

CHAPTER 12

REPEALS, TRANSITIONALS, SAVINGS AND VALIDATION

TABLE OF CONTENTS

12.	REPEALS, TRANSITIONALS, SAVINGS AND VALIDATION	12-1
12.1.	GENERAL	12-1
12.2.	SCHEDULE 2 (AS IT RELATES TO THE LAND ACT 1933)	12-2
12.2.1.	GENERAL	12-2
12.2.2.	EXCEPTIONS TO TRANSITION AND GENERAL APPLICATION OF THE LAA	12-2
12.2.3.	INTRODUCTION OF A SINGLE REGISTRATION SYSTEM	12-4
12.3.	SCHEDULE 3 (AS IT RELATES TO PRE-LAND ACT 1933)	12-5
12.3.1.	GENERAL	12-5
12.4.	INCOMPLETE DEALINGS UNDER THE LAND ACQUISITION AND PUBLIC WORKS ACT 1902	12-6
12.5.	ROADS ACTIONS COMMENCED UNDER THE LOCAL GOVERNMENT ACT 1960	12-7

12. REPEALS, TRANSITIONALS, SAVINGS AND VALIDATION

12.1. GENERAL

The introduction of the *Land Administration Act 1997* (LAA) had the effect of, *inter alia*, repealing the *Land Act 1933* (see section 281 of the LAA).

Apart from the total repeal of the *Land Act 1933*, the LAA had the effect of repealing large portions of the *Land Acquisition and Public Works Act 1902* and most of Division 1 of Part XII of the *Local Government (Miscellaneous Provisions) Act 1960*. Amendments to other legislation as a result of the introduction of the LAA are set out in the *Acts Amendment (Land Administration) Act 1998*.

Parts 12 and 13 of the LAA deal exclusively with the savings, transitional and validation provisions of the *Land Act 1933* and all Crown land related legislation pre-LAA, that is, the *Land Act 1898* or an Act or regulation repealed by the *Land Act 1898* or the *Land Act 1933*. This Chapter of the manual provides some general information about these savings and transitional provisions.

As is common with repealing legislation, the effect of the repeal of the *Land Act 1933* does not invalidate any act, matter or thing which was already in existence or in operation under the *Land Act 1933*.

12.2. SCHEDULE 2 (AS IT RELATES TO THE LAND ACT 1933)

12.2.1. GENERAL

Schedule 2 of the LAA sets out the transitional, savings and validation provisions related to the *Land Act 1933* and how specific actions are dealt with in the transitional period. When reading any items in Schedule 2, the *Interpretation Act 1984* must also be considered.

In general, where a Crown process was brought forward from the *Land Act 1933* into the LAA, the general principle is that the LAA will apply to any Crown action that was not completed under the *Land Act 1933* as if the action or decision was one that had been made by the Minister under the equivalent provisions of the LAA.

Despite this general principle, there are a number of processes under the *Land Act 1933* that have not been carried forward into the LAA. Most of these processes relate to statutory processes under the *Land Act 1933* that were outdated and would not apply in the new environment, but had to be retained. Where those processes were not carried forward into the LAA, the provisions of the *Land Act 1933* continued to apply to those processes as if that Act had not been repealed.

12.2.2. EXCEPTIONS TO TRANSITION AND GENERAL APPLICATION OF THE LAA

As mentioned above, most Crown actions that commenced under the *Land Act 1933* but were not finalised are taken to have commenced under the relevant provisions of the LAA. Part of the reason for this was to ensure that the single registration system introduced by the LAA will apply from the date of proclamation of the LAA (being 30 March 1998).

However, there are a number of exceptions to this general principle. In view of this, where any Crown action is being contemplated in relation to a matter that may have commenced under the *Land Act 1933*, consideration must be made of the relevant items in Schedule 2 of the LAA.

Examples of the types of Crown actions that were not carried forward into the LAA are set out below. Please note that the list below is not exclusive and where any Crown action of a transitional nature is being considered, you must refer to Schedule 2 of the LAA.

12.2.2.1. FORFEITURE ACTIONS

Where any lease or other holding or lands and improvements were liable to be forfeited under section 23 of the *Land Act 1933* they could be forfeited under section 35 of the LAA. In this regard, the general principle of the LAA applying includes forfeiture actions commenced under the *Land Act 1933*.

However, where such forfeiture action commenced under the *Land Act 1933*, the power of the Minister to waive any forfeiture and reinstate the lessee or licensee as of his former estate under section 23(2) and (3) of the *Land Act 1933* remains in operation. There is no power to waive the forfeiture action once it has commenced under section 35 of the LAA.

