



Western Lands Regulation 2004

under the

Western Lands Act 1901

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Western Lands Act 1901*.

CRAIG KNOWLES, M.P.,

Minister for Natural Resources

Explanatory note

The object of this Regulation is to repeal and remake the *Western Lands Regulation 1997*, which was due to be repealed on 1 September 2003 by section 10 (2) of the *Subordinate Legislation Act 1989*. The repeal was postponed by an order of the Governor under section 11 of that Act.

This Regulation does not make extensive changes to the substance of the *Western Lands Regulation 1997*, but it contains new matter consequent on the enactment of the *Western Lands Amendment Act 2002*.

This Regulation deals with the following matters:

- (a) local land boards, including:
 - (i) the prescription of qualifications for appointment as Chairperson of local land boards, and
 - (ii) the appointment of Registrars for local land boards, and
 - (iii) the conduct of proceedings before local land boards,
- (b) leases under the *Western Lands Act 1901* (*Western Lands leases*), including provisions with respect to:
 - (i) the procedures for extending the term of, purchasing, transferring, exchanging and surrendering a Western Lands lease, and
 - (ii) the payment of rent and other amounts due under a Western Lands lease, and

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Explanatory note

- (iii) the conditions to which a Western Lands lease is subject,
- (c) the prescription of classes of land for which consent to cultivate is required, and the circumstances under which land is exempt from that requirement,
- (d) the fencing of land under a Western Lands lease and the enclosure of roads,
- (e) formal and ancillary matters (such as the commencement of the Regulation).

This Regulation is made under the *Western Lands Act 1901*, including section 36 (the general regulation-making power) and the sections referred to in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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Western Lands Act 1901

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Western Lands Regulation 2004*.

2 Commencement

This Regulation commences on 1 June 2004.

3 Definitions

In this Regulation:

approved deposit, approved fee or *approved form* means a deposit, fee or form approved by the Minister for the purposes of the provision in which the expression is used.

lessee means a lessee under a Western Lands lease.

the Act means the *Western Lands Act 1901*.

Western Lands lease means a lease granted under the Act.

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

Part 2 Local land boards

5 Qualifications for appointment as Chairperson of Local Land Boards: section 9

For the purposes of section 9 (2A) (b) of the Act, the following offices or qualifications are prescribed:

- (a) the office of Magistrate,
- (b) qualification as a legal practitioner of the Supreme Court of New South Wales,
- (c) qualification as a barrister or solicitor, or as a barrister and solicitor, of any court of any other State, or of any Territory, of Australia or of the High Court of Australia,
- (d) the qualification of having knowledge and experience of the Western Division or other relevant knowledge and experience.

6 Registrars of local land boards

- (1) The Commissioner may appoint a Registrar for each administrative district.
- (2) The Commissioner may appoint the same Registrar for 2 or more administrative districts.

7 Matters to be brought before local land board

- (1) All matters are to be brought before a local land board as soon as practicable after the Chairperson receives them (or, if a document is required to be lodged with a Registrar, the Registrar receives the document).
- (2) Subclause (1) does not apply in respect of a matter if the Chairperson or Registrar has power to deal with the matter.

8 Chairperson's power to deal with certain matters: section 9

The Chairperson may deal with any matter specially referred by the Minister or Commissioner to a local land board for investigation with a request that it be dealt with under section 9 (5) (b) of the Act.

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Clause 9 Western Lands Regulation 2004

Part 2 Local land boards

9 Notice of proceedings before local land board

- (1) Notice of the time and place appointed for any proceedings before a local land board, and of the nature of the proceedings:
 - (a) is to be in the approved form, and
 - (b) is to be served on the parties to the proceedings not less than 14 days before the time appointed for the proceedings (or such lesser period as may be directed by the Chairperson).
- (2) If at the time and place appointed it appears that notice has not been given to a party, the board may:
 - (a) order notice to be given for some future day (which may be less than 14 days from the giving of the notice), and
 - (b) in the meantime, adjourn the proceedings.

10 Board's power where notice given and party fails to appear

If a local land board or the Chairperson is satisfied that notice of the time and place of any proceeding has been given to a party, the board or Chairperson may proceed and adjudicate in the absence of that party.

11 Appeals

Except as otherwise provided by the Act, any party to proceedings before a local land board or Chairperson may appeal to the Land and Environment Court from the decision of the local land board or Chairperson at any time within 28 days after it has been given:

- (a) by filing an application in accordance with the rules of court, and
- (b) by paying the appropriate fees in accordance with the regulations made under the *Land and Environment Court Act 1979*.

Part 3 Western Lands leases

Division 1 Extension of terms of Western Lands leases

12 Application for extension of term of Western Lands lease: sections 18E and 28B

- (1) An application under section 18E or 28B of the Act for extension of the term of a Western Lands lease must be made to the Commissioner in the approved form.
- (2) A number of Western Lands leases may be included in one application if they are worked as one holding.
- (3) The relevant fee specified in Schedule 1 must be lodged with the application.

13 Extension of term of mortgaged Western Lands lease to be notified to mortgagee

If the term of a Western Lands lease that is mortgaged is extended pursuant to an application under section 18E or 28B of the Act, notice of the extension is to be served on the mortgagee.

Division 2 Purchase of land held under certain Western Lands leases

14 Applications to purchase land: section 28BB

- (1) An application under section 28BB of the Act to purchase the whole or any part of the land comprised in a Western Lands lease:
 - (a) is to be made to the Commissioner in the approved form endorsed (if the lease is mortgaged) with the consent of the mortgagee, and
 - (b) is to be accompanied by the approved deposit.
- (2) If the deposit is in excess of the cost of dealing with the application the balance must be applied, firstly, to any duty payable and, secondly, to payment of any amount due on the purchase.

