

FIRST PRINT

**WORLD HERITAGE PROPERTIES (LORD HOWE ISLAND)  
BILL 1991**

NEW SOUTH WALES



**EXPLANATORY NOTE**

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- \* to recognise the world heritage value of the Lord Howe Island Group
- \* to reconstitute the Lord Howe Island Board
- \* to make other provisions concerning the use and management of Lord Howe Island, largely in accordance with the Lord Howe Island Act 1953 which is repealed by the proposed Act.

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**PART 1 - PRELIMINARY**

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 defines certain expressions used in the proposed Act.

Clause 4 specifies the objects of the proposed Act.

**PART 2 - THE LORD HOWE ISLAND BOARD**

Clause 5 constitutes, as a body corporate, the Lord Howe Island Board.

Clause 6 provides that the Board is to be subject to Ministerial control.

Clause 7 provides that the Board is to consist of 8 members appointed by the Minister. Three of the members are to be persons who ordinarily reside on Lord Howe Island and who are elected by Islanders in accordance with elections to be held under the proposed Act.

## *World Heritage Properties (Lord Howe Island) 1991*

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**Clause 8** enables the appointment of staff to assist the Board in the performance of its functions.

**Clause 9** confers on the Board the general function of caring for and controlling and managing the Island and its affairs and trade. In exercising its functions, the Board is to have particular regard to the world heritage significance of the Island.

**Clause 10** confers on the Board more particular functions (such as the provisions of roads, the promotion of public health, the regulation of building work and the provision of water supply and sewerage or drainage works).

**Clause 11** confers on the Board the functions of regulating the tourist trade of the Island and of licensing businesses carried on on the Island.

**Clause 12** enables the Board to delegate its functions.

**Clause 13** enables the Board to impose charges and fees for services and commodities supplied by it and permissions given by it.

### **PART 3 - PROTECTION OF THE ISLAND**

#### **Division 1 - Lord Howe Island National Park**

**Clause 14** establishes as the Lord Howe Island National Park the land which was permanently dedicated under section 19A of the Lord Howe Island Act 1953 as the Lord Howe Island Permanent Park Preserve and will enable the management of the National Park by the Board in accordance with a plan of management prepared under the National Parks and Wildlife Act 1974.

**Clause 15** makes it an offence for a person to use any part of the Lord Howe Island National Park in a manner that contravenes the plan of management. If the offence involves the erection of a building, the Board is empowered to order its demolition.

#### **Division 2 - Application of Environmental Planning and Assessment Act 1979**

**Clause 16** provides that for the purposes of the Environmental Planning and Assessment Act 1979 the Board is taken to be the council of the Island and the Island is taken to be a region.

### **PART 4 - LAND TENURE**

The provisions of this Part re-enact, without significant alteration, the provisions of Divisions 2-8 of Part 4 (Land Tenure) of the Lord Howe Island Act 1953 as in force immediately before the repeal of that Act by the proposed Act.

#### **Division 1 - Dealings with Crown lands**

**Clause 17** provides that Crown lands on the Island are to be dealt with in accordance with the proposed Act.

**Clause 18** provides for the reservation or dedication of Crown lands for public purposes (by the Minister on the recommendation of the Board).

*World Heritage Properties (Lord Howe Island) 1991*

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**Clause 19** will enable the Minister to lease vacant Crown lands to the Commonwealth.

**Clause 20** provides for the leasing in perpetuity of vacant Crown lands (of up to 2 hectares in area) to Islanders for residential purposes.

**Clause 21** provides for the determination (by the Board on the basis of the Valuer-General's valuation) of the rent for each such residential lease.

**Clause 22** will enable the Minister to lease Crown lands to an Islander holding a residential lease for farming purposes or for such other purposes as the Minister may approve (on the recommendation of the Board).

**Clause 23** will enable the holder of a lease to surrender the lease.

**Clause 24** provides for the transfer of leases, the granting of subleases and the surrender of part of the land comprised in leases, in certain circumstances. The consideration for a transfer of lease must not exceed the fair market value as determined by the Valuer-General. In the case of a lease of land used for commercial purposes, the consideration may also include a sum for goodwill.

A lease may be transferred or sublet to a person other than an Islander only if the Board is satisfied that there is no Islander who desires and is in a position to take the transfer or sublease. The Board may require that part of the land covered by a lease be surrendered if it is proposed to transfer the lease to a person other than an Islander.

**Clause 25** will enable the Minister to exclude from land the subject of a lease the whole or part of which is proposed to be transferred land which may be required for access roads.

**Clause 26** regulates the rights and obligations of mortgagees of leases, particularly with respect to entry into possession, foreclosure and transfer.

**Clause 27** will render a foreclosure or transfer in contravention of the proposed Division void.

**Clause 28** provides that occupation by a mortgagee of mortgaged land is evidence that the mortgagee has entered into possession under the mortgage.

**Clause 29** regulates the devolution of leases under a will or intestacy.

**Clause 30** concerns the protection given under other legislation to persons acquiring title to land (and to persons such as the Registrar-General or Crown Solicitor who register or certify title). The clause extends this protection to a person acquiring title to any land or holding under proposed Part 4.

**Clause 31** provides for appeals and references to the Land and Environment Court concerning rental determinations and valuations made for the purposes of the proposed Part.

## *World Heritage Properties (Lord Howe Island) 1991*

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### **Division 2 - Redetermination of rent on transfers of a lease to a person other than an Islander**

Clause 32 provides for the redetermination of rent (by the Board on the basis of the Valuer-General's valuation) on the transfer of a lease to a person other than an Islander.

### **Division 3 - Deferring or waiver of rent**

Clause 33 will enable the Minister to defer or waive the payment of any rent payable under a lease.

Clause 34 provides for a lease to be forfeited, for example, if the rent is not paid or the land is not used and occupied for the purpose for which the lease was granted. The Minister may (on the recommendation of the Board) waive any such forfeiture, either absolutely or subject to conditions.

### **Division 4 - Improvements**

Clause 35 defines expressions used in the proposed Division ("improvements" and "capital value of improvements").

Clause 36 provides for incoming tenants to pay the capital value of improvements on the land that are the subject of tenant-right.

Clause 37 provides for the last holder of a lease granted under proposed section 22 to have tenant-right in improvements on the land. The Minister may also grant tenant-right in improvements to the last holder of any lease on forfeiture of the lease. (A person who has tenant-right in improvements is entitled to receive the capital value of the improvements from a subsequent lessee. The tenant-right lapses after 12 years when the improvements become the property of the Crown).

Clause 38 preserves the right of a former lessee to payment for improvements (the subject of tenant-right) if the lease is subsequently forfeited and the former lessee has not been paid for those improvements.

Clause 39 will enable the Minister (on the recommendation of the Board) to grant permission to a person to occupy vacant Crown lands or Crown lands the subject of a reservation under the proposed Act, for the purposes and on the terms imposed by the Minister.

### **Division 5 - Trespass on Crown lands or dedicated lands**

Clause 40 makes it an offence to trespass on, or otherwise interfere with, Crown lands or dedicated lands without lawful authority.

### **Division 6 - Timber**

Clause 41 provides that all timber on the Island remains the property of the Crown (whether or not the land is the subject of a lease, reservation or dedication).

## *World Heritage Properties (Lord Howe Island) 1991*

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The clause makes it an offence for a person to remove, cut or destroy the timber unless the person is the holder of a lease and is authorised to do so by the Board or the conditions of a lease.

### **PART 5 - FINANCE**

Clause 42 provides for the establishment of the Lord Howe Island Account as an account in the Special Deposits Account in the Treasury. The clause specifies the payments that are to be made into, and the payments that may be made out of, the Account.

Clause 43 provides for the establishment of the Lord Howe Island Mortgages Account as an account in the Special Deposits Account in the Treasury. The Account is to be used to finance the activities specified in clause 39.

Clause 44 enables the Board to advance money to an Islander on security for the transfer of a lease or for the carrying out of improvements on certain land.

Clause 45 specifies the financial year of the Board to be the year ending on 30 June.

### **PART 6 - MISCELLANEOUS**

Clauses 46 provides that for the purposes of the Dog Act 1966 the Board is taken to be the council of the Island.

Clause 47 requires the Board to include in its annual report particulars of any transfers or sublettings of leases under the proposed Act to persons other than Islanders.

Clause 48 enables proceedings for an offence against the proposed Act or regulations to be dealt with summarily before a Local Court.

Clause 49 enables the making of regulations by the Governor-in-Council for the purposes of the proposed Act.

Clause 50 provides for the repeal of the Lord Howe Island Act 1953 and the Lord Howe Island Aerodrome Act 1974.

Clause 51 is a formal provision that gives effect to Schedule 3, a Schedule which contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

### **SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE LORD HOWE ISLAND BOARD**

Schedule 1 contains provisions relating to the election of the Islander members of the Board, the terms of office of Board members, the payment of allowances to Board members, the circumstances in which a vacancy occurs in the office of a Board member and the manner in which it is to be filled. The Schedule also contains provisions relating to the conduct of Board meetings, including the quorum, the person who is to preside and voting rights.

