

# NORTHERN TERRITORY OF AUSTRALIA

## PASTORAL LAND ACT

As in force at 13 November 2014

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 13 November 2014

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## PASTORAL LAND ACT

**An Act to make provision for the conversion and granting of title to pastoral land and the administration, management and conservation of pastoral land, and for related purposes**

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Pastoral Land Act*.

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

***Aborigine*** means a person who is a member of the Aboriginal race of Australia.

***Appeal Tribunal*** means the Pastoral Land Appeal Tribunal established by section 115(1).

***approved*** means approved by the Minister.

***Board*** means the Pastoral Land Board established by section 11 or, in relation to a power or function delegated under section 24 to a member or members of the Board, that member or those members.

***Chairman***, in relation to the Board, means the Chairman appointed under section 16 and includes a person appointed under section 19(1) to act as the Chairman while the person is so acting.

***condition***, in relation to a pastoral lease, includes a covenant and a term and, in relation to land, means the state of the land.

**Crown land** means all lands of the Territory, including the bed of the sea within territorial limits, but does not include reserved or dedicated land.

**degradation**, in relation to land, means a decline in the condition of the natural resources of the land, including the capacity of the land to sustain pastoral productivity, resulting directly or indirectly from human activities on or affecting the land.

**District** means a pastoral district into which the Territory is divided under section 8.

**feral animal** means an animal of a kind introduced into Australia since 1787 that is living in a wild state.

**homestead**, in relation to land the subject of a pastoral lease, means a building or group of buildings and other facilities of a substantial nature built for residential, administrative and management purposes and used for those purposes in connection with the legitimate pastoral use of the land.

**improved pasture**, in relation to pastoral land, means a variety of plant not native to the District in which the pastoral land is situated that is sown and cultivated for consumption by grazing animals or for soil conservation or improvement purposes.

**improvements** has the same meaning as it has in the *Valuation of Land Act*.

**lessee** includes:

- (a) the person to whom a lease passes, whether by transfer or devolution;
- (b) a person permitted, in pursuance of an arrangement under section 50, to hold over land that was the subject of a former pastoral lease after the expiration of the term of the lease;
- (c) a mortgagee in possession; and
- (d) where applicable, a sublessee or other person in control of the relevant land.

**monitoring site** means a monitoring site established under section 75.

**non-pastoral purpose**, see section 85A(1).

**NTA** means the *Native Title Act 1993* (Cth).



***pastoral land*** means land the subject of a pastoral lease.

***pastoral lease*** means a lease granted over Crown land for pastoral purposes and includes a pastoral homestead lease and land which, in pursuance of an arrangement under section 50, is held over by the former lessee after the expiration of the term of a pastoral lease.

***pastoral lessee*** means a lessee under a pastoral lease.

***pastoral purposes*** means the pasturing of stock for sustainable commercial use of the land on which they are pastured or agricultural or other non- dominant uses essential to, carried out in conjunction with, or inseparable from, the pastoral enterprise, including the production of agricultural products for use in stock feeding and pastoral based tourist activities such as farm holidays, but does not include a use which, under section 91, is declared by the Board not to be a use for pastoral purposes.

***permit***, for Part 7, see section 85A(1).

***reference area*** means an area of pastoral land declared under section 74(1) to be a reference area.

***rehabilitate***, in relation to land, means to bring the land back as near as practicable to the condition it was in before its degradation, having particular regard to its capacity to carry stock and its level of soil stability or, where there is a remedial plan in force in respect of the land, the action required to comply with the remedial plan or as otherwise directed by the Board.

***remedial plan*** means a plan prepared by a pastoral lessee at the direction of the Board (or under section 76(5) by the Board) that details the proposed management of pastoral land over a specified period (or the time taken to rectify a problem) to prevent, arrest or minimise degradation of the pastoral land or to rehabilitate the land.

***rent*** means annual rental.

***stock*** means a species of animal permitted by or under this Act or the terms of a pastoral lease to be pastured on pastoral land as part of the pastoral enterprise under the lease.

***Surveyor-General*** means the person appointed or acting as the Surveyor-General for the Northern Territory under the *Licensed Surveyors Act*.

***unimproved value*** means unimproved capital value within the meaning of the *Valuation of Land Act*.

**Valuer-General** means the person appointed as the Valuer-General for the Northern Territory under the *Valuation of Land Act*.

- (2) In this Act, a reference to a lease as:
- (a) granted in perpetuity, means that the term of the lease continues indefinitely; and
  - (b) perpetual, means that the lease is granted in perpetuity.

## **Part 2                      Objects and duties**

### **4                      Objects**

The objects of this Act are:

- (a) to provide a form of tenure of Crown land that facilitates the sustainable use of land for pastoral purposes and the economic viability of the pastoral industry;
- (b) to provide for:
  - (i) the monitoring of pastoral land so as to detect and assess any change in its condition;
  - (ii) the prevention or minimisation of degradation of or other damage to the land and its indigenous plant and animal life; and
  - (iii) the rehabilitation of the land in cases of degradation or other damage;
- (c) to recognise the right of Aborigines to follow traditional pursuits on pastoral land;
- (d) to provide reasonable access for the public across pastoral land to waters and places of public interest; and
- (e) to provide a procedure to establish Aboriginal community living areas on pastoral land.

### **5                      Duty of Minister and Board**

The Minister and the Board, in administering this Act and in exercising a power or performing a function in relation to pastoral land, shall act consistently with, and seek to further, the objects of this Act.

## **6 General duty of pastoral lessees**

It is the duty of a pastoral lessee:

- (a) to carry out the pastoral enterprise under the lease so as to prevent degradation of the land;
- (b) to participate to a reasonable extent in the monitoring of the environmental and sustained productive health of the land; and
- (c) within the limits of the lessee's financial resources and available technical knowledge, to improve the condition of the land.

## **Part 3 Administration**

### **Division 1 General**

#### **7 Fees**

The Minister may, by notice in the *Gazette*, prescribe the fees to be charged in connection with matters under this Act.

#### **8 Pastoral districts**

The Minister may, by notice in the *Gazette*, after considering the recommendations, if any, of the Board, divide the Territory into such pastoral districts, and for such purposes, as the Minister thinks fit, and assign a name to each such district.

#### **9 Power to enter pastoral land**

- (1) The Minister or a member of the Board, or a person authorised in writing by the Minister or the Board, may at any time, after giving reasonable notice to the owner, occupier or person apparently in charge of the land, enter on pastoral land (other than a homestead on the land, unless with the permission of the lessee) for the purpose of giving effect to, or carrying out a function or exercising a power under, this Act, or for the purpose of assessing the land in connection with the preparation of an application under Part 8.
- (2) A person authorised by the Minister or the Board for the purposes of subsection (1) shall, on demand, show a copy of his or her written authority to the owner, occupier or person apparently in charge of the pastoral land.

## **10 Delegation by Minister**

- (1) The Minister may, by instrument in writing, delegate to a person any of the Minister's powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

## **Division 2 Pastoral Land Board**

### **11 Establishment of Board**

There is established by this Act a Board by the name of the Pastoral Land Board.

### **12 Composition of Board**

- (1) The Board shall consist of 5 members appointed by the Minister.
- (2) An appointment under subsection (1) shall be notified in the *Gazette* as soon as practicable after it is made.
- (3) The exercise of a power or the performance of a function of the Board is not affected by reason only of there being a vacancy in the membership of the Board.

### **13 Qualification for membership of Board**

In appointing members of the Board the Minister shall ensure that:

- (a) 2 persons who have experience as pastoralists are included;  
and
- (b) as far as practicable, the members collectively have expertise or experience that, in the opinion of the Minister, is relevant to their role as members.

### **14 Period of appointment**

Subject to this Act, a member of the Board holds office until the expiration of such period, not exceeding 4 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

## **15 Alternate members**

- (1) The Minister may, either concurrently with the appointment of a member to the Board or at a later time, appoint a person to act as the alternate of a member (other than the Chairman) while the member is prevented by illness, absence, the operation of section 20 or other cause considered sufficient by the Chairman, from performing the member's duties of office.
- (2) An appointment under subsection (1) shall be notified in the *Gazette* as soon as practicable after it is made.
- (3) An alternate member appointed under subsection (1) holds office during the period the member for which he or she is appointed alternate holds office or for such shorter period as is specified by the Minister in the instrument of appointment.
- (4) The Minister shall not appoint an alternate member under subsection (1) unless the person would be qualified in his or her own right to be appointed as a member.

## **16 Chairman**

- (1) The Minister shall appoint a person who is or is to be a member of the Board to be its Chairman.
- (2) An appointment under subsection (1) shall be notified in the *Gazette* as soon as practicable after it is made.
- (3) The Chairman shall, subject to the directions of the Board, administer the affairs of the Board.
- (4) The Chairman:
  - (a) may be paid such salary, allowances and expenses; and
  - (b) holds office on such terms and conditions,  
as the Administrator determines.

## **17 Resignation of members**

- (1) A member of the Board may resign office by writing signed by him or her and delivered to the Minister.
- (2) A resignation under subsection (1) is not effective until accepted by the Minister.

## **18 Dismissal of members**

- (1) The Minister may terminate the appointment of a member of the Board for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (2) If a member:
  - (a) is absent, except by leave of the Board, from 3 consecutive meetings of the Board; or
  - (b) becomes bankrupt, applies to take the benefit of a 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,

the Minister shall terminate the appointment of the member.

## **19 Acting Chairman**

- (1) Where the Chairman of the Board is or is expected to be absent from duty or from the Territory, the Minister may appoint a member of the Board to act as the Chairman during the absence.
- (2) The validity of a decision of the Board shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a member purporting to be appointed under subsection (1) had not arisen or that an appointment under subsection (1) had ceased to have effect.

## **20 Disclosure of interest**

- (1) A member of the Board who has or has had a direct or indirect proprietary or other pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of his or her interest at a meeting of the Board.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Board and the member:
  - (a) shall not, while he or she has that interest, (otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he or she is not a director), take part after the disclosure in any deliberation or decision of the Board; and
  - (b) shall be disregarded for the purpose of constituting a quorum of the Board,

in relation to the matter.

## **21 Meetings of Board**

- (1) The Chairman shall call such meetings of the Board as are necessary for the exercise of its powers and the performance of its functions.
- (2) The Minister may, at any time, direct the Chairman to convene a meeting of the Board and the Chairman shall convene a meeting in accordance with the direction.
- (3) At a meeting of the Board:
  - (a) four members of the Board (or 3 in relation to the consideration of any matter where the disregarding of a member because of section 20(2)(b) would otherwise cause a quorum to be lost) constitutes a quorum;
  - (b) the Chairman, if present, shall preside but in the absence of the Chairman (including a member appointed under section 19 to act as the Chairman) the members present shall elect one of their number to act as Chairman and that person may exercise the powers and shall perform the functions of the Chairman for the meeting;
  - (c) questions arising shall be determined by a majority of the votes of the members present and voting and in the event of an equality of votes the Chairman or other member presiding at the meeting shall have, in addition to his or her deliberative vote, a casting vote; and
  - (d) subject to this Act, the Chairman or other member presiding at the meeting shall determine the procedure to be followed at or in connection with the meeting.
- (4) The Board shall cause records of its meetings to be kept.
- (5) The Minister may request, and shall be provided with, a copy of the minutes of a meeting of the Board.

## **22 Confidentiality**

A member of the Board shall not disclose information obtained in the course of his or her duties as a member unless the disclosure is made in the course of those duties.

Maximum penalty: 40 penalty units or imprisonment for 6 months.

### **23 Protection of members**

No action or proceeding, civil or criminal, shall lie or be continued against the Chairman or other member of the Board for or in respect of an act or thing done in good faith by the Board or that person in the exercise or performance, or purported exercise or performance, of a power or function under this Act.

### **24 Delegation by Board**

- (1) Subject to subsection (4), the Board may, by resolution, delegate to such persons, or committees of its members, as it thinks fit any of its powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegates shall, for the purpose of this Act, be deemed to have been exercised or performed by the Board.
- (3) A delegation under this section does not prevent the performance of a function or the exercise of a power by the Board or the supervision by the Board of its performance or exercise by the delegate.
- (4) The Minister may give to the Board written guidelines as to the number of members who shall jointly as a committee perform a function or exercise a power of the Board, or as to the functions or powers that should not be delegated except to members of the Board, and when such guidelines have been given the Board shall not delegate the function or power except in accordance with the guidelines.

### **25 Consultation and inquiries**

The Board may, in exercising its powers and performing its functions under this Act, consult with such persons, associations, institutions and bodies, and make such inquiries, as it thinks fit.

### **26 Representation and inquiries**

- (1) Where the Board is considering an application for a pastoral lease, it shall give to the applicant an opportunity of appearing before it and of calling evidence, examining witnesses and addressing the Board.
- (2) A person or body appearing before the Board in pursuance of subsection (1) may be represented by a legal practitioner or agent, and the legal practitioner or agent may examine witnesses and address the Board on behalf of the person or body on whose behalf he or she appears.



**27 Protection of legal practitioners, witnesses, &c.**

- (1) A legal practitioner or agent appearing before the Board has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- (2) A witness summoned to attend or appearing before the Board has the same protection as a witness in proceedings in the Supreme Court.

**28 Rules of evidence**

The Board is not bound by rules of evidence but may inform itself in such manner as it thinks fit.

**Division 3 Functions and powers of Board**

**29 Functions of Board**

The functions of the Board are:

- (a) to report regularly to, and as directed by, the Minister, but in any case not less than once a year, on the general condition of pastoral land and the operations of the Board;
- (b) to consider applications for the subdivision or consolidation of pastoral land and make recommendations to the Minister in relation to them;
- (c) to plan, establish, operate and maintain systems for monitoring the condition and use of pastoral land on a District or other basis;
- (d) to assess the suitability of proposed new pastoral leases over vacant Crown land;
- (e) to direct the preparation, and monitor the implementation, of remedial plans;
- (f) to monitor, supervise or cause to be carried out work in relation to the rectification of degradation or other damage to pastoral land;
- (g) to monitor the numbers and effect of stock and feral and other animals on pastoral land;
- (h) to monitor and administer the conditions to which pastoral leases are subject;

- (ha) to consider and determine applications for permission to use pastoral land for a non-pastoral purpose in accordance with Part 7;
- (j) to make recommendations to the Minister on any matter relating to the administration of this Act;
- (k) to hear and determine all questions, and consider and make recommendations on all matters, referred to it by the Minister; and
- (m) such other functions as are imposed on it by or under this or any other Act or as directed by the Minister.

### **30            Powers of Board**

- (1) Subject to this Act, the Board has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of its functions and the exercise of its powers.
- (2) For the purposes of performing its pastoral monitoring functions, the members of the Board, and persons authorised in writing for that purpose by the Board, may, after giving reasonable notice to the pastoral lessee of their intention to do so:
  - (a) enter on pastoral land to assess the condition of the land and identify, establish and operate monitoring sites and reference areas; and
  - (b) inspect recorded land data kept by the pastoral lessee in accordance with the requirements of or under this Act.
- (3) Without limiting the generality of subsection (1), the Board may, for the purposes of performing its functions or exercising its powers, including powers conferred on it elsewhere in this Act, with the approval in writing of the Minister, act as agent for the Territory or a statutory corporation.

## **Part 4            Leases of pastoral land**

### **Division 1        General**

#### **31            Leases for pastoral purposes**

- (1) The Minister may, in the name of the Territory, by instrument in the appropriate form, grant a lease of Crown land for pastoral purposes.

- (2) Without limiting the generality of subsection (1), where a person has a right to be granted a lease of Crown land, the Minister may, in his or her discretion and in the appropriate form, lodge with the Registrar-General details of the means by which the right arose.
- (3) On the lodgement of the details referred to in subsection (1), the Registrar-General must create an entry in the land register in relation to the land and record the particulars in accordance with the *Land Title Act*.
- (4) Despite that a lease of Crown land has not been signed by the lessee or the lessor, the recording of the particulars in the land register takes effect as a lease.
- (5) Without limiting the generality of subsection (1), the Minister may determine to whom a pastoral lease may be granted by inviting applications, auctioning the right to the grant, inviting tenders for the right or otherwise selling or disposing of the right.
- (6) The Minister shall cause notice of the disposal of the right to the grant of a pastoral lease to be published in the *Gazette* within 28 days after the right is given, where the right is given otherwise than:
  - (a) by sale by auction or tender; or
  - (b) under or in pursuance of Division 3.

### **32 Notice of lands available**

- (1) Where the Minister proposes to sell or otherwise dispose of a right to the grant of a pastoral lease by auction, tender or as the result of the invitation of applications, he or she shall give notice of:
  - (a) in the case of a sale of the right by auction – the date, time and place at which the auction will be conducted;
  - (b) in the case of a sale of the right by tender or the sale or disposal as the result of the invitation of applications – the closing date for the submission of tenders or applications, and the place where they must be submitted;
  - (c) a general description of the land; and
  - (d) the place at which details of the land may be obtained.

- (2) Subject to subsection (4), a notice under subsection (1) shall be published in the *Gazette*, and by such other means, if any, as the Minister thinks fit, not earlier than 3 months or later than 28 days before the tenders or applications are to close or the sale is to take place.
- (3) Where the Minister proposes to include in a pastoral lease a provision by virtue of which the lessee may acquire or claim a right to another lease, the notice under subsection (1) shall include a reference to the right.
- (4) Where a notice under subsection (1)(b) specifies a date as the closing date for the submission of tenders or applications, the Minister may, before the closing date, by notice in the *Gazette*, specify a later date as the closing date for the submission of the tenders or applications and the later date so specified shall be the closing date accordingly.
- (5) A tender for the purchase of the right to the grant of a pastoral lease may indicate the date until which the offer to purchase remains open but, notwithstanding that such a date is indicated, the offer may be withdrawn at any time before it is accepted.
- (6) The Minister is not bound to accept the highest, or any, tender for the purchase of the right to the grant of a pastoral lease offered for sale in pursuance of this section.
- (7) The Minister may withdraw an offer of the right to the grant of a pastoral lease at any time before a person obtains the right.

