

NORFOLK ISLAND



CROWN LANDS ACT 1996

[Consolidated as at 31 January 2000
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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Crown Lands Act 1996

An Act relating to the granting of leases of land and for related purposes

PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Crown Lands Act 1996*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the Gazette.
(2) The remaining provisions commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

Interpretation

3. In this Act, unless the contrary intention appears—
“Land Titles Act” means the *Land Titles Act 1996*;
“lease” means —
 - (a) a lease granted under this Act; or
 - (b) a lease granted under the repealed Act and continued in force by section 39,
but does not include a sublease;“Plan” means the Norfolk Island Plan established by section 7 of the *Planning Act 1996*;
“registered lease” means a lease registered in the Register under the *Land Titles Act 1996*;
“registered proprietor”, in relation to a lease, means the person who is registered under the *Land Titles Act 1996* as the proprietor of the lease;

“Registrar of Titles” means the Registrar of Titles under the *Land Titles Act 1996*;

“repealed Act” means the *Crown Lands Act 1913* in force immediately before the commencement of this section.

Application

3A. (1) This Act applies to Crown land of the Commonwealth in respect of which the Administrator is authorised by the Minister to make grants or other dispositions, and deal with in accordance with this Act, on behalf of the Minister.

(2) A reference in this Act to the exercise of a power by the Administrator in relation to Crown land of the Commonwealth shall be read as a reference to the exercise of that power in accordance with the authority of the Minister.

Jurisdiction of Supreme Court

4. Jurisdiction is vested in the Supreme Court to hear and determine an application under this Act.

Inconsistency with Plan

5. The Administrator shall not, in granting or varying a lease for a particular purpose, do any thing inconsistent with the Plan.

PART II — LEASES

Division 1 — Leases

Grant of leases

6. (1) The Administrator may grant a lease of unleased Crown land to an applicant for a lease.

(2) A lease may be granted subject to conditions.

(3) Without limiting the generality of subsection 6(2), the conditions subject to which a lease may be granted may include conditions requiring the lessee —

- (a)** to develop the land comprised in the lease in a specified way; or
- (b)** to give security for the performance of any of his or her obligations under the lease.

(4) The Administrator shall not grant a lease under subsection 6(1) otherwise than in accordance with criteria specified pursuant to subsection 6(5).

(5) The Administrator may, for the purposes of this section, by instrument —

- (a) specify criteria for the granting of leases under subsection 6(1); and
- (b) amend or revoke criteria so specified.

(6) An instrument under subsection 6(5) is a disallowable instrument for the purposes of section 41A of the *Interpretation Act 1979*.

Term of lease

7. A lease granted under section 6 shall be for such term as is specified in the lease, being a term not exceeding 99 years.

Persons eligible for grant of lease

8. (1) A lease shall only be granted to—

- (a) a natural person who is granted residential status or general entry permit status under the *Immigration Act 1980*; or
- (b) a community organisation.

(2) A person who is under 18 years of age is not entitled to hold a lease unless he or she holds the lease under a will or on the intestacy of a deceased person.

(3) In this section —

“community organisation” means a body corporate or an unincorporated association that is not carried on for the pecuniary profit of its members, and that has as its principal purpose the provision of community service, or a form of assistance, to persons living or working on Norfolk Island, including the provision of sporting or cultural facilities.

Eligibility for certain classes of leases

9. (1) The Administrator may, by instrument —

- (a) declare a specified class of leases to be leases to which this section applies; and

- (b) specify, in respect of a class of leases declared under paragraph 9(1)(a) to be leases to which this section applies, criteria for determining whether a person is eligible to hold the land comprised in a lease included in that class.

(2) The Administrator shall not grant a lease to which this section applies to a person who does not satisfy the criteria specified under paragraph 9(1)(b) in respect of the class of leases in which the lease is included.

(3) The validity of a lease to which this section applies is not to be taken to be affected by a failure to comply with subsection 9(2).

Administrator not bound to grant lease

10. The Administrator is not bound to grant a lease to an applicant, notwithstanding that applications for a lease have been invited.

Failure to accept and execute a lease

11. (1) Subject to subsection 11(2), where a person to whom a lease may be granted fails, within the prescribed period —

- (a) to accept and execute the lease under this Act; or
- (b) to pay any amount that he or she is required to pay before being granted that lease,

the Administrator may, by instrument served on the person, terminate his or her right to the grant of the lease.