*World Heritage Properties (Lord Howe Island) 1991*

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**SCHEDULE 2 - LORD HOWE ISLAND NATIONAL PARK**

Schedule 2 contains a description of the areas which comprise the Lord Howe Island National Park.

**SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

Schedule 3 enacts savings, transitional and other provisions consequent on the repeal of the Lord Howe Island Act 1953 and the Lord Howe Island Aerodrome Act 1974 and the enactment of the proposed Act.

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FIRST PRINT

**WORLD HERITAGE PROPERTIES (LORD HOWE ISLAND)  
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NEW SOUTH WALES



**TABLE OF PROVISIONS**

**PART 1 - PRELIMINARY**

1. Short title
2. Commencement
3. Definitions
4. Objects of Act

**PART 2 - THE LORD HOWE ISLAND BOARD**

5. Constitution of the Board
6. Board subject to Ministerial control
7. Composition and procedure of the Board
8. Staff of the Board
9. General functions of the Board
10. Other functions of the Board
11. Powers of the Board as to tourists and licensing businesses
12. Delegation
13. Charges and fees

**PART 3 - PROTECTION OF THE ISLAND**

**Division 1 - Lord Howe Island National Park**

14. Lord Howe Island National Park
15. Enforcement of plan of management

**Division 2 - Application of Environmental Planning and Assessment Act  
1979**

16. Manner in which Act applies

PART 4 - LAND TENURE

Division 1 - Dealings with Crown lands

17. Crown lands not to be dealt with except under this Act
18. Reservation or dedication of Crown lands for public purposes
19. Leases to the Commonwealth
20. Leases in perpetuity for residence
21. Rent of lease in perpetuity
22. Special leases
23. Surrenders
24. Transfers and subleases
25. Transfers - exclusion of land for access
26. Mortgages of leases
27. Avoidance of certain foreclosures and transfers
28. Evidence of entry into possession by mortgagee
29. Devolution of lease under will or intestacy
30. Protection of persons registering transfers
31. Appeal to Land and Environment Court

Division 2 - Redetermination of rent on transfer of a lease to a person other than an Islander

32. Redetermination of rent on certain transfers

Division 3 - Deferring or waiver of rent

33. Rent may be deferred or waived
34. Forfeiture

Division 4 - Improvements

35. Definitions
36. Payment for improvements etc.
37. Tenant-right in improvements
38. Right to payment for improvements not to be lost by subsequent forfeiture of the land
39. Permissive occupancies

Division 5 - Trespass on Crown lands or dedicated lands

40. Trespass on Crown lands or dedicated lands

Division 6 - Timber

41. Timber to be property of the Crown



*World Heritage Properties (Lord Howe Island) 1991*

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PART 5 - FINANCE

- 42. Lord Howe Island Account
- 43. Lord Howe Island Mortgages Account
- 44. Advances by the Board on mortgage
- 45. Financial year

PART 6 - MISCELLANEOUS

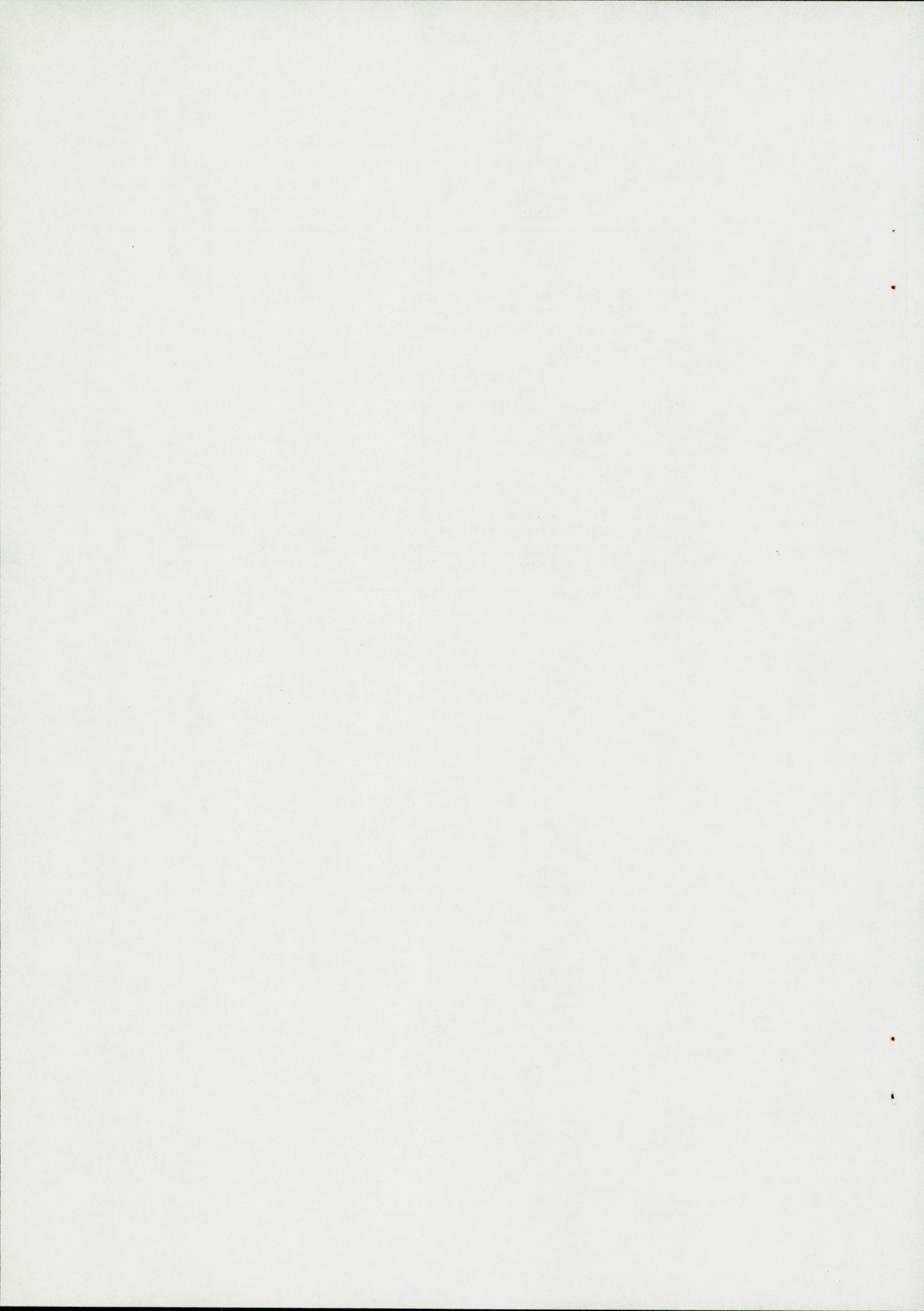
- 46. Application of Dog Act 1966
- 47. Annual report
- 48. Proceedings for offences
- 49. Regulations
- 50. Repeals
- 51. Savings, transitional and other provisions

SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS AND  
PROCEDURE OF THE LORD HOWE ISLAND BOARD

SCHEDULE 2 - LORD HOWE ISLAND NATIONAL PARK

SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

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**WORLD HERITAGE PROPERTIES (LORD HOWE ISLAND)  
BILL 1991**

NEW SOUTH WALES



No. , 1991

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**A BILL FOR**

An Act relating to the protection and conservation of Lord Howe Island; to repeal the Lord Howe Island Act 1953 and the Lord Howe Island Aerodrome Act 1974; and for other purposes.

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**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the World Heritage Properties (Lord Howe Island) Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act:

"Board" means the Lord Howe Island Board;

"Crown lands" means lands of the Island which are vested in Her Majesty and not permanently dedicated to any public purpose;

"Island" means the island known as Lord Howe Island and all adjacent islands and coral reefs situated within 3 nautical miles measured from low-water mark on the coast of Lord Howe Island together with the islands known as Ball's Pyramid, Wheatsheaf Island, Observatory Rock and South-East Rock and the unnamed islands in the vicinity;

"Islander" means, subject to subsection (2), a person who:

- (a) resided on the Island immediately before 1 January 1982, being the commencement of Schedule 1 (2) (c) to the Lord Howe Island (Amendment) Act 1981, and was an Islander within the meaning of the Lord Howe Island Act 1953 as in force immediately before that commencement; or
- (b) has resided on the Island continuously since that commencement and for the period of 5 years that immediately preceded that commencement; or
- (c) resides on the Island and has so resided continuously during the immediately preceding period of 10 years; or
- (d) is, on the recommendation of the Board made in special circumstances, declared by the Minister, by order published in the Gazette and for the time being in force, to have retained or acquired the status of an Islander;

*World Heritage Properties (Lord Howe Island) 1991*

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**"member"** means member of the Board;

**"reside"**, in relation to a person, means to reside continuously and in good faith on the Island as the usual home of the person, without any other habitual residence;

**"statutory authority"** means:

- (a) a Government Department or an Administrative Office within the meaning of the Public Sector Management Act 1988; or
- (b) a city, municipal, shire or county council; or
- (c) any other public body constituted by or under an Act;

**"vacant Crown lands"** means Crown lands not reserved or dedicated or held under any lease from the Crown.

(2) In determining for the purposes of this Act whether a person resided or resides on the Island at any time or resided continuously on the Island during any period, an absence from the Island:

- (a) to attend a school, college, university or other educational institution; or
- (b) at any time when a school, college, university or other educational institution attended by that person is closed for a holiday or during a vacation; or
- (c) during any period not exceeding 10 years or during periods totalling not more than 10 years, for the purpose of gaining experience in a trade, profession or other gainful employment,

by a person who, immediately before the commencement of the person's first such absence, resided on the Island is taken not to interrupt residence on the Island.