### **33            Purchase price**

- (1) The Minister may determine that a purchase price is payable for the right to the grant of a pastoral lease, with or without improvements, and, where the Minister does so, he or she shall fix the purchase price or the reserve price, or determine the manner in which the purchase price shall be fixed, and may determine the amount or the percentage of the purchase price or reserve price that shall be paid by a successful purchaser on entering into a contract for the purchase of the right.
- (2) For the purposes of subsection (1), the Minister may require the Valuer-General to make a valuation of a proposed pastoral lease.

### **34 Maximum holding, &c., of pastoral land**

(1) Subject to section 135, unless:

- (a) the Minister was, at the time the land or interest was or was to be acquired, of the opinion that it was or would be in the interest of the Territory and advised the person, in writing, accordingly; or
- (b) the land or interest was lawfully held at the commencement of this Act,

a person shall not:

- (c) hold, either alone or together with an associate, pastoral land that exceeds in aggregate an area of 13,000 square kilometres;
- (d) have a direct or indirect beneficial interest, either alone or together with an associate, in pastoral land that exceeds in aggregate an area of 13,000 square kilometres;
- (e) hold, either alone or together with an associate and, at the same time, have a direct or indirect beneficial interest either alone or together with an associate in, pastoral land the total area of which lands exceeds in aggregate 13,000 square kilometres; or
- (f) hold, either alone or together with an associate, or have a direct or indirect beneficial interest either alone or together with an associate in, pastoral land, that in either case or together at the same time is worked in association with other pastoral land, whether as one station or otherwise, the total area of which lands exceeds 13,000 square kilometres.

(2) For the purposes of this section:

- (a) a person whose holding of pastoral land or a direct or indirect beneficial interest in pastoral land comprises land or an interest in land held jointly or in common with one or more other persons (not being an associate or associates), shall be deemed to hold or have a beneficial interest (as the case may be) in an area of the land that bears the same proportion to the total area the subject of the joint or common holding or interest as the share of the person bears to the totality of the holding or interest;

- (b) a direct beneficial interest in pastoral land shall include a vested equitable interest in the ownership of any leasehold or under-leasehold estate in respect of pastoral land, however that interest may arise, whether as beneficiary under or pursuant to a trust, whether express, implied or constructive, or as purchaser under an uncompleted contract for sale, and accordingly may include units in a unit trust estate;
- (c) an indirect beneficial interest in pastoral land includes, where a company holds the pastoral land or has itself a direct beneficial interest in the pastoral land, the holding of a controlling power or interest in relation to the company, such controlling power or interest comprising:
  - (i) the ability or capacity to control or procure the composition of the board of directors of the company;
  - (ii) the ability or capacity to cast or control, or procure the casting of, not less than 50% of the maximum number of votes that may be cast at a general meeting of the corporation; or
  - (iii) the holding of legal title to, or of a beneficial interest, direct or indirect, whether by medium of interposed corporations and/or trusts or otherwise, in, not less than 50% of the shares in the corporation carrying voting rights in respect of any one or more subject matters capable of resolution at a general meeting of the company;
- (d) an indirect interest in pastoral land also includes, where a trustee or any one of 2 or more trustees of a trust estate, having a discretion as to the disposition of income or corpus of the trust estate, holds the pastoral land or an interest in the pastoral land for and on behalf of the trust estate:
  - (i) in the case of a trustee being a corporation, the holding of a controlling power or interest in relation to the corporation of any one or more of the kinds referred to in paragraph (c); and
  - (ii) in the case of a trustee being a natural person, the holding of an ability or capacity to control, or procure the removal of, the trustee or the appointment of additional trustees or the exercise of the discretion as to the disposition of income or corpus of the trust estate;

- (e) a mortgagee under a mortgage of pastoral land shall not be taken to hold or to have a beneficial interest in the pastoral land unless and until:
  - (i) the mortgagee is and has been in possession of the land for more than 2 years; or
  - (ii) the mortgage has been foreclosed by order of a court or otherwise; and
- (f) an associate of a person means:
  - (i) a lineal or adoptive ancestor of any degree, sibling, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person, or a spouse or de facto partner or former spouse or de facto partner of the person or of any of the persons listed in this subparagraph;
  - (ii) a trustee of a trust estate, where the person or an associate referred to in subparagraph (i) of the person benefits or is capable of benefiting under the trust or under a subtrust in relation thereto;
  - (iii) a partner of the person, or a person who was within the preceding 2 years a partner of the person;
  - (iv) a company where:
    - (A) the company is, or the majority of its directors are, accustomed or under an obligation or arrangement, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or of an associate referred to in subparagraph (i), of the person; or
    - (B) the person is, the persons who are associates of that person by virtue of subparagraphs (i), (ii) and (iii) are, or the person and the persons who are associates of the person by virtue of those subparagraphs are, in a position to cast, or control, or procure the casting of, 50% or more of the maximum number of votes that might be cast at a general meeting of the company;
  - (v) in the case of the person being a corporation:
    - (A) a director or secretary of the corporation, or an associate referred to in subparagraph (i), of a director or secretary of the corporation;

- (B) a corporation that is a related body corporate to the first-mentioned corporation within the meaning of the Corporations Act 2001; or
  - (C) a director or secretary of such a related body corporate, or an associate referred to in subparagraph (i), of a director or secretary of such a related body corporate; or
- (vi) also, in the case of the person being a corporation (***the first corporation***), another corporation ***the second corporation***), where:
- (A) the ability or capacity to control or procure the composition of the board of directors of the second corporation is held by not less than 50% of the persons comprising or having the ability or capacity to control or procure the composition of the board of directors of the first corporation;
  - (B) the ability or capacity to cast or control or procure the casting of not less than 50% of the maximum number of votes that may be cast at a general meeting of the second corporation is held by persons having the ability or capacity to control or procure the control of not less than 50% of the maximum number of votes that may be cast at a general meeting of the first corporation; or
  - (C) the holding of legal title to, or of a beneficial interest, direct or indirect, whether by medium of interposed corporations and/or trusts or otherwise in, not less than 50% of the shares in the second corporation carrying voting rights in respect of one or more subject matters capable of resolution at a general meeting of the second corporation, is held by persons holding legal title to, or a beneficial interest, direct or indirect, whether by medium of interposed corporations and/or trusts or otherwise in, not less than 50% of the shares in the first corporation carrying voting rights of the same kind.
- (3) For the purposes of this section ***corporation*** has the same meaning as in the Corporations Act 2001.



### 35 Enforcement of restrictions on holdings

- (1) The Minister may, at any time, by notice in writing to a person, whether or not the person is a resident of the Territory, require the person to make, and cause to be delivered to the Minister, within such time as is specified in the notice, a statutory declaration setting out particulars of:
  - (a) an area of pastoral land the person holds or in which the person has a direct or indirect beneficial interest within the meaning of section 34;
  - (b) the time and circumstances under which the person acquired the land or interest;
  - (c) the identity and place of residence or business of an associate within the meaning of section 34(1) in relation to the land and the time and circumstances under which the association was established;
  - (d) the identity and place of residence or business of all persons for whom the person specified in the notice holds pastoral land as trustee or nominee; and
  - (e) such other information as the Minister requires for the purpose of ascertaining if a person, whether or not the person requested to make the statutory declaration, is or has been in contravention of section 34(1).
- (2) The notice need not identify particular pastoral land or the lessee of pastoral land.
- (3) In the case of a notice addressed to a corporation, the statutory declaration shall be completed by its secretary or by one of its directors.
- (4) A person shall not refuse or fail to comply with the requirements of a notice given to the person under subsection (1).

Maximum penalty: 440 penalty units and 8 penalty units for each day during which the offence continues.

- (5) In connection with an application for consent to transfer pastoral land, the Minister may, by notice in writing to the applicant transferee (***the applicant***), whether or not the applicant is a resident of the Territory, require the applicant to make, and cause to be delivered to the Minister, within such time as is specified in the notice, a statutory declaration setting out such of the particulars referred to in subsection (1) as the Minister requires in relation to

the applicant, in order to satisfy the Minister that, on the purchase of the pastoral land the subject of the application, the applicant or another person would not contravene section 34(1).

- (6) The Minister shall not under section 68(2) refer to the Board for consideration and recommendation an application for consent to transfer, or consent to the transfer, until the applicant has complied with a notice, if any, under subsection (5).
- (7) Where the Minister has reasonable grounds to believe that a contravention of section 34(1) has occurred, and for the purpose of forming that belief the Minister may take into account the failure of a person to comply with a notice given under subsection (1), the Minister may give notice of intention to the lessee of the pastoral land in relation to which the suspected contravention has occurred, to forfeit the lease or any other pastoral lease of the lessee, and the notice shall specify the grounds and a period of time (being not less than 28 days) within which representations and submissions (including in relation to the divesting of interests) may be made to the Minister.
- (8) Where the Minister gives a notice under subsection (7), the Minister may in his or her discretion, and at any time, give a copy of the notice to any other person considered by the Minister to have an interest in the pastoral land.
- (9) Within the time specified in the notice, the lessee and any other person claiming to have an interest in the pastoral land the subject of the lease may make representations and submissions to the Minister, in writing or in such other manner as the Minister agrees or requires.
- (10) As soon as practicable after the expiration of the time specified in the notice under subsection (7), or within such further time as the Minister requires to consider representations or submissions made to the Minister pursuant to that subsection, the Minister shall decide whether or not to forfeit the lease specified in the notice, and in the case of a decision to forfeit, shall give not less than 28 days notice of his or her intention to the lessee and to such other persons as in the Minister's discretion the Minister thinks fit, and shall, subject to section 53, by notice in the *Gazette*, forfeit the lease.
- (11) The Minister shall state in the notice of forfeiture the contravention of section 34(1) that has occurred.
- (12) A notice of intention to forfeit, and a forfeiture, may be given and effected, as the case may be, in respect of the whole or part only of the pastoral land the subject of a lease.

- (13) An amount equal to the reasonable costs incurred by or on behalf of the Minister in investigating a matter leading to an action resulting in the forfeiture of land under this section is a debt due and payable to the Territory by the person against whom the action is taken.

### **36 Failure to accept offer of lease**

Where a person is offered the right to the grant of a pastoral lease but fails, within such time as the Minister allows, to accept the offer or to pay an amount that is due and payable in respect of the lease, the Minister may, by notice in writing to the person, revoke the agreement for the lease and retain all or part, as the Minister thinks fit, of the money that the person has already paid in respect of the lease.

### **37 Costs of survey, &c.**

The Minister may require a person to whom a pastoral lease is granted to pay an amount towards the costs of:

- (a) surveying the land the subject of the lease; and
- (b) preparation and registration of the grant,

and, where the Minister does so, he or she may fix the amount or determine the manner in which the amount shall be fixed.

### **38 Conditions of pastoral leases**

- (1) Without limiting the power of the Minister to impose such other conditions as he or she thinks fit on the granting of a pastoral lease, a pastoral lease is subject to the following conditions and reservations:

- (a) a reservation of a right of entry and inspection

(a reservation of a right of entry and inspection shall be read as a reservation of a right in favour of the Minister or a member of the Board, or a person authorised in writing by the Minister or the Board, at all reasonable times and in a reasonable manner, to enter on the leased land or any part of it (other than a homestead) and to inspect the leased lands and any improvements, stock and pasture on the land);

- (b) a reservation of all minerals in or on the leased land  

(a reservation of minerals shall be read as a reservation to the Territory of all minerals and extractive minerals, within the meaning of the *Mineral Titles Act*, and all petroleum, within the meaning of the *Petroleum Act*);
- (c) that the lessee will pay the rent in accordance with this Act;
- (d) that, subject to section 88, the lessee will use the land only for pastoral purposes;
- (e) that the lessee, having paid all rent due and payable by him or her, may at any time, in the prescribed manner, surrender the lease;
- (f) that the lease (except a perpetual pastoral lease) shall be liable to forfeiture if the rent or any part of that rent is unpaid for 12 months or more;
- (g) that the lease (except a perpetual pastoral lease) shall, subject to this Act, be liable to forfeiture for non-compliance by the lessee with a condition of the lease;
- (h) that the lessee will not clear any pastoral land except with and in accordance with the written consent of the Board or guidelines, if any, published by the Board;
- (j) that the lessee will comply with the requirements of or under all laws of the Territory relating to the use and maintenance of the land the subject of the lease;
- (k) a reservation of all timber  

(a reservation of all timber shall be read as including all timber trees and all trees producing bark, resin or valuable substances, together with the right to authorise a person to enter on the land and to cut or fell any timber or timber trees, or trees producing bark, resin or valuable substances and to take away any timber, wood, bark, resin or such valuable substances, and to do all things necessary or convenient for those purposes);
- (m) that the lessee will not without the consent of the Minister take any timber trees or parts of trees or stone, sand or gravel on the leased land except for use on or in connection with the land;
- (n) a reservation in favour of the Aboriginal inhabitants of the Territory.

(2) In a pastoral lease, a reservation in favour of the Aboriginal inhabitants of the Territory shall be read as a reservation permitting those Aborigines:

- (a) who ordinarily reside on the leased land;
- (b) who ordinarily reside on an area of land that at any time after 1 January 1979 was within the boundaries of the land that then comprised the leased land and which area of land has since that date been excised from the leased land as a living area or part of a living area for those Aborigines; or
- (c) who, by Aboriginal tradition, are entitled to use or occupy the leased land,

subject to subsection (3):

- (d) to enter and be on the leased land;
- (e) notwithstanding any other law of the Territory, to take and use the water from the natural waters and springs on the leased land; and
- (f) subject to any other law in force in the Territory:
  - (i) to take or kill for food or for ceremonial purposes animals *ferae naturae*; and
  - (ii) to take for food or for ceremonial purposes vegetable matter growing naturally,on the leased land,

but not permitting:

- (g) the Aborigines referred to in paragraph (a) to erect or use a structure on the leased land that would serve as a permanent shelter for human occupation, other than at the place on the leased land where they ordinarily reside; or
  - (h) the Aborigines referred to in paragraph (b) or (c) to erect or use such a structure on the leased land.
- (3) Subject to subsection (4), a reservation in a pastoral lease in favour of the Aboriginal inhabitants of the Territory does not apply to a part of the leased land within 2 kilometres of a homestead.
- (4) Where an Aborigine was, or a group of Aborigines were, at the commencement of the *Aboriginal Land Ordinance 1978*, residing within 2 kilometres of a homestead and was or were entitled to use

educational, medical or other facilities provided for his, her or their use within that area, the Aborigine or group of Aborigines may reside within 2 kilometres of the homestead and use the educational, medical and other facilities provided for him, her or them until the Aborigine or group of Aborigines ceases to reside permanently within 2 kilometres of the homestead or until adequate facilities of a similar nature are provided on another site, whether or not on the leased land, being a site suitable to the Aborigine or group of Aborigines.

- (5) Where a pastoral lease contains a reservation in favour of the Aboriginal inhabitants of the Territory, a person shall not, without just cause, interfere with the full and free exercise, by the persons thereby entitled, of the rights reserved to them.

Maximum penalty: 40 penalty units.

- (6) For the purposes of subsection (5), **just cause** includes reasonable acts taken by or on behalf of a lessee or another person having an interest in the lease to ensure the proper management of the lease for the purposes for which it was granted.

### **39 Conditions relating to land management**

In addition to the conditions specified in section 38 or elsewhere in this Act, a pastoral lease is subject to the condition that the lessee will:

- (a) not use or stock the land other than as permitted by or under this Act or the lease;
- (b) take all reasonable measures to conserve and protect features of environmental, cultural, heritage or ecological significance;
- (c) prepare a remedial plan, as directed by the Board and undertake such action as is required in the plan;
- (d) allow the establishment on the leased land of monitoring sites as required by the Board and allow reasonable access to those sites for the purposes of this Act;
- (e) allow fencing of reference areas declared under section 74(1) and access to those areas and fences for maintenance purposes; and
- (f) maintain in good repair all improvements necessary for sustainable pastoral production on the land.

#### **40 Breach of conditions**

- (1) Where the Minister is satisfied that a pastoral lessee has failed to comply with a condition of his or her pastoral lease, the Minister may give notice in writing of the breach to the lessee and require the lessee to furnish to the Minister, within the time specified in the notice, an explanation of why the lessee has not complied with the condition.
- (2) If the Minister, after considering an explanation furnished as required under subsection (1), is satisfied with the explanation, the Minister may, by notice in writing to the pastoral lessee, waive the breach and may direct that the condition be complied with within such time as is specified in the notice.
- (3) If:
  - (a) an explanation is not furnished as required under subsection (1);
  - (b) the Minister is not satisfied with the explanation furnished and notifies the lessee in writing of that fact; or
  - (c) the pastoral lessee fails to comply with the condition within the time specified under subsection (2),the Minister may, subject to sections 41 and 53, in the Minister's discretion:
  - (d) by notice in writing to the lessee, direct that the condition be complied with within such time as the Minister specifies in the notice; or
  - (e) except in the case of a perpetual pastoral lease, if the Minister is satisfied that the non-compliance has been wilful and that the lessee has made no real effort to comply with the condition, decide to forfeit the lease.
- (4) Where a pastoral lessee fails to comply with a notice under subsection (3)(d) within the time specified in the notice, the Minister may, subject to section 53, except in the case of a perpetual pastoral lease, decide to forfeit the lease.
- (5) Where under subsection (3)(e) or (4) the Minister decides to forfeit a lease, the Minister shall give written notice of the decision (together with, in the case of a decision under subsection (3)(e), a statement of the Minister's reasons for the decision) to the lessee.

(6) The Minister may, not earlier than 28 days after the service of a notice referred to in subsection (5) or where, within that time, an appeal against the Minister's decision is lodged under section 119(1)(c) after the appeal has been determined and the Minister's decision has been confirmed, by notice in the *Gazette*, forfeit the lease.

