



New South Wales

# Western Lands Amendment Act 2002 No 68

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New South Wales

## **Western Lands Amendment Act 2002 No 68**

Act No 68, 2002

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An Act to amend the *Western Lands Act 1901* with respect to the recognition of public and other roads, the assessment of annual rents and the constitution and functions of a Western Lands Advisory Council; and for other purposes. [Assented to 10 July 2002]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Western Lands Amendment Act 2002*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Western Lands Act 1901 No 70**

The *Western Lands Act 1901* is amended as set out in Schedules 1–5.

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## **Schedule 1 Amendments with respect to public roads and rights of way**

(Section 3)

### **[1] Part 9C**

Insert after Part 9B:

## **Part 9C Public roads and rights of way**

### **Division 1 Public roads**

#### **35Q Minister may dedicate public roads**

- (1) The Minister may, by notice published in the Gazette, withdraw from lease, for the purpose of its being dedicated as a public road, any land that, in the Minister's opinion, is being used by the public as a road.
- (2) Having withdrawn land from lease by means of a notice referred to in subsection (1), the Minister may, pursuant to section 12 of the *Roads Act 1993*, dedicate that land as a public road.
- (3) No compensation is payable to any person with respect to any loss or damage arising from the operation of this section.
- (4) This section applies to land comprised in a lease granted or issued before the commencement of this section, but does not apply to a lease granted or issued after that commencement.

### **Division 2 Rights of way**

#### **35R Definitions**

In this Division:

*beneficiary*, in relation to a special easement, means:

- (a) any lessee of land benefited by the easement, or

- (b) any other person or body in whose favour the easement has been created as referred to in section 88A of the *Conveyancing Act 1919*.

*special easement* means an easement created under section 35S.

**35S Minister may create easements for right of way**

- (1) The Minister may, by instrument lodged with the Registrar-General (a *Minister's request*), request the Registrar-General to create the following easements over land within the Western Division that, in the Minister's opinion, is being used as a road or track:
  - (a) an easement in the nature of a right of way,
  - (b) such other easements as are appropriate to the construction and maintenance of a right of way.
- (2) Such a request:
  - (a) may not be made with respect to freehold land, and
  - (b) may only be made with respect to land held under a lease on the application of the lessee or lessees of that land.
- (3) A Minister's request is to be made by reference to a plan that is registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919*.
- (4) On receiving a Minister's request, the Registrar-General may make such recordings in the Register kept under the *Real Property Act 1900* as are appropriate to give effect to the request.
- (5) No duty is payable under the *Duties Act 1997* in respect of a Minister's request.
- (6) Sections 88A and 181A of the *Conveyancing Act 1919* apply to a Minister's request.

- (7) An easement referred to in section 88A of the *Conveyancing Act 1919* may be created not only in favour of a public authority referred to in that section but also in favour of such other persons or bodies as may be specified in that regard by the plan referred to in subsection (3), in which case any reference in that section to a public authority extends to any person or body so specified.
- (8) As soon as practicable after a special easement is created, the Minister must cause notice of that fact to be given to:
  - (a) each beneficiary of the easement, and
  - (b) each lessee of land over which the easement is in force.
- (9) Section 89 of the *Conveyancing Act 1919* does not apply to a special easement.
- (10) Neither the creation of a special easement in respect of any land held under a lease, nor a lessee's request for the creation of a special easement in respect of any such land, is to be regarded:
  - (a) as a breach of any contractual provision prohibiting, restricting or regulating the lessee's right to deal with the land, or
  - (b) as giving rise to any remedy by a party to any legal instrument, or as causing or permitting the termination of any legal instrument, because of the creation of the easement or the making of the request.
- (11) This section applies to land held under a lease granted or issued before the commencement of this section, but does not apply to land held under a lease granted or issued after that commencement.

**35T Minister may extinguish special easements**

- (1) On the application of:
  - (a) each beneficiary of a special easement, and
  - (b) in the case of a special easement over land held under a lease, each lessee of the land,the Minister may, by instrument lodged with the Registrar-General (a *Minister's request*), request the Registrar-General to release the easement.

- (2) On receiving a Minister's request, the Registrar-General may make such recordings in the Register kept under the *Real Property Act 1900* as are appropriate to give effect to the request.
- (3) No duty is payable under the *Duties Act 1997* in respect of a Minister's request.
- (4) As soon as practicable after a special easement is released under this section, the Minister must cause notice of that fact to be given to:
  - (a) each former beneficiary of the easement, and
  - (b) each lessee of land over which the easement was formerly in force.