(3) In this Act, or reference to a prescribed form is a reference to:

- (a) the form prescribed by the regulations for the purposes of the provision in relation to which the expression is used; or
- (b) if no such form is prescribed, the form approved by the Minister for the purposes of the provision in relation to which the expression is used.

(4) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**Objects of Act**

4. The objects of this Act are:
- (a) to ensure that the heritage of the Island is protected; and
  - (b) to make provision for the proper, prudent and consistent management of the Island; and
  - (c) to promote consultation with the occupiers of the Island on proposals for significant changes to the management of the Island.

**PART 2 - THE LORD HOWE ISLAND BOARD**

**Constitution of the Board**

5. (1) There is constituted by this Act a body corporate with the corporate name of the Lord Howe Island Board.

(2) The Board is, for the purposes of any Act, a statutory body representing the Crown.

**Board subject to Ministerial control**

6. The Board is, in the exercise of its functions, subject to the control and direction of the Minister.

**Composition and procedure of the Board**

7. (1) The Board is to consist of 8 members appointed by the Minister, of whom:

- (a) one is to be an officer of the National Parks and Wildlife Service who is to be the Chairperson of the Board; and
- (b) one is to be a person who is not an Islander and who, in the opinion of the Minister, represents the interests of conservation; and
- (c) one is to be an officer of the Ministry for the Environment or an officer of the Commonwealth Public Service nominated by the Commonwealth Minister administering the World Heritage Properties Conservation Act 1983 of the Commonwealth; and
- (d) one is to be an officer of the Tourism Commission of New South Wales nominated by the Minister for Tourism; and
- (e) one is to be an officer of the Public Service of New South Wales involved in scientific research of cultural conservation issues or

natural conservation issues, or both, relevant to Lord Howe Island; and

- (f) 3 are to be Islanders who were enrolled as electors for, and were elected at, the election under clause 2 (1) of Schedule 1 that last preceded their appointment.

(2) Schedule 1 has effect with respect to the members and procedure of the Board.

#### **Staff of the Board**

8. Such staff as may be necessary to enable the Board to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

#### **General functions of the Board**

9. (1) The Board has the care, control and management of the Island and of the affairs and trade of the Island.

(2) In exercising its functions, the Board is to have particular regard to the world heritage listing of the Island and to conserving the values supporting that listing as set out in the submission to the World Heritage Committee.

(3) The Board is required, subject to any other Act in force relating to the protection or conservation of fisheries, fauna or flora, to take all practicable measures to protect and conserve the fisheries, fauna and flora of the Island.

(4) The Board may adopt any measures and may examine and explore proposals and carry out schemes for the improvement of the conditions and for the welfare of the Island and of the residents of the Island.

(5) The Board is required to arrange or provide for the gathering, collection and sale of *Kentia* palm seed, seedlings and trees and may arrange or provide for the gathering, collection and sale of any other produce of the Island.

(6) The Board is required, subject to any other Act in force relating to the prevention, control or suppression of fire, to take all practicable measures to protect the Island from fire and, for that purpose, has the functions conferred under the Bush Fires Act 1949 on a council.

**Other functions of the Board**

10. (1) The Board may do any one or more of the following:

- (a) provide and maintain roads on the Island;
- (b) promote and preserve public health, safety and convenience on the Island;
- (c) control and regulate the erection and use of buildings and structures on the Island;
- (d) provide, control and manage on the Island grounds for public health, recreation, convenience, enjoyment or other similar public purposes, including parks, children's playgrounds, sports grounds and gardens;
- (e) construct, maintain, control and manage on the Island works of water supply or sewerage or drainage and any incidental works and works for the supply of electricity, and make and levy rates and charges for the maintenance and management of those works or for the payment of instalments of capital debts and interest;
- (f) construct, maintain, control, manage and lease wharves and anchorages;
- (g) provide public buildings and offices, residences for staff of the Board and shops, offices and other buildings for lease to the public;
- (h) exercise any functions which the Board may be authorised or required to exercise by the regulations.

(2) For the purpose of enabling the Board to exercise any functions conferred or imposed on it by this Act, the Governor may grant to the Board any vacant Crown lands and impose in any such grant such terms and conditions as the Governor considers desirable.

**Powers of the Board as to tourists and licensing businesses**

11. (1) The Board may:

- (a) control and regulate the tourist trade to and on the Island; and
- (b) subject, in the case of a person providing accommodation for the public, to regulations made in pursuance of section 49 (1) (a) (iv), require persons carrying on such businesses or trades as the Board may determine to be licensed.



(2) Any such licence is to be subject to the payment of such fee and may include such terms and conditions as may be prescribed or as the Board may determine.

#### **Delegation**

12. The Board may, with the approval of the Minister, delegate to any person any function of the Board, other than this power of delegation or a function relating to:

- (a) the granting of leases; or
- (b) any other matter which may be prescribed by the regulations.

#### **Charges and fees**

13. If the Board:

- (a) supplies any service, product or commodity; or
- (b) gives any permission; or
- (c) receives any application for its approval,

the Board may make, demand, levy and recover such charges and fees as may be prescribed or, if no charge or fee is prescribed, such charges and fees as may be fixed by the Board subject to the maximum (if any) prescribed by the regulations.

### **PART 3 - PROTECTION OF THE ISLAND**

#### **Division 1 - Lord Howe Island National Park**

##### **Lord Howe Island National Park**

14. (1) There is permanently dedicated by this Act, as the Lord Howe Island National Park, the land described in Schedule 2, which was permanently dedicated as the Lord Howe Island Permanent Park Preserve for the public purpose of preserving native flora and fauna under section 19A of the Lord Howe Island Act 1953.

(2) The permanent dedication of the land described in Schedule 2 is taken to be a continuation of the permanent dedication under section 19A of the Lord Howe Island Act 1953.

(3) The permanent dedication of the land described in Schedule 2 may not be revoked except by an Act.

(4) The National Parks and Wildlife Act 1974 applies to the Lord Howe Island National Park in the same way as it applies to a national park reserved under that Act, except as provided by this section.

(5) Section 38 of the National Parks and Wildlife Act 1974 does not apply to the Lord Howe Island National Park.

(6) In the application of the National Parks and Wildlife Act 1974 to the Lord Howe Island National Park:

- (a) a reference (however expressed) in that Act to the Minister administering that Act is to be construed as a reference to the Minister administering this Act; and
- (b) any plan of management prepared under that Act for the Lord Howe Island National Park is to be carried out and given effect to by the Board instead of as provided by section 81 (1) of that Act.

(7) Land described in Schedule 2 may not be leased.

(8) No entry fee may be charged by the Board for public admission to the land described in Schedule 2.

(9) The regulations may make provision for or with respect to any matter for or with respect to which regulations relating to a national park may be made under the National Parks and Wildlife Act 1974.

#### **Enforcement of plan of management**

15. (1) A person must not use any part of the Lord Howe Island National Park in a manner that contravenes the plan of management for the land.

Maximum penalty: 5 penalty units and, in the case of a continuing offence, a further daily penalty of 1 penalty unit.

(2) Where a penalty is imposed on a person under subsection (1) for erecting, or causing to be erected, a building, work or structure, the Board may, by notice in writing specifying a reasonable time for compliance with the notice, order the person to demolish the building, work or structure and to remove the materials from the land.

(3) The provisions of section 317B (2), (2A), (3), (4), (4A) and (4C) of the Local Government Act 1919, apply to land in respect of which an order of the Board is in force under subsection (2) as if:

- (a) a reference in those provisions to a council were a reference to the Board; and

- (b) a reference in those provisions to an order were a reference to an order under subsection (2).

**Division 2 - Application of Environmental Planning and Assessment Act 1979**

**Manner in which Act applies**

16. For the purposes of the Environmental Planning and Assessment Act 1979:

- (a) the Island is taken to be a region within the meaning of that Act; and
- (b) the Board is taken to be the council of an area situated in that region; and
- (c) Part 4 of that Act applies as if a reference in that Part to a consent authority were a reference to the Board.

