

Crown Lands Legislation Amendment (Budget) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Appropriation Bill 2004*.

Overview of Bill

The object of this Bill is to amend certain Crown Lands and other legislation for the following purposes:

- (a) to provide for a uniform minimum annual rent in respect of certain leases, licences and enclosure permits relating to Crown land and other land and to provide for the adjustment of that minimum annual rent in line with movements in the Consumer Price Index (the **CPI**),
- (b) to provide for the CPI adjustment of certain annual rents payable under the *Crown Lands (Continued Tenures) Act 1989*,
- (c) to provide for a minimum annual instalment or half-yearly instalment in respect of the purchase of certain land under that Act and under the *Hay Irrigation Act 1902*,
- (d) to discontinue the practice of allowing land comprised in certain leases to be purchased by payment of instalments, in respect of new purchase applications,
- (e) to provide for the redetermination of the rent of certain leases under the *Crown Lands (Continued Tenures) Act 1989* to market rates at intervals of 3 years,
- (f) to establish special arrangements for the purchase by a lease holder of land comprised in a perpetual lease under that Act, if the rent is not subject to redetermination, and to provide for the redetermination of the rent of such leases to market rates in the event that the land is not purchased under those arrangements,
- (g) to allow the Minister, on behalf of the Crown, to impose certain restrictions or public positive covenants on land that is purchased under the special arrangements,
- (h) to make it clear that fees may be charged for services provided by the Department of Lands in connection with Crown lands,
- (i) to make provisions of a savings, transitional or consequential nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2004.

Clause 3 is a formal provision that gives effect to the amendments to the *Crown Lands Act 1989* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Crown Lands (Continued Tenures) Act 1989* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the *Hay Irrigation Act 1902* set out in Schedule 3.

Clause 6 is a formal provision that gives effect to the amendments to the Act and instrument specified in Schedule 4.

Schedule 1 Amendment of Crown Lands Act 1989

Minimum rents

At present, regulations under the *Crown Lands Act 1989* prescribe a minimum annual rent in respect of various holdings and enclosure permits under the Crown Lands Acts, other than a lease the rent of which is not subject to redetermination. That minimum rent varies from \$50 to \$70. In the case of a lease under the *Crown Lands (Continued Tenures) Act 1989*, the rent of which

is not subject to redetermination, a higher minimum rent of \$100 applies, which has been adjusted over the years for movements in the CPI.

The amendments impose a new uniform minimum rent of \$350 on all holdings (other than incomplete purchases) and enclosure permits under the *Crown Lands Act 1989*. The new minimum rent will extend to leases under the *Crown Lands (Continued Tenures) Act 1989*. However, at present, it will not apply to holdings and enclosure permits in relation to land in the Western Division (see further below).

The new minimum rent will be subject to adjustment for movements in the CPI. The amendments also allow the regulations to impose a higher minimum rent. The amendments require the new minimum rent to be phased-in in respect of existing holdings and enclosure permits. Holders of existing holdings and enclosure permits will not be required to pay the full minimum rent in respect of due dates occurring before 1 July 2006.

Holdings and enclosure permits in relation to land situated in the Western Division will continue to be subject to the existing minimum rent provisions. However, the regulations may extend the operation of the new minimum rent provisions to those holdings and enclosure permits.

The principal amendment concerned is set out in **Schedule 1 [5]**. **Schedule 1 [1]–[4] and [6]** are consequential amendments.

Fees for services

The amendment makes it clear that fees may be charged, of an amount approved by the Minister, for services provided by the Department of Lands in connection with Crown lands.

The amendment is set out in **Schedule 1 [7]**.

Savings, transitional and other provisions

The amendments include provisions of a saving or transitional nature, including provision for the making of savings and transitional regulations and for the phasing-in of the various changes (**Schedule 1 [8] and [9]**).

Schedule 2 Amendment of Crown Lands (Continued Tenures) Act 1989

Minimum rents and CPI adjustments to rents

The amendments supplement the amendments made to the *Crown Lands Act 1989* in relation to minimum rents.

In addition, the amendments provide for the adjustment of the annual rent of a perpetual lease, special lease, term lease or Commonwealth lease under the *Crown Lands (Continued Tenures) Act 1989* for movements in the CPI. In the case of a lease the rent of which is subject to redetermination by the Minister, CPI adjustments will be made in respect of every due date other than a due date on which a redetermination of rent by the Minister takes effect (or a due date immediately following a mid-term redetermination). In the case of a lease the rent of which is not subject to redetermination by the Minister, CPI adjustments will continue to be made in every year. If the CPI adjusted rent, or the rent as redetermined by the Minister, is less than the minimum rent payable under the *Crown Lands Act 1989*, the minimum rent will be payable.

The new provisions will not apply in relation to leases of land situated in the Western Division. Existing minimum rent provisions and CPI adjustment provisions will continue to apply to those leases. However, the regulations may extend the application of the new provisions to those leases.

The principal amendment is set out in **Schedule 2 [3]** (see, in particular, proposed sections 4C and 4D). Consequential amendments are contained in **Schedule 2 [1], [2], [4], [8], [9], [10], [22], [25], [26] and [27]**.