**35U Mediation of disputes as to easements**

- (1) If there is a dispute between two or more lessees of land over a proposal to create or release a special easement, either of them may apply to a local land board for mediation of the dispute.
- (2) Attendance at, and participation in, proceedings on the application are voluntary.
- (3) The local land board is to use its best endeavours to bring the parties to the proceedings to a resolution of the dispute.
- (4) Each party to the proceedings is to bear his or her own costs with respect to the proceedings.
- (5) Testimony given, and documents tendered, in the proceedings are not admissible as evidence in any other proceedings before any court or tribunal.
- (6) A local land board, and parties to proceedings before a local land board, have the same protections and immunities in relation to proceedings brought before the local land board under this section as a Local Court, and parties to proceedings before a Local Court, have in relation to civil proceedings brought before the Local Court.

**[2] Schedule 1 (as renumbered by Schedule 5 [21])**

Omit “, roads, or tracks,” from paragraph (e).

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## Schedule 2 Amendments with respect to rent

(Section 3)

### [1] Section 10C Minister may deal with matters by agreement

Insert after section 10C (7):

- (8) This section does not apply to matters arising under Part 6.

### [2] Part 6

Omit the Part. Insert instead:

## Part 6 Rent payable under leases

### Division 1 Preliminary

#### 19 Definitions

In this Part:

*financial year* means the year commencing 1 July.

*intensive agriculture* includes irrigated farming, feedlot farming, aquaculture, pisciculture and any other activity declared by the regulations to be intensive agriculture.

*rehabilitation* means any activity that results in an improvement in the condition and functioning of the natural environment.

*rural holding* means the aggregate of all lands:

- (a) that are held by the same person under one or more rural leases, and
- (b) that, in the opinion of the Commissioner, comprise a single holding,

regardless of whether or not the lands are contiguous with each other.

*rural lease* means any lease of a kind declared under section 27D to be a rural lease for the purposes of this Part.



**scaling factor**, for any financial year, means the scaling factor determined by the regulations for that year or, if no such factor is determined, the scaling factor determined by the regulations for the previous financial year.

**urban lease** means any lease of a kind declared under section 27D to be an urban lease for the purposes of this Part, and includes any lease that is not declared under that section to be either a rural lease or an urban lease.

## Division 2 Rural holdings

### 20 Annual rent

- (1) Annual rent is to be calculated for a rural holding as follows:

*Annual rent = Base rent + Cultivation charge + Intensive agriculture charge Rehabilitation rebate*

- (2) If the regulations prescribe a minimum annual rent that is greater than the rent so calculated, the annual rent is to be the minimum rent so prescribed.

### 21 Calculation of base rent

Base rent referred to in section 20 (1) is to be calculated for a rural holding as follows:

$$\text{Base rent} = S \times [(A_1 \times k_1) + (A_2 \times k_2) + (A_3 \times k_3) + (A_4 \times k_4) + (A_5 \times k_5) + (A_6 \times k_6) + (A_7 \times k_7)]$$

where:

$S$  represents the scaling factor for the financial year to which the rent relates.

$A_1$  represents 1,000 hectares or (for a rural holding of less than 1,000 hectares) the number of hectares in the holding, and  $k_1$  represents an amount of money per hectare prescribed by the regulations for the first 1,000 hectares of a rural holding.

$A_2$  represents 4,000 hectares or (for a rural holding of less than 5,000 hectares) the number of hectares in the holding in excess of 1,000, and  $k_2$  represents an amount of money per hectare prescribed by the regulations for the second to the fifth 1,000 hectares (inclusive) of a rural holding.

$A_3$  represents 5,000 hectares or (for a rural holding of less than 10,000 hectares) the number of hectares in the holding in excess of 5,000, and  $k_3$  represents an amount of money per hectare prescribed by the regulations for the sixth to the tenth 1,000 hectares (inclusive) of a rural holding.

$A_4$  represents 10,000 hectares or (for a rural holding of less than 20,000 hectares) the number of hectares in the holding in excess of 10,000, and  $k_4$  represents an amount of money per hectare prescribed by the regulations for the eleventh to the twentieth 1,000 hectares (inclusive) of a rural holding.

$A_5$  represents 10,000 hectares or (for a rural holding of less than 30,000 hectares) the number of hectares in the holding in excess of 20,000, and  $k_5$  represents an amount of money per hectare prescribed by the regulations for the twenty-first to the thirtieth 1,000 hectares (inclusive) of a rural holding.

$A_6$  represents 20,000 hectares or (for a rural holding of less than 50,000 hectares) the number of hectares in the holding in excess of 30,000, and  $k_6$  represents an amount of money per hectare prescribed by the regulations for the thirty-first to the fiftieth 1,000 hectares (inclusive) of a rural holding.