**PART 4 - LAND TENURE**

**Division 1 - Dealings with Crown lands**

**Crown lands not to be dealt with except under this Act**

17. Crown lands comprising any part of the Island are not to be dealt with except under and subject to the provisions of this Act.

**Reservation or dedication of Crown lands for public purposes**

18. (1) The Minister, on the recommendation of the Board, may by notification in the Gazette reserve or dedicate Crown lands in such manner as may seem best for the public interest for any purpose declared by the Minister by notification in the Gazette to be a public purpose under this section.

(2) The Minister on a like recommendation and by a like notification may modify, alter or revoke any reservation or dedication under this section.

**Leases to the Commonwealth**

19. The Minister may lease vacant Crown lands to the Commonwealth at such rent and on such terms and subject to such conditions, reservations and provisions as are agreed on.

**Leases in perpetuity for residence**

20. (1) Subject to this section, the Minister may lease areas not exceeding in any case 2 hectares of vacant Crown lands for the purposes of residence.

(2) A lease under this section is to be in the prescribed form and may only be granted to an Islander of or above the age of 18 years or 2 or more such Islanders as joint tenants or tenants in common.

(3) The title to a lease under this section is to be a lease in perpetuity.

(4) An application for a lease under this section is to be made to the Board in the manner prescribed by the regulations and in the prescribed form.

(5) The Board is to report to the Minister as to whether there is an objection in the public interest or otherwise to the granting of the application either as to the whole or any part of the land the subject of the application and generally as to the merits of the application. If the Board considers it expedient to recommend the granting of the application (either as to the whole or any part of the land the subject of the application) it is also to report as to what conditions (if any) should attach to the lease.

(6) After receipt of such a report, the Minister may grant a lease either as to the whole or any part of the land the subject of the application if the Board so recommends, or the Minister may refuse the application.

(7) Subject to this subsection and subsections (8) and (9), a condition of residence on the lease attaches to the lease in perpetuity, and is to be performed by the holder or sublessee of the lease for the time being. Residence is required to commence within 6 months after the granting of the application or such further period as the Minister on the recommendation of the Board may approve. Where the holder or the owner (subject to mortgage) or sublessee of the lease has been or is prevented by sickness of himself or herself or family or other adverse circumstance from performing any such condition, the Board may, on application as prescribed, and on sufficient reason being shown, suspend the condition for such period and subject to such conditions as the Board may approve.

(8) The Minister may, in special circumstances, for such time and on such terms and conditions as the Minister thinks fit, suspend the

*World Heritage Properties (Lord Howe Island) 1991*

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condition of residence on a lease held or owned (subject to mortgage) by, or subleased to, an Islander who already (whether jointly or not) holds or owns (subject to mortgage) or subleases not more than one other lease.

(9) Where a lease is held or owned (subject to mortgage) by, or is subleased to, 2 or more persons jointly, subsections (7) and (8) extend to authorising suspension of the condition of residence in respect of any of the joint holders, owners or sublessees in the same way as they do in respect of a sole holder, owner or sublessee.

(10) The Minister may annex to any such lease such conditions, reservations and provisions as the Minister thinks fit. Any such condition, reservation or provision annexed to a lease may on application by the lessee in the manner prescribed by the regulations and on the recommendation of the Board be varied, modified or revoked by the Minister.

(11) The annual rent of the lease to be paid annually in advance is to be not less than \$20 per hectare or part of a hectare or, where some other rent is prescribed for the purposes of this subsection, that other rent.

(12) Where, on a day on which payment of the rent for a lease under this section is due, the lessee is a person referred to in paragraph (a), (b) or (c) of the definition of "eligible pensioner" in section 160AA of the Local Government Act 1919, the lessee is not liable to pay on that day a greater rent than the minimum rent in force on that day under subsection (11).

(13) Subsections (11) and (12) apply to and in respect of the rent payable under a lease whether or not it has been redetermined under any provision of this Part.

**Rent of lease in perpetuity**

21. (1) The Board is required to determine, in accordance with a valuation made at its request by the Valuer-General, the rent for each lease that, after the commencement of this section, is granted under section 20.

(2) The Board is required to redetermine from time to time the rent of a lease granted under section 20. The redetermination is to take effect on and from the tenth anniversary of the day on which the lease

commenced or the tenth anniversary of the day on which the last redetermination took effect.

**Special leases**

22. (1) Subject to this section, the Minister may lease Crown lands for cultivation or grazing or cultivation and grazing or for such other purpose as the Minister, on the recommendation of the Board, may approve.

(2) The term of a lease under this section may be fixed for any period not exceeding 10 years, but the term may, on the recommendation of the Board, be extended by the Minister for such period as the Board may recommend.

(3) A lease may only be granted under this section to the holder of a lease under section 20.

(4) An application for a lease under this section is to be made to the Board in the manner prescribed by the regulations and in the prescribed form.

(5) The Board is to report to the Minister as to whether there is any objection in the public interest or otherwise to the granting of the application either as to the whole or any part of the land the subject of the application and generally as to the merits of the application. If the Board considers it expedient to recommend the granting of the application (either as to the whole or any part of the land the subject of the application), it is also to report as to what conditions (if any) should attach to the lease and to proceed to determine the rent of the land having regard to its productivity and the proposed use of the land.

(6) After receipt of such a report, the Minister may grant a lease (either as to the whole or any part of the land the subject of the application) if the Board so recommends, or the Minister may refuse the application.

(7) The Minister may annex to any such lease such conditions, reservations and provisions as the Minister thinks fit. A condition, reservation or provision annexed to a lease or the purpose for which the lease has been granted may, on application by the lessee in the manner prescribed by the regulations and on the recommendation of the Board, be varied, modified or revoked by the Minister.

(8) The annual rent of the lease, to be paid annually in advance, is to be as determined by the Board.

(9) The Minister, on the recommendation of the Board, may withdraw from any lease under this section any land required for home sites or public purposes, subject to the payment to the lessee of compensation as determined by the Board for improvements on the area so withdrawn.

#### **Surrenders**

23. (1) The holder of a lease under this Part may lodge in the manner prescribed by the regulations an instrument of surrender, in the prescribed form, as to the whole or a part of the land comprised in the lease.

(2) Subject to section 24 (9), the surrender takes effect on the day of its acceptance by the Minister, on the recommendation of the Board.

(3) The Board may determine, demand and recover the costs, including costs of any necessary survey, in connection with the surrender.

#### **Transfers and subleases**

24. (1) A lease under this Part may be transferred in the manner prescribed by the regulations and the prescribed form as to the whole or a part of the land comprised in the lease or may be sublet at any time. The consideration for the transfer must not exceed the fair market value of the interest of the transferor in the unimproved land the subject of the lease, the fair market value for the improvements on the land at the commencement of the lease and the fair market value of any improvements subsequently effected on the land with the approval of the Board and, in the case only of a lease of land used for commercial purposes, a sum for the goodwill of the business conducted on the land, being goodwill transferred to the transferee in connection with the transfer of the lease or accruing to the transferee in consequence of the transfer. Such fair market values and, as the case may require, such sum for goodwill are to be as determined by the Valuer-General.

(2) Despite anything in subsection (1), a lease may not be transferred, by way of mortgage or discharge of mortgage, as to part only of the land comprised in the lease.

(3) A lease may be transferred or subleased to 2 or more persons as joint tenants or tenants in common but, for the purposes of any transfer

*World Heritage Properties (Lord Howe Island) 1991*

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or sublease to 2 or more persons who are not all Islanders, a reference in this Part (however expressed) to a person other than an Islander applies in respect of each transferee or sublessee who is not an Islander.

- (4) Applications for consent to transfer, except:
- (a) by way of discharge of mortgage; or
  - (b) to the Board by way of mortgage as security for an advance under section 44,

or to sublet a lease under this Part are to be made in the manner prescribed by the regulations and in the prescribed form. Any such transfer or subletting may not be effected, or if effected is not valid, unless the consent of the Minister and, in the case of a transfer or subletting to a person other than an Islander, the approval of the Governor, has been obtained.

(5) The Minister may consent to the transfer (not being a transfer referred to in subsection (4) (a) or (b)) or subletting if the Board so recommends, or the Minister may refuse consent.

(6) The Board has an absolute discretion to recommend the granting or refusal of any application for consent under this section, but may not recommend the granting of consent to a transfer or subletting to any person other than an Islander unless satisfied that there is no Islander who desires and is in a position to take a transfer or sublease, as the case may be, of the lease.

(7) Where, in the case of an application for consent to transfer a lease as to the whole of the land comprised in the lease to a person other than an Islander, the Board is prepared to recommend, in accordance with subsection (6), the granting of the application but as to part only of the land so comprised, the Board may, by notice served on the applicant, state that it is prepared so to recommend if the applicant within 3 months lodges with the Board an instrument of surrender of such part of the land comprised in the lease as is specified in the notice, being the part as to which the Board is not prepared so to recommend.

