

CROWN LANDS ORDINANCE (No. 3) 1969

483

No. 31 of 1970

An Ordinance to amend the *Crown Lands Ordinance* 1931-1968 as amended by the *Crown Lands Ordinance* 1969 and the *Crown Lands Ordinance* (No. 2) 1969

[Reserved 10 December, 1969]

[Assented to 1 September, 1970]*

BE it ordained by the Legislative Council for the Northern Territory of Australia as follows:—

1.—(1.) This Ordinance may be cited as the *Crown Lands Ordinance* (No. 3) 1969. Short title
and citation

(2.) The *Crown Lands Ordinance* 1931-1968, as amended by the *Crown Lands Ordinance* 1969 and the *Crown Lands Ordinance* (No. 2) 1969, is in this Ordinance referred to as the Principal Ordinance.

(3.) Section 1 of the *Crown Lands Ordinance* (No. 2) 1969 is amended by omitting sub-section (4.).

(4.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Crown Lands Ordinance* 1931-1969.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.† Commencement

3. Section 4 of the Principal Ordinance is amended by inserting after the words and figures— Parts

“Division 6.—Town Lands Subdivision Leases (Sections 75 - 90)”
the words and figures—

“Part IIIA.—Leases of Land in Aboriginal Reserves (Sections 91 - 100R).”.

4. Section 9 of the Principal Ordinance is amended by omitting from sub-section (3.) the words “six persons” and inserting in their stead the words “seven persons, one of whom shall be the person appointed under the *Social Welfare Ordinance* 1964-1969 to be the Director of Social Welfare.” Land Board

* Notified in the *Northern Territory Government Gazette* No. 36 of 9 September, 1970, page 247.

† The date fixed was 31 December, 1970 (see *Northern Territory Government Gazette* No. 52A of 1 December, 1970, page 375).

Land Board

5. Section 9 of the Principal Ordinance is amended—

- (a) by inserting in sub-section (7.) after the words “under this” the words “or any other”;
- (b) by omitting from sub-section (8A.) the words “under the last preceding sub-section, the Board as thus constituted” and inserting in their stead the words “the available members who shall sit on the Board for the purpose of considering and recommending upon or determining a matter or question, the Board as consequently constituted”;
- (c) by omitting from sub-section (9.) the words “the persons whom he has so selected” and inserting in their stead the words “the other persons who constitute the Board for that sitting”; and
- (d) by omitting from sub-section (14.) the word “available” and inserting in its stead the word “other”.

Leases to
be in
perpetuity

6. Section 14 of the Principal Ordinance is amended by inserting, after the words “section six A”, the words “, Part IIIA. or section one hundred and twelve”.

Re-appraisal
of rent

7. Section 32 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) the words “, subject to sub-section (7.) of this section,”;
- (b) by omitting from paragraph (a) of sub-section (1.) the words “or miscellaneous lease” and inserting in their stead the words “, miscellaneous lease or lease under Part IIIA. of this Ordinance”;
- (c) by omitting from sub-paragraph (ii) of paragraph (b) of sub-section (3E.) the word “Ordinance” (first occurring) and inserting in its stead the word “section”;
- (d) by inserting in sub-section (4.) after the word “lease” the words “or lease under Part IIIA. of this Ordinance for pastoral purposes”; and
- (e) by omitting from paragraph (ba) of sub-section (4.) the words “where land included in the lease” and inserting in their stead the words “in the case of a pastoral lease the land included in which”.

Part IIIA

8. After section 90 of the Principal Ordinance the following Part is inserted:—

“PART IIIA.—LEASES OF LAND IN ABORIGINAL RESERVES.

