Minister, and on payment of a fee of \$2, be relieved of the condition of residence provided that in such case the improvements shall be of the value of double the amount of the purchase money.

In the case of a lease acquired on the recommendation of a Land Board, such application may be granted or refused in the discretion of the Minister.

- (3) Any lessee of conditional purchase land not subject to the condition of residence, who is prepared to comply with such conditions may, on application to the Minister, and on payment of the fee of \$2, have the conditions of his lease modified accordingly.

[Section 49 amended by No. 113 of 1965 s.8.]

50. Additional land where lessee has not acquired the maximum area

- (1) Any person having obtained land of less extent than may be lawfully acquired under section 47 (1) may make other applications for land under that section, within 20 miles of the land so obtained; but so that his holdings shall not exceed in the whole the maximum quantity that may be lawfully held.
- (2) Residence on the additional land shall not be obligatory, but all the other conditions shall apply.

[Section 50 amended by No. 58 of 1950 s.16; No. 14 of 1986 s.5.]

51. Cost of survey of land not surveyed before selection

- (1) Every lessee under this Part of land not surveyed before selection shall pay the prescribed cost of survey, with or without interest, by such instalments, at such times, and in such manner, as may be prescribed, and in default the lessee shall be subject to the penalties prescribed by section 139.

Provided that the Minister may refuse to effect the survey of any land unless the lessee pays the cost of survey in advance:

Provided, also, that if a lease is surrendered or forfeited, the cost of the survey, or the unpaid balance thereof, shall if so directed by the Minister, be payable to the Minister forthwith by the person in whom the lease was vested at the date of the surrender or forfeiture.

- (2) Where several contiguous holdings are held by the same person, it shall suffice if the external boundaries of the group of holdings are surveyed, and in such case the survey fee may be assessed upon the area comprised in the group of holdings as a whole, unless the Minister, having regard to the relative positions of the holdings, shall otherwise order:

Provided that, if the lessee shall request the issue of a separate Crown grant for any particular holding, being one of a group of contiguous holdings of which only the external boundaries have been surveyed, or if the lessee shall transfer to any other person any particular holding of the kind hereinbefore mentioned, the Minister may, before such Crown grant is issued or such transfer is approved, as the case may be, require the lessee to pay such amount as the Minister may determine for or on account of the cost of any surveys necessary to define the boundaries of the several holdings which comprise the group of contiguous holdings aforesaid.

[Section 51 amended by No. 36 of 1939 s.6.]

52. Selector may be required to accelerate payments for existing improvement made by a prior lessee

Notwithstanding section 47 (2) (b), where there are existing improvements on land applied for, and such improvements were made by a former lessee whose holdings may have been surrendered or forfeited, and the Minister may, in the exercise of the discretion vested in him by section 23 (2) (b) have directed that the value of such improvements shall be wholly or

partially paid to the former lessee or other person deemed to be entitled thereto, the applicant may be required to pay the value of such improvements, to be determined by the Minister at such time and in such manner as the Minister may direct.

[Section 52 amended by No. 126 of 1987 s.69.]

53. Accelerated completion of conditional purchase

- (1) The Minister may, in the exercise of the power conferred by section 46, declare any Crown land to be open for selection exclusively under the conditions for accelerated payment as provided in this section, and may in like manner withdraw such land or any portion thereof from the availability for selection as aforesaid:

Provided that any land which otherwise would be open for selection under section 47 may be applied for under and subject to the provisions of this section, unless the notice in the Government Gazette declaring such land to be open for selection expressly states that such land shall not be open for selection under and subject to the provisions of this section.

- (2) In relation to land selected under and subject to the provisions of this section —
- (a) the provisions of section 47 (1) shall apply;
 - (b) the land shall not be subject to any condition of residence;
 - (c) notwithstanding anything to the contrary contained elsewhere in this Act, the price to be paid for the land shall be fixed by the Minister;
 - (d) every application for land shall be made in writing, in accordance with the form prescribed by the regulations;

- (e) when an application for land is approved by the Minister, a licence in accordance with the form prescribed by the regulations shall be issued to the applicant, and shall operate and have effect for 7 years computed from and including the first quarter day next preceding the date of the approval of the application by the Minister;
- (f) when an application for land has been approved by the Minister as aforesaid the deposit which accompanied the application shall be credited to the applicant in part payment of the price payable for the land, and the balance of such price then remaining unpaid shall be paid by the applicant within 12 months after the date upon which the licence issued to the applicant as provided in paragraph (e) commences to operate by means of 4 equal quarterly instalments on 1 January, April, July, and October, the first of such instalments being payable on the first day of the quarter next following the date when the said licence commences to operate as aforesaid: Provided that the applicant shall be at liberty on any quarter day aforesaid to pay the whole of the said balance of purchase price, instead of only one instalment thereof, but shall, notwithstanding such payment, not be entitled to the issue to him of a Crown grant in respect of the land until the Minister is satisfied that the applicant has complied with and fulfilled all the prescribed conditions relating to the land;
- (g) the applicant, as the licensee aforesaid, or the transferee of the licence issued to the applicant, shall, within 7 years from the date when the licence commenced to operate, expend upon improvements of or on the said land an amount equal to the purchase money, but not exceeding \$2 per acre *pro rata* during each year;

- (h) in addition to the improvements required by paragraph (g) the applicant, as licensee, or the transferee of the licence shall, if so required by the Minister, provide upon the land an adequate water supply within 2 years from the date when the said licence commences to operate;
- (i) if the land to which the licence relates adjoins other lands which are held under this Act or under any Act repealed by this Act, with a right to acquire the freehold thereof by the person who for the time being is the holder of such licence, the land to which the licence relates and the other lands aforesaid shall, for the purpose and in respect of the improvements required under paragraphs (g) and (h) be deemed to be one holding;
- (j) when and as soon as —
 - (i) the full purchase price for the land and the fee for Crown grant has been paid; and
 - (ii) the conditions as to improvements and water supply (if required) have been duly complied with in accordance with this subsection; and
 - (iii) the provisions of sections 51 and 52, in so far as they are applicable, have been duly complied with,

and provided the said improvements and the said water supply (if required) have been duly and properly maintained, a Crown grant in respect of the land shall be issued to the person then being the beneficial owner of the licence issued under this subsection in relation to such land, notwithstanding that the said licence may not then have expired:

Provided that, if the said land is a balance of a surveyed location, a portion of which has been granted as a homestead farm or conditional purchase lease to the person who for the time being is the beneficial holder of the licence issued under this section in relation to such first-mentioned land, the Crown grant for such first-mentioned land shall not be issued to such person until all the conditions appertaining to the said homestead farm or conditional purchase lease have been fulfilled.

[Section 53 inserted by No. 36 of 1939 s.7; amended by No. 65 of 1965 s.5; No. 113 of 1965 s.8; No. 14 of 1986 s.6; No. 126 of 1987 s.70.]

54. Land for vineyards, orchards and gardens

- (1) In exercise of the power conferred by section 46 the Governor may, from time to time, by notice in the *Gazette*, declare any Crown land to be open for selection for vineyards, orchards, and gardens, and may in like manner withdraw such land from being open for selection.
- (2) Such land shall be disposed of under and subject to the following conditions: —
 - (a) The price of the land shall be fixed by the Governor, but shall not be less than \$1 per acre, payable in 3 years or sooner, as hereinafter prescribed.
 - (b) The maximum area held by one person shall be 50 acres, and the minimum except in special cases approved by the Minister, shall be 5 acres: Provided that the area of any land held by the selector, under section 60 of the *Land Act 1898*, shall, in calculating the total area held by such selector, be deemed to be held under this section.
 - (c) The application shall be in the prescribed form.

- (d) On approval of the application by the Minister, a licence, in the prescribed form, shall be issued for 3 years, to date from the first day of the quarter next preceding the date of the approval of the application, and the amount of the deposit paid with the application shall be credited to the licensee in payment of the first half-yearly instalment of the purchase price payable for the said land.
- (e) Subject to paragraph (d), the balance of purchase money shall be paid within 3 years from the date of the commencement of the licence by equal half-yearly instalments on 1 March and 1 September: Provided that the balance of the purchase money may be paid at an earlier date should the selector so desire, but no Crown grant shall issue until the Minister is satisfied that the prescribed conditions have been fulfilled.
- (f) The licensee shall, during the term of the licence, fence in the whole of the land, and shall plant at least one-tenth of the area with vines or fruit trees, or otherwise cultivate it *bona fide* as a vegetable garden: Provided that the term may be extended under and subject to the last paragraph of section 47 (4) (f), which shall apply.
- (g) At the expiration of the licence, or at any time during the continuance of the licence, provided that all the conditions of fencing and cultivation have been complied with, and the said fencing and cultivation maintained, and also that the full purchase money and prescribed fee have been paid, a Crown grant of the land shall issue.

- (h) Any person having obtained land under this section of less extent than 50 acres may make other applications for land under this section, but so that his holdings shall not exceed in the whole the maximum quantity of 50 acres: Provided that, if 2 or more licences held by one person adjoin, they may be deemed to be one licence in respect of the required fencing and cultivation.

[Section 54 amended by No. 36 of 1939 s.8; No. 65 of 1965 s.6; No. 113 of 1965 s.8; No. 126 of 1987 s.71.]

[55-56. Repealed by No. 60 of 1963 s.5.]

57. Discount for payment of purchase money in advance

If a lessee under sections 47 or 49 shall pay the balance of the price of the land in advance of the half-yearly instalments, he shall be allowed such rebate as shall reduce the amount paid to a sum equal to the present value of the instalments of purchase money to fall due under the lease, calculated actuarially on a 5% basis. Provided that no such rebate shall be allowed in respect of a lease approval for a term commencing on or after 1 January 1988.

[Section 57 amended by No. 58 of 1950 s.17; No. 126 of 1987 s.72.]

58. Portion of improvements may be dispensed with in certain cases

In the case of any conditional purchase lease held under this Part, or under any Act hereby repealed, if the price of the land has been paid and the Minister is satisfied that from the nature or situation of the land or composition of the soil its cultivation or further improvement would be out of proportion to the probable returns, or otherwise impracticable, and not likely to result in any profitable return, the Minister may discharge the lessee from the obligation to make further improvements.

[Section 58 amended by No. 14 of 1986 s.7; No. 126 of 1987 s.73.]

[59. Repealed by No. 14 of 1986 s.8.]

60. Subdivision of holdings

- (1) With the approval of the Minister, any holding under this Part, may, under special circumstances, be subdivided on such terms as to adjustment of rent, or otherwise, as the Minister may determine, and upon payment of the prescribed fees and cost of survey: Provided that the area of any subdivision shall not be less than the prescribed minimum.
- (2) Upon the subdivision of land comprised in any lease, the original lease shall be surrendered and new leases shall be issued in lieu thereof in the name of the original lessee, or of any person claiming under the original lessee, as the case may require, for the unexpired term of the original lease at the time of the surrender thereof as aforesaid.

[Section 60 amended by No. 36 of 1939 s.9.]

61. Special improvement conditions

Notwithstanding anything contained in this Act to the contrary, where any Crown land open for selection is situated within a distance prescribed by regulations from a railway, or the line of

an authorized railway, the Minister may prescribe by regulations special conditions as to improvements in substitution for or in addition to the conditions prescribed by this Act

[Section 61 amended by No. 6 of 1994 s.13; No. 14 of 1995 s.44.]

62. Inclusion of closed roads in adjoining land held under conditional purchase lease

- (1) Subject to the provisions of Part VIIA, when after the granting of any conditional purchase lease any road running through or across or abutting on any portion of the land comprised therein has been closed, the Minister may, by an order under his hand, direct that such road shall be included in the land comprised in the lease.
- (2) Every such order shall have effect according to its tenor, and every alteration and entry or memorial necessary to give effect to any such order shall be made in and on the lease instrument in the Department within the meaning of the *Transfer of Land Act 1893* or the Department, free of charge.

[Section 62 amended by No. 41 of 1962 s.4; No. 79 of 1982 s.26; No. 81 of 1996 s.153 (2).]

63. Devisees, etc.

Whenever any person acquires land held on conditional purchase lease or licence under this Part as the devisee or next-of-kin of a deceased lessee or licensee, it shall not be obligatory upon such person during the 2 years next following the death of the deceased, to comply with the residential conditions to which such land may be subject, and such land so acquired may be held by the devisee or next-of-kin, during such period, notwithstanding that the land so acquired may, together with the land previously held by him, exceed the maximum area a person may lawfully hold under this Act.

63A. Price may be reduced and rent may be deferred

In respect of any conditional purchase lease granted under Parts V or VI of the *Land Act 1898*, or granted before or after the commencement of this section under Part V. of the principal Act —

- (a) if it is proved to the satisfaction of the Governor, after due regard has been given to the quality, productiveness, distance from railway, market, or port, or any other circumstances connected with the land the subject of the lease, that the price reserved by the lease is excessive, or if it is proved that the land is infested with indigenous poison plants or the harmful species of woddjil as a dominating growth, the Governor may at his discretion reduce the price of such land to not less than 20 cents per acre, exclusive of the value of improvements (if any) and survey fees:

Provided that, on any such reduction being made, the lessee shall not receive a refund of rent, if any, already paid prior to the date of such reduction, nor shall the liability of the lessee for payment to that date of the rent, if any, reserved by the lease be affected, but any credit in favour of the lessee which shall result by any such reduction shall be placed to the lessee's credit without affecting, however, his liability to continue the payment of the annual rent at the reduced rate per acre until the purchase price adjusted as aforesaid and reduced by the amount so placed to his credit is fully paid.

Provided, further, that the grant in fee simple of land the rental of which has been reduced on the ground that such land is infested with indigenous poison plants shall not be approved until such poison plants are eradicated to the satisfaction of the Minister.

- (b) The Minister may defer payment of rent reserved by the lease for any period not exceeding 10 years, and may —
- (i) direct that the amount payable as annual rent under the terms of the lease shall be increased for the balance of the existing term of the lease to the intent that payment of the full price for the land shall be made within the term of the lease; or
 - (ii) direct that the term of the lease shall be extended for a like period to that for which the payment of rent is deferred and that the annual rental shall be proportionately increased to the intent that the payment of the full price for the land shall be made within the extended term of the lease.

The Minister shall notify the Registrar of Titles of any alteration of rental and/or extension of term made under the provisions of this section in respect of any lease registered as a Crown lease under the provisions of the *Transfer of Land Act 1893*, and its amendments, and the Registrar shall indorse the original and duplicate lease accordingly.

[Section 63A inserted by No. 47 of 1934 s.7; amended by No. 36 of 1939 s.10; No. 58 of 1950 s.18; No. 113 of 1965 s.8.]

63B. When a lease has already expired Minister may grant extension of time to pay balance of rent

- (1) The Minister may grant an extension of the term of any conditional purchase lease granted under the provisions of Part V. or Part VI. of the *Land Act 1898*, which has expired or shall have expired at the time of the granting of such extension, where the full purchase price has not been paid at such date of expiry.
- (2) Any such extension shall be for a period not exceeding 10 years from the date of the expiration of the lease, and during that

period the lessee shall make payment of the balance of the purchase price.

- (3) The annual rental payable for the period of such extension shall be that amount which represents the total balance of purchase money remaining owing divided by the number of years of such extended period. Such annual rental shall be payable by equal instalments half-yearly in advance, on or before 1 March and 1 September in every year, and the first of such instalments shall be deemed to become due on the next half-yearly day following the date on which the term had expired. Failure to pay the said rental on the due dates shall render the lessee liable to the prescribed fines and penalties and the lease liable to forfeiture.
- (4) Subject to the provisions of this section, the extension of the term of any lease under this section shall not be deemed a waiver of the right of the Crown or the Minister to enforce the observance of any covenant, condition, or regulation under which the lease is held, or the forfeiture thereof, for a breach of any covenant, condition, or regulation committed before or after the granting of such extension of term.
- (5) In regard to any such lease which is registered as a Crown lease under the provisions of the *Transfer of Land Act 1893*, and its amendments, the Minister shall notify the Registrar of any such extension and of the annual rent payable during the period of such extension. The Registrar shall thereupon indorse the original lease and the duplicate lease accordingly, and such lease shall, by force of this Act, be deemed to have been extended, subject to any alteration as regards the rental, as though the term had continued uninterruptedly, and all encumbrances registered against such lease shall, by force of this Act, have effect against the lease with such extended term.

[Section 63B inserted by No. 47 of 1934 s.8; amended by No. 36 of 1939, s.11.]

Division (2) — Free homestead farms

64. Lands open for selection

- (1) In any notice in the *Gazette* under section 46, the Governor may direct that the selector of the whole of the land specified in the notice may, subject to this Act, apply for a portion thereof as a homestead farm, and may in like manner withdraw the direction: Provided that the area of the homestead farm shall not exceed 160 acres or one-tenth of the total area selected, whichever area is the less.
- (2) From and after the commencement of the *Land Act Amendment Act 1950*, a homestead farm shall not be granted to any person except a selector who applies therefor under the provisions of the last preceding subsection.

[Section 64 inserted by No. 58 of 1950 s.19.]

65. Application for homestead farm

- (1) Every person not being already the holder of a homestead farm or of more than 100 acres of land for an estate in fee simple or under conditional purchase lease, and being the head of a family or a male who has attained the age of 16 years may, upon selection of land in respect of which the Governor has given the direction referred to in section 64, apply to the Minister for a grant of a homestead farm for the portion of the land so selected.
- (2) Where the Minister approves of the application for a homestead farm, the selector shall take the balance of the land selected by him under conditional purchase lease.

[Section 65 inserted by No. 58 of 1950 s.20.]

66. Occupation certificate

- (1) The application for a homestead farm shall be in the prescribed form, and every applicant shall make a statutory declaration, in the prescribed form and upon leaving with or forwarding to the

Minister or his agent such declaration and on payment of an office fee of \$2, such person shall, if his application is approved by the Minister, receive an occupation certificate in the prescribed form.

- (2) Such certificate shall, subject to the provisions of this Act, authorize the person obtaining it (hereinafter referred to as the selector) to enter upon and take possession of the land described therein, and to hold possession of, occupy, and improve such land to the exclusion of any other person for the term of 7 years to be computed from the first day of the quarter next preceding the date of approval of his application.

Provided, however, that where the area of a homestead farm constitutes portion of a surveyed location and the selector of the homestead farm is the holder of a conditional purchase lease of the balance of such surveyed location, then the occupation certificate shall have the same currency and term as the conditional purchase lease.

- (3) The title to the land shall remain in the Crown until the issue of the Crown grant therefor, and neither the land nor the interest of the selector therein shall be liable to be taken in execution or be subject to the provisions of section 22 relating to insolvency during continuation of the occupation certificate.

Provided that, if the Crown grant of the homestead farm be not obtained by the selector within 7 years from the commencement of the term of the occupation certificate, then the protection conferred by this subsection on the selector shall cease to have effect.

[Section 66 amended by No. 47 of 1934 s.9; No. 113 of 1905 s.8; No. 126 of 1987 s.74.]

67. Conditions as to taking possession and residence

- (1) Every such selector shall, within 6 months from the date of the commencement of the term of his occupation certificate, take, in his own person, possession of the land, and shall, subject to the

provisions of this Act, reside upon it and make it his usual home, without any other habitual residence, during at least 6 months in each year for the first 5 years of the term of his certificate.

- (2) If possession is not taken as aforesaid, the occupation certificate shall be cancelled, and the land shall be forfeited with any improvements thereon:

Provided also that the residence of the wife or a parent of the selector, or a child of the selector of the age of over 16 years, or other near relative approved by the Minister, may be accepted in lieu of the personal residence of the selector.

- (3) The Governor may in special cases grant exemption from residence on condition of the selector effecting improvements to the satisfaction of the Minister to double the value of the improvement hereinafter required.
- (4) The Minister may accept as a performance of the residence condition residence by the selector on any land held by him in fee simple or under conditional purchase lease within 20 miles of his homestead farm.

68. In case of illness and other valid reason absence allowed

If the selector proves to the satisfaction of the Minister that he has been or is prevented by illness or some other valid reason from complying with the next preceding section, the Minister may, by writing under his hand, waive any forfeiture thereby incurred, or may grant the selector permission to absent himself from his homestead farm for such period and subject to such conditions of improvement as he may think fit, and, during the time mentioned in the permission the selector shall be deemed to be residing on his homestead farm.

69. Improvements before issue of Crown grant

- (1) The selector shall —

- (a) within 2 years from the date of his occupation certificate, expend a sum equal to not less than 40 cents per acre of the total area of his homestead farm; and
- (b) within 5 years from the same date, expend a sum equal, with the expenditure under paragraph (a), to not less than \$1 per acre on the total area of his homestead farm; and
- (c) within 7 years from the same date, expend a sum equal, with the expenditure under paragraphs (a) and (b), to not less than \$1.40 per acre on the total area of his homestead farm,

in the erection of a habitable house and other prescribed improvements.

- (2) (a) Where a sheep-proof and cattle-proof exterior fence is erected, half the value of such fence shall be deemed to be part of the improvements required after the 4th year:
- (b) Where the lessee erects a rabbit or dog-proof exterior fence, capable of resisting great and small stock, the Minister may allow two-thirds of the value of such exterior fence to be part of the improvements:
- (c) Where the selector holds any land under conditional purchase lease adjoining his homestead farm, the several holdings may be deemed to be one holding in respect of the required improvements, but the value of such improvements on the whole area shall not be less than required in respect of both holdings.
- (3) In special cases, when the Minister is satisfied that from the nature or situation of the land or the composition of the soil, its cultivation or further improvement would be out of proportion to the probable returns, or otherwise impracticable, and not likely to result in profitable returns, the Governor may accept such lesser value of improvements as he may deem reasonable in any particular case.

[Section 69 amended by No. 113 of 1965 s.8; No. 14 of 1986 s.9.]

70. Forfeiture for non-compliance with conditions

If the selector fails or neglects to comply with, perform, or fulfil all or any of the conditions mentioned in the next preceding section, the homestead farm shall be forfeited, together with all improvements thereon; and the selector shall not be eligible to obtain another homestead farm, except in special cases in the discretion of the Minister.

71. Certain assignments before issue of Crown grants void

The selector may, with the approval in writing of the Minister, transfer his homestead farm to any person duly qualified to hold a homestead farm, or mortgage or encumber his interest therein to any person, but, save as aforesaid, every assignment, transfer, or mortgage of, and every agreement to assign, transfer or mortgage any homestead farm or any part thereof or any interest therein made or entered into before the issue of the Crown grant shall be null and void, and the person so assigning, transferring, mortgaging, or making an agreement to assign, transfer, or mortgage, shall forfeit his homestead farm, and all his interest therein to the Crown, and shall not be permitted to make another application for a homestead farm.

72. When and on what conditions a Crown grant shall issue

At the expiration of 7 years from the date of his occupation certificate, or at any earlier time after the expiration of 5 years from such date, the selector (or in case of his death, his legal representative), upon proving to the satisfaction of the Minister that the residence and other conditions applicable to the homestead farm have been duly performed, and that the improvements have been duly effected, shall be entitled to a Crown grant upon payment of the prescribed fee.

[Section 72 amended by No. 14 of 1986 s.10.]