(8) If the applicant within 3 months lodges with the Board such an instrument of surrender, the application may be dealt with as if the applicant had originally applied for consent to the transfer as to the land that would be comprised in the lease after the surrender takes effect.



(9) An instrument of surrender under subsection (7) does not take effect until the day on which the transfer takes effect.

(10) Where, in accordance with this section, a lease (in this subsection referred to as "the original lease") is transferred to any person as to part only of the land comprised in the original lease, and the residue of the land comprised in the original lease is retained by the transferor:

- (a) where the original lease was a lease under section 20, separate leases in the prescribed form are to be issued in respect of the part so transferred and the residue so retained, and the original lease is to be delivered up for cancellation; and
- (b) where the original lease was a lease under section 22, the lease of the part so transferred and the residue so retained are each to be held for the balance of the term for which the original lease was held before the transfer; and
- (c) the lease of the part so transferred and the residue so retained are, as from the transfer, each to be held in all respects as a separate lease, but are, subject to section 20 (10), or section 22 (7), as the case may require, and to section 32, to be subject to such conditions, reservations or provisions as applied in respect of the original lease immediately before the transfer; and
- (d) the Board may determine, demand and recover from the transferor the costs of any necessary survey in connection with the transfer.

#### **Transfers - exclusion of land for access**

25. The Minister, on the recommendation of the Board, may, when giving consent to an application to transfer a lease as to part of the land comprised in the lease, exclude from any of the land comprised in the firstmentioned lease any areas required for providing roads of access to the part so transferred or the residue so retained, or both. Any such exclusion does not take effect until the day on which the transfer takes effect, on which day the areas so excluded are to be taken to have been surrendered.

#### **Mortgages of leases**

26. (1) If any lease under this Part is mortgaged and the mortgagee enters into possession of the lease under the mortgage, the mortgagee may hold the lease for such period as the Minister, on the

recommendation of the Board, may permit. The mortgagee may not, despite the terms of the mortgage, so enter into possession of the mortgaged land more than once, except by permission of the Minister on the recommendation of the Board. The mortgagee may not foreclose the mortgage except with the consent of the Minister on the recommendation of the Board. Such a consent is to be applied for, and may be given or refused, as in the case of a transfer.

(2) The mortgagee may not transfer the lease except in accordance with this section or by way of discharge of mortgage.

(3) If, within the period referred to in subsection (1), the mortgagee does not obtain the consent of the Minister to a foreclosure, or does not transfer the lease in accordance with this Division, the lease is liable to forfeiture, and on notification by the Minister in the Gazette may be forfeited, and on forfeiture reverts to the Crown.

(4) Where the Board is the mortgagee of any lease under this Part, the provisions of section 24 (4), (5) and (6) and subsections (1), (2) and (3) of this section do not have effect in respect of the lease mortgaged, and the following provisions have effect:

- (a) If the Board as mortgagee enters into possession of the lease under the mortgage, the Board may not foreclose the mortgage except with the consent of the Minister.
- (b) The Board as mortgagee:
  - (i) may not transfer the lease except with the consent of the Minister or by way of discharge of mortgage, or sublet the lease except with that consent; and
  - (ii) may not apply for consent to transfer or sublet to any person other than an Islander unless satisfied that there is no Islander residing on the Island who desires and is in a position to take a transfer or sublease, as the case may be, of the lease.
- (c) Such a transfer or subletting may not be effected, or if effected is not valid, unless the consent thereto of the Minister and, in the case of a transfer or subletting to a person other than an Islander, the approval of the Governor, has been obtained.
- (d) Where the Board as mortgagee applies for consent under this subsection, the Minister may give consent, or may refuse consent.

**Avoidance of certain foreclosures and transfers**

27. A foreclosure or transfer in contravention of this Division is void and any agreement or contract for the sale of such lease made without the permission of the Minister renders the lease liable to forfeiture if the agreement or contract is not submitted for the approval of the Minister within 3 months from the date of execution of the agreement or contract.

**Evidence of entry into possession by mortgagee**

28. The fact that the mortgagee or some person by authority of the mortgagee occupies or uses any part of the mortgaged land is prima facie evidence that the mortgagee has entered into possession of the land under the mortgage.

**Devolution of lease under will or intestacy**

29. (1) If a lease under this Part devolves under a will or intestacy on any person, the person may hold the lease for such period after the death of the testator or intestate as the Minister, on the recommendation of the Board, may permit.

(2) Within any such period the person may, on application and on the recommendation of the Board, obtain a certificate from the Minister that the person is entitled to hold the lease or the person may, subject to this Division, sell and transfer the lease.

(3) If, by the provisions of the will or by law, the person has power to sell the lease, the sale may be effected under that power. In any other case, the sale may be effected with the consent of all persons beneficially entitled to the lease or by order of the Supreme Court. The order may be obtained in the manner prescribed by rules of court, or until such rules are made, by summons.

(4) If the person does not within any such period obtain the certificate of the Minister or transfer the lease, the lease together with any money paid to the Crown in respect of the lease is liable to forfeiture.

(5) Where, under the will, or on the intestacy, of a lineal ancestor, a lease under section 20 devolves beneficially on a person who is not an Islander, that person, for the purposes of sections 24 (4), (6) and (7), 26 (4) and 32, is to be taken to be an Islander if application is, not later than the expiration of the period of 2 years, or such longer period as

the Minister may in a particular case approve, that next succeeds the death of the lessee, made for that person's registration as holder of the lease.

(6) Where, under the will, or on the intestacy, of a lineal ancestor, a lease under section 20 devolves beneficially on an Islander who is already a lessee under that section, the Minister may, on the recommendation of the Board, by order suspend the condition of residence to which the lease is subject for such period, and subject to such conditions as to the transfer of the lease to a child or children of the beneficiary, and such other conditions, as the Minister thinks fit.

(7) Where a child to whom a condition under subsection (6) as to a transfer to the child of a lease relates is not an Islander at the time for compliance with the condition, the child is, for the purpose of compliance with the condition, to be taken to be an Islander if application is made for consent to a transfer to the child, but registration of such a transfer must be refused if it is lodged for registration after the expiration of the period of 6 months that next succeeds the expiration of the period for which the condition of residence was suspended under subsection (6).

#### **Protection of persons registering transfers**

30. Any provision in any other Act whereby:

- (a) a person acquiring title to land, whether by devolution or otherwise; or
- (b) the Registrar-General or other person registering or certifying title,

is protected against notice of any matter or fact or excused from the need to inquire into any matter or fact (including satisfaction of condition, exercise of power or want of authority) extends and is taken to have always extended to a person acquiring title to any land or holding under this Part, or the Minister, in the course of registering any transfer, transmission or devolution of any land or holding under this Part, as the case may require.

#### **Appeal to Land and Environment Court**

31. Any determination or redetermination by the Board of rent or of fair market values or of a sum for goodwill under this Division or section 32 may be the subject of an appeal or reference by a person aggrieved or by the Minister to the Land and Environment Court. That

*World Heritage Properties (Lord Howe Island) 1991*

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Court has jurisdiction to hear and determine any such appeal or reference. Any such appeal is to be made within the time prescribed by the regulations and in the prescribed manner in the prescribed form and is to be accompanied by the prescribed deposit. Any such reference is to be made within the time and in the manner prescribed.

**Division 2 - Redetermination of rent on transfer  
of a lease to a person other than an Islander**

**Redetermination of rent on certain transfers**

32. (1) On the transfer of a lease under this Part to any person other than an Islander, the rent of the lease is to be as redetermined by the Board in accordance with a valuation made at its request by the Valuer-General.

(2) Such a redetermination is to be made as at the date of the transfer.

(3) The rent as so redetermined operates in respect of the lease on and from the date on which the annual rent is next payable after the transfer.

(4) Where the lease is a lease in perpetuity under section 20, the rent as so determined remains in force for a period of 10 years. Subsequent determinations are to be made at intervals of 10 years and each such determination is to be made as at the date of expiration of the period of the last preceding determination and remains in force for a period of 10 years from that date. However, if at any time the lease is transferred to an Islander, the annual rent is, subject to section 20 (11), to be redetermined by the Board with effect on and from the date on which the annual rent is next payable after the transfer until the expiration of the period of the last preceding determination.

**Division 3 - Deferring or waiver of rent**

**Rent may be deferred or waived**

33. On application, the Minister, on the recommendation of the Board, may defer or waive the payment of any rent due or to become due under any lease. Any such deferment or waiver is subject to such terms and conditions as the Minister may on a like recommendation impose.