“91. In this Part, unless the contrary intention appears—
‘aboriginal’ means an aboriginal native of Australia who is an inhabitant of the Territory;

'aboriginal reserve' means a reserve as defined in section seven of the *Social Welfare Ordinance* 1964-1969 and includes land which is reserved under a law in force in the Territory for the use and benefit of the aboriginal inhabitants of the Territory;

'approved person' means—

- (a) an aboriginal of or over the age of eighteen years; or
- (b) a company or a co-operative trading society registered under the *Co-operative Trading Societies Ordinance* 1945-1963 all the shares in which are beneficially owned by aboriginals;

'lease' means a lease under this Part;

'miscellaneous purposes' means the purposes for which land that is subject to a miscellaneous lease under Division 5 of Part III. of this Ordinance may be utilized;

"92.—(1.) Unless the contrary intention appears in this Part, the provisions of this Ordinance contained elsewhere than in this Part apply, so far as they are capable of applying, to and in relation to leases under this Part as if lands in an aboriginal reserve were Crown lands and such were leases of Crown lands.

Application of other provisions of Ordinance

"(2.) Sub-sections (8.) and (11.) of section nine and sections nine A, nine B, nine C, ten, fifteen, sixteen, seventeen, eighteen, twenty-three, twenty-five C and twenty-six of this Ordinance do not apply to or in relation to leases under this Part.

"93.—(1.) Where the Board has occasion under this or any other Ordinance to consider a matter relating to a particular parcel of land within an aboriginal reserve, the Administrator in Council shall, subject to the next succeeding sub-section, select two aboriginals who reside on or within reasonable proximity to land including that parcel of land and shall appoint them to be the local members of the Board for the purpose of the Board considering that matter.

Constitution of Board

"(2.) If, where the Board has occasion to consider a matter relating to a particular parcel of land within an aboriginal reserve, a majority of the aboriginals residing within reasonable proximity to that parcel of land intimate that they nominate a specified aboriginal or two specified aboriginals as a local member or the local members, as the case may be, of the Board for the purpose of the Board considering that matter, the Administrator in Council shall appoint that nominated aboriginal to be a local member or those nominated aboriginals to be the local members, as the case may be, of the Board for that purpose.

“(3.) Upon a matter relating to a particular parcel of land within an aboriginal reserve being referred under sub-section (7.) of section nine of this Ordinance to the Chairman or the Deputy Chairman, he shall select from the available members three persons who shall, with him and the persons appointed to be the local members of the Board for the purpose of the Board considering that matter, constitute the Board for the purpose of considering and recommending upon or determining the matter referred.

“(4.) At a meeting of the Board in respect of which local members have been appointed, the Chairman or Deputy Chairman acting as Chairman, one local member and two selected members shall form a quorum.

Functions
of the
Board

“94. The Board shall make reports, advise and make recommendations to the Minister or the Administrator, as the case requires, in relation to—

- (a) applications for and the granting of leases under this Part;
- (b) the transfer or subletting of leases granted under this Part;
- (c) such matters relating to land within an aboriginal reserve as are referred under this or any other Ordinance to the Chairman of the Board; and
- (d) such other matters as are referred to the Board by the Minister or the Administrator.

Application
of Real
Property
Act

“95. For the purposes of the Real Property Act, leases under this Part shall be deemed to be Crown leases within the meaning of that Act.

Minister
may grant
lease

“96. Subject to this Part, the Minister may grant to an approved person a lease for agricultural purposes, pastoral purposes or miscellaneous purposes of any unleased land within an aboriginal reserve.

Survey
of lease

“97.—(1.) Notwithstanding anything contained in this Ordinance or in any other law in force in the Northern Territory, a lease under this Part may be granted before the boundaries of the land the subject of the proposed lease have been surveyed.

“(2.) Where a lease under this Part is granted before the boundaries of the land are surveyed—

- (a) the lease instrument shall indicate how the boundaries can be determined; and
- (b) the Administrator shall, as soon as is practicable after the lease is granted, cause the boundaries to be surveyed.

Cost of
survey

“98. A survey fee is not payable by the lessee in respect of a lease granted under this Part, whether the survey is made before or after the lease is granted.

"99.—(1.) An approved person may make application for a lease. Application for lease

"(2.) The application shall be in writing addressed to and served on the Administrator.

"(3.) An application may be made by two or more aboriginals of or over the age of eighteen years for the grant of a lease to them as joint lessees or lessees in common.