(7) A pastoral lessee who fails to comply with a notice under subsection (3)(d) within the time specified in the notice is guilty of an offence.

Maximum penalty: 85 penalty units and 4 penalty units for each day during which the offence continues.

(8) Proceedings for an offence referred to in subsection (7) shall not be instituted except with the consent in writing of the Minister or the Minister's delegate.

#### **41 Breaches to be referred to Board**

(1) Before:

- (a) deciding under section 40(3)(e) or (4) to forfeit a lease; or
- (b) consenting under section 40(8) to the instituting of proceedings against a pastoral lessee for an offence against section 40(7),

the Minister shall, unless the Board has already considered the matter and recommended the forfeiture or instituting of proceedings, refer the matter to the Board.

(2) Where a matter is referred under subsection (1) to the Board, the Board shall investigate the circumstances connected with the failure to comply with the condition of the lease and shall report to the Minister as to whether, in its opinion:

- (a) the pastoral lessee could reasonably have complied with the condition; or
- (b) circumstances beyond the control of the lessee prevented him or her from complying with the condition,

and shall recommend whether or not, in its opinion, the lease should be forfeited or proceedings instituted.



## **42 Remedial action on pastoral lease**

- (1) Where, in the opinion of the Minister, the lessee of a pastoral lease:
  - (a) has failed or neglected to observe or perform any of his or her obligations, expressed or implied, under this Act or the relevant lease document (including under a remedial plan or a notice under section 40(3)(d)); or
  - (b) has failed to manage the leased land in such a way as to prevent or minimise degradation of the land,and the failure or neglect is or causes, or may be or cause, in the opinion of the Minister, a danger to life or to property in the locality of the leased land or degradation of the land, the Minister may cause such action to be taken in respect of the land or property (including the destocking of all or part of the land) as the Minister thinks necessary to eliminate the danger or rehabilitate the land.
- (2) Where the Minister causes action to be taken under subsection (1), an amount equal to the value of the work undertaken and expenses incurred in relation to the work shall be a debt due and payable by the pastoral lessee to the Territory.
- (3) Where under subsection (1) stock is removed from the land, otherwise than by or on behalf of the pastoral lessee, it shall be disposed of as prescribed and the Regulations may provide for the allocation of the proceeds of the sale, if any, of the stock.
- (4) Notwithstanding subsections (1) and (2), a pastoral lessee may be prosecuted for an offence against this or any other Act in respect of the failure or neglect.

## **43 Minister may review conditions of lease**

- (1) The Minister may, not earlier than 10 years after the granting of a pastoral lease and not earlier than 10 years after he or she last reviewed the reservations in, or the conditions or provisions of, the lease, or at any time when the term of the lease is extended in pursuance of section 49, review the reservations in, or conditions or provisions of, the lease and, subject to subsection (2), vary those reservations, conditions or provisions as the Minister thinks fit.
- (2) The Minister shall not, under subsection (1), vary a reservation, condition or provision of a lease unless the Minister has given to the lessee not less than 60 days notice of the Minister's intention to do so and has considered the submissions relating to the proposed variations, if any, made by the lessee within that time.

**44 Variation of lease provisions**

Notwithstanding section 43(1), the Minister may, in his or her discretion, on application in writing by the pastoral lessee, vary a reservation in, or condition or provision of, a pastoral lease.

**45 Opinion of Board to be sought**

Before varying under section 43 or 44 a reservation in, or condition or provision of, a pastoral lease the Minister may refer the matter to the Board for its consideration and shall take into account all recommendations the Board makes in relation to it.

**46 Minister may grant a moratorium**

The Minister may, on the recommendation of the Board, vary a reservation in, or condition or provision of, a pastoral lease for the purpose of allowing a moratorium.

**47 Noting variation of lease**

A variation of a reservation in, or a condition or provision of, a pastoral lease does not have effect until notice of the variation is lodged with the Registrar-General.

**48 Term of pastoral lease**

- (1) The term of a pastoral lease granted under this Act shall be:
  - (a) in perpetuity; or
  - (b) subject to section 49, for such period, not exceeding 25 years, as the Minister thinks fit.
- (2) A pastoral lease, other than a perpetual pastoral lease, which was granted before the commencement of this Act:
  - (a) shall, unless sooner determined under this Act, continue until the expiration of the term of the lease, whether the term is specified in the lease or by an Act under which the lease was granted or saved; and
  - (b) may be the subject of an application referred to in section 49.

**49 Extension of term of pastoral lease**

- (1) A pastoral lessee may at any time before the commencement of the last 2 years of the term of his or her pastoral lease apply to the Minister for an extension of the term of the pastoral lease.

- (2) Subject to Division 4, the Minister may by notice in writing to the pastoral lessee, extend the term of the pastoral lease or advise the pastoral lessee that the application has been refused.
- (3) The term of a pastoral lease shall not be extended under this section for a period greater than 25 years from the date on which it would otherwise expire.

**50 Continuation in occupation on expiration of term of pastoral lease**

- (1) The Minister may make such arrangements as the Minister thinks fit in relation to the holding over by a former pastoral lessee of the land comprised in the former pastoral lease on the expiration of its term.
- (2) A person holding over in pursuance of an arrangement under subsection (1) shall keep the land and all improvements on the land in good order and condition to the satisfaction of the Minister.

**51 Payment of value of improvements to outgoing pastoral lessee**

Subject to this Act, on the determination (as the result of the expiration of its term or otherwise) of a pastoral lease, the former pastoral lessee is entitled to be paid an amount equal to the value, as at the date of the determination of the lease, of all improvements on the land comprised in the former lease, as determined by the Minister and as soon as practicable after the determination of the lease the Minister shall give to the former lessee written notice of the Minister's determination of that value.

**52 Deductions from amount payable for improvements**

The Minister shall deduct from the amount payable under section 51 all amounts due and payable to the Territory (including under sections 42, 59 and 76) by the outgoing former pastoral lessee under the lease.

**53 Forfeiture of mortgaged pastoral lease**

- (1) Where a pastoral lease is subject to a mortgage given for valuable consideration and registered under the *Land Title Act*, the Minister shall not cause notice of the forfeiture of the lease to be published in the *Gazette* in pursuance of section 35(10) or 40(6) until after the expiration of a period of 28 days after the Minister has given to the mortgagee notice of the Minister's intention to do so.

- (2) The Minister shall give a copy of the notice under subsection (1) to the pastoral lessee, and thereafter the lessee ceases, except with the consent in writing of the Minister, to be entitled to exercise any of the rights or powers conferred by the lease.
- (3) If, during the period of 28 days after receipt of a notice under subsection (1), or within such further time as the Minister allows, a mortgagee advises the Minister that the mortgagee wishes to exercise the mortgagee's power of sale, the Minister shall allow the mortgagee 6 months, or such further time as, in the opinion of the Minister, is reasonable, to exercise it.
- (4) Where the Minister allows a mortgagee time to exercise a power of sale, the Minister shall advise the mortgagee of the extent to which the Minister is prepared to vary the conditions of the pastoral lease (other than those relating to land monitoring and land management) and, where the Minister does so, he or she shall, if the lease is transferred following a sale, so vary those conditions and lodge with the Registrar-General a notice of the variation.
- (5) Where a mortgagee exercises the mortgagee's power of sale of a pastoral lease after receipt of a notice under subsection (1) in relation to the lease:
  - (a) the total of all amounts due and payable to the Territory by the lessee in relation to the lease up to and including the date of the sale is a debt due and payable to the Territory out of the proceeds of the sale, having priority before all debts secured by mortgage;
  - (b) the balance of the proceeds of the sale, after payment of all debts and expenses payable out of those proceeds, are payable:
    - (i) as to any amount not exceeding the unimproved value of the lease – to the Territory; and
    - (ii) as to any amount in excess of the unimproved value – to the lessee; and
  - (c) on the transfer of the lease following the sale, the transferee holds the lease, as varied in pursuance of subsection (4), as though the action leading up to the forfeiture of the lease had not been commenced.

## **Division 2 Rent**

### **54 Application of *Valuation of Land Act***

- (1) The *Valuation of Land Act* applies to and in relation to a pastoral lease as if the leased land were ratable land within the meaning of that Act and the Minister were the rating authority in respect of the land.
- (2) Section 10(1) of the *Valuation of Land Act*, in its application to pastoral land by virtue of subsection (1), shall be construed so that the period of 3 years there referred to is the period of 3 years after the date of commencement of this Act.

### **55 Rent**

- (1) Subject to subsections (3) and (4) but notwithstanding anything in the lease document, the rent payable in respect of a pastoral lease for a financial year is the percentage of the unimproved value of the leased land determined by the Valuer-General under the *Valuation of Land Act*, declared by the Minister in accordance with this section in respect of the District in which the land is situated.
- (2) The Minister may, before 30 June in a financial year, by notice in the *Gazette*, declare the percentage of the unimproved value of pastoral land in a District to be the rent payable for pastoral leases in the District for the next following financial year.
- (3) If by 30 June in a financial year the Minister has not declared a percentage in respect of a District in accordance with subsection (2), the rent payable for a pastoral lease in the District in respect of the next following financial year is an amount equal to the rent payable for the lease in respect of the financial year ending on that date.
- (4) Notwithstanding the *Valuation of Land Act*, in determining the unimproved value of pastoral land the Valuer-General shall disregard any existing or potential use of the land that is inconsistent with the use of the land for pastoral purposes.

### **56 Payment of rent**

- (1) The Minister shall, as soon as practicable after declaring the rate of rent under section 55 (or, if a rate is not declared for a financial year, as soon as practicable after the previous 30 June) send by post to each pastoral lessee a notice showing:
  - (a) the amount of rent due in respect of the financial year;

- (b) the amount payable in respect of each quarter of the financial year; and
  - (c) such other information as is prescribed.
- (2) Subject to section 58, a pastoral lessee shall pay the rent due and payable in respect of the relevant quarter for his or her pastoral lease:
- (a) in respect of the first quarter of the financial year – within 40 days after the date of the notice under subsection (1); and
  - (b) in respect of each subsequent quarter – within 28 days after the commencement of the quarter.

**57            Penalty for late payment**

- (1) If rent is not paid in respect of a pastoral lease within the time specified in section 56(2), interest shall accrue on the amount of rent from time to time outstanding at the rate of 1% above the Commonwealth Bank of Australia standard overdraft rate on the first working day after it first became in arrears and on the first working day after each subsequent 1 October, 1 January, 1 April and 1 July, as the case may be, with corresponding quarterly rests.
- (2) The amount of penalty accrued under subsection (1) shall be added to and be deemed to be part of the rent outstanding for the purposes of calculating a future penalty and recovery of the penalty, and for the purposes of section 60.

**58            Release of lessee in case of hardship**

Where it is shown to the satisfaction of the Minister that the payment of the full amount of rent under a pastoral lease will result in the pastoral lessee suffering serious hardship, the Minister may remit or postpone the whole or a portion of the rent for such period, and on such conditions, as the Minister thinks fit.

**59            Recovery of rent**

All rent payable to the Territory under this Act or under a pastoral lease granted under or continued in effect by this Act is recoverable by the Minister as a debt due to the Territory.

### **Division 3 Surrender, subdivision, consolidation, conversion, transfer, &c.**

#### **60 Surrender of leases – general**

A pastoral lessee may, at any time, surrender his or her pastoral lease or, with the consent of the Minister, any part of the land the subject of the lease, on payment of all rent due and payable under the lease.

#### **61 Surrender of lease for subdivision, &c.**

- (1) A pastoral lessee may apply to the Minister for approval to subdivide the land the subject of his or her pastoral lease into 2 or more pastoral leases.
- (2) An application under subsection (1):
  - (a) shall be in writing; and
  - (b) shall be accompanied by a plan showing the manner in which it is proposed to subdivide the land.
- (3) On receiving an application under subsection (1), the Minister shall refer it to the Board for consideration and recommendation.
- (4) The Board shall consider the application and, in particular, shall consider:
  - (a) whether it is desirable that the pastoral lease be subdivided;
  - (b) whether the resultant parts of the proposed subdivision are capable, individually, of supporting sustainable commercial pastoral enterprises;
  - (c) whether the proposed lines of subdivision should be varied;
  - (d) the appropriate terms of the leases for the proposed subdivided portions;
  - (e) what special conditions should be imposed on the leases of the proposed subdivided portions; and
  - (f) such other matters as it thinks fit.
- (5) The Board may make such recommendations to the Minister as it thinks fit in relation to an application under this section.

- (6) The Minister may, after considering the recommendations of the Board:
- (a) approve the application as submitted by the pastoral lessee or as varied by the Minister; or
  - (b) refuse the application.
- (7) The Minister shall, by notice in writing, notify the applicant pastoral lessee of the Minister's decision and, if the Minister has approved the application or the application as varied by the Minister, the Minister shall specify in the notice:
- (a) the reservations, conditions and provisions to be included in each lease of the land if it is subdivided; and
  - (b) in respect of each of the portions into which the land is to be subdivided:
    - (i) the lease grant charges, if any, for the lease;
    - (ii) the fees and deposits to be paid by the lessee in respect of the grant of the lease; and
    - (iii) the current rent.
- (8) The pastoral lessee may, if he or she:
- (a) has paid all rent due and payable under the lease;
  - (b) accepts the reservations, conditions and provisions specified in the notice under subsection (7); and
  - (c) has paid the lease grant charges, fees and deposits specified in the notice,
- surrender his or her pastoral lease and subject to Division 4, is to be granted a new pastoral lease for each of the subdivided portions of the land.
- (9) A surrender of a pastoral lease:
- (a) shall be made within 3 months after the date of the notice of the approval of the subdivision; and
  - (b) has effect on the date of commencement of the new leases.
- (10) A new pastoral lease granted under this section shall:
- (a) preserve the lessee's rights, if any, in respect of improvements on land the subject of the new lease;



- (b) be for such period (or in perpetuity) as the Minister thinks fit; and
- (c) in addition to the matters provided for elsewhere in this Act, contain the reservations, conditions and provisions which are specified in the notice under subsection (7).

**62 Surrender of term pastoral lease in exchange for perpetual pastoral lease**

- (1) The lessee under a pastoral lease, other than a perpetual pastoral lease, may, at any time during the currency of the lease, apply in writing to the Minister to surrender the lease in exchange for a perpetual pastoral lease of the whole or a specified part of the land the subject of the existing lease.
- (2) On receiving an application under subsection (1), the Minister shall refer it to the Board for consideration and recommendation.
- (3) The Board shall consider the application and, in particular:
  - (a) the total area of pastoral land held by the applicant lessee; and
  - (b) whether the applicant has complied with the conditions and provisions of or to which the existing lease is subject,and, if the Board is satisfied that the applicant lessee has generally managed or is likely to manage the term pastoral lease in accordance with his or her duty under section 6, it shall recommend to the Minister that a perpetual pastoral lease of the whole or a specified part of the land included in the existing lease be granted to the applicant.
- (4) The Board may, in making its recommendation under subsection (3), recommend to the Minister that the Minister include in the proposed perpetual lease a specified area of land that:
  - (a) does not constitute an economic area and is suitable for occupation by the applicant lessee;
  - (b) has been used exclusively by the applicant in conjunction with the pastoral lease to be surrendered; and
  - (c) is wholly or partially bounded by, or has at some earlier date been excised from, the land the subject of the pastoral lease to be surrendered.

- (5) On receiving a recommendation from the Board under subsection (3) the Minister may, by notice in writing to the applicant lessee, advise the applicant of:
- (a) the description of the land in respect of which the Minister is prepared to grant a perpetual pastoral lease;
  - (b) the fee, if any, that has been fixed under subsection (7) in respect of the application;
  - (c) the rent for the proposed lease; and
  - (d) the reservations, conditions and provisions that the proposed lease will contain.
- (6) An applicant lessee may, at any time within 3 months after the date on which the notice under subsection (5) is given, or within such further time as the Minister allows, in writing addressed to the Minister, indicate his or her willingness to accept the proposed perpetual pastoral lease on the conditions specified in the notice.
- (7) The Minister may, in his or her discretion, fix a fee in respect of each application under subsection (1).
- (8) An applicant lessee may, if he or she:
- (a) has indicated to the Minister his or her willingness to accept the proposed perpetual pastoral lease in accordance with subsection (6);
  - (b) has paid all rent due and payable under the existing lease; and
  - (c) has paid the fee (if any) fixed under subsection (7),
- surrender the existing lease and, subject to Division 4, is to be granted a perpetual pastoral lease according to the particulars contained in the notice under subsection (5) commencing immediately on the surrender of the existing lease.
- (9) A pastoral lease granted under subsection (8) shall preserve the lessee's rights in respect of improvements on land included in the surrendered lease which is the subject of the perpetual pastoral lease.

### **63 Applications under section 62 involving subdivision**

Where an application under section 62 proposes that part only of the land comprising an existing pastoral lease be granted as a perpetual pastoral lease, the Minister shall treat the application as both an application under that section and under section 61 and the Board shall consider the application referred to it and make its recommendations to the Minister, and the Minister may exercise his or her powers in such order as the Minister thinks fit, accordingly.