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Clause 15 Western Lands Regulation 2004

Part 3 Western Lands leases

Division 3 Payment of rent, interest and survey fees

15 Scaling factor for rent: section 19

- (1) The object of this clause is to determine the scaling factors for the financial year commencing on 1 July 2004 and for subsequent financial years, as referred to in the definition of *scaling factor* in section 19 of the Act.
- (2) The scaling factor for the financial year commencing on 1 July 2004 is 1.0.
- (3) The scaling factor for each subsequent financial year is to be the scaling factor for the immediately preceding financial year plus half the CPI movement.

Note. This formula will result in a reduction in the scaling factor in the case of a downward CPI movement.

- (4) In this clause:

CPI means the index known as the *Weighted Average of Eight Capital Cities: All Groups Consumer Price Index* that is published quarterly by the Australian Statistician.

$$CPI\ movement = \frac{C_1}{C_2} - 1$$

where:

C_1 represents the CPI index for the December quarter for the calendar year immediately preceding the financial year for which the scaling factor is to be determined.

C_2 represents the CPI index for the December quarter for the calendar year immediately preceding the calendar year referred to in the definition of C_1 .

16 Minimum rent for rural holdings and urban leases: sections 20 and 27B

The amount prescribed as the minimum rent for the purposes of sections 20 (2) and 27B (2) of the Act is \$100.

17 Calculations: amounts of money represented by “k”

For the purposes of the calculations required by sections 21–24 of the Act, the symbols k_1 – k_{12} in those sections represent the amounts of money specified in Schedule 2 in respect of each of those symbols.

18 Annual rent for urban leases: section 27B

- (1) For the purposes of section 27B of the Act, the following classes of urban leases are prescribed:
 - (a) Urban (Business), being leases expressed to be granted or issued for business purposes,
 - (b) Urban (General), being all other urban leases.
- (2) For the purposes of the symbol *p* in the formula set out in section 27B (1) of the Act, the following percentages are prescribed:
 - (a) for leases of the Urban (Business) class—6%,
 - (b) for leases of the Urban (General) class—3%.

19 Concessional rent: section 27E

- (1) For the purposes of section 27E (1) of the Act, the following classes of lessee are prescribed:
 - (a) a lessee under a Western Lands lease for the purpose of residence or a similar purpose, being a lessee:
 - (i) whose principal place of residence is a dwelling on the land the subject of the lease, and
 - (ii) who is an eligible pensioner (within the meaning of the *Local Government Act 1993*) or is, in the opinion of the Minister, suffering hardship,
 - (b) a lessee under a Western Lands rural lease, being a lessee:
 - (i) who receives household support from the Rural Assistance Authority, or
 - (ii) who is, in the opinion of the Minister, suffering hardship, or
 - (iii) who, in the opinion of the Minister, contributes appropriate data relating to rangeland condition or other natural resources on the land comprising the lease as part of a program approved by the Commissioner,
 - (c) a lessee that is a community service, sporting or recreational organisation:
 - (i) that is the holder of an authority under the *Charitable Fundraising Act 1991*, or
 - (ii) that is incorporated under the *Associations Incorporation Act 1984*, or

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Clause 20 Western Lands Regulation 2004

Part 3 Western Lands leases

- (iii) that the Minister is satisfied is a non-profit organisation, whose Western Lands lease is used for the purpose of a help or service facility of benefit to the general community or an active sporting, passive recreational or youth advancement facility of general benefit to a local community.
- (2) For the purposes of section 27E (1) of the Act, the following classes of lands are prescribed:
 - (a) such hectares subject to a rural lease on which:
 - (i) cultivation is permitted under the Act for a limited period of time pursuant to a consent under section 18DA of the Act, and
 - (ii) either opportunity cropping on receding floodwaters or the maintenance of open grazing land is specifically authorised,
 - (b) land that:
 - (i) is subject to a Western Lands lease held in the name of the Crown or a statutory body representing the Crown, or
 - (ii) in the opinion of the Minister, is managed by or on behalf of the Crown for non-commercial purposes.

20 Interest on arrears: section 36B

For the purposes of section 36B (2) (d) of the Act, the prescribed rate is the rate prescribed for the time being under section 148 (2) of the *Crown Lands Act 1989*.

21 Interest on sums payable: section 36C

For the purposes of section 36C (2) (c) of the Act, the prescribed rate is the rate prescribed for the time being under section 148 (2) of the *Crown Lands Act 1989*.

22 Holdings in respect of which incoming holder liable to pay arrears: sections 36D and 36E

For the purposes of sections 36D (1) (a) and 36E (1) of the Act, a Western Lands lease is a prescribed class of holding.

23 Survey fees: sections 18E, 18I and 35C

- (1) The cost of any necessary survey payable under section 18E (4) (d) of the Act (relating to the extension of part of a Western Lands lease) must be paid to the Commissioner no later than 60 days after the Commissioner has advised the holder of the lease of the amount payable.
- (2) For the purposes of sections 18I (Survey fee) and 35C (2) (b) of the Act (addition of certain lands to leases), a survey fee or cost calculated according to the scale in Schedule 3 is prescribed.
- (3) A survey fee (other than a subdivision fee) is not to be charged:
 - (a) to a lessee claiming title through a previous holder who has paid the survey fee, or
 - (b) if the Minister has granted permission for the survey to be done by a licensed surveyor employed by the lessee.
- (4) Survey fees or costs are payable to the Commissioner.

Division 4 Transfer of Western Lands leases**24 Minister's consent to transfer: section 18G**

- (1) An application for the Minister's consent under section 18G (1) of the Act is to be made in an approved form and accompanied by the relevant fee specified in Schedule 1.
- (2) