

WESTERN LANDS (AMENDMENT) ACT 1989 No. 18

NEW SOUTH WALES

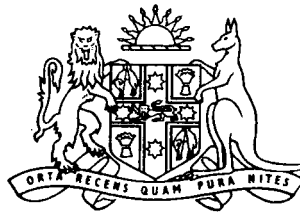


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WESTERN LANDS (AMENDMENT) ACT 1989 No. 18

NEW SOUTH WALES



Act No. 18, 1989

An Act to amend the Western Lands Act 1901 with respect to the rent, purposes and granting of leases and in certain other respects. [Assented to 20 April 1989]

*Western Lands (Amendment) 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Western Lands (Amendment) Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Section 4 and Schedule 7 commence on the date of assent to this Act.

Amendment of Western Lands Act 1901 No. 70

3. The Western Lands Act 1901 is amended as set out in Schedules 1–6.

Transitional and other provisions

4. Schedule 7 has effect.

**SCHEDULE 1—AMENDMENTS RELATING TO HOME
MAINTENANCE AREAS**

(Sec. 3)

- (1) Section 3 (**Definitions**)—
Section 3 (1), definition of “Home maintenance area”—
Omit the definition.
- (2) Section 9 (**Power to establish administrative districts**)—
Section 9 (5) (b) (ii)—
Omit the subparagraph.
- (3) Section 18E (**Subsisting leases: extension**)—
(a) Section 18E (2) (b), (e)—
Omit the paragraphs.
(b) Section 18E (13)—
Omit the subsection.
- (4) Section 23 (**Minister’s power to grant leases**)—
Section 23 (3)—
Omit the subsection.
- (5) Section 26 (**Applications for leases of land set apart exclusively**)—
Section 26 (3)—
Omit the subsection.

**SCHEDULE 1—AMENDMENTS RELATING TO HOME
MAINTENANCE AREAS—*continued***

- (6) Section 33A (**Surrender**)—
 Section 33A (3)—
 Omit the subsection.

**SCHEDULE 2—AMENDMENTS RELATING TO CONDITIONS OF
LEASES**

(Sec. 3)

- (1) Section 18DA (**Cultivation of certain land**)—
- (a) Section 18DA (1A)—
 After section 18DA (1), insert:
 (1A) This section also applies to any other class of land in the Western Division prescribed for the purposes of this section.
- (b) Section 18DA (2)—
 Omit the subsection, insert instead:
 (2) In this section—
 “cultivate”, in relation to land—
- (a) includes the preparation of the land for cultivation and the further cultivation of the land if it has previously been cultivated; and
- (b) does not include the clearing of the land within the meaning of section 18DB or the carrying on in relation to the land of an activity prescribed as not being cultivation for the purposes of this section;
- “occupier” means the person who, under the Crown Lands Acts, the Commons Regulation Act 1898 or the Pastures Protection Act 1934—
- (a) is the holder of a permissive occupancy, a licence, a conditional lease or any other prescribed tenure; or
- (b) has the care, control and management of land prescribed for the purposes of this section as referred to in subsection (1A).
- (c) Section 18DA (3)—
 Omit the subsection, insert instead:
 (3) Except in such circumstances as may be prescribed, the lessee of land the subject of a lease to which this section applies, or the occupier of any other land to which this section applies, shall not cultivate any part of the leased or occupied land unless—
- (a) the Commissioner has consented in writing to the cultivation of that part; and

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SCHEDULE 2—AMENDMENTS RELATING TO CONDITIONS OF
LEASES—*continued*