$A_7$  represents the number of hectares in a rural holding in excess of 50,000, and  $k_7$  represents an amount of money per hectare prescribed by the regulations for each hectare in the holding after the fifty-thousandth.

## 22 Calculation of cultivation charge

The cultivation charge referred to in section 20 (1) is to be calculated for a rural holding as follows:

$$\text{Cultivation charge} = S \times [(TC \times k_8) + (PC \times k_9)]$$

where:

$S$  represents the scaling factor for the financial year to which the rent relates.

$TC$  represents the number of hectares in the holding on which cultivation is permitted under this Act for a limited period of time pursuant to a consent under section 18DA, and  $k_8$  represents an amount of money per hectare prescribed by the regulations for such land.

*PC* represents the number of hectares in the holding on which cultivation is permitted under this Act indefinitely:

- (a) pursuant to a lease for the purpose of agriculture, grazing and agriculture combined or mixed farming or any similar purpose or purposes, or
  - (b) pursuant to a consent under section 18DA,
- and *k<sub>9</sub>* represents an amount of money per hectare prescribed by the regulations for such land.

### 23 Calculation of intensive agriculture charge

The intensive agriculture charge referred to in section 20 (1) is to be calculated for a rural holding as follows:

$$\text{Intensive agriculture charge} = S \times (IA \times k_{10})$$

where:

*S* represents the scaling factor for the financial year to which the rent relates.

*IA* represents the number of hectares in the holding which are, in the opinion of the Commissioner, being used for or in connection with intensive agriculture, and *k<sub>10</sub>* represents an amount of money per hectare prescribed by the regulations for such land.

### 24 Calculation of rehabilitation rebate

The rehabilitation rebate referred to in section 20 (1) is to be calculated for a rural holding as follows:

$$\text{Rehabilitation rebate} = S \times [(TR \times k_{11}) + (PR \times k_{12})]$$

where:

*S* represents the scaling factor for the financial year to which the rent relates.

*TR* represents the number of hectares in the holding on which, in the opinion of the Commissioner, managed rehabilitation is being carried out on a temporary basis (that is, for a period of 10 years or less), and *k<sub>11</sub>* represents an amount of money per hectare prescribed by the regulations for such land.

**PR** represents the number of hectares in the holding on which, in the opinion of the Commissioner, managed rehabilitation is being carried out on a permanent basis (that is, for a period of more than 10 years), and **k<sub>12</sub>** represents an amount of money per hectare prescribed by the regulations for such land.

**25 Assessment of annual rent**

- (1) As soon as practicable after 1 April in each year, the Commissioner must cause an assessment to be made of the annual rent payable for each rural holding for the financial year commencing next 1 July.
- (2) In making such an assessment, the Commissioner is to have regard to the circumstances of each rural holding as at 1 April in that year.
- (3) The Commissioner must cause written notice of the assessment for each rural holding to be served on the owner of the holding as soon as practicable after the assessment is made.
- (4) For the purposes of section 36C, the due date for payment of the annual rent for a rural holding is 1 July of the financial year for which the rent is payable.

**26 Review of assessment by local land board**

- (1) If the owner of a rural holding is dissatisfied with any of the following decisions of the Commissioner with respect to an assessment of annual rent for specified land:
  - (a) a decision that the land is or is not a single holding,
  - (b) a decision that cultivation is or is not permitted under this Act on the whole or any part of the land,
  - (c) a decision that the whole or any part of the land is or is not being used for or in connection with intensive agriculture,
  - (d) a decision that managed rehabilitation is or is not being carried out on the whole or any part of the land,

the owner may apply to the local land board for a review of the decision.

- (2) The making of an application for such a review does not stay the owner's obligation to pay the annual rent to which the application relates.
- (3) Subject to section 27, the decision of the local land board has effect as if it were the decision of the Commissioner.

**27 Appeal to Land and Environment Court**

- (1) Either the owner of a rural holding or the Commissioner may appeal to the Land and Environment Court against a decision of the local land board under section 26.
- (2) The making of an appeal does not stay the owner's obligation to pay the annual rent to which the appeal relates.

**27A Ministerial guidelines**

- (1) The Minister may, by order published in the Gazette, establish guidelines with respect to the assessment of annual rents for rural holdings.
- (2) Before establishing any such guidelines, the Minister must consult with the Western Lands Advisory Council.
- (3) In determining for the purposes of this Part:
  - (a) whether land is or is not a single rural holding, or
  - (b) whether cultivation is or is not permitted under this Act on the whole or any part of a rural holding, or
  - (c) whether the whole or any part of a rural holding is or is not being used for or in connection with intensive agriculture, or
  - (d) whether managed rehabilitation is or is not being carried out on the whole or any part of a rural holding, or
  - (e) any other matter relevant to the assessment of annual rent for a rural holding,

regard must be had to any guidelines in force under this section.