Redetermination of rents

At present, the rent of certain leases under the *Crown Lands (Continued*

Tenures) Act 1989 may be redetermined by the Minister at intervals of 5 years. The amendments provide for the redetermination of rents at intervals of 3 years, and for the phasing-in of the new redetermination intervals. Under the amendments, any redetermination of rent is to be made to market rates. The amendments remove the concessional rates of rent that currently apply to certain leases of land within special land districts and to prickly-pear leases. The new provisions will not apply in relation to leases of land situated in the Western Division that are subject to redetermination. Those leases will continue on 5-year redetermination intervals, and any existing concessions regarding the redetermination of rent will remain unchanged. However, the regulations may extend the application of the new provisions to those leases. The principal amendments are set out in **Schedule 2 [3]** (see, in particular, proposed sections 4E and 4F) and **Schedule 2 [15]–[17]**. Consequential amendments are set out in **Schedule 2 [11]–[14], [18]–[21] and [23]**.

Payment of purchase price by instalments

At present, the *Crown Lands (Continued Tenures) Act 1989* allows land that is the subject of a lease under that Act to be purchased and makes provision for the continuation of incomplete purchases under that Act. Such purchases may be paid by instalments. The minimum annual instalment in respect of certain incomplete purchases is \$100.

The amendments impose a new minimum annual instalment of \$350 in respect of all purchases under the Act (including existing incomplete purchases). If a purchase is payable by half-yearly instalments, the minimum half-yearly instalment is \$175. These amounts are subject to CPI adjustment. The regulations may also increase the minimum instalments payable. Provision is made for the phasing-in of the new minimum instalment provisions, so that the full amount of the minimum annual or half-yearly instalment will not be payable in respect of existing incomplete purchases on due dates that occur before 1 July 2006.

The amendments discontinue the practice of allowing the purchase price of land to be paid by instalments in respect of applications for purchase made after the commencement of the amendments. The purchase price in respect of such applications will be required to be paid in full within such time as the Minister requires.

Again, the new provisions will not apply in relation to purchases of land situated in the Western Division. However, any incomplete purchases that are subject to the existing minimum annual instalment of \$100 will continue to be subject to that minimum. In addition, the regulations may extend the application of the new provisions to those purchases.

The principal amendments are set out in **Schedule 2 [3]** (see, in particular, proposed Part 1B) and **Schedule 2 [28] and [29]**. Consequential amendments are set out in **Schedule 2 [1], [4], [5], [6] and [30]**.

Special arrangements—purchase of perpetual leases

The amendments establish special arrangements for the purchase of perpetual leases. The arrangements apply in respect of a perpetual lease only if the rent of the lease is not subject to redetermination.

The amendments allow land to which the arrangements apply to be purchased by the holder of the lease at a special purchase price of 3 per cent of the land value of the land. However, if the purchase price already available in respect of the land is lower, the lower purchase price continues to apply.

The Minister may, by notice, invite the holder of a lease to which the special arrangements apply to purchase the land comprised in the lease. The rent of the lease becomes subject to redetermination by the Minister (at market rates) at the end of the period of 2 years after that notice is given. If an application is made

to purchase the land within that 2-year period, the Minister may defer or waive the redetermination of the rent. If an application is made within the 2-year period, and is refused (or partly refused), the rent may be redetermined to market rent but discounted in an appropriate manner.

The amendments also allow the Minister to impose, on behalf of the Crown, restrictions or public positive covenants on the land on or before selling the land under the special arrangements. Such restrictions or covenants may be imposed for the purpose of protecting the environment, protecting or managing natural resources, or protecting cultural, heritage or other significant values of the land or of items or works on the land. Restrictions may also be imposed to prevent or restrict subdivision of the land. Restrictions or public positive covenants are to be imposed under the scheme provided for by the *Conveyancing Act 1919*.

The new arrangements will not apply in relation to purchases of land situated in the Western Division. However, the regulations may extend the application of the new arrangements to those purchases.

The principal amendment is set out in **Schedule 2 [31]**. Consequential amendments are set out in **Schedule 2 [7] and [24]**.

Savings, transitional and other provisions

The amendments include provisions of a saving or transitional nature, including provision for the making of savings and transitional regulations and for the phasing-in of the various changes (**Schedule 2 [32] and [33]**).

Schedule 3 Amendment of Hay Irrigation Act 1902

The amendments to the *Hay Irrigation Act 1902* are similar to the amendments described above. The amendments:

- (a) require rents of leases to which that Act applies to be paid annually and in advance from a date fixed by the Minister (**Schedule 3 [3]**, proposed section 18), and
- (b) require a minimum rent (of the same amount as that calculated under the new provisions of the *Crown Lands Act 1989*) to be paid in respect of such leases (**Schedule 3 [3]**, proposed section 18A), and
- (c) impose a minimum half-yearly instalment of \$175 on purchases of land made under the Act that are payable by half-yearly instalments, which amount is to be subject to CPI adjustment (**Schedule 3 [6]**), and
- (d) discontinue the practice of allowing land comprised in a lease to be purchased by payment of instalments (to apply to purchase applications made after the commencement of the amendments) (**Schedule 3 [4] and [5]**).

The amendments also include transitional and consequential provisions, including provision for the phasing-in of the minimum rent and minimum halfyearly instalment provisions (**Schedule 3 [1], [2], [7], [8] and [9]**).

Schedule 4 Other amendments

Schedule 4.1 amends the *Crown Lands Regulation 2000* as a consequence of the changes to the minimum rent provisions.

Schedule 4.2 amends the *Western Lands Act 1901* as a consequence of the changes to the minimum rent provisions under the *Crown Lands Act 1989*.