

South Australia

# **Pastoral Lands Bill 2020**

A BILL FOR

An Act to make provision for the management and conservation of pastoral land, to make a related amendment to the *Crown Land Management Act 2009*, to repeal the *Pastoral Land Management and Conservation Act 1989*, and for other purposes.

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## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Simplified outline
- 4 Interpretation

### **Part 2—Objects and duties**

- 5 Objects
- 6 Duties of Minister and Board
- 7 General duty of pastoral lessees
- 8 Pastoral land not to be freeholded

### **Part 3—Administration**

#### **Division 1—The Minister**

- 9 Power of Minister to delegate
- 10 Appointment of authorised officers
- 11 Minister may develop policies and guidelines
- 12 Minister to be notified of rights under other Acts

#### **Division 2—The Board**

- 13 Pastoral Board
- 14 Conditions of office
- 15 Functions of Board
- 16 Meetings
- 17 Conflict of interest under Public Sector (Honesty and Accountability) Act
- 18 Delegation by Board
- 19 Annual report

#### **Division 3—The Fund**

- 20 Pastoral Lands Fund

**Division 4—The Pastoral Register**

21 Pastoral Register

**Part 4—Pastoral leases**

- 22 Grant of pastoral leases
- 23 Execution of pastoral leases
- 24 Term of pastoral leases
- 25 Conditions of pastoral leases
- 26 Rent
- 27 Alternative land uses
- 28 Dealing with pastoral leases etc
- 29 Consent to certain share transfers in pastoral company
- 30 Alteration of boundaries
- 31 Variation of land subject to pastoral lease
- 32 Resumption of land
- 33 Compensation
- 34 Vacation of land
- 35 Cancellation of pastoral lease

**Part 5—Assessment of land capacity**

- 36 Assessment of land prior to grant of pastoral lease
- 37 Assessment of land after grant of pastoral lease
- 38 Manner in which assessments are to be carried out
- 39 Reports etc following assessment
- 40 Extension of term of pastoral leases following assessment
- 41 Reference areas

**Part 6—Enforcement and compliance**

- 42 Powers of authorised officers
- 43 Misuse of pastoral land
- 44 Hindering etc persons engaged in the administration of this Act
- 45 Compliance notices
- 46 Verification of livestock levels

**Part 7—Access to pastoral land****Division 1—Indigenous land use agreements**

- 47 Indigenous land use agreement binding on lessees
- 48 Immunity from liability
- 49 ILUA to be endorsed on lease
- 50 Trespassers on pastoral land the subject of an ILUA

**Division 2—Public access**

- 51 Rights of Aboriginal persons
- 52 Establishment of public access routes
- 53 Right to travel across and camp on pastoral land
- 54 Public access not to be obstructed

**Division 3—Travelling livestock**

- 55 Travelling with livestock

Division 4—Access to water

56 Right to take water

Part 8—Reviews

Division 1—Reviews by Tribunal

57 Jurisdiction of Tribunal

58 Operation of certain decisions pending review

59 Related provisions

Division 2—Review of valuation and review by Tribunal

60 Valuations—right of review

Part 9—Miscellaneous

61 Recovery of native title compensation

62 Interaction with mining Acts etc

63 Exemption from stamp duty

64 Certain debts are charges over leases

65 Service of notices or other documents

66 Form of applications

67 Consent unreasonably withheld

68 False or misleading information

69 Criminal jurisdiction of ERD Court

70 Proceedings for offences

71 General defence

72 Additional orders on conviction

73 Continuing offence

74 Evidentiary provision

75 Recovery of technical costs associated with contraventions

76 Regulations and fee notices

Schedule 1—Related amendments, repeals and transitional provisions etc

Part 1—Preliminary

1 Amendment provisions

Part 2—Related amendment of *Crown Land Management Act 2009*

2 Amendment of section 8—Application of Act to pastoral leases

Part 3—Repeal

3 Repeal of *Pastoral Land Management and Conservation Act 1989*

Part 4—Transitional provisions etc

4 Leases to continue

5 Consent to continue

6 Reference areas

7 Continuation of public access routes

8 Notices to continue

9 Transitional regulations

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**The Parliament of South Australia enacts as follows:****Part 1—Preliminary****1—Short title**

This Act may be cited as the *Pastoral Lands Act 2020*.

**2—Commencement**

5 This Act comes into operation on a day to be fixed by proclamation.

**3—Simplified outline**

10 This Act provides for the management of pastoral land by providing for the grant of pastoral leases over such land, subject to various conditions and periodic assessment of the extent to which such land has maintained its natural ecological functions (referred to in this Act as the land's *capacity*) and by providing certain statutory rights of access to pastoral land.

The Act contains provisions as follows:

- Part 1 includes formal and interpretation provisions;
- 15 • Part 2 sets out the objects of the Act, specifies duties in relation to pastoral land for the Minister and the Board, and for lessees, and includes the fundamental principle that pastoral land is not to be freeholded;
- 20 • Part 3 contains various administrative provisions including establishing the Pastoral Board for the purposes of the Act, continuing the Pastoral Lands Fund, providing for a register relating to pastoral lands, specifying the Minister's and the Board's power of delegation under the Act, and providing for the appointment of authorised officers for the purposes of the Act;
- 25 • Part 4 contains provisions relating to the grant, variation and cessation of pastoral leases;
- Part 5 deals with assessment of land capacity and extension of the term of a pastoral lease following an assessment;
- Part 6 sets out the powers of authorised officers and includes other enforcement and compliance provisions;
- 30 • Part 7 provides various rights of public access to pastoral land and ensures that an ILUA that is in force in relation to pastoral land is binding on the lessee;
- Part 8 provides for various reviews (including valuation reviews) by SACAT;
- Part 9 contains miscellaneous provisions to do with administrative matters and proceedings under the Act and includes a power to make regulations and fee notices.

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#### 4—Interpretation

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

**Aboriginal people** means the people who inhabited Australia before European colonisation;

**Aboriginal person** means a descendant of the Aboriginal people who is accepted as a member by a group in the community who claim descent from the Aboriginal people;

**ancillary purposes**, in relation to a pastoral lease, include any purposes (other than the pasturing of livestock) that support the primary purpose of the lease;

**authorised officer** means—

(a) a police officer; or

(b) a person appointed by the Minister as an authorised officer for the purposes of this Act;

**Board** means the Pastoral Board established under this Act;

**capacity**, in relation to land, means the extent to which the land has maintained its natural ecological functions;

**Crown land** means land held by the Crown that has not been alienated in fee simple and is not part of a reserve under the *National Parks and Wildlife Act 1972* or subject to any lease (other than a mining lease), agreement to purchase or dedication;

**degradation** of land means a decline in the ecological function of natural systems on or relating to the land such that the land cannot recover to its original state or has passed the recovery threshold and has transitioned to a new state;

**ERD Court** means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

**ILUA** means an indigenous land use agreement registered under Part 2 Division 3 of the *Native Title Act 1993* of the Commonwealth, the parties to which must include, but are not limited to, the Crown, a lessee and a native title group;

**lessee** means the holder of a pastoral lease;

**livestock**, in relation to a pastoral lease, means any species of animal permitted by the terms of the lease to be pastured on the land as part of the commercial enterprise under the lease;

**motor vehicle** means any vehicle capable of being driven or ridden that is propelled by means of an engine;

**native title group** means—

(a) in the case where the ILUA is an ILUA (body corporate agreement) under Part 2 Division 3 Subdivision B of the *Native Title Act 1993* of the Commonwealth—the persons referred to in section 24BD(1) of that Act; and

(b) in the case where the ILUA is an ILUA (area agreement) under Part 2 Division 3 Subdivision C of the *Native Title Act 1993* of the Commonwealth—the persons referred to in section 24CD(2) or (3) (as the case requires) of that Act; and

(c) in any case—

- (i) a person who is, pursuant to section 24EA of the *Native Title Act 1993* of the Commonwealth, bound by a particular ILUA; and
- (ii) a person—
- (A) who holds native title; or
- (B) who is a member of a native title claim group (within the meaning of the *Native Title Act 1993* of the Commonwealth),
- in relation to the land or waters subject to a particular ILUA; and
- (iii) any other person identified in the regulations as being included within the ambit of this definition,

but does not include a person identified in the regulations as being excluded from the ambit of this definition;

***pastoral land*** means land comprised in a pastoral lease;

***pastoral lease*** means a lease granted under this Act over Crown land;

***pastoral purposes*** means the pasturing of livestock and other ancillary purposes;

***rehabilitation*** of degraded land means to improve the condition of the ecological function of natural systems on or relating to the land, having particular regard to soil stability, the presence of perennial native vegetation and the level of diversity in native vegetation species on the land;

***repealed Act*** means the *Pastoral Land Management and Conservation Act 1989* repealed by this Act;

***traditional owner*** of land means an Aboriginal person who, in accordance with Aboriginal tradition, has social, economic or spiritual affiliations with, and responsibilities for, the land;

***Tribunal*** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

***unimproved value***, in relation to land, means unimproved value as defined in the *Valuation of Land Act 1971*;

***variation*** of conditions includes an addition, deletion or substitution, and ***to vary*** has a corresponding meaning.

- (2) For the purposes of the definition of ***ILUA***, a ***native title group*** does not include a person who would not, but for the operation of paragraph (c) of the definition of ***native title group***, be included in the definition of ***native title group***.

## Part 2—Objects and duties

### 5—Objects

The objects of this Act are as follows:

- (a) to ensure that the State's pastoral lands support the production of livestock and the growth of the pastoral industry;
- (b) to ensure the State's pastoral lands are sustainable and maintain productive capacity of the land for future generations;

- (c) to recognise the rights of Aboriginal people to follow traditional pursuits on pastoral land;
- (d) to provide for a risk-based assessment of land capacity based on scientific principles using a variety of information sources, including technology;
- 5 (e) to provide a form of tenure of Crown land for pastoral purposes;
- (f) to provide for alternate land uses to support the economic sustainability of pastoralism (where that is not substantially inconsistent with the other objects of this Act);
- 10 (g) to provide the community with a system of access through pastoral land that finds a reasonable balance between the interests of the pastoral industry and the interests of the community.

## 6—Duties of Minister and Board

The Minister and the Board must, in administering this Act and in exercising any other power or discharging any other function in relation to pastoral leases—

- 15 (a) act consistently with and seek to further the objects of this Act; and
- (b) be committed to good management and compliance practices in relation to the pastoral land of the State; and
- (c) have regard to the relevant terms of any ILUA.