73. Crown grants may be obtained after 12 months' residence on certain conditions

Every selector who proves to the satisfaction of the Minister that he has resided on his homestead farm for 12 months from the date of his taking possession, and that he has made all the improvements required to entitle him to a Crown grant may at any time before the expiration of the 7 years mentioned in the last preceding section, obtain a Crown grant by paying, in addition to the cost of survey and improvements, 50 cents an acre for the land comprised in such farm, together with the prescribed grant fee.

[Section 73 amended by No. 113 of 1965 s.8.]

74. Applicant for homestead farm may apply for C.P. land

The applicant for a homestead farm may at the time of making his application, or at any time thereafter, apply under Part V, for such land as he may require in addition to his homestead farm, and in the event of his applying for land subject to residence as a condition, residence upon the homestead farm, if within 20 miles of the land applied for, shall be a sufficient compliance with the residence conditions for all purposes.

75. Improvements on land applied for under this Division to be paid for

The fair value of any improvements existing on or affecting any land applied for under this Division, at the time when the application is made, or authorized and in course of construction by the Department, or intended to be so constructed, shall be determined by the Minister, and the value of such improvements, with interest thereon at the rate of 5% per annum shall be paid by the selector in half-yearly instalments extending over not exceeding 7 years.

[Section 75 amended by No. 65 of 1965 s.7.]

76. Power to cancel abandoned applications for homestead farms

If at any time after the approval of an application for a homestead farm it appears to the Minister that the applicant has abandoned the holding, the Minister may by notice in writing, require the applicant to show cause why the application, and the occupation certificate, if issued, should not be cancelled; and unless within 21 days after the service of such notice or such further time as may be stated therein, the applicant shows cause to the contrary, the Minister may, by notice in the *Gazette*, cancel the application and the occupation certificate, if issued, and thereupon all the interest of the applicant, and any person claiming under him, in the holding, shall cease and determine.

77. Area of free homestead farms granted under a scheme of group settlement may be increased

Where lands have, prior to the commencement of this Act been disposed of or are hereafter disposed of as free homestead farms under any scheme of group settlement, the Governor may, on the recommendation of the Minister, in respect of free homestead farms granted prior to the commencement of this Act, increase the area thereof by including therein such further area of land as the Minister may approve, and in respect of applications made after the commencement of this Act, grant free homestead farms having an area of such acreage in excess of 160 acres as the Minister may approve.

This section applies to all Crown land, including land acquired under the *Agricultural Lands Purchase Act 1909* 8, or under Part VIII. of this Act.

78. Grants of holdings to group settlers

The Governor may, under the provisions of this Part, grant to any person who is one of a group of settlers on an area declared by the Governor by a notification in the *Gazette* to be a group settlement area under the *Group Settlement Act 1925*, a parcel

of Crown land within such area whether such land was acquired under the *Agricultural Lands Purchase Act 1909*⁸, or Part VIII, or otherwise and any parcel of land so granted may, if the Minister think fit, exceed 160 acres.

79. Application of section 51 (cost of survey) and of s.47 (4) (f)

Section 51 shall apply to land acquired under this Division; and also the last paragraph of section 47 (4) (f).

Division (3) — Working men's blocks

80. Governor may set apart certain lands for working men's blocks

- (1) The Governor may, by notice in the *Gazette*, define and set apart any Crown lands or town or suburban lands held by the Crown in the South-West Division of the State, or any Crown lands or suburban lands held by the Crown within 10 miles of a townsite, within any other Division of the State, for working men's blocks, and may, in like manner, declare any such land as open for selection as hereinafter provided, and may withdraw any such land from being so open.
- (2) Before any land is so declared open for selection, it shall be surveyed under the direction of the Minister, and divided into lots, each not exceeding half an acre in area within any goldfield, or 5 acres in area elsewhere, with proper roads and reserves for public purposes, and such lots shall be marked on the ground:

Provided that any town or suburban lands set apart and surveyed as aforesaid, but not selected as working men's blocks, may be disposed of for other purposes under this Act at the discretion of the Minister.

81. Certain persons entitled to leases of working men's blocks

Every person not being already the holder of land within the State, for an estate of freehold, or under conditional purchase

lease, and who does not hold a homestead farm, who is the head of a family, or a male who has attained the age of 16 years may, subject to the approval of the Minister, obtain a lease of land set apart and defined as prescribed in the last preceding section, subject to the following conditions: —

- (1) The price of the land shall be fixed by the Governor, but shall not be less than \$2 an acre, payable half-yearly at the rate of one-tenth of the total purchase money per annum or sooner, as hereinafter prescribed.
- (2) The maximum area held by one person shall be half an acre within any goldfield, or 5 acres elsewhere, and not more than one block shall be granted to or held by one person.
- (3) The application shall be in the prescribed form, and the first instalment of purchase money, as prescribed by section 139, shall accompany each application, and shall be returned if the application is not approved.
- (4) On approval of the application, a lease in the prescribed form shall be issued for 10 years, to date from the first day of the quarter next preceding the date of the approval of the application.
- (5) The lessee shall, within 3 months from the date of his lease, take, in his own person, possession of the land, and shall reside upon it and make it his usual home during at least 9 months in each year for the first 5 years of the lease, and if possession be not taken as aforesaid, the land shall be forfeited: Provided that possession may be taken and the residence condition performed by the lessee's wife, or a member of his family.

(6) The lessee shall, within 3 years from the date of the commencement of his lease, fence in with a fence of such description as may be prescribed, the whole of the land on the surveyed boundaries, and within 5 years from the said date shall expend upon the land upon prescribed improvements in addition to the external fencing, an amount equal to double the full purchase money: Provided that not more than one-half of the cost of any house erected thereon by the lessee may be included in the prescribed improvements. Provided, also, that the last paragraph of section 47 (4) (f) shall apply.

(7) At the expiration of the lease, or at any time after 5 years from the date of the commencement of the lease, provided that all the conditions of residence, fencing and improvements have been complied with, and the said fencing and improvements maintained, and also that the full purchase money and fee have been paid, a Crown grant of the land shall issue. Application for the Crown grant shall be made in the prescribed form:

Provided that no person who has held and forfeited, transferred, or otherwise disposed of a working man's block, shall be eligible to obtain any other working man's block in the same district, except in the discretion of the Minister.

[Section 81 amended by No. 113 of 1965 s.8; No. 126 of 1987 s.75.]

82. Minister may waive forfeiture for non-residence in case of illness, etc.

If the lessee of a working man's block proves to the satisfaction of the Minister that he has been or is prevented by illness or other valid reason, from performing or complying with the provisions of subsection (5) of the last preceding section, the Minister may, by writing under his hand, waive any forfeiture thereby incurred, or may grant the lessee written permission to absent himself from his block for such period as the Minister

may think fit, and during the time mentioned in the permission the lessee shall be deemed to be residing on his block.

83. In certain cases leases may be transferred or mortgaged with Minister's approval

A lessee under this Division may, with the approval of the Minister, transfer his lease to any person duly qualified to hold such lease, and with like permission may mortgage the same, but except as aforesaid, every assignment, transfer, or mortgage of, and every agreement to assign, transfer, or mortgage any such lease or any part thereof, or any interest therein, made or entered into before the lessee is entitled to the Crown grant shall be null and void, and the person so assigning, transferring, mortgaging or making any agreement to assign, transfer, or mortgage shall forfeit his lease and all his estate, right, title, and interest therein to the Crown.

Division (4) — Special settlement lands

84. Governor may declare lands open for selection as special settlement lands

- (1) The Governor may, by notice in the *Gazette*, define and set apart any Crown lands as special settlement lands, and may declare the same open for selection as such, and he may in like manner withdraw any land from being so open for selection.
- (2) Prior to being declared open for selection, special settlement lands shall be surveyed into lots of such size and shape, and roads and ways shall be laid out thereon of such width and in such direction as the Minister may determine:

Provided that the Governor may suspend the operation of so much of this section as requires the land to be surveyed before it is declared open for selection, and in such case the Minister shall cause a plan to be kept, on which shall be projected boundary lines showing the division of such lands into blocks of convenient sizes:

Provided also that the Minister may, at any time before granting a lease of or otherwise alienating any block, alter, extend, or adjust such boundary lines in any way that he may think fit.

85. Minister may improve lands within special settlement area

- (1) The Minister may carry out on land within a special settlement area such improvements, including clearing, drainage, fencing, sowing, provision of livestock and machinery, houses and buildings, and such other improvements, whether of the same or different kind as or from the foregoing, as he may think fit and either before or after the land is thrown open for selection.
- (2) The fair value of any improvements existing on or affecting any land applied for within a special settlement area or authorized and in course of construction, or intended to be constructed, shall be determined by the Minister, and the price of any such land shall be increased by the value so determined of such improvements, with interest thereon, or upon so much thereof as for the time being is unpaid, at the prescribed rate, to the intent that the price of the lands as increased by the value of such improvements, with interest thereon as aforesaid, shall be paid by the selector at such times and in such manner as the price of the land, if unimproved, would have been payable, except where the land is sold under section 86 (aa).

[Section 85 amended by No. 68 of 1948 s.3; No. 17 of 1954 s.2.]

86. Conditions of selection of land within special settlement area

Any land within a special settlement area may be disposed of —

- (aa) by the Minister either by public auction or by public tender but in either case on such terms and conditions as the Governor approves and is hereby authorized to approve, but the Minister shall not dispose of the land by public auction until he has first endeavoured to dispose of it by public tender and no satisfactory tender has been received; or

- (a) under the provision of Division (1) of this Part, subject to the conditions contained in the last preceding section; or
- (b) subject to the following conditions: —
 - (i) The selector shall enter into a contract in the prescribed form to forthwith grub and clear a portion specified in the contract of the lot he wishes to apply for, to ringbark the trees and cut down all scrub on the remainder of the lot, and to fence the same in for an agreed sum to be paid by the Minister as the work proceeds.
 - (ii) On the completion of such work in accordance with the contract and to the satisfaction of the Minister, the selector shall, within one month after the expiration of the period mentioned in his contract for the completion of the work, be entitled to apply for and have granted to him a lease of the land under section 47 at the price fixed as the selling price in the contract; or
- (c) subject to such conditions, whether of the same or a different kind as or from those referred to in the preceding paragraphs of this section, as shall be specified by the Minister in writing.

[Section 86 amended by No. 68 of 1948 s.4; No. 17 of 1954 s.3; No. 126 of 1987 s.76.]

87. Power to throw open land for special selection

The Governor may, if he thinks fit, declare any lands open to selection under Divisions (1) and (2) of this Part by any special class of selectors to the exclusion of all other persons.

88. Group settlement

Land may be disposed of under Divisions (1) and (2) of this Part of this Act, without such land being declared open for selection,

to applicants approved by the Minister under any scheme for group settlement.

Where land is disposed of under Division (2) of this Part pursuant to this section, or has been disposed of as free homestead farms under section 5 of the *Land Act Amendment Act 1922*, the Governor may, on the recommendation of the Minister in every case, in respect of free homestead farms granted prior to the commencement of this Act, increase the area thereof by including therein such further area of land as the Minister may approve, and in respect of applications made after the commencement of this Act, grant free homestead farms having an area of such amount in excess of 160 acres as the Minister may approve.

89. Special settlement

The Minister may, with the approval of the Governor, enter into an agreement with any body of persons incorporated under the *Associations Incorporation Act 1895*, or other corporate body, whereby Crown land (including land acquired under Part VIII) may be appropriated to the purposes of the development of such land under a scheme for the training of youths, and their settlement upon such lands, and the acquisition of holdings under the provisions of this Act, as modified by such regulations that may be expedient to give effect to this section.

89A. Governor may set apart farm reconstruction areas

- (1) The Governor may, by notice in the *Gazette*, define and set apart any Crown lands, including land acquired pursuant to the provisions of Part VIII, as farm reconstruction areas.
- (2) Such lands so defined and set apart may, but without being declared open, be disposed of under such of the provisions of Divisions (1) and (2) of this Part (Part V) or of Part VIII as shall be applicable to applicants approved by the Minister and who —

- (a) already hold adjacent land which is deemed by the Minister to be insufficient in area or quality to provide a reasonable living, or
- (b) already hold or have held land in some other locality which has been found difficult or uneconomic to work, whether through its situation, area, quality, rainfall, or otherwise, and who are desirous of acquiring land in a farm reconstruction area, and who, in the opinion of the Minister should accordingly be granted land in such an area.

[Section 89A inserted by No. 35 of 1946 s.4; amended by No. 53 of 1948 s.6.]

89B. Disposal of farm reconstruction areas to The Rural and Industries Bank

The Governor may dispose of any land which has been set apart as a farm reconstruction area under the provisions of section 89A to a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth, for an estate in fee simple, subject to payment of such price as would be charged were the land otherwise disposed of to a selector pursuant to the provisions of Part V or Part VIII.

[Section 89B inserted by No. 53 of 1948 s.7; amended by No. 6 of 1994 s.13; No. 14 of 1995 s.44.]

89C. Disposal of war service land no longer required for the purpose

- (1) Where land acquired by the State for the purposes of the *War Service Land Settlement Agreement Act 1945*⁹, is, in the opinion of the Governor, no longer required for the purposes of that Act and the Commonwealth agrees to the disposal of the land under this section, the Governor may unless the land remains in a certificate of title registered under the operation of the *Transfer of Land Act 1893* in the name of Her Majesty,

authorize the issue of a Crown Grant in the name of the Minister for Lands for an estate in fee simple of the land.

- (2) The Minister may sell the land whether such land be the subject of a certificate of title or of a Crown grant referred to in the last preceding subsection, by public auction, public tender or private treaty, subject to the approval of the Governor to be endorsed on the instrument of transfer of the land, and shall apply the proceeds of sale in or towards recouping the State and the Commonwealth the expenditure incurred in relation to the land.
- (3) The provisions of this section shall not apply to Crown lands of the State set apart for the purposes of the said Act, but any such Crown lands as are, in the opinion of the Governor, no longer required for such purposes may be disposed of under the provisions of Part V.

[Section 89C inserted by No. 58 of 1950 s.21.]

89D. Governor may authorize Ministers to enter into agreements for disposal of areas of Crown land

- (1) The Governor may authorize any of the Ministers of the Crown on behalf of the State —
 - (a) to enter into, and carry out, any agreement for the disposal of any area or areas of any Crown land, for such price or consideration, and subject to such conditions, and containing such covenants, as the Governor approves, but
 - (i) only if the agreement is made with a body corporate approved by the Governor; and
 - (ii) only if the agreement contains a covenant by which the body corporate is bound to develop the land for agricultural purposes approved by the Governor, and

- (b) to sue and be sued, compromise claims and actions, and enter into submissions to arbitration, in respect of any matter arising out of, or in connection with, the agreement or its interpretation.

Provided that any agreement entered into after 1 January 1957, shall be ratified by Parliament and failing such ratification within 6 months of the date of such agreement it shall be void and of no effect.

- (2) The Governor may exercise the power conferred by subsection (1) and the Minister may act upon, and in accordance with, any, authorization conferred in exercise of the power, notwithstanding the provisions of any other section, or of any regulations, whether limiting the area of Crown land which may be disposed of under this Act, or prescribing the manner in which, or the price or consideration for which, or the conditions subject to which, Crown land may be disposed of under this Act, or otherwise affecting or related to the disposal of Crown land under this Act.
- (3) This section shall be deemed to have come into operation on 19 November 1956.

[Section 89D inserted by No. 51 of 1956 s.2.]

Part VI — Pastoral leases

89E. Interpretation

In this Part —

“**the Board**” means the Pastoral Board constituted under section 98.

[Section 89E inserted by No. 97 of 1980 s.4.]

90. Pastoral leases may be granted

Any Crown lands within the State which are not withdrawn from selection for pastoral purposes, and which are not required to be reserved, may be leased for pastoral purposes at the rent, and subject to the conditions hereinafter prescribed.

91. Application

- (1) Every application for a lease shall be made in the prescribed form, and be accompanied by a deposit of an amount equal to the first instalment of the rent payable under section 98.
- (2) On approval of an application a lease shall, subject to subsection (3), be issued in the prescribed form.
- (3) An application for a lease made by a body corporate shall not be approved except on the recommendation of the Minister, and any lease issued on the approval of such an application shall be issued subject to such additional terms, conditions and restrictions as are determined by the Minister and set forth in the lease.

[Section 91 amended by No. 29 of 1969 s.3; No. 126 of 1987 s.77.]

[92-96. Repealed by No. 60 of 1963 s.6.]

97. Position and boundaries of leases

- (1) The position of pastoral leases and the arrangement of boundary lines shall be subject to the approval of the Minister; and any description furnished by an applicant shall be full and particular, and shall refer to some fixed point or object which can be recognized by the Department.
- (2) The Minister shall not be responsible for any errors in descriptions so furnished; but any erroneous description may be rectified, if practicable, on an approved application, in such a manner as not to disturb the boundaries of any lease previously granted.
- (3) Subject to the boundaries of any lease previously granted, the boundaries or position of any lease may be amended at the lessee's request, irrespective of any error, on payment of the prescribed fee.
- (4) If on an application to rectify or alter the boundaries of a lease it is impracticable to do so in such manner as not to disturb the boundaries of another lease, and improvements were made by the applicant or his predecessor in title on land comprised in such other lease in the belief that such land was within the boundaries of the applicant's lease, the Minister may adjust the boundaries of the leases so as to exclude the land on which such improvements were made from the lease thereof and include such land in the applicant's lease, unless the lessee is willing and agrees to pay to the applicant the value of such improvements to be ascertained, if not agree upon, in the manner prescribed by section 111¹⁰ which *mutatis mutandis* shall apply.
- (5) When any reserve, road, or stock route comprising land within or adjoining the boundaries of a pastoral lease is —
 - (i) found on survey or otherwise to be incorrectly shown in the plan on the pastoral lease in relation to the boundaries of any such land; or

s. 98

- (ii) cancelled or closed, as the case may be, as regards such land or the position thereof is altered in such a way as to affect the boundaries of the pastoral lease the Minister may direct —
 - in case (i) that the said plan be corrected;
 - in case (ii) that the said lands be added to the area of the pastoral lease or that the boundaries be amended to conform to such alteration in position and that the rent be adjusted accordingly.
- (6) The Minister shall give notice to the Registrar of Titles of any amendment made under this section to the boundaries (and area and rental, if altered) of a Crown lease registered under the *Transfer of Land Act 1893*, and its amendments, and such notice shall be accompanied by a plan, certified by an authorized land officer, showing the original and amended boundaries, and the Registrar, on receipt of such notice and plan, shall amend the original and duplicate lease in accordance therewith.
- (7) If any pastoral lease amended under this section is subject to any encumbrance, then, by force of this Act, such encumbrance shall be deemed to attach to the land included in the boundaries of the pastoral lease as amended as if such land had been the subject of the lease at the date of such encumbrance.

[Section 97 amended by No. 47 of 1934 s.10; No. 126 of 1987 s.78.]

98. Term and rent

- (1) Crown land open for selection for pastoral purposes may be leased for a term expiring on 30 June in the year 2015 at an annual rent to be determined by the Minister, acting on the advice of the Pastoral Board constituted under and in accordance with the provisions of subsection (2).
- (2) On the coming into operation of the *Land Amendment Act (No. 2) 1980* there shall be constituted a Board by the name

of the Pastoral Board having the functions and powers prescribed and conferred by this Act and consisting of 5 members of whom

- (a) one, who shall be the chairman of the Board, shall be a person appointed for the purposes of this paragraph by the Governor or, until the first such appointment is made, shall be the person for the time being holding the office of Surveyor General under this Act;
 - (b) one shall be the person for the time being holding the office of Director of Agriculture in the Department of Agriculture in the State; and
 - (c) subject to the provisions of subsection (2a), 3 shall be persons appointed for the purposes of this paragraph by the Governor of whom 2 shall either hold, or have held, an interest in a pastoral lease, or are, or have been, shareholders in an incorporated company holding, or beneficially interested in a pastoral lease.
- (2a) A person appointed to be a member of the Board pursuant to subsection (2) (c) shall hold office for a period of 3 years on such terms and conditions as the Governor determines and shall be eligible for reappointment.
- (2b) Upon the constitution of the Pastoral Board under this section, the Pastoral Appraisal Board constituted under the provisions of subsection (2) as those provisions existed prior to the coming into operation of the *Land Amendment Act (No. 2) 1980* is abolished, but a person appointed by the Governor to be a member of the Pastoral Appraisal Board and holding office immediately before its abolition shall be a member of the Pastoral Board as if he had been appointed such a member under subsection (2) (c).
- (2ba) The Governor may appoint as deputy for —
- (a) the member of the Board referred to in subsection (2) (b) a person nominated by that member to be so appointed; and

s. 98

- (b) each of the 2 persons appointed under subsection (2) (c) who at the time of their appointment were required by that provision to either hold, or have held, an interest in a pastoral lease, or be, or have been, shareholders in an incorporated company holding, or beneficially interested in a pastoral lease, a person who fulfils the like requirements.
- (2bb) Subject to subsection (2bd) a person appointed under subsection (2ba) as the deputy for a member may, during the term of office of the member for whom he is appointed as deputy, take the place of that member at any meeting of the Board at which that member is not present, and in that event has the powers and entitlements of the member whose place he takes.
- (2bc) A reference in subsection (2c) to a member includes a reference to a deputy taking the place of that member under subsection (2bb).
- (2bd) The Governor may terminate the appointment of a person appointed under subsection (2ba) and, in the event of the death or resignation of a person so appointed, or the termination by the Governor of the appointment of a person so appointed, the Governor may, under that subsection, appoint another person in his place.
- (2c) At a meeting of the Board 3 members constitute a quorum, and if the chairman is absent, the members present shall appoint one of their number to preside at the meeting.
- (2d) Notwithstanding anything contained in this section, an appointed member of the Board may be removed from office at any time by the Governor; and in the event of the death, resignation or removal from office of an appointed member the Governor may appoint a successor who shall, where the member held office under subsection (2) (c) hold office for the unexpired period of the term of office of that member.

- (3) The advice tendered to the Minister by the Board, in accordance with subsection (1), shall be based on the pastoral capabilities of the land, its distance from a port or railway, or other circumstances affecting its value for pastoral purposes.
- (3a) In respect of any pastoral lease granted in any Division, not being a lease that is due to expire on 31 December 1982, the rent payable shall on 1 July in the year 1984, and again on 1 July in each of the years 1991, 1998, 2005 and 2012, be subject to re-assessment as on and from each of those dates respectively by the Minister on the advice of the Board.
- (3b) In respect of any pastoral lease granted in any Division, not being a lease that is due to expire on 31 December 1982, the lessee may, at any time not less than 2 years nor more than 3 years after the date on which a re-assessment of the rent in respect of that lease pursuant to subsection (3a) became effective, apply to the Minister to have that rent reviewed by the Board, and thereupon the Minister shall direct the Board to hear the application.
- (3c) The Board shall fix a time and place for the hearing of an application under subsection (3b) and cause notice in writing thereof to be given to the applicant lessee, and the Board may upon such hearing maintain or vary the assessment the subject of the review and fix the rent in respect of the lease accordingly, and thereupon shall cause written notice of its decision to be given to the applicant lessee.
- (4) The rent of land applied for before the rent is determined as aforesaid shall, if the application is approved before such determination, be at the following interim rates, namely: —
- South-West Division — \$2 per annum per 1 000 acres or portion thereof;
 - Eucla Division — 30 cents per annum per 1 000 acres or portion thereof;
 - North-West Division — \$1 per annum per 1 000 acres or portion thereof;

Eastern Division — 50 cents per annum per 1 000 acres
or portion thereof;

Kimberley Division — \$1 per 1 000 acres
or portion thereof :

But when the rent is so determined it shall be adjusted
accordingly from the commencement of the lease.

