

## **Crown Lands Legislation Amendment Bill 2005**

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are as follows:

- (a) to provide greater flexibility and accountability in relation to the management of Crown reserves under the *Crown Lands Act 1989*,
- (b) to enable councils in certain circumstances, as reserve trust managers, to grant leases, licences and related easements over the Crown reserves they manage without the need to obtain the Minister's consent,
- (c) to enable Crown reserves to be used for additional purposes (either under a plan of management for the reserve or in accordance with an order of the Minister),
- (d) to extend the Minister's existing power to grant licences in respect of Crown reserves so that the Minister will be able to grant leases, permits, easements and rights-of-way over Crown reserves,
- (e) to extend the Minister's existing power under the *Crown Lands (Continued Tenures) Act 1989* to impose a restriction or public positive covenant on land (such as for the purposes of protecting the environment or for preventing subdivision) so that the Minister will be able to impose such restrictions or covenants in connection with the sale of any Crown land,
- (f) to extend the existing provisions under the *Continued Tenures Act* that protect the operation of restrictions on use or public positive covenants imposed by the Minister under that Act so that a restriction on use or covenant imposed by the Minister in connection with the sale of any Crown land will be protected in the same manner,
- (g) to apply those same protections to agreements with landholders under the *National Parks and Wildlife Act 1974* and the *Nature Conservation Trust Act 2001*,
- (h) to require the Minister to obtain the concurrence of the Minister for the Environment before approving the subdivision of certain former Crown land or before removing covenants in certain circumstances,
- (i) to enable authorised inspectors to enter and inspect land that is subject to a Crown tenure and to enter and inspect private land that is subject to a restriction on use or covenant for the purpose of monitoring or reviewing the effectiveness of the restriction or covenant,
- (j) to enable the Minister, when determining or redetermining the rent of certain holdings under the *Crown Lands Act* and the *Continued Tenures Act*, to have regard, if the matter has been referred to the Independent Pricing and Regulatory Tribunal, to any recommendation made by IPART in relation to the rent of any such holding,
- (k) to provide for the redetermination and adjustment of rents for licences and enclosure permits under the *Crown Lands Act*,
- (l) to enable the Minister to give rent rebates in relation to certain water-access only holdings and council holdings that are used for community purposes,
- (m) to enable certain land that is subject to the *Trustees of Schools of Arts Enabling Act 1902* to be transferred to, or vested in, the Crown under the *Crown Lands Act* or to be transferred to councils in accordance with amendments to the *Local Government Act 1993*,
- (n) to make other miscellaneous and consequential amendments (including savings and transitional provisions).

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 a day or days to be appointed by proclamation.

**Clause 3** gives effect to the amendments to the *Crown Lands Act 1989* set out in Schedule 1.

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

**Clause 5** gives effect to the amendment of other legislation set out in Schedule 3.

#### **Schedule 1 Amendment of Crown Lands Act 1989**

##### **Crown reserve management**

At present under Part 5 of the Crown Lands Act, the affairs of a reserve trust (that is, the corporation appointed as trustee of a Crown reserve) are managed by a trust board, a corporation (such as a local council) or an administrator appointed by the Minister.

**Schedule 1 [12]** provides that the Minister may also manage the affairs of a reserve trust and allows the Minister to appoint more than one reserve trust manager to manage the affairs of a reserve trust in different respects or in relation to different parts of the reserve. **Schedule 1 [28] and [29]** are consequential amendments.

**Schedule 1 [13]** provides that the Lands Administration Ministerial Corporation may be appointed as a reserve trust manager.

**Schedule 1 [14]** provides that a corporation, if appointed as a reserve trust manager, may be appointed for a fixed term (which may be extended by the Minister).

**Schedule 1 [15]** is a consequential amendment and **Schedule 1 [16]** provides that a corporate reserve trust manager is not entitled to compensation if it is removed from office by the Minister.

**Schedule 1 [17]** requires reserve trust managers to report to the Minister on their performance.

**Schedule 1 [18]** enables reserve trust managers to delegate their functions with the Minister's approval.

**Schedule 1 [19]** enables the Minister to assume responsibility for certain public reserves that fall under the control of local councils by virtue of section 48 of the *Local Government Act 1993*.

**Schedule 1 [20]** enables a local council, if authorised to do so by the Minister, to grant leases, licences or related easements over a Crown reserve where the council is the reserve trust manager without having to obtain the Minister's consent each time it proposes to grant such a lease, licence or easement.