### **Division 3      Urban leases**

#### **27B    Annual rent**

- (1) Annual rent is to be calculated for an urban lease as follows:

$$\text{Annual rent} = LV \times p$$

where:

*LV* represents the land value (within the meaning of the *Valuation of Land Act 1916*) of the land comprised in the urban lease.

*p* represents a percentage prescribed by the regulations with respect to the class of land to which the urban lease belongs.

- (2) If the regulations prescribe a minimum annual rent that is greater than the rent so calculated, the annual rent is the minimum rent so prescribed.
- (3) The regulations may prescribe different classes of urban lease for the purposes of this section and different percentages in relation to each class of urban lease so prescribed.

#### **27C    Assessment of annual rent**

- (1) As soon as practicable after 1 April in each year, the Commissioner must cause an assessment to be made of the annual rent payable for each urban lease for the financial year commencing next 1 July.
- (2) In making such an assessment, the Commissioner is to have regard to the land value of each urban lease as at 1 April in that year.
- (3) The Commissioner must cause written notice of the assessment for each urban lease to be served on the holder of the lease as soon as practicable after the assessment is made.
- (4) For the purposes of section 36C, the due date for payment of the annual rent for an urban lease is 1 July of the financial year for which the rent is payable.

## **Division 4      Miscellaneous**

### **27D    Classification or leases as rural or urban leases**

The Minister may, by order published in the Gazette, declare that a lease of a specified kind is either a rural lease or an urban lease for the purposes of this Part.

### **27E    Concessional rent**

(1) The Minister:

- (a) may waive, reduce or remit the whole or any part of the annual rent that would otherwise be payable by a lessee under this Part, and
- (b) may postpone payment, for up to 10 years, of the whole or any part of the annual rent payable by a lessee under this Part,

in respect of such classes of lessees or classes of lands as are prescribed by the regulations.

(2) The total amount of rent waived or remitted by the Minister in each rental year (but not rent reduced or postponed in relation to debt management) are to be published:

- (a) in the Department's annual report under the *Annual Reports (Departments) Act 1985* for the financial year concerned, and
- (b) in the Treasurer's budget papers for the following financial year.

### **[3]    Section 28A Granting of leases after 1989 amending Act**

Insert after section 28A (1):

- (1A) If the Minister makes an order under subsection (1) (f) with respect to a particular lease purpose, the Minister must also make an order under section 27D declaring that a lease for that purpose is either a rural lease or an urban lease for the purposes of Part 6.

### **[4]    Section 28B Extension of term of lease**

Omit section 28B (4).

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## **Schedule 3 Amendments with respect to Western Lands Advisory Council**

(Section 3)

### **[1] Sections 8B and 8C**

Insert after section 8A:

#### **8B Western Lands Advisory Council**

- (1) There is to be a Western Lands Advisory Council.
- (2) The Western Lands Advisory Council is to have 14 members appointed by the Minister, and of whom:
  - (a) four are to be appointed to represent lessees in the Western Division:
    - (i) 2 being nominees of the Western Division Council of the NSW Farmers' Association, and
    - (ii) one being the nominee of The Pastoralists' Association of West Darling, and
    - (iii) one being a person who is independent of each of the associations referred to in subparagraphs (i) and (ii), and
  - (b) two are to be appointed to represent the interests of local councils, each being a nominee of the Western Division Group of the Shires Association of NSW, and
  - (c) two are to be appointed to represent the interests of Aboriginal people, of whom one is to be appointed on the nomination of the New South Wales Aboriginal Land Council, and
  - (d) one is to be appointed on the nomination of the Nature Conservation Council of New South Wales to represent the interests of environment protection groups, and
  - (e) one is to be appointed to represent the interests of catchment management boards, and
  - (f) one is to be appointed to represent the interests of the Minister for the Environment, and



- (g) one is to be appointed to represent the interests of the Minister for Agriculture, and
  - (h) one is to be the Commissioner, and
  - (i) one is to be appointed as an independent chairperson for the Council.
- (3) Each of the members referred to in subsection (2) (a)–(e) must be a person who, in the Minister’s opinion, has a current or recent connection with, or has a relevant interest in, the Western Division.
  - (4) If a candidate to represent the interests of any person or body is not duly nominated as referred to in subsection (2), the Minister may appoint any person to represent those interests without the need for nomination.
  - (5) The regulations may make provision with respect to qualifications for appointment as a member of the Western Lands Advisory Council.
  - (6) Schedule 5 has effect with respect to the constitution and procedure of the Western Lands Advisory Council.