- (5) On every periodical re-assessment of the rent of a pastoral lease, the report of the Board shall be laid before both Houses of Parliament, with the reasons therefor, and the evidence on which the reasons are based.
- (6) Notwithstanding any provision to the contrary hereinbefore in this Act contained, the minimum rental which shall be payable on any pastoral lease granted after the commencement of the *Land Act Amendment Act (No. 2) 1980* shall be \$20 per annum.

[(7) repealed]

- (8) Where under and in pursuance of the provisions of the *Soil and Land Conservation Act 1945*, grazing of livestock is prohibited on all or part of the land comprised in a pastoral lease, the lessee shall be exempt from payment of rent in respect of that land in proportion to the area thereof so affected, but the lessee shall nevertheless be liable during the period of exemption to comply with the requirements of the *Agriculture and Related Resources Protection Act 1976* for the control of vermin on or in respect of the land so affected.
- (8a) Where, at the direction of the Minister under section 103, a lessee is required to reduce the number of stock depastured on the land comprised in a pastoral lease, the lessee shall be entitled to pay a reduced rent in accordance with the reduced number of stock proportionate to the carrying capacity of the land as assessed for rental purposes.
- (9) (a) After the coming into operation of the *Land Act Amendment Act 1963*, a pastoral lease shall not be granted unless the Board

is of opinion that the land comprised in the lease will be capable when fully developed of carrying such number of sheep or cattle as to enable it to be worked as an economically viable pastoral unit; but this subsection does not apply to a new lease applied for under the provisions of section 114.

- (b) Notwithstanding the provisions of paragraph (a), but subject to the provisions of section 113, a pastoral lease of land that in the opinion of the Board will not be capable when fully developed of carrying stock to the numbers referred to in that paragraph may be granted to the lessee of any land that is in the same locality as that land.
- (10) (a) A lessee of a pastoral lease who becomes either by application or by transfer the lessee of land contiguous to the land the subject of his pastoral lease in addition to the land so subject shall apply for a grant to him in lieu of that pastoral lease of a new lease under this Part for the land subject of that pastoral lease and including therein that contiguous land, and upon the application being approved the provisions of section 114 (2) shall apply to that new lease as if it were a new lease granted under the provisions of that section.
- (b) When the rent payable in respect of the contiguous land referred to in paragraph (a) has been assessed in accordance with the provisions of this Part, the rent payable in respect of the land the subject of the new lease shall be adjusted so that such rent is the aggregate of the sum payable for rent under the pastoral lease in lieu whereof a new lease has been granted and the sum payable in respect of the contiguous land.
- (11) (a) At any time during the year 1995 a lessee of a pastoral lease may apply in writing to the Minister requesting to be informed as to whether the Minister will upon the expiration of the pastoral lease extend that lease or grant to the lessee a new lease of the whole or part of the land the subject of that lease and if so, at what rent and upon what other terms and conditions not inconsistent with this Act.

s. 98A

- (b) On receipt of an application pursuant to paragraph (a) the Minister shall consider and determine the matters referred to in that paragraph and shall give to the lessee notice in writing of his decision not later than 31 December 1997.
- (c) A notice to a lessee pursuant to paragraph (b) shall be deemed an offer of a lease or, as the case may be, an extension of a lease, at the rent and on the other terms and conditions specified in the notice; and the lessee may accept the offer at any time within 1 year from the date that the notice is given.

[Section 98 amended by No. 20 of 1938 s.2; No. 58 of 1950 s.22; No. 60 of 1963 s.7; No. 65 of 1965 s.8; No. 113 of 1965 s.8; No. 97 of 1980 s.5; No. 94 of 1982, sections 4 and 5; No. 79 of 1982 s.11.]

98A. Pastoral Board may call and examine witnesses on oath

- (1) The Board may, in manner prescribed, call and examine witnesses on oath, and such oath may be administered by any member of the Board.
- (2) The Board may, for the purpose of considering any application by a lessee for a review of the determination or re-assessment of the rental determined or re-assessed for any pastoral lease, or for the purpose of considering any application by a lessee for relief from payment of rent on any pastoral lease —
 - (a) require the lessee or his agent, to submit such evidence as the Board deems necessary, and including information contained in the audited or otherwise duly authenticated books of account, and any other records of the operations and transactions relevant to all or any of the lessee's leases;
 - (b) require the lessee, or his agent, to verify such evidence by statutory declaration;

- (c) require the lessee, or his agent, to attend at a meeting or meetings of the Board to be examined on oath and, if further required, produce for inspection by the Board such said books of accounts and records.

[Section 98A inserted by No. 35 of 1946 s.5; amended by No. 60 of 1963, s.8; No. 97 of 1983 s.6.]

[98B.] *Inserted by No. 58 of 1950 s.23; repealed by No. 97 of 1980 s.7.]*

99. Review of assessment of rent

- (1) Any lessee whose application was made and approved under section 98 (4) before the rent was determined on the advice of the Board may, within 3 months after the rent is so determined and notified to him, apply in writing to the Minister for a review of such determination.
- (2) The Minister shall thereupon direct the Board to hear and dispose of such application. Notice of the time and place of the hearing shall be given by the Board to the applicant; and after having heard the applicant or his agent and considered any evidence adduced, or if the applicant does not attend the hearing himself or by his agent, the Board may either maintain or vary the rent as so determined.
- (3) Notice of the decision shall be given by the Board to the lessee who may, if he thinks fit, surrender the lease within one month thereafter.

[Section 99 amended by No. 60 of 1963 s.10; No. 97 of 1980 s.8.]

100. Review of re-assessment

- (1) Any lessee may, within 3 months after receipt of notice of a periodical re-assessment under section 98, apply in writing to the Minister for a review of such re-assessment.

s. 101A

- (2) The Minister shall thereupon direct the Board to hear the application; and notice of the time and place of the hearing shall be given to the applicant. The Board may vary or maintain the re-assessment, and the rent shall be fixed accordingly.
- (3) This section shall apply to leases which are surrendered under the provisions of section 114: Provided that in the case of such surrendered leases the lessee shall, on lodging his appeal, pay such fee as may be prescribed.

[Section 100 amended by No. 60 of 1963 s.11; No. 97 of 1980 s.9.]

[101. Repealed by No. 60 of 1963 s.12.]

101A. Minister may grant relief from payment of rent in certain cases

- (1) Where the lessee proves that in any year ending 30 June —
 - (a) he has suffered serious loss of stock on any pastoral lease through drought, cyclone, fire or flood; or
 - (b) through drought or fire he has been unable to stock any pastoral lease to the extent to which such lease might except for such drought or fire have been stocked, and thereby has suffered serious loss; or
 - (c) his wool or beef production in respect of stock on any pastoral lease has been adversely affected by drought, cyclone, fire, or flood,

the Minister may grant the lessee relief from payment of rent payable under such pastoral lease in respect of that year:
Provided that no such relief shall be granted, except on the recommendation of the Board.

- (2) The relief granted under this section may be total or partial and may take the form of extended terms for the payment of the rent payable under the pastoral lease.

[Section 101A inserted by No. 4 of 1936 s.2; repealed and a new section 101A inserted by No. 36 of 1939 s.12; amended by No. 60 of 1963 s.13; No. 55 of 1971 s.4; No. 97 of 1980 s.10.]

101B. Minister may extend relief from payment of rent in certain cases

The Minister may on the recommendation of the Board, grant to any lessee relief from payment of rent in addition to such relief as may have been granted under the provisions of section 101A, for a further period not exceeding 2 years after the end of the drought, cyclone, fire, or flood, notwithstanding that in such period no loss of stock may have been suffered by the lessee or that the rainfall may have been above the average for the district in which the lease is situated.

[Section 101B inserted by No. 35 of 1946 s.6; amended by No. 60 of 1963 s.14; No. 97 of 1980 s.11.]

102. Improvement conditions

- (1) Every pastoral lease shall be granted, and every pastoral lease granted before the commencement of this Act, shall continue to be held, on condition that improvements within the meaning of section 140 are effected by the lessee as follows: —

Within 5 years from the commencement of the lease to the value of \$10, and within 10 years from the commencement of the lease to the value of \$20 (inclusive of the value of improvements effected during the first 5 years of the term) for each 1 000 acres of the area leased.

- (2) The provisions of subsection (1) apply only to pastoral leases that are due to expire on 31 December 1982.
- (3) (a) Subject to paragraph (aa), every lessee of a pastoral lease, not being a pastoral lease to which subsection (1) applies, within 12 months after the commencement of his lease, or, in the case of a lease in existence at the date of coming into operation of section 5 of the *Land Act Amendment Act 1971*, within

s. 102

12 months after that date, and at the end of each period of 5 years thereafter, shall furnish to the Board a return setting forth the improvements that have been effected on the land subject of his lease and containing a plan showing in respect of the next succeeding 5 years of the lease, particulars of the improvements that the lessee proposes to effect on any portion of that land and the proposed situation on those portions of that land of those improvements, and shall in the plan provide for the reasonable development of those portions of that land which, in the estimation of the Board, are capable of being developed for or in connection with pastoral purposes in accordance with the plan during that 5 years.

- (aa) The board may exempt the lessee from the furnishing of a plan under paragraph (a) if the Board considers the land the subject of his lease is adequately developed.
 - (b) On receipt of the plan referred to in paragraph (a) the Board shall advise the Minister as to whether the plan makes proper provision for the reasonable development of usable land and may recommend the Minister to approve the plan either without modification or subject to such modifications as the Board specifies.
 - (c) Where pursuant to the provisions of this subsection the Minister approves a plan of improvements proposed to be effected by the lessee of a pastoral lease on the land the subject of his lease, no improvements shall be effected to that land except in accordance with the plan so approved; but notwithstanding the provisions of this paragraph, the Minister may from time to time, at the request of the lessee and on the recommendation of the Board, permit the lessee to effect improvements on the land other than in accordance with the plan so approved.
- (4) (a) Every lessee of land in respect of which a plan of proposed improvements has been approved by the Minister pursuant to subsection (3) shall effect those improvements during the 5 year period to which the plan relates.

- (b) Every lessee of a pastoral lease shall furnish to the Board annually not later than 31 December a return in the prescribed form showing full particulars of the improvements effected on the land the subject of his lease during the year next preceding that date and the cost of those improvements or stating that no improvements were effected on that land during that year.
- (c) For the purposes of this subsection the term “year” means a period of 12 months ending on 30 June.
- (5) It is a condition of every pastoral lease that all improvements effected by the lessee pursuant to this section shall be maintained in good repair, to the satisfaction of the Board, and so far as necessary renewed, during the term of the lease.

[Section 102 amended by No. 60 of 1963 s.15; No. 113 of 1965 s.8; No. 55 of 1971 s.5; No. 97 of 1980 s.12; No. 94 of 1982 s.6.]

103. Penalty for non-stocking

[(1) and (2) repealed]

- (3) (a) Every pastoral lease is liable to forfeiture if the land the subject of that lease is not stocked or kept stocked with such number of sheep or cattle, or both sheep and cattle, as the Board in its opinion, on a fair and reasonable assessment of the capacity of that land for the carrying of stock, having regard to all the circumstances including the seasonal climatic conditions affecting the land and the period of time that has elapsed since the commencement of the lease, considers to be a number sufficient for stocking and keeping stocked that land; but no pastoral lease shall be forfeited under this section until such notice has been given to the lessee as the Minister considers reasonable in the circumstances of the case.
- (b) Where the number of sheep or cattle, or both sheep and cattle, being depastured upon the land the subject of a pastoral lease exceeds the number that the Board considers that land is reasonably capable of carrying, to an extent that is likely in the

s. 103

opinion of that Board to adversely affect the capacity of that land for the carrying of stock, the Minister may by notice in writing —

- (i) prohibit the lessee from increasing the number of stock then so depastured; or
- (ii) require the lessee to reduce the stock so depastured to either or both a number or kind to be specified in the notice within a time to be so specified; or
- (iii) require the lessee to provide and maintain suitable fencing for the prevention or control of grazing on any area which is portion of the lease and which, in the opinion of the Board has been adversely affected by excessive numbers of stock being depastured thereon,

and the Minister may by such notice also require the lessee to comply with such other requirements in respect to the stocking of the land as on the recommendation of the Board the Minister may think necessary or advisable and specifies in the notice.

- (4) A lessee of a pastoral lease —
 - (a) shall furnish to the Board annually not later than 31 December a return in the prescribed form setting forth the respective numbers of sheep, cattle and horses with which the land the subject of his lease was stocked on the next preceding 30 June;
 - (b) shall not cause or permit stock to be agisted on any part of the land the subject of his lease unless he first obtains the permission in writing of the Minister on the recommendation of the Board to such agistment;

- (c) shall at all times during the term of his lease use, manage and work the land the subject of his lease as a pastoral property in a proper and husbandlike manner and according to the most sound and approved methods of pastoral husbandry in relation to sheep and cattle and to the management, conservation and regeneration of pasture for pastoral purposes that prevail in the district wherein the land is situated to the intent that the land is utilized to the best advantage as a pastoral property.
- (5) Any pastoral lease is liable to forfeiture if the lessee permits or suffers all or part of the land the subject of that lease to deteriorate to such extent as to necessitate in the opinion of the Minister a lengthy period of protection from the grazing thereon of stock in order to effect regeneration of pasture, or to be utilized in such manner that the land is likely in the opinion of the Minister to deteriorate to that extent if depasturing of stock is continued thereon.

[Section 103 amended by No. 60 of 1963 s.16; No. 97 of 1980 s.13; No. 94 of 1982 s.7.]

104. Re-appraisal of pastoral leases on transfer, etc., of portion

When any portion of land held under pastoral lease is transferred or surrendered, the rent for the land transferred and retained shall be subject to re-appraisal:

Provided that the annual rents to be reserved and paid in respect of the excised land and the land retained by the lessee on any such re-appraisal shall be so fixed and apportioned as to produce in the aggregate an annual rent not exceeding the rent previously payable under the lease.

105. Pastoral lessees have no right to soil or timber

- (1) Subject to subsection (2) a pastoral lease shall give no right to the soil, or to the timber, except as may be required for domestic purposes, for the construction of airstrips, roads, buildings,

s. 106

fences, stockyards, or other improvements on the lands so occupied.

- (2) The Minister may on the recommendation of the Board, and upon such terms and conditions as he considers appropriate, approve of the sowing and cultivation by a lessee of non-indigenous pasture species for the purpose of enhancing the stock carrying capability of the lease or for such other purposes as are approved by the Minister.
- (3) Any cultivation of non-indigenous pasture species carried out in accordance with subsection (2) shall not be taken into account in determining whether or not compensation is payable, or the amount of compensation payable, upon any resumption or pursuant to section 110.

[Section 105 inserted by No. 97 of 1980 s.14; amended by No. 94 of 1982 s.8.]

106. Reservations

- (1) The right is reserved to the Minister —
 - (a) to lay out, declare open, and make, either permanently or for temporary use, public roads through any land held under pastoral lease;
 - (b) to take away any indigenous produce, rock, soil, or other material which may be required for public purposes, from any such land;

[(c), (d) and (e) deleted]

- (f) to depasture any horses or cattle in the employ of the Government while working on or passing over the said land, and to water them at any natural sources there, together with a right for any person to pass over any such land which may be unenclosed, or enclosed but otherwise unimproved, with or without horses, stock, or vehicles, on all necessary occasions.

- (2) The aboriginal natives may at all times enter upon any unenclosed and unimproved parts of the land the subject of a pastoral lease to seek their sustenance in their accustomed manner.

[Section 106 amended by No. 47 of 1934 s.11; No. 36 of 1939 s.13; No. 107 of 1978 1st Schedule; No. 94 of 1982 s.9.]

107. Permission for clearing and penalty for unauthorized clearing

- (1) A pastoral lessee desiring to remove or destroy scrub or other vegetation on the land the subject of his lease for the purpose of promoting growth of indigenous pasture species or for otherwise improving or facilitating the working of his lease shall first obtain permission to do so from the Minister, and in his application shall describe the boundaries and area of the land upon which he proposes to remove or destroy scrub or other vegetation and the Minister may refuse or grant permission for the same on the recommendation of the Board or after such inquiry and upon such conditions as to him may seem necessary.
- (2) Any lessee who, without such permission, removes or destroys scrub or other vegetation on the land the subject of his lease, or causes or knowingly permits or suffers the same to be done, shall render his lease liable to forfeiture.
- (3) Any removal or destruction of scrub or other vegetation done in accordance with the permission of the Minister shall not be taken into account in determining whether or not compensation is payable, or the amount of compensation payable, upon any resumption or pursuant to section 110.

[Section 107 inserted by No. 97 of 1980 s.15; amended by No. 94 of 1982 s.8.]

[108. Repealed by No. 36 of 1939 s.14.]

s. 109

109. Power to resume land from pastoral leases for agricultural settlement

- (1) The Governor may resume, enter upon, and dispose of the whole or any part of the land comprised in any pastoral lease, for agricultural or horticultural settlement, or for mining or industry, or to enable the land to be declared open for selection for pastoral purposes and again leased under the provisions of this Part, subject to subsection (2), or as in the opinion of the Governor may be required for any purpose of public utility or for otherwise facilitating the improvement and settlement of the State.
- (2) In the granting of a lease under the provisions of this Part of any land that pursuant to this section is resumed and declared open for selection for pastoral purposes, regard shall be had and consideration be given to encouraging and promoting the working of pastoral leases as family units and to making available further land to resident holders of small pastoral leases.

[Section 109 amended by No. 60 of 1963 s.17.]

[109A. Repealed by No. 94 of 1982 s.10.]

[109B. Repealed by No. 94 of 1982 s.11.]

110. Payment for improvements in certain cases

- (1) On the expiration by effluxion of time of any pastoral lease not open to renewal on the same or any other conditions to the same lessee, the lessee shall, subject to the provisions of this Act, receive from the Minister the fair value of all lawful improvements including, notwithstanding the provisions of section 140, dwelling houses, then on the land of which the lessee has been deprived.
- (2) If a pastoral lease be renewed to a succeeding lessee, the Minister shall be entitled to receive from the succeeding lessee

the amount paid under subsection (1) as if the payment to the Minister of that amount were a condition of the lease.

- (3) The amount to be paid by the Minister under subsection (1) shall be determined in the manner provided by the *Public Works Act 1902* for the determination of an amount of compensation payable under that Act by reason of a resumption and for that purpose the provisions of that Act shall apply as if the day on which the lease expired were the day on which the notice taking the land had been published, and with such other modifications as are necessary, but the matters to which regard shall be had in determining the amount shall be derived from subsection (1).

[Section 110 amended by No. 30 of 1967 s.3; No. 94 of 1982 s.12.]

[111. Repealed by No. 94 of 1982 s.13.]

[112. Repealed by No. 36 of 1939 s.16.]

113. Maximum area

- (1) The maximum area held under pastoral lease by one person, or by 2 or more persons jointly, or by any association of persons incorporated or unincorporated, shall not exceed 500 000 hectares; and the Governor may, in specified districts or localities, fix the maximum area to be held as aforesaid at less than 500 000 hectares.
- (2) No person shall become beneficially interested in any lease of pastoral land to an extent whereby the aggregate area of pastoral land in which such person is beneficially interested would exceed 500 000 hectares.
- (2a) Notwithstanding anything to the contrary contained in subsection (1) or subsection (2), no person shall at the same time hold a lease of pastoral land as lessee or sublessee or transferee from the lessee, and also be beneficially interested (other than as lessee, or sublessee, or transferee from the lessee)

s. 113

in a lease of pastoral land in excess of a maximum aggregate area of 500 000 hectares.

- (3) If any person acquires or becomes beneficially interested in a lease of pastoral land whereby the aggregate area of the pastoral land which he has acquired, or the aggregate area of the pastoral land in which he is beneficially interested, or the total of the aggregate area of the pastoral land which he has acquired and of the aggregate area of pastoral land in which he is beneficially interested when added together, as the case may be, exceeds 500 000 hectares, whether such person acquired the lease of, or became beneficially interested in the lease of any of such pastoral land before or after the commencement of this Act, and such person continues to hold or to be beneficially interested, either one or the other or both, in pastoral land in excess of such 500 000 hectares, he shall forfeit and pay to the Crown a sum of \$100 for every day or part of a day during which he so continues to hold or be beneficially interested in such pastoral land.
- (4) If any lease holder is also beneficially interested in an area of pastoral land so that the area of his leasehold and the area of the pastoral land in which he is beneficially interested as aforesaid taken together exceed 500 000 hectares contrary to subsection (2a), or if the leasehold of a leaseholder is worked in association with other holdings so that the area of the leasehold and the area of such other holdings taken together exceed 500 000 hectares, both the lease which he holds as leaseholder and the lease or leases in which he is beneficially interested shall be liable to forfeiture.
- (5) If any area of pastoral land is worked in association with another area of pastoral land in all respects as one separate and distinct station, and the total of such areas so worked in association exceeds 500 000 hectares, every person who is the holder of or has any beneficial interest in either of the areas of pastoral land aforesaid shall forfeit and pay to the Crown the

sum of \$100 for every day or part of a day during which such working of the said areas continues.

- (6) Any person being the lessee of or having any share or interest in pastoral land may be required by the Minister at any time to make a statutory declaration that his beneficial interest in pastoral land does not exceed the maximum area that he may lawfully hold or acquire.

In the case of an incorporated company, such declaration may be made by any director or the secretary or attorney of such company.

If any person refuses or, after the expiration of one month from being so required, neglects to make such declaration, such person shall be guilty of an offence.

Penalty — \$1 000.

- (7) No person shall be registered in the Department within the meaning of the *Transfer of Land Act 1893* or in the Department as transferee or sublessee of any pastoral land if the area thereof when added to the area of any other pastoral land which such person already holds and to the area of any other pastoral land in which he is already beneficially interested would cause the total of all such areas to exceed 500 000 hectares.
- (8) For the purpose of calculating the area of pastoral land that a person may acquire or in which a person may become beneficially interested —
- (a) where several persons hold pastoral land, jointly or in common, each person shall be deemed to hold a number of hectares equal to his undivided share; and
 - (b) a shareholder in an incorporated company holding or beneficially interested in pastoral land shall be deemed to be beneficially interested in such land, but to the extent only of a number of hectares proportionate to his interest in the paid-up share capital of the company:

s. 113

Provided that this subsection shall not apply to pastoral land held by any incorporated bank or other company as mortgagee or after foreclosure unless the sole or principal object of the company, under its memorandum of association, is to carry on the business of a pastoralist.

- (9) This section —
- (a) shall not apply to an executor, administrator, or trustee in respect of any pastoral land held in that capacity, except to such extent (if any) as such executor, administrator, or trustee is beneficially interested; and
 - (b) shall not have effect in respect of any pastoral land acquired by a person as next-of-kin or legatee of a deceased person, or by right of survivorship, until the expiration of one year from the date of such acquisition, or such further time as the Minister may deem necessary to enable such person to dispose of his pastoral land in excess of the area that may be lawfully acquired.
- (10) A mortgagee shall not be deemed to be beneficially interested in the mortgaged land unless —
- (a) the mortgagee is in possession and has been in possession for upwards of 2 years; or
 - (b) the mortgage is foreclosed.