### **64 Surrender of leases and grant of consolidated lease**

- (1) Where a person is the lessee of land under a pastoral lease and is also the lessee, under another pastoral lease, of land that adjoins the first mentioned land, the person may apply to the Minister for the grant to him or her of a single pastoral lease of all the land the subject of the first mentioned lease together with the land the subject of the other lease.
- (2) An application under subsection (1):
  - (a) shall be in writing; and
  - (b) shall be accompanied by a plan showing the land that the applicant wishes to be included under the new pastoral lease.
- (3) On receiving an application under subsection (1), the Minister may refer it to the Board for consideration and recommendation.
- (4) The Board shall consider an application referred to it under subsection (3) and make such recommendations to the Minister as it thinks fit.
- (5) The Minister shall, after considering the recommendations of the Board:
  - (a) approve the application; or
  - (b) refuse the application.
- (6) The Minister shall, by notice in writing, notify the applicant lessee of the Minister's decision and, if the Minister approves the application, shall specify in the notice:
  - (a) the reservations, conditions and provisions that the new lease will contain;
  - (b) the purchase price, if any, for the new lease;
  - (c) the lease grant charges, if any, for the new lease;

- (d) the fees and deposit payable in respect of the grant of the new lease; and
  - (e) the rent for the new lease.
- (7) The applicant lessee may, if he or she:
- (a) has paid all rent due and payable under each of the leases of the respective lands that are to be included in the new lease;
  - (b) accepts the reservations, conditions and provisions specified; and
  - (c) has paid the purchase price, lease grant charges, fees and deposits specified in the notice under subsection (6),
- surrender each of the pastoral leases and, subject to Division 4, is to be granted a new pastoral lease of all the lands the subject of the leases so surrendered.
- (8) A surrender of a pastoral lease:
- (a) shall be made within 3 months after the date of the notice of the approval of the application; and
  - (b) shall have effect from the date of commencement of the new lease.
- (9) A new pastoral lease granted under this section shall:
- (a) preserve the lessee's rights, if any, in respect of improvements on land the subject of the new lease;
  - (b) be for such period (or in perpetuity) as the Minister thinks fit; and
  - (c) in addition to the matters provided for elsewhere in this Act, contain the reservations, conditions and provisions specified in the notice under subsection (5).

## **65 Uneconomic areas of Crown land**

- (1) Where, in the opinion of the Minister, an area of Crown land does not constitute an economic area and is suitable only for occupation as part of an adjoining pastoral lease, the Minister shall, in writing, advise the lessees of adjoining pastoral land that the area is available for leasing and invite them to apply for a lease of the land.

- (2) Where 2 or more applications are received in response to an invitation under subsection (1), the Minister shall refer the applications to the Board and request it to make a recommendation as to how the land should be dealt with.
- (3) Where the recommendation of the Board is that the grant of a lease of all or part of the area of land be offered to an applicant, or an applicant is the only applicant for the lease of the land, the Minister may, by notice in writing to the applicant, offer the grant of the lease to the applicant on such terms and conditions as the Minister thinks fit.
- (4) Where a pastoral lessee to whom an offer under subsection (3) is made accepts the Minister's offer, the Minister shall grant the pastoral lessee a lease of the land which shall be added to the land the subject of the existing adjoining pastoral lease in accordance with this section.
- (5) Where the Minister grants a lease of land in pursuance of subsection (4), the Minister shall cause to be lodged with the Registrar-General a memorandum in an appropriate form under the *Land Title Act*, describing:
  - (a) the land to be added to the existing adjoining pastoral lease; and
  - (b) any variations of the reservations, conditions and other provisions of the existing adjoining pastoral lease agreed to by the Minister and the lessee.
- (6) On the lodging of a memorandum under subsection (5), the Registrar-General shall register the memorandum and, on the endorsement of the details of the memorandum on the existing adjoining pastoral lease, the lease shall extend over the area of the land to be added to the pastoral lease, subject to such reservations, conditions and other provisions as are set out in the memorandum.
- (7) Where land the subject of the existing adjoining pastoral lease to which an area of land is to be added pursuant to this section is mortgaged or otherwise encumbered, the mortgage or encumbrance shall, subject to the consent of the mortgagee or encumbrancee, which consent shall not be unreasonably withheld, extend over the area of the land to be added, subject to such reservations, conditions and other provisions as are set out in the memorandum referred to in subsection (5) that relates to the pastoral lease.

- (8) In this section ***economic area*** means such area of land as the Minister considers to be sufficient to support a sustainable commercial pastoral enterprise.

## **66 Agreement for exchange of part of pastoral lease**

- (1) A pastoral lessee may apply in writing to the Minister for permission to surrender a part of his or her pastoral lease in respect of part of the land the subject of the lease, being a part of the land that adjoins a part of the land included in another pastoral lease.
- (2) An application under subsection (1) shall be accompanied by:
- (a) a plan showing the land included in the part of the lease to be surrendered and the land comprised in the adjoining pastoral lease;
  - (b) a written statement of the other lessee that he or she desires, and is prepared to accept, for inclusion in his or her pastoral lease, the land included in the part of the lease to be surrendered; and
  - (c) reasons in writing why the surrender and inclusion are desired.
- (3) Subject to subsection (4), the Minister may grant permission or refuse permission for a surrender under this section of a part of a lease.
- (4) The Minister shall refuse permission if the area of the part of the land sought to be surrendered exceeds 8% of the total area of the land the subject of the lease.
- (5) The Minister shall give to the applicant and to the lessee of the adjoining pastoral lease notice in writing of the Minister's decision under this section.
- (6) Where the Minister grants permission under this section, the notice under subsection (5) shall specify the variations of the reservations, conditions and other provisions of the existing leases the Minister will require and the amount of rent, if any, payable for the pastoral lease in respect of the remainder of the current financial year and the ensuing financial year, apportioned to the percentage of the land to remain the subject of the lease, unless, in relation to the ensuing financial year, the land is sooner revalued under the *Valuation of Land Act* for the purposes of Division 2 and/or the relevant percentage is next declared under section 55.

- (7) If, within 60 days after receiving a notice given under subsection (5), the applicant pastoral lessee and the lessee of the adjoining pastoral lease inform the Minister in writing of their acceptance of the variations of the reservations, conditions and other provisions specified in the notice, the Minister shall, by notice in writing to them, grant permission for the surrender and inclusion subject to those variations.
- (8) On the surrender under this section of a part of the land the subject of a pastoral lease, the Minister shall cause to be lodged with the Registrar-General a memorandum, in the form of an instrument under the *Land Title Act*, describing:
- (a) the part of the land to be excised from the pastoral lease and added to the adjoining pastoral lease; and
  - (b) any variations of the reservations, conditions and other provisions of the leases and specified in the notice given under subsection (5).
- (9) On the lodging of a memorandum under subsection (8), the Registrar-General shall register the memorandum and, on the Registrar-General so doing:
- (a) in the case of the pastoral lease to which the land is to be added – the lease shall extend over the area of land to be added, subject to such reservations, conditions and other provisions as are set out in the memorandum; and
  - (b) in the case of the lease from which the land is to be excised – the lease shall cease to have force or effect over or in relation to the area of land to be excised.
- (10) Where there is in existence a mortgage or encumbrance over a lease referred to in subsection (9), the mortgage or encumbrance shall, subject to the consent of the mortgagee or encumbrancee, which consent shall not be unreasonably withheld:
- (a) in the case of the lease to which the land is to be subject – on and from the endorsement on the lease document of the details of the memorandum referred to in that subsection which relates to the lease, extend over the area of land to be added, subject to such reservations, conditions and other provisions as are set out in the memorandum; and
  - (b) in the case of the lease to which the land is to cease to be subject – cease to have force or effect over or in relation to the area of land to be excised.

**67 Consent to transfer, &c., of lease, &c.**

- (1) Except as provided by this Act, a pastoral lessee shall not, without the consent of the Minister:
  - (a) transfer his or her pastoral lease;
  - (b) sub-let the land or part of the land the subject of the pastoral lease; or
  - (c) otherwise part with possession of the land or part of the land, and compliance with this subsection is a condition of the lease.
- (2) Except as provided by this Act, a sublessee of pastoral land shall not, without the consent of the Minister:
  - (a) transfer his or her sublease;
  - (b) further sub-let the subleased land; or
  - (c) otherwise part with possession of the land or part of the land.

Maximum penalty: 40 penalty units.

**68 Application for consent to transfer, &c., of leases, &c.**

- (1) An application for consent to transfer a pastoral lease or a sublease of land the subject of a pastoral lease, or to sub-let the land the subject of a pastoral lease, shall be made in writing by the lessee to the Minister.
- (2) On receiving an application under subsection (1) the Minister may refer it to the Board for consideration and recommendation and the Board shall report to the Minister within 30 days after the application is referred to it.
- (3) The Minister shall, after considering the recommendations of the Board, but subject to subsections (4) and (5) and section 35(6), by notice in writing to the lessee or sublessee (or as the case may be), consent or refuse to consent to the transfer of the pastoral lease or sublease or the sub-letting of the land.
- (4) The Minister shall not consent to the transfer of a pastoral lease until all instalments of the purchase price for the grant of the lease, and all rent and other moneys due and payable to the Territory under the lease, have been paid.



- (5) The Minister shall not consent to a subletting of land or a part of the land the subject of a pastoral lease unless it is a condition of the agreement to sub-let that the land will be used only for pastoral purposes, for the purposes of the Territory or for a prescribed purpose.

## **69 Position of mortgagee**

- (1) Where pastoral land has been mortgaged and the mortgagee enters into possession of the land, the mortgagee may, unless the lease is sooner forfeited, remain in possession for the unexpired period of the lease and while in possession is subject to the conditions of the lease as if the mortgagee were the lessee under the lease.
- (2) The fact that the mortgagee or some person by the mortgagee's authority occupies or uses a part of the mortgaged land is prima facie evidence that the mortgagee has entered into possession of the land under the mortgage.
- (3) A mortgagee shall, within a period of 28 days after entering into possession of pastoral land, notify the Minister in writing of that fact.
- (4) Unless the Minister has been notified in accordance with subsection (3), any notice under this Act given to the lessee after the expiration of the period referred to in that subsection shall be deemed to have been duly given to the mortgagee.

## **70 Subleases for Aboriginal communities**

- (1) Notwithstanding section 38(1)(d) and 68(5), a pastoral lessee may, with the consent of the Minister, sublet part of the land the subject of his or her pastoral lease for Aboriginal community living purposes to an incorporated body set up for the management of the Aboriginal community by which the area subleased is or is to be used.
- (2) For the purposes of this section ***Aboriginal community living purposes*** includes residential, educational and medical purposes, the keeping of livestock and poultry and the growing of fruit and vegetables for use by the Aborigines in the community.
- (3) Where the Territory erects improvements on an area the subject of a pastoral lease sublet for Aboriginal community living purposes, it may, within 3 months after the expiration or sooner determination of the sublease, remove the improvements (including fixtures so erected by the Territory) without liability for compensation to the pastoral lessee.

## **71 Abandonment of perpetual pastoral lease**

- (1) The abandonment of a perpetual pastoral lease shall be deemed to be a breach of a condition of the lease and section 40 applies to and in relation to the lease, and the lease may be forfeited under that section, notwithstanding the exceptions expressed in section 40(3)(e) and (4).
- (2) For the purposes of subsection (1), a perpetual pastoral lease is abandoned when the rent for the lease has not been paid for 2 years and during that period there is, in the opinion of the Minister, no discernible effective day to day management or occupation for pastoral purposes of the leased land by the lessee.

## **72 Vacation of land**

- (1) Where the lessee or former lessee of pastoral land vacates the land leaving behind property, the Minister may, by notice in writing, require him or her to remove the property within the period specified in the notice.
- (2) If the lessee or former lessee does not comply with a notice under subsection (1) within the specified period, the Minister may remove and dispose of the property.
- (3) Costs incurred by the Minister in removing and disposing of property under subsection (2) that are not covered by the proceeds, if any, of the sale of the property may be recovered as a debt due and payable to the Territory from the person to whom the notice under subsection (1) was given.
- (4) Surplus proceeds of the sale of the property shall be paid to the lessee or former lessee.

## **Division 4 Certain grants, &c., to be treated as compulsory acquisitions**

### **72A Application**

This Division applies in relation to:

- (a) an extension of the term of a pastoral lease under section 49;
- (b) the grant of a new pastoral lease under section 61;
- (c) the grant of a perpetual pastoral lease under section 62; and
- (d) the grant of a new pastoral lease under section 64,

where the extension or grant:

- (e) will affect native title rights and interests; and
- (f) is an act to which section 24MD(6B) of the *Native Title Act 1993* of the Commonwealth applies by virtue of section 24ID(4) of that Act.

**72B Procedures under *Lands Acquisition Act* to be complied with**

- (1) Divisions 1 and 2 of Part IV and sections 45 and 45A of the *Lands Acquisition Act* (in this Division called ***the applied provisions***) apply in relation to an extension or grant to which this Division applies as if it were a compulsory acquisition of native title rights and interests in relation to the land that will be affected by the extension or grant.
- (2) For the purposes of subsection (1):
  - (a) a reference in the applied provisions to the Minister for the time being administering the *Lands Acquisition Act* is to be read as a reference to the Minister for the time being administering this Act; and
  - (b) a reference in the applied provisions to the compulsory acquisition of native title rights and interests is to be read as a reference to the extension or grant of a pastoral lease under section 49, 61, 62 or 64 (as the case may be) that affects native rights and interests.
- (3) Where the Minister has complied with Divisions 1 and 2 of Part IV of the applied provisions in respect of an extension or grant to which this Division applies then, subject to section 45 of the applied provisions, the Minister may extend the term of the pastoral lease or grant the new pastoral lease or the perpetual pastoral lease accordingly.

**72C Compensation**

- (1) Compensation is payable by the Territory to the native title holder in respect of any land affected by an extension or grant to which this Division applies for the effect of the extension or grant on the holder's registered native title rights and interests.
- (2) A native title holder or registered native title claimant who intends to claim compensation under this section for the effect of an extension or grant to which this Division applies on their registered native title rights and interests must make the claim within 3 years after the term of the pastoral lease is extended or the perpetual pastoral lease or new pastoral lease is granted, as the case may be.

- (3) In the absence of agreement, compensation is not payable to a registered native title claimant unless and until the native title claimed by the claimant is determined.
- (4) In the event of a dispute about compensation payable under subsection (1), the Territory or the native title holder may refer the dispute to the Tribunal.

## **Part 5 Pastoral land monitoring**

### **73 Feral animal control**

- (1) The Board may, by notice in writing, direct a pastoral lessee to control declared feral animals on his or her pastoral land by culling, fencing or other means directed by the Board and the pastoral lessee shall comply with the reasonable directions of the Board.

Maximum penalty: 40 penalty units and 4 penalty units for each day after being found guilty of the offence during which the pastoral lessee fails to comply with the directions.

- (2) For the purposes of subsection (1), the Board may, by notice in the *Gazette*, declare a feral animal in relation to the District or part of the District in which the leased land is situated.

### **74 Reference areas**

- (1) The Board may, by notice in the *Gazette*, declare a specified area of pastoral land to be a reference area for the purposes of evaluating the effect that the grazing of stock has on the pastoral land on which it is located.
- (2) The Board shall not make a declaration under subsection (1) unless it has given to the lessee not less than 28 days notice of its intention to do so and has considered the submissions, if any, made by the lessee within that time relating to the proposed declaration.
- (3) A reference area:
  - (a) shall not exceed one square kilometre in size; and
  - (b) will, where necessary, be fenced by the Minister.
- (4) Subject to any agreement to the contrary between the lessee and the Minister, a pastoral lessee is not obliged to maintain a reference area or its fences.

- (5) A person shall not:
- (a) if the area is fenced, allow stock within a reference area; or
  - (b) in any case do anything on or near a reference area that degrades or damages, or is likely to degrade or damage, the reference area or the fences.

Maximum penalty: 440 penalty units.

- (6) A pastoral lessee shall, as soon as possible after becoming aware of it, advise the Board of any damage to the fence around a reference area.

Maximum penalty: 8 penalty units.

## **75 Monitoring sites**

- (1) The Board may, by marking them in the prescribed manner, establish on pastoral land such monitoring sites as it thinks necessary for the purposes of this Act.
- (2) A person shall not remove, deface or otherwise damage a marker at a monitoring site.

Maximum penalty: 40 penalty units.

## **76 Remedial plans**

- (1) If the Board is of the opinion that pastoral land has been degraded or otherwise damaged, or is likely to suffer degradation or other damage, and that in order to prevent, arrest or minimise degradation of or other damage to the land, or to rehabilitate the land, it is necessary that action under this section be taken, it may, by notice in writing to the pastoral lessee, require the lessee to submit to the Board:
- (a) a remedial plan detailing the proposed management of the pastoral land over a specified period; or
  - (b) a revised remedial plan,
- in accordance with the notice.
- (2) A remedial plan shall contain such information as the Board requires.
- (3) The Board may:
- (a) approve, by endorsement, a remedial plan or revised remedial plan;

- (b) refer the plan back to the lessee for modification; or
- (c) reject the plan and:
  - (i) by notice in writing, require the lessee to submit a fresh plan; or
  - (ii) itself prepare (or revise, as the case may be) a remedial plan.
- (4) Where the Board prepares or revises a remedial plan in pursuance of subsection (3)(c)(ii), the cost of it so doing is a debt due and payable by the lessee to the Territory.
- (5) If a lessee fails to comply with a notice under subsection (1) or (3), the Board may prepare a remedial plan or revised remedial plan in respect of the pastoral land and the cost of it so doing is a debt due and payable by the lessee to the Territory.
- (6) A remedial plan or revised remedial plan prepared by the Board in pursuance of subsection (3)(c)(ii) or (5) shall be taken to be an approved remedial plan for the pastoral land to which it relates.
- (7) The Board may, by endorsement, approve a remedial plan voluntarily submitted to it by a lessee.
- (8) An approved remedial plan may, with the approval of the Board, be varied by the lessee.
- (9) If a lessee fails, without reasonable excuse:
  - (a) to comply with a notice under subsection (1) or (3); or
  - (b) to implement an approved remedial plan,the failure constitutes a breach of the conditions of the pastoral lease.
- (10) The Board shall cause a copy of each approved remedial plan, and each such plan as varied under subsection (8), to be lodged with the Registrar-General.
- (11) Each approved remedial plan lodged with the Registrar-General shall be registered on the title records kept by the Registrar-General.
- (12) A remedial plan registered as referred to in subsection (11) is binding on a mortgagee in possession of, and on successors in title to, the land.

