

Western Australia

War Service Land Settlement Scheme Act 1954

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War Service Land Settlement Scheme Act 1954

An Act to enable the State to carry out and give effect to war service land settlement; and to accept appropriations mentioned in the *State Grants (War Service Land Settlement) Act 1952*, of the Commonwealth Parliament for the purpose of financial assistance in connection with war service land settlement in such amounts and subject to such conditions as the Minister mentioned in that Act determines under that Act; and for other and incidental purposes.

1. Short title

This Act may be cited as the *War Service Land Settlement Scheme Act 1954*¹.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Repeal

- (1) The *War Service Land Settlement Agreement Act 1951*, is repealed.
- (2) The provisions of sections 15, 16 and 17 of the *Interpretation Act 1918*², apply in respect of the repeals effected by subsection (1) of this section, but this express inclusion of the application of those provisions is not intended to imply the exclusion of the application to this Act of any of the other provisions of that Act.

4. Interpretation

In this Act unless the context requires otherwise —

Commonwealth Act means the *State Grants (War Service Land Settlement) Act, 1952*, of the Commonwealth Parliament;

Land Act means the *Land Administration Act 1997*;

repealed Acts means the *War Service Land Settlement Agreement Act 1951*, and Acts repealed by that Act;

scheme means the war service land settlement scheme which prior to the coming into operation of this Act has been carried out and given effect, under the repealed Acts and which after the coming into operation of this Act is to continue to be carried out under this Act;

tenure means such estates or interests in land whether of perpetual leasehold or otherwise as the Governor is authorized and thinks fit to grant in order to carry out the scheme;

Transfer of Land Act means the *Transfer of Land Act 1893*.

[Section 4 amended by No. 31 of 1997 s.141.]

5. Financial provisions

- (1) The Minister on behalf of the State is authorized —
 - (a) to carry out and give effect to the scheme;
 - (b) to accept from appropriations mentioned in the Commonwealth Act financial assistance in connection with war service land settlement in such amounts and subject to such conditions as the Minister mentioned in that Act determines under that Act; and
 - (c) to comply with conditions if any so determined by the Commonwealth Act.
- (2) This Act without further appropriation is sufficient authority —
 - (a) for the Minister to expend money accepted under subsection (1)(b) and, where conditions referred to in that paragraph are imposed, to expend that money in accordance with those conditions; and
 - (b) for charging to the Consolidated Account of the State such other amounts as are necessary for carrying out and

giving effect to, the scheme and complying with such conditions, referred to in that paragraph, as are imposed.

- (3) Where the Minister so accepts on behalf of the State financial assistance from those appropriations upon conditions determined under the Commonwealth Act by the Minister mentioned in that Act, the Minister so accepting on behalf of the State shall cause the conditions to be laid before each House of Parliament within 6 sitting days of the House next following his receipt of the conditions.

[Section 5 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64; No. 77 of 2006 s. 4.]

6. Granting of tenures

- (1) Notwithstanding the provisions of the Land Act the Governor is authorized to grant tenures on such terms and conditions as are not inconsistent with the conditions as determined by the Minister under the Commonwealth Act, for the purpose of carrying out the scheme.
- (2) To the extent to which the provisions of the Land Act and the regulations made under that Act are capable of being applied with or without adaptation in respect of tenures and grants of tenures those provisions with or without adaptation apply in respect of those matters.
- (3) Notwithstanding the provisions of subsection (2) the Governor may make such regulations as he thinks necessary or convenient for carrying out and giving effect to the scheme and where there is inconsistency between regulations so made and regulations made under the Land Act the provisions of the former prevail.
- (3A) Subject to section 5 nothing contained in this Act or in any regulations made pursuant to authority granted by this Act shall in any way alter, prejudice or affect or permit the alteration of the terms or conditions of any perpetual lease heretofore granted or the terms or conditions upon which the Minister has heretofore approved of the granting of any perpetual lease or has

otherwise agreed to grant leasehold rights to any applicant within the meaning of the repealed Acts or render any such applicant liable to pay rental or purchase money for land and/or non-structural improvements in excess of that rental or purchase money which he would have been liable to pay if this Act or any such regulation had not been passed or made.