## 7—General duty of pastoral lessees

20 It is the duty of a lessee throughout the term of a pastoral lease to—

- (a) proactively manage the land for pastoral purposes; and
- (b) manage the land to ensure that its productive and environmental capacity are sustainable through good land management practices; and
- 25 (c) endeavour, within the available financial resources, to improve the capacity of the land; and
- (d) prevent, or mitigate, any negative impacts of their management practices on neighbouring land.

## 8—Pastoral land not to be freeholded

30 Despite any Act or law to the contrary, the Minister cannot enter into any agreement or arrangement for transferring an estate in fee simple in pastoral land to the lessee of that land, except pastoral land that the Governor has determined is to be used for some purpose other than pastoral purposes.

# Part 3—Administration

## Division 1—The Minister

### 9—Power of Minister to delegate

- (1) The Minister may delegate any of the Minister's powers or functions under this Act—
- (a) to any particular person or body; or

(b) to the person for the time being occupying a particular office or position.

(2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

5 (c) does not derogate from the power of the delegator to act in any matter; and

(d) is revocable at will.

(3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

### 10—Appointment of authorised officers

10 (1) The Minister may appoint such persons to be authorised officers for the purposes of this Act as the Minister thinks fit.

(2) An appointment under this section—

(a) will be for a period stated in the instrument of appointment; and

15 (b) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of an authorised officer.

(3) A person appointed as an authorised officer must be issued with an identity card in a form approved by the Minister.

20 (4) An authorised officer must, on request, produce a copy of the officer's identity card for inspection before exercising the powers of an authorised officer under this Act in relation to any person.

### 11—Minister may develop policies and guidelines

(1) The Minister may, in consultation with the Board, develop policies and guidelines for the purposes of this Act.

25 (2) Policies and guidelines developed under this section must be published on a website determined by the Minister.

### 12—Minister to be notified of rights under other Acts

30 Subject to any exclusions prescribed by the regulations, before any rights in relation to pastoral land are created under another Act, the Minister responsible for the administration of that other Act (or such other person or body as may be prescribed by the regulations) must notify the Minister.

## Division 2—The Board

### 13—Pastoral Board

(1) The *Pastoral Board* is established.

35 (2) The Board consists of up to 7 members appointed by the Minister on the nomination of the nomination committee constituted in accordance with subsection (6).

- (3) The Minister must not appoint a person as a member of the Pastoral Board unless the Minister is satisfied that the person has qualifications, knowledge or experience in 1 or more of the following areas:
- (a) operational management of pastoral leases;
  - 5 (b) natural resource management and conservation of productive pastoral land;
  - (c) governance;
  - (d) financial management;
  - (e) native title and the cultural and traditional connections of Aboriginal people to the land.
- 10 (4) At least 4 members must be persons who hold 1 or more pastoral leases (and 1 of these members will be appointed by the Minister as the presiding member).
- (5) At least 2 members (whether appointed in accordance with subsection (4) or otherwise) must be persons with experience in, or in connection with, the production of cattle and at least 2 members (whether appointed in accordance with subsection (4) or otherwise) must be persons with experience in, or in connection with, the production of sheep.
- 15 (6) Before appointing a member of the Board, the Minister must seek nominations from a committee (the *nomination committee*) constituted of 1 person nominated by each of the following bodies:
- 20 (a) Livestock SA;
  - (b) the South Australian Arid Lands Landscape Board;
  - (c) the Department that is, under the Minister, responsible for the administration of this Act.
- (7) If a body referred to in subsection (6) ceases to exist, the regulations may specify another body to act in substitution for the body that has ceased to exist for the purposes of that subsection.
- 25 (8) If a vacancy occurs on the Board, the Minister must give written notice to the nomination committee (in such manner as may be agreed between the Minister and the nomination committee) and the nomination committee must, within 12 weeks of being given that notice, provide the Minister with at least 2 nominees who are qualified for appointment to the vacancy.
- 30 (9) A decision of the nomination committee in relation to a particular nomination will only be valid if it is a unanimous decision (but otherwise the committee may meet and conduct proceedings as the committee thinks fit).

#### 35 **14—Conditions of office**

- (1) Subject to this section, the appointment of a member to the Board will be on terms and conditions determined by the Minister.
- (2) A member of the Board will be appointed for a term not exceeding 5 years and will, on the expiration of a term of office, be eligible for reappointment.
- 40 (3) The Minister may, in the Minister's absolute discretion, remove a member from office, by written notice to the member, for any reason the Minister thinks fit.

- (4) The office of a member becomes vacant if the member—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice addressed to the Minister; or
  - (d) is removed from office by the Minister under subsection (3).
- (5) On the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.
- (6) A member of the Board is entitled to such allowances and expenses as the Minister may determine.

### 15—Functions of Board

- (1) The functions of the Board are—
- (a) to provide advice to the Minister in relation to pastoral land, the administration of this Act and any other matter referred by the Minister to the Board; and
  - (b) to perform any other functions assigned to the Board under this or any other Act or by the Minister.
- (2) The Board is responsible to, and is subject to the control and direction of, the Minister in carrying out its functions under this Act.

### 16—Meetings

- (1) A meeting of the Board will be chaired by the member appointed to preside at meetings or, in the absence of that person, by a member chosen by the members present from amongst their own number.
- (2) Subject to subsection (3), the Board may act despite there being vacancies in its membership.
- (3) Four members constitute a quorum of the Board and no business may be transacted at a meeting of the Board unless a quorum is present.
- (4) Each member present at a meeting of the Board has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (5) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Board.
- (6) A conference by telephone or other electronic means between members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
- (a) notice of the conference is given to all members in the manner determined by the Board for that purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.

- (7) A proposed resolution of the Board becomes a decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
- (a) a notice of the proposed resolution is given to all members in accordance with procedures determined by the Board; and
  - (b) a majority of the members expresses concurrence in the proposed resolution by written communication setting out the terms of the proposed resolution.
- (8) The Board must cause accurate minutes of its meetings to be kept and must publish a record of each meeting (containing such details as the Board thinks fit) on a website determined by the Board.
- (9) A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with pastoralists generally, or a substantial section of pastoralists.
- (10) Subject to this Act, the proceedings of the Board may be conducted as it thinks fit.
- (11) The Board must, in each calendar year, hold at least 2 public meetings in regions in which pastoral leases are situated.

### **17—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with pastoralists generally, or a substantial section of pastoralists.

### **18—Delegation by Board**

- (1) The Board may, with the consent of the Minister, delegate any of its powers or functions (other than the function of providing advice to the Minister in relation to pastoral land and the administration of this Act)—
- (a) to a member of the Board; or
  - (b) to any particular person or body; or
  - (c) to the person for the time being occupying a particular office or position.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Board to act in any matter; and
  - (d) is revocable at will by the Board.

### **19—Annual report**

- (1) The Board must, no later than 30 September in each year, furnish the Minister with a report of its operations during the preceding financial year.
- (2) The Minister must, within 12 sitting days of receiving a report, have copies of it laid before both Houses of Parliament.

## Division 3—The Fund

### 20—Pastoral Lands Fund

- (1) The Fund established under the repealed Act continues as the *Pastoral Lands Fund* (the *Fund*).
- 5 (2) The Fund consists of—
- (a) any rent and other amounts received or recovered in respect of activities on pastoral land under this Act; and
  - (b) any fine, expiation fee or other penalty imposed under this Act; and
  - (c) any fees paid under this Act; and
  - 10 (d) any money appropriated by Parliament for the purposes of the Fund; and
  - (e) any money paid into the Fund at the direction or with the approval of the Minister and the Treasurer; and
  - (f) any income from investment of money belonging to the Fund; and
  - (g) any money paid into the Fund under any other Act.
- 15 (3) The Fund may be applied by the Minister (without further appropriation than this subsection)—
- (a) towards the costs of administration of this Act; and
  - (b) towards any other purposes that further the objects of this Act.
- 20 (4) The Minister may, with the approval of the Treasurer, invest any of the money belonging to the Fund that is not immediately required for the purposes of the Fund in such manner as is approved by the Treasurer.

## Division 4—The Pastoral Register

### 21—Pastoral Register

- (1) The Minister must maintain a register relating to pastoral land (the *Pastoral Register*).
- 25 (2) The Pastoral Register must contain information of a kind prescribed by the regulations relating to pastoral land.
- (3) The Pastoral Register, or parts of the Pastoral Register determined by the Minister, must be made publicly available on a website determined by the Minister.
- 30 (4) A lessee must, on or before 30 September in each year, provide the Minister with a return containing the particulars prescribed by the regulations in relation to the pastoral lease for the purposes of this section.

Maximum penalty:

- (a) for a body corporate—\$10 000;
- (b) for a natural person—\$5 000.

35 Expiation fee: \$500.

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## Part 4—Pastoral leases

### 22—Grant of pastoral leases

- (1) Subject to this Act, the Minister may grant pastoral leases over Crown land.
- 5 (2) The Minister cannot grant a pastoral lease over Crown land unless an assessment of the land has been undertaken in accordance with section 36 and the Board is satisfied that the land is suitable for pastoral purposes.
- (3) Where the Minister proposes to make Crown land available for lease for pastoral purposes, the process for taking the lease must be a public auction, public tender or such other open competitive process as the Minister may determine.
- 10 (4) Subsection (3) does not apply—
- (a) if the Minister is satisfied that special circumstances exist justifying the addition of the land to the holding of an existing lease; or
  - (b) if the land was subject to a pastoral lease that was surrendered upon condition that a further such lease be granted to the same lessee or a nominee of the lessee; or
  - 15 (c) if the Minister is satisfied that for any other good and proper reason it would be just and equitable to offer the land to a particular person.

### 23—Execution of pastoral leases

If—

- 20 (a) a document intended to constitute a pastoral lease is sent to the prospective lessee for execution; and
- (b) the document is not returned duly executed, together with such fees or other amounts as may be required, within a period (which must be at least 30 calendar days) specified in an accompanying notice,
- 25 the Minister may decline to enter into the lease and forfeit any deposit or other money paid in connection with it.

### 24—Term of pastoral leases

- (1) Subject to this Act, a pastoral lease will be granted for a term of up to 100 years.
- 30 (2) Where a lessee surrenders any pastoral leases for the purposes of merger, the term of the lease to be granted to the lessee will be such term as the Minister, having regard to the terms of the surrendered leases, thinks appropriate.

### 25—Conditions of pastoral leases

- (1) A pastoral lease will be granted subject to conditions and reservations providing for the following matters:
- 35 (a) general conditions providing for—
- (i) the proactive management of the land for pastoral purposes;
  - (ii) the payment of rent annually in arrears;

(iii) the lessee's obligation to pay all rates, taxes and other government charges in relation to the land;

(iv) the lessee's obligation not to hinder or obstruct any person who is exercising, or attempting to exercise, a right of access to the land under this Act or any other Act;

(v) the lessee's obligation to comply with other Acts and laws (to the extent that they apply in relation to the land);

(b) land management conditions providing for—

(i) the lessee's obligation not to use the land for any purpose other than pastoral purposes, except with the prior approval of the Minister;

(ii) the lessee's obligation to maintain the capacity of the land;

(iii) the lessee's obligation to maintain adequate infrastructure required to undertake pastoral purposes and any other approved purposes on the land;

(iv) the lessee's obligation not to pasture (as part of any commercial enterprise) any species of animal on the land other than the species specified in the lease or approved by the Board;

(c) reservations providing for—

(i) the property in minerals, petroleum, underground waters and live or dead standing timber on or under the land to be vested in the Crown;

(ii) the right of the Commissioner of Highways to establish public roads across the land,

and will be subject to such other conditions and reservations as may be prescribed by regulation or determined by the Board.

(2) A condition referred to in subsection (1)(a) or (1)(b), and a reservation referred to in subsection (1)(c), will be taken to be a condition or reservation (as the case requires) of all pastoral leases (whether granted under the repealed Act or under this Act).

(3) The form of a pastoral lease will be determined by the Board.

(4) Subject to this Act, a condition of a pastoral lease can only be varied by agreement between the lessee and the Board.

(5) A lessee who refuses or fails, without reasonable excuse, to comply with a condition of the pastoral lease, is guilty of an offence.

Maximum penalty:

(a) for a body corporate—\$100 000;

(b) for a natural person—\$50 000.

## 26—Rent

(1) The rent payable to the Crown under a pastoral lease—

(a) is the amount from time to time determined under this section to be the annual rent for the lease; and

(b) is payable annually in arrears.

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- (2) The annual rent for a pastoral lease is to be determined as follows:
- (a) the Valuer-General will from time to time determine the unimproved value of the land in accordance with the *Valuation of Land Act 1971*, taking into account, in addition to any other matters taken into account under that Act, the following matters:
    - (i) the purposes, whether authorised under the lease or by the Minister, for which the land is used and the inherent capacity of the land to be used for those purposes;
    - (ii) any prevailing climatic conditions currently affecting the productivity of the land;
    - (iii) the proximity and accessibility of markets and other facilities to the extent that they affect the profitability of the lessee's enterprise;
  - (b) the Valuer-General will, on making a determination under paragraph (a), fix the annual rent for the lease as a percentage of the unimproved value of the land, being a percentage—
    - (i) that represents, in the Valuer-General's opinion, the appropriate rate of return for the land, taking into account the purposes for which the land is being used; and
    - (ii) that may vary from lease to lease according to the various purposes for which land is being used.
- (3) The Valuer-General may make a determination of the rents for all pastoral leases at the same time.
- (4) The Valuer-General—
- (a) may determine the rent for a pastoral lease at any time; and
  - (b) must do so on direction by the Minister,
- but, in any event, must make such a determination at least every 5 years.
- (5) On completing a determination of the annual rent for a pastoral lease, the Valuer-General must give to the Minister a notice of the determination that includes a statement of the unimproved value of the land and the percentage on which the rent is based.
- (6) If the Minister is satisfied that—
- (a) some factor exists affecting the profitability of the enterprise under a pastoral lease that has arisen since the Valuer-General last determined the annual rent for the lease; or
  - (b) the lessee has, under an agreement with the Minister, carried out work on the land on behalf of the Minister for which the lessee has not been recompensed,
- the Minister may reduce by an appropriate amount the rent that would otherwise be payable under the lease in respect of any particular year.
- (7) The Board is responsible for issuing and sending to lessees annual rent accounts.
- (8) The Board may, for the purposes of administrative efficiency, fix a common day by which the rent under all pastoral leases must be paid in each year and, for that purpose, rent accounts for a period greater or less than a year may be sent to lessees.

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- (9) A rent account must be accompanied by or include—
- (a) a copy of the Valuer-General's notice of determination if a new determination has been made since the last rent account sent to the lessee; and
  - (b) an explanation of any debits or credits shown on the account; and
  - (c) a statement of the reasons for any reduction, waiver or deferment of rent pursuant to this section.
- (10) The Minister may, if the Minister is satisfied that a case of financial hardship exists, waive or defer payment of any amount of the rent due and payable under a pastoral lease, subject to such conditions (if any) as the Minister thinks fit.
- (11) The Minister may, by notice in the Gazette—
- (a) fix fees to be paid by lessees for late payment of rent or any other amount due under pastoral leases; and
  - (b) vary or revoke any fees previously fixed under this subsection,
- and any such fees will be regarded as an amount that is due and payable under the pastoral lease.
- (12) The Minister may, for proper reasons, remit a fee payable under a notice referred to in subsection (11) in whole or part.

## 27—Alternative land uses

- (1) The Board may, on application by, or with the consent of, the lessee—
- (a) approve the pasturing (as part of the commercial enterprise under the lease) of a species of animal other than a species specified in the lease; or
  - (b) approve the use of land subject to a pastoral lease for a purpose other than pastoral purposes.
- (2) The Board may not grant an approval under this section on application by the lessee unless—
- (a) the lessee has paid the prescribed fee (if any); and
  - (b) all persons who have a registered interest in, or caveat over, the lease have consented to the application.
- (3) For the avoidance of doubt, the Board may approve a use of land in accordance with this section even though that use is inconsistent with the use of that land for pastoral purposes.
- (4) An approval of the Board under subsection (1) must be in writing and may be subject to conditions agreed to by the lessee.
- (5) An approval granted under this section will be taken to be a Schedule to the pastoral lease and forms part of the lease (and any conditions of the approval will be taken to be conditions of the lease and may be enforced accordingly).

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**28—Dealing with pastoral leases etc**

- 5 (1) Subject to the conditions of the lease, the interest of the lessee under a pastoral lease, and any water allocation or other water access rights held in relation to land subject to a pastoral lease, cannot be transferred, assigned, mortgaged, sublet or otherwise dealt with without the consent of the Minister.
- (2) The Minister must not unreasonably or capriciously refuse or withhold consent under subsection (1).
- 10 (3) A lessee may, by application to the Minister, request that the Minister indicate whether a particular proposed transfer, assignment, mortgage, sublease or other dealing is likely to be consented to under subsection (1) (provided that the Minister may, on receiving an application, decline to provide any such indication and any such indication provided by the Minister is not binding on the Minister).
- (4) The regulations may prescribe circumstances in which a lessee will be required to make a request under subsection (3).
- 15 (5) The Minister must consult with the Minister responsible for the administration of the *Defence Act 1903* of the Commonwealth before granting any consent under subsection (1) in relation to a pastoral lease that is wholly or partly within the Woomera Prohibited Area (prescribed under the *Defence Act 1903* of the Commonwealth).
- 20 (6) If a sublease of pastoral land is granted—
- (a) the conditions applicable to the pastoral lease apply to the sublease and may also be enforced against the sublessee as if they were the lessee under the pastoral lease; and
  - 25 (b) any powers exercisable under this Act in relation to a lessee may also be exercised in relation to the sublessee; and
  - (c) subject to the terms of the sublease, the lessee remains liable for all liabilities that have accrued prior to the commencement of the sublease; and
  - (d) the lessee and the sublessee will be jointly and severally liable for all liabilities accruing after the commencement of the sublease.
- 30 (7) Where the interest of a lessee under a pastoral lease is transferred or assigned—
- (a) the conditions applicable to the pastoral lease continue to apply to the lease as transferred or assigned (unless otherwise varied in accordance with this Act); and
  - 35 (b) the transferee or assignee is taken to be the lessee for the purposes of this Act; and
  - (c) all accrued and accruing liabilities pass to the transferee or assignee.
- (8) Any such liabilities that had accrued before the date of the transfer or assignment may be enforced against the transferor or assignor (who will be regarded as jointly and severally liable with the transferee or assignee).
- 40 (9) A pastoral lease can be wholly or partially surrendered with the consent of the Minister (which may be unconditional or subject to conditions) and the consent of all persons who have a registered interest in or caveat over the lease.

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- (10) Where the surrender of a pastoral lease is conditional on the granting of an interest in the land to the lessee or any other person, the lease is cancelled on such an interest being granted and an interest or caveat that was registered on the lease will be endorsed on the new lease or other documents of title, unless the holder of the interest or caveat consents to its discharge.
- (11) Where the surrender of a pastoral lease is not conditional on the granting of an interest in the land to the lessee or any other person, the lease is cancelled and the land reverts to the Crown freed from all encumbrances and claims (and the Minister may grant a subsequent pastoral lease in relation to the land or otherwise deal with the land).
- (12) Where an agreement is entered into under which the parties agree to transfer, assign, mortgage, sublet or otherwise deal with a pastoral lease, the agreement will expire 12 months after its execution unless the consent of the Minister to the transfer, assignment, mortgage, subletting or other dealing has been obtained.

### 29—Consent to certain share transfers in pastoral company

- (1) Where a company—
- (a) is a lessee under a pastoral lease; or
  - (b) is a party to an agreement for the transfer, assignment, mortgage or subletting of a pastoral lease to the company,

no change in the ownership of the shares of the company can be effected without the prior consent of the Minister, if the change in ownership would result in a controlling interest in the company being held by some person, or by some other person than the present holder of such an interest.

- (2) The Minister must consult with the Minister responsible for the administration of the *Defence Act 1903* of the Commonwealth before granting any consent under subsection (1) in relation to a pastoral lease that is wholly or partly within the Woomera Prohibited Area (prescribed under the *Defence Act 1903* of the Commonwealth).
- (3) Subsection (1) does not apply to a change in ownership of shares effected by a will or other testamentary disposition.

### 30—Alteration of boundaries

- (1) If the Minister is satisfied that the boundary of land subject to a pastoral lease does not reflect the land actually occupied by the lessee, the Minister may, by written notice to the lessee, alter the boundary accordingly.
- (2) The Minister must not issue a notice under subsection (1) unless the Minister is satisfied that all persons who would be affected by the proposed alteration have consented to it (but the Minister may, if satisfied that such consent has been unreasonably withheld, grant the consent instead).
- (3) The Minister may, in a notice under this section, vary the rent payable under the lease to take into account the increase or reduction in value of the lease that results from the alteration of the boundary.
- (4) In determining a variation of rent under subsection (3) the Minister may consult with the Valuer-General or any other person the Minister thinks appropriate in the circumstances.

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- (5) On registration by the Registrar-General of a boundary alteration under this section—
- (a) the alteration takes effect; and
  - (b) all registered interests or caveats to which the pastoral lease is subject extend over the lease as so altered.

### 5 **31—Variation of land subject to pastoral lease**

- (1) The Minister may, on application by, or with the consent of, the lessee under a pastoral lease, or on the recommendation of the Board, by written notice to the lessee—
- 10 (a) excise land, or a part of land, subject to a pastoral lease and transfer the land, or the part of land, to another lease; and
  - (b) alter the boundaries of the leases accordingly.
- (2) The Minister must not take action under this section on application by the lessee unless—
- 15 (a) the lessee has paid the prescribed fee (if any); and
  - (b) all persons who have a registered interest in, or caveat over, either of the leases have consented to the application.
- (3) Despite a provision of this Act, the Minister may, in the same notice—
- 20 (a) vary the rent payable under a pastoral lease to take into account the increase or reduction in value of the lease resulting from the alteration of the boundaries; and
  - (b) with the consent of the lessee, vary the land management conditions of a pastoral lease.
- (4) In determining a variation of rent under subsection (3) the Minister may consult with the Valuer-General or any other person the Minister thinks appropriate in the
- 25 circumstances.
- (5) On registration by the Registrar-General of a boundary alteration pursuant to this section—
- 30 (a) the alteration takes effect; and
  - (b) all registered interests or caveats to which the pastoral lease is subject extend over the lease as so altered.

### **32—Resumption of land**

- (1) The Minister may, by notice in the Gazette, resume any pastoral land.
- (2) Before a notice is published under subsection (1), the Minister must—
- 35 (a) give written notice of intention to resume to—
    - (i) the lessee under the pastoral lease affected by the proposal; and
    - (ii) each person who has a registered interest in or caveat over the lease; and
  - (b) following the giving of such notice, undertake consultation with the lessee in relation to the proposed resumption.

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- (3) The resumption takes effect on a day specified in the notice in the Gazette, which must be a day falling at least 6 months after the date on which any written notice under subsection (2)(a)(i) is given.
- (4) A notice under subsection (2)(a)(ii) must be given at least 14 days before the resumption takes effect.
- (5) If the whole of the land subject to a pastoral lease is resumed, the resumption operates to cancel the lease and the land reverts to the Crown freed from all encumbrances and claims (and the Minister may grant a subsequent pastoral lease in relation to the land or otherwise deal with the land).
- (6) Where part only of the land subject to a pastoral lease is resumed—
- (a) the area of land resumed is excised from the area to which the lease formerly applied (and the land so excised reverts to the Crown freed from all encumbrances and claims); and
  - (b) the lease continues to apply to the remainder of that land subject to—
    - (i) any variation of its conditions specified in the notice with the consent of the lessee (but the Minister may, if satisfied that such consent has been unreasonably withheld, grant the consent instead); and
    - (ii) any variation of its conditions determined by the Tribunal on the application of the lessee (and any such variation may, according to the Tribunal's determination, operate in addition to or in substitution of a variation under subparagraph (i)).
- (7) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, an application to vary any conditions of a lease under subsection (6)(b)(ii) will be taken to come within the Tribunal's original jurisdiction.

### 33—Compensation

- (1) A lessee is entitled to compensation on resumption of pastoral land.
- (2) The amount of the compensation—
- (a) will be determined by agreement between the Minister and the lessee or, in default of agreement, by the Environment, Resources and Development Court; and
  - (b) must be based on the market value of the pastoral lease as if the lease were not being resumed.

### 34—Vacation of land

- (1) If land subject to a pastoral lease has been abandoned, the Board may cancel the lease.
- (2) Where the lessee or former lessee under a pastoral lease abandons or vacates the land leaving behind property, the Minister may, by written notice, require them to remove the property within a stipulated period.
- (3) If the notice is not complied with within the stipulated period, the Minister may remove and dispose of the property.
- (4) Any costs incurred by the Minister under subsection (3) that are not covered by the proceeds (if any) of the sale of the property may be recovered as a debt from the person to whom the notice under subsection (2) was given.

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**35—Cancellation of pastoral lease**

- (1) Subject to subsection (2), the Board may cancel a pastoral lease if satisfied that—
- (a) a breach of a condition of the lease has occurred; or
  - (b) the lease was obtained on the basis of false or misleading information; or
  - 5 (c) cancellation is necessary—
    - (i) in order to prevent, arrest or minimise damage to or deterioration of the land; or
    - (ii) because the land is otherwise no longer suitable for pastoral purposes.
- 10 (2) The Board cannot cancel a pastoral lease unless—
- (a) the Board has given written notice of the proposed cancellation to all persons who have a registered interest in or caveat over the lease; and
  - (b) the Board is satisfied that—
    - 15 (i) in the case involving breach of a condition of the lease—the lessee has been allowed a reasonable opportunity to make good the breach but has failed to do so; or
    - (ii) in any case—cancellation of the lease is necessary in order to prevent, arrest or minimise damage to or deterioration of the land.
- 20 (3) A notice under subsection (2)(a) must be given at least 14 days before cancellation of the lease.
- (4) On cancelling a pastoral lease under this section, the Board may—
- 25 (a) order that the lessee be compensated by the Crown for loss suffered as a result of the cancellation to such extent as the Board thinks fit (but the total amount payable under all such orders must not exceed the market value of the lessee's interest less the costs incurred by the Board in taking action under this section); or
  - (b) order that holder of any registered interest in or caveat over the lease be compensated by the lessee or by the Crown for loss suffered as a result of the cancellation to such extent as the Board thinks fit; or
  - 30 (c) make such incidental or ancillary orders as the Board thinks fit.
- (5) If the Board makes an order for the payment of compensation to a person under subsection (4), the amount so ordered is recoverable by that person as a debt.
- 35 (6) On cancellation of a pastoral lease under this section, the land is freed from all encumbrances and claims (and the Minister may grant a subsequent pastoral lease in relation to the land or otherwise deal with the land).

## Part 5—Assessment of land capacity

### 36—Assessment of land prior to grant of pastoral lease

- 5
- (1) The Minister must not grant a pastoral lease over Crown land unless an assessment of the capacity of the land has been undertaken during the period of 10 years preceding the date of the application for the grant of the lease.
- (2) If at the time of the application for the grant of a pastoral lease, no assessment of the capacity of the land has been made within the preceding 10 years, the Board must cause such an assessment to be undertaken within 3 months after the date of the application for the lease or such longer period as may be necessary in the
- 10 circumstances.

### 37—Assessment of land after grant of pastoral lease

The Board must cause an assessment of the capacity of the land comprised in each pastoral lease to be completed at intervals of not more than 10 years.

### 38—Manner in which assessments are to be carried out

- 15
- (1) An assessment of the capacity of land under this Act must—
- (a) appropriately utilise available technology; and
  - (b) be risk based; and
  - (c) be conducted in accordance with scientific principles; and
  - (d) be carried out by appropriately qualified persons; and
  - (e) take into account—
    - (i) climatic conditions; and
    - (ii) total grazing pressure; and
    - (iii) any other measurable impact on the land's capacity; and
  - (f) otherwise be conducted in accordance with any requirements prescribed by
- 20
- 25 the regulations.
- (2) For the purpose of undertaking an assessment of the capacity of land in accordance with this Part, the Board may give the lessee a written notice requiring the lessee to provide specified information relevant to the assessment to the Board within a specified period.
- 30
- (3) If a lessee fails, without reasonable excuse, to comply with a notice under subsection (2), the lessee is guilty of an offence.  
Maximum penalty: \$10 000.  
Expiation fee: \$500.
- 35
- (4) The Board may, if it thinks fit, cause an authorised officer to attend at any land subject to an assessment to conduct an on-ground inspection of the land.

- (5) For the purposes of subsection (4), an authorised officer may exercise any powers under Part 6 (including, without limitation, entering the land and conducting any tests or taking any samples or photographs on the land) but the lessee must be given at least 28 days' notice (in writing) of the intention to enter the land for this purpose.

### 39—Reports etc following assessment

- (1) The Board must, within 3 months after completing an assessment of the capacity of land, forward—
- (a) a copy of the assessment; and
  - (b) a written report that has been approved by the Board detailing any action the Board recommends in accordance with subsection (2),
- to the lessee and to the Minister.
- (2) If an assessment concludes that land is degraded or subject to a high risk of degradation and recommends the taking of action under this Act, the Board must make recommendations as to what action (if any) should be taken under this Act to address the degradation or risk.

**Note—**

Examples of actions that may be taken under this Act are establishing a reference area under section 41, negotiating a change of lease conditions with the lessee or taking action under Part 6 to enforce compliance with existing conditions of the lease.

### 40—Extension of term of pastoral leases following assessment

- (1) Subject to subsection (2), following an assessment of land comprised in a pastoral lease, the Board may take the following actions:
- (a) if the Board is satisfied that the lessee has not knowingly breached—
    - (i) the conditions of the lease; or
    - (ii) a policy or guidelines relating to pastoral leases issued by the Minister; or
    - (iii) their duty under section 7,the Board—
    - (iv) in the case of land that was subject to a pastoral lease immediately before the commencement of this section—must extend the term of the pastoral lease by such period as will bring the term to 42 years (measured from the date the assessment was completed); or
    - (v) in the case of land that was not subject to a pastoral lease immediately before the commencement of this section—may extend the term of the pastoral lease by such period as will bring the term to 42 years (measured from the date the assessment was completed);
  - (b) if the Board is not satisfied as required by paragraph (a), the Board may—
    - (i) with the consent of the lessee, impose new conditions on the pastoral lease and extend the term of the pastoral lease by such period as will bring the term to 42 years (measured from the date the assessment was completed); or

(ii) refuse to extend the term of the pastoral lease.