"100.—(1.) Upon receiving an application under the last preceding section, the Administrator shall submit it to the Board for consideration and report. Processing of application

"(2.) The Board shall consider the application and shall return it to the Administrator together with a report containing—

- (a) any advice which it sees fit to give; and
- (b) its recommendation that a lease be granted or that the application be refused as the case may be.

"(3.) In considering the application the Board shall consult with the aboriginals residing within reasonable proximity to the land the subject of the application who intimate that they wish to make representations in relation to or otherwise discuss the application and with any church or missionary society or organization or like body which—

- (a) conducts an establishment or activities for the benefit of aboriginals on the aboriginal reserve in which the land the subject of the application is situated; and
- (b) is, in the opinion of the Board, able to furnish it with relevant information or advice.

* * * * *

Assent to sub-section (4) withheld

"100A. A lease under this Part shall be for such period and at such a rental as the Minister determines. Term and rental of lease

"100B. A lease under this Part shall contain reservations, covenants, conditions and provisions as follows:— Reservations, covenants, &c

- (a) a reservation of a right of entry and inspection;
- (b) a reservation of all minerals;
- (c) a reservation of a power of resumption;
- (d) a covenant by the lessee to pay the rent annually in advance;
- (e) a covenant by the lessee that he will use the leased land only for the purposes for which it is leased;
- (f) a covenant by the lessee that he will observe and

- comply with the provisions of this Ordinance and the regulations for the time being in force;
- (g) where the lessee is a company or a co-operative trading society, a condition that the lessee shall, during the subsistence of the lease, continue to be an approved person;
 - (h) a provision that the lessee, having paid all rent due by him, may at any time in the prescribed manner surrender the lease;
 - (i) a provision that the lease shall be liable to forfeiture if the rent is unpaid for six months or more;
 - (j) a provision that the lease shall be subject to forfeiture for non-compliance on the part of the lessee with any covenant or condition of the lease;
 - (k) such reservations, covenants, conditions and provisions as are prescribed; and
 - (l) such other reservations, covenants, conditions and provisions as the Administrator determines.

Reservations,
covenants, &c.,
of leases for
agricultural
purposes

“100c. In addition to the matters provided for in the last preceding section, a lease under this Part for agricultural purposes shall contain reservations, covenants, conditions and provisions as follows:—

- (a) a covenant by the lessee that he will cultivate the leased land to the extent specified in the covenant; and
- (b) a covenant by the lessee that he will fence the leased land in the manner specified in the covenant.

Reservations,
covenants, &c.,
of leases for
pastoral
purposes

“100d. In addition to the matters provided for in section one hundred b of this Ordinance, a lease under this Part for pastoral purposes shall contain reservations, covenants, conditions and provisions as follows:—

- (a) a reservation of all timber and timber trees and of all trees producing bark, resin or valuable substances;
- (b) a reservation in favour of the aboriginal inhabitants of the Territory;
- (c) a covenant by the lessee that he will stock the leased land to the extent specified in the covenant and will keep the land so stocked;
- (d) a covenant by the lessee that he will comply with the laws in force relating to the destruction of vermin and noxious weeds;
- (e) a covenant by the lessee that he will not, without the consent of the Administrator, cut any timber trees on the leased land except for use on or in connexion with the leased land;

- (f) a covenant by the lessee that he will not, in clearing the leased land, destroy any timber or timber trees producing any valuable bark, resin or other valuable substances, except with the permission of the Administrator;
- (g) a covenant by the lessee that he will not obstruct any public roads, paths or ways, or interfere with the use thereof by any person, and will not interfere with travelling stock lawfully passing through the leased land;
- (h) a covenant by the lessee that he will not, without the consent of the Administrator, pollute, divert or obstruct any water flowing in a defined natural channel upon the leased land; and
- (i) a covenant by the lessee that he will comply with the requirements of the lease as to developmental work and improvements and, during the continuance of the lease, maintain developmental work and improvements on the leased land to the satisfaction of the Administrator.

"100E. The provisions of Part V. of this Ordinance relating to the resumption of Crown lands the subject of a lease, not being lease under the *Mining Ordinance 1939-1969*, apply to and in relation to lands leased under this Part as if those lands were such Crown lands.