- (4) Notwithstanding anything contained —
- (a) in the proviso to subsection (3) of this section; or
 - (b) in any perpetual lease issued under the scheme; or
 - (c) in any regulation made under any Act,

the Governor may, under that subsection make regulations authorizing the lessee of a tenure of perpetual leasehold of land demised by instrument of lease under the scheme that is mortgaged or otherwise encumbered to further mortgage or otherwise encumber the lease, if the approval of the Minister to do so is first obtained and regulations empowering the Minister at his discretion to approve of any contract of sale of land the subject of a perpetual lease granted under the scheme, without requiring that all amounts owing by the lessee in respect of that land to the Minister or other Crown instrumentality, authority or agent be first paid.

[(4a) *deleted*]

- (5) On and after the date of coming into operation of this subsection, 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 perpetual lease issued under this Act any reservation to the Crown of a right to take marketable timber on land the subject of the lease;
 - (b) any such reservation in any perpetual lease issued before that date under this Act or any Act repealed by this Act shall be no effect;
 - (c) no permit shall be granted, and no license shall be issued under the *Forests Act 1919*³, in respect of marketable

timber on land the subject of a perpetual lease issued at any time under this Act or any Act repealed by this Act; and

- (d) any permit granted, or any license issued, before that date under the *Forests Act 1919*³, in respect of marketable timber on land the subject of a perpetual lease issued under this Act or any Act repealed by this Act shall be of no effect.

[Section 6 amended by No. 9 of 1960 s.2; No. 6 of 1962 s.2; No. 52 of 1972 s.2; No. 11 of 1974 s.2; No. 6 of 1994 s.13; No. 14 of 1995 s.44; No. 8 of 2010 s. 34; No. 19 of 2010 s. 51.]

7. Purchase of fee simple by lessee of perpetual leasehold

Unless the conditions imposed under the Commonwealth Act require otherwise, the lessee of a tenure of perpetual leasehold of land demised by instrument of lease under the scheme, notwithstanding the provisions of the instrument of lease or the provisions of this or another Act, may —

- (a) after the expiration of a period of 10 years from the commencement of the term of the perpetual lease or such shorter period as the Commonwealth and the State have determined or may determine where special circumstances exist and on payment of such purchase price for the fee simple as is fixed under the scheme by the Minister, but subject to —
- (i) the conditions, if any, imposed under the Commonwealth Act;
 - (ii) the provisions, if applicable to the land, of section 8(5) relating to Mineral rights;
 - (iii) mortgages and other encumbrances, if any, affecting the land;
 - (iv) the provisions of the regulations where applicable; and
 - (v) compliance with the provisions of the lease instrument,

purchase the fee simple in the land; and on completion of the purchase is entitled to obtain in place of the lease a transfer of the fee simple in the land; and

- (b) may, but subject to the conditions, if any, imposed under the Commonwealth Act, at any time and from time to time during the period of 10 years from the commencement of the term of the lease, pay such amount or amounts, not exceeding in the aggregate 90% of the purchase price for the fee simple, as he thinks fit on account of that purchase price; and on his making payment of an amount on account of the purchase price, interest on the amount so paid by him ceases to accrue.

[Section 7 amended by No. 9 of 1960 s.3; No. 31 of 1997 s.136(1); No. 19 of 2010 s. 51.]

8. Protection of certain mineral rights

- (1) In this section, unless the context requires of otherwise —

Company means the Midland Railway Company of Western Australia Limited;

mineral rights means, in relation to land, any grant, transfer or reservation to —

- (a) the Company; or
(b) a person who derives his title to the mineral rights from the Company and is registered pursuant to the provisions of the Transfer of Land Act as the proprietor of the mineral rights,

of all mines of copper, tin, lead, coal, ironstone, phosphatic rock and other metals, ores or minerals whatsoever, except gold, silver and precious metals, and all substances containing minerals or phosphates, except substances containing gold, silver, or precious metals, and all gems and precious stones and, subject to the *Petroleum Act 1936*⁴, mineral oil in, upon and under the land, with full liberty at all times to search, dig, mine, bore for and carry them away, and for that purpose to enter upon the land or any part of it without paying compensation therefor;

registration authority means the Registrar of Titles, the Registrar of Deeds and Transfers, the Under Secretary for Mines, and any other person authorized by Act to record and give effect to the registration of documents relating to transactions affecting estates and interests in land.