- (2) If the Board proposes to extend the term of a pastoral lease under any provision of subsection (1), the Board may, if it thinks fit, extend the term of the pastoral lease by such further period as will bring the term to 100 years (measured from the date the assessment was completed).
- (3) If the Board proposes to refuse to extend a pastoral lease, or to extend a pastoral lease by a period that would not bring its term to 100 years (measured from the date the assessment was completed), the Board must give written notice of the proposal to all persons who have a registered interest in or caveat over the lease at least 14 days before making a determination on the matter.
- (4) If, having refused to extend the term of a pastoral lease under this section, the Board is subsequently satisfied (either on an application by the lessee or of its own motion) that the grounds for the refusal no longer exist, the Board may extend the term of a pastoral lease by such period as will bring the term to 42 years or 100 years, as the Board thinks fit (and in either case measured from the date the assessment was completed).

**Note—**

The *Native Title Act 1993* of the Commonwealth might apply in determining whether, or to what extent, the term of a pastoral lease may be extended under this section.

**41—Reference areas**

- (1) The Board may, by written notice to a lessee, declare that a specified portion of the land subject to the pastoral lease (determined by the Board) is a reference area for the purposes of conducting assessments under this Part.
- (2) The Board may vary or revoke a notice declaring a reference area under this section.
- (3) Subject to subsection (4) and to any agreement between the Minister and the lessee to the contrary, if a portion of land is declared to be a reference area in relation to a lease—
- (a) the lessee's rights under the pastoral lease over the land comprising the reference area cease; and
  - (b) the care, control and management of the reference area is vested in the Minister,
- but the Minister is not thereby obliged to maintain any such area.
- (4) If a portion of land subject to a lease is declared to be a reference area—
- (a) no compensation is payable to a lessee in respect of the declaration; and
  - (b) the declaration will only be taken into account in relation to determining the rent payable under the lease when the rent is next reviewed following the declaration.
- (5) The Minister may, at the Minister's expense, construct fencing or take other measures to exclude livestock and other grazing animals from the reference area and, in such a case, it will be taken to be a condition of the pastoral lease that the lessee must not allow any livestock into the reference area.

- (6) If access to the reference area can only reasonably be gained by passing through the lessee's land, an authorised officer may enter the lessee's land for that purpose but the lessee must be given at least 28 days' notice (in writing) of the intention to enter the land for this purpose.

## 5 **Part 6—Enforcement and compliance**

### **42—Powers of authorised officers**

- (1) An authorised officer may, as may reasonably be required in connection with the administration, operation or enforcement of this Act, at any reasonable time—
- (a) enter any place;
  - 10 (b) inspect any place, including the stratum lying below the surface of any land, and water on or under any land, and inspect any works, plant or equipment;
  - (c) enter and inspect any vehicle and for that purpose require a vehicle to stop, or to be presented for inspection at a place and time specified by the authorised officer, and board any vessel or craft;
  - 15 (d) use reasonable force to break into or open any part of, or anything in or on, any place or vehicle, but only if the authorised officer—
    - (i) is acting under the authority of a warrant issued by a magistrate; or
    - (ii) is acting with the permission of the occupier of the relevant land, or the person apparently in charge of the vehicle (as the case requires);
    - 20 or
    - (iii) is acting in circumstances in which the authorised officer reasonably believes that immediate action is required;
  - (e) give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing;
  - 25 (f) require a person apparently in charge of a vessel or craft to facilitate any boarding;
  - (g) bring any equipment or other thing on to any land, and use that equipment or thing on the land;
  - (h) take measurements, including measurements of the flow of any water on or
  - 30 under any land or relating to any change in any aspect of a natural resource;
  - (i) place any markers, pegs or other items or equipment in order to assist in testing or monitoring;
  - (j) place signs or notices on any land or on any thing on land;
  - (k) erect fences on land;
  - 35 (l) examine, handle or move any livestock;
  - (m) take samples of any substance or thing from any place (including under any land) or vehicle;

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- (n) with the authority of a warrant issued by a magistrate, require any person to produce specified documents or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;
- 5 (o) with the authority of a warrant issued by a magistrate, examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information;
- (p) take photographs, films, audio, video or other recordings;
- 10 (q) examine or test any vehicle, plant, equipment, fitting or other thing, or cause or require it to be so examined or tested, or require its production for such examination or testing;
- (r) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act, or require a person to surrender, either immediately or within a specified period and at a specified place, anything held or maintained in contravention of this Act;
- 15 (s) without limiting the operation of paragraph (r), if the authorised officer—
- (i) finds any animals or plants that are being held or maintained contrary to any requirement or provision of this Act, that are liable to be destroyed or controlled under this Act, or that are prohibited from being in the State under any other Act or law; or
- 20 (ii) finds any animals trespassing on pastoral land or finds any animals trespassing on other land having come from any pastoral land,
- the authorised officer may seize and remove the animals or plants or take measures for their destruction or control (including any measures that may be taken under the *Impounding Act 1920*, where appropriate);
- 25 (t) require a person who the authorised officer reasonably suspects is on pastoral land without lawful authority or excuse to leave the land;
- (u) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- 30 (v) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required in connection with the administration, operation or enforcement of this Act to answer questions in relation to those matters;
- 35 (w) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act.
- 40 (2) Without limiting subsection (1), an authorised officer may exercise a power under this section for the purpose of determining whether the conditions of a lease or requirements imposed under a compliance notice are being, or have been, complied with.

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- (3) Subject to any other provision of this Act to the contrary, before entering any pastoral land an authorised officer should give the lessee reasonable notice (orally or in writing) of the intention to enter the land unless—
- (a) it is not practicable, in the circumstances, to give the lessee such notice; or
- 5 (b) the authorised officer reasonably suspects that a contravention of this Act has been, or is about to be, committed on or in relation to the land.
- (4) An authorised officer may not exercise the power of entry under this section in respect of a residential dwelling except under the authority of a warrant issued by a magistrate.
- 10 (5) A magistrate must not issue a warrant under subsection (1)(d)(i), (n) or (o) or subsection (4) unless satisfied that there are reasonable grounds to believe that circumstances require the relevant action to be taken.
- (6) A magistrate must not issue a warrant under subsection (5) unless satisfied that there are reasonable grounds to believe—
- 15 (a) that a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle; or
- (b) that something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or
- (c) that other circumstances require such action to be taken.
- 20 (7) An application for the issue of a warrant under this section—
- (a) may be made either personally or by telephone; and
- (b) must be made in accordance with any procedures prescribed by the regulations.
- (8) If an authorised officer digs up any land under this section, the authorised officer must, after taking such steps as the authorised officer thinks fit in the exercise of powers under this section, insofar as is reasonably practicable, take steps to ensure that the land is restored to such state as is reasonable in the circumstances.
- 25 (9) If an authorised officer causes any damage by digging up any land under this section, the Crown is liable to pay reasonable compensation to any person who has suffered loss on account of that damage.
- 30 (10) If any animal or plant is surrendered under subsection (1)(r) or seized or removed under subsection (1)(s), the animal or plant may be destroyed or disposed of in such manner as the Minister approves if the Minister believes on reasonable grounds that such action should be taken.
- 35 (11) An authorised officer in exercising powers under this section may be accompanied by such assistants as are reasonably required in the circumstances.
- (12) An authorised officer may require an occupier of any land or a person apparently in charge of any vehicle, plant, equipment or other thing to give to the authorised officer or a person assisting the authorised officer such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.
- 40 (13) If a person gives assistance to an authorised officer as required under subsection (12), the person must, if the person so requires, be reimbursed in accordance with the regulations for any reasonable costs and expenses incurred in giving the assistance.

- (14) An authorised officer must, in taking action under this section, have regard to any request made by aboriginal people that the authorised officer (or authorised officers generally) not enter a specified area.
- (15) An authorised officer may, if the authorised officer thinks fit, determine not to seize something that the authorised officer suspects has been used in, or may constitute evidence of, a contravention of this Act pending the outcome of any proceedings or other process under this Act (and a decision not to exercise a power of seizure does not prevent the institution of proceedings under this Act).
- (16) Without derogating from section 76, the regulations may make provision in relation to the seizure of items and the manner in which seized items are to be dealt with.

### 43—Misuse of pastoral land

- (1) A person who, without lawful authority or excuse—
- (a) travels across or occupies pastoral land; or
  - (b) brings animals onto pastoral land or causes or permits animals (for which the person is responsible) to enter or remain on pastoral land; or
  - (c) damages or interferes with pastoral land, or anything on pastoral land; or
  - (d) cuts down, lops branches from or otherwise damages any living tree or bush on pastoral land; or
  - (e) pollutes any water on the land, whether stored or a natural source of water; or
  - (f) deposits litter or abandons any goods on pastoral land; or
  - (g) erects or places any structure on pastoral land; or
  - (h) hunts or shoots on pastoral land,

is guilty of an offence.

Maximum penalty:

- (a) for a body corporate—\$100 000;
- (b) for a natural person—\$50 000.

Expiation fee: \$1 000.

- (2) In proceedings for an offence against subsection (1), the onus of proving lawful authority or excuse lies on the defendant.

### 44—Hindering etc persons engaged in the administration of this Act

- (1) A person who—
- (a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration or enforcement of this Act; or
  - (b) fails to answer a question put by an authorised officer to the best of the person's knowledge, information or belief; or
  - (c) produces a document or record that the person knows is false or misleading in a material particular; or
  - (d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or

- (e) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (f) falsely represents, by words or conduct, that the person is an authorised officer,

5 is guilty of an offence.

Maximum penalty:

- (a) in the case of an offence against paragraph (a) or (e)—\$5 000;
- (b) in any other case—\$10 000.

10 (2) A person (other than an authorised officer) who, without the permission of the Minister, removes, destroys or interferes with any marker, peg or other item or equipment, or with any sign or notice, placed under section 42(1) by an authorised officer is guilty of an offence.

Maximum penalty: \$5 000.

#### 45—Compliance notices

15 (1) If an authorised officer reasonably believes that—

- (a) pastoral land is degraded or subject to a high risk of degradation; or
- (b) a breach of a condition of a pastoral lease has occurred or is likely to occur; or
- (c) a breach of a policy or guidelines relating to pastoral leases issued by the Minister has occurred or is likely to occur,

20 the authorised officer may, by written notice in a form approved by the Minister, issue a notice (a **compliance notice**) in accordance with this section.