Similarly, where such forfeiture action commenced under the *Land Act 1933*, the Minister retains the power under section 24 of the *Land Act 1933* to advertise the lease or licence for re-selection in a newspaper circulating in the area in which the land is situated.

12.2.2.2. CLASS B RESERVES

Class B reserves created under the *Land Act 1933* have been saved under that Act: clause 14 of Schedule 2 of the LAA. There is no power in the LAA to create Class B reserves. See [Chapter 4](#) of this manual for more details of reserve classification under the LAA.

Where class B reserves are to be cancelled, the process set out in the *Land Act 1933* apply and the Minister can only cancel a class B reserve by order under the LAA and also presenting a special report to both Houses of Parliament in accordance with section 31(2) of the *Land Act 1933*.

12.2.2.3. LICENCES TO OCCUPY

Licences to occupy, being a statutory licence issued to the purchaser of town or suburban lands under section 43 of the *Land Act 1933* cannot be created under the LAA. Under clause 21 of schedule 2 of the LAA licences to occupy issued under the *Land Act 1933* continued to exist as if the *Land Act 1933* had not been repealed. Most licences to occupy usually last for a period of 2 years. Under the LAA, existing pre-LAA licences to occupy only continued to apply for the remaining period. There is no power in the LAA to extend Land Act licences to occupy. Existing pre-LAA licences to occupy can be endorsed on any qualified certificate of Crown land title.

12.2.2.4. INCOMPLETE GRANTS OF LAND TO THE STATE HOUSING COMMISSION

Section 45 of the *Land Act 1933* empowered the Minister to grant town or suburban land to the State Housing Commission to be dealt with under the *Housing Act 1980*. Any decision made by the Minister in accordance with the repealed Act is saved and may be effected as if the *Land Act 1933* had not been repealed: clause 23 of Schedule 2 of the LAA. There is no similar provision in the LAA. Under the LAA, the Minister's powers to sell or otherwise dispose of Crown land is dealt with in accordance with Part 6 of the LAA. See [Chapter 6](#) of this manual for further information on the Minister's powers to dispose of Crown land.

12.2.2.5. POWER TO INVITE APPLICATIONS TO PURCHASE TOWN OR SUBURBAN LAND UNDER SECTION 45B OF THE LAND ACT 1933

Any power of the Minister to invite applications for the purchase of fee simple interest in any suburban or town land was not carried forward to the LAA. However any existing applications or any decision of the Minister to proceed with the invitation of such applications were carried into effect under the repealed Act: See clause 25 of Schedule 2 of the LAA.

The old process of requiring the Minister to invite applications for the purchase of Crown land was not continued under the LAA. Instead, the conveyancing processes under the LAA were modernised to bring it in keeping with current freehold requirements of dealing with land. New requirements to dispose of fee simple interests in Crown land are now dealt with in accordance with Part 6 of the LAA. See [Chapter 6](#) of this manual for further information on the Minister's powers to dispose of Crown land.

12.2.2.6. ALIENATION OF CLOSED ROADS UNDER SECTION 118F OF THE LAND ACT 1933

Where the Minister has issued a certificate under section 118F of the *Land Act 1933* that identifies which parcel of land the closed road should be incorporated into, that certificate is saved and transitioned into the LAA and the procedure for completing the vesting of the land may be completed under the *Land Act 1933* as if that Act had not been repealed: See clause 32 of Schedule 2 of the LAA.

All other actions for the alienation, conveyance and amalgamation of closed roads can and should be completed in accordance with section 87 of the LAA.

12.2.2.7. ANNUAL RENEWABLE LEASES

An annual renewable lease was a lease issued by the Governor under section 33 of the *Land Act 1933* for a period of one year. By their very nature and as a matter of practice, such

leases were renewed annually on an ongoing basis. There was no clear statutory basis for such leases without the clear approval of the Governor for each renewal.

Under the LAA, any lease continued from the *Land Act 1933* except if issued as part of a State Agreement Act was not able to be renewed. As such, all annual renewable leases that were usually renewed would have expired, at the most, within one year of the introduction of the LAA.

All annual renewable leases that have expired by virtue of clause 38 in Schedule 2 of the LAA must be renegotiated and new leases entered into. Where any leases are subject to mortgages by way of sub-demise or subleases, those interests by law, cease to exist and must be renegotiated again.

This does not apply to leases granted pursuant to special State Agreement Acts.

For more information on this topic, see paragraph 6.5.2.4.

12.2.3. INTRODUCTION OF A SINGLE REGISTRATION SYSTEM

12.2.3.1. GENERAL

Before the single registration system was introduced, the former Department of Land Administration (now LANDGATE) created a recording mechanism known as Crown land records. This recording mechanism utilised the computerised searching facilities under the Torrens system of land registration while trying to set up a one-page record of all actions affecting a particular parcel of Crown land.