**Schedule 1 [27]** enables the Minister to appoint an administrator to manage the affairs of a reserve trust in the same way as a corporation may be appointed.

**Schedule 1 [31] and [32]** make minor amendments relating to the reporting requirements of reserve trusts.

##### **Use of Crown reserves**

At present under Part 4 of the Crown Lands Act, the Minister may grant a licence in respect of a Crown reserve. **Schedule 1 [5]** provides that the Minister will also be able to grant a lease, permit, easement or right-of-way over a Crown reserve.

**Schedule 1 [4]** is a consequential amendment.

**Schedule 1 [21]–[26]** provide that a Crown reserve may be used for a purpose that is additional to the purpose for which the land has been reserved or dedicated if the additional purpose is authorised by a plan of management for the reserve.

**Schedule 1 [30]** enables the Minister, by order published in the Gazette, to authorise a Crown reserve to be used for an additional purpose so long as that purpose is compatible with the purpose for which the land has been reserved or dedicated and certain other requirements are satisfied.

##### **Covenants**

At present under Schedule 7A to the Continued Tenures Act, the Minister may, in

connection with the grant of an application to purchase certain perpetual leases, impose on the land restrictions on use or public positive covenants for purposes such as protection of the environment or preventing or restricting the subdivision of the land. The restrictions and covenants are imposed under the scheme provided for by the *Conveyancing Act 1919*. The current provisions under the Continued Tenures Act also protect the operation of any such restriction or covenant from being suspended by a provision of an environmental planning instrument made in accordance with section 28 of the *Environmental Planning and Assessment Act 1979* (**a section 28 EP&A Act provision**).

**Schedule 1 [11]**, which inserts proposed Part 4A into the Crown Lands Act, extends and modifies the current scheme so that it will apply in relation to the sale of any Crown land.

**Schedule 1 [46]** provides that a restriction on use or covenant imposed by the Minister under Part 4A of the Crown Lands Act, as well as any condition imposed by the Minister in relation to the sale of Crown land and that is recorded in the Register under the *Real Property Act 1900*, will not be suspended because of the operation of a section 28 EP&A Act provision unless the Minister consents to the suspension.

**Schedule 1 [6]** is a consequential amendment.

#### **Powers to enter and inspect land**

**Schedule 1 [42]** enables authorised inspectors to enter and inspect land that is the subject of a Crown tenure for the purpose of determining whether the landholder is complying with the terms and conditions of the tenure. Authorised inspectors will also be able to enter and inspect land that is subject to a restriction on use or covenant imposed under proposed Part 4A of the Crown Lands Act for the purposes of monitoring and reviewing the effectiveness of the restriction or covenant and to ensure compliance with the restriction or covenant. The amendment also enables the Director-General of the Department of Lands to require the production of certain information and to enter into arrangements with other government agencies or local councils for their staff to exercise the functions of authorised inspectors under the proposed Division.

**Schedule 1 [43]** is a consequential amendment relating to the appointment of authorised inspectors.

#### **Schools of Arts and other institutions**

**Schedule 1 [34]** provides for land that is subject to the *Trustees of Schools of Arts Enabling Act 1902* to be transferred to, or vested in, the Crown depending on the status of the land. In either case, the trustees of the land may agree with the Minister for the land to be transferred or vested. On becoming Crown land, the transferred or vested land may be reserved for a public purpose.

#### **Miscellaneous amendments**

**Schedule 1 [1]** inserts additional definitions into the Principal Act.

**Schedule 1 [3] and [33]** update certain references concerning the Department of Lands and rural lands protection boards.

**Schedule 1 [4]** removes an obsolete reference to yearly leases from the definition of **holding** (which refers to the various types of tenures under the Continued Tenures Act).

**Schedule 1 [7]** enables the Minister to grant licences in respect of Crown land for a specified term and **Schedule 1 [8]** makes it clear that compensation is not payable if a licence is revoked before its term expires.

**Schedule 1 [9]** provides that licences may be transferred only in certain circumstances.

**Schedule 1 [10]** enables the holder of a licence to grant a sublicence with the Minister's consent.

**Schedule 1 [35]** is consequential on the amendments made to the Continued Tenures Act by **Schedule 2 [13] and [14]**.

**Schedule 1 [39]** enables the Minister, when determining or redetermining the rent of certain holdings under the Crown Lands Act and the Continued Tenures Act, to have regard, if the matter has been referred to the Independent Pricing and Regulatory Tribunal, to any recommendation made by IPART in relation to the rent of any such holding.