**77 Lessee not responsible for rectification of certain damage, &c.**

- (1) Notwithstanding anything in this Act, a pastoral lessee is not responsible for the expense of rehabilitating or restoring land the subject of his or her pastoral lease to the extent that the degradation or other damage was or is, in the opinion of the Minister after considering the advice of the Board, beyond the pastoral lessee's reasonable control (and was not or is not caused or aggravated by his or her activity) and, subject to subsection (2), neither is the lessee's failure to take action in relation to the degradation or other damage, as required by a remedial plan, a breach of a condition of his or her pastoral lease.
- (2) The Territory may enter into an arrangement with a pastoral lessee for the payment of the costs of rectifying particular damage or deterioration of a kind referred to in subsection (1) and when such an arrangement is entered into that rectification, to the extent of the arrangement, becomes an obligation of the pastoral lessee under the remedial plan.

**Part 6 Access to pastoral land****78 Interpretation**

- (1) For the purposes of this Part, camping is temporary if it is for a period not exceeding 2 weeks or, if a longer or shorter period is prescribed in respect of a particular area, the period so prescribed in relation to camping in that area.
- (2) The Board may, by notice in the *Gazette*, prescribe periods for the purposes of subsection (1).

**79 Access to waterways**

- (1) Subject to this or any other law in force in the Territory, a person has, without the specific permission of the pastoral lessee, a right to be on:
  - (a) perennial natural water (including the sea) on or surrounded by (or, in the case of the sea or a stream or waters forming the boundary of pastoral land, bordered by) pastoral land; or
  - (b) land within the prescribed distance of those waters.
- (2) Subject to this Part, where a pastoral lessee, within 12 months after the commencement of this Act, by notice in a newspaper circulating in the area in which his or her pastoral land is situated, nominates a reasonably practicable route across land the subject of his or her lease from a public road to water referred to in subsection (1),

advises the Board in writing of the route so nominated and indicates on the land by reasonable signs or other means (such as by grading the surface of an access road or track), access to the water may be obtained by members of the public, without the specific permission of the pastoral lessee, only by that route.

- (3) Where a pastoral lessee has not under subsection (2) nominated a route, or has nominated a route that the Board considers is not practicable for the purposes of this Part, the Board may, in the same manner, nominate such a route as the route, or an alternative route, for public access to the water, and members of the public may use the route accordingly.
- (4) In exercising its discretion under subsection (3) the Board shall have regard to:
  - (a) the possible environmental damage that may result from the use of a proposed route;
  - (b) the adverse effect, if any, that its use may have on the management of the pastoral land;
  - (c) the financial burden on any person (including the Territory) that may result from the nomination of the route;
  - (d) the impact, if any, on the privacy of persons residing on the pastoral land;
  - (e) the availability of alternative access other than across the pastoral land;
  - (f) whether, in its opinion, it is necessary for access to be provided across the pastoral land; and
  - (g) such other matters as it thinks fit or as are presented to it.
- (5) A route shall not, by reason only of being nominated or indicated pursuant to subsection (2) or (3) or being used by members of the public as a consequence, become a public road.
- (6) Subject to this Part, a person may camp temporarily on land within the prescribed distance of water referred to in subsection (1).
- (7) This section does not give a person the right to camp:
  - (a) within a radius of 2 kilometres of a homestead or other residential premises on pastoral land;
  - (b) within a radius of 1 kilometre of a dam or other constructed stock watering point on pastoral land; or



- (c) within 500 metres of every usual point of access for stock or wildlife to natural water.
- (8) In this section **prescribed distance** means 50 metres or where, under subsection (9), some other distance is prescribed in relation to particular waters or water at a place, that other distance in relation to those waters or that place.
- (9) The Board may, by notice in the *Gazette*, prescribe a distance for the purposes of subsection (8).

## **80 Public access not to be obstructed**

- (1) Subject to subsection (3), a person shall not, without lawful authority, place an obstruction across a route nominated or indicated pursuant to section 79(2) or (3) or a route for the passage of travelling stock.

Maximum penalty: 40 penalty units.

- (2) If pastoral land over which an access route referred to in subsection (1) is nominated is fenced and there is no gate or grid in or other means of passage through or over, the fence at the point at which reasonable access to the route can be had, the Minister shall cause a suitable gate or grid, or other means of passage, to be erected in, through or over the fence at that point.
- (3) Where a pastoral lessee erects a fence across an access route referred to in subsection (1), the pastoral lessee shall provide a suitable gate, grid or other means of passage in, through or over the fence at its intersection with the access route to ensure that access to the route can be had.

Maximum penalty: 40 penalty units.

- (4) The pastoral lessee shall, subject to section 82, keep a gate referred to in subsection (2) or (3) unlocked.

Maximum penalty: 40 penalty units.

## **81 Access to features of public interest**

- (1) Subject to subsection (2), the Minister may, by notice in the *Gazette* declare an area of pastoral land to be or contain a feature of public interest and in the same or a subsequent notice in the *Gazette* nominate a route by which members of the public may gain access across pastoral land to the area.

- (2) The Minister shall not under subsection (1) declare an area of pastoral land or nominate a route unless the Minister has given the pastoral lessee reasonable written notice of his or her intention to do so.
- (3) Sections 79 and 80, with the necessary changes, apply to and in relation to an area declared under subsection (1) as if the feature that it contains were perennial water referred to in section 79 and the area were land within the prescribed distance of that water.

## **82 Temporary closure of access**

- (1) A pastoral lessee may, for reasons associated with the reasonable management of his or her pastoral lease, after advising the Board of his or her intention to do so, by notice in a newspaper circulating in the part of the Territory in which the pastoral land is situated and by reasonable indication on or in the vicinity of the land to which the notice refers, close any land the subject of his or her pastoral lease on which members of the public would otherwise have the right to be and any access route nominated under section 79 or 81 to that land or water adjacent to the land, but so that such land or access route is not closed by the lessee for more than 2 weeks in a year, except with the approval in writing of the Board.
- (2) The Board may direct a pastoral lessee to revoke or amend a notice under this section in such manner as it thinks fit to ensure that the public has reasonable access to the land or water without unduly interfering with the operations of the pastoral enterprise and the pastoral lessee shall, as soon as practicable, comply with the direction.

Maximum penalty: 40 penalty units.

## **83 Closure for rehabilitation, &c., purposes**

- (1) A pastoral lessee may apply to the Board for permission to close or close from access under section 79 or 81, or permit the use or such access subject to conditions, any land to which members of the public would otherwise have the use or access, on the grounds that the land, or adjoining water or pastoral land, is being or is likely to be degraded because of the use or access or that the use or access, or proposed use or access, is interfering with or will interfere with the reasonable conduct of the pastoral lessee's enterprise.
- (2) The Board may, in its absolute discretion, whether or not as a result of an application under subsection (1), by notice in the *Gazette* and in a newspaper circulating in the area in which the land is situated, declare that members of the public do not have a right, without the

specific permission of the pastoral lessee, to use or have access to land specified in the notice, either absolutely or during such period as is specified in the notice, or shall use the land or have the access only subject to such conditions as are specified or referred to in the notice and, accordingly, the right ceases to exist or exists only subject to those conditions.

- (3) A person who contravenes or fails to comply with a declaration under subsection (2) or a condition imposed under that subsection is guilty of an offence.

Maximum penalty: 4 penalty units.

#### **84 Licensing of persons for certain purposes**

- (1) Subject to subsection (2), the Minister may, on behalf of the Territory, on the payment to the Minister of the prescribed fee, license a person to go onto pastoral land, whether the pastoral lease was granted before or after the commencement of this Act, and to take from the land:

- (a) live or dead naturally grown timber or wood;
- (b) stone, shell, sand, gravel, clay, or earth, not being or supposed to be metalliferous;
- (c) salt;
- (d) seaweed;
- (e) bark; or
- (f) any other substance or article,

reserved to, or otherwise the property of, the Territory.

- (2) A person licensed under this section is not entitled to exercise the right after the expiration of 12 months from the date on which he or she was first licensed, except with and in accordance with the written permission of the Minister.

#### **85 Pastoralists' liability limited**

The liability of a lessee or occupier of pastoral land for injury to a person, or damage to the property of a person, on that land or perennial natural waters on the land in pursuance of the person's right under this Part (including under section 84) shall not exceed that of an occupier of land to a trespasser.

## **Part 7                    Non pastoral use of pastoral land**

### **85A            Permit**

- (1) The Board may, on application by a pastoral lessee, grant the lessee a ***permit*** to use all or part of the land the subject of the lessee's pastoral lease for a purpose that is not a pastoral purpose (a ***non-pastoral purpose***).
- (2) The Board may issue guidelines for pastoral lessees in relation to the processes of application for a permit and the determination of the application.
- (3) The guidelines must be approved by the Minister.

### **85B            Registration**

- (1) A permit is a registrable instrument for the *Land Title Act*.
- (2) On granting a permit, the Board must lodge with the Registrar-General the required number of copies of the permit for registration.
- (3) On registration by the Registrar-General, a permit gives the pastoral lessee of the land to which the permit relates the right to use the land the subject of the lease for non-pastoral purposes to the extent specified in the permit.

### **85C            Effect of permit on dealing with lease**

To avoid doubt, if a permit is registered in relation to land held under a pastoral lease, any subsequent dealing with the lease (for example, by a transfer or an assignment) is of the lease and the permit unless the dealing specifically states otherwise.

### **85D            Fee for permit**

The Minister may determine fees payable, on an annual or other basis, for a permit to use pastoral land for a non-pastoral purpose.

### **86             Application for permit**

- (1) A pastoral lessee who wishes to use all or part of the land the subject of a pastoral lease for a non-pastoral purpose may, in the form the Board requires, apply to the Board for a permit.

*Note for subsection (1)*

*Section 87 sets out matters the Board must consider in relation to applications.*

- (2) Before considering an application under subsection (1) the Board may request from the applicant such additional information relating to the proposed use as it thinks fit and may defer its consideration until the information is provided.

## **87 Assessment of application**

- (1) This section applies if:
- (a) the Board is considering an application under section 86(1) for a permit to use pastoral land for a non-pastoral purpose; and
  - (b) the grant of the permit would be a future act to which Part 2, Division 3, Subdivision G of the NTA applies.
- (2) The Board:
- (a) must comply with the requirements of Part 2, Division 3, Subdivision G of the NTA; and
  - (b) must take into account current government policy known to it in relation to the type of use proposed; and
  - (c) must consider the likely effect of the proposed use on the environment and the pastoral enterprise of the pastoral lessee; and
  - (ca) must take into account submissions received by the Board under section 87A within the period specified in the notice given under section 87A(3)(c); and
  - (d) may consider or take into account any other matters as it thinks fit.
- (3) For subsection (2)(b), the Minister may issue guidelines to the Board.
- (3A) The meeting of the Board at which the application is considered may be open to the public.
- (3B) If the meeting is to be open to the public, the Board must:
- (a) invite the applicant and any person who made a submission under section 87A to attend the meeting; and
  - (b) give any person attending the meeting a reasonable opportunity to address the Board.
- (4) In this section:
- future act**, see section 233 of the NTA.

**87A Public notice of application**

- (1) Before making a decision on an application the Board must give public notice of the application.
- (2) The notice must be published in a newspaper circulating in the area of the Territory where the pastoral lease is located and on the Board's website.
- (3) The notice must:
  - (a) give details of the application; and
  - (b) be in the form prescribed by regulation; and
  - (c) invite any person who is interested in doing so to make written submissions to the Board about the application within the time specified in the notice (which must be not less than 14 days after the date the notice is first published).

**88 Decision of Board**

- (1) After considering the matters specified in section 87(2), the Board may grant a permit for the use of pastoral land for a non-pastoral purpose.
- (2) The permit is subject to any conditions the Board thinks appropriate and specifies in the permit.

**89 Term of permit**

- (1) A permit has effect for the period, not exceeding 30 years, specified in the permit.
- (2) However, if a permit relates to land held under a term pastoral lease, the permit has effect only until the expiry of the lease, or the lesser period specified in the permit.

**89A Extension of term of permit**

- (1) A pastoral lessee may apply to the Board for the extension for a specified period of the term of a permit granted in relation to the pastoral land.
- (2) The application must be made in the approved form at least 2 years before the permit is due to expire.

- (3) In considering the application, the Board must have regard to:
  - (a) the conduct of the applicant in relation to the operation of the permit (including the extent to which the applicant has complied with the conditions of the permit); and
  - (b) the likely impact on the environment if the term of the permit was extended; and
  - (c) any other matter prescribed by regulation.
- (4) The Board must, by written notice to the applicant, decide the application by:
  - (a) extending the term of the permit for the specified period; or
  - (b) extending the term of the permit for a shorter period as decided by the Board; or
  - (c) refusing the application.
- (5) If the Board extends the term of the permit, the Board must lodge with the Registrar-General the required number of copies of the written notice of extension for registration.
- (6) On registration by the Registrar-General of the written notice of extension, the term of the permit is extended for the period specified in the notice.
- (7) If the Board has not decided the application before the permit ceases to have effect, the Board is taken to have refused the application.

**89B Variation of permit – by Board**

- (1) The Board may, on its own initiative, by written notice given to a pastoral lessee in relation to whose pastoral land a permit is in force, vary the permit if the Board considers the variation is appropriate, having regard to:
  - (a) the conduct of the lessee in relation to the operation of the permit (including the extent to which the lessee has complied with the conditions of the permit); and
  - (b) the likely impact on the environment if the variation were made; and

- (c) whether the variation may result in:
    - (i) a use for a non-pastoral purpose becoming the dominant use of the pastoral land; or
    - (ii) Part 2, Division 3, Subdivision G of the NTA applying in relation to the variation; and
  - (d) any other matter prescribed by regulation.
- (2) The notice must specify the variation.
  - (3) If the Board varies the permit, the Board must lodge with the Registrar-General the required number of copies of the written notice of variation for registration.
  - (4) On registration by the Registrar-General of the written notice of variation, the permit is varied as specified in the notice.
  - (5) A permit may be varied more than once under this section.
  - (6) In this section:
    - variation**, of a permit:
      - (a) includes a variation of the conditions of the permit; but
      - (b) does not include an extension of the term of the permit.

**89C Variation of permit – on application by pastoral lessee**

- (1) A pastoral lessee in relation to whose pastoral land a permit is in force may apply to the Board for a specified variation of the permit.
- (2) The application must be made in the approved form before the permit is due to expire.
- (3) In considering the application, the Board must have regard to:
  - (a) the conduct of the applicant in relation to the operation of the permit (including the extent to which the applicant has complied with the conditions of the permit); and
  - (b) the likely impact on the environment if the variation were made; and
  - (c) whether the variation may result in:
    - (i) a use for a non-pastoral purpose becoming the dominant use of the pastoral land; or



- (ii) Part 2, Division 3, subdivision G of the NTA applying in relation to the variation; and
  - (d) any other matter prescribed by regulation.
- (4) The Board must, by written notice to the applicant, decide the application by:
  - (a) varying the permit as specified in the application; or
  - (b) varying the permit as specified in the application, but with specified changes made by the Board; or
  - (c) refusing the application.
- (5) If the Board varies the permit, the Board must lodge with the Registrar-General the required number of copies of the written notice of variation for registration.
- (6) On registration by the Registrar-General of the written notice of variation, the permit is varied as specified in the notice.
- (7) If the Board has not decided the application before the permit expires or otherwise ceases to have effect, the Board is taken to have refused the application.
- (8) A permit may be varied more than once under this section.
- (9) In this section:
  - variation***, of a permit:
    - (a) includes a variation of the conditions of the permit; but
    - (b) does not include an extension of the term of the permit.

#### **89D Suspension of permit – by Board**

- (1) The Board may, on its own initiative, by written notice to a pastoral lessee in relation to whose pastoral land a permit is in effect, suspend the permit if the Board thinks the suspension is appropriate, having regard to:
  - (a) the conduct of the lessee in relation to the operation of the permit (including the extent to which the lessee has complied with the conditions of the permit); and
  - (b) any special circumstances giving rise to the need for the suspension (including, for example, an emergency); and

- (c) the likely impact on the environment if the permit were suspended; and
  - (d) any other matter prescribed by regulation.
- (2) The notice must specify:
- (a) the reason for the suspension; and
  - (b) the period of the suspension (the **suspension period**).
- (3) Before the end of the suspension period, the Board may, by written notice given to the pastoral lessee:
- (a) extend the suspension period; or
  - (b) revoke the permit under section 89E; or
  - (c) reinstate the permit.
- (4) A permit may be suspended more than once under this section.

#### **89E Revocation of permit – by Board**

- (1) The Board may, on its own initiative, if the Board considers that a permit should be revoked, by written notice to the pastoral lessee in relation to whose pastoral land the permit is in effect, give the lessee the opportunity to give reasons to the Board why the permit should not be revoked.
- (2) The notice must specify:
- (a) a reasonable time (the **response time**) by which the pastoral lessee must provide the reasons; and
  - (b) if the notice has been given because the Board considers the lessee has contravened this Act in relation to the permit or pastoral lease:
    - (i) details of the contravention; and
    - (ii) if the contravention can be remedied – that the lessee must take specified actions to remedy the contravention within a reasonable period as specified in the notice.
- (3) After the expiry of the response time, the Board may revoke the permit if it thinks it appropriate, having had regard to:
- (a) whether or not the pastoral lessee has taken appropriate actions that will remedy a contravention (including, for example, actions mentioned in subsection (2)(b)(ii)); and

- (b) any reasons given by the lessee under subsection (1); and
  - (c) the likely impact on the environment if the permit were revoked; and
  - (d) any other matter prescribed by regulation.
- (4) If the Board revokes the permit, the Board must lodge with the Registrar-General the required number of copies of the written notice of revocation for registration.
- (5) On registration by the Registrar-General of the written notice of revocation, the permit ceases to have effect.