Crown land records, being an administrative device only, needed to be saved and transitioned across to the LAA to ensure that all the work that had already been undertaken in setting up such a system was not lost. See [Chapter 2](#) of this manual for more information on this.

Clause 44 of Schedule 2 of the LAA saved and transitioned all Crown land records compiled before the repeal of the *Land Act 1933* into qualified certificates of Crown land title.

12.2.3.2. TRANSITIONAL PERIOD

For the purposes of introducing a registration system for all land in this State, a period of time was required to ensure that all interests and rights affecting parcels of Crown land could be registered or recorded during this period.

However, a time limit was needed to ensure that the recording of interests and rights was carried out. A 5 year transition period was set up so that any transaction or dealing that was not registered or an interest affecting a parcel of Crown land was not recorded by way of a caveat or otherwise against a Crown title during the transition period, was void as against a prior registered dealing. With the 5-year transitional period having now expired, standard registration fees are charged for those documents created pre-LAA.

For more information on this transitional period, see [Chapter 2](#) of this manual.

12.3. SCHEDULE 3 (AS IT RELATES TO PRE-LAND ACT 1933)

12.3.1. GENERAL

Amendments to the LAA by section 45 of the *Land Administration Amendment Act 2000* inserted a new Schedule 3 into the LAA. Schedule 3 contains transitional provisions in relation to various matters and Crown land tenures created under “pre-1933 legislation”. “Pre-1933 legislation” is the *Land Act 1898* or an Act or regulation repealed by the *Land Act, 1898* or the *Land Act 1933*.

Legal review of the LAA identified the need for these transitional provisions to remove any doubts caused by apparent inadequacies in the transitional provisions in the *Land Act 1933*.

Section 283 of Part 13 of the LAA defines the terms “land reserved” and “pre-1933 legislation” for the purposes of Schedule 3.

This new Schedule 3 of the LAA corresponds, in essence, with clauses 14 to 17 of Schedule 2 of the LAA, so that interests and dealings in Crown land under pre-*Land Act 1933* may be dealt with under the LAA.

12.4. INCOMPLETE DEALINGS UNDER THE LAND ACQUISITION AND PUBLIC WORKS ACT 1902

Transitional provisions in relation to incomplete actions initiated under provisions of the *Land Acquisition and Public Works Act 1902* (LAPWA) (now the *Public Works Act 1902*) revoked by the *Acts Amendment (Land Administration) Act 1997* are found in sections 200 and 201 of the LAA.

Generally speaking, these provisions are limited.

Section 200(1) provides that if a notice of intention to resume made under section 17(2)(b) of the LAPWA was still current at the date the LAA commenced operation, it continued in force until expiry of the 30 day period specified by section 17(2)(e) of that Act, and taking could then proceed under the LAA.

Section 200(2) provides that, subject to section 200(1), an incomplete procedure commenced under the LAPWA could continue and be completed as if the LAPWA had not been repealed.

Section 200(3) provides that any court proceedings commenced prior to the LAA's commencement in relation to a former owner's rights in relation to land compulsorily taken or resumed land, including an appeal, may continue as though the LAPWA provisions remained in force. The effect of this provision is that although owners' rights in relation to resumed land have been substantially changed by the LAA, a court action in process as at 30 March 1998 may continue to deal with a former owner's rights as they existed under the LAPWA.

Section 201 preserved delegations existing under sections 5A and 5B of the LAPWA. In fact, the effect of this provision was limited. Replacement delegations were put into place under sections 159 and 160 of the LAA.

12.5. ROADS ACTIONS COMMENCED UNDER THE LOCAL GOVERNMENT ACT 1960

Section 66 of the *Acts Amendment (Land Administration) Act 1997* (AALAA) repealed sections 285, 286, 287, 288A, 288B, 289, 290, 291, 292, 293 and 294A of the *Local Government Act 1960* (LGA 1960); now the *Local Government (Miscellaneous Provisions) Act 1960*, and deals with public roads. It also provides that where an action had been commenced but not completed under those repealed sections as at the LAA's commencement, it may be completed as though those sections had not been repealed by the AALAA.

Section 67 of the AALAA repealed section 297A of the LGA 1960. Section 67 of the AALAA similarly provides that any action commenced under section 297A of the LGA 1960, dealing with closure of private roads, could be completed as if that section had not been repealed.

One effect of these provisions is that the relevant purchaser may still lodge closed road alienation certificates issued under the *Land Act 1933* for registration.