(2) An instrument under subsection 11(1) —

- (a) shall specify the grounds on which it is given;
- (b) takes effect on the day 28 days after the day on which it is served; and
- (c) shall include a statement to the effect of paragraph 11(2)(b).

(3) A person whose right to the grant of a lease has been terminated under this section shall not have any claim for compensation in respect of the termination of the right or for the recovery of any monies paid to the Administrator in respect of the grant of the lease.

Registration of leases

12. A lease granted under this Act shall be registered under the *Land Titles Act*.

Land to be used for the purpose for which it is leased

13. Land in respect of which a lease has been granted, whether before or after the commencement of this Act, shall not be used for any purpose other than a purpose authorised by the lease.

Variation of leases

14. (1) The Administrator may, in his or her discretion, on application in writing by a lessee, vary the provisions of a lease.

(2) A variation of a provision of a lease does not have effect until notice in writing of the variation, in a form approved by the Administrator, is lodged with the Registrar of Titles.

(3) On receipt of a notice under subsection 14(2), the Registrar of Titles shall record the details in the Register.

(4) A person who is aggrieved by the decision of the Administrator under subsection 14(1) refusing to vary a provision of a lease may apply to the Administrative Review Tribunal for a review of the decision.

Surrender of lease

15. (1) Subject to subsection 15(2), a person who holds a lease of Crown land may, at any time, with the consent of the Administrator, surrender the lease or any part of the land comprised in the lease.

(2) A person is not entitled to surrender a lease unless the Administrator is satisfied that —

- (a)** all covenants have been observed; and
- (b)** if the lease is subject to a mortgage or encumbrance — the mortgagee or encumbrancee has consented to the surrender.

(3) The surrender of a lease, or of part of the land comprised in a lease, does not entitle the lessee to a refund or remission of any rent already paid or due.

Mortgage of lease

16. A mortgage of a lease is invalid to the extent to which the term of the mortgage purports to exceed the term of the lease.

Direction to comply with lease purpose clause

17. (1) Where a lessee contravenes the terms or conditions of a lease, the Administrator may, by notice given to the lessee, direct the lessee to comply with the terms of the lease.

(2) A direction under subsection 17(1) —

- (a) shall specify the grounds on which it is made; and
- (b) may direct the person against whom it is made —
 - (i) to stop any activity specified in the direction which it is alleged is in contravention of the lease; or
 - (ii) to comply with the terms of the lease, within such period as is specified or determined in accordance with the lease.

Non-compliance — directions

18. (1) Where a person contravenes a direction under section 17, the Administrator may —

- (a) direct that a person authorised by the Administrator enter a place and carry out work to which the direction relates that was not carried out within the period specified in the direction under that section; or
- (b) apply to the Supreme Court —
 - (i) for an injunction restraining a person from contravening a direction; or
 - (ii) for an order requiring a person to do an act or thing in accordance with the terms of the lease.

(2) The Administrator shall not make a direction under subsection 18(1) until after the expiration of the period of 14 days commencing on the date specified in the direction as the date on which the terms of the lease are to be complied with.

(3) The reasonable cost of work carried out under subsection 18(1) is a debt payable by the person against whom the order was made to the Administration.

Termination of lease

19. (1) Where a lessee contravenes a provision of this Act or the conditions of his or her lease, the Administrator may, by notice in writing served on the lessee, terminate the lease.

(2) A notice under subsection 19(1) takes effect on the day 14 days after the day on which it is served.

(3) The Administrator shall not terminate a lease under this section unless he or she has —

- (a) by notice in writing served on the lessee —
 - (i) informed the lessee that the Administrator is considering terminating the lease;
 - (ii) specified the grounds on which the Administrator is considering taking that action; and
 - (iii) invited the lessee to notify the Administrator in writing within 21 days after the date of the notice of any reasons why the lessee considers that the lease should not be terminated; and
- (b) taken into account any reasons for not terminating the lease notified to the Administrator by the lessee in accordance with the notice served on him or her under paragraph 19(3)(a).

Powers of Supreme Court

20. (1) The Supreme Court may, on application being made under paragraph 18(1)(b), grant an injunction restraining a person from engaging in conduct which would contravene a direction and, if in the Court's opinion it is desirable to do so, requiring the person to do any act or thing.