### **8C Functions of Western Lands Advisory Council**

- (1) The principal functions of the Western Lands Advisory Council are as follows:
  - (a) to advise the Minister on matters relevant to the objects of this Act,
  - (b) to advise the Minister on matters affecting the administration of the Western Division,
  - (c) to consult with persons and bodies having an interest in any matter affecting the administration of the Western Division.
- (2) The Western Lands Advisory Council has such other functions as are conferred or imposed on it by or under this or any other Act or law.
- (3) For the purpose of exercising its functions, the Western Lands Advisory Council may consult with, and receive submissions from, other persons and bodies.

**[2] Schedule 5**

Insert after Schedule 4 (as renumbered by Schedule 5 [24]):

**Schedule 5 Provisions with respect to constitution  
and procedure of Western Lands  
Advisory Council**

(Section 8B)

**Part 1 Constitution**

**1 Acting chairperson**

- (1) The Minister may, from time to time, appoint a person to act in the office of chairperson during the illness or absence of a chairperson, and the person, while so acting, has all the functions of the chairperson and is taken to be the chairperson.
- (2) The Minister may, at any time, remove a person from an office to which the person has been appointed under this clause.
- (3) For the purposes of this clause, a vacancy in the office of chairperson is taken to be an absence from office of the chairperson.

**2 Term of office**

Subject to this Schedule, a member of the Western Lands Advisory Council holds office for 3 years, but is eligible (if otherwise qualified) for re-appointment.

**3 Remuneration**

A member of the Western Lands Advisory Council is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**4 Vacancy in office of appointed member**

- (1) The office of a member of the Western Lands Advisory Council becomes vacant if the member:

- (a) dies, resigns or is removed from office, or
  - (b) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member, unless:
    - (i) the Council has granted the member leave to be absent from those meetings, or
    - (ii) within 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (d) becomes a mentally incapacitated person, or
  - (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member of the Western Lands Advisory Council from office at any time.

#### **5 Filling of vacancy in office of member**

If the office of a member of the Western Lands Advisory Council becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **6 Disclosure of pecuniary interests**

- (1) A member of the Western Lands Advisory Council who has a direct or indirect pecuniary interest:
- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Council, or
  - (b) in a thing being done or about to be done by the Council,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

- (2) A disclosure at such a meeting that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or a specified person,
- is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date of the disclosure.
- (3) The Western Lands Advisory Council must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose, and that book must be open at all reasonable hours to the inspection, free of charge, of any person.
- (4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister otherwise determines:
- (a) be present during any deliberation, or take part in any decision, of the Western Lands Advisory Council with respect to that matter, or
  - (b) exercise any functions under this Act with respect to that thing,
- as the case requires.
- (5) A contravention of this clause does not invalidate any decision of the Western Lands Advisory Council or the exercise of any function under this Act.
- (6) A reference in this clause to a meeting of the Western Lands Advisory Council includes a reference to a meeting of any of its committees.

## **7 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member of the Western Lands Advisory Council and the office of such a member is not, for the purposes of any Act, an office or place of profit under the Crown.
- (2) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate so as to disqualify the person from holding that office and also the office of a member of the Western Lands Advisory Council, or from accepting and retaining any remuneration payable to the person under this Part as such a member.

## **Part 2 Procedure**

### **8 General procedure**

Except as otherwise provided by this Act or the regulations:

- (a) meetings of the Western Lands Advisory Council are to be held at such times and places as are fixed by the chairperson, and
- (b) the procedure for the convening of meetings and for the conduct of business at those meetings is to be as determined by the chairperson.

### **9 Quorum**

A majority of the members of the Western Lands Advisory Council constitutes a quorum.

**10 Presiding member**

The chairperson (or, in the absence of the chairperson, a member appointed by the members then present) is to preside at a meeting of the Western Lands Advisory Council.

**11 Decisions**

- (1) At any meeting of the Western Lands Advisory Council, all members present are to strive for consensus in reaching decisions.
- (2) However, a decision by the Western Lands Advisory Council has effect if it is supported by a majority of the votes cast at a meeting at which a quorum is present.

**12 Record of proceedings**

- (1) The presiding member at a meeting of the Western Lands Advisory Council must cause a record of the proceedings at the meeting to be made.
- (2) Records made for the purposes of this clause may be destroyed after the expiry of the period prescribed by the regulations.

**13 Authentication of documents**

Any document requiring authentication by the Western Lands Advisory Council is sufficiently authenticated if it is signed by:

- (a) the member who presided at the meeting that dealt with the proceedings with respect to which the document was prepared, or
- (b) in the absence of that member, any other member who was present at that meeting.

**14 First meeting**

The first meeting of the Western Lands Advisory Council is to be called by the Minister in such manner as the Minister considers appropriate.