**Forfeiture**

**34. (1)** Every lease under this Part is liable to be forfeited:

- (a) if any rent is not paid as required by this Part; or
- (b) on breach of any condition annexed to the lease by or under this Part; or
- (c) if it appears to the satisfaction of the Minister after report by the Board that the land comprised in the lease is not used and occupied bona fide for the purpose for which the lease was granted; or
- (d) where in pursuance of any other provision of this Part the lease becomes liable to forfeiture.

(2) Whenever under this Part a lease becomes liable to be forfeited, the forfeiture may be declared by the Minister by notification in the Gazette.

(3) No forfeiture of any lease under this Part takes effect until the expiration of 30 days after notification of the forfeiture in the Gazette.

(4) The forfeiture of a lease under section 20 operates as a forfeiture of any lease under section 22 held by the same lessee in the same interest.

(5) The acceptance by or on behalf of the Crown of any rent or other payment in respect of a lease under this Part does not operate as a waiver by the Crown of any forfeiture accruing by reason of the breach of any condition annexed by or under this Part to the lease.

(6) In any case in which it appears to the Minister after report by the Board that there are good and sufficient reasons for the waiver of any forfeiture, the Minister may, despite anything contained in the conditions annexed to the lease by or under this Part, declare that the forfeiture is waived:

- (a) absolutely; or
- (b) subject to compliance with the conditions annexed to the lease within such time (or extension of that time) as the Minister determines; or
- (c) on such other conditions to be attached to the lease as the Minister, after the Board has made a recommendation in the matter, sees fit to impose.

The forfeiture is waived on the making of the declaration.

(7) The Minister, on the recommendation of the Board, has power to reverse, whether provisionally or otherwise, any forfeiture declared under this section, subject to the following provisions:

- (a) A provisional reversal of a forfeiture suspends the operation of the forfeiture, as from the date when such forfeiture is declared. In any case, where the provisional reversal is afterwards revoked, the revocation has the same effect as if the provisional reversal so revoked had never been made.
- (b) Any absolute reversal of a forfeiture relates back to the date when forfeiture is declared, and has the same effect as if the forfeiture so reversed had never been declared.
- (c) Any reversal of a forfeiture is, as soon as practicable, to be notified in the Gazette, but the date of the reversal is the date of the approval of the reversal by the Minister.

#### **Division 4 - Improvements**

##### **Definitions**

35. In this Division:

"**improvements**" means improvements of a permanent, fixed and substantial character, and necessary for the profitable occupation of the land, and fencing - where of the same description - is to be taken to be an improvement common to the land on either side of the fencing;

"**capital value of improvements**" means their capital value determined so as to be:

- (a) their value at the date of the commencement of the title of the incoming tenant; and
- (b) their value to such tenant; and
- (c) exclusive of any value which may be due to the inherent capabilities of the land.

##### **Payment for improvements etc.**

36. (1) Where Crown lands containing improvements which are the subject of tenant-right become the subject of a lease under this Part, the incoming tenant is required to pay the capital value of the improvements to the person having tenant-right in them.

(2) The amount of the capital value payable by an incoming tenant is to be as determined by the Board, but where the incoming tenant has agreed with the person having tenant-right in the improvements as to payment for the improvements, no determination by the Board is necessary.

(3) Where the incoming tenant has agreed with the person having tenant-right in the improvements as to payment for the improvements, the payment is to be made within the time and in accordance with the terms agreed on.

(4) Where the incoming tenant has not agreed with the person having tenant-right in the improvements as to payment for the improvements, the payment is to be made within 3 months after the determination of the Board (in which case no interest may be charged) or at the option of the incoming tenant by not more than 4 equal yearly instalments, together with interest at the rate of 4 per cent per annum.

#### **Tenant-right in improvements**

37. (1) On the expiration by effluxion of time of the term of a lease under section 22, the last holder has tenant-right in improvements which at the date of commencement of the lease were on the land previously held under the expired lease and in improvements subsequently effected on the land with the approval of the Board.

(2) On the forfeiture of any lease under this Part, the Minister, on the recommendation of the Board, may by notification in the Gazette grant to the last holder tenant-right in improvements which were on the land at the date of commencement of the lease and in improvements subsequently effected on the land with the approval of the Board.

(3) Where, under this section, a person has tenant-right in improvements, such tenant-right accrues on the determination of the lease and entitles the person in whom for the time being the tenant-right is vested to receive the capital value of the improvements from any persons who take leases of the land containing the improvements, and the following provisions as to tenant-right apply in all cases:

- (a) The improvements are the property of the person claiming to have tenant-right in respect of them.
- (b) The capital value of the improvements, or so much of the capital value as for the time being remains unpaid, is a charge



on the land containing such improvements while in the hands of the lessee, until payment of the capital value.

- (c) The holder of the lease of the land containing the improvements is liable to pay any instalments of the capital value of the improvements which accrue during the holder's holding.
- (d) The tenant-right lapses after the expiration of 12 years from the date of its first accruing, and thereafter the improvements are the property of the Crown, but the lapsing does not affect any agreement, determination or order for payment previously made.

**Right to payment for improvements not to be lost by subsequent forfeiture of the land**

38. (1) Where a lessee of land containing improvements which are the subject of tenant-right under this Part pays to the person having tenant-right part of the capital value of the improvements, and the lease becomes forfeited, such share of the capital value of the improvements as is represented by the amount paid up to the time of the forfeiture, (subject to this Act) vests in the Crown, and the remaining share of the improvements continues (or in the case of no such payments having been made, then the whole of the improvements continue) to belong to the person having tenant-right, and are subject to tenant-right as defined by this Part.

(2) If, after the forfeiture, the land becomes the subject of a lease under this Part, a determination or redetermination, as the case may be, is thereon to be made of such share of the capital value of the improvements as is vested in the person having tenant-right.

**Permissive occupancies**

39. (1) The Minister, on the recommendation of the Board, may grant permissions to occupy vacant Crown lands or Crown lands the subject of a reservation under this Act, whether above or below or beyond high water mark, for such purposes and on such terms and conditions as the Minister may impose on the recommendation of the Board.

(2) A permission to occupy any such Crown lands or a permissive occupancy of Crown lands granted or purporting to have been granted before the commencement of the Lord Howe Island (Amendment)

Act 1967, and whether or not a tenancy was created or purported to have been created thereby, is taken to have been validly granted and to have and always to have had force and effect subject to the terms and conditions of the permission.

(3) A permission to occupy Crown lands or a permissive occupancy of Crown lands referred to in subsection (2) or a permission to occupy Crown lands granted under subsection (1) is terminable at will by the Minister on the recommendation of the Board.

#### **Division 5 - Trespass on Crown lands or dedicated lands**

##### **Trespass on Crown lands or dedicated lands**

40. (1) Any person who, without lawful authority, occupies or uses any vacant Crown lands or land reserved or dedicated for any public purpose under this Act, by:

- (a) dwelling on the land; or
- (b) erecting any building or other structure on the land; or
- (c) clearing, digging up, enclosing or cultivating any part of the land; or
- (d) depasturing stock on the land,

is guilty of an offence.

(2) Any person who, without lawful authority, in respect of any vacant Crown lands or land reserved or dedicated for any public purpose under this Act:

- (a) causes to be cut or removed any timber or products on the land; or
- (b) obtains or causes to be obtained any stone, clay, shells, earth, gravel or similar material from the land; or
- (c) removes or causes to be stripped or removed the bark of any tree on the land; or
- (d) ringbarks or otherwise destroys any tree on the land,

is guilty of an offence.

(3) Any person duly authorised by the Board in that behalf may impound any stock trespassing on any vacant Crown lands or land reserved or dedicated for any public purpose under this Act, and may recover damages for damage caused by the stock trespassing.

(4) Any person duly authorised by the Board in that behalf may dispossess and remove any person (in this subsection called "the occupier") from any Crown lands in respect of which the occupier is in illegal occupation or use and require the occupier to demolish any building or structure erected on the lands and remove the materials of the building or structure to some convenient place within the time specified in the requirement. If within the time so specified the occupier fails to comply with the requirement, the person duly authorised by the Board may do all such acts, matters and things as the occupier was required to do. The expenses of doing those acts, matters and things are to be borne by and may be recovered as a debt from the occupier by the Board in any court of competent jurisdiction.

Maximum penalty: 5 penalty units and, in the case of a continuing offence, a further daily penalty of 1 penalty unit.

#### **Division 6 - Timber**

##### **Timber to be property of the Crown**

41. (1) All timber on the Island remains the property of the Crown even though the land on which the timber is growing becomes the subject of a lease or reservation or dedication under this Act.

(2) A person must not remove, cut, ringbark or otherwise destroy any timber growing on land which becomes the subject of any lease under this Part, unless, being the holder of the lease, the person is authorised to do so by the Board or by the conditions of the lease.

Maximum penalty (subsection (2)): 5 penalty units.

#### **PART 5 - FINANCE**

##### **Lord Howe Island Account**

42. (1) There is to be established and kept in the Treasury an account in the Special Deposits Account to be called the Lord Howe Island Account.