(2) Where, in the opinion of the Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection 20(1).

(3) The Court may rescind or vary an injunction granted under subsection 20(1) or 20(2).

(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised —

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

(5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised —

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing.

Recovery of land on expiry, surrender or termination of lease

21. If, after the term of a lease has expired, or such a lease has been surrendered or terminated the lessee or licensee, or any other person apparently in occupation or possession of the land fails, on demand by the Administrator, to deliver up possession of the land, the Supreme Court may, on the application of the Administrator, issue a warrant authorising a police officer, within a period of not more than 30 days after the date of the warrant, to enter the land, with such assistance and by such force as is necessary and reasonable, and deliver possession of the land to the Administrator.

Certificate of Administrator to be evidence

22. A certificate signed by the Administrator, or by a person authorised by the Administrator to give such a certificate, stating that a lease has been terminated shall be evidence of the termination of the lease.

Division 2 — Rent

Rent

23. The Administrator may determine the rent payable under a lease or a lease included in a specified class of leases.

Redetermination of rent

24. (1) Rent payable under a lease may be redetermined by the Administrator in accordance with this section.

(2) The Administrator may, not earlier than 3 years after he or she last redetermined the rent payable under a lease or a specified class of leases, redetermine the rent payable under that lease or class.

Rent review

25. (1) Where the rent payable under a lease or specified class of leases is —

- (a) redetermined in accordance with section 24; or

(b) varied in accordance with the provisions of the lease;
the Administrator shall give the lessee notice in writing.

(2) A redetermination or variation of rent referred to in a notice under subsection 25(1) shall come into operation on —

- (a) the day 28 days after the day on which the notice was given;
or
- (b) where the lease under which the redetermination or variation is made provides that the redetermination or variation shall come into operation on a later day — that later day.

Review of variations of rent

26. (1) Where the rent payable under a lease is redetermined or varied in accordance with this Act, the lessee may, within 28 days after receiving the notice under subsection 25(1) relating to the redetermination or variation, serve on the Administrator a request in writing for its reconsideration.

(2) The making of a request under subsection 26(1) does not affect the operation of the redetermination or variation to which the request relates or prevent the taking of action for its implementation.

(3) Where a request is made under subsection 26(1), the Administrator shall, within 90 days after the receipt of the request, review the redetermination or variation to which the request relates and may confirm it or set it aside and substitute such other redetermination or variation as the Administrator considers appropriate.

(4) A person who is aggrieved by the decision of the Administrator under subsection 26(3) may apply to the Administrative Review Tribunal for a review of the decision.

Remission, refund of rent

27. (1) The Administrator may, by instrument, authorise the remission or refund, in whole or in part, of rent payable or paid by the person under this Act if the Administrator is satisfied that payment would impose undue hardship on the person.

(2) Where the Administrator makes an instrument under subsection 27(1) in relation to a person, the liability of that person in respect of the rent is discharged to the extent of the remission or refund.

Lessee's rights in improvements

28. (1) In this section —

“improvements”, in relation to a lease, means a building, structure or other thing of a permanent, fixed or substantial nature necessary for the profitable occupation of the land comprising the lease, and includes a timber plantation registered under section 13 of the *Trees Act 1997* on that lease, but does not include a building, structure or other thing constructed or installed at the cost of the Administration or the Commonwealth.

(2) Subject to subsection 28(5), where a lease on which there are improvements —

(a) expires; or

(b) is terminated, otherwise than under section 19,

the lessee to whom the lease is granted is liable to pay to the previous lessee an amount equal to the value of the improvements.

(3) The Administrator shall determine the value of the improvements and may appoint a valuer for the purpose.

(4) The value of improvements shall be assessed as at the commencement of the new lease granted after the expiration or termination referred to in subsection 28(2).

(5) The lessee liable to pay for improvements shall make the payment in such instalments or in such manner as the Administrator, in writing, determines.

(6) Where a lessee fails to pay an amount in accordance with subsection 28(2), the amount for the time being remaining unpaid is a charge on the land, recoverable in the Supreme Court.

(7) Where the Administrator decides that a lease is not to be granted of land that was the subject of a lease that has expired or been terminated, the Administration is liable to pay the previous lessee an amount equal to the value of the improvements, as if the Administration were the new lessee of that land.