- (b) the consent is in force; and
- (c) any condition to which the consent is subject under subsection (6) is complied with.
- (d) Section 18DA (8), (8A) (b)—
After “lessee” wherever occurring, insert “or occupier”.
- (2) Section 18DB (Clearing licences)—
 - (a) Section 18DB (1)—
Omit the subsection, insert instead—
 - (1) This section applies to—
 - (a) a lease for any purpose, whether granted or issued before or after the commencement of this section, unless the land leased has an area of one-half of a hectare or less; and
 - (b) any other class of land in the Western Division prescribed for the purposes of this section.
 - (b) Section 18DB (2)—
After the definition of “clear”, insert:
“occupier” means the person who, under the Crown Lands Acts, the Commons Regulation Act 1898 or the Pastures Protection Act 1934—
 - (a) is the holder of a permissive occupancy, a licence, a conditional lease or any other prescribed tenure; or
 - (b) has the care, control and management of land prescribed for the purposes of this section as referred to in subsection (1) (b);
 - (c) Section 18DB (3)—
Omit the subsection, insert instead:
 - (3) Except as provided by subsection (4), the lessee of land the subject of a lease to which this section applies, or the occupier of any other land to which this section applies, shall not clear any part of the leased or occupied land unless—
 - (a) the Commissioner has issued a clearing licence which authorises the clearing of that part of the land; and
 - (b) the licence is in force; and
 - (c) any condition to which the licence is subject under subsection (6) is complied with.

SCHEDULE 2—AMENDMENTS RELATING TO CONDITIONS OF
LEASES—*continued*

- (d) Section 18DB (4)—
Omit “The lessee of a lease to which this section applies is not”, insert instead “Neither the lessee of land the subject of a lease to which this section applies nor the occupier of any other land to which this section applies is”.
- (e) Section 18DB (4) (b)—
Omit “land subject to the lease”, insert instead “leased or occupied land”.
- (f) Section 18DB (7) (b)—
After “lessee”, insert “or occupier”.
- (g) Section 18DB (13) (b)—
Omit “21A”, insert instead “21AB”.
- (h) Section 18DB (14) (b)—
Omit the paragraph, insert instead:
(b) section 21C of the Soil Conservation Act 1938.
- (3) Section 18E (**Subsisting leases: extension**)—
Section 18E (4) (e)—
Omit the paragraph.
- (4) Section 18F (**Residence**)—
Omit the section.
- (5) Section 18G (**Transfers**)—
Section 18G (1B)–(1F)—
After section 18G (1A), insert:
(1B) If consent to a dealing is given under subsection (1) after the insertion of this subsection by the Western Lands (Amendment) Act 1989, the consent lapses if the dealing is not registered—
(a) within the period of 6 months that next succeeds the date of the consent; or
(b) within such further period as may be allowed on an application being made under subsection (1C).
(1C) An application for further time may—
(a) within the period allowed under subsection (1B) (a); or
(b) after that, within a period subsequently allowed under this subsection,
be allowed on application being made in the approved form, accompanied by the prescribed fee.

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SCHEDULE 2—AMENDMENTS RELATING TO CONDITIONS OF LEASES—*continued*

(1D) The Minister may allow such further period for registering the dealing (not exceeding 6 months) as the Minister thinks fit.

(1E) In relation to a lease of land having an area of not more than 4,050 square metres granted for residential purposes or any other prescribed purposes, a consent under subsection (1) is not required if the Minister—

(a) on application being made in the approved form accompanied by the prescribed fee; and

(b) on being satisfied that the land is being used for the purpose for which the lease was granted,

certifies that the consent is not required.

(1F) If the Minister has given a certificate under subsection (1E) in respect of land under the Real Property Act 1900, the Registrar-General shall record the issue of the certificate in the Register if it is lodged with a dealing to which it applies.

SCHEDULE 3—AMENDMENTS RELATING TO RENTS

(Sec. 3)

(1) Section 18E (**Subsisting leases: extension**)—

(a) Section 18E (4) (a)—

After “created”, insert “under section 28A”.

(b) Section 18E (11)—

Omit the subsection.

(2) Sections 19B–19E—

Omit sections 19B–19D, insert instead:

Transitional provision for leases granted before 1989 amending Act

19B. (1) This section applies to a lease that, immediately before the commencement of this section, was—

(a) a lease in perpetuity; or

(b) a lease for a term extending past that commencement.