Resumption of leased land

"100F. Notwithstanding section one hundred B of this Ordinance, the Administrator may direct that a particular lease shall not contain a specified reservation, covenant, condition or provision prescribed by the regulations.

Prescribed reservations may be omitted from lease

"100G.—(1.) Where the Administrator is of the opinion that the operation of a covenant or condition in a lease should be suspended he may by writing under his hand direct that the operation of that covenant or condition be suspended for such time and subject to such conditions, if any, as he specifies.

Suspension of covenants, &c.

"(2.) While such a suspension remains in force, the lessee shall not be required to comply with any covenant or condition to which the suspension relates and the lease shall not be liable to forfeiture by reason of the failure of the lessee to comply with such a covenant or condition.

"100H. The Administrator may, on the application of the lessee, by writing under his hand permit the payment of the rental under a lease under this Part to be postponed for such period as he thinks fit.

Postponement of rental

"100I. Where it is shown to the satisfaction of the Administrator that the payment of the full amount of the rental under a lease under this Part would entail serious hardship in the case of the lessee, the Administrator may by writing under his hand remit

Remitting of rental

the whole or any portion of the rental in respect of such period as he thinks fit.

Property in
improvements

“100j.—(1.) Where there are improvements on land the subject of a lease under this Part, those improvements are the property of—

- (a) the Commonwealth if the Commonwealth made or has paid the cost of making the improvements;
- or
- (b) the lessee if the lessee made or has paid the cost of making the improvements.

“(2.) Where a person, not being the Commonwealth or the lessee, makes or pays the cost of making such improvements, the improvements are, subject to this section, the property of that person.

“(3.) Where improvements are the property of a person by virtue of the last preceding sub-section, the title to the improvements shall not be transferred otherwise than in accordance with this section.

“(4.) Where improvements are the property of a person by virtue of sub-section (2.) of this section, he may, by instrument in writing, transfer his title to the improvements to the lessee by way of sale or gift at any time during the subsistence of the lease and if the title to the improvements is so transferred the improvements are the property of the lessee.

“(5.) Where, upon the termination of the lease, any improvements such as are referred to in the last preceding sub-section have not been transferred as authorized by that sub-section, those improvements shall thereupon become the property of the Commonwealth.

“(6.) For the purposes of this section, a person who has entered into an agreement to pay the cost of making improvements shall be deemed to have paid that cost.

Report on
lease

“100k. As soon as is practicable after the expiration of a period of two years after a lease under this Part has been granted and thereafter as soon as is practicable after twelve months have elapsed since the date on which the last report under this section was made the Board shall make a report to the Administrator on such of the following matters as are applicable in relation to the lease:—

- (a) the extent to which the lessee has used the land for the purposes for which the lease was granted
- (b) the number of cattle and other animals depastured on the leased land;
- (c) the area of the leased land cultivated or prepared for cultivation;
- (d) the number and value of cattle and other animals turned off the leased land;

- (e) in relation to each agricultural product disposed of by the lessee during the period covered by the report, the quantity and value of the product;
- (f) the nature and value of improvements erected on the leased land;
- (g) if the lease is the subject of a trust, whether the lessee has observed the terms of the trust; and
- (h) such other matters as the Board thinks fit.

"100L. The Administrator shall not forfeit a lease under this Part except upon the recommendation of the Board. Restriction on forfeiture

"100M.—(1.) Where a lease under this Part is forfeited or surrendered a person who is entitled to any improvements on the land that was the subject of the lease may, within fourteen days from the date of the forfeiture or surrender, elect to remove those improvements from the land or to make application for compensation in respect thereof. Property in improvements upon forfeiture or surrender of lease

"(2.) Upon an application for compensation being made under the last preceding sub-section the Commonwealth is liable, upon the applicant establishing to the satisfaction of the Administrator that he is entitled to the improvements in respect of which the application is made, to pay to the applicant such amount as is, in the opinion of the Administrator, the value to the Commonwealth of those improvements.