(2) A compliance notice may require the lessee or any other person lawfully occupying the land—

- 25
- (a) to discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice; or
  - (b) to not carry on a specified activity except subject to specified conditions; or
  - (c) to take specified action within a specified period or until the happening of a specified event or until further notice.

30 (3) A compliance notice may be issued orally if the authorised officer is of the opinion that urgent action is required, but in that event, the notice will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written compliance notice served on the person.

35 (4) A written compliance notice under this section must include a statement advising the recipient of their right to apply to the Tribunal for a review under Part 8 Division 1.

(5) An authorised officer may, by written notice given to a lessee to whom a compliance notice has been issued, vary or revoke the notice.

(6) If a lessee fails, without reasonable excuse, to comply with a compliance notice, the lessee is guilty of an offence.

40 Maximum penalty:

**Pastoral Lands Bill 2020**

## Part 6—Enforcement and compliance

- (a) for a body corporate—\$100 000;
- (b) for a natural person—\$50 000.

(7) A person must not hinder or obstruct a person complying with a compliance notice.  
Maximum penalty: \$5 000.

5 (8) If a person who is required to take action in compliance with a compliance notice refuses or fails to do so, an authorised officer may take the action required to be taken by that person, with or without assistance, or cause that action to be taken.

(9) The Minister may recover costs and expenses reasonably incurred under subsection (8) as a debt owed by the person of whom the requirement was made.

## 10 **46—Verification of livestock levels**

(1) For the purpose of ascertaining at any time the amount of livestock on pastoral land, or on any particular area of pastoral land, the Board may, by written notice in writing to the lessee—

15 (a) require the lessee to furnish the Board, within a specified time, with a statement verifying the livestock levels on the land; or

(b) require the lessee to muster livestock in accordance with the terms of the notice in order to allow a person authorised by the Minister to count the livestock.

20 (2) A statement furnished pursuant to subsection (1) must contain such information as the Board may require.

(3) If a lessee fails to comply with a notice under subsection (1)(b), the Board may cause the muster to be carried out and, subject to subsection (4), may recover the cost of doing so from the lessee as a debt.

25 (4) If a muster carried out pursuant to this section verifies that the livestock levels as declared by the lessee in accordance with this section were accurate, the cost of carrying out the muster will be borne by the Crown.

(5) A declaration as to livestock levels will be taken to be accurate if a subsequent muster finds that the numbers of livestock on the land are not more than 10% above or below the declared levels.

30 (6) If a lessee fails, without reasonable excuse, to comply with a requirement of, or notice under, this section, the lessee is guilty of an offence.

Maximum penalty: \$10 000.

Expiation fee: \$500.

## **Part 7—Access to pastoral land**

### 35 **Division 1—Indigenous land use agreements**

#### **47—Indigenous land use agreement binding on lessees**

(1) An ILUA that is in force in relation to pastoral land is binding on the current lessee of the land whether or not the lessee was the person with whom the ILUA was made.

(2) A lessee of pastoral land may enter an ILUA in relation to contiguous pastoral land that is under the lessee's management and control (and the lessee of the contiguous pastoral land will be taken not to be the occupier of that land for the purposes of this Division).

5 (3) An ILUA that is in force in relation to pastoral land the subject of subsection (2) is binding on the current occupier of the land whether or not the occupier was the person with whom the ILUA was made.

#### 48—Immunity from liability

10 (1) Subject to this section, no civil liability attaches to a party to an ILUA for injury, damage or loss—

- (a) caused by another party to the ILUA; or
- (b) suffered by a person who is unlawfully on pastoral land the subject of the ILUA unless the injury, damage or loss was caused intentionally or through gross negligence.

15 (2) Subject to this section, an ILUA may—

- (a) modify the duty of care or standard of care required of a party to an ILUA as against another party to the ILUA; or
- (b) limit the civil liability of a party to an ILUA as against another party to the ILUA.

20 (3) To avoid doubt, section 20(4) and (6) of the *Civil Liability Act 1936* do not apply to an occupier of pastoral land the subject of an ILUA.

(4) Nothing in this section affects the operation of a statutory insurance or compensation scheme.

(5) For the purposes of this section—

25 (a) a reference to a party to an ILUA includes a reference to—

(i) in the case of a lessee of pastoral land—

(A) that lessee, in relation to pastoral land used by the lessee for pastoral purposes that is contiguous to land the subject of the pastoral lease; and

30 (B) a family member, employee or invitee (not being a person entering the pastoral land under section 53) of the lessee that is on the pastoral land; and

(ii) in the case of a native title group—an invitee of an Aboriginal person exercising a right of entry or staying on the pastoral land under the ILUA or section 51(1); and

35 (b) a reference to a pastoral land includes a reference to contiguous land that is located within the perimeter fence line of land the subject of a pastoral lease, but is not the subject of the lease.

## Pastoral Lands Bill 2020

Part 7—Access to pastoral land

Division 1—Indigenous land use agreements

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**49—ILUA to be endorsed on lease**

- (1) If an ILUA is entered in relation to pastoral land, the Minister must cause a notice of that fact (in a form approved by the Registrar-General) to be lodged with the Registrar-General.
- 5 (2) The Registrar-General must, on receipt of a notice under subsection (1), endorse on the relevant pastoral lease or pastoral leases the fact that an ILUA has been entered in relation to pastoral land the subject of the lease or leases.
- (3) No stamp duty or fee is payable in respect of a notice lodged or action of the Registrar-General pursuant to this section.

**50—Trespassers on pastoral land the subject of an ILUA**

- 10 (1) If—
- (a) a person trespasses on pastoral land the subject of an ILUA; and
  - (b) the nature of the trespass is such as to interfere with the enjoyment of the land by the lessee or the native title group; and
  - 15 (c) the trespasser is asked by an authorised person to leave the land, the trespasser is, if they fail to leave the land forthwith or again trespass on the land within 24 hours of being asked to leave, guilty of an offence.
- Maximum penalty: \$2 500 or imprisonment for 6 months.
- (2) A person who trespasses on pastoral land the subject of an ILUA must, if asked to do so by an authorised person, give their name and address to the authorised person.
- 20 Maximum penalty: \$1 250.
- (3) An authorised person, on asking a trespasser to leave pastoral land the subject of an ILUA or to give a name and address, must, if the trespasser so requests, inform the trespasser of—
- 25 (a) the authorised person's name and address; and
  - (b) the capacity in which the person is an authorised person under this section.
- (4) In this section—

*authorised person* means—

- (a) the lessee of pastoral land the subject of the ILUA; or
- 30 (b) the native title group in relation to pastoral land the subject of the ILUA; or
- (c) an employee of the lessee or other person acting on the authority of the lessee; or
- (d) a person acting on the written authority of the native title group;

*pastoral land* includes a building or structure.

- 35 (5) In proceedings for an offence against this section, an allegation in the information that a person named in the information was on a specified date an authorised person in relation to specified pastoral land will be accepted, in the absence of proof to the contrary, as proof of the authorisation.

- (6) For the purposes of subsection (4)(d), a *native title group* does not include a person who would not, but for the operation of paragraph (c) of the definition of *native title group* in section 4(1), be included in the definition of *native title group*.

## Division 2—Public access

### 5 51—Rights of Aboriginal persons

- (1) Despite this Act or any pastoral lease granted under this Act or the repealed Act, but subject to this section, an Aboriginal person may enter, travel across or stay on pastoral land for the purpose of following the traditional pursuits of the Aboriginal people.
- 10 (2) Subsection (1) does not give an Aboriginal person a right to camp—
- (a) within a radius of 1 km of any house, shed or other outbuilding on pastoral land; or
  - (b) within a radius of 500 m of a dam or any other constructed livestock watering point.
- 15 (3) An ILUA in force in relation to particular pastoral land may—
- (a) confer a right to enter, travel across or stay on the land in addition to the rights conferred by subsection (1); or
  - (b) remove or qualify, or make any other provision in relation to, the rights conferred by subsection (1).

### 20 52—Establishment of public access routes

- (1) A public access route is a route dedicated as a public access route pursuant to this section.
- (2) The Board may, by notice in the Gazette—
- (a) dedicate delineated routes over pastoral land as public access routes; or
  - 25 (b) vary or revoke a notice under this section.
- (3) A notice must not be published under this section unless the Board has consulted with all pastoral lessees affected by the proposal.
- (4) Subsection (3) does not apply in relation to the temporary closure of a public access route, or any part of such a route, pursuant to subsection (5).
- 30 (5) If, on the application of a lessee or of its own motion, the Board is satisfied that it is necessary to do so for the purposes of the safety of the public, the management of livestock or the carrying out of rehabilitative work on land adjacent to the route, the Board may, by notice in the Gazette, temporarily close a public access route, or a part of such a route and, for that purpose, may require the lessee to erect such signs or
- 35 barriers as the Board thinks fit for the purpose of warning the public of the closure.
- (6) If a notice delineating a public access route is revoked, the public access route is taken to have been closed on such revocation.
- (7) On a public access route being established—
- 40 (a) the lessee's rights under the pastoral lease over the land comprising the route cease; and

**Pastoral Lands Bill 2020**

Part 7—Access to pastoral land

Division 2—Public access

(b) the care, control and management of the route is vested in the Minister, but the Minister is not thereby obliged to maintain any such route.

(8) However, the Minister may, if of the opinion that an access route has suffered considerable damage as a result of any activities of a lessee, by notice given to the lessee, require the lessee to contribute an amount specified in the notice towards the repair or maintenance of the route.

(9) An amount specified in a notice under subsection (8) may be recovered by the Minister as a debt.

(10) A lessee of pastoral land over which a public access route is established is not obliged and cannot be required to keep livestock off the route, and may use the route for the purposes of droving livestock.

(11) The lessee of pastoral land over which a public access route is established is not entitled to compensation for any reduction in the value of the lease resulting from establishment of the route, but any such reduction in value will be taken into account when the lease is next revalued for the purposes of rent determination.

**53—Right to travel across and camp on pastoral land**

(1) Subject to this Act, a person may travel (by any reasonable means) on a public access route or, with consent obtained in accordance with this section, camp temporarily on pastoral land adjacent to a public access route.