(2) If a redetermination of the rent of a lease to which this section applies—

(a) was due before the commencement of this section; and

*Western Lands (Amendment) 1989*SCHEDULE 3—AMENDMENTS RELATING TO RENTS—*continued*

(b) was still pending immediately before that commencement, the redetermination shall be made under this Act as in force immediately before that commencement and this section applies in relation to the lease as if the pending redetermination had been made on the date on which it was due.

(3) The first redetermination after the commencement of this section of the rent of a lease to which this section applies (not being a redetermination referred to in subsection (2)) shall be as determined by the local land board under this Part—

- (a) as if the lease had been granted to take effect immediately after the end of the period for which it had last been redetermined before the commencement of this section; and
- (b) unless the lease is a lease in perpetuity—as if it were for a term the same as so much of its original term as was unexpired at the end of that period.

(4) In this section—

“commencement”, in relation to this section, means the insertion of this section by the Western Lands (Amendment) Act 1989.

Rent rates

19C. (1) For each rental period, the rent of a lease of land held for grazing that is granted after the commencement of this section or extended after that commencement to a lease in perpetuity shall be as determined for the period by the local land board in accordance with subsection (2).

(2) In determining the rent of a lease of land held for grazing, the local land board shall (after taking into account a period that last preceded the determination by at least 10 years) have regard to the productive capacity of the land, assuming fair average seasons, prices and conditions, but the rent shall not be determined at a rate that is—

- (a) more than 50 cents for each sheep; or
- (b) less than 5 cents for each sheep,

on the fair average carrying capacity of the land, when reasonably improved, as estimated by the local land board on a sheep carrying basis.

(3) For each rental period, the rent of a lease that is granted after the commencement of this section or extended after that commencement to a lease in perpetuity and is a lease of land held for—

- (a) agriculture; or

*Western Lands (Amendment) 1989*SCHEDULE 3—AMENDMENTS RELATING TO RENTS—*continued*

(b) agriculture and grazing combined; or

(c) mixed farming,

or for a similar purpose shall be as determined for the period by the local land board in accordance with subsection (4).

(4) The rent for a rental period of a lease of land held for a purpose referred to in subsection (3) shall be 2.5 per cent, or such other percentage as may be prescribed, of the capital value of the land as assessed for the period by the local land board—

(a) according to the capabilities and situation of the land; and

(b) irrespective of any improvements on the land,

but including any enhanced value in the land arising from, or created by, improvements on the land.

(5) If there is a successful bid at auction, or a successful tender, of an amount of rent for a lease under section 28A, the rent of the lease shall be—

(a) for the first rental period for the lease—the amount of the rent bid or tendered; and

(b) for each succeeding rental period—the rent as determined by the local land board, having regard to the purpose of the lease.

(6) For each rental period, the rent of a lease that is not required to be determined under subsection (1), (3) or (5) (b) shall be the rent as determined for the period by the local land board, having regard to the purpose of the lease.

(7) In this section—

“commencement”, in relation to this section, means the insertion of this section by the Western Lands (Amendment) Act 1989;

“rental period”, in relation to a lease, means—

(a) each period of 5 years during the term of the lease that succeeds—

(i) in the case of a lease extended to a lease in perpetuity—the beginning of the extension; or

(ii) in any other case—the beginning of the term of the lease; or

(b) the unexpired term of the lease if—

(i) it is not a lease in perpetuity and, at the end of a 5 year period referred to in paragraph (a), the unexpired term is shorter than 5 years; or

(ii) the term of the lease is shorter than 5 years.

 SCHEDULE 3—AMENDMENTS RELATING TO RENTS—*continued*
Rent after change of purpose

19D. (1) If, under section 18J, the purpose of a lease is changed after the insertion of this section by the Western Lands (Amendment) Act 1989, the rental periods under section 19C for the lease are, except for the first, the same as they would have been if there had not been a change of purpose.

(2) The first rental period under section 19C after the change is the unexpired part of the period for which the rent had last been determined before the change.

(3) This section has effect despite any other provision of this Part except section 19E.

Minimum rent

19E. (1) The rent of a lease shall not be less than the amount that, at the time the rent is payable, is prescribed as the minimum rent of the lease.