Provided that a mortgagee, with the consent in writing of the Minister, may continue in possession or may hold the mortgaged land after foreclosure, for such period and subject to such conditions as the Minister may think fit, and during such period shall not be deemed to be beneficially interested in the land for the purpose and within the meaning of this section.

- (11) (a) Notwithstanding anything to the contrary contained in this section, any person who at the commencement of this subsection has consistently with the provisions of this Act as in force prior to the commencement of this subsection, already acquired, or become beneficially interested in (either one or the

other or both) an aggregate area of pastoral land in excess of 500 000 hectares, may continue to hold or be beneficially interested in such area of pastoral land, but shall not be entitled to acquire or become beneficially interested in any other pastoral land until his holdings of and beneficial interest in pastoral land as at the commencement of this subsection have been so reduced as to entitle him in accordance with subsection (2a) to acquire or become beneficially interested in other pastoral land.

- (b) Where any person referred to in paragraph (a) acquires or becomes beneficially interested in pastoral land contrary to the provisions of paragraph (a), such person shall forfeit and pay to the Crown a sum of \$100 for every day or part of a day during which he continues so to contravene the provisions of paragraph (a).

(12) (a) The Governor may authorize the Minister on behalf of the State —

- (i) to enter into and carry out any agreement for the leasing for pastoral purposes of any area or areas of Crown land, at rentals to be fixed under the provisions of section 98 and subject to such conditions and containing such covenants as the Governor approves, but only if the agreement is made with a body corporate approved by the Governor and contains a covenant by which that body corporate is bound to develop and utilize the land for pastoral purposes approved by the Governor; and
- (ii) to sue and be sued, compromise claims and actions, and enter into submissions to arbitration in respect of any matter arising out of, or in connection with, the agreement or its interpretation.

- (b) Any agreement entered into pursuant to the provisions of paragraph (a) shall be ratified by Parliament and failing such ratification within 6 months of the date of such agreement it shall be void and of no effect.

s. 114

- (c) The Governor may exercise the power conferred by paragraph (a) and the Minister may act upon and in accordance with any authorization conferred in exercise of the power, notwithstanding any other provisions of this Act or the provisions of any regulations, whether limiting the area of Crown land that may be leased for pastoral or other purposes under this Act, or prescribing the manner in which, or the rental or consideration for which, or the conditions subject to which, Crown land may be leased under this Act, or otherwise affecting or related to the leasing of Crown land under this Act.

[Section 113 amended by No. 36 of 1939 s.17; No. 60 of 1963 s.20; No. 113 of 1965 s.8; No. 97 of 1980 s.16; No. 79 of 1982 s.26; No. 81 of 1996 s.153 (2).]

114. Lessees may surrender lease and apply for a new lease

- (1) (a) Any lessee holding a pastoral lease granted under this Act or under any previous Act for a term expiring on 31 December 1982, may apply in the prescribed form to the Under Secretary for Lands at any time, subject to paragraph (b), not later than 31 December 1964, for a grant to him in lieu of that pastoral lease of a new lease under this Part, or if the land leased by the lessee for pastoral purposes is comprised in more than one such pastoral lease and the lessee satisfies the Under Secretary for Lands that such land is run and utilized as one pastoral station or property, for a grant to him in lieu of those pastoral leases of one new lease comprising all the land the subject of those pastoral leases, but subject nevertheless to the provisions of section 113, and every new lease granted under this paragraph shall be for a term expiring on 30 June 2015.
- (b) Notwithstanding the provisions of paragraph (a), the Minister may at the request of the lessee of a pastoral lease extend the time of application for the grant of a new lease until 30 June 1965 in any case where in his opinion special circumstances exist that warrant such extension being granted.

- (c) Where application is made under this subsection by the lessee of one or more pastoral leases for a grant to him in lieu of that lease or leases of a new lease and any such pastoral lease is subject to any registered mortgage or to any other encumbrance within the meaning of that term in section 4 of the *Transfer of Land Act 1893*, the consent of the mortgagee or encumbrancer is necessary on such application.
 - (d) Every lessee of a pastoral lease shall in his application under this subsection for the grant to him of a new lease state the name given or intended to be given to his pastoral station or property and under which it will be carried on, and the Minister may at his discretion approve of that name, or reject that name and direct the lessee to submit within 3 months another name or names for his approval.
- (2) If the application made under subsection (1) for a new lease is approved by the Minister the following matters and things shall be done and take effect: —
- (a) The Under Secretary for Lands shall forward notice in writing to the applicant and serve notice of such approval on the Registrar of Titles.
 - (b) Subject to the payment of the fees that may be prescribed in respect of such application on the approval of the application and after service of the notice on the Registrar of Titles pursuant to paragraph (a), the lease or leases the subject of the application is or are by force of this Act surrendered to the Crown and the Registrar of Titles shall endorse the lease or leases in the relevant register under the *Transfer of Land Act 1893* accordingly.

s. 114

- (c) A new lease under this Part shall thereupon be granted to the lessee and forwarded to the Registrar of Titles, who shall endorse on that lease a note of all registered mortgages and encumbrances within the meaning of that term as defined by section 4 of the *Transfer of Land Act 1893*, to which the surrendered lease or leases was or were subject, and enter that new lease in the relevant register under the *Transfer of Land Act 1893*; but the registered mortgages and encumbrances to which the surrendered lease or leases was or were subject shall by force of this Act apply to and bind the interest of the lessee in the new lease and all rights acquired by him on the approval of his application for the new lease from the date of that approval.
- (d) The annual rent previously payable by the lessee in respect of the lease or leases the subject of his application shall continue to be applicable in respect of the new lease and payable by the lessee until re-assessed under and in accordance with the provisions of section 98.

- (e) The endorsement by the Registrar of Titles on the new lease of any registered mortgage to which the surrendered lease or leases was or were subject shall by force of this Act alone convert that mortgage into a mortgage of the new lease or part thereof in lieu of the surrendered lease or leases, to all intents and purposes and to the like effect as if, for securing payment of the principal and interest in accordance with the terms of the registered mortgage and the performance and observance of the obligations of the mortgagor thereunder, the mortgagor had granted to the mortgagee a mortgage of the new lease or part thereof as a substituted security in lieu of the registered mortgage on the surrendered lease or leases, and the endorsement by the Registrar of Titles on the new lease of any other encumbrances to which the surrendered lease or leases was or were subject shall by force of this Act alone render the new lease or part thereof subject to any such encumbrance.
- (3) Where the lessee of a pastoral lease or pastoral leases is entitled under the provisions of paragraph (a) of subsection (1) to apply for the grant to him of a new lease but does not so apply within the time limited by that paragraph, the Minister shall call in and cancel that lease or leases and issue to the lessee in lieu thereof a composite lease, subject to the provisions of section 113, for a term expiring on 31 December 1982, such composite lease to include therein all land that the lessee satisfies the Minister is run and utilized by him as one pastoral station and property.
- (4) Before the Minister issues a lease pursuant to the provisions of subsection (3), the Minister shall request the lessee to inform him of the name given or intended to be given to the pastoral station or property of the lessee and under which it will be carried on, and the Minister may at his discretion approve of that name, or reject that name and direct the lessee to submit within 3 months another name or names for his approval, but if the lessee fails to comply with this subsection, or if the Minister

s. 115

does not approve of any name submitted by the lessee, the Minister may if he thinks fit approve of and assign a name recommended by the Board.

[Section 114 amended by No. 36 of 1939 s.18; No. 60 of 1963 s.21; No. 97 of 1980 s.17; No. 81 of 1996 s.153 (1).]

115. Transfer of pastoral lease

- (1) With the Minister's approval in writing, but not otherwise, a lessee of pastoral lands may transfer all his right, title, and interest in the whole of any portion of his land: Provided as follows: —
- (a) Both the portion transferred and the portion remaining shall each comply with the provisions of section 98 (9), unless in any particular case the Minister approves otherwise.
 - (b) No transfer of a portion of a lease lodged after 1 January or 1 July shall be approved until after the half-year's rent has been paid.
 - (c) The Minister may, in his absolute discretion, refuse to approve of a transfer.

For the purpose of this paragraph the Minister may require any lessee, or in the case of an incorporated company, any director, shareholder or officer of any such company to make one or more statutory declarations containing such information as the Minister deems necessary to enable him to exercise his discretion as aforesaid.

- (1a) Where the Minister approves of a transfer of the whole or any portion of the pastoral lands of a lessee to a body corporate he may require such additional terms, conditions and restrictions as he thinks fit to be included in the lease of the pastoral lands so transferred, and he shall incorporate those additional terms, conditions and restrictions in the new lease issued to the transferee pursuant to subsection (2).

- (2) On production to the Registrar of Titles of a transfer by a lessee of his interest in any portion of the land the subject of the pastoral lease registered under the *Transfer of Land Act 1893*, and its amendments, and subject to the indorsement on the transfer of the approval of the Minister thereto, and a certificate from the Minister showing the adjusted area, and the adjustments to be made in the rental by reason of such transfer, the Registrar shall register the transfer and indorse on the lease a memorandum cancelling the same, so far as it affects the portion of the land the subject of the transfer, and enter on the said lease a memorandum of the rent thenceforth payable in respect to the remaining land. Upon the registration by the Registrar of such transfer the Minister shall issue a new lease to the transferee in respect of the land transferred to him.

[Section 115 amended by No. 47 of 1934 s.12; No. 60 of 1963 s.22; No. 65 of 1965 s.9; No. 29 of 1969 s.4.]

115A. Restrictions on transfer of shares in certain companies

- (1) Where —
- (a) the holder of a pastoral lease is a company; and
 - (b) the working of that pastoral lease or the working of that pastoral lease together with the working of any other pastoral lease or pastoral leases of which the company is also the holder, constitutes the principal activity or, one of the principal activities of the company,

the company shall not register a transfer of any share in it unless the instrument of transfer of the share has been endorsed with the approval of the Minister to the transfer.

Penalty: \$1 000, and in addition the Minister may, if the company is convicted of an offence against this subsection, forfeit the lease or leases held by the company convicted of the offence.

- (2) A person who holds a beneficial interest in a share in a company of the kind referred to in subsection (1) shall not sell, transfer,

s. 115A

charge or otherwise dispose of his beneficial interest in the share unless he has first obtained the consent in writing of the Minister.

Penalty: \$1 000.

(3) For the purposes of this section —

- (a) **“company”** and **“share”** have the same respective meanings as are given to those terms by section 5 of the *Companies Act 1961*¹¹, and
- (b) a person, including a body corporate, shall be deemed to have a beneficial interest in a share if that person, either alone or together with other persons (including a body corporate or bodies corporate), is entitled (other than as trustee for, on behalf of or on account of, another person) to receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the share.

[Section 115A inserted by No. 29 of 1969 s.5.]

Part VII — Special leases and licences

116. Minister may grant leases for special purposes

On receiving application in the prescribed form, the Minister may grant leases of any Crown land in the prescribed form, for a term not exceeding 50 years from the date thereof at a yearly rental of not less than \$4, and on payment by the lessee of the cost of survey, for any of the following purposes (that is to say): —

- (1) For obtaining and removing therefrom guano or other manure.
- [(2) deleted]*
- (3) For sites for hotels, stores, smithies, or similar buildings.
- (4) For sites for bathing-houses, bathing-places, bridges, or ferries.
- (5) For sites for tanneries, factories, saw or other mills, stores, warehouses, or dwellings.
- (6) For sites for wharves, jetties, quays, and landing-places, or for sites for the depositing of materials.
- (7) For the working of mineral springs or artesian wells.
- (8) For sites for ship and boat-building, or repairing and marine and general engineering works.
- (9) For the collection and manufacture of salt.
- (10) For taking, diverting, conserving, and using water for mining, agricultural, industrial, and other purposes.
- (11) For works for supplying water, gas, or electricity.
- (12) For market gardens.
- (13) For fishing stations, and for the purpose of drying, canning, or preserving fish.
- (14) For any other purpose approved by the Governor by notice in the *Gazette*:

s. 117

Provided that in all cases where it is proposed to grant a lease for a longer term than 10 years, notice of the application for such lease and of the purpose and term for which it is proposed to be granted shall be published in 4 consecutive ordinary numbers of the *Gazette*, the first publication being at least one month before the grant of such lease.

[Section 116 amended by No. 113 of 1965 s.8; No. 107 of 1978; 1st Schedule; No. 79 of 1982 s.12; No. 126 of 1987 s.79.]

117. Town, suburban or village lands may be leased

The Minister may lease any town, suburban or village lands on such terms as he may think fit.

[Section 117 amended by No. 79 of 1982 s.13.]

117A. Lease or licence under or over streets for construction and maintenance of subways and bridges

(1) For —

- (a) the benefit and convenience of the public;
- (b) the conduct of trade and commerce;
- (c) the provision of access and passage for persons as pedestrians or otherwise;
- (d) the provision of access, passage, parking, and storage for vehicles and other forms of transport;
- (e) the provision of pipes, cables, electrical transmission lines, conveyor belt systems, and other services; and
- (f) the provision of any structure, plant, or equipment, the carrying out of any works, and the performance of any maintenance that is necessary for, or ancillary or incidental to, giving effect to any of the purposes referred to in paragraphs (a) to (e) inclusive,

the Minister may, for such period and on such terms and conditions as he thinks fit, grant a lease or licence of any part of

land that is vested in the Crown pursuant to section 286 of the *Local Government (Miscellaneous Provisions) Act 1960*.

- (2) Any lease or licence granted under this section is subject to the right of a local government to construct and maintain any —
- (a) subway;
 - (b) pedestrian bridge or overway; or
 - (c) pipe, conduit or conveyor for transporting material,

under or over (at a height of not less than 4.5 metres) a thoroughfare or from land abutting a thoroughfare to or onto that thoroughfare or another thoroughfare.

- (3) In subsection (2) —
“thoroughfare” has the same meaning as in the *Local Government Act 1995*.

- (3) In this section **“part of land”** means any part of the land that is on or below the surface of the land and any part of the air space above the land.

[Section 117A inserted by No. 93 of 1969 s.2; amended by No 60 of 1971 s.2; No. 126 of 1987 s.80; No. 14 of 1996 s.4.]

117AA. Lessee may apply for fee simple

- (1) The lessee of the land leased under section 116 or 117 may, whether or not the lease was granted before the coming into operation of section 14 of the *Land Amendment Act (No. 2) 1982*, apply to the Minister to purchase the fee simple of the land.
- (2) Where the Minister approves an application made under subsection (1) the applicant is entitled, on payment of a price fixed by the Minister for the sale of the fee simple and of the Crown grant fee, and on performance of the prescribed conditions, if any, to obtain in lieu of the lease of the land to which that application relates a Crown grant of that land.

s. 117AA

- (3) Regulations may make provision as to the making of applications under subsection (1).

[Section 117AA inserted by No. 79 of 1982 s.14; amended by No. 126 of 1987 s.81.]

[118.] *Repealed by No. 107 of 1978 1st Schedule.]*

Part VIIA — Alienation of closed roads, etc.

118A. Provisions for vesting of land in closed roads

- (1) Where the land comprised in a road that is closed, whether before or after the commencement of this Part, has become or becomes Crown land, and land of any person through which that closed road passes or which it adjoins is resumed for the purpose of a road to take the place of that closed road in exercise of a right of resumption without payment of compensation, the Minister, without any compensation, may by order declare that so much of the land comprised in the closed road that passes through or adjoins the land of that person, as is equivalent, in the opinion of the Minister, to the land so resumed, shall vest in that person for an estate or interest similar to that held by him in his land immediately contiguous to the land so vested.

- (2) Where the land comprised in a road that is closed, whether before or after the commencement of this Part, has become or becomes Crown land, and land of any person through which that closed road passes or which it adjoins is resumed for the purpose of a road to take the place of that closed road, by reason whereof that person is entitled to claim and recover compensation from a local government constituted, the Minister, with the consent of that person and of that local government, may by order declare that as and by way of satisfaction or part satisfaction of the compensation payable so much of the land comprised in the closed road that passes through or adjoins the land of that person as is equivalent in value, in the opinion of the Minister, to the amount of the compensation payable or to a definite part of that compensation, shall vest in that person for an estate or interest similar to that held by him in his land immediately contiguous to the land so vested; and in such case, if required by the Minister so to do, the local government shall pay to the Minister forthwith the amount of the compensation in satisfaction whereof the land has been so vested.

s. 118B

- (3) Where the land comprised in a road that is closed, whether before or after the commencement of this Part, as being no longer required as a road is Crown land, or where any land remains in a closed road after exercise in relation to that road of the powers conferred by subsections (1) and (2) and such remaining land is Crown land, the Minister may by order declare that upon payment of the price fixed for the same by the Minister, so much of the land in the closed road as adjoins the land of a person holding land contiguous thereto shall vest in that person for an estate or interest similar to that held by him in the land so adjoining the closed road; but where the land on the opposite sides of a closed road is held by different owners, the contiguous half of the land in the closed road to the middle thereof may be vested in each respective owner.

[Section 118A inserted by No. 41 of 1962 s.5; amended by No. 126 of 1987 s.82; No. 14 of 1996 s.4.]

118B. Vesting of land in former rabbit proof fence reserve

- (1) Where land that has been reserved for the purpose of a vermin proof fence is no longer required for that purpose and as provided by this or any other Act ceases to be so reserved, the Minister may by order declare that upon payment of the price fixed for that land by the Minister, so much of that land as adjoins the land of a person holding land contiguous thereto shall vest in that person for an estate or interest similar to that held by him in the land so adjoining the former reserve, and for the purposes of this section may include in the land so vested any portion of the land in a closed road that separates the former reserve from the adjoining land.
- (2) In subsection (1) —
“**vermin**” means emu or rabbit.

[Section 118B inserted by No. 41 of 1962 s.5; amended by No. 126 of 1987 s.83.]

118C. Vesting of land in reserves of discontinued railways and deviations

- (1) Where under the provisions of any Act a railway has been discontinued or the line of a railway has been deviated, and by reason of that discontinuance or that deviation land that was reserved for the purposes of that railway is no longer required for that purpose, such land if not already revested in Her Majesty is by this section revested in Her Majesty as of her former estate freed and discharged from rights (if any) to mines of coal or other minerals, and from the estate, right, title, interest, claim or demand of all persons, to or in respect of that land, and any such land that is under the operation of the *Transfer of Land Act 1893*, is hereby removed from the operation of that Act.
- (2) The Minister may by order declare that upon payment of the price fixed for the same by the Minister, so much of the land referred to in subsection (1) that is no longer required for the purpose of a railway and is revested in Her Majesty, as adjoins the land of a person holding land contiguous thereto, shall vest in that person for an estate or interest similar to that held by him in the land so adjoining the revested land, and where the land on the opposite sides of the revested land is held by different owners, the contiguous half of the revested land to the middle thereof may be vested in each such owner.

[Section 118C inserted by No. 41 of 1962 s.5; amended by No. 126 of 1987 s.84.]

118CA. Vesting of Crown land unsuitable for retention as separate lot or for division and retention as separate lots

- (1) Whenever in the opinion of the Minister a portion of Crown lands is —
 - (a) suitable for disposal to a person holding a lot or lots contiguous to that portion; but

s. 118CA

- (b) because of its size, shape, location, potential use or any other reason based on good planning principles, unsuitable for retention as a separate lot or for division and retention as separate lots,

the Minister may —

- (c) approve the disposal of that portion to the person referred to in paragraph (a) —
 - (i) if that person holds one lot, subject to the condition that that portion be amalgamated with that lot; or
 - (ii) if that person holds 2 or more lots, subject to the condition that that portion be amalgamated with one of those lots, or be divided and the products of that division amalgamated with each or some of those lots, as the Minister specifies in that approval; and
- (d) by order declare that on the payment of the price fixed for —
 - (i) that portion by the Minister that portion shall vest in the person referred to in paragraph (a) for an estate or interest the same as that held by him in his one lot; or
 - (ii) each product of the division of that portion by the Minister that product shall vest in the person referred to in paragraph (a) for an estate or interest the same as that held by him in the lot with which that product is to be amalgamated,as the case requires.

- (2) Whenever in the opinion of the Minister a portion of Crown lands is —
 - (a) suitable for disposal to 2 or more persons each holding a lot or lots contiguous to that portion; but

- (b) because of its size, shape, location, potential use or any other reason based on good planning principles, unsuitable for division and retention as separate lots,
- the Minister may —
- (c) approve the disposal of that portion to the persons referred to in paragraph (a), subject to the condition that that portion be divided and the products of that division be so amalgamated with each or some of the lots held by those persons that not less than the lot, or one of the lots, as the case requires, held by each of those persons will be amalgamated with one such product; and
- (d) by order declare that on the payment of the price fixed by the Minister for each product of the division referred to in paragraph (c) that product shall vest in the person with whose lot, or with one of whose lots, that product is to be amalgamated for an estate or interest the same as that held by that person in his lot, or the relevant one of his lots, as the case requires.

[Section 118CA inserted by No. 126 of 1987 s.85.]

118D. Vesting of additional Crown land to adjust boundaries

Where for the purpose of adjusting the boundaries of any land that under the provisions of this Part the Minister declares shall be vested in a person holding land contiguous thereto, the Minister is of opinion that it is desirable that additional Crown land be included in the land so vested, the Minister may by the order vesting land in a person holding land contiguous thereto, or by a subsequent order, declare that such additional Crown land be included in, and for the same estate or interest as, the land so vested as though it were, immediately prior to the making of the order so vesting land, part of that land so vested.

[Section 118D inserted by No. 41 of 1962 s.5; amended by No. 26 of 1985 s.86.]

s. 118E

118E. Land to be vested for estate similar to that of adjoining land

- (1) Any land which is —
- (a) comprised in a closed road and referred to in section 118A;
 - (b) comprised in a former vermin proof fence reserve and referred to in section 118B;
 - (c) comprised in a former railway reserve and referred to in section 118C;
 - (d) a portion of Crown lands, or a product of the division of a portion of Crown lands, referred to in section 118CA; or
 - (e) additional Crown land referred to in section 118D,

that has become or hereafter becomes vested under this Act or any other Act in the person who is entitled to an estate or interest in land through which the land so vested passes or which it adjoins, is deemed to have been or to be vested in that person for an estate or interest similar to that held by him in the land through which the land so vested passes or which it adjoins.

- (2) In subsection (1) —
“**vermin**” means emu or rabbit.

[Section 118E inserted by No. 41 of 1962 s.5; amended by No. 126 of 1987 s.87.]

118F. Vested land to be incorporated with adjoining land *Ibid.* s.7.

- (1) Where land is vested in any person under and in accordance with the provisions of this Part, that land is deemed to be incorporated with and to form part of the parcel of land through which the land so vested passes or which it adjoins, as the same is denoted and identified in the records of the Department, or the Department within the meaning of the *Transfer of Land Act 1893*, or the Deeds Office, as the case may be; but, in the case of land comprised in a closed road and referred to in

section 118A, if the same person holds the land on both sides of the land so vested, and the land on one side of the land so vested is held under an instrument of title different from that under which the land on the other side thereof is held, the Minister shall decide with which parcel of land the land in the closed road shall be so incorporated.