(2) Subject to this Act and to the terms (if any) of an ILUA relating to public access and activities on the land in force in relation to the land, a person may, with consent obtained in accordance with this section, travel (by any reasonable means) across pastoral land otherwise than on a public access route and, in the course of so travelling, camp temporarily on the land.

(3) A term of an ILUA may only limit a right conferred by subsection (2) to the extent reasonably necessary for the following purposes:

(a) restricting public access to places identified by the native title group as being places of cultural significance;

(b) preventing injury, damage or loss to any person that may arise from an activity undertaken under the ILUA or under section 51(1);

(c) protecting an activity of the native title group on pastoral land the subject of the ILUA.

(4) This section does not give a person the right to camp—

(a) within a radius of 1 km of any house, shed or other outbuilding on the land; or

(b) within a radius of 500 m of any natural livestock watering point or of a dam or any other constructed livestock watering point on the land; or

(c) within a radius of 1 km of any significant infrastructure installed for a commercial purpose other than pastoral purposes (for example, wind farm infrastructure).

- 5 (5) A person who proposes to travel across or camp on pastoral land otherwise than on a public access route must first seek the lessee's consent to the proposal and the lessee may refuse that consent if of the opinion that it is necessary to do so for the purposes of the safety of the public, the management of livestock or the carrying out of rehabilitative work on the land or for any other good and sufficient reason.
- (6) If the lessee refuses to consent to a proposal under subsection (5), the person may seek the Minister's consent to the proposal.
- 10 (7) The Minister may, without consulting the lessee, consent to the proposal but, if the Minister consents to the proposal without consulting the lessee, the proposal cannot be carried out until the Minister has notified the lessee that consent has been given.
- (8) The Minister incurs no liability by virtue of giving consent to a proposal to travel across or camp on pastoral land.
- 15 (9) A lessee must not give consent under subsection (5), or the Minister under subsection (7), to a proposal to travel across or camp on pastoral land if to do so would be inconsistent with the terms (if any) of an ILUA in force in relation to the land relating to public access and activities on the land.
- (10) For the purposes of this section, camping is temporary if it is for a period not exceeding 3 days or, if some other greater or lesser period is prescribed in respect of a particular area, that period in relation to camping in that area.
- 20 (11) An authorised person may give to a person travelling across or camping on pastoral land the subject of an ILUA such directions as may be reasonably required for the purpose of giving effect to a term of an ILUA relating to 1 or more of the purposes referred to in subsection (3).
- 25 (12) A person who, without lawful authority or reasonable excuse, fails to comply with a direction under subsection (11) is guilty of an offence.  
Maximum penalty: \$1 250.
- (13) A person who travels across or camps on pastoral land in accordance with this section—
- 30 (a) must take reasonable steps to ensure that they have appropriate equipment and supplies available while travelling across or camping on the land; and
- (b) must not leave any items on the land without the consent of the lessee; and
- (c) must not interfere with any lawful activities of the lessee.
- (14) In proceedings for an offence against this section, an allegation in the information that a person named in the information was on a specified date an authorised person in relation to specified pastoral land will be accepted, in the absence of proof to the contrary, as proof of the authorisation.
- 35 (15) In this section—
- authorised person* means—
- 40 (a) the Minister; or
- (b) an authorised officer; or
- (c) the lessee of pastoral land the subject of the ILUA; or
- (d) the native title group in relation to pastoral land the subject of the ILUA; or

- (e) an employee of the lessee or other person acting on the authority of the lessee.

#### 54—Public access not to be obstructed

- (1) A person must not, without lawful authority, place any obstruction across a public access route.

Maximum penalty: \$1 250.

- (2) If any pastoral land over which a public access route is established is fenced, the lessee—

(a) must provide a gate or other means of access at the point of intersection; and

(b) must keep any such gate unlocked.

Maximum penalty: \$1 250.

### Division 3—Travelling livestock

#### 55—Travelling with livestock

- (1) Subject to this Act and to the terms (if any) of an ILUA relating to public access and activities on the land in force in relation to the land, a person may, with the consent of the lessee, travel with livestock across pastoral land.

- (2) A person must seek the consent of the lessee not less than 28 days (or a shorter period agreed to by the lessee) before the date on which the proposed travel on the land would commence.

- (3) A lessee must not unreasonably refuse consent or impose unreasonable conditions on a consent under this section.

- (4) If the lessee refuses to consent or imposes unreasonable conditions on a consent under this section, the person may seek the Minister's consent to the proposed travel.

- (5) The Minister may, without consulting the lessee, consent to the proposed travel (with or without conditions) but, if the Minister consents without consulting the lessee, the proposed travel cannot be carried out until the Minister has notified the lessee that consent has been given.

- (6) The Minister incurs no liability by virtue of giving consent to a proposal to travel with livestock across pastoral land.

- (7) A lessee, or the Minister, must not give consent under this section to a proposal to travel with livestock across pastoral land if to do so would be inconsistent with the terms (if any) of an ILUA in force in relation to the land relating to public access and activities on the land.

- (8) A person who travels with livestock across pastoral land must do so—

(a) in compliance with any conditions lawfully imposed by the lessee or the Minister; and

(b) as quickly as is reasonable in the circumstances.

Maximum penalty: \$1 250.

**Note—**

See also section 43.

## Division 4—Access to water

### 56—Right to take water

- (1) A person exercising a right of access to or through pastoral land in accordance with this Part—
- 5           (a) may take water from any natural source or storage point on the land, but only so much as is sufficient for the person's personal or domestic needs; and
- (b) in the case of a person travelling with livestock, may permit the livestock access to water on the land, subject to compliance with such directions as the lessee may give.
- 10       (2) The holder of a mining tenement over pastoral land may take reasonable quantities of water from any natural source or storage point on the land for mining, personal or domestic purposes, but not so as to deprive the lessee of the water necessary for all of the lessee's purposes.
- (3) A person who takes water pursuant to subsection (2) is liable to pay compensation to the lessee in accordance with the regulations.
- 15       (4) Subsections (1) and (2) do not entitle a person to take water from a domestic rainwater tank.
- (5) This section is subject to the *Landscape South Australia Act 2019*.

## Part 8—Reviews

### 20       Division 1—Reviews by Tribunal

#### 57—Jurisdiction of Tribunal

- (1) A lessee who is dissatisfied with—
- (a) a refusal of consent to a transfer, assignment, mortgage, subletting or other dealing with a pastoral lease; or
- 25           (b) a decision to issue a notice under section 30(1) without the consent of the lessee; or
- (c) a decision to vary the conditions of a pastoral lease under section 32(6)(b)(i) without the consent of the lessee; or
- (d) a decision to cancel a pastoral lease; or
- 30           (e) a decision not to extend the term of a pastoral lease; or
- (f) a decision under Part 6; or
- (g) a decision under section 52 (establishment of public access routes),
- may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision.
- 35       (2) An application for review must be made within 3 months after notification of the decision to the lessee.

**Pastoral Lands Bill 2020**

## Part 8—Reviews

Division 1—Reviews by Tribunal

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(3) For the purposes of proceedings before the Tribunal under this Part, a panel of assessors must be established under section 22 of the *South Australian Civil and Administrative Tribunal Act 2013* consisting of persons with expertise that would be of value to the Tribunal in exercising its jurisdiction under this Part.

5 (4) In any proceedings under this Part, the Tribunal may, if the President of the Tribunal so determines, sit with 1 or more assessors selected by the President from the panel referred to in subsection (3).

**58—Operation of certain decisions pending review**

10 (1) Subject to this section, a decision in relation to which an application for review to the Tribunal may be made continues to operate despite the right to make such an application or the commencement of proceedings for review.

15 (2) A decision to cancel a pastoral lease or impose a fine on a lessee for breach of lease conditions cannot be implemented or enforced until the period for commencing proceedings for a review of the decision has elapsed or, if an application has been made to the Tribunal, until the proceedings have been determined or withdrawn.

(3) The operation of a decision in relation to which an application for review to the Tribunal has been made may, on the application of the lessee, be suspended by the Tribunal in whole or in part pending the determination of the matter.

**59—Related provisions**

20 (1) The Tribunal may not allow non-party intervention in proceedings before the Tribunal under this Division.

(2) The Tribunal must require the parties to proceedings under this Division to attend a compulsory conference under section 50 of the *South Australian Civil and Administrative Tribunal Act 2013*.

25 (3) Counsel for the parties to proceedings under this Division are not entitled to attend a compulsory conference under subsection (2).

**Division 2—Review of valuation and review by Tribunal****60—Valuations—right of review**

30 (1) A lessee who is dissatisfied with a determination by the Valuer-General of the annual rent for the lessee's pastoral lease may, within 3 months of receiving a copy of the notice of determination—

(a) apply to the Minister for a review of the determination; or

(b) apply to the Tribunal for a review of the determination.

35 (2) If an application is made under subsection (1)(a), the Minister may request further information from the Valuer-General in relation to the determination.

(3) An application under subsection (1)(a) must be made, and will be dealt with, in accordance with the *Valuation of Land Act 1971*, as if it were an application for review of a valuation under that Act.

- (4) If the lessee or the Valuer-General is dissatisfied with the decision of a land valuer on a review under subsection (3), the lessee or the Valuer-General may, within 1 month of receiving notification of the decision, apply to the Tribunal for a review of the decision.
- 5 (5) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, an application to the Tribunal under this Division will be taken to come within the Tribunal's review jurisdiction but, in the exercise of this jurisdiction, the Tribunal will consider the matter *de novo* (adopting such processes and procedures, and considering and receiving such evidence or material, as it thinks fit for the purposes of the
- 10 proceedings).

## Part 9—Miscellaneous

### 61—Recovery of native title compensation

Without limiting any other civil right of action of the Crown, if the Crown is liable to pay compensation in respect of acts extinguishing or affecting native title by a person granted a right in respect of, or interest in, land under this Act, the Crown is entitled to recover the amount of the compensation from the person.

15

### 62—Interaction with mining Acts etc

Nothing in this Act derogates from the operation of the *Mining Act 1971*, the *Opal Mining Act 1995* or the *Petroleum and Geothermal Energy Act 2000* or of a tenement granted under any of those Acts.

20

### 63—Exemption from stamp duty

The grant of a pastoral lease or extension of the term of a lease is exempt from stamp duty under the *Stamp Duties Act 1923*.