(2) Subsection (1) has effect despite any other provision of this Part.

(3) Section 20—

Omit the section, insert instead:

Concessional rent

20. (1) The Minister may, on such conditions as the Minister thinks fit, grant a rebate of the rent payable by a prescribed class of lessee under a lease for a prescribed purpose.

(2) The Minister may, on such conditions as the Minister thinks fit, extend over a period not exceeding 10 years the payment of rent or other money due to the Crown under this Act.

(3) The Minister may discontinue a rebate granted under subsection (1).

(4) Section 22—

After section 21, insert:

Time at which rent is payable

22. The rent of a lease is payable in advance on each anniversary of the date of commencement of the lease or at such other time as may be prescribed.

*Western Lands (Amendment) 1989***SCHEDULE 4—AMENDMENTS RELATING TO THE GRANTING,
EXTENSION AND FORFEITURE OF LEASES**

(Sec. 3)

- (1) Section 23 (**Minister's power to grant leases**)—
Section 23 (1), (2), (4)—
Omit the subsections.
- (2) Section 24 (**Power to set apart Crown lands**)—
Omit the section.
- (3) Section 25 (**Lodgment of applications**)—
Omit the section.
- (4) Section 26 (**Applications for leases of land set apart exclusively**)—
Section 26 (1), (2), (2A), (4), (5)—
Omit the subsections.
- (5) Section 27 (**No appeal in certain cases**)—
Omit the section.
- (6) Sections 28A–28BA—
Omit section 28A, insert instead:
Granting of leases after 1989 amending Act
28A. (1) The Minister may, in such manner as the Minister determines, dispose of Crown land by way of a lease for—
(a) grazing; or
(b) agriculture; or
(c) agriculture and grazing combined; or
(d) mixed farming; or
(e) a purpose similar to a purpose referred to in paragraphs (a)–(d); or
(f) any other purpose declared by the Minister, by order published in the Gazette and for the time being in force, to be a purpose for which a lease may be granted under this section.
(2) A disposal of Crown land under this section may be effected on such terms and conditions determined by the Minister as are not inconsistent with this section or with section 18E.
(3) A lease granted under this section may be—
(a) a lease in perpetuity; or
(b) a lease for a term not exceeding 40 years.

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**SCHEDULE 4—AMENDMENTS RELATING TO THE GRANTING,
EXTENSION AND FORFEITURE OF LEASES—*continued***

(4) The rent of a lease to be granted under this section may not be determined at auction or by tender if it is a lease for a purpose referred to in subsection (1) (a)–(e).

(5) Any money consideration (other than rent) for a lease disposed of under this section at auction or by tender is payable on such terms and conditions as are determined by the Minister.

(6) If tenders are invited for a lease under this section, they shall be considered by a tender board consisting of the Commissioner as Chairperson and 2 persons nominated by the Minister.

(7) The tender board shall report to the Minister on the tenders considered by it and the Minister may, but need not, accept any tender, whether or not it is the highest tender.

(8) An application for a lease made before the commencement of this section and not finally dealt with before that commencement shall be dealt with as an application made under this section for the granting of the lease.

(9) In this section—

“commencement”, in relation to this section, means the insertion of this section by the Western Lands (Amendment) Act 1989.

Extension of term of lease

28B. (1) This section applies to a lease, other than a lease in perpetuity, granted under section 28A before or after the insertion of this section by the Western Lands (Amendment) Act 1989.

(2) The term of a lease to which this section applies may be extended from time to time—

- (a) for a term not exceeding 40 years; and
- (b) on such terms and conditions (not affecting the amount of rent) as the Minister thinks fit.

(3) An extension under subsection (2) may be for the whole, or a specified part, of the land leased.

(4) The rent during the extended term—

- (a) for each separate period of 5 years; or
- (b) if the unexpired term of the lease is less than 5 years—for the unexpired term,

shall be determined under section 19C.

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**SCHEDULE 4—AMENDMENTS RELATING TO THE GRANTING,
EXTENSION AND FORFEITURE OF LEASES—*continued***

(5) If application is made for extension of the term of a lease for which a certificate of title has issued, the certificate of title must be lodged with the application.