(2) Subject to section 43, there is to be paid to the credit of the Lord Howe Island Account:

- (a) all money received from the sale of *Kentia* palm seed;
- (b) all money received by way of rent, licences, fees, dues or charges prescribed by or under this Act;
- (c) all other money received by the Board in the conduct of the affairs of the Island;

- (d) all other money paid into the Lord Howe Island Account under the authority of this or any other Act.
- (3) Subject to section 43, there may be paid out of the Lord Howe Island Account:
  - (a) all expenses incurred in the gathering, collection and sale of *Kentia* palm seed;
  - (b) all administrative and other expenses incurred in giving effect to any of the provisions of this Act or the regulations;
  - (c) all payments authorised by or under this or any other Act to be paid out of the Lord Howe Island Account.

#### **Lord Howe Island Mortgages Account**

43. (1) There is to be established and kept in the Treasury an account in the Special Deposits Account to be called the Lord Howe Island Mortgages Account.

(2) There is to be paid to the credit of the Lord Howe Island Mortgages Account:

- (a) all money made available to the Board by the Treasurer for advances under section 44;
- (b) all money received by way of repayments of those advances and interest thereon.

(3) There may be paid out of the Lord Howe Island Mortgages Account:

- (a) all money advanced under section 44;
- (b) such money as is required by the Treasurer to be repaid to the Treasurer from time to time.

#### **Advances by the Board on mortgage**

44. (1) The Board may, on the application of an Islander, advance money to the Islander:

- (a) for the whole or part of the consideration for the transfer of a lease under this Act to the Islander under Division 1 of Part 4;  
or
- (b) for effecting improvements on land the subject of a lease under section 20 held by the Islander,

on the security of a mortgage of that lease in favour of the Board.

(2) The Treasurer may from time to time make money available to the Board for advances under this section.

#### **Financial year**

45. (1) The financial year of the Board is the year ending 30 June.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

### **PART 6 - MISCELLANEOUS**

#### **Application of Dog Act 1966**

46. For the purposes of the Dog Act 1966, the Board is taken to be the council of an area comprised of the Island.

#### **Annual report**

47. The Board is required to include in its annual report prepared in accordance with the Annual Reports (Statutory Bodies) Act 1984 particulars of any transfers or sublettings of leases under this Act to persons other than Islanders.

#### **Proceedings for offences**

48. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

#### **Regulations**

49. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, including regulations:

(a) for or with respect to:

- (i) the protection and conservation of the Island's world heritage values;
- (ii) any function conferred or imposed on the Board by or under this Act;

- (iii) the introduction into the Island and the use and sale on the Island of intoxicating liquor;
- (iv) the licensing, control and regulation of public accommodation and commercial undertakings on the Island and the licensing of, and the terms and conditions to be observed by, persons associated with them;
- (b) prescribing the forms of licences and of renewals and transfers of licences and of applications for them;
- (c) prescribing the fees to be paid for licences granted under this Act;
- (d) applying any or all of the provisions of the Crown Lands Act 1989 with such modifications and adaptations as may be necessary to matters arising under this Part or Part 4;
- (e) prohibiting the introduction of any species of fauna or flora to the Island or prescribing conditions in relation to the introduction of any species of fauna or flora;
- (f) prohibiting the cutting or removal from any land on the Island of timber or any other form of vegetative cover or prescribing conditions under which any such timber or vegetative cover may be cut or removed from any such land;
- (g) for or with respect to:
  - (i) the prohibition, regulation or control of the use of motor vehicles on the Island;
  - (ii) the prohibition, regulation or control of the removal from the Island of flora or fauna or coral or any other prescribed substance forming part of the Island;
  - (iii) prohibiting damage to, or the destruction of, flora or fauna or coral or any prescribed substance forming part of the Island;
  - (iv) the destruction of plants declared by the regulations to be noxious; or
- (h) for or with respect to the production and sale of *Kentia* palm seeds, seedlings and trees.

(2) Without limiting the generality of subsection (1), regulations may be made that are applicable to or in relation to land within the Lord Howe Island National Park, being regulations for or with respect to:

*World Heritage Properties (Lord Howe Island) 1991*

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- (a) the regulation of the use and enjoyment of the land;
- (b) the securing of order and decency on the land including the removal of trespassers from the land and the removal from the land of persons causing annoyance or inconvenience on the land;
- (c) the regulation, control or prohibition of animals on the land and public or other roads traversing the land;
- (d) the regulation, control or prohibition of mooring adjacent to, or parking or camping on, the land and the making of charges for any such mooring, parking or camping;
- (e) the preservation or protection of, or prevention of damage to, trees or any other forms of vegetative cover on the land;
- (f) the conditions under which trees or timber may be cut or removed from the land and the amount and payment of royalties, fees and charges in respect of the cutting or removal;
- (g) the preservation or protection of any rocks, soil, sand, stone or other similar substance on or comprising part of the land, or the removal of any such substance from the land and the amount and payment of royalties, fees and charges in respect of the removal;
- (h) the preservation or protection of any animal or bird, within the meaning of the National Parks and Wildlife Act 1974, on the land;
- (i) the preservation or protection of, or prevention of damage to, any relic, within the meaning of the National Parks and Wildlife Act 1974, on the land;
- (j) the regulation, control or prohibition of the use on the land of any such relic for commercial purposes;
- (k) except as provided by section 14 (8), the making of charges or payment of entrance fees for persons, clubs or associations or for vehicles using or entering the land or any specified part of the land or any public or other road traversing or bounding the land or such a part;
- (l) the reservation of a part of the land for such separate or exclusive use as is prescribed by the regulations;
- (m) the regulation, control or prohibition of the entry of any person or class of persons on the land or a specified part of the land;

*World Heritage Properties (Lord Howe Island) 1991*

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- (n) the use of roads, tracks, trails and other ways on the land and the circumstances under which they are to be open or may be closed to public traffic or use;
  - (o) the functions of any officer of the Board in relation to the land;
  - (p) the regulation or prohibition of the use of vehicles on the land, the conditions under which they may be used on the land and the regulation of the speed of any vehicle permitted on the land;
  - (q) the protection of signs and other management facilities placed on the land in accordance with the plan of management;
  - (r) the regulation, control or prohibition of exotic plants on the land;
  - (s) the collection of scientific specimens, the preservation or protection of marine life (other than fish within the meaning of the Fisheries and Oyster Farms Act 1935) and the pursuit of research on the land;
  - (t) the regulation, control or prohibition of the use of firearms or other weapons on the land and the carrying of firearms or other weapons while on the land;
  - (u) the management and maintenance of pounds on the land;
  - (v) the procedure for the impounding of animals on the land and for their subsequent disposal, sale or destruction;
  - (w) the damage fees, driving charges, sustenance charges, deterrent fees and pound fees chargeable in respect of the impounding of animals on the land; and
  - (x) the fees chargeable in respect of the sale or offering for sale and in respect of the destruction of animals impounded on the land.
- (3) Except as provided by section 14 (8), the regulations may make provision for or with respect to:
- (a) the payment of a charge by tourists to the Island; and
  - (b) the rate of any such charge.
- (4) The regulations may authorise or require the Board to exercise such functions as may be specified in the regulations.
- (5) Regulations under subsection (4) may adopt any of the provisions of the Local Government Act 1919 and the ordinances made under that Act, with such modifications and adaptations as the Governor considers necessary or desirable.



(6) A regulation may create an offence punishable by a penalty not exceeding 4 penalty units and, in the case of a continuing offence, a further daily penalty not exceeding 1 penalty unit.

**Repeals**

50. (1) The Lord Howe Island Act 1953 is repealed.

(2) The Lord Howe Island Aerodrome Act 1974 is repealed.

**Savings, transitional and other provisions**

51. Schedule 3 has effect.

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**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS  
AND PROCEDURE OF THE LORD HOWE ISLAND BOARD**

(Sec. 7 (1) (f), (2))

**Definitions**

1. In this Schedule:

"Islander member" means an Islander who is appointed to the Board under section 7 (1) (f) or clause 7 (b).

**Election of Islander members**

2. (1) An election for the purpose of electing the Islander members to be appointed to the Board under section 7 (1) (f) is to be held every 3 years.

(2) An election for the purpose of filling a vacancy in the office of an Islander member under clause 7 (b) (i) is to be held as soon as practicable after the vacancy occurs.

(3) The elections are to be conducted by the Electoral Commissioner.

(4) A person enrolled on the State electoral roll for the electorate in which the Island is situated is entitled to be enrolled as an elector for an election under this Schedule if the person resides on the Island and the person's address on that electoral roll is an address on the Island.

SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS  
AND PROCEDURE OF THE LORD HOWE ISLAND  
BOARD - *continued*

(5) The regulations may make provision with respect to the enrolment of electors, the nomination of persons as candidates at an election under this Schedule, the time for holding such an election, the appointment of electoral officers, the system of election, the method of voting, the conduct of the election, the declaration of the poll and all matters associated with the election.