### 64—Certain debts are charges over leases

If, under this Act, the Minister may recover from a lessee the costs incurred by the Minister in taking action under this Act, the amount from time to time due and payable by the lessee is a charge over the pastoral lease, ranking in priority before all other charges or mortgages (other than a charge or mortgage in favour of the Crown or a Crown instrumentality).

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### 65—Service of notices or other documents

- (1) If this Act requires or authorises a notice or other document to be served on, or given to, a person, the notice or document may—
- 30
- (a) be served on, or given to, the person or an agent of the person; or
  - (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
  - (c) be sent by post to the person or an agent of the person at the person's or agent's last known address; or
- 35

(d) if the notice or document is to be served on the owner of land, the land is unoccupied, and the person seeking to serve the notice or document has taken reasonable steps to effect service under the other paragraphs of this subsection but has been unsuccessful—be served by fixing it to some conspicuous part of the land; or

(e) if the notice or document is to be served on the occupier of land—be sent by post to the occupier at the address of the land; or

(f) be served on the person by fixing it to, or leaving it on, a vessel or craft that the person is apparently in charge of, or expected to board at some stage, if the person giving or serving the notice or document has reasonable grounds to believe that service in this manner will bring the notice or document to the attention of the person to be served; or

(g) be sent to an email address known to be used by the person (in which case the notice or other document will be taken to have been served or given at the time of transmission); or

(h) be served or given in some other manner prescribed by the regulations.

(2) Without limiting subsection (1), a notice or document to be served on or given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth may be served or given in accordance with that Act.

(3) Subject to the regulations, a notice or document required or authorised to be given to an owner of land may, if it is to be served personally, be served on the owner, 1 of any joint owners, or the agent of the owner.

(4) This section does not affect any provision for service prescribed by the *Native Title (South Australia) Act 1994*.

## 66—Form of applications

An application to the Board or the Minister under this Act must be in such a form, and include such information, as the Board or the Minister (as the case may be) may require.

## 67—Consent unreasonably withheld

Where a provision of this Act requires the consent of any person (not being the lessee under the pastoral lease, the Minister or the Board) to an application relating to the pastoral lease or to the doing of some act in respect of the pastoral lease, the Minister may, if satisfied that such consent has been unreasonably withheld, grant the consent instead.

## 68—False or misleading information

A person who furnishes information to the Minister or another authority under this Act that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$20 000.

## 69—Criminal jurisdiction of ERD Court

An offence against this Act lies within the criminal jurisdiction of the ERD Court.

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**70—Proceedings for offences**

- (1) Proceedings for an offence against this Act—
- (a) may only be commenced by—
    - (i) the Minister; or
    - (ii) the Director of Public Prosecutions; or
    - (iii) a person acting with the authorisation in writing of the Minister; and
  - (b) must be commenced within 5 years after the date on which the offence is alleged to have been committed.
- (2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

**71—General defence**

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

**72—Additional orders on conviction**

If a person is convicted of an offence against this Act, the court by which the conviction is recorded may, in addition to any penalty that it may impose, and to any other order that it may make under this or any other Act, make 1 or both of the following orders:

- (a) an order requiring the person to take any specified action (including an order to rectify the consequences of any contravention of this Act, or to ensure that a further contravention does not occur);
- (b) an order that the person pay to the Crown an amount determined by the court to be equal to a fair assessment or estimate of the financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the commission of an offence against this Act.

**73—Continuing offence**

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
- (a) is liable, subject to any determination of a court, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
  - (b) is, if the act or omission continues after the conviction, subject to any determination of a court, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

#### 74—Evidentiary provision

- (1) In any proceedings—

- (a) an apparently genuine document purporting to be a certificate signed by the Minister or by the Chief Executive of the Department primarily responsible for assisting a Minister in the administration of this Act and certifying—
- (i) as to the contents of a pastoral lease, compliance notice or any authorisation, notice or document given to a person under this Act; or
  - (ii) that a person named in the certificate was at a specified time a delegate of the Minister unconditionally or subject to specified conditions; or
  - (iii) that a person named in the certificate was at a specified time an authorised officer under this Act unconditionally or subject to specified conditions; or
  - (iv) that a person named in the certificate was or was not at a specified time the holder of a specified pastoral lease; or
  - (v) that at a specified time specified land was or was not—
    - (A) pastoral land; or
    - (B) a public access route; or
    - (C) a reference area,
 is, in the absence of proof to the contrary, proof of the matters certified; and
- (b) an apparently genuine document purporting to be a map or plan signed by or on behalf of the Surveyor-General will be accepted, in the absence of proof to the contrary, as an accurate map or plan of the land to which it relates; and
- (c) an apparently genuine document purporting to be a certificate of value signed by or on behalf of the Valuer-General is, in the absence of proof to the contrary, proof of the value of the pastoral lease to which it relates as at the date of the certificate; and
- (d) an apparently genuine document purporting to be a certificate signed by the Minister detailing the costs and expenses and the purpose for which they were incurred is, in the absence of proof to the contrary, proof of the matters so certified; and
- (e) an apparently genuine document purporting to be a certificate signed by an authorised officer certifying that, at a specified time—
- (i) a specified vehicle was stopped or parked in a specified place; or
  - (ii) a specified person was the owner of a specified vehicle,
- is, in the absence of proof to the contrary, proof of the matters so certified.

- (2) If in any proceedings for an offence against this Act it is proved that vegetation has been cleared, it must be presumed in the absence of proof to the contrary that the vegetation was cleared by the owner and occupier of the land on which it is or was growing or is or was situated.
- 5 (3) If in any proceedings for an offence against this Act it appears that an alleged fact has been determined by the use of an electronic, sonic, optical, mechanical or other device by an authorised officer or a person assisting an authorised officer, the alleged fact must be accepted as proved in the absence of proof to the contrary.
- 10 (4) In proceedings for an offence against this Act, a document produced by the prosecution and purporting to certify that a remotely sensed image specified in the document—
- (a) was captured by a specified device and is accurate to the extent indicated in the document; and
  - (b) was captured at a specified time on a specified date; and
  - 15 (c) is an image of a specified place,
- constitutes, in the absence of proof to the contrary, proof of the facts so certified.
- (5) For the purposes of this section, a reference to an electronic, sonic, optical, mechanical or other device includes a reference to any software used by, or in relation to, such a device.
- 20 (6) In this section—
- image* includes—
- (a) a copy of an image; and
  - (b) data from which an image can be produced;
- remotely sensed image* means—
- 25 (a) an image captured by a device (whether a camera or otherwise) mounted on or in a satellite or aircraft; and
  - (b) any other image declared by the regulations to be included in the ambit of this definition.

### 75—Recovery of technical costs associated with contraventions

- 30 If a person is convicted of an offence against this Act and, in the course of investigating the offence, the Minister has incurred costs and expenses in taking samples or in conducting tests, examinations or analyses, the court must, on application by the Minister, order the convicted person to pay to the Minister the reasonable costs and expenses incurred by the Minister.

### 35 76—Regulations and fee notices

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The regulations may—
  - (a) be of general or limited application; and

- 
- (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
- (c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and
- (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other specified person or body.
- (3) The Minister may prescribe fees for the purposes of this Act (including in relation to the exercise of any function or power of the Minister or the Board under this Act) by fee notice under the *Legislation (Fees) Act 2019*.
- (4) A fee notice may provide for the waiver, reduction or remission of fees.

## Schedule 1—Related amendments, repeals and transitional provisions etc

### Part 1—Preliminary

#### 1—Amendment provisions

In the Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Related amendment of *Crown Land Management Act 2009*

#### 2—Amendment of section 8—Application of Act to pastoral leases

Section 8—after its present contents (now to be designated as subsection (1)) insert:

- (2) A reference in this section to *land subject to a pastoral lease* includes land subject to a pastoral lease that has been cancelled under the *Pastoral Lands Act 2020*, unless the Minister responsible for the administration of that Act has notified the Minister that the land has reverted to the status of unalienated Crown land for the purposes of this Act.

### Part 3—Repeal

#### 3—Repeal of *Pastoral Land Management and Conservation Act 1989*

The *Pastoral Land Management and Conservation Act 1989* is repealed.

### Part 4—Transitional provisions etc

#### 4—Leases to continue

- (1) Subject to this clause—

- (a) a pastoral lease granted under the *Pastoral Land Management and Conservation Act 1989* or the *Pastoral Act 1936* and in force immediately before the commencement of this clause continues as a pastoral lease under this Act; and

- (b) the provisions of this Act relating to pastoral leases apply to such a lease as if it had been granted under this Act; and
- (c) the conditions of such a lease will be taken to be the conditions registered on the lease.
- 5 (2) Within the period of 5 years after the commencement of this clause, the Board must—
- (a) undertake a review of the conditions of all pastoral leases to which this clause applies and may, if the Board thinks it is necessary to ensure that the conditions are consistent with the requirements of this Act, with the consent of the lessee, vary or revoke any conditions or add new conditions; and
- 10 (b) cause an assessment of the capacity of land subject to a pastoral lease to which this clause applies to be undertaken in accordance with Part 5 (and, for the avoidance of doubt, following such assessment section 40 will apply in relation to the lease).
- (3) A condition of a pastoral lease to which this clause applies is, to the extent that it relates to the minimum stocking rate of pastoral land, void and of no effect.
- 15 (4) Nothing in this clause affects any liability (including a liability to pay rent or any other amount) arising under a lease or licence prior to the commencement of this clause.

### 5—Consent to continue

- (1) Any consent granted by the Minister under the *Pastoral Land Management and Conservation Act 1989* will be taken to be a consent granted by the Minister under this Act (and has effect according to its terms).
- 20 (2) The Minister may vary or revoke a consent to which this clause applies.

### 6—Reference areas

25 A reference area established under section 44 of the *Pastoral Land Management and Conservation Act 1989* and in existence immediately before the commencement of this clause continues as if it were a reference area established under section 41 of this Act.

### 7—Continuation of public access routes

30 A public access route established under section 45 of the *Pastoral Land Management and Conservation Act 1989* and in existence immediately before the commencement of this clause continues as a public access route under section 52 of this Act.

### 8—Notices to continue

35 A notice issued by the Board or the Minister under a provision of the *Pastoral Land Management and Conservation Act 1989* has effect as if it were a notice issued under the corresponding provision (if any) of this Act.

### 9—Transitional regulations

Regulations made under section 76(2)(c) may be inconsistent with, or otherwise affect, the operation of this Schedule.