Forfeiture of lease

28BA. (1) If, in relation to a lease granted under section 28A before or after the insertion of this section by the Western Lands (Amendment) Act 1989, the Minister determines—

(a) that the land comprised in the lease is not used or occupied in good faith for the purpose for which the lease is in force; or

(b) that a condition of the lease has not been complied with,

section 50 applies in relation to the determination in the same way as it applies in relation to a determination referred to in that section.

(2) Except to the extent, if any, that the Minister otherwise directs, forfeiture of a lease to which this section applies includes forfeiture of any improvements made and rent paid.

(7) Section 33A (Surrender)—

Section 33A (1), (1A)—

Omit section 33A (1), insert instead:

(1) The Minister may—

(a) accept a surrender of the whole or any part of a lease under this Act; and

(b) under section 28A, grant a new lease, or new leases, of the surrendered land on such terms and conditions as the Minister thinks fit.

(1A) If only part of a lease is surrendered, the Minister may, with the consent of the lessee, adjust the rent of the part of the lease not surrendered.

(8) Sections 37–43A—

Omit the sections.

SCHEDULE 5—AMENDMENTS RELATING TO ENFORCEMENT PROVISIONS

(Sec. 3)

- (1) **Section 47 (Notice to rectify contravention)—**
 Section 47 (1A)—
 After section 47 (1), insert:
 (1A) If an occupier within the meaning of section 18DA or 18DB contravenes that section whether by act or omission, the Commissioner may serve on the occupier a notice in writing requiring the occupier—
 (a) to comply with that section; and
 (b) to take such measures to rectify the contravention as the Commissioner considers appropriate and specifies in the notice.
- (2) **Section 48 (Commissioner may rectify contravention and recover costs)—**
 (a) Section 48 (1)—
 After “lessee”, insert “or occupier”.
 (b) Section 48 (1)—
 Omit “land the subject of the lease”, insert instead “leased or occupied land”.
 (c) Section 48 (2) (a)—
 After “lessee”, insert “or occupier”.
 (d) Section 48 (2) (b)—
 Omit “against the lease”, insert instead “on the leased or occupied land”.
- (3) **Section 49 (Offences)—**
 (a) Section 49 (1)—
 Before “penalty” wherever occurring, insert “maximum”.
 (b) Section 49 (1) (a1)—
 After section 49 (1) (a), insert:
 (a1) The requirements of section 18DA (3) (cultivating land without consent or contrary to a condition to which consent is subject)—maximum penalty: \$10,000.
 (c) Section 49 (2A), (2B)—
 After section 49 (2), insert:
 (2A) An occupier within the meaning of section 18DA (cultivation of certain land) who—
 (a) contravenes, whether by act or omission, the requirements of section 18DA (3) (cultivating land without consent or contrary to a condition to which consent is subject); or

*Western Lands (Amendment) 1989***SCHEDULE 5—AMENDMENTS RELATING TO ENFORCEMENT PROVISIONS—*continued***

(b) fails to comply with a notice under section 47 in connection with such a contravention,
is guilty of an offence.

Maximum penalty: \$10,000.

(2B) An occupier within the meaning of section 18DB (clearing licences) who—

(a) contravenes, whether by act or omission, the requirements of section 18DB (3) (clearing land without a clearing licence or contrary to any condition to which such a licence is subject); or

(b) fails to comply with a notice under section 47 in connection with such a contravention,
is guilty of an offence.

Maximum penalty: \$10,000.

(4) Section 52 (Proceedings for offences)—

Section 52 (4)—

After section 52 (3), insert:

(4) Proceedings for an offence against this Act or the regulations made under this Act may be instituted within 12 months after the time when the matter giving rise to the proceedings occurred.

SCHEDULE 6—AMENDMENTS RELATING TO ADMINISTRATION

(1) Section 3 (Definitions)—

Section 3 (1)—

Before the definition of “Local land board”, insert:

“Lessee” includes a purchaser who has paid the purchase money but has not registered a transfer.