## **Schedule 4    Miscellaneous amendments**

(Section 3)

### **[1]    Section 2**

Omit the section. Insert instead:

#### **2    Objects of Act**

The objects of this Act are as follows:

- (a) to establish an appropriate system of land tenure for the Western Division,
- (b) to regulate the manner in which land in the Western Division may be dealt with,
- (c) to provide for the establishment of a formal access network, by means of roads and rights of way, in the Western Division,
- (d) to establish the rights and responsibilities of lessees and other persons with respect to the use of land in the Western Division,
- (e) to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development referred to in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
- (f) to promote the social, economic and environmental interests of the Western Division,
- (g) to make other provision for the effective integration of land administration and natural resource management in the Western Division.

**[2] Section 3B**

Insert after section 3A:

**3B Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as practicable after the period of 5 years from the date of assent to the *Western Lands Amendment Act 2002*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**[3] Section 8A**

Omit the section. Insert instead:

**8A Delegation by Commissioner**

The Commissioner may delegate to:

- (a) any officer of the Department, or
- (b) any public or local authority,

the exercise or performance of any of the Commissioner's powers, authorities, duties or functions, other than this power of delegation.

**[4] Section 12A**

Omit the section. Insert instead:

**12A Delegation by Minister**

The Minister may delegate to:

- (a) any officer of the Department, or
- (b) any public or local authority,

the exercise or performance of any of the Minister's powers, authorities, duties or functions, other than this power of delegation.



**[5] Section 18**

Omit the section. Insert instead:

**18 General conditions of lease**

Each lease must contain:

- (a) the covenants, reservations and exemptions set out in Schedule 1, or
- (b) such of those covenants, reservations and exemptions as the Minister considers applicable to the lease.

**[6] Section 18G**

Omit the section. Insert instead:

**18G Dealings in leased land**

- (1) Land held under a lease:
  - (a) in the case of land under the *Real Property Act 1900*, may not be transferred, and
  - (b) in the case of any other land, may not be conveyed, except with the consent of the Minister.
- (2) A conveyance effected in contravention of subsection (1) (b) is void for all purposes.
- (3) In the case of land:
  - (a) that has an area of not more than 4,050 square metres, and
  - (b) that is the subject of a lease for residential, business, motel, community or other such purposes,the Minister may, by notice published in the *Gazette*, declare that consent to the transfer or conveyance of the land is not required under this section.
- (4) If any land to which such a notice relates is land under the *Real Property Act 1900*, the Registrar-General must make an appropriate recording in respect of that land in the Register kept under that Act.

- (5) Subsections (1) and (2) do not apply to:
  - (a) any transfer of a sublease or mortgage, or
  - (b) any conveyance effected for the purpose of creating, assigning or extinguishing a sublease, mortgage or easement, or
  - (c) any land the subject of a notice referred to in subsection (3).
- (6) The following provisions apply to the subleasing of land held under a lease (the *head lease*):
  - (a) the sublease must specify the purpose for which the land may be used under the sublease, being a purpose that is consistent with the purpose for which the land may be used under the head lease,
  - (b) the head lessee must notify the Commissioner of the granting of the sublease within 28 days after it is granted,
  - (c) the head lessee must take all reasonable steps to ensure that the sublessee complies with the requirements of this Act and the conditions of the head lease with respect to the land.

**[7] Section 28BA Forfeiture of lease**

Omit “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” from section 28BA (1).

Insert instead “the lease is liable to be forfeited”.

**[8] Section 28BB Purchase of land held under certain leases**

Omit section 28BB (1). Insert instead:

- (1) This section applies to any of the following leases (other than a lease that has become liable to forfeiture):
  - (a) a lease for residential, business, motel, community or other such purposes, but not for grazing or pastoral purposes (either alone or in combination with other purposes),

- (b) a lease for agricultural or mixed farming purposes, being a lease that was originally granted for those purposes, where:
  - (i) the lease was granted before 23 December 1996, or
  - (ii) the lease was granted on or after 23 December 1996, and the granting of the lease is a past act, or
  - (iii) the lease was granted on or after 23 December 1996 in respect of land in respect of which an earlier lease for grazing or pastoral purposes had previously been granted, where the granting of the earlier lease is a past act, or
  - (iv) the lease was granted on or after 23 December 1996 in respect of land that had been the subject of a previous exclusive possession act,
- (c) a lease for agricultural or mixed farming purposes, being a lease that was originally granted for grazing or pastoral purposes, but was subsequently altered, pursuant to section 18J, to a lease for agricultural or mixed farming purposes, where:
  - (i) the alteration occurred before 23 December 1996, or
  - (ii) the alteration occurred on or after 23 December 1996, and is a past act, or
  - (iii) the alteration occurred on or after 23 December 1996, and the land the subject of the lease had previously been the subject of an earlier lease for grazing or pastoral purposes, where the granting of the earlier lease is a past act, or
  - (iv) the alteration occurred on or after 23 December 1996, and the land the subject of the lease had been the subject of a previous exclusive possession act,

where *previous exclusive possession act* and *past act* have the meanings given to them by sections 23B and 228, respectively, of the *Native Title Act 1993* of the Commonwealth.