"(3.) Where a person entitled to improvements on the land elects to remove them, he has the right to enter upon the land to remove those improvements but that right subsists only for a period of six months from the date of the forfeiture or cancellation or such longer period as the Administrator allows and if that right is not exercised while it subsists the improvements become the property of the Commonwealth.

"100N.—(1.) Except as provided in this section, a person other than an approved person is not capable of acquiring a lease under this Part. Restrictions on holding of lease

"(2.) A person other than an approved person can acquire a lease under this Part—

- (a) by devolution; or
- (b) by operation of law.

"(3.) Where a person other than an approved person acquires a lease under this Part, he shall—

- (a) notify the Administrator forthwith that he has acquired it; and
- (b) forthwith take, and continue to take, all steps reasonably necessary to dispose of it satisfactorily to the Commonwealth or to an approved person in the shortest practicable time.

"(4.) At any time after the expiration of one year from the date on which a person other than an approved person acquires a

lease under this Part, the Administrator may serve on him notice of his intention to recommend that the lease be resumed.

“(5.) If, at the expiration of one year from the date on which the Administrator serves a notice under the last preceding sub-section, the lease is still held by the person upon whom the notice was served, the Administrator shall recommend that the lease be resumed.

“(6.) The Registrar-General shall not register an instrument that purports to vest, otherwise than by or in consequence of devolution or operation of law, a lease under this Part in a person other than an approved person.

Transfer, &c.,
of lease to
another
approved
person

“100o. A lease under this Part may, with the consent of the Administrator on the recommendation of the Board, be transferred or sublet to an approved person but may not otherwise be transferred or sublet.

Mortgage
of lease

“100p.—(1.) A lease under this Part may, with the consent of the Administrator, be mortgaged or made the subject of a charge but may not otherwise be mortgaged or made the subject of a charge (not being a charge authorized by or under an Ordinance or an Act).

“(2.) Where a lease under this Part is mortgaged otherwise than to an approved person, the mortgagee shall, before he exercises any of his powers as mortgagee, give to the Administrator reasonable notice of his intention so to do.

“(3.) Where a lease under this Part is mortgaged otherwise than to an approved person, the Administrator may, on behalf of the Commonwealth, at any time—

- (a) pay to the mortgagee the amount owing under the mortgage; and
- (b) require the mortgagee to execute a transfer of the mortgage to the Commonwealth.

Lease subject
of trust

“100q. A lease under this Part shall not be made the subject of a trust unless the persons who are entitled under the terms of the trust to the use of the land or to receive any benefits under the trust are aboriginals.

Effect of
revocation
of reserve
upon lease

“100r. Where, as a consequence of a revocation under sub-section (1.) of section one hundred and three of this Ordinance, land the subject of a lease under this Part ceases to be within an aboriginal reserve, that lease shall, as from the date of the revocation—

- (a) if it was a lease under this Part for agricultural purposes, be deemed to be an agricultural lease under Part III. of this Ordinance;
- (b) if it was a lease under this Part for pastoral purposes, be deemed to be a pastoral lease under Part III. of this Ordinance; or

(c) if it was a lease under this Part for miscellaneous purposes, be deemed to be a miscellaneous lease under Part III. of this Ordinance, and the provisions of this Ordinance that relate to agricultural leases, pastoral leases or miscellaneous leases (as the case may be) under Part III. of this Ordinance shall, as from that date, apply to and in relation to that lease.”.

9. Section 103 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

Resumption and
reservation of
Crown land

“(8.) Where land has been reserved for the purpose specified in sub-paragraph (i) of paragraph (a) of sub-section (1.) of this section, the reservation of that land or any part of it shall not be revoked unless—

- (a) the proposed revocation has been submitted to the Board for consideration and report;
 - (b) the Board has considered the proposed revocation and has forwarded to the Administrator in Council a report containing—
 - (i) any advice which it sees fit to give; and
 - (ii) any recommendation which it sees fit to make,in relation to the proposed revocation; and
 - (c) the Administrator in Council has forwarded the report, together with his own recommendations, to the Minister.”.
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