(2) Section 9 (Power to establish administrative districts)—

(a) Section 9 (2A)–(2C)—

After section 9 (2), insert:

(2A) The Governor may appoint as Chairperson of Local Land Boards—

(a) an officer within the meaning of the Public Sector Management Act 1988; or

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 SCHEDULE 6—AMENDMENTS RELATING TO
 ADMINISTRATION—*continued*

- (b) a person who holds such other office, or has such qualifications, as may be prescribed.
- (2B) The person appointed is Chairperson of the local land boards for all administrative districts.
- (2C) If the Minister knows that the Chairperson—
- (a) will be absent at a time when a local land board is to sit; or
- (b) for any reason, will be unable to act, or should not act, at a particular sitting of a local land board,
- the Minister may appoint a person to act as Chairperson at the sitting.
- (b) Section 9 (3) (a) (i)—
 Omit the subparagraph, insert instead:
- (i) the Chairperson appointed under subsection (2A); and
- (c) Section 9 (3) (b)—
 Omit “Assistant Commissioner shall be the chairman and”, insert instead “Chairperson”.
- (d) Section 9 (3) (c)–(e)—
 Omit “chairman” wherever occurring, insert instead “Chairperson”.
- (e) Section 9 (3C)—
 Omit “an Assistant Commissioner”, insert instead “the Chairperson”.
- (f) Section 9 (5) (b)—
 Omit “An Assistant Commissioner” wherever occurring, insert instead “The Chairperson”.
- (g) Section 9 (5) (c)—
 Omit “Assistant Commissioner”, insert instead “Chairperson”.
- (h) Section 9 (6) (a), (b)—
 Omit “an Assistant Commissioner” wherever occurring, insert instead “the Chairperson”.
- (3) Section 35MA—
 After section 35M, insert:
- Notices**
- 35MA. (1) If by or under this Act a notice, order or other document is required to be given to or served on any person, the notice, order or other document may be given or served—
- (a) in the case of a person other than a corporation—
- (i) by delivering it to the person; or

*Western Lands (Amendment) 1989*SCHEDULE 6—AMENDMENTS RELATING TO
ADMINISTRATION—*continued*

- (ii) by posting it to the address, if any, specified by the person for the giving of notices or service of documents under this Act, or if no such address is specified, to the person's usual or last known place of residence or last known place of business; or
 - (b) in the case of a corporation—
 - (i) by leaving it at the registered office of the corporation with a person apparently not less than 16 years of age and apparently in the service of the corporation; or
 - (ii) by posting it to the address, if any, specified by the corporation for the giving of notices or service of documents under this Act or, if no such address is specified, to the last known place of business of the corporation.
- (2) A notice, order or other document sent by post in accordance with subsection (1) shall be taken to have been given or served at the time at which it would be delivered in the ordinary course of post.

SCHEDULE 7—TRANSITIONAL AND OTHER PROVISIONS

(Sec. 4)

Definition

1. In this Schedule—
“Principal Act” means the Western Lands Act 1901.

Validation

2. If, before the date of assent to this Act, the rent of a lease under the Principal Act of land set apart for grazing had, following a change of purpose under section 18J of the Principal Act, been redetermined as if the land had been set apart for the new purpose, the redetermination is validated.

Transitional provision

3. (1) This clause applies to a lease if—
 - (a) before the date of assent to this Act, the purpose of the lease was changed under section 18J of the Principal Act and a redetermination of the rent of the lease following the change had not been finalised; or
 - (b) on or after the date of assent to this Act and before the next succeeding date for redetermination of the rent of the lease, the purpose of the lease is changed under section 18J of the Principal Act.

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SCHEDULE 7—TRANSITIONAL AND OTHER PROVISIONS—*continued*

(2) If this clause applies to a lease, a redetermination resulting from the change of purpose shall be made on the basis prescribed by the Principal Act, as in force at the time of the change, for land set apart or held for the new purpose.

[*Minister's second reading speech made in—
Legislative Assembly on 29 November 1988
Legislative Council on 4 April 1989*]