- (2) When any land is vested under this Part in any person as owner of any land through which the land so vested passes or which it adjoins, the Minister, or the chief executive officer of the Department or an officer appointed by the Minister for the purpose, shall issue to the Registrar of Titles a certificate in writing setting forth the particulars of the vesting and specifying the land affected.
- (3) The Registrar of Titles, or, as the case may require the chief executive officer of the Department shall, upon receipt of an application in writing from the person in whom the land is vested and inspection of the certificate issued to the Registrar of Titles under subsection (2), and on payment of the fee prescribed where a fee is payable, make such alterations in any lease from the Crown registered under the *Land Act 1933*, or in any certificate of title issued under the *Transfer of Land Act 1893*, or in any other records under his control relating to the parcel of land through which the land so vested passes or which it adjoins, as may be necessary to show that the land so vested has become incorporated with and forms part of that parcel of land; but no fee is payable except in the case of land in a closed road that is vested in a person under section 118A (3).
- (4) Where a parcel of land through which land vested under this Part passes or which it adjoins is freehold land under the *Transfer of Land Act 1893*, the Registrar of Titles may, and upon the application of the owner of that parcel and inspection of the certificate issued to the Registrar of Titles under subsection (2) and on payment of the fee prescribed by or under that Act shall, cancel the relative certificate of title and create and register a new certificate of title in which shall be included

s. 118G

the land so vested that has become incorporated with and forms part of that parcel of land comprised in such certificate of title.

- (5) Where any person has possession or control of any lease from the Crown, or any certificate of title or other instrument in which the Registrar of Titles or the chief executive officer of the Department desires to make any alterations as required by this section, and where any person has possession or control of any certificate of title that has been cancelled by the Registrar of Titles under subsection (4), the Registrar of Titles, or, as the case may require, the chief executive officer of the Department, may serve upon that person a notice in writing requiring that person, within a time specified in the notice, to deliver up to him the lease, certificate of title, or other instrument mentioned and described in the notice.
- (6) A person who fails or neglects to comply with a notice served upon him under subsection (5) is guilty of an offence against this Act, and is liable to a penalty of \$40 and in addition to a daily penalty of \$4.

[Section 118F inserted by No. 41 of 1962 s.5; amended by No 113 of 1965, s.8; No. 79 of 1982 s.27; No. 113 of 1987 Schedule; No. 126 of 1987 s.88; No. 81 of 1996 s.153 (1) and (2).]

118G. Vested land to be subject to encumbrances on land with which it is incorporated. *Ibid.* s.8.

Where land vested under and in accordance with the provisions of this Part has become incorporated with and forms part of other land as in this Part provided, and that other land is subject to a mortgage or other encumbrance or caveat, then upon the lease or certificate of title of that other land being altered as provided for in section 118F, the land so vested then shown to be included in that lease or certificate of title becomes by virtue of this Part subject to that mortgage or other encumbrance or caveat as if that land had originally been included therein.

[Section 118G inserted by No. 41 of 1962 s.5.]

118H. Provision for increase of purchase price of land under contract of sale in certain cases. *Ibid.* s.10.

Notwithstanding anything contained in this Part, where any parcel of land, or the estate or interest therein, is in the course of being sold under a contract of sale by the legal owner thereof, and during the currency of the contract and with the approval of the purchaser land in a closed road is vested in that legal owner under section 118A (2) or (3), or land is vested in that legal owner under section 118B, 118C or 118CA, and is incorporated with the parcel of land so being sold, the purchase price or consideration expressed in the contract of sale is deemed to be increased by the amount of compensation referred to in section 118A (2), or the amount of the purchase price referred in section 118A (3), 118B, 118C or 118CA, as the case requires, and to be payable by the purchaser accordingly and the terms and conditions of the contract of sale shall extend and apply to the land so incorporated as if that land had originally formed part of the parcel of land the subject of the contract; but this section shall not affect the rights of any person in respect of any claim that has already been settled or decided.

[Section 118H inserted by No. 41 of 1962 s.5; amended by No. 126 of 1987, s.89.]

Part VIII — Agricultural lands purchase

119. Funds

- (1) The Treasurer may, with the approval of the Governor, expend for the purposes of this Part sums, not exceeding in the aggregate, with the moneys expended under the *Agricultural Lands Purchase Act 1909*⁸, and the Acts thereby repealed, \$2 400 000 out of money appropriated by Parliament for such purposes.
- (2) At the option of the vendor of any land purchased under this Part of this Act, the Treasurer may pay the whole or any portion of the purchase money by debentures secured upon the Consolidated Fund of the State bearing such interest as the Governor may appoint, not exceeding the rate prescribed for the time being under the *General Loan and Inscribed Stock Act 1910*¹², and redeemable not later than 40 years after the date thereof, and such debentures, when so paid, shall be regarded as forming a part, at their face value, of the said sum of \$2 400 000.

[Section 119 amended by No. 113 of 1965 s.8; No. 6 of 1993 s.12.]

120. Land Purchase Board

- (1) The Governor may appoint a Board consisting of not more than 9 persons and may from time to time remove such persons, and appoint others in their stead. The Board shall be incorporated under the name of the Land Purchase Board, and shall have a common seal.
- (2) Three members of the Board shall constitute a quorum; and, unless the Minister shall otherwise direct, not more than 3 members shall act for the purpose of reporting on any offer of land or on any land proposed to be acquired.

121. Land may be surrendered

The Governor may accept surrenders of land to Her Majesty, for the purposes of this Part and any owner of land may offer to surrender to Her Majesty any land at a price to be named, and such offer shall be binding on the owner if the decision of the Minister to purchase the land is notified to such owner by letter posted within 3 months of the date of the receipt of the offer by the Minister: Provided that any such land must be situated within 40 miles of a railway, or of the intended route of a proposed railway the construction of which is authorized by Parliament, or within 25 miles of the established route of some other authorized form of transport which provides facilities for transportation comparable with those of a railway.

The term “**land**” includes any interest in land held under the Crown on conditional purchase lease, or otherwise, with or without the right to acquire the fee simple.

[Section 121 amended by No. 45 of 1945 s.2.]

122. Land Purchase Board to report

- (1) Any such offer shall, before acceptance, be referred to the Land Purchase Board for its report upon the following matters, that is to say: —
 - (a) The fair value of the land and the improvements thereon.
 - (b) The suitability of the land offered for agricultural settlement.
- (2) The Land Purchase Board, before making a report, shall satisfy itself as to the matters mentioned in subsection (1) and examine or cause to be examined to the satisfaction of the Board, the land, for which purpose the members of the Board or any person authorized in writing by the Board, may enter and remain thereon for such time as may be necessary to obtain sufficient information for the preparation of the report.

[Section 122 amended by No. 35 of 1946 s.7.]

s. 123

123. Governor may purchase lands

If it appears from the report of the Land Purchase Board, in any case, that the land offered is suitable, the Minister, with the approval of the Governor, and subject to the conditions prescribed by this Part, may make a contract for the acquisition of the land by surrender at the price fixed by the Board as the fair value thereof, or at any lesser price.

124. Disposal of land acquired under this Act

All land acquired by Her Majesty under the provisions of this Part shall be deemed to be Crown lands, and after being surveyed into sections, and, if necessary, classified, shall be disposed of in accordance with the provisions of this Act, as modified by this Part.

125. Minister may improve lands purchased

The Minister may, with the approval of the Governor, clear, drain, fence, or otherwise improve any land acquired under this Part, prior to disposing of it, and the cost of such clearing, draining, fencing, or other improvements shall be added to the price paid for the acquisition of the land.

126. Reserves for public purposes, roads, etc.

- (1) A sufficient part of the land may be set apart by the Minister, with the approval of the Governor, for roads, reserves, townsites, suburban areas, and other purposes as may be deemed necessary.
- (2) The Minister, with the approval of the Governor, may dispose of town and suburban lands, set apart under this section in like manner as town and suburban lands may, for the time being, be disposed of under Part IV.

127. Price and conditions on which land is to be sold

The remainder of the land, other than land defined and set apart under section 84 (1) as special settlement land, shall be thrown open for selection under the provisions and conditions of sections 47 or 49, subject to the following modifications: —

- (1) The selling price of the land shall be ascertained by adding to the price paid for the land 5% of such price, and the cost of all improvements made upon it, and of survey and subdivision, and the total so arrived at shall be the least aggregate price to be paid by selectors of the land:

Provided that where land acquired is held on conditional purchase lease, the balance of the purchase money payable to the Crown under such lease shall be added to the selling price of the land:

Provided also that where the interest in land acquired is leasehold without the right to acquire the fee simple, the price of the land in fee simple under the provisions of this Act shall be added to the selling price of the land.

- (2) The selling price of each allotment shall be fixed by the Governor, but so that the aggregate price for all the allotments into which the land is divided shall not be less than that hereinbefore prescribed; and the price of each allotment, with interest thereon at the prescribed rate, shall be payable as rent as hereinafter provided.
- (3) The maximum area held by one person shall be 5 000 acres as prescribed by section 47 (1) (a), except in special cases approved by the Governor, when the maximum area may be increased to 10 000 acres.
- (4) The term of the conditional purchase lease shall be 40 years from the first day of the quarter next preceding the date of the approval of an application.

s. 128

- (5) The rent shall be fixed at such sum per annum as will, if duly paid during the currency of the lease, amount to the price of the land, with interest at the prescribed rate on so much of the price of the land as for the time being remains unpaid, and shall be payable by the lessee in equal half-yearly instalments in advance:

Provided that for each of the first 5 years of the term of the lease the rent shall be fixed at an amount not to exceed such sum as will yield interest on the selling price of the land.

[Section 127 amended by No. 17 of 1954 s.4; No. 65 of 1965 s.10.]

128. Power to reduce selling price

- (1) Notwithstanding the provisions of the last preceding section, if it appears to the Governor that, having regard to the quality and productiveness of any land acquired under this Part, or any Act hereby repealed, or the distance of such land from a railway station or siding, market, or port, or other circumstances, the selling price of such land should be reduced, such price may, with the approval of the Governor, be reduced below the least aggregate price as ascertained under that section.
- (2) The Governor may on the grounds stated in the previous subsection, reduce the said least aggregate sale price of any land sold under the provisions of the *Agricultural Lands Purchase Act 1909*⁸, and amendments, or sold under the provisions of this Part, whether before or after the commencement of this subsection, and adjust the rental over the balance of the lease accordingly: Provided that the liability of the lessee for the payment of the rent reserved by the lease up to the date of such reduction shall not be affected, and in making such adjustment the lessee shall not be entitled to any cash refund of any part of the rent already paid, but the same shall be placed to the lessee's credit and utilized to pay off the instalments of rent (calculated on the basis of the reduced price) from time to time falling due

under the lease. Save, as aforesaid, the obligations of the lessee under the lease shall not be affected.

- (3) The Minister shall notify the Registrar of Titles of any such reduction and the particulars of any such adjustment, and the Registrar shall indorse a memorandum thereof on the original and on the duplicate of the Crown lease registered in the Department within the meaning of the *Transfer of Land Act 1893*.

[Section 128 amended by No. 47 of 1934 s.13; No. 81 of 1996 s.153 (2).]

129. Deferment of rent payable by discharged soldiers

If land is acquired under this Part by a discharged soldier or a dependant under the *Discharged Soldiers' Settlement Act 1918*, or a discharged member of the forces as hereinafter defined in section 139B —

- (a) the Minister may dispense with the prepayment of the first half-yearly instalment of purchase money, and may dispense with payment of interest during the first year of the term of the lease, but in that case such interest shall be capitalised and added to and treated for all purposes as part of the purchase money; and
- (b) the interest chargeable to the lessee shall be the rate payable for the money raised and applied to the acquisition of the land selected, except that the interest on the value of improvements may, during the first 5 years of the term, be reduced, and shall be payable as prescribed.

[Section 129 amended by No. 35 of 1946 s.8.]

s. 130

130. Application of s.127 (4) and (5) to existing leases

- (1) The Minister may —
- (a) extend the term of any conditional purchase lease granted under the *Agricultural Land Purchase Act 1909*⁸, to not exceeding 40 years and, in the event of any such extension under this paragraph, all necessary adjustments may be made to apply the provisions of section 127 (4) and (5) to the lease, the term whereof is extended as aforesaid; or
 - (b) extend the term of any such lease aforesaid for any period, inclusive of the then unexpired portion of the term, not exceeding 40 years, and in the event of any such extension under this paragraph, all necessary adjustments may be made to apply the provisions of section 127 (5) to the lease the term whereof is extended as aforesaid:

Provided that, in relation to extensions granted under paragraph (b), the following conditions shall apply, that is to say: —

Irrespective of the aggregate term created under the lease as extended, the lessee shall not be required to pay in total as rent a sum greater than the selling price of the land with prescribed interest over a period of 40 years.

- (2) No adjustment or extension of term under subsection (1) (b) shall be granted except on the recommendation of a Board to be appointed by the Governor under and for the purposes of this section.
- (3) When the term of any lease has been extended under this section the Registrar of Titles shall, on receiving from the Minister a notification to that effect, and without fee, indorse on the relative Crown lease registered in the Department within the

meaning of the *Transfer of Land Act 1893* a memorandum of the facts so notified to him.

[Section 130 inserted by No. 36 of 1939 s.19; amended by No. 58 of 1950 s.26; No. 81 of 1996 s.153 (2).]

131. Interim cropping leases

The Minister may, under and subject to the regulations, grant from time to time cropping leases of any land acquired by Her Majesty under this Part, or the *Agricultural Lands Purchase Act 1909*⁸, or any Act thereby repealed, for not exceeding 3 years, pending the lease thereof on terms of conditional purchase to a selector under this Part.

132. Appropriation of receipts when debentures are issued

When debentures have been issued for the purposes of this Part, or of any repealed Act, all moneys received as the selling price of land forming part of any parcel of land acquired thereunder shall, except as hereinafter provided, be credited to a special trust fund, and shall be applied in payment of the interest upon such debentures, and the surplus shall be accumulated to form a fund for redeeming the debentures at maturity.

Provided that if —

- (a) any Crown land not so acquired is included in any parcel of land selected; or
- (b) any interest in land so acquired is less than the fee simple thereof and the selling price has been increased in accordance with the provisos to section 127 (1),

the selling price and the instalments thereof shall, subject to regulations to be made under this Act, be duly apportioned and a proportionate part shall be credited to the special trust fund and a proportionate part to the Consolidated Fund.

[Section 132 amended by No. 6 of 1993 s.13; No. 49 of 1996 s.64.]

s. 133

133. Separate account to be kept by Treasurer

- (1) A separate account showing the expenditure and receipts in connection with any lands acquired by Her Majesty under this Part shall be kept by the Treasurer.
- (2) In the event of any profit or loss accruing under the operation of this Part, such profit or loss, as the case may be, shall be credited or charged to the Consolidated Fund of the State.

[Section 133 amended by No. 6 of 1993 s.12; No. 49 of 1996 s.64.]

134. Report to be presented to Parliament

Within 30 days after the meeting of Parliament in each year, a report shall be presented to both houses of Parliament showing —

- (a) the locality and area of each block of land purchased under this Part, the name of the person from whom it was acquired, and the price paid for the same;
- (b) the report of the Land Purchase Board on each transactions, and the condition and settlement of all land required under this Act.

Part VIIIA — Easements

134A. Interpretation

In this Part “**Crown lease**” has the same meaning as it has under and for the purposes of the *Transfer of Land Act 1893*.

[Section 134A inserted by No. 78 of 1982 s.3.]

134B. Easements may be granted

- (1) For —
- (a) the provision of access and passage for persons as pedestrians or otherwise;
 - (b) the provision of pipes, cables, electrical transmission lines, conveyor belt systems, and other services; and
 - (c) the provision of any structure, plant, or equipment the carrying out of any works, and the performance of any maintenance that is necessary for, or ancillary or incidental to, giving effect to any of the purposes referred to in paragraph (b),

the Minister may grant to any person any easement in, upon, through, over, or under any land and may express any easement so granted to be subject to conditions and the payment of consideration as set out in the grant.

- (2) The Minister shall not grant an easement under subsection (1) unless —
- (a) the land in, upon, through, over, or under which the easement is proposed to be granted is —
 - (i) Crown land; or
 - (ii) land of the Crown that is reserved for or dedicated to any public purpose, whether or not the land is classified under section 31 as of Class A;

s. 134C

- (b) not more than 1 year has passed since the day on which the Minister —
 - (i) delivered to the Registrar of Titles a memorial containing notification of the proposed easement under section 134C (1) (a); or
 - (ii) made a record of the proposed easement under section 134C (1) (b),
(in this subsection referred to as “the relevant day”) and the record made by the Registrar of Titles or the Minister, as the case may be, of the proposed easement has not been cancelled under section 134C (2); and
- (c) every person —
 - (i) who has, and on the relevant day had, any right, title, or interest in the land;
 - (ii) in whom the land is, and on the relevant day was, vested within the meaning of section 33 (2) or under any other Act; or
 - (iii) who has, and on the relevant day had, the control of the land pursuant to section 34 of this Act or section 3 of the *Parks and Reserves Act 1895*,
has consented in writing to the grant of the easement.

[Section 134B inserted by No. 78 of 1982 s.3; amended by No. 126 of 1987 s.90.]

134C. Proposed easement to be recorded

- (1) Before the Minister grants an easement under section 134B (1) he shall —
 - (a) if the land concerned is the subject of a Crown lease registered under the *Transfer of Land Act 1893*, deliver a memorial containing notification of the proposed easement, together with a description of the proposed easement and a plan showing its location in relation to the land proposed to be affected by it, to the Registrar of Titles under that Act who shall, without requiring the payment of any fee, duly record the notification in the appropriate register;
 - (b) in any other case, make a record of the proposed easement in the appropriate register kept under this Act.
- (2) Where the Minister has made or caused the Registrar of Titles to make a record of a proposed easement pursuant to subsection (1) and it appears to the Minister that the easement proposed is unlikely to be granted under section 134B (1) he may —
 - (a) if the land concerned is the subject of a Crown lease registered under the *Transfer of Land Act 1893*, deliver a memorial containing notification that the record of the proposed easement is to be cancelled to the Registrar of Titles who shall, without requiring the payment of any fee, cancel the record accordingly;
 - (b) in any other case, cancel the record of the proposed easement in the appropriate register kept under this Act.

[Section 134C inserted by No. 78 of 1982 s.3; amended by No. 126 of 1987 s.91.]

134D. Easement to be recorded

- (1) A person to whom an easement is granted under section 134B shall, if the land concerned is the subject of a Crown lease registered under the *Transfer of Land Act 1893*, lodge the

s. 134E

instrument creating the easement with the Registrar of Titles who shall duly register the easement under that Act.

- (2) Where an easement is granted under section 134B and the land concerned is not the subject of a Crown lease registered under the *Transfer of Land Act 1893*, the Minister shall, upon payment of the prescribed fee, duly register the easement under this Act, but may, where he sees fit, dispense wholly or in part with the requirement to pay the prescribed fee.

[Section 134D inserted by No. 78 of 1982 s.3.]

134E. Cancellation

- (1) The Minister may, by notice in writing served on the person to whom an easement is granted under section 134B, cancel the easement if —
- (a) default occurs in any condition or any payment to which the grant of the easement is expressed to be subject; or
 - (b) the person to whom the easement is granted requests the Minister in writing to cancel the easement,

and shall —

- (c) if the easement is registered under the *Transfer of Land Act 1893*, deliver notice of the cancellation to the Registrar of Titles who shall, without requiring the payment of any fee, record the cancellation accordingly; or
- (d) if the easement is registered under this Act, duly record the cancellation under this Act.

[Section 134E inserted by No. 78 of 1982 s.3.]

134F. Easement to subsist

Where an easement granted under section 134B in respect of land is registered under this Act or the *Transfer of Land Act 1893* pursuant to section 134D of this Act, the easement shall, subject to sections 134E and 134J of this Act and section 229A of the *Transfer of Land Act 1893* but notwithstanding any other provision of this or any other Act, continue to have effect in respect of the land notwithstanding the grant of any estate or interest in the land or the transfer or surrender or other extinguishment of any estate or interest in the land, and —

- (a) where the easement is so registered under this Act, the Minister shall, upon land affected by the easement becoming subject of a grant in fee or a Crown lease, cause the grant or Crown lease delivered to the Registrar of Titles to be accompanied by the instrument creating the easement and the Registrar of Titles shall duly register the easement;
- (b) where the easement is so registered under the *Transfer of Land Act 1893*, the Minister shall, upon the land concerned ceasing to be under the operation of the *Transfer of Land Act 1893*, duly register the easement under this Act.

[Section 134F inserted by No. 78 of 1982 s.3.]

134G. Easements over land dedicated to a purpose

A person holding land for an estate in fee simple granted under section 33 (4) in trust for a purpose is not prevented by reason only —

- (a) that the land is held in trust for that purpose or of any condition, limitation, or restriction imposed in relation to the purpose; or
- (b) that the land may be classified under section 31 as of Class A,

s. 134H

from creating in favour of any person an easement affecting the land for any purpose mentioned in section 134B (1) but shall not create any such easement without the consent of the Minister.

[Section 134G inserted by No. 78 of 1982 s.3.]

134H. Easement in anticipation of grant of fee simple

- (1) Where land is disposed of under this Act subject to the right of the holder to acquire the fee simple of the land, the holder is not prevented by reason only that he has not yet acquired the fee simple of the land from creating in favour of any person an easement affecting the land for any purpose mentioned in section 134B (1) but an easement shall not be so created without the consent of the Minister and an easement so created terminates if the right to acquire the fee simple is forfeited in accordance with this Act.
- (2) An instrument creating an easement referred to in subsection (1) may be lodged, together with the prescribed fee, with the permanent head of the Department and shall be duly registered under this Act.
- (3) The Minister may, where he sees fit, dispense wholly or in part with the requirement to pay the prescribed fee.

[Section 134H inserted by No. 78 of 1982 s.3.]

134I. Easement in gross

An easement granted under section 134B or referred to in section 134G or 134H may be created without there being a dominant tenement and there may be made appurtenant or annexed to any such easement another easement or the benefit of a restriction as to the user of the land.

[Section 134I inserted by No. 78 of 1982 s.3.]

134J. Abandonment

- (1) Where an easement in respect of land is registered under this Act, the permanent head of the Department or —
- (a) where the easement is granted under section 134B, any person whose consent would be required by subsection (2) (c) of that section if it were desired to grant an easement affecting the land under that section; or
 - (b) where the easement is an easement referred to in section 134H, any person having any right, title, or interest in the land,

may request the Minister to remove from the register the record in respect of that land of the easement.

- (2) The Minister may, if he is satisfied after making all reasonable enquiry that an easement affecting land no longer serves any purpose, remove from the appropriate register the record in respect of that land of the easement and thereupon the easement affecting the land shall be deemed to have been abandoned and extinguished.
- (3) The Minister shall not under subsection (2) remove the record of an easement until the expiration of 21 days after notice of the request under subsection (1) has been served by the Minister on the person to whom the easement was granted and, where there is a dominant tenement, every other person appearing to the Minister to have any estate or interest in the land comprised in the dominant tenement.
- (4) A notice under subsection (3) —
- (a) shall be in writing and dated and shall include or contain a plan showing the extent to which such easement is affected; and

s. 134K

- (b) may be served on a person for whom an address appears in the appropriate register by being sent in a registered letter addressed to that person at the address so appearing,

and a memorandum made in the appropriate register recording that such notice was served and the day on which it was served shall be admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the facts so recorded.

[Section 134J inserted by No. 78 of 1982 s.3.]