**[9] Section 35N Agreements relating to betterment schemes**

Insert “, conservation, environmental protection or monitoring” after “productivity” in section 35N (1).

**[10] Section 43B Power to withdraw for public purposes**

Omit “(not exceeding 80 hectares)” from section 43B (1).

**[11] Section 49 Offences**

Omit section 49 (1) (f).

**[12] Section 50**

Omit the section. Insert instead:

**50 Appeal to Land and Environment Court against forfeiture of leases**

- (1) A lessee may appeal to the Land and Environment Court against any declaration of forfeiture made under section 129 of the *Crown Lands Act 1989* (as adopted by Schedule 2).
- (2) Subject to any order of the Land and Environment Court, the making of the appeal does not stay the effect of the declaration.

**[13] Schedule 1 (as renumbered by Schedule 5 [21])**

Omit paragraph (c). Insert instead:

- (c) To carry out the control of noxious weeds (within the meaning of the *Noxious Weeds Act 1993*) as directed by the Director-General of the Department of Agriculture, by the Minister administering that Act or by an authorised officer within the meaning of that Act.

**[14] Schedule 2 (as renumbered by Schedule 5 [22])**

Omit “for residential, business, motel, community or similar purposes,” from the matter relating to Division 1 of Part 4 of the *Crown Lands Act 1989*.

Insert instead “the subject of a lease to which section 28BB of the *Western Lands Act 1901* applies,”.

**[15] Schedule 2 (as renumbered by Schedule 5 [22])**

Insert at the end of the matter relating to Division 2 of Part 4 of the *Crown Lands Act 1989*:

, except that it is to be read as including the following provision:

**40A Land use to be consistent with ecologically sustainable development**

The Minister is not to sell land within the Western Division unless satisfied that the use of the land for the purposes for which the purchaser proposes to purchase the land is ecologically sustainable.

**[16] Schedule 2 (as renumbered by Schedule 5 [22])**

Insert at the end of the matter relating to Division 4 of Part 4 of the *Crown Lands Act 1989*:

and the Division is taken to include the following provision:

**50A Licences may be granted over land subject to Western Lands lease**

The Minister may grant a licence for any purpose over land the subject of a lease granted under the *Western Lands Act 1901*, but only with the consent of the lessee of that land.

**[17] Schedule 2 (as renumbered by Schedule 5 [22])**

Omit the matter relating to Division 5 of Part 4 of the *Crown Lands Act 1989*.

Insert instead:

Division 5 (Easements)—the whole Division, except paragraphs (a) and (b) of the definition of *prescribed land* in section 51.

**[18] Schedule 2 (as renumbered by Schedule 5 [22])**

Insert “leases granted under the *Western Lands Act 1901* and” after “but only in respect of” in the matter relating to Part 6 of the *Crown Lands Act 1989*.

**[19] Schedule 3 (as renumbered by Schedule 5 [23])**

Insert before Part 1A:

## **Part 1 Preliminary**

### **1AAA Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Western Lands Amendment Act 2002*

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

**[20] Schedule 3 (as renumbered by Schedule 5 [23])**

Insert after Part 1D:

**Part 2 Provisions consequent on enactment of  
Western Lands Amendment Act 2002**

**4 Definitions**

In this Part:

*the 2002 amending Act* means the *Western Lands Amendment Act 2002*.

*the amended Schedule*, followed by a number, means the corresponding Schedule to this Act, as amended by the 2002 amending Act.

**5 Conditions under section 18**

The substitution of section 18 by the 2002 amending Act does not limit or otherwise affect the conditions of any lease granted before the substitution of that section.

**6 Transfers under section 18G**

Nothing in the *Crown Lands Act 1989* (as applied by the amended Schedule 2) affects any dealing for which a consent had been given under section 18G before the substitution of that section by the 2002 amending Act.

**7 Forfeitures under section 50**

If notice of the proposed forfeiture of a lease had been served on a lessee under section 50 before the repeal of that section by the 2002 amending Act:

- (a) that section continues to apply, and
- (b) the provisions of Part 6 of the *Crown Lands Act 1989* (as applied by the amended Schedule 2) do not apply,

to the forfeiture of the lease.