**Schedule 1 [40]** provides for the redetermination on a 3-yearly (or other) basis, and for CPI adjustment, of rents for licences and enclosure permits under the Crown Lands Act in much the same manner as rents for leases under the Continued Tenures Act may be redetermined or adjusted under that Act. **Schedule 1 [36]–[38] and [45]** are consequential amendments.

**Schedule 1 [41]** provides that, in relation to any overdue payments under the Crown land legislation, interest will be charged after 28 days (instead of after 3 months) following the due date for payment.

**Schedule 1 [44]** enables any amount payable under the Crown land legislation in respect of any sale, rent, fee or other matter to be increased to cover the cost of the GST that is payable.

**Schedule 1 [47]** provides that compensation is not payable by the Crown because of the enactment of, or the operation of the amendments to be made by, the proposed Act. The proposed section replicates clause 13 of Schedule 8 to the Continued Tenures Act which was inserted as a consequence of the *Crown Lands Legislation Amendment (Budget) Act 2004*. **Schedule 1 [49]** is a consequential amendment.

**Schedule 1 [48]** enables regulations of a savings and transitional nature to be made as a consequence of the proposed Act and **Schedule 1 [50]** contains specific savings and transitional provisions, including the continuation of existing restrictions on use or covenants imposed under the Continued Tenures Act.

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

**Schedule 2 [6]** provides for the CPI adjustment of the annual rent of permissive occupancies under the Continued Tenures Act in the same manner as the rent of leases under that Act are currently adjusted. **Schedule 2 [2]–[5] and [7]** are consequential amendments.

**Schedule 2 [9] and [10]** make it clear that if the Minister imposes, under proposed Part 4A of the Crown Lands Act, a restriction on use or covenant in connection with the purchase of leasehold land under the Continued Tenures Act, the title does not pass to the purchaser until such time as the restriction or covenant is recorded in the Register under the *Real Property Act 1900*.

**Schedule 2 [13]** provides that the Minister must obtain the concurrence of the Minister for the Environment before consenting to the subdivision of land that is the subject of a restriction on subdivision imposed in connection with the sale of a perpetual lease under Schedule 7A to the Continued Tenures Act.

**Schedule 2 [14]** provides that the Minister must obtain the concurrence of the Minister for the Environment before removing or varying a covenant that has been imposed on land adjoining, abutting or within a national park or a declared or identified wilderness area.

The other amendments to the Continued Tenures Act are mainly consequential on, or similar to, the amendments to the Crown Lands Act set out in Schedule 1 to the proposed Act.

#### **Schedule 3 Amendment of other legislation**

**Schedule 3.1** amends the *Crown Lands Regulation 2000* to enable the Minister to grant rent rebates for holdings relating to residential properties that are accessible only by water and for holdings granted to local councils that are used for community purposes.

**Schedule 3.2** amends the *Hay Irrigation Act 1902* to enable the Ministerial Corporation (in which the land in the Hay Irrigation Area is currently vested) to

impose a restriction on use or covenant on land when it is sold by the Ministerial Corporation under that Act.

**Schedule 3.3 [2]** amends the *Local Government Act 1993* to enable the trustees of “private” trust land that is subject to the *Trustees of Schools of Arts Enabling Act 1902* to transfer the trust land to a local council to be held and managed by the council as community land. **Schedule 3.3 [1]** is consequential on the amendment made to the Crown Lands Act by **Schedule 1 [19]**.

**Schedule 3.4** amends the *National Parks and Wildlife Act 1974* to provide that conservation agreements entered into with landholders under that Act are protected from the operation of a section 28 EP&A Act provision. **Schedule 3.5** makes the same amendment in relation to Trust agreements under the *Nature Conservation Trust Act 2001*.

**Schedule 3.6** amends the *Public Reserves Management Fund Act 1987* as a consequence of the amendment made to the Crown Lands Act by **Schedule 1 [5]** (proposed section 34A of the Crown Lands Act).

**Schedule 3.7** amends the *Real Property Act 1900* to expressly authorise the Registrar-General to record in the Register a restriction on use or covenant imposed by the Minister under proposed Part 4A of the Crown Lands Act before taking any action to give effect to the sale or purchase of the land concerned.

**Schedule 3.8** amends the *Western Lands Act 1901* to extend the application of certain provisions of the Crown Lands Act to land in the Western Division.