(8) Where payment is made under subsection 28(7) by the Administration, any liability of the Administration in respect of the improvements is to be taken to be discharged.

Review of valuation of improvements

29. A person aggrieved by a valuation under section 28 may apply to the Administrative Review Tribunal for a review of the valuation.

*Division 3 — General***Licences**

30. (1) The Administrator may grant a licence to use unleased Crown land.

(2) An application for a licence under subsection 30(1) shall —

- (a) be in writing signed by the applicant,
- (b) specify —
 - (i) the land in respect of which the licence is sought; and
 - (ii) the purpose for which it is proposed that the land be used under the licence; and
- (c) be accompanied by the prescribed fee.

(3) A licence under subsection 30(1) shall —

- (a) be in writing;
- (b) specify the period for which it is granted, being a period that does not exceed 10 years; and
- (c) be subject to such conditions, if any, as are specified in the licence.

(4) A licence under subsection 30(1) is not transferable.

Offence — sale, assignment etc., of leases

31. (1) The lessee under a lease shall not —

- (a) assign or transfer the lease;
- (b) sublet the lease or any part of it; or
- (c) sell, offer or expose for sale, agree to sell or otherwise convey or part with possession of, the land comprised in the lease or any part of it,

without first having obtained the written consent of the Administrator.

(2) An assignment, transfer, sublease agreement or arrangement entered into in contravention of subsection 31(1) is of no effect.

Unlawful occupation and recovery of Crown land

32. (1) A person shall not, without reasonable excuse, use Crown land otherwise than in accordance with a licence granted under section 30.

Penalty:

- (a) if the offender is a natural person — 50 penalty units;
- (b) if the offender is a body corporate — 250 penalty units.

(2) If a person referred to in subsection 32(1) fails on demand in writing by the Administrator to deliver up possession of the land, the Supreme Court may, on application by the Administrator, issue a warrant authorising a police officer, within such period as is specified in the warrant, to enter the land, with such assistance and force as is reasonable, and deliver possession of the land to the Administrator.

PART III — ENFORCEMENT

Inspectors

33. (1) The Administrator may, in writing, appoint a person to be an inspector for the purposes of this Part.

(2) An inspector shall, subject to this Act and the regulations, perform such duties as the Administrator directs.

Identity cards

34. The Administrator shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

Power of entry

35. (1) An inspector may, at any reasonable time, with the consent of the occupier of premises, enter premises for the purposes of this Act.

(2) An inspector who enters premises under subsection 35(1) is not entitled to remain in or on the premises if, on request by the

occupier, the inspector does not show his or her identity card to the occupier.

PART IV — MISCELLANEOUS

Delegation

36. (1) The Administrator may, by instrument, delegate any of his or her powers under this Act, other than this power of delegation.

(2) A delegation under subsection 36(1) may be made —

- (a)** to a specified person; or
- (b)** to the holder for the time being of a specified office or position.

(3) Where a delegated power under subsection 36(1) is exercised by the delegate, the power is to be taken to have been performed by the Administrator.

(4) The delegation of a power under subsection 36(1) does not prevent its exercise by the Administrator.

Regulations

37. (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters —

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

(2) The regulations may prescribe penalties not exceeding 10 penalty units for a contravention of the regulations.

PART V — REPEAL, TRANSITIONAL AND SAVINGS

Repeal

38. The *Crown Lands Act 1913* is repealed.

Transitional and savings

39. (1) A lease granted under the repealed Act and in force immediately before the commencement of this section, subject to subsection 39(2), is to be taken to have been granted under section 6 of this Act for the remainder of the unexpired term of the lease.

(2) On and after the commencement of this section, section 14A of the repealed Act continues to apply to a lease granted under that Act.

NOTES

The *Crown Lands Act 1996* as shown in this consolidation comprises Act No. 22 of 1996 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Crown Lands Act 1996</i>	22, 1996	Sections 1, 2 & 3 commenced on gazettal, (No. 46, 3 September 1996) Remainder commenced 23 June 1997, gazette No. 34	
<i>Crown Lands Amendment Act 1997</i>	21, 1997	Commenced on gazettal (No. 62, 4 December 1997)	

Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and substituted
inserted

Provisions affected	How affected
28	am 21, 1997

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