134K. Production of instruments

- (1) Any person in possession of any deed, certificate, or other instrument evidencing the title to any land that is or would be affected by an easement granted or proposed to be granted under section 134B or referred to in section 134G or 134H shall, upon receiving notice requiring him to do so, deliver up to the Registrar of Titles or the Minister for Lands, as the case may be, such deed, certificate, or other instrument for the purpose of enabling a record to be made thereon of the proposed easement or the grant, cancellation or abandonment of the easement as the case may require, corresponding to the record thereof required by this Part, but the Registrar of Titles or Minister for Lands, as the case may be, may make a record required by this Part without requiring such delivery and make the corresponding record on such deed, certificate, or other instrument when it is subsequently produced or delivered to him.
- (2) A person who, in contravention of subsection (1), fails to deliver up any deed, certificate, or other instrument is guilty of an offence and is liable to a penalty of not more than \$100.

[Section 134K inserted by No. 78 of 1982 s.3.]

134L. Evidence

A record made pursuant to this Part in a register kept under this Act of an easement in favour of a person in respect of land shall be admissible in evidence in any proceedings and is conclusive of the fact that the person is entitled to the easement in respect of that land.

[Section 134L inserted by No. 78 of 1982 s.3.]

134M. Land under Transfer of Land Act

The provisions of the *Transfer of Land Act 1893* concerning easements in respect of land for which there is a certificate of title under that Act apply, with the necessary modifications, to land the subject of a Crown lease registered under that Act, and for the purposes of those provisions the registered Crown lease relating to the land shall be regarded as the certificate of title.

[Section 134M inserted by No. 78 of 1982 s.3.]

134N. Tabling of report of grant of certain easements

Where the Minister —

- (a) grants an easement under section 134B (1); or
- (b) consents for the purposes of section 134G to the creation of an easement,

and land to be made subject to the easement is classified under section 31 as of Class A, the Minister shall present a special report to both Houses of Parliament setting forth the reasons for the grant or consent and the purpose of the easement; and such report shall be made to both Houses of Parliament within 14 days from the making of the grant or the giving of consent as the case may be, if Parliament is then in session, and, if not, within 14 days after the commencement of the next session.

[Section 134N inserted by No. 78 of 1982 s.3; amended by No 126 of 1987 s.92.]

Part IX — Miscellaneous provisions

135. Priority of application

- (1) All applications for land under this Act shall be made in the prescribed forms, and shall take priority according to the order of their being lodged or received through the post with the prescribed deposit, at the office of the Department in Perth or at such other places and offices as the Minister may publicly notify.

Provided that if two or more applications for the same land are lodged or received through the post on the same day, such applications shall be deemed to be lodged or received at the same time.

Provided further that applications for the same land lodged or received through the post on or before the date so notified for the receipt of applications shall be deemed to have been received at the same time.

- (2) When two or more applications in respect of the same land are lodged or received at the same time, the application to be granted shall, subject as hereinafter provided, be determined by a Board of 3 persons appointed by the Minister.
- (2a) In its exercise of the power of determination conferred upon it by subsection (2) the Board shall, —
- (a) if the applicant is a discharged member of the forces as defined in section 139B (1); and
 - (b) if the Board is satisfied that the ability and capacity of the applicant to develop the land for which he has applied being equal to or not less than the ability and capacity of any other applicant are such as would enable him to properly develop the land,

determine that his application be granted in preference to the application of any other person not being a discharged member of the forces.

- (3) The Board may require the personal attendance of and, when deemed necessary, examine on oath all applicants, objectors, and other witnesses, and any member of the Board may administer such oath.
- (4) Subject to subsection (2a) the Board may, in lieu of such determination, recommend that none of the applications should be approved.

[Section 135 amended by of 58 of 1950 s.27; No. 67 of 1968 s.2; No. 79 of 1982 s.15; No. 126 of 1987 s.93.]

136. Applications

- (1) Every application for land which has not been surveyed shall be for land in one block, and, except in special cases to be allowed by the Minister, in the form of a rectangle, with boundaries in the direction of the meridian and at right angles to it, and the proportion of depth to breadth except as herein specified, shall not exceed 3 to one unless the Minister shall otherwise direct.
- (2) The proportion of depth to breadth in any section bounded by a frontage line shall be as 2 to one, unless otherwise provided or by approval of the Minister.
- (3) Every application shall contain or be accompanied by a sketch of the proposed boundaries, which shall be fixed wherever possible with reference to some natural or permanent artificial object, and show the position of the land with reference to any lake, river, or main stream, and also to land held by or in the occupation of any other person in the locality; and also show all permanent waterholes and springs within the area applied for:

Provided that when, from the frontage not being a straight line, or from the interference of other frontage lines, natural features, or the boundaries of other lands, the foregoing rules in respect of form cannot be observed, the form of the land shall be determined as nearly in accordance therewith as circumstances permit.

s. 137

137. Applications for surveyed lands

- (1) Any application for land already surveyed (not being town or suburban lands) may include two or more adjoining blocks.
- (2) In special cases, with the approval of the Minister, application may be made for portion of a surveyed block, not being a town or suburban lot, and the block shall be subdivided accordingly:

Provided that in such case the applicant shall, if the Minister think fit, pay the cost of survey of such subdivision.

138. Fractions of an acre of holdings under Part V

In fixing the maximum area of any holding under Part V any fraction of an acre may be disregarded.

139. Rents

- (1) All land rents, except those payable in respect of pastoral leases issued after the coming into operation of the *Land Act Amendment Act 1963*, shall be calculated as from 1 January to 31 December, and shall be paid half-yearly in advance, at the office of the Department in Perth, or to a stipendiary magistrate or other person authorized by the Minister to receive rents, on or before 1 March and 1 September in each year.
- (1a) All land rents payable in respect of pastoral leases issued after the coming into operation of the *Land Act Amendment Act 1963*, shall be calculated as from 1 July to 30 June, and shall be paid half-yearly in advance at the office of the Department in Perth or to a stipendiary magistrate or other person authorized by the Minister to receive rents, on or before 1 March and 1 September in each year.
- (2) All leases applied for during the year shall, except in special cases approved by the Minister, be granted as from the first day of the quarter next preceding the date of approval of the application; and rent for the current half-year shall be payable as from the date of granting.

- (2a) Where for a lease granted under Part III, VI, or VII the rent levied under this Act for any period after 1 July 1970 has not been paid the Minister may defer or cancel that rent or part of it, or where it has been paid he may refund it or part of it, if he is, on the application of the lessee, satisfied that the lessee has suffered personal hardship by reason of such economic conditions as, in the opinion of the Minister, warrant the rent or part of it being deferred, cancelled, or refunded, as the case may be.
- (2b) Any amounts that are required to refund rent under subsection (2a) shall be charged to the Consolidated Fund which is to the necessary extent hereby appropriated accordingly.
- (3) Except as otherwise provided under subsection (2a), if a lessee fails to pay the rent due to him on 1 April or 1 October in any year, or if he fails to pay any premium, instalment of payment for improvements, survey fee, or other money payable by him on the due day, he shall pay the same within 30 days from the due day together with a fine 10%, and if he fails to pay for 60 days, his lease and the lands comprised therein, and all improvements thereon, may be forfeited.
- (4) If any holding becomes forfeited, and such holding is one of a group of holdings held by the same person, and the external boundaries only of the group of holdings have been surveyed, the lessee shall be required to pay the cost of any additional surveys rendered necessary by reason of such forfeiture, and unless such cost is duly paid within a time to be fixed by the Minister, the remaining holdings of the group with the improvements thereon shall be forfeited.

[Section 139 amended by No. 60 of 1963 s.23; No. 65 of 1965 s.11; No. 55 of 1971 s.6; No. 79 of 1982 s.16; No. 98 of 1985 Schedule 1; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

s. 139A

139A. Minister may defer rent payable by lessee who has served with H.M. Forces

The Minister may, in his discretion, and subject to such conditions as may be prescribed, defer the payment of rent of any conditional purchase lease, and any lease granted under Part VIII or any Act repealed thereby, held by any lessee who has served in any of the naval, military or air forces of the Sovereign since 3 September 1939; such deferment of rent being limited to the period commencing from the first day of the half year in which the lessee joined such forces and ending on the last day of the half year in which such lessee was discharged from such forces, and the term of any such lease may be proportionately extended notwithstanding that such term may have already expired. The Minister shall notify the Registrar of Titles of any such extension of term granted in respect of any Crown lease registered under the *Transfer of Land Act 1893*, and the Registrar shall thereupon endorse such Crown lease accordingly.

[Section 139A inserted by No. 35 of 1946 s.9.]

139B. Definition of “discharged member of the forces”

- (1) For the purposes of this section, a “**discharged member of the forces**” means —
 - (a) a person who was a resident of the Commonwealth for the period of not less than 12 months immediately prior to 3 September 1939 and who became a member of any of the naval, military or air forces of the Sovereign at any time subsequent to that date during the war in which the Sovereign was engaged and which commenced on that date, and who has been honourably discharged after not less than 6 months’ full time service in any of those forces or, having in the opinion of the Minister been materially prejudiced by reason of service in any of those forces, has been honourably discharged after less than 6 months’ full time service therein;

- (b) a person who was, in the opinion of the Minister, for a period of not less than 12 months immediately prior to 3 September 1939, ordinarily resident within the Commonwealth and who was employed, at any time between 3 September 1939, and 15 August 1945, in sea-going service on —
- (i) a ship engaged in trading between a port of a State or Territory of the Commonwealth and any other port, whether a port of a State or Territory of the Commonwealth or not; or
 - (ii) a ship being a troop transport or hospital ship, for not less than 6 months or, who being so employed for less than 6 months, was in the opinion of the Minister materially prejudiced by reason of that employment; or
- (c) a person who was a resident of the Commonwealth for a period of not less than 12 months immediately prior to his becoming a member of any of the naval, military or air forces of the Sovereign and who, while such a member, has served in a theatre of war or hostilities approved as such by the Minister for the purposes of this paragraph, and who has been honourably discharged after not less than 6 months' full time service in any of those forces or, having in the opinion of the Minister been materially prejudiced by reason of service in any of those forces, has been honourably discharged after less than 6 months' full time service therein.
- (2) The provisions of this section shall not be construed to apply to leases granted under and subject to Part VIII or any Act repealed thereby.
- (3) In respect of any conditional purchase lease of Crown land of which a discharged member of the forces is already the lessee or shall hereafter become the lessee, whether by selection from the Crown or by acquisition otherwise, there may, subject as hereafter provided and to the approval of the Minister, upon

s. 139B

application by the lessee, be deducted from the amount of the half-yearly rental otherwise required to be paid, a rebate equivalent to half of that portion of the rental as would be required to pay the price of the land exclusive of cost of improvements and survey fee.

- (4) Where at the time he became a member of the forces such discharged member was the lessee of a conditional purchase lease, and the Minister's approval is given to such rebate, then such rebate shall be granted as from the first day of the half-year of the term of such lease in which the lessee joined the forces, but otherwise the rebate shall be granted as from the first half-yearly rent day nearest to the date of registration of the transfer or other dealing by which the lease is acquired by a discharged member of the forces.
- (5) A lessee who is a discharged member of the forces shall not, in any case, be required to pay any rent or any interest on the cost of survey or interest on the value of improvements on any conditional purchase lease during the first 5 years of the term thereof.
- (6) If a discharged member of the forces to whom a concession has been granted under this section in respect of any conditional purchase lease sells or assigns or otherwise disposes of, or agrees to sell, assign or otherwise dispose of any such conditional purchase lease otherwise than to another discharged member of the forces, or in the case of a deceased member of the forces, if a sale, assignment or disposal otherwise, or agreement for sale, assignment or disposal otherwise be made other than to the next-of-kin or the beneficiary under the will being the widow, child or parent of the deceased, then in such case such concession shall terminate as from the first day in the half-year of the term of such lease in which the sale or agreement for sale, assignment or disposal otherwise of the lease was made.
- (7) Any lessee who disposes of or agrees to dispose of his conditional purchase lease by any means whatsoever shall, if

any concession has been granted in respect of such lease under this section, notify the Minister within 30 days of such disposition or agreement therefor, and failure to give such notification shall render the lease liable to forfeiture forthwith.

- (8) If the lessee of any conditional purchase lease granted under this Act or any Act thereby repealed and to which lease concessions have been applied under the provisions of section 11 of the *Discharged Soldiers' Settlement Act 1918*, transfers or otherwise disposes of his interest in such lease, with the Minister's consent, to any discharged member of the forces, then and in such case such concessions as have already been applied shall continue in all respects instead of the grant of any rebate of rent as otherwise mentioned in this section but the lease shall thereupon become subject to the provisions of subsections (6) and (7).
- (9) No discharged member of the forces shall be granted or receive concessions under this section in respect of any area or areas of land exceeding in the aggregate 5 000 acres of land.
- (10) The Minister may, in his discretion, approve of the granting of a rebate of rent under the provisions of this section to the widow, child or parent of a deceased discharged member of the forces in respect of any conditional purchase lease which may have devolved to such widow, child or parent from such deceased discharged member of the forces before the commencement of this Act, and in like manner, may approve of such a rebate in respect of any conditional purchase lease which may have devolved to the widow, child or parent of any lessee who at the time of his death was a member of any of the naval, military or air forces of the Sovereign. In any such case the rebate shall be granted from the first day of the half-year of the term of such lease in which such deceased discharged member of the forces or such deceased lessee joined the forces.

[Section 139B inserted by No. 35 of 1946 s.9; amended by No. 65 of 1965 s.12; No. 30 of 1967 s.5.]

s. 140

140. Improvements

- (1) No payment or valuation shall be made pursuant to this Act in respect to any improvements, nor shall any improvements be considered pursuant to this Act, unless the Minister shall be satisfied that the same were made *bona fide* for the purpose of improving the land or increasing the carrying capacity thereof, and unless the same shall consist of wells of fresh water, reservoirs, tanks, or dams of permanent character and available for the use of stock, increasing thereby the carrying capacity of the land; or of fences, sheds, and buildings erected for farm or shearing and station purposes, not being dwelling-houses (except where such dwelling-houses exist upon a homestead farm, or working man's block); or of cultivation, subdivision fences, clearing, grubbing, draining, or any improvement for maintaining or improving the agricultural or pastoral capabilities of the land.
- (2) The fact that the Minister is satisfied that the improvements were made *bona fide* for the purpose of improving the land or increasing the carrying capacity thereof may be proved in any court or before any arbitrator by a certificate in writing signed by the Minister, whose signature shall be judicially noticed.
- (3) Where land held under conditional purchase lease or Crown grant issued before or after the commencement of this Act is resumed under the reservation in the lease or grant of the right to resume a portion thereof for any work or purpose of public use, utility, or convenience, or for the purpose of exercising the power to search for minerals reserved to the Crown, compensation shall be payable to the lessee or grantee for the value of the improvements (if any), and the provisions of this section shall apply.

[Section 140 amended by No. 58 of 1950 s.28; No. 60 of 1963 s.24; No. 113 of 1965 s.8; No. 30 of 1967 s.6.]

141. Restriction of right of resumption without compensation

- (1) From the commencement of this Act the right under a reservation in a Crown grant to resume a prescribed portion of the land granted for works or purposes of public use, utility or convenience, shall not be exercisable without compensation to the grantee, or any person lawfully claiming under him, after 5 years from the date of the grant, but such compensation shall be assessed by setting off against the value of any lands so resumed any increase in value of the remaining lands in the grant or of any other lands of the grantee which is due to or arises out of such resumption, and the balance, if any, shall be payable to the grantee.
- (2) This section shall not affect the provisions of any Crown grant whereby a resumption shall not be made without compensation of any part of the land granted or demised upon which buildings are erected or other improvements have been made; and such compensation shall be assessed at the value of such buildings, or other improvements, without regard to any increase in the value of the remaining land of the grantee, and shall be payable without any deduction by a set-off against the value of such buildings or other improvements of any increase in the value of such remaining land of the grantee.

142. Fee on Crown grants

- (1) For preparing and recording a Crown grant there shall be charged such fee as is prescribed; such fee is to be paid with the balance of the purchase money:

Provided that at the discretion of the Minister, lands comprised in two or more adjoining leases or licences, as the case may be, registered in the same name and contracted to be granted for an estate in fee simple, subject to the same conditions, rights and reservations, may be included in one Crown grant, in which case there shall be charged the prescribed fee for the first lease or licence and one half of that fee for each additional lease or licence so included.

s. 143

- (2) After payment of the purchase money and the fee for the Crown grant, and having performed all the conditions, the purchaser upon application and payment of the prescribed fee shall receive from the Minister a permit to occupy, in the appropriate prescribed form, being a certificate that he is entitled to the Crown Grant.
- (3) In the case of a free grant of land under this Act, no Crown grant fee shall be charged.

[Section 142 amended by No. 53 of 1948 s.8; No. 113 of 1965 s.8; No. 65 of 1980 s.5; No. 126 of 1987 s.94.]

143. Transfers etc., to be approved by Minister

- (1) No transfer, mortgage, or sublease of any lease or licence under this Act shall be valid or operative until the approval in writing of the Minister or an officer of the Department authorized in that behalf by the Governor is obtained.
 - (2) The Minister may, before approving any transfer or sublease, require the proposed transferee or sublessee to make a statutory declaration of his eligibility to hold the land intended to be transferred or sublet, or the Minister may, in his absolute discretion, refuse to approve any transfer, sublease or other dealing.
- (2a)(a) The holder of any lease or licence shall not without the approval in writing of the Minister being first obtained —
- (i) sell, assign or otherwise dispose of the lease or licence in whole or in part;
 - (ii) agree to sell, assign or dispose of the lease or licence in whole or in part; or
 - (iii) offer to sell, assign or otherwise dispose of the lease or licence in whole or in part.
- (b) Where the holder of a lease or licence contravenes the provisions of paragraph (a), the lease or licence, as the case may be, may be forfeited.

- (2b) Any person who whether directly or indirectly enters into a transaction relating to land under this Act for the purpose of avoiding a condition or restriction imposed by or under this Act commits an offence.

Penalty: \$1 000.

- (2c) In any proceedings for an offence against subsection (2b) a certificate of the Minister certifying that the purpose of the transaction in question is to avoid a condition or restriction imposed by or under this Act and set out in that certificate is *prima facie* evidence of that fact.

- (2d) Where —

- (a) the holder of a lease or licence of land under this Act; or
- (b) a person who is entitled to be issued with a Crown grant of land under this Act,

is convicted of an offence against subsection (2b) the lease or licence or any entitlement of that person to the issue of the Crown grant, as the case requires, may be forfeited.

- (2e) The provisions of subsections (2b) to (2d) (both inclusive) are in addition to and not in derogation of the provisions of subsection (2a).
- (3) Except in special cases to be approved by the Minister, no holding under Part V shall be transferred or sublet until after the expiration of 5 years from the commencement of the lease or occupation certificate, and then only if the holder has himself effected on the land, in prescribed improvements, the full amount required to be effected during that period.
- (4) Subject to the provisions of section 115, except in special cases to be approved by the Minister no area leased under section 98 shall be transferred or sublet until after the expiration of 5 years from the commencement of the lease, and then only if the lessee has complied with the conditions relating to improvements and stocking as prescribed by sections 102 and 103 respectively.

s. 144

- (5) The special cases which may be approved of by the Minister and which are referred to respectively in subsection (3) and in subsection (4) may be so approved notwithstanding that none of the conditions for a transfer or subletting set out respectively in subsection (3) and subsection (4) has occurred, been complied with or performed.

[Section 143 amended by No. 41 of 1956 s.4; No. 6 of 1960 s.3; No. 20 of 1965 s.2; No. 65 of 1965 s.13; No. 30 of 1967 s.7; No. 73 of 1977 s.13.]

144. Transfer of leases and licences

- (1) Subject to the last preceding section, to the provisions of Part VI, relating to the transfer of pastoral leases, and to the restrictions contained in Division (2) of Part V, any holder of a lease or licence, except licences to quarry, may transfer his interest in the land:

Provided that in the case of land held under a conditional purchase lease the transferee or sublessee does not hold, together with the land to be transferred or sublet, more than the maximum area allowed under this Act.

- (2) On the occasion of every transfer or sublease the lease or licence or occupation certificate, if issued, must be produced, and the transferor and transferee or sublessor or sublessee shall each, on demand, receive a certificate in the prescribed form.
- (3) Unless the lease or licence is registered as a Crown lease under the provisions of the *Transfer of Land Act Amendment Act 1909*, transfers may be in the prescribed form and each holding must be transferred or sublet by a separate instrument, and such fee as is prescribed shall be payable on each transfer or sublease.

[Section 144 amended by No. 113 of 1965 s.8; No. 65 of 1980 s.6; No. 126 of 1987 s.95.]

145. Leases and licences may be mortgaged

- (1) Subject to section 143, and the restrictions contained in Division (2) of Part V and in Part VI, any lease or licence under this Act not registered as a Crown lease under the *Transfer of Land Act Amendment Act 1909*, may be mortgaged as hereinafter provided.
- (2) When any lease or licence is intended to be charged with or made security for the payment of money, the lessee or licensee shall execute a memorandum of mortgage in the prescribed form.
- (3) Every memorandum of mortgage must be in duplicate, and must be registered in the Department; and in the case of several mortgages of the same holding they shall take effect according to priority of registration.
- (4) The prescribed fee shall be payable upon the registration of every such memorandum in respect of every holding comprised in or affected by it.
- (5) A mortgage may be transferred on payment of the like fee as for registration of the memorandum of mortgage.
- (6) On the registration of or transfer of a mortgage, the lease or licence if issued must be produced.

[Section 145 amended by No. 113 of 1965 s.8; No. 65 of 1980 s.7; No. 79 of 1982 s.26; No. 126 of 1987 s.96.]

146. Effect of mortgage

A memorandum of mortgage shall have effect only as a security for the money intended to be secured by it, and shall not take effect as an assignment.

147. Right of mortgagee

If default is made in the payment of the money secured by a mortgage according to the tenor thereof, or upon the happening

s. 148

of any event which, according to the terms of the mortgage, entitles the mortgagee so to do, the mortgagee may —

- (a) enter upon and take and retain possession of the holding for any period not exceeding 12 months;
- (b) sell the holding by public auction after not less than 30 days' notice of the intended sale published in the *Gazette* and in a local newspaper;
- (c) after failure to sell by public auction, sell by private sale.

Provided that the purchaser must be a person who is not disqualified to be the lessee of the land under the provisions of this Act.

Provided also that the Minister may extend the time during which the mortgagee may retain possession of or sell the holding.

148. Transfer on sale

Upon a sale of a holding under the power of sale hereby conferred upon a mortgagee, he may transfer the lease or licence to the purchaser, and the transfer shall be registered in the Department upon payment of such fee as is prescribed.

[Section 148 amended by No. 113 of 1965 s.8; No. 79 of 1982 s.26; No. 126 of 1987 s.97.]