**89F Suspension or revocation of permit – on application by pastoral lessee**

- (1) A pastoral lessee in relation to whose pastoral land a permit is in force may apply to the Board for:
- (a) the suspension of the permit for a specified period; or
  - (b) the revocation of the permit.
- (2) The application must be made in the approved form.
- (3) In considering the application, the Board must have regard to:
- (a) any special circumstances giving rise to the need for the suspension or revocation (including, for example, an emergency); and
  - (b) the likely impact on the environment if the decision to suspend or revoke the permit were made; and
  - (c) any other matter prescribed by regulation.
- (4) The Board must, by written notice given to the applicant, decide the application by:
- (a) approving the application by suspending or revoking the permit; or
  - (b) refusing the application.
- (5) A permit may be suspended more than once under this section.
- (6) If the Board revokes the permit, the Board must lodge with the Registrar-General the required number of copies of the written notice of revocation for registration.

- (7) On registration by the Registrar-General of the written notice of revocation, the permit ceases to have effect.

**89G If permit revoked**

- (1) If the Board revokes a permit under section 89E or 89F, the pastoral lessee of the land in relation to which the permit had been granted must comply with the reasonable written directions of the Board in relation to removal of any impact on the land arising from the carrying on of the use for a non-pastoral purpose.
- (2) A failure to comply with a direction mentioned in subsection (1) is an offence.

Maximum penalty: 500 penalty units and 10 penalty units for each day during which the offence continues.

**90 Board may require pastoral lessee to provide details of uses**

- (1) The Board may require a pastoral lessee to provide to it such details, and within such time, as it requires in relation to activities being carried out on land the subject of his or her pastoral lease and the lessee must provide the details accordingly.
- (2) If in the opinion of the Board (whether or not formed as a result of details provided under subsection (1)) an activity being carried out on pastoral land is not a pastoral purpose it may, by notice in writing to the pastoral lessee, require the lessee, within 30 days:
- (a) to apply to the Minister to surrender the part of the pastoral lease on which the activity is being carried out in exchange for a separate title under another Act for that non-pastoral purpose; or
- (b) to apply under section 86 for a permit to carry out the activity.

**91 Board may declare use of land not to be pastoral use**

The Board may, at any time, by notice in the *Gazette*, declare a use of land described in the notice not to be a use for pastoral purposes.

## **Part 8            Aboriginal community living areas**

### **Division 1        Interpretation**

#### **92            Definitions**

(1) In this Part, unless the contrary intention appears:

***applicant***, in relation to an application, means:

- (a) an Aborigine:
  - (i) who at any time since 1 January 1968 was ordinarily resident on land which, at any time since that date, was comprised in the pastoral lease to which the application relates or which, together with land that comprises the pastoral lease, was comprised in another pastoral lease; or
  - (ii) who otherwise has an historical residential association with the pastoral lease the subject of the application,  
  
and who can demonstrate a present need for a community living area for himself or herself; or
- (b) where the lessee of the relevant pastoral lease has consented in writing to the application being made, any other Aborigine.

***application*** means an application under section 101.

***Chairman*** means the Chairman of the Tribunal, and includes the Deputy Chairman:

- (a) while the Deputy Chairman is exercising the powers and performing the functions of the Chairman, including the performance of a function of the Chairman in pursuance of a direction under section 106(1B)(b); or
- (b) in relation to a meeting of the Tribunal at which the Deputy Chairman is directed, in pursuance of section 106(1A)(a), to preside.

***Deputy Chairman*** means the Deputy Chairman of the Tribunal.

***party***, in relation to an application, means the applicant or the lessee of the pastoral lease to which the application relates.

**relevant Land Council** means the Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth for the area of the Territory in which the land the subject of an application or grant, or to which an agreement under section 113 relates, is situated.

**relevant pastoral organization**, in relation to an application, means the organisation referred to in section 93(3) and approved by the Minister or, where more than one organisation is approved, the organisation so approved as representing the interests of pastoralists in that part of the Territory in which the land the subject of the application or grant is situated.

**Tribunal** means the Community Living Areas Tribunal continued in existence by section 93 or constituted under this Part.

- (2) In relation to an application:
- (a) a reference in this Part to pastoral land, a pastoral lease or land comprised in a pastoral lease includes a reference to an area which, at the time the application was made, was comprised in a pastoral lease but, before the application was finally disposed of, was converted to or included in a Crown lease of another kind and a lessee of the relevant lease into which the land was converted shall be a party to the application as if he or she were the pastoral lessee at the time the application was made; and
  - (b) where the Tribunal has not been constituted in relation to the application before that conversion to or inclusion in the Crown lease of another kind or after that conversion or inclusion is for any reason to be constituted with a new member, a reference in section 93(2)(b), (4) and (5) to the relevant pastoral organisation shall be construed as a reference to the lessee of that Crown lease,

and this Part, with the necessary changes, applies accordingly.

## **Division 2            Community Living Areas Tribunal**

### **93            Continuation of Tribunal**

- (1) Subject to this Part, the Tribunal established by the *Crown Lands Act* as in force before the commencement of this Act continues in existence under this Act as if established by this Division.

- (2) Subject to subsection (8) and to section 113(3), the Tribunal shall consist of:
- (a) a person who:
- (i) is a lawyer who has been admitted to the legal profession for at least 10 years; and
  - (ii) is a Judge of the Supreme Court of the Northern Territory or a magistrate or is practising as a legal practitioner in the Territory,
- and who is appointed by the Administrator to be the Chairman of the Tribunal;
- (ab) one other person who has the qualifications required under paragraph (a)(i) and (ii) and who is appointed by the Administrator to be the Deputy Chairman of the Tribunal; and
- (b) subject to subsection (5), in respect of each application or matter referred to it, 2 other members appointed by the Minister:
- (i) one of whom shall be appointed from a panel of 3 persons nominated by the relevant Land Council; and
  - (ii) one of whom shall be appointed from a panel of 3 persons nominated by the relevant pastoral organisation.
- (3) The Minister shall, by notice in the *Gazette*, approve an organisation that, in the Minister's opinion, represents the interests of pastoralists in the Territory or a particular part of the Territory, for the purpose of nominating in pursuance of section 105 the panel for the purposes of subsection (2)(b)(ii).
- (4) A nomination of a panel for the purposes of subsection (2)(b) shall be in writing addressed to the Minister and shall be signed by or on behalf of the relevant Land Council or relevant pastoral organisation, as the case may be.

- (5) If a relevant Land Council or relevant pastoral organisation does not, within the period of 30 days after being required under section 105 to do so, nominate a panel of 3 persons of whom one is to be appointed to the Tribunal, the Minister shall, as soon as practicable after the expiration of the period, either:
- (a) appoint a person he or she thinks fit as a member in place of the member who would otherwise have been appointed from the panel nominated by the Land Council or organisation in default; or
  - (b) decide not to make such an appointment, in which case the Tribunal shall be lawfully constituted without the appointment of that member.
- (6) A person who has a direct personal interest in the land the subject of an application or reference for consideration by the Tribunal, or in the outcome of the Tribunal's consideration of the application or reference, shall not be nominated, or be qualified to hold office, as a member of the Tribunal in relation to that application or reference.
- (7) The Tribunal is a statutory body within the meaning and for the purposes of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act*.
- (8) The Tribunal may, in the Chairman's discretion, be constituted by the Chairman or the Deputy Chairman alone for the purposes of the Tribunal:
- (a) giving directions in any matter within its jurisdiction (including general practice directions by the Chairman and directions in relation to a particular matter); or
  - (b) performing its functions or exercising its powers under section 106(4), (5) or (6).

#### **94            Term of office**

A member of the Tribunal appointed under section 93(2)(b) or (5)(a), or for the purpose of a reference under section 113(3), or under section 28A(3) of the *Lands Acquisition Act*, holds office as a member until the Tribunal makes its recommendation on the relevant application or reference to the Minister in accordance with section 108 or 114(5) or until the member sooner resigns his or her office as a member, his or her appointment is terminated or he or she acquires an interest of a kind referred to in section 93(6) but, subject to this Part, he or she is eligible to be re-appointed as a member of the Tribunal.



**95            Resignation of members**

- (1) A member of the Tribunal appointed under section 93(2)(b) or (5)(a), or for the purpose of a reference under section 114(3) or under section 28A(3) of the *Lands Acquisition Act* may, in writing delivered to the Minister, resign his or her office as a member.
- (2) The Chairman or Deputy Chairman of the Tribunal may, in writing delivered to the Administrator, resign his or her office.

**96            Termination of appointment**

The Minister may, on the recommendation of the Chairman, terminate the appointment of a member of the Tribunal appointed under section 93(2)(b) or (5)(a), or for the purpose of a reference under section 114(3) or under section 28A(3) of the *Lands Acquisition Act* for inefficiency, misbehaviour or physical or mental incapacity or when, because of illness, absence from the Territory or any other reason the member is unable conveniently to perform the duties of his or her office.

**97            Consideration of application where member ceases to hold office**

Where a member of the Tribunal, other than the Chairman or Deputy Chairman, ceases to hold office by reason of his or her death, resignation, termination of appointment or, by virtue of section 93(6), ceasing to be qualified to hold office as a member, the vacancy shall be filled in the same manner as the appointment of the vacating member unless the Chairman has advised the Minister, in writing, that, in the opinion of the Chairman, an injustice to a party is likely to arise by reason of the consideration of an application or reference being continued by the Tribunal constituted with a new member.

**98            Functions and powers of Tribunal**

- (1) The functions of the Tribunal are:
  - (a) on an application being referred to it:
    - (i) to determine whether the applicant is entitled to make the application; and
    - (ii) where it is satisfied that the applicant is so entitled:
      - (A) to consider the application; and

(B) to make recommendations as soon as practicable to the Minister as to whether the land the subject of the application, or any other land that is part of the pastoral lease to which the application relates in substitution for that land or part of that land, should be acquired by the Territory and granted or transferred in fee simple for the benefit of the applicant; and

(b) such other functions as are imposed on it by or under this Act.

(2) Subject to this Part, the Tribunal has such powers as are necessary to enable it to carry out its functions.

### **99            Absence of submission of party**

(1) Subject to subsection (2), the Tribunal may proceed to consider an application referred to it notwithstanding that it has not received written submissions from a party.

(2) The Tribunal shall not consider an application in circumstances described in subsection (1) unless it has given reasonable notice to the party of its intention to do so.

## **Division 3            Community living areas**

### **100           Land Council may act for Aborigine**

(1) At the request in writing of a party to an application or an Aborigine who wishes to make an application, a person (including the relevant Land Council in the case of a request by an Aborigine) may represent the party or Aborigine in relation to the application or a reference to the Tribunal.

(2) A person representing a party or Aborigine in pursuance of a request under subsection (1) shall attach a copy of the writing referred to in that subsection on first making an application or lodging a written submission with the Minister or, as the case may be, the Tribunal.

### **101           Application for grant of living area**

(1) Subject to subsections (2) and (3), an applicant, on his or her own behalf or on behalf of the applicant and other Aborigines who, if they themselves had applied, would also be qualified as applicants, may apply to the Minister for the excision from the pastoral lease to which the application relates of an area of land specified in the application and the grant of an estate in fee simple in that land for the benefit of the applicant, or the applicant and those Aborigines,

as a community living area.

- (2) An Aborigine is not, or would not be, qualified as an applicant for the purposes of subsection (1) in respect of an area of land all or any part of which is within 2 kilometres of a homestead unless:
  - (a) he or she, at the time of making the application or being included amongst those on whose behalf the application was made, as the case may be, was entitled under section 38(4) to reside within 2 kilometres of the homestead; or
  - (b) not being so entitled but being a person referred to in paragraph (a)(i) of the definition of "applicant" in section 92 in relation to the pastoral lease, he or she has the written consent of the owner of the pastoral lease to make the application or to be included amongst those on whose behalf it is made.
- (3) Subject to subsection (4), except as agreed between the parties, an application shall not be considered before the expiration of 6 months after the date the application was made to the Minister or before the expiration of such further period as agreed between the parties.
- (4) Where, after making an application under subsection (1), an applicant has requested the lessee of a pastoral lease to negotiate for the surrender of an area of land comprised in the pastoral lease as a living area for the applicant or the applicant and other similarly qualified Aborigines and, within 3 months after the request, the lessee has failed to agree to the negotiations taking place, an application under subsection (1) shall be considered by the Minister at any time after the expiration of the period.

## **102        Form of application**

- (1) An application shall:
  - (a) be in writing;
  - (b) identify the Aborigine or Aborigines who are making the application or on whose behalf the application is made;
  - (c) state the basis on which the application is made having regard to the criteria set out in the definition of ***applicant*** in section 92, and have attached supporting documentary evidence for the statement;
  - (d) identify the pastoral lease to which it relates and the lessee of the pastoral lease;

- (e) contain a reasonably accurate description of the land the subject of the application sufficient to identify its proposed boundaries together with a detailed map to sufficiently identify the land in relation to surrounding areas;
  - (f) if discussions have been held between the parties to the proposed application before the application was made, contain a summary of, and an assessment of the outcome of, the discussions; and
  - (g) if made with the agreement of the lessee of the pastoral lease to which the application relates, be accompanied by a copy of the agreement.
- (2) A copy of an application shall, as soon as practicable after it is made, be served by the applicant on:
- (a) the other parties to the application or their agents; and
  - (b) such other persons, if any, on whom the Minister requires it to be served,

and any person served pursuant to this subsection may, within the period referred to in section 101(3), make written submissions to the Minister in relation to the application.

### **103 Service on lessee**

Service under section 102(2)(a) of a copy of an application on the lessee of a pastoral lease may be effected by post or by personal service on the lessee or by personal service on the manager or other person apparently in charge of, and resident on, the pastoral lease.

### **104 Minister to consider application**

- (1) Subject to this section the Minister shall, within 90 days after the expiration of the relevant period referred to in section 101(3) or (4), approve the application or refer it to the Tribunal together with any submissions received and such information, if any, as he or she thinks fit.
- (2) The Minister may, by notice in writing, at any time within the period of 90 days referred to in subsection (1), require a party to an application to furnish to the Minister, in writing, such information or material (including a summary of, and an assessment of the outcome of, any discussions held between the parties to an application after the application was made) as is specified in the notice, within the time so specified.

- (3) Where a notice is given under subsection (2), the period of 90 days referred to in subsection (1) shall be extended by such period:
- (a) as is specified in the notice as being the period within which a party is to comply with the Minister's requirements or within such extended period as is agreed by the applicant with the Minister; or
  - (b) as is actually taken by a party to comply with the Minister's requirements under the notice,

whichever is shorter, but if a party fails to comply with the Minister's requirements within the time specified or extended under paragraph (a), the Minister shall consider the application without the information or material requested.

- (4) The Minister shall, as soon as practicable after approving an application or referring it to the Tribunal, by notice in writing, advise the parties to the application and any person served with a copy of the application under section 102(2)(b) of the decision or action taken.

#### **105        Tribunal to consider application referred by Minister**

The Minister shall, as soon as practicable, but not later than 28 days, after referring to the Tribunal an application and as soon as practicable after the occasion for the appointment of a member of the Tribunal arises, by notice in writing to the relevant Land Council and relevant pastoral organisation, require each to nominate a panel of 3 persons for the purpose of constituting, under section 93, the Tribunal for the purpose of considering and making recommendations to the Minister in relation to the application, and forward a copy of the notice to the Chairman.

#### **105A      Minister may withdraw referral**

- (1) At any time after an application is referred to the Tribunal by the Minister and before a recommendation under section 108 or 109 is made by the Tribunal, the Minister may, by notice in writing to the Tribunal, for the purpose only of approving the application in whole or, with the consent of the parties, in part, withdraw the matter from the Tribunal.
- (2) The Minister shall, within 30 days after withdrawing a matter under subsection (1), approve the application in whole or in part, as the case may be, and section 104(4) and Division 4 shall apply as if the approval were the approval under section 104(1) of the application or the application as so modified.

## **106        Meetings of Tribunal and procedure**

- (1) In its consideration of an application or reference under this or any other Act, the Tribunal (except as provided in subsection (7) or section 107, or in such exceptional circumstances as the Chairman allows) shall not consider any matter other than that contained in written submissions or material before it.
- (1A) A meeting of the Tribunal to consider an application or reference referred to in subsection (1) shall comprise:
- (a) at the discretion of the Chairman, the Chairman or Deputy Chairman; and
  - (b) the relevant members appointed under section 93(2)(b).
- (1B) Nothing in this Act prevents:
- (a) the Tribunal from conducting at the same time 2 meetings, one presided over by the Chairman and the other by the Deputy Chairman, to consider separate applications or references; or
  - (b) the Deputy Chairman performing a function of the Chairman, as directed, in relation to an application at any time before, during or after a meeting of the Tribunal to consider the application (and the Chairman may give such a direction).
- (1C) Where the Chairman is absent or, for any reason, the Chairman is unable to perform his or her functions under this Part or there is a vacancy in the office of Chairman, the Deputy Chairman has all the powers and may perform all the functions of the Chairman.
- (2) The convening of meetings of the Tribunal and the procedures at those meetings are, subject to this Act, in the discretion of the Chairman.
- (3) A person who has been advised pursuant to section 104(4) that an application has been referred to the Tribunal may make written submissions to the Tribunal in relation to the application.
- (4) The Tribunal may, by notice in writing, require a party to an application referred to it to furnish to the Tribunal such information (including the answers, in writing, to questions put by the Tribunal) or material as is specified in the notice, within the time specified in the notice.

- (5) The Tribunal may request a person having relevant knowledge, experience or expertise to supply, on such terms as agreed, such information or material as the Tribunal thinks will assist it in considering the application or reference before it.
- (6) If the Tribunal receives submissions, information, or material pursuant to subsection (3) or, as the case may be, subsections (4) or (5), it shall supply a copy to:
  - (a) where the submissions, information or material was received from a party to the application – the other party to the application; and
  - (b) where the submissions, information or material was received from a person who was not a party – the parties to the application,

and the party or those parties may, within 28 days after receiving the copy, make submissions in writing to the Tribunal in relation to the submissions, information or material.