- (2) Where private land was, at any time prior to, or is, at any time after, the coming into operation of this Act —
- (aa) acquired by the State by agreement for the purposes of the Scheme;
 - (ab) under the operation of the Transfer of Land Act; and
 - (ac) the subject of mineral rights,

on registration of the transfer to Her Majesty from the registered proprietor of every estate and interest therein, other than the mineral rights, the mineral rights, by virtue of, and subject to, the provisions of this subsection, revert in Her Majesty as of Her former estate, for the purposes of —

- (a) removing the land from the operation of the Transfer of Land Act;
 - (b) bringing the land under the operation of the Land Act; and
 - (c) enabling the Governor to —
 - (i) grant tenures of the land pursuant to the provisions of this Act; and
 - (ii) make and issue instruments evidencing the reversion, referred to in subsection (3) of this section, of the mineral rights in the land.
- (3) Where mineral rights are reversioned in Her Majesty by operation of the provisions of subsection (2),
- (a) the mineral rights, are by virtue of the provisions of this subsection, immediately thereupon reversioned in such person, and for such estate or interest as, but for the operation of that subsection, they would have continued to be vested;

- (b) the Governor shall make and issue an instrument of grant in the form of the Schedule to this Act evidencing that reversion free of cost to that person.
- (4) Nothing contained in, or done in pursuance of, the provisions of this section —
 - (a) affects any proprietary interest in the mineral rights;
 - (b) entitles any person to compensation or damages from the Crown.
- (5) The Governor shall not grant or demise, pursuant to the provisions of this Act, any tenure of land referred to in this section, unless the instrument evidencing the grant or demise is expressed to be and is subject to the mineral rights.
- (6) The appropriate registration authorities are authorized to record in the appropriate manner the effect of the operation of the provisions of this section in relation to land.

[Section 8 amended by No. 31 of 1997 s. 136(2); No. 19 of 2010 s. 51; No. 47 of 2011 s. 16.]

9. Validation

- (1) Things done, including rights, titles and interests reversioned, conferred, granted, demised, and acquired, in pursuance or purported pursuance of the provisions of the repealed Acts are, subject to subsection (2), ratified as lawful and validated.
- (2) Notwithstanding the repeal, or any of the provisions, of the repealed Acts, the interpretation of the expression, ***mineral rights*** in section 8, and the form of Crown Grant in the Schedule, are deemed to have been in operation on and from 15 January 1946, being the day on which the repealed *War Service Land Settlement Agreement Act 1945*, came into operation.

10. Regulations

The Governor may make regulations prescribing forms, fees, matters and things necessary or convenient to be prescribed for carrying out the scheme and for giving effect to this Act and may by a regulation so made prescribe penalties recoverable on summary conviction and not exceeding fifty pounds for breach of a regulation so made.

11. Delegation

- (1) The Minister may delegate to a public service officer of the Department, as defined in the *Land Administration Act 1997* section 3(1), any power or duty of the Minister under another provision of this Act.
- (2) The delegation must be in writing signed by the Minister.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

[Section 11 inserted by No. 8 of 2010 s. 35.]

12. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.

s. 12

- (3) Despite subsection (1), neither the Minister nor the State is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 12 inserted by No. 8 of 2010 s. 35.]

Schedule — Form of Crown grant

[s. 8(3)(b) and 9(2)]

[Heading inserted by No. 19 of 2010 s. 39.]