149. Mortgages of leases or licences to be transferred to Crown grant

If a lease or licence is mortgaged under the provisions of section 145, or is subject to a mortgage under section 138 of the *Land Act 1898*, or is subject to a caveat lodged under 152 of this Act or under section 75 of the *Land Act Amendment Act 1906*, or is affected by an easement referred to in section 134H of this Act, and the lessee or licensee, during the continuance of such mortgage, easement, or caveat becomes entitled under such lease or licence to, or becomes entitled under section 117AA (2) to obtain, a Crown grant in fee simple of the land, the mortgage,

easement, or caveat, unless discharged, terminated, withdrawn, removed, or lapsed, as the case may be, shall by the operation of this Act be transferred to and apply to the Crown grant and the land thereby granted in all respects as if such Crown grant had been referred to in the mortgage, easement, or caveat; and on the lease or licence being filed in the Department within the meaning of the *Transfer of Land Act 1893* with a certified copy or the mortgage, easement, or caveat as registered under this Act or the *Land Act 1898*, a memorandum of such mortgage, easement, or caveat shall be indorsed by the Registrar of Titles as an encumbrance on the Crown grant and in the relevant register under the *Transfer of Land Act 1893* on his registering such grant, and when so indorsed shall, in the case of a mortgage, have effect as if it contained all the covenants, powers, and conditions, which, by the *Transfer of Land Act 1893*, are implied in mortgages under that Act or conferred on the parties thereto, except so far as such mortgage contains express provisions to the contrary, or, in the case of a caveat, as if it were a caveat lodged under the provisions of the *Transfer of Land Act 1893*, in respect of the estate or interest specified therein.

The term “**licence**” includes an occupation certificate or permit to occupy relating to a free homestead farm.

[Section 149 amended by No. 47 of 1934 s.14; No. 78 of 1982 s.4; No. 126 of 1987 s.98; No. 81 of 1996 s.153 (1) and (2).]

149A. Transfer of estates, interests and caveats to Crown Grants

- (1) Before a Crown Grant is issued in respect of any land in respect of which an estate or interest or caveat continues under section 34B or 37AA —
 - (a) all instruments creating or evidencing any estates or interests in the land that are sought to be endorsed on the Crown Grant in accordance with a determination made under this subsection shall be produced to the Minister; and

s. 149A

- (b) the Minister shall —
 - (i) determine which, if any, of the instruments produced to the Minister under this subsection, and which, if any, of any caveats lodged in respect of the land, shall be endorsed on the Crown Grant; and
 - (ii) cause a note of the determination referred to in subparagraph (i) to be made on all instruments and caveats which shall be endorsed on the Crown Grant.
- (2) An estate or interest created or evidenced by an instrument, or a caveat, endorsed on a Crown Grant in accordance with a determination made under subsection (1) continues and applies to the Crown Grant and the land thereby granted or the relevant part thereof.
- (3) The Minister may, before making a determination under subsection (1), require each person known to the Minister to have an estate or interest in the relevant land and each caveator claiming an estate or interest in that land to make a statutory declaration stating the nature of that estate or interest and the title thereto or the nature of the estate or interest so claimed and the claimed title thereto, as the case requires.
- (4) On the delivery to the Registrar of Titles of —
 - (a) a Crown Grant;
 - (b) any relevant internal interests plan referred to in section 149B; and
 - (c) each instrument creating or evidencing an estate or interest, and each caveat, endorsed on the Crown Grant referred to in paragraph (a),

the Registrar of Titles shall endorse a memorandum of each estate or interest referred to in paragraph (c) as an encumbrance, and a memorandum of each caveat referred to in that paragraph,

in the relevant register under the *Transfer of Land Act 1893* on the registration of the Crown Grant referred to in paragraph (a).

- (5) On the endorsement of a memorandum under subsection (4), the encumbrance or caveat to which the memorandum relates is by operation of this subsection transferred to and applies to the relevant certificate of title and to the land therein contained or the relevant part thereof in all respects as if that certificate of title had been referred to in the relevant instrument or that caveat.
- (6) When one or more Crown Grants are issued in respect of one or more parts of a piece of land, subsections (2) and (5) apply to that part or each of those parts as if the references in those subsections to “the land thereby granted” were references to that part or each of those parts.
- (7) Encumbrances and caveats, memoranda of which are endorsed under subsection (4), shall for the purposes of the *Transfer of Land Act 1893* when the relevant instruments or those caveats are endorsed on the certificate of title be entitled to priority as between themselves according to the order, and as from the dates and times, of their respective —
 - (a) production for registration under this Act or the *Transfer of Land Act 1893*, whichever first occurs; or
 - (b) in the case of caveats, lodging under this Act.
- (8) If the Minister does not make a determination under subsection (1) for endorsement on the Crown Grant of an instrument creating an estate or interest in, or of a caveat lodged in respect of, any land, that estate or interest continues subject to and in accordance with the terms of that estate or interest or subject to that caveat, but a Crown Grant shall not be issued in respect of the land until that estate or interest terminates or that caveat lapses or is removed or is withdrawn, as the case requires.

s. 149B

- (9) A reference in this section to an instrument includes a reference to a certified copy of the instrument.

[Section 149A inserted by No. 33 of 1992 s.6; amended by No. 81 of 1996 s.153 (1).]

149B. Matters ancillary to transfer of estates, interests and caveats to Crown Grants

- (1) A person in whom land is or was vested under an Order made under section 33 (2) or who has or had control of land under an Order in Council made under section 34 as in force before the coming into operation of section 9 of the *Acts Amendment (Reserves) Act 1982* or under an Act other than this Act and each other person having an estate or interest in the land (in this subsection called “**the principal estate or interest**”) and a caveator in respect of the land shall, when requested by the chief executive officer of the Department to do so, submit to that chief executive officer in a form approved by that chief executive officer —
- (a) all available documentary evidence concerning the principal estate or interest or the caveat, as the case requires, and concerning each estate or interest (in this section called a “**dependent estate or interest**”) to which the principal estate or interest, or the claimed estate or interest, of that person in the land is subject;
 - (b) if a dependent estate or interest relates to part only of the piece of land the subject of the principal estate or interest, or the claimed estate or interest, of that person, a plan describing to the satisfaction of that chief executive officer the location and boundaries of that part;
 - (c) such other information as that chief executive officer requires; and
 - (d) a statutory declaration verifying that —

- (i) all dependent estates or interests of that person in the land have been fully disclosed under this subsection; and
 - (ii) the evidence, plan or plans and any other information submitted under this subsection are accurate and complete.
- (2) When all the estates, interests or caveats to which land referred to in subsection (1) is subject or by which it is affected relate to the whole of that land, a Crown Grant of that land may be issued with adjustments showing locations and boundaries different from those set out or described in the instrument creating or evidencing each estate or interest, or in each caveat, referred to in that subsection if that difference is due to —
 - (a) the inaccuracy or inadequacy of any description, diagram, plan or survey of that land;
 - (b) any discrepancy between the actual measurements or bearings at any time made or marked on the ground and those represented in that instrument or caveat; or
 - (c) any prescribed circumstance,and, on the issue of that Crown Grant, that estate or interest or caveat and all dependent estates or interests relating to the whole of that land apply to the land the subject of that Crown Grant instead of to the land the subject of that instrument or caveat.
- (3) When not all of the estates, interests or caveats to which land referred to in subsection (1) is subject or by which it is affected relate to the whole of that land, the Minister shall prepare from the evidence, plan or plans and other information submitted under that subsection a plan showing the location and boundaries of the land —
 - (a) the subject of each such estate or interest; or
 - (b) affected by each such caveat,

s. 149B

in respect of which an endorsement may be made on the relevant Crown Grant in accordance with a determination made under section 149A (1).

- (4) The Minister may prepare an internal interests plan with adjustments showing the location and boundaries of the land the subject of each relevant estate or interest, or affected by each relevant caveat, different from the location and boundaries set out or described in the instrument creating or evidencing that estate or interest, or in that caveat, if that difference is due to —
- (a) the inaccuracy or inadequacy of any description, diagram, plan or survey of that land;
 - (b) any discrepancy between the actual measurements or bearings at any time made or marked on the ground and those represented in that instrument or caveat; or
 - (c) any prescribed circumstance,

and, on the endorsement of that estate or interest or that caveat on the relevant Crown Grant in accordance with a determination made under section 149A (1), that estate or interest or that caveat applies to the relevant piece of land shown on the internal interests plan as being subject to that estate or interest or as being affected by that caveat, as the case requires, instead of applying to the piece of land to which that instrument or caveat relates.

- (5) Notwithstanding anything in the *Transfer of Land Act 1893*, an action shall not be brought under that Act against the State with the Registrar of Titles as nominal defendant by reason or in respect of any inaccuracy or inadequacy in any diagram, description, plan or survey of land used in respect of any estate or interest or caveat —
- (a) on an instrument creating or evidencing which estate or interest, or on which caveat, the relevant determination made under section 149A (1) is noted;
 - (b) which is passed by an instrument registered, or a caveat lodged, under this Act or the *Transfer of Land Act 1893*;

- (c) a memorandum of which is endorsed under section 149A (4); and
- (d) which applies to the relevant Crown Grant and the land thereby granted or the relevant part thereof,

or which is based on or arises out of any such estate or interest or caveat.

- (6) When an internal interests plan is delivered to the Registrar of Titles with the Crown Grant to which it relates —
 - (a) an authorized land officer shall, if he is satisfied that the internal interests plan adequately sets out or describes for the purposes of the *Transfer of Land Act 1893* the location and boundaries of the land the subject of each estate or interest, or affected by each caveat, referred to in subsection (3), approve the internal interests plan; and
 - (b) in the case of a Crown Grant issued to a State agency or instrumentality, the Minister may within the period ending —
 - (i) 5 years after that issue; or
 - (ii) when the State agency or instrumentality disposes of the title conferred by that Crown Grant,whichever is the shorter period, make such adjustments, with or without the consent of each of the holders of the estates or interests, or of each of the caveators of the caveats, referred to in paragraph (a), to the locations and boundaries of those estates or interests, or claimed estates or interests, as the Minister considers necessary by preparing a revised internal interests plan.
- (7) If a revised internal interests plan is delivered to the Registrar of Titles, an authorized land officer shall, if he is satisfied the revised internal interests plan adequately sets out or describes for the purposes of the *Transfer of Land Act 1893* the location and boundaries of the land the subject of each estate or interest,

s. 149B

or affected by each caveat, referred to in subsection (3), approve the revised internal interests plan.

- (8) On the approval under subsection (6) (a) or (7) of an internal interests plan or a revised internal interests plan, the location and boundaries of the land the subject of each estate or interest, or affected by each caveat, to which the internal interests plan or revised internal interests plan relates are adjusted accordingly.
- (9) When a diagram or plan of subdivision of land drawn up in accordance with an internal interests plan or revised internal interests plan is received or deposited in the Department within the meaning of the *Transfer of Land Act 1893*, an authorized land officer may approve that diagram or plan of subdivision and, if he does so, the Registrar of Titles shall issue certificates of title for lots shown on that diagram or plan of subdivision notwithstanding the endorsement on the relevant Crown Grant of any instrument or caveat in accordance with a determination made under section 149A (1) and without the consent of any person entitled to the benefit of —
- (a) the estate or interest created or evidenced by the instrument; or
 - (b) the caveat,
- as the case requires.
- (10) The Minister may make, without any obligation to make or pay compensation, an adjustment under subsection (4) or (6) (b) notwithstanding that the adjustment affects, or may affect, the value of —
- (a) one or more of the relevant estates or interests; or
 - (b) one or more of the estates or interests claimed in any relevant caveat.
- (11) The Minister shall ensure that an adjustment made under subsection (4) or (6) (b) is made in conformity with sound planning and land management principles and so as to cause as

little detriment as possible to the holder of any estate or interest, or to any caveator, affected by that adjustment.

- (12) Before a revised internal interests plan is delivered to the Registrar of Titles, the Minister may obtain the approval of the Western Australian Planning Commission under section 20 of the *Town Planning and Development Act 1928* to the plan or diagram of subdivision referred to in subsection (9), but nothing in this subsection makes it necessary for any internal interests plan or revised internal interests plan to be approved by the Western Australian Planning Commission.
- (13) If the Minister elects not to seek the approval of the Western Australian Planning Commission under section 20 of the *Town Planning and Development Act 1928*, the plan or diagram of subdivision shall still be registered in the Department within the meaning of the *Transfer of Land Act 1893* without the approval of the Western Australian Planning Commission.

- (14) In this section —

“**internal interests plan**” means plan prepared under subsection (3);

“**revised internal interests plan**” means revised internal interests plan prepared under subsection (6) (b);

“**the Western Australian Commission**” means the Western Australian Planning Commission established by section 4 of the *Western Australian Planning Commission Act 1985*,

and a reference to an instrument includes a reference to a certified copy of the instrument.

[Section 149B inserted by No. 33 of 1992 s.6; amended by No. 84 of 1994 s.46; No. 81 of 1996 s.153 (1) and (2).]

150. Minors may hold and deal with land

A person under the age of 18 years who is the holder of any conditional purchase lease or other holding or permit or licence under this Act shall for the purposes of transferring, subletting,

s. 151

mortgaging, or otherwise dealing with the land have the same capacity as if he were of full age:

Provided that the terms and conditions of such transfer, sublease, mortgage, or other dealing may be reviewed and altered by a Judge of the Supreme Court on an application in chambers.

[Section 150 amended by No. 46 of 1972 s.6 and Schedule.]

151. Instruments not effectual until registered

No transfer, lease, mortgage, charge, or other instrument shall be effectual to pass any estate or interest in any land under the operation of this Act, or to render such land liable to any mortgage or charge, until such instrument is registered in the Office of Land Titles, or in the Department, as the case may be; but upon such registration, the estate or interest comprised in the instrument shall pass, or the land shall become liable in manner and subject to the conditions set forth and specified in the instrument or by this Act implied in instruments of a like nature.

[Section 151 amended by No. 79 of 1982 s.26.]

152. Caveat may be lodged

- (1) Any beneficiary or other person claiming any estate or interest in land under the operation of this Act not registered under the *Transfer of Land Act 1893*, or the *Transfer of Land Act Amendment Act 1909*, may lodge a caveat with the chief executive officer of the Department in the prescribed form, forbidding the registration of any person as transferee of and of any instrument affecting such estate or interest, either absolutely or until after notice of the intended registration or dealing is given to the caveator, or unless such instrument is expressed to be subject to the claim of the caveator, as may be required in such caveat.

- (2) Every such caveat shall state the name and address of the person by whom or on whose behalf the same is lodged and (except in a case of caveat lodged by the chief executive officer of the Department as hereinafter provided) shall be signed by the caveator or by his agent.
- (3) The person lodging such caveat shall, if required by the chief executive officer of the Department, support the same by a statutory declaration stating the nature of the estate or interest claimed and the title thereto, and may withdraw any such caveat.
- (4) If such declaration, when required by the chief executive officer of the Department, is not lodged with him within 7 days from the date of such registration or within such further time as he may direct, the caveat shall be null and void.
- (5) No such caveat shall be received unless some address or place within the limits of the city of Perth shall be appointed therein as the place at which notices and proceedings relating to such caveat may be served; but a caveator may give an additional address elsewhere within the State, in which case any notice relating to such caveat shall be sent through the post by registered letter to such address on the same day as that on which the notice is served in Perth.
- (6) Every notice relating to such caveat, and any proceedings in respect thereof, if served at the address or place appointed as aforesaid, shall be deemed to be duly served.

[Section 152 amended by No. 79 of 1982 s.27; No. 113 of 1987 Schedule; No. 126 of 1987 s.99.]

153. Notice of caveat to be given

- (1) Upon the receipt of such caveat the chief executive officer of the Department shall notify the same to the proprietor against whose title to deal with the estate or interest such caveat has been lodged.

s. 154

- (2) Such proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he thinks fit, summon the caveator to attend before a Judge of the Supreme Court in chambers to show cause why such caveat should not be removed; and the judge may, upon proof that such caveator has been summoned, make such order as he thinks fit.
- (3) Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement, or by the chief executive officer of the Department, every caveat lodged against a proprietor shall be deemed to have lapsed upon the expiration of 14 days after notice served on the caveator that such proprietor has applied for the registration of a transfer or other dealing.
- (4) A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest; but if, before the expiration of the said period of 14 days or such further period as shall be specified in any order made under this section, the caveator or his agent appears before a Judge and give such undertaking or security or lodges such sum in court as such Judge may consider sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed, then, and in such case, such Judge may direct the chief executive officer of the Department to delay registering any dealing with the land, lease, mortgage, or charge for a further period to be specified in such order or may make such other order as may be just.

[Section 153 amended by No. 79 of 1982 s.27; No. 113 of 1987 Schedule.]

154. No entry to be made in registry book while caveat in force

Except in the cases provided by section 157 so long as any caveat remains in force prohibiting any registration or dealing the chief executive officer of the Department shall not register any change in the proprietorship of or any transfer or other instrument purporting to transfer or otherwise deal with or

affect the estate or interest in respect to which such caveat may be lodged. The consent of a caveator shall not operate as a withdrawal of his caveat, but where such consent is given the caveat does not prevent the registration of an easement granted under section 134B or the making of a record in the appropriate register of the proposal to grant the easement.

[Section 154 amended by No. 78 of 1982 s.5; No. 79 of 1982 s.27; No. 113 of 1987 Schedule.]

155. Compensation for lodging caveat without cause

Any person lodging any caveat without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as a Judge on a summons in chambers shall deem just and order.

156. Notification of caveats

A memorandum of every caveat lodged under section 152, shall be entered on the register, and a copy of the caveat, or so much thereof as the chief executive officer of the Department shall deem material to the person notified, shall be sent with the notification required by section 153.

[Section 156 amended by No. 79 of 1982 s.2; No. 113 of 1987 Schedule.]

157. Caveat on behalf of a beneficiary under a will or settlement not to bar registration

Where a caveat has been lodged by or on behalf of a beneficiary claiming under a will or settlement, and a change in the proprietorship of or a transfer or other dealing with or affecting the land, estate, or interest in respect of which the caveat was lodged is presented for registration, the same may notwithstanding section 154, be registered without the caveat being withdrawn, and without determining the operation of the caveat, provided the chief executive officer of the Department is of opinion that such change of proprietorship or such transfer or

s. 158

other dealing is authorized by the will or settlement and the caveator either consents to the registration, or does not lodge a written protest against such registration within 14 days after being served with notice as such caveator.

[Section 157 amended by No. 79 of 1982 s.27; No. 113 of 1987 Schedule.]

158. Power to Under Secretary for Lands to enter caveats

The chief executive officer of the Department may lodge a caveat on behalf of Her Majesty or on behalf of any person who shall be under the disability of infancy, lunacy, unsoundness of mind, or absence from Western Australia to prohibit the transfer or dealing with any land belonging or supposed to belong to any such person, and also to prohibit the dealing with any land in any case in which it shall appear that an error has been made by misdescription of such land or otherwise in any instrument or for the prevention of any fraud or improper dealing.

[Section 158 amended by No. 79 of 1982 s.27; No. 113 of 1987 Schedule.]

159. Executions against land

- (1) The provisions of the *Transfer of Land Act 1893*, and its amendments, relating to executions against land are *mutatis mutandis* incorporated with this Act and shall apply to land held under this Act and not registered under the *Transfer of Land Act 1893*, or the *Transfer of Land Act Amendment Act 1909*, the words “chief executive officer of the Department” being read, in such provisions, in place of the words “Registrar of Titles”.
- (2) On any transfer pursuant to a sale under a writ of *fiery facias* or warrant of execution, the lease or other instrument of title of the judgment debtor shall be called in by the chief executive officer of the Department; but, if not produced, its production may be dispensed with, and a duplicate thereof may be issued to the purchaser on payment of the prescribed fee.

[Section 159 amended by No. 79 of 1982 s.27; No. 113 of 1987 Schedule.]

160. Power to Minister to register transmission where no administration of a deceased's estate

- (1) The Minister, if satisfied —
- (a) that a will has been left by any deceased person being the selector of a conditional purchase lease, free homestead farm, working-men's block or residential lease, and that no probate of such will has been obtained within 6 months after the death of such person; or
 - (b) that no will has been left by such deceased person, and no letters of administration of the estate of such deceased person have been obtained within such time as aforesaid; and
 - (c) that the value of the estate of such person does not exceed \$200; and
 - (d) that the holding has not become liable to forfeiture,
- may cause transmission of such selection to be entered up in the records of the Department in favour of the person or persons who would have been entitled, upon the grant of such probate or letters of administration, to be entered up as the selector of such conditional purchase lease, free homestead farm, working-men's block, or residential lease.
- (2) Thereupon the person in whose favour such transmissions shall be entered up shall have all rights, powers, and liabilities in respect of such selection as he would have had if probate of the will or letters of administration with the will annexed, or letters or administration of the estate of such deceased person had been granted to him.
- (3) If the administration of the estate of the deceased is in the hands of the Public Trustee, a lease or occupation certificate may be issued in his name, if the Minister so approves.

s. 161

[Section 160 amended by No. 58 of 1950 s.29; No. 113 of 1965 s.8; No. 79 of 1982 s.26.]

161. Where death or lunacy occurs before completion of fencing and improvements

If any holder of land under this Act dies or is declared a lunatic before the fulfilment of the prescribed conditions of fencing and improvement, the land may, with the approval of the Minister, be held by his legal representative or the person having charge of his estate, subject to the fulfilment of all unfulfilled conditions, except residence, in trust for, and for the benefit of the persons rightfully entitled; but the Crown grant, if any, shall issue in the name of the lessee: Provided that such representative, or the person having charge of the estate, shall make written application to the Minister for authority to enter into occupation of the land, within 12 months from the date of the holder's death, or from the date of his becoming a lunatic, failing which the land may be forfeited and thrown open for re-selection.

161A. Crown grant may issue in name of deceased holder

In respect of any land disposed of under the provisions of this Act or of any Act repealed by this Act, subject in either case to the right of the holder to acquire the fee simple of the land, the Crown grant may, subject to proof, to the satisfaction of the Minister, of the performance of conditions other than residence, issue in the name of the holder notwithstanding his prior decease.

[Section 161A inserted by No. 58 of 1950 s.30.]

162. Acceptance of rent not to be deemed waiver of breach of covenant

The demand or acceptance of rent in respect of any lease granted or agreed to be granted under this Act, or any Act hereby repealed, shall not be deemed a waiver of the right of

Her Majesty or the Minister to enforce the observance of any covenant, condition, or regulation under which the demised premises are held, or the forfeiture thereof for breach of any such covenant, condition, or regulation committed before the receipt of such rent.

163. *Gazette* notice equivalent to re-entry

A notice inserted in the *Gazette*, signed or purporting to be signed by the Minister or the chief executive officer of the Department, to the effect that any lease, licence, or other holding is forfeited for default in payment of rent, or for breach or non-observance or non-performance of the conditions thereof, shall be equivalent to a re-entry and recovery of possession by or on behalf of the Crown within the meaning of the proviso for re-entry expressed in or implied by the lease, licence, or other instrument.

[Section 163 amended by No. 79 of 1982 s.27; No. 113 of 1987 Schedule.]

164. Offences on public lands

- (1) In this section and in sections 164A and 164AA —
- “**public lands**” means any Crown lands or lands reserved for or dedicated to any public purpose;
- “**structure**” includes —
- (a) any building; and
 - (b) any post, pile, stake, pipe, chain, wire, or any other thing, that is fixed to the soil or to anything fixed to the soil.
- (2) A person shall not without lawful authority —
- (a) reside on any public lands;
 - (b) erect any structure on, over or under any public lands;
 - (c) clear, cultivate, or enclose any public lands;

s. 164

- (d) remove, or cause to be removed, from any public lands anything of whatever kind, whether growing on or in, or being in, on or under or forming part of, any public lands;
- (e) deposit or cause to be deposited, or leave or cause to be left, on any public lands any rubbish, litter, refuse, disused vehicle, noxious waste, or other similar matter except in a place or receptacle provided for the purpose; or
- (f) bore or sink any well for water or construct or excavate any dam or other means of water catchment or storage on any public lands.