- (7) For the purposes only of assisting the Tribunal in its consideration of an application, the Chairman may order a view of the land the subject of the pastoral lease to which the application relates and the Tribunal may, in the course of the view, take oral evidence in explanation of the subject of the view, provided it is relevant to a matter referred to in section 109(1)(a) or (b).
- (8) Notwithstanding any law in force in the Territory, after reasonable notice in writing has been given to the lessee of the pastoral lease the land the subject of which a view has been ordered under subsection (7), the Tribunal and such other persons as are specified in the notice may enter on and remain on the pastoral land, together with such vehicles and equipment as are necessary, and view the land.

#### **107 Tribunal may require compulsory conference**

- (1) The Tribunal may, by notice in writing to the parties to an application, require them to attend a compulsory conference before the Tribunal or a person nominated by the Tribunal and at a time and place specified in the notice, to discuss the application with a view to resolving the differences of the parties in relation to it.
- (2) If a party refuses or fails to attend a conference in accordance with a notice under subsection (1), the Tribunal may:
  - (a) if the party is the applicant – refuse to consider the application further until the party attends such a conference; or

- (b) if the party is not the applicant – proceed to consider the application and make such recommendations as it thinks fit.

**108        Recommendation, &c., to Minister after agreement**

- (1) If, after considering an application referred to it, the Tribunal is satisfied that the parties have reached agreement on all matters relevant to the application, it shall recommend to the Minister the excision from the pastoral lease of the land agreed between the parties to be excised and the granting of an estate in fee simple in the land as a community living area for the Aborigine or Aborigines for whose benefit the application was made, or any of them.
- (2) When making a recommendation under subsection (1), the Tribunal shall comment on the matters referred to in section 109(1)(b)(ix), and such other matters in section 109(1)(b)(i) to (x) on which the Minister requires it to comment.

**109        Recommendation, &c., to Minister in other cases**

- (1) If, after considering an application referred to it (other than an application considered under section 108), the Tribunal:
  - (a) is satisfied that:
    - (ii) the excision of the area of land the subject of the application, or another area in substitution for the land or part of the land, will not unreasonably reduce the economic viability of the relevant pastoral lease; and
  - (b) has had regard to:
    - (i) the length of time during which the applicant has or had, or those Aborigines for whose benefit the application was made have, or a particular Aborigine has or had, resided on the area or another part of the pastoral lease, and the likely benefit to the applicant or those Aborigines, or any of them, of the granting of an estate in fee simple in the area as a community living area, and the acceptability to the applicant of another area in substitution for the area applied for;
    - (ii) the reasonableness of the size of the area applied for, taking into account the number of people who reside or intend to reside on the community living area, and any estimates of population growth or decrease;
    - (iii) the likely effect of the use of the proposed community living area on the privacy of others residing on the pastoral lease or neighbouring areas;



- (iv) the provisions, if any, that should be made for reasonable access to the area, or across the area to parts of the pastoral lease from which, if it is recommended, the area should be excised;
- (v) the need for and probable cost of providing services, including the provision of water and electricity, and reasonable access to the area, and the availability of or the potential to locate potable ground water;
- (vi) the number and size of areas already granted or sought under this Act or any other law in force in the Territory for the applicant or those Aborigines for whose benefit the application was made or any of them or on which they reside, or which are available for occupation by them;
- (vii) the number and size of areas of land claimed under a law in force in the Territory or of a State or other Territory of the Commonwealth as Aboriginal land (by whatever name called) on which the applicant or those Aborigines for whose benefit the application was made, or any of them, would be entitled to reside if the claim were successful, and the stage of proceedings reached in relation to such claims, but where the grant of land under that law is to be made on the recommendation of a person or body, the Tribunal shall only have regard to the land actually granted or in respect of which such a recommendation for grant has been made;
- (viii) the degree to which the economic viability of the pastoral lease would be affected by the excision of the area;
- (ix) whether the applicant or the Aborigines for whose benefit the application was made have adequate housing circumstances or have available to them land on which housing might be provided; and
- (x) any agreement reached between the parties to the application in relation to the issues between them,

it shall recommend to the Minister that:

- (c) there be excised from the pastoral lease the land to which the application relates or any other land that is part of the pastoral lease in substitution for that land or part of that land as an Aboriginal community living area; or
- (d) that no such excision be made.

- (2) In making its recommendation under subsection (1) the Tribunal shall comment on the matters to which it has had regard.
- (3) At the time of making its recommendation under subsection (1), the Tribunal shall send a copy of the recommendation and its comments under subsection (2) to the parties to the application.

**110 Discretion of Minister in relation to recommendations**

- (1) The Minister shall, within 28 days after receiving it (and having regard to such matters as the Minister thinks fit but in any event having regard to the Tribunal's comment on the matters referred to in section 109(1)(b)(ix)), accept in whole or in part the recommendation made under section 108(1) or section 109(1), or reject it.
- (2) As soon as practicable, but not later than 28 days, after making a decision under subsection (1), the Minister shall, by notice in writing to the parties to the application as a result of which the recommendation of the Tribunal was made and such other persons as the Minister thinks fit, advise them of the decision and his or her reasons for the decision.

**Division 4 Formation of association and acquisition of land**

**111 Formation of association and acquisition of land**

- (1) Where the Minister:
  - (a) approves under section 104(1) an application;
  - (b) accepts a recommendation under section 108(1); or
  - (c) accepts in whole or in part a recommendation under section 109(1)(c),

the successful applicant or applicants shall, for the purposes of a grant of an estate in fee simple in the relevant land by section 46(1A) of the *Lands Acquisition Act*:

- (d) form an association of Aborigines and incorporate it under the *Associations Act* or the *Aboriginal Councils and Associations Act 1976* of the Commonwealth; or
- (e) approve an association already incorporated under either of the Acts specified in paragraph (d), being an association which, at the time of the approval, does not hold and is not intended to hold, other land as an Aboriginal community living area under this Part,

to hold the land.

- (2) The Minister shall, on being advised of the formation and incorporation of an association referred to in subsection (1)(d) or of the approval of an association referred to in subsection (1)(e), advise the minister responsible for the administration of the *Lands Acquisition Act* of that fact and of the name of the association and a description of the relevant land, and that minister shall, within 30 days after receiving the advice, commence action under that Act to acquire the relevant land (including, where necessary, an easement for reasonable access to the land), except that the pre-acquisition procedures otherwise required under Part IV of that Act to be followed shall not apply to or in relation to the acquisition.

## **Division 5 Miscellaneous**

### **112 Appeal to Supreme Court**

- (1) An appeal lies to the Supreme Court, in accordance with the rules of the Court, against a decision of the Minister under this Part but only on the grounds of that decision being:
  - (a) made on an error of law; or
  - (b) so manifestly wrong that no reasonable person could have come to the decision,

and the Minister shall be bound by the decision of the Court.

- (2) In its determination of an appeal under this section the Court may confirm, modify, or reverse the decision appealed against, or any part of the decision, and may, instead of determining the appeal, direct the Minister to reconsider, either generally or in respect of specified matters, the decision to which the appeal relates.
- (3) In giving a direction under subsection (2) the Court shall:
  - (a) advise the Minister of its reasons for doing so; and
  - (b) give the Minister such directions as it thinks fit as to his or her reconsideration of the matter,

and the Minister shall have regard to those reasons and directions.

### **113 Access to certain areas of Aboriginal land**

- (1) Where there is no practical way of gaining access to an area of Aboriginal land described in Part 2 or 3 of Schedule 1 of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth otherwise than by crossing over a pastoral lease, a

person is entitled, for the purpose of gaining access to the area, to cross over the pastoral lease by:

- (a) a route that has been agreed on between each person (in this section called the **lessee**) having an estate or interest in the pastoral lease and the relevant Land Council; or
  - (b) if no agreement has been reached in respect of such a route – a route determined by the Tribunal.
- (2) A person having a right of access to Aboriginal land referred to in subsection (1) may, in writing, apply to the Tribunal for the Tribunal to determine a route for the purposes of this section and in the application the person shall indicate the steps he or she has taken in an effort to agree on a route with the lessee of the relevant pastoral lease and the results of the effort.
  - (3) For the purposes of this section, the Tribunal shall be constituted by the Chairman alone who, subject to subsection (4), shall act as an arbitrator in the matter in such manner as he or she thinks fit.
  - (4) In making a determination under subsection (1)(b), the Tribunal shall as far as possible try to ensure that, while the route provides reasonable access to the Aboriginal land, it does not unduly interfere with a lessee's legitimate use or enjoyment of the land over which it passes.
  - (5) A route that may be used, by virtue of an agreement or determination under subsection (1), to gain access to an area of Aboriginal land referred to in that subsection is not to be taken to be a route on or over which the public has a right of way.

#### **114 Resumption of abandoned Aboriginal community living areas**

- (1) In this section, **abandoned**, in relation to an Aboriginal community living area granted by section 46(1A) of the *Lands Acquisition Act*, means the case where neither the applicant nor any of the Aborigines for whose benefit the grant of land was made, or any of the members from time to time of the association to which the land was granted, have occupied the land as their principal place of residence during the 5 year period before an application is made under subsection (2).
- (2) The lessee of a pastoral lease or a Crown lease of another kind adjacent to an abandoned Aboriginal community living area may apply to the Minister to have the land comprising the abandoned community living area incorporated in his or her lease.

- (3) On receipt of an application under subsection (2), the Minister shall refer it to the Tribunal for the purpose of considering the application, and the Tribunal may call for submissions in writing to be made to it:
  - (a) by any person interested in the matter; and
  - (b) by the relevant Land Council.
- (4) In considering a reference under subsection (3), the Tribunal shall take into account:
  - (a) the length of time the community living area has been abandoned;
  - (b) the apparent reason for abandonment;
  - (c) the number and age grouping of Aborigines, if any, eligible to live on the community living area;
  - (d) the history of occupation of the community living area since it was granted to the association;
  - (e) the cost and method of calculating the cost to the Territory of acquiring the community living area on just terms; and
  - (f) such other matters as the Tribunal thinks relevant, including the submissions made to it under subsection (3).
- (5) After considering a reference under this section, the Tribunal shall recommend a course of action to be taken by the Minister in relation to the abandoned community living area and shall give notice of its recommendations to the association to which the land was granted and to all persons who made submissions to it pursuant to subsection (3).

## **Part 9 Appeals and review**

### **Division 1 Pastoral Land Appeal Tribunal**

#### **115 Establishment of Appeal Tribunal**

- (1) The Pastoral Land Appeal Tribunal is hereby established.
- (2) The Appeal Tribunal is constituted in respect of each appeal to it, by:
  - (a) the Chief Magistrate, or a Magistrate chosen by the Chief Magistrate, as the President of the Tribunal; and

- (b) 2 experts chosen by the President to constitute with him or her the Appeal Tribunal for and during the period of the particular appeal to be dealt with from the panel of experts established under subsection (3).
- (3) The Minister shall establish, in accordance with the Regulations, a panel of experts (comprising experts in such fields as the Minister thinks fit) from which members of the Appeal Tribunal may be chosen.
- (4) Section 22 applies to and in relation to a person chosen under subsection (2)(b) as a member of the Tribunal as if the person were a member of the Board.
- (5) The Minister shall appoint a Registrar of the Appeal Tribunal.

#### **116 Determination of questions**

- (1) A question of law or procedure arising before the Appeal Tribunal shall be determined by the President of the Tribunal and all other questions by unanimous or majority decision of the members.
- (2) The Appeal Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

#### **117 Powers and procedures of Appeal Tribunal**

- (1) The Appeal Tribunal may, for the purposes of proceedings before it:
  - (a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance of a person before the Tribunal or at a conference; or
  - (b) by summons signed on behalf of the Tribunal by a member or the Registrar, require the production before the Tribunal of any relevant books, papers or documents; or
  - (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit and make copies of any of them or their contents; or
  - (d) require a person appearing before it to give evidence on oath; or

- (e) require a person appearing before the Tribunal to answer a relevant question put by a member or by a person appearing before the Tribunal.
- (2) Subject to subsection (3), a person who:
- (a) has been served with a summons to appear before the Appeal Tribunal or at a conference and fails, without reasonable excuse, to attend in obedience to the summons; or
  - (b) has been served with a summons to produce books, papers or documents and fails, without reasonable excuse, to comply with the summons; or
  - (c) misbehaves before the Tribunal, wilfully insults the Tribunal or a member or interrupts the proceedings of the Tribunal; or
  - (d) refuses to take an oath, or to answer a relevant question when required to do so by the Tribunal,

is guilty of an offence.

Maximum penalty: 15 penalty units.

- (3) A person who appears as a witness before the Appeal Tribunal has the same protection as a witness in proceedings before the Supreme Court.
- (4) The Appeal Tribunal shall not allow non-party intervention in proceedings before it.
- (5) The Registrar shall give the parties to proceedings before the Appeal Tribunal reasonable notice of the time and place of the proceedings.
- (6) A party is entitled to appear before the Appeal Tribunal personally or by counsel or other representative.
- (7) Counsel for, or other representatives of the parties to proceedings before the Appeal Tribunal are not entitled to attend a compulsory conference.
- (8) A party shall be allowed a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Appeal Tribunal.

- (9) A witness shall, unless the Appeal Tribunal otherwise determines, be allowed witness fees in accordance with a prescribed scale or, if a scale has not been prescribed, with the scale applicable to civil proceedings in the Supreme Court.
- (10) The Appeal Tribunal may make a determination in proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear but failed to do so.
- (11) The Appeal Tribunal may make orders for costs, in accordance with a prescribed scale, against:
  - (a) the Minister or the Board; or
  - (b) any other party to proceedings,or if a scale has not been prescribed, then as if the proceedings were civil proceedings in the Supreme Court, but an order cannot be made under paragraph (b) unless the Appeal Tribunal is satisfied that the party's conduct in relation to the proceedings was frivolous, vexatious or calculated to cause delay.
- (12) At the conclusion of proceedings, the Appeal Tribunal shall furnish to the parties a written statement of the reasons for its decision.
- (13) The Chief Magistrate may give directions on any matter within the jurisdiction of the Appeal Tribunal (including general practice directions and in relation to a particular matter).

#### **118 Compulsory conferences**

- (1) Before the Appeal Tribunal commences to hear an appeal, the Registrar shall convene a conference between the parties to the proceedings for the purpose of attempting to resolve the matters in dispute.
- (2) Where the Minister or the Board is a party to an appeal, the Minister or the Board as the case may be, may appoint a person to represent him, her or it for the purposes of this section and any consent or agreement given or made by the person is binding on the Minister or the Board.
- (3) A person appointed by the President from the panel established under section 115(3), or a Registrar of the Local Court nominated by the Chief Magistrate, shall preside over a conference, but the person who so presides cannot be a member of the Appeal Tribunal as constituted for the purpose of hearing the appeal.



- (4) Subject to subsection (5), evidence of anything said or done in the course of a conference under this section is not admissible in proceedings before the Appeal Tribunal except by consent of all parties to the proceedings.
- (5) The person presiding over a conference under this section shall report to the Appeal Tribunal on whether a settlement was reached at the conference and, if so, the terms of the settlement, and the Tribunal may, without further inquiry, make such determination or order as it thinks necessary to give effect to the settlement.

## **Division 2 Right of appeal to Appeal Tribunal**

### **119 Appeal against certain decisions**

- (1) A pastoral lessee who is dissatisfied with:
  - (a) a decision or action of the Board;
  - (b) a decision of the Minister or the Valuer-General on an objection to a determination referred to in section 121(1); or
  - (c) a decision of the Minister under section 40,may, on the payment of the prescribed fee, appeal to the Appeal Tribunal against the decision or action.
- (2) An appeal under this section shall be instituted within 28 days after notification of the decision to the pastoral lessee or the taking of the action, as the case may be.
- (3) On an appeal under subsection (1)(b) the appellant is limited to the grounds stated in the objection.
- (4) On an appeal, the Appeal Tribunal shall review the matter the subject of the appeal and shall:
  - (a) confirm the decision or action;
  - (b) vary or revoke the decision or action; or
  - (c) substitute its own decision for that of the Board, Minister or Valuer-General or direct that particular action be taken in lieu of the action the subject of the appeal.
- (5) The Board, Minister or Valuer-General, as the case may be, shall comply with a direction of the Appeal Tribunal under subsection (4)(c).

- (6) The Appeal Tribunal shall, in determining an appeal, have regard to the objects of this Act.

**120 Operation of certain decisions pending appeal**

- (1) Subject to this section, a decision against which a right of appeal lies continues to operate notwithstanding the right of appeal or the institution of appeal proceedings.
- (2) The operation of a decision against which an appeal has been instituted may, on the application of the lessee, be suspended by the Appeal Tribunal pending the determination of the appeal.

**Part 10 Objections relating to value of improvements**

**121 Objections**

- (1) Where the Minister or the Valuer-General gives to a person a notice of a determination of the value of improvements on pastoral land, the person may, within the prescribed period after receiving the notice or within such extended period as the Minister or the Valuer-General, as the case may be, allows, send by post to, or lodge with, the Minister or the Valuer-General, as the case may be, at his or her office, an objection to the determination specifying the grounds of objection.
- (2) For the purposes of subsection (1), the prescribed period is:
- (a) in the case of a determination for the purposes of assessing compensation – 6 months; and
  - (b) in any other case – 28 days.
- (3) The Minister or the Valuer-General shall, within 28 days after receiving an objection, consider the objection and may disallow it or allow it in whole or in part and shall as soon as possible give to the objector written notice of his or her decision on the objection.

**122 Validity of determinations, &c.**

The validity of a determination referred to in section 121(1) is not affected by:

- (a) a failure to give notice of the determination;
- (b) the lodging of an objection to the determination;
- (c) a failure to give notice of a decision on an objection to the determination; or

- (d) a reference to the Appeal Tribunal of a decision on an objection to the determination.