Western Australia

CROWN GRANT

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories Queen, Head of the Commonwealth, To all to whom these presents shall come, GREETING: Know Ye that We, of our especial Grace, certain knowledge, and mere motion and by virtue of the provisions of the *War Service Land Settlement Scheme Act 1954*, have given and granted, and We do by these presents for Us, our heirs and successors, Give and Grant unto all mines of copper, tin, lead, coal, ironstone, phosphatic rock and other metals, ores or minerals whatsoever, except gold, silver, and precious metals, and all substances containing minerals or phosphates, except substances containing gold, silver, and precious metals, and all gems and precious stones and, subject to the *Petroleum Act 1936*⁴, mineral oil in, upon and under all that tract or parcel of land situate and being in the District of in Our said State containingmore or less and marked and distinguished in the maps and books of the Department of Lands and Surveys⁵ of Our said State as and as the same is delineated and coloured in, in the plan drawn hereon with full liberty at all times to search, dig, mine, bore for and carry away the same, and for that purpose to enter upon the said land or any part thereof without paying compensation therefor: TO HAVE AND TO HOLD all and singular the premises hereby granted together with all appurtenances whatsoever thereunto belonging or in anywise appertaining for an estate in fee simple: YIELDING and paying for the same to Us, Our heirs and successors, one peppercorn of yearly rent on the twenty-fifth day of March in each year, or so soon thereafter as the same shall be lawfully demanded.

IN WITNESS whereof, We have caused
Governor in and over the State of Western Australia in the Commonwealth of Australia,
to affix to these presents the Public Seal of the said State.

SEALED this day of one thousand nine hundred and

.....
Governor.

.....
Minister for Lands.

[Schedule amended by No. 38 of 1947⁶ s. 3; No. 19 of 2010 s. 39.]

Notes

¹ This is a compilation of the *War Service Land Settlement Scheme Act 1954* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short Title	Number and Year	Assent	Commencement
<i>War Service Land Settlement Scheme Act 1954</i>	29 of 1954	5 Nov 1954	28 Jan 1955 (see s. 2 and <i>Gazette</i> 28 Jan 1955 p. 171)
<i>Royal Style and Titles Act 1947</i> ⁶	38 of 1947	11 Dec 1947	19 Mar 1948 (see s. 2 and <i>Gazette</i> 19 Mar 1948 p. 627-8)
<i>War Service Land Settlement Scheme Act Amendment Act 1960</i>	9 of 1960	6 Oct 1960	6 Oct 1960
<i>War Service Land Settlement Scheme Act Amendment Act 1962</i>	6 of 1962	27 Sep 1962	27 Sep 1962
<i>War Service Land Settlement Scheme Act Amendment Act 1972</i>	52 of 1972	2 Oct 1972	2 Oct 1972
<i>War Service Land Settlement Scheme Act Amendment Act 1974</i>	11 of 1974	27 Sep 1974	27 September 1974
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>R & I Bank Amendment Act 1994, section 13</i>	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2(2) and <i>Gazette</i> 26 Apr 1994 p. 1743)
<i>Bank of Western Australia Act 1995, section 44</i>	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2(3) and <i>Gazette</i> 29 Nov 1995 p. 5529)
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))

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Short Title	Number and Year	Assent	Commencement
<i>Acts Amendment (Land Administration) Act 1997</i> , Part 63 and section 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Approvals and Related Reforms (No. 3) (Crown Land) Act 2010</i> Pt. 10	8 of 2010	3 Jun 2010	18 Sep 2010 (see s. 2(b) and <i>Gazette</i> 17 Sep 2010 p. 4757)
<i>Standardisation of Formatting Act 2010</i> s. 39 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 16	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))

² Now *Interpretation Act 1984* (No. 12 of 1984).

³ Repealed by the *Conservation and Land Management Act 1984* (No. 126 of 1984).

⁴ Repealed by the *Petroleum Act 1967* (No. 72 of 1967).

⁵ The Department formerly known as the Department of Lands and Surveys was replaced by the Western Australian Land Information Authority. Maps and books formerly held by the Department are now held by the Authority (see the *Land Information Authority Act 2006* s. 100).

⁶ The Style and Titles pertaining to the Crown was changed by Proclamation under the *Royal Styles and Titles Act 1947* (see *Gazette* 7 December 1974 p.4479).