**Deputy Chairperson**

3. The members are, each year, at a meeting of the Board to elect one of the Islander members to be the Deputy Chairperson of the Board.

**Terms of office**

4. (1) Subject to this Schedule:

- (a) a member, other than an Islander member, holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment; and
- (b) an Islander member holds office until his or her successor is appointed.

(2) If the member appointed under section 7 (1) (c) is an officer of the Ministry of the Environment ("the State officer"), the Minister may at any time appoint an officer of the Commonwealth Public Service nominated by the Commonwealth Minister administering the World Heritage Properties Conservation Act 1983 of the Commonwealth ("the Commonwealth officer") to replace that member. On such an appointment, the State officer ceases to be a member and the Commonwealth officer becomes a member for the balance of the term of office of the State member.

**Allowances**

5. A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS  
AND PROCEDURE OF THE LORD HOWE ISLAND  
BOARD - *continued*

**Vacancy in office**

6. (1) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (i) in the case of an Islander member, ceases to be an Islander; or
- (j) in the case of a member qualified as referred to in section 7 (1) (a), (b), (c), (d) or (e), ceases to be so qualified.

(2) The Minister may remove a member, other than an Islander member, from office at any time.

**Filling of vacancy**

7. (1) If the office of a member becomes vacant, the vacancy is to be filled:

SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS  
AND PROCEDURE OF THE LORD HOWE ISLAND  
BOARD - *continued*

- (a) in the case of a vacancy in the office of a member referred to in section 7 (1) (a), (b), (c), (d) or (e) - by the Minister appointing to the vacant office a person who is qualified to be such a member; or
- (b) in the case of a vacancy in the office of an Islander member:
  - (i) if the Minister is of the opinion that an election under clause 2 (1) is not likely during the 6 months after the vacancy occurred - by the Minister appointing to the vacant office the Islander elected at an election held as provided by clause 2 (2) to fill the vacancy; or
  - (ii) if the Minister is of the opinion that an election under clause 2 (1) is likely during the 6 months after the vacancy occurred - by the Minister appointing an Islander to the vacant office.

(2) A member appointed under this clause holds office for the unexpired portion of the term of office of his or her predecessor.

**Effect of certain other Acts**

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS  
AND PROCEDURE OF THE LORD HOWE ISLAND  
BOARD - *continued***

**Personal liability of members etc.**

9. A matter or thing done by the Board, a member of the Board or any person acting under the direction of the Board does not, if the matter or thing is done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**General procedure**

10. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

**Quorum**

11. The quorum for a meeting of the Board is 5 members, at least one of whom must be an Islander member.

**Presiding member**

12. (1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson of the Board, is to preside at a meeting of the Board.

(2) In the absence of the Chairperson and the Deputy Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Board.

(3) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

13. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**Transaction of business outside meetings or by telephone etc.**

14. (1) The Board may, if it resolves unanimously to do so, transact any of its business by the circulation of papers among all the members

SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS  
AND PROCEDURE OF THE LORD HOWE ISLAND  
BOARD - *continued*

for the time being, and a resolution in writing approved in writing by a sufficient number of those members to constitute a quorum at a meeting of the Board is to be taken to be a decision of the Board.

(2) The Board may, if it resolves unanimously to do so, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the Chairperson of the Board and each other member have the same voting rights they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**Proof of certain matters not required**

15. In any legal proceedings proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the appointment of, or the holding of office by, any member of the Board; or
- (d) the presence of a quorum at any meeting of the Board.

**SCHEDULE 2 - LORD HOWE ISLAND NATIONAL PARK**

(Sec. 14)

**Part 1**

All that piece or parcel of land at Lord Howe Island: Commencing at the easternmost corner of Portion 117 and bounded thence by part of the southeastern boundary of that portion to the northernmost corner of Portion 119; thence generally by the eastern boundaries and part of the southeastern boundary of Portion 119 to the northernmost corner of Portion 124; thence by the northeastern boundaries of Portions 124, 123 and 131 to the easternmost corner of Portion 131; thence by the southeastern boundary of Portion 131 and its prolongation southwesterly to the southernmost corner of Portion 129; thence by the generally southeastern boundaries of Portion 128 to the southernmost corner of Portion 128; thence by part of the southernmost southwestern boundary of Portion 128 to a point east of and distant 50 metres from mean high water mark of the South Pacific Ocean; thence by a line 50 metres east of and parallel to that mean high water mark and extending southwesterly for a distance of about 1400 metres; thence by a line westerly 50 metres to the mean high water mark; thence by that mean high water mark generally southwesterly, northeasterly and northwesterly around all the bays and headlands including King Point, Red Point, Sugarloaf Point, Cut Grass Point, East Point, Edmanoch Point (Boat Harbour Point), Rocky Point and Mutton Bird Point to a point on the mean high water mark of Ross or Blinkenthorpe Bay due east of the easternmost corner of Portion 117; thence by a line extending westerly to the point of commencement.

**Part 2**

All that piece or parcel of land situated at Lord Howe Island: Commencing at the southernmost corner of Portion 74 and bounded thence by the generally northwestern boundaries and the northernmost northeastern boundary of Portion 74; thence by northeastern and northwestern boundaries of Portion 73 to the northernmost corner of Portion 73; thence by the northern end of road separating Portion 73 from Portion 66; thence by generally southwestern, northeastern and northwestern boundaries of Portion 66 to the most easterly northern corner of Portion 66; thence by the northeasterly prolongation of the easternmost northwestern boundary of Portion 66 to the mean high water mark of the South

**SCHEDULE 2 - LORD HOWE ISLAND NATIONAL  
PARK - *continued***

Pacific Ocean at Neds Beach; thence by that mean high water mark generally northerly, westerly, southerly and easterly around all the bays and headlands including Old Gulch, Phillip Bluff (Fishy Point), New Gulch, Phillip Point (North Head), North Bay, Dawsons Point and part Hunter Bay to a point at the western end of Old Settlement Beach; thence by a line being the southeasterly prolongation of the southernmost southwestern boundary of Portion 74 extending northwesterly to the point of commencement.

**Part 3**

All those pieces or parcels of land situated at Lord Howe Island being the following named islands: Flat Rock, North Rock, Tenth of June, Roach Island, South Island, Sugarloaf, Noddy, Soldiers Cap, Blackburn Island, Gower Island, Sail Rock, Mutton Bird Island and unnamed island north of the most northerly point of Lord Howe Island lying between that point and Soldiers Cap.

**Part 4**

All those pieces or parcels of land situated at the islands known as Ball's Pyramid, Wheatsheaf Island, Observatory Rock, South-East Rock and the unnamed islands in the vicinity.

**SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS**

(Sec. 51)

**Part 1 - General**

**Definitions**

1. In this Schedule:  
"former Act" means the Lord Howe Island Act 1953.

**Savings and transitional regulations**

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.



**SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued***

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

**Part 2 - Provisions consequent on enactment of this Act**

**General savings**

3. (1) Any act, matter or thing done or omitted to be done under a provision of the former Act and having any force or effect immediately before the commencement of a provision of this Act that replaces that provision is, on that commencement, to be taken to have been done or omitted under the provision of this Act.

(2) Subclause (1) does not apply:

- (a) to the extent that its application would be inconsistent with another provision of this Schedule or with a provision of a regulation in force under clause 2; or
- (b) to the extent that its application would be inappropriate in a particular case.

**Continuation of legal entity**

4. The Board is a continuation of, and the same legal entity as, the Lord Howe Island Board constituted under the former Act.

**Offices of Islander members of the Board**

5. A person who held office under section 4 (3) (a) of the former Act immediately before its repeal is to be taken to have been appointed under section 7 (1) (f) and is to hold office as a member until his or her successor is appointed following an election under clause 6.

**SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS - *continued***

**Election of Islander members of the Board**

6. The first election under clause 2 (1) of Schedule 1 is to be conducted on the day on which it would have been conducted if the former Act had not been repealed.

**Vesting of Lord Howe Island in the Crown**

7. The repeal of the former Act does not affect the vesting of the Island in Her Majesty pursuant to section 16 of that Act or create or revive any right to compensation in any person in respect of that vesting.

**Continuation of certain regulations etc.**

8. (1) The regulations in force under the former Act immediately before the repeal of that Act continue in force despite the repeal and are to be taken to have been made under this Act.

(2) The Lord Howe Island Regional Environmental Plan 1986 as in force immediately before the repeal of the former Act continues in force despite the repeal and may be altered, varied or repealed under the Environmental Planning and Assessment Act 1979, as applied by this Act.

**Lease relating to Lord Howe Island Aerodrome**

9. A lease granted under section 6 of the Lord Howe Island Aerodrome Act 1974 and in force immediately before the repeal of that Act is to be taken to be a lease to which section 32 (4) applies.

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