## **8 Application of Schedule 1**

The amended Schedule 1 applies to leases granted before its amendment by the 2002 amending Act in the same way as it applies to leases granted after its amendment.

## **9 Application of Schedule 2**

- (1) The amended Schedule 2 applies to matters arising before its amendment by the 2002 amending Act in the same way as it applies to matters arising after its amendment.
- (2) However, in its application to a lease granted before the commencement of the *Western Lands (Amendment) Act 1989*, the powers of forfeiture conferred by section 129 of the *Crown Lands Act 1989* (as applied by the amended Schedule 2) are exercisable only in accordance with the terms of the lease.

## **10 Continuation of former rents**

- (1) This clause applies to any lease for which a rental period had begun, but not ended, on the commencement of Schedule 2 to the 2002 amending Act.
- (2) If the annual rent payable for a rural holding or urban lease under the new Part 6 (as inserted by Schedule 2 to the 2002 amending Act) is greater than the sum of the rents payable for the relevant lease or leases under the old Part 6 (as in force immediately before the commencement of that Schedule), the annual rent for that lease or those leases for the remainder of the current rental period is the sum of the rents payable under the old Part 6.
- (3) For the purposes of this clause, *current rental period* means the rental period under section 19C (as in force immediately before the commencement of Schedule 2 to the 2002 amending Act) and, if that period expires after that commencement otherwise than on 30 June in any year, includes the further period up to the end of the following 30 June.

## **11 Application of section 28BB and Schedule 4**

The provisions of section 28BB and the amended Schedule 4 apply to leases granted before the commencement of their amendment by the 2002 amending Act in the same way as they apply to leases granted after their amendment.



**[21] Schedule 4 (as renumbered by Schedule 5 [24])**

Insert after clause 3 (2):

- (3) The Minister may not grant an application in relation to land the subject of a lease for any purpose unless satisfied that the continued use of the land for that purpose is ecologically sustainable.

**[22] Schedule 4 (as renumbered by Schedule 5 [24])**

Omit clauses 14 and 15.

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## **Schedule 5 Amendments by way of statute law revision**

(Section 3)

**[1] Section 1**

Omit the section. Insert instead:

**1 Name of Act**

This Act is the *Western Lands Act 1901*.

**[2] Section 2A Application of Crown Lands Act 1989**

Omit “Schedule B” wherever occurring. Insert instead “Schedule 2”.

**[3] Section 2B Savings, transitional and other provisions**

Omit “Schedule C”. Insert instead “Schedule 3”.

**[4] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*Department* means the Department of Land and Water Conservation.

**[5] Section 11 Appointment of staff**

Omit “*Public Service Act 1979*”.

Insert instead “*Public Sector Management Act 1988*”.

**[6] Part 3**

Omit the Part.

**[7] Section 18CC Minister may sue for money**

Omit “the Minister for Natural Resources to bring under that name, and”.

Insert instead “the Minister to bring”.

**[8] Section 18DA Cultivation of certain land**

Omit “the *Commons Regulation Act 1898* or the *Pastures Protection Act 1934* from the definition of *occupier* in section 18DA (2).

Insert instead “the *Commons Management Act 1989* or the *Rural Lands Protection Act 1998*”.

**[9] Section 18GA**

Omit the section.

**[10] Section 18H**

Omit the section.

**[11] Section 28BB Purchase of land held under certain leases**

Omit “Schedule D” from section 28BB (2). Insert instead “Schedule 4”.

**[12] Part 8**

Omit the Part.

**[13] Section 33A Surrender**

Insert “18FA or” after “section” in section 33A (1) (b).

**[14] Section 33A (2), (2A) and (2B)**

Omit the subsections. Insert instead:

- (2) A person who holds land under a lease as trustee, executor or administrator may surrender the lease under this section as if a power to that effect were included in the Act or instrument pursuant to which he or she so acts.

**[15] Section 35B**

Omit the section.

**[16] Section 35K Transfers under legal process etc**

Omit section 35K (1).

**[17] Section 35M**

Omit the section.

**[18] Section 44 Power to withdraw for settlement**

Omit section 44 (2) (c).

**[19] Section 44 (3)**

Omit “, but the provisions of section 31 shall apply upon any such redisposal”.

**[20] Section 45**

Omit the section.

**[21] Schedule A**

Re-number as Schedule 1.

**[22] Schedule B Applicable provisions of the Crown Lands Act 1989**

Re-number as Schedule 2.

**[23] Schedule C Savings, transitional and other provisions**

Re-number as Schedule 3.

**[24] Schedule D Provisions relating to purchases of certain leased land**

Re-number as Schedule 4.

[Second reading speech made in—  
Legislative Assembly on 4 June 2002  
Legislative Council on 13 June 2002]