Penalty: \$1 000.

- (3) Where a continuing state of affairs is created by a wrongful act referred to in subsection (2) (a), (c), (d), (e), or (f), and that state of affairs continues after conviction and after the court considers that the same could reasonably have been discontinued, the person is guilty of a further offence and is liable to a further fine not exceeding \$20 in respect of each day on which that further offence so continues.
- (4) In addition to any penalty imposed for an offence arising under this section, a person guilty of the offence is liable to pay such sum by way of compensation or reimbursement for the rehabilitation or reinstatement of any public lands as the court before which the person is convicted may order.
- (5) Any sum ordered to be paid under subsection (4) shall be paid by the offender to the clerk of the court to be paid by him to the Minister for Lands.
- (6) An amount ordered to be paid under subsection (4) may be recovered as a judgment debt in a court of competent jurisdiction.

- (7) Nothing in this section affects any other provision of this or any other Act, so far as that provision would, but for this section, have effect in relation to lands reserved for any public purpose pursuant to section 29, or of any by-laws applying to such a reserve, but a person is not liable to be punished twice for an act or omission that constitutes an offence both under this section and any other such provision.
- (8) By-laws applying to such a reserve may contain provisions having the effect of authorizing any act or omission that would, but for the by-laws and this subsection, constitute an offence arising under this section, but nothing in this subsection authorizes the making of by-laws that could not be made if this section were not in force.
- (9) In proceedings for an offence arising under this section, the defendant has the onus of proving lawful authority in relation to the act or omission giving rise to the alleged offence.

[Section 164 inserted by No. 65 of 1980 s.8; amended by No. 92 of 1994 s.21; No. 5 of 1995 s.6.]

164A. Removal of unauthorized structures from public lands

- (1) In this section and section 164AA —
“**order**” means an order referred to in subsection (2);
“**unauthorized structure**” means a structure the erection of which was not, at the time of its erection, authorized under any Act.
- (2) The Minister may by order published —
(a) in the *Gazette*; and
(b) in a newspaper circulating in the locality of the unauthorized structure,

direct the owner of, or any person occupying, any unauthorized structure that is on any public lands to remove permanently the unauthorized structure, the contents of the unauthorized structure and any materials, objects and fixtures in the area of

s. 164A

the unauthorized structure from those public lands before the day specified in the order, being a day not less than 90 days after the day of publication of the order in the *Gazette*.

- (3) An order may be directed —
 - (a) to the owners or occupiers of all unauthorized structures that are on any public lands specified in the order; or
 - (b) to the owner or occupier of one or more unauthorized structures specified in the order that are on any public lands.
- (4) The Minister shall, within 14 days after the publication of the order in the *Gazette*, cause a copy of the order to be served on the owner or occupier of each unauthorized structure to which the order relates.
- (5) For the purposes of subsection (4), and without limiting section 170 of this Act or section 76 of the *Interpretation Act 1984*, an order is duly served on the owner or occupier of an unauthorized structure if a copy of the order —
 - (a) is served on any person in occupation or apparently in occupation of the unauthorized structure; or
 - (b) is affixed to the unauthorized structure in a conspicuous place.
- (6) If —
 - (a) an order has been published in accordance with subsection (2) and a copy of the order has been served in accordance with subsection (4); and
 - (b) an unauthorized structure to which the order relates, or any part of the unauthorized structure, or any contents of the unauthorized structure, or any materials, objects or fixtures remaining in the area of the unauthorized structure have not been removed from the public lands by the day specified in the order or, if an extension has been granted under section 164AA (3), by the day fixed under that subsection,

the unauthorized structure, contents, materials, objects and fixtures become the property of the Crown and may be removed, destroyed or disposed of in any manner that the Minister thinks fit.

- (7) No compensation is payable to any person in respect of the removal, destruction or disposal of any unauthorized structure, contents, materials, objects or fixtures under subsection (6).

[Section 164A inserted by No. 5 of 1995 s.7.]

164AA. Application by owner or occupier of unauthorized structure for extension of time

- (1) The owner or occupier of an unauthorized structure to which an order relates may apply to the Minister in accordance with subsection (2) to extend the period within which the unauthorized structure, the contents of the unauthorized structure and the materials, objects and fixtures in the area of the unauthorized structure are to be removed.
- (2) An application under subsection (1) —
- (a) shall be made in writing, setting out the grounds on which the extension is sought; and
 - (b) shall be served on the Minister not later than 21 days before the day specified in the order.
- (3) The Minister may extend the period referred to in subsection (1) by not more than 45 days after the day specified in the order and shall grant the extension only if the Minister is satisfied that the applicant —
- (a) is unable to remove the unauthorized structure, contents, materials, objects and fixtures from the public lands by the day specified in the order; and
 - (b) intends, and is able, to remove the unauthorized structure, contents, materials, objects and fixtures from the public lands within the extended period if the extension is granted.

s. 164B

[Section 164AA inserted by No. 5 of 1995 s.7.]

164B. Delegation

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate any of his powers or duties under section 164, 164A or 164AA to any person —
 - (a) in whom is vested; or
 - (b) under whose control and management is placed,
any land reserved for or dedicated to a public purpose.
- (2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the Minister.
- (3) A delegation under this section may —
 - (a) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;
 - (b) be revoked or varied by instrument in writing signed by the Minister.
- (4) The Minister may exercise a power or perform a duty notwithstanding that he has delegated its exercise or performance under this section.

[Section 164B inserted by No. 65 of 1980 s.9; amended by No. 5 of 1995 s.8.]

165. Proof of residence and improvements

Proof of residence and improvements required by this Act may be made by surveyors or inspectors in the service of the State, or by the statutory declaration of the claimant, and shall be subject to acceptance as sufficient by the Minister. The Minister may require either the proposed transferor or the proposed transferee, or both, to furnish him with a statutory declaration

with regard to improvements in the case of any application to transfer lands.

166. Returns of stock and improvements

Lessees and licensees under this Act shall furnish such returns respecting stock or improvements as may be required by the Minister; such returns shall be furnished at such times and in such forms as he may require, and, if necessary, be verified by statutory declaration.

167. Statutory declarations

Any statutory declaration required under the provisions of this Act may be made before the Minister or the chief executive officer of the Department, or any agent duly appointed by the Minister, and shall have the same force and effect, and in the case of false declaration shall subject the declarant to the same pains and penalties as if such declaration had been made before a Justice of the Peace.

[Section 167 amended by No. 79 of 1982 s.27; No. 113 of 1987 Schedule.]

168. Communications to be addressed to the chief executive officer of the Department

Whenever by this Act or any regulation an application, tender, document, or communication is directed to be sent or forwarded to the Minister, the same shall be addressed to the chief executive officer of the Department, or other officer duly authorized in that behalf, who shall have authority to correspond with all persons and otherwise act under the direction of the Minister.

[Section 168 amended by No. 79 of 1982 s.27; No. 113 of 1987 Schedule.]

s. 169

169. Auctioneer may sell without licence

Any person authorized by the Minister may conduct sales by auction under this Act without having an auctioneer's licence or incurring on that account any liability.

170. Service of notices

(1) A notice required by this Act to be given may be served as follows: —

- (a) By delivering the same to the person to whom it is addressed, or leaving it for him at his usual place of abode or business.
- (b) By posting the same in a letter prepaid addressed to him at his usual place of abode or business.
- (c) In the case of a notice addressed to a corporation, by leaving the same at the principal office in the State of such corporation, or by posting the same as aforesaid, addressed to the corporation there.
- (d) Notices addressed to a firm or partnership may be served by being delivered to the manager or any partner, or by leaving the same at the principal place of business in the State of the firm or partners, or by posting the same as aforesaid addressed to the firm or partners there.

(2) Proof of posting a notice as aforesaid shall be deemed *prima facie* evidence of the notice being served at the time at which, by the course of post, such notice should be delivered.

171. Repayment of expenditure from loan funds by Consolidated Fund

(1) All moneys expended by the Minister out of loan funds for the acquisition of land for selection under this Act or any Act hereby repealed (otherwise than under the provisions of Part VIII or any repealed enactment replaced by that Part), or for improving, surveying, or otherwise preparing land for sale, shall be repaid to the lands improvement loan fund and charged

to the Consolidated Fund in 40 half-yearly instalments, on the basis of an assessment to be made in January and July in every year of the expenditure for the 6 months ended on 31 December and 30 June next preceding.

- (2) All moneys standing for the time being to the credit of the land improvement loan fund may be invested from time to time in such securities and in such manner as the Treasurer may determine, and the Treasurer may, subject to appropriations by Parliament, apply such moneys or the proceeds of the investments thereof, to the improvement, survey, and preparation for sale of Crown land, or to any purpose authorized by the schedule of any Loan Act.

[Section 171 amended by No. 6 of 1993 s.12; No. 49 of 1996 s.64.]

172. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular —

- (a) providing for fees;
- (b) creating offences and providing penalties not exceeding \$1 000 for any offence so created; and
- (c) prescribing forms for the purposes of this Act, and any such form may be used with such variations as circumstances may render necessary in any particular case.

[Section 172 inserted by No. 126 of 1987 s.100; amended by No. 33 of 1992 s.7.]

Part X — Survey and mapping

173. Authorized land officers

- (1) The Minister may by notice published in the *Gazette* appoint an officer of the Department who is a licensed surveyor within the meaning of the *Licensed Surveyors Act 1909* to be an authorized land officer to exercise such powers, and to perform such duties, as are conferred and imposed on an authorized land officer by this Act or any other Act.
- (2) The powers conferred on the Minister by section 52 (1) of the *Interpretation Act 1984* in relation to an appointment under subsection (1) shall be exercisable by notice published in the *Gazette*.

[Section 173 inserted by No. 126 of 1987 s.101.]

[174. Repealed by No. 126 of 1987 s.102.]

175. Plans of surveys

Plans representing all surveys carried out by the direction of the Minister shall be retained in the Department, and such plans or copies thereof, if certified as correct by an authorized land officer, shall be accepted in every court of law as *prima facie* evidence respecting the alignment and width of every street, road, lane, or way and the boundaries of every lot or surveyed portion.

[Section 175 inserted by No. 79 of 1982 s.17; amended by No 126 of 1987 s.103.]

Schedules

[1st Schedule to 28th Schedule Repealed by No. 126 of 1987 s.104.]

[Forms deleted by No. 126 of 1987 s.104.]

NOTES

- ^{1.} This is a compilation of the *Land Act 1933* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Land Act 1933</i>	37 of 1933	4 Jan 1934	6 Mar 1934 (see <i>Gazette</i> 2 Mar 1934 p.269)
<i>Land Act Amendment Act 1934</i>	47 of 1934	21 Jan 1935	21 Jan 1935
<i>Land Act Amendment Act 1936</i>	4 of 1936	3 Nov 1936	3 Nov 1936
<i>Land Act Amendment Act 1937</i>	39 of 1937	18 Jan 1938	18 Jan 1938
<i>Land Act Amendment Act 1938</i>	20 of 1938	22 Dec 1938	22 Dec 1938
<i>Land Act Amendment Act 1939</i>	36 of 1939	16 Dec 1939	16 Dec 1939
<i>Land Act Amendment Act 1945</i>	45 of 1945	30 Jan 1946	30 Jan 1946
<i>Land Act Amendment Act 1946</i>	35 of 1946	24 Jan 1947	24 Jan 1947
<i>Land Act Amendment Act 1948</i>	53 of 1948	21 Jan 1949	21 Jan 1949
<i>Land Act Amendment Act (No. 2) 1948</i>	68 of 1948	21 Jan 1949	21 Jan 1949
<i>Land Act Amendment Act 1950</i>	58 of 1950	18 Dec 1950	18 Dec 1950
<i>Land Act Amendment Act 1953</i>	66 of 1953	9 Jan 1954	9 Jan 1954
<i>Land Act Amendment Act 1954</i>	17 of 1954	22 Sep 1954	22 Sep 1954
<i>Land Act Amendment Act 1956</i>	41 of 1956	18 Dec 1956	18 Dec 1956
<i>Land Act Amendment Act</i>	48 of 1956	18 Dec 1956	8 Feb 1957 (see <i>Gazette</i> 8 Feb

Short title	Number and year	Assent	Commencement
<i>(No. 2) 1956</i>			1957 p.235)
<i>Land Act Amendment Act (No. 3) 1956</i>	51 of 1956	27 Dec 1956	27 Dec 1956 (section 89D as inserted by 51 of 1956 deemed to operate from 19 November 1956)
<i>Land Act Amendment Act 1958</i>	12 of 1958	29 Sep 1958	29 Sep 1958
<i>Land Act Amendment Act (No. 3) 1958</i>	36 of 1958	11 Dec 1958	11 Dec 1958
<i>Land Act Amendment Act 1960</i>	6 of 1960	6 Oct 1960	6 Oct 1960
<i>Land Act Amendment Act 1962</i>	41 of 1962	29 Oct 1962	29 Oct 1962
<i>Land Act Amendment Act 1963</i>	60 of 1963	18 Dec 1963	10 Jan 1964 (see <i>Gazette</i> 10 Jan 1964 p.50)
<i>Land Act Amendment Act 1965</i>	20 of 1965	1 Oct 1965	1 Oct 1965
<i>Land Act Amendment Act (No. 2) 1965</i>	65 of 1965	19 Nov 1965	19 Nov 1965
<i>Land Act Amendment Act 1967</i>	30 of 1967	17 Nov 1967	17 Nov 1967
<i>Land Act Amendment Act 1968</i>	67 of 1968	18 Nov 1968	18 Nov 1968
<i>Land Act Amendment Act 1969</i>	29 of 1969	16 May 1969	30 May 1969 (see <i>Gazette</i> 30 May 1969 p.1590)
<i>Land Act Amendment Act (No. 2) 1969</i>	55 of 1969	29 Sep 1969	31 Oct 1969 (see <i>Gazette</i> 31 Oct 1969 p.3362)
<i>Land Act Amendment Act (No. 3) 1969</i>	93 of 1969	17 Nov 1969	17 Nov 1969
<i>Land Act Amendment Act 1971</i>	55 of 1971	15 Dec 1971	15 Dec 1971 except section 3. Section 3 on 1 Feb 1972 (see <i>Gazette</i> 28 Jan 1972 p.168)
<i>Land Act Amendment Act 1971</i>	60 of 1971	15 Dec 1971	15 Dec 1971
<i>Age of Majority Act 1972</i>	46 of 1972	18 Sep 1972	1 Nov 1972 (see <i>Gazette</i> 13 Oct

Land Act 1933

Short title	Number and year	Assent	Commencement
			1972 p.4069)
<i>Land Act Amendment Act 1977</i>	73 of 1977	28 Nov 1977	Section 6 on 28 Nov 1977; balance on 20 Mar 1978 (see <i>Gazette</i> 10 Mar 1978 p.666)
<i>Mining Act 1978</i>	107 of 1978	8 Dec 1978	Section 3: 1 Jan 1982 (see <i>Gazette</i> 18 Dec 1981 p.5085)
<i>Land Amendment Act 1980</i>	65 of 1980	26 Nov 1980	Sections 8 and 9: 10 Apr 1981 (see <i>Gazette</i> 10 Apr 1981 p.1169); balance: 24 Dec 1980 (see <i>Gazette</i> 24 Dec 1980 p.4349)
<i>Land Amendment Act (No. 2) 1980</i>	97 of 1980	9 Dec 1980	20 Feb 1981 (see <i>Gazette</i> 20 Feb 1981 p.721)
<i>Acts Amendment (Reserves) Act 1982</i>	77 of 1982	8 Nov 1982	8 Nov 1982
<i>Land Amendment Act 1982</i>	78 of 1982	8 Nov 1982	8 Nov 1982
<i>Land Amendment Act (No. 2) 1982</i>	79 of 1982	8 Nov 1982	31 Dec 1982 except sections 3, 4, 5, 6, 7 and 9, and 15 to 27: (see <i>Gazette</i> 31 Dec 1982 p.4969); sections 3, 4, 5, 6, 7, 9 and 15 to 27: 25 Feb 1983 (see <i>Gazette</i> 25 Feb 1983 p.638)
<i>Land Amendment Act (No. 3) 1982</i>	94 of 1982	1 Dec 1982	29 Dec 1982 except sections 5 and 7. Sections 5 and 7: 1 Jan 1983
<i>Acts Amendment (Conservation and Land Management) Act 1984</i>	112 of 1984	19 Dec 1984	22 Mar 1985
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see <i>Gazette</i> 30 Jun 1986 p.2255)
<i>Land Amendment Act 1986</i>	14 of 1986	25 Jul 1986	25 Jul 1986
<i>Acts Amendment (Public</i>	113 of 1987	31 Dec 1987	16 Mar 1988

Short title	Number and year	Assent	Commencement
<i>Service) Act 1987, Schedule</i>			(see <i>Gazette</i> 16 Mar 1988 p.813)
<i>Acts Amendment (Land Administration) Act 1987, Part XI</i>	126 of 1987	31 Dec 1987	The Act (except Part IX): 16 Sep 1988 (see <i>Gazette</i> 16 Sep 1988 p.3637); Part IX to be proclaimed
<i>Acts Amendment (Swan River Trust) Act 1988, Part 4</i>	21 of 1988	5 Oct 1988	1 Mar 1989 (see section 2 and <i>Gazette</i> 27 Jan 1989 p.264)
<i>Conservation and Land Management Amendment Act 1991, section 57</i>	20 of 1991	25 Jun 1991	23 Aug 1991 (see <i>Gazette</i> 23 Aug 1991 p.4353)
<i>Land Amendment (Transmission of Interests) Act 1992</i>	33 of 1992	16 Jun 1992	16 Jun 1992
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993
<i>Land (Titles and Traditional Usage) Act 1993, section 45, Part 2</i>	21 of 1993	2 Dec 1993	2 Dec 1993
<i>R & I Bank Amendment Act 1994, section 13</i>	6 of 1994	11 Apr 1994	Sections 5, 6, 7, 8, 12 and 13 and Schedule 1: proclaimed 26 Apr 1994 (see <i>Gazette</i> 26 Apr 1994 p.1743); balance on assent
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994, Part 10</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see section 2)
<i>Planning Legislation Amendment Act (No. 2) 1994,</i>	84 of 1994	13 Jan 1995	1 Mar 1995 (see <i>Gazette</i> 21 Feb 1995 p.567)

Land Act 1933

Short title	Number and year	Assent	Commencement
section 46			
<i>Land, Parks and Reserves Amendment Act 1995</i> , Part 2	5 of 1995	24 May 1995	5 Aug 1995 (see <i>Gazette</i> 4 Aug 1995 p.3309)
<i>Bank of Western Australia Act 1995</i> , section 44	14 of 1995	4 Jul 1995	1 Dec 1995 (see section 2 and <i>Gazette</i> 29 Nov 1995 p.5529)
<i>Acts Amendment and Repeal (Native Title) Act 1995</i> , Part 4	52 of 1995	24 Nov 1995	9 Dec 1995 (see <i>Gazette</i> 8 December 1995 p.5935)
<i>Local Government (Consequential Amendments) Act 1996</i> , section 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see section 2)
<i>Financial Legislation Amendment Act 1996</i> , section 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2 (1))
<i>Transfer of Land Amendment Act 1996</i> , section 153 (1) and (2)	81 of 1996	14 Nov 1996	14 Nov 1996 (see section 2 (1))

N.B. The Land Act 1933 is affected by the *Soil and Land Conservation Act 1945* (see section 3 of that Act) and the *Decimal Currency Act 1965*.

Regulation numbered 22 made under and for the purposes of the *Land Act 1933* and published in the *Government Gazette* on 16 December 1949.

Regulations published in the *Government Gazette* on 1 August 1968 and amended from time to time hereafter.

² Repealed by Act No. 107 of 1978, 1st Schedule.

³ Now *Mining Act 1978*.

⁴ By section 2 (2) of Act No. 47 of 1934 it is enacted as follows —

“

- (2) The amendments effected by this section shall have effect as from the commencement of the principal Act..

”.

⁵ Came into operation on 8 February 1957. (See *Gazette* 8 February 1957, p.235).

⁶ Now *Interpretation Act 1984*.

⁷ Section 14 of Act No. 77 of 1982 reads as follows —

“

- 14.** Where, before the coming into operation of this section, the Governor has purported to amend the boundaries of any reserve classified as of Class A so as to include in the reserve any additional lands and notice of the purported amendment has been published in the *Gazette*, the purported amendment is hereby validated and declared to have been lawful and effective.

”.

⁸ Repealed by Act No. 37 of 1933.

⁹ See *War Service Land Settlement Scheme Act 1954*.

¹⁰ Repealed by Act No. 94 of 1982 s.13.

¹¹ *Companies (Western Australia) Code*.

¹² Repealed by Act No. 57 of 1965.

¹³ Now *Petroleum Act 1967*.

¹⁴ Repealed by Act No. 42 of 1976.

¹⁵ Section 11 of Act No. 14 of 1986 reads as follows —

“

11. Transitional

Notwithstanding anything in the principal Act as in force before the commencement of this Act the provisions of the principal Act as amended by this Act apply to and in relation to conditional purchase leases issued under the principal Act before the commencement of this Act..

¹⁶ Section 8 of Act No. 33 of 1992 reads as follows —

“

8. Validation

- (1) Each estate or interest or caveat in respect of the land that is at the commencement of this Act Swan Location 11526 and the subject of Certificate of Title Volume 1898 Folio 640 that was lawfully created or lodged prior to the issue of a Crown Grant of that land shall —
 - (a) be deemed to have continued and been effectual to pass the relevant estate or interest or maintain the claim set out in the relevant caveat; and
 - (b) subject to subsection (2), be dealt with as though each instrument for that estate or interest and each such caveat had been endorsed on that Crown Grant in accordance with a determination made under section 149A (1) of the principal Act prior to the issue of that Crown Grant.
- (2) Notwithstanding subsection (1), a memorandum of an estate or interest, or a caveat, referred to in and continued by that subsection shall be endorsed on the relevant folium of the Register Book under section 149A (4) of the principal Act as at the date and time of delivery to the Registrar of Titles of —
 - (a) the relevant internal interests plan within the meaning of section 149B of the principal Act; and
 - (b) all relevant instruments and caveats referred to in section 149A (4) of the principal Act, or certified copies of those instruments or caveats,
and for the purpose of determining priority as between —
 - (c) an estate, interest or caveat referred to in and continued by subsection (1);
and
 - (d) an estate, interest or caveat a memorandum of which is endorsed under the *Transfer of Land Act 1893*,
the instrument for the estate or interest, or the caveat, referred to in paragraph (c) shall be deemed to have been registered or lodged under the *Transfer of Land Act 1893* at the date and time of that delivery.
- (3) Notwithstanding subsection (1), an estate or interest or caveat referred to in, and continued by, that subsection shall be subject to

any estate or interest or caveat, a memorandum of which has been endorsed under section 149A (4) of the principal Act prior to the date and time referred to in subsection (2).

- (4) The provisions of section 149A and 149B of the principal Act, as modified by this section, apply to and in relation to an estate, interest or caveat referred to in, and continued by, subsection (1).
- (5) Words and expressions used in this section shall be construed as if this section were a provision of the principal Act..

”.