## **Part 11            Miscellaneous**

### **123            Effect of notice forfeiting lease**

- (1) A notice published in the *Gazette* in pursuance of section 35(10) or 40(6) forfeiting a lease:
  - (a) has the same effect as a re-entry and recovery of possession by or on behalf of the Territory; and
  - (b) is conclusive evidence that the lease to which the notice relates has been forfeited.
- (2) The Minister shall lodge with the Registrar-General a copy of each notice of the forfeiture of a lease referred to in subsection (1).

### **124            Certain debts a charge on pastoral land**

- (1) An amount due and payable under section 42, 59 or 76(5) is an overriding statutory charge, within the meaning of the *Land Title Act*, on the pastoral land to which it relates.
- (2) In subsection (1) **amount** includes the interest, if any, accrued on the amount as prescribed.

### **125            Service of notices, &c.**

- (1) Except where otherwise provided in this Act, a notice required by this Act to be given to a person may be delivered personally to the person or sent by post, addressed:
  - (a) in the case of an individual – to the person's last-known place of business or residence; and
  - (b) in the case of a corporation – to its registered office in the Territory or otherwise as provided by the Corporations Act 2001.
- (2) A notice under this Act or arising out of a breach of this Act or a condition of a lease under this Act may, in the case of a corporation without a registered office in the Territory, be served by affixing a copy of the notice on a conspicuous part of the land.

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**126 Onus of proof**

In an action, suit, or proceeding under this Act:

- (a) an averment that land is Crown land, or reserved or dedicated land, or land held under lease, or occupied under licence or agreement, or that a person is authorised to take proceedings, to do an act or perform a duty, or sue for the recovery of a penalty or other money under this Act, is prima facie evidence of the fact;
- (b) if a question arises as to whether the defendant was authorised to do the act complained of, proof of that fact lies with the defendant; and
- (c) all licences, certificates, maps, plans and copies thereof, purporting to be certified as true under the hand of the Surveyor-General shall, in all matters relating to the action, suit or proceeding, be sufficient evidence without production of original records, and without the personal attendance of the Surveyor-General or proof of his or her signature.

**127 Compensation and liability**

Except as provided by this Act, the Territory is not liable to pay compensation to a person as a result of the operation of this Act or of the due exercise of a power, function, authority or discretion conferred by this Act unless, in a particular case, an acquisition of property within the meaning of section 50 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, in which case the acquisition shall be on just terms.

**128 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular:

- (c) for prescribing matters for the regulation of persons holding licences under this Act;
- (d) relating to the issuing of guidelines in respect of, and the consent of the Board for, the clearing of pastoral land;

- (e) relating to applications for the right to the grant of a pastoral lease and the publication of the results of invitations for such applications;
- (f) for prescribing records to be kept by lessees of pastoral land;
- (g) for prescribing the grounds for the determination by the Minister of licences under this Act and the manner of their determination;
- (h) providing for interest to be payable, and the rate and method of calculating interest, on amounts due and payable under this Act, but unpaid, to the Territory;
- (j) for prescribing maximum penalties of 40 penalty units for offences against the Regulations;
- (k) for prescribing criteria to be applied in assessing the condition of land for the purposes of this Act and the procedures in relation to such assessments;
- (m) for regulating persons on pastoral land in pursuance of Part 6 or on or in perennial natural waters referred to in section 79(1), and relating to wilful or negligent damage or degradation caused by such persons (including restoration and the payment of compensation);
- (n) for prescribing standard forms to be used for the purposes of this Act; and
- (p) for prescribing standard provisions that shall be implied in leases and other instruments, short forms of provisions of leases and other instruments and definitions of words and expressions used in leases and other instruments.

## **Part 12                    Savings and transitional**

### **129                    Term pastoral leases to continue**

A pastoral lease for a term of years, or a pastoral homestead lease, in existence immediately before the commencement of this Act shall, subject to section 130, continue in existence under this Act after the commencement as if granted under this Act for the unexpired period of its term and is subject not only to the reservations and conditions applicable to it under this Act but also to those applicable to it immediately before the commencement, to the extent that they are not inconsistent with this Act.

**130 Certain leases to be or become perpetual pastoral leases**

- (1) On the commencement of this Act, all perpetual pastoral leases granted under the *Crown Lands Act* and in existence immediately before the commencement are, by virtue of this section, perpetual pastoral leases as if granted under this Act on that commencement and are subject not only to the reservations and conditions applicable to them under this Act but also to those conditions not relating to the development of the leases applicable to them immediately before the commencement, to the extent that they are not inconsistent with this Act.
- (2) The Minister may, by notice in writing to the lessee of a pastoral lease specified in the Schedule, declare that the pastoral lease, on and from the date specified in the notice, shall be a perpetual pastoral lease subject to such reservations and conditions (in addition to those applicable to perpetual pastoral leases by virtue of this Act) as the Minister specifies in the notice and subject to section 131, on and from that date the pastoral lease shall for all purposes be taken to be a perpetual pastoral lease as if granted as such under this Act on that date.
- (3) If the Minister does not, within the period of 12 months after the commencement of this Act, exercise his or her power under subsection (2) in relation to a pastoral lease specified in the Schedule, the pastoral lease becomes a perpetual pastoral lease on the expiration of the period as if granted as such under this Act, and is subject not only to the reservations and conditions applicable to it by virtue of this Act but also to those applicable to it immediately before the expiration of the period, to the extent that they are not inconsistent with this Act or its status as a perpetual pastoral lease.

**131 Land containing Territory improvements may be excised**

- (1) The Minister may, in a notice referred to in section 130(2), excise from a pastoral lease to which it relates such areas described in the notice as the Minister thinks fit that contain improvements constructed by or on behalf of the Territory, a local government council, the Commonwealth or a statutory authority of the Territory or the Commonwealth, and that section has the effect of converting the lease to a perpetual pastoral lease only in relation to so much of the land that was the subject of the existing lease as is not included in the excised areas described in the notice.
- (2) There is reserved to the Territory in every perpetual pastoral lease resulting from a declaration under section 130(2) such interests (including easements and easements in gross) as are necessary to provide essential services and facilities, being power (including

gas), water, sewerage, road or communication services and facilities across the land the subject of the lease to an area excised under subsection (1).

### **132 Certain interests preserved**

Nothing in this Act derogates the legal or equitable rights of a person that existed in or in relation to land immediately before becoming the subject of a perpetual pastoral lease under this Act by virtue of section 130 (other than the rights of the Crown in right of the Territory as the lessor of the land) and those rights shall continue and may be enforced against the pastoral lessee in the same manner as they could have been enforced immediately before the land became so subject.

### **133 Right to continue to use land for non pastoral purposes**

Where under section 40B of the *Crown Land Act* as in force immediately before the commencement of this Act there was in force a permission of the Minister to use the whole or a part of land under a pastoral lease for purposes which but for that section and permission the land could not be so used, that permission shall continue in force for a period of 12 months after that commencement, and this Act shall apply, as if it were the permission of the Board given under section 88 on that commencement for 12 months on the same terms and conditions (other than as to its duration) as applied immediately before that commencement, but the lessee may, before the expiration of that period apply to the Board under Part 7 (or, where required by the Board under section 90(2), to the Minister) for permission to use the land or part, or to surrender the part in exchange for a separate lease for that purpose, accordingly.

### **134 Aboriginal community living areas**

The continuation in existence of the Community Living Areas Tribunal by section 93 shall be taken to be a continuation of all appointments, the effect of things done and matters in process immediately before the commencement of this Act under Part IV of the *Crown Lands Act* as then in force, including the rights, obligations and status of applicants (and persons for whose benefit applications were made) and other parties under that Act, and Part 8 of this Act shall be construed accordingly.

**135 Minister's opinion in relation to holdings in excess of limit at commencement of Act**

If within 6 months after the commencement of this Act the Minister, on the application of a person who would but for this section be in breach of section 34 in respect of land or an interest in land acquired before that commencement, forms the opinion that the holding of that land or interest by the person is in the interest of the Territory and advises the person, in writing, accordingly, section 34 applies to and in relation to the land or interest as if the Minister were of that opinion at the time the land or interest was acquired (and had advised the person, in writing, accordingly) and that section was then in force.



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**Schedule Pastoral leases for automatic conversion to perpetual pastoral leases**

section 130

Aileron – PL641	Gorrie – PL940	Mount Skinner – PL878
Alcoota – PL1032	Hayfield – PL868	Mountain Valley – PL908
Ambalindum – PL647	Henbury – PL600	Muckaty – PL856
Amburla – PL75	Hodgson Downs – PL613	Mulga Park – PL889
Ammaroo – PL791	Horseshoe Bend – PL784	Murranji – PL855
Amungee Mungee – PL732	Humbert River – PL975	Murray Downs – PL881
Andado – PL778	Idracowra – PL952	New Crown – PL777
Angas Downs – PL584	Indiana – PL659	Newhaven – PL884
Anningie – PL622	Innesvale – PL710	Newry – PL909
Annitowa – PL792	Inverway – PL867	Numery – PL557
Apiwentye – PL691	Jindare – PL633	Nutwood Downs – PL526
Arapunya – PHL3	Jinka – PHL4	Old MacDonald Downs – PL645
Argadargada – PL876	Kalala – PL699	Palmer – PL886
Auvergne – PL910	Kiana – PL731	Robinson River – PL598
Ban Ban Springs – PL865	Killarney – PL979	Roper Valley – PL632
Beetaloo – PL640	Kirkimbie – PL951	Shenandoah – PL891
Billengarra – PL759	Kurundi – PL841	Spirit Hills – PL877
Bradshaw – PL1024	Labelle Downs – PL986	Stirling – PL771

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Buchanan Downs – PL937	Legune – PL679	Sunday – PL996
Bullo River – PL811	Limbunya – PL873	Suplejack – PL826
Bushy Park – PL625	Lyndavale – PL993	Tanumbirini – PL642
Coniston– PL628	MacDonald Downs – PL973	Tennant Creek – PL897
Curtin Springs – PL573	Mainoru – PL854	The Garden – PL608
Delamere – PL567	Mallapunyah – PL861	Tobermorey – PL713
Delmore Downs – PL653	Manners Creek – PL770	Todd River – PL605
Delny – PL661	Marrakai –PL746	Ucharonidge – PL827
Derry Downs – PL794	Mary River – PL816	Urapunga – PL657
Derwent – PL607	Maryfield – PL665	Victory Downs – PL609
Dneiper – PL652	Maryvale – PL682	Waterloo – PL998
Dorisvale – PL736	Milton Park – PL671	Welltree – PL987
Dungowan – PL863	Mistake Creek – PL971	Wollogorang – PL870
Elsey – PL593	Moroak – PL751	Woolner – PL793
Fitzroy – PL674	Mount Bundy – PL928	
Glen Helen – PL681	Mount Denison – PL862	
Goondooloo – PL752	Mount Ebenezer – PL617	

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**ENDNOTES**
**1****KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2****LIST OF LEGISLATION*****Pastoral Land Act 1992 (Act No. 17, 1992)***

Assent date	30 April 1992
Commenced	26 June 1992 ( <i>Gaz S33</i> , 26 June 1992)

***Statute Law Revision Act 1992 (Act No. 46, 1992)***

Assent date	7 September 1992
Commenced	7 September 1992

***Pastoral Land Amendment Act 1993 (Act No. 18, 1993)***

Assent date	16 June 1993
Commenced	16 June 1993

***Pastoral Land Amendment Act (No. 2) 1993 (Act No. 68, 1993)***

Assent date	9 November 1993
Commenced	1 December 1993 ( <i>Gaz S95</i> , 1 December 1993)

***Real Property (Statutory Charges Consequential Amendments) Act 1993 (Act No. 77, 1993)***

Assent date	23 November 1993
Commenced	1 October 1994 (s 2, s 2 <i>Real Property Amendment Act (No. 2) 1993</i> (Act No. 76, 1993) and <i>Gaz G37</i> , 14 September 1994, p 2)

***Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)***

Assent date	1 December 1993
Commenced	1 June 1994 (s 2, s 2 <i>Local Government Act 1993</i> (Act No. 83, 1993) and <i>Gaz S35</i> , 20 May 1994)

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date	20 September 1994
Commenced	20 September 1994

***Pastoral Land Amendment Act 1994 (Act No. 53, 1994)***

Assent date 22 September 1994  
 Commenced 30 September 1994 (Gaz S51, 30 September 1994)

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
 Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

***Lands and Mining (Miscellaneous Amendments) Act 1998 (Act No. 93, 1998)***

Assent date 23 December 1998  
 Commenced ss 197 – 202: 23 December 1998; rem: 1 October 1998 (s 2)

***Pastoral Land Amendment Act 1998 (Act No. 103, 1998)***

Assent date 29 December 1998  
 Commenced 29 December 1998

***Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)***

Assent date 12 September 2000  
 Commenced 1 December 2000 (s 2, s 2 *Land Title Act 2000* (Act No. 2, 2000) and Gaz G38, 27 September 2000, p 2)

***Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)***

Assent date 29 June 2001  
 Commenced 15 July 2001 (s 2 and s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth Gaz S285, 13 July 2001)

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)***

Assent date 7 January 2004  
 Commenced 17 March 2004 (Gaz G11, 17 March 2004, p 8)

***Statute Law Revision Act 2004 (Act No. 18, 2004)***

Assent date 15 March 2004  
 Commenced 5 May 2004 (s 2(1), s 2 *Associations Act 2003* and Gaz G18, 5 May 2004, p 2)

***Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006 (Act No. 7, 2006)***

Assent date 26 April 2006  
 Commenced 26 April 2006

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date 8 March 2007  
 Commenced 8 March 2007

***Legal Profession (Consequential Amendments) Act 2007 (Act No. 7, 2007)***

Assent date 17 May 2007  
 Commenced s 10: 1 July 2007; rem: 17 May 2007 (s 2 and Gaz G26, 27 June 2007, p 3)

***Local Government (Consequential Amendments) Act 2008 (Act No. 28, 2008)***

Assent date 14 November 2008  
 Commenced 1 July 2008 (s 2)

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***Mineral Titles (Consequential Amendments) Act 2010 (Act No. 37, 2010)***

Assent date 18 November 2010  
 Commenced 7 November 2011 (*Gaz G41*, 12 October 2011, p 5)

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)***

Assent date 18 November 2010  
 Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz G7*, 16 February 2011, p 4)

***Penalties Amendment (Miscellaneous) Act 2013 (Act No. 23, 2013)***

Assent date 12 July 2013  
 Commenced 28 August 2013 (*Gaz G35*, 28 August 2013, p 2)

***Pastoral Land Amendment Act 2013 (Act No. 29, 2013)***

Assent date 8 November 2013  
 Commenced 1 January 2014 (*Gaz S70*, 19 December 2013)

***Local Government Amendment Act 2014 (Act No. 19, 2014)***

Assent date 2 June 2014  
 Commenced s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014 (s 2)

***Statute Law Revision Act 2014 (Act No. 38, 2014)***

Assent date 13 November 2014  
 Commenced 13 November 2014

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

s 4 *Pastoral Land Amendment Act 1998* (Act No. 103, 1998)  
 s 78 *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (Act No. 1, 2004)

**4 LIST OF AMENDMENTS**

s 3 amd No. 1, 2004, s 62; No. 29, 2013, s 4  
 s 22 amd No. 23, 2013, s 14  
 s 27 amd No. 7, 2007, s 16  
 s 29 amd No. 29, 2013, s 5  
 s 31 amd No. 45, 2000, s 6  
 s 34 amd No. 17, 2001, s 21  
 s 35 amd No. 23, 2013, s 14  
 s 38 amd No. 37, 2010, s 13; No. 23, 2013, s 14  
 s 40 amd No. 23, 2013, s 14  
 s 49 amd No. 93, 1998, s 198  
 s 53 amd No. 45, 2000 s 6  
 s 61 amd No. 93, 1998, s 199  
 s 62 amd No. 93, 1998, s 200  
 s 64 amd No. 93, 1998, s 201  
 ss 65 – 66 amd No. 45, 2000, s 6  
 s 67 amd No. 18, 1993, s 2; No. 23, 2013, s 14  
 s 68 amd No. 18, 1993, s 3  
 pt 4  
 div 4 hdg ins No. 93, 1998, s 202  
 ss 72A – 72C ins No. 93, 1998, s 202

## ENDNOTES

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s 73	amd No. 17, 1996, s 6; No. 23, 2013, s 14
ss 74 – 75	amd No. 23, 2013, s 14
s 80	amd No. 23, 2013, s 14
ss 82 – 83	amd No. 23, 2013, s 14
ss 85A – 85D	amd No. 29, 2013, s 6
s 86	amd No. 29, 2013, s 7
s 87	sub No. 29, 2013, s 8
s 87A	ins No. 29, 2013, s 8
ss 88 – 89	sub No. 29, 2013, s 8
ss 89A – 89G	ins No. 29, 2013, s 8
s 90	amd No. 29, 2013, s 9
s 92	amd No. 68, 1993, s 4
s 93	amd No. 46, 1992, s 6; No. 68, 1993, s 5; No. 53, 1994, s 3; No. 103, 1998, s 3; No. 7, 2006, s 30; No. 7, 2007, s 16
s 95	amd No. 50, 1994, s 11; No. 53, 1994, s 4
s 97	amd No. 68, 1993, s 6
s 101	amd No. 46, 1992, s 13
s 102	amd No. 4, 2007, s 7
s 105A	ins No. 68, 1993, s 7
s 106	amd No. 68, 1993, s 8; No. 50, 1994, s 11
s 108	amd No. 38, 2014, s 2
s 109	amd No. 68, 1993, s 9
s 111	amd No. 18, 2004, s 3
s 114	amd No. 68, 1993, s 10
s 115	amd No. 68, 1993, s 11
s 117	amd No. 68, 1993, s 12; No. 40, 2010, s 118; No. 23, 2013, s 14
s 118	amd No. 68, 1993, s 13
s 124	amd No. 77, 1993, s 11; No. 45, 2000, s 6
s 125	amd No. 17, 2001, s 21
s 128	amd No. 23, 2013, s 14
s 131	amd No. 84, 1993, s 6; No. 28, 2008, s 3; No. 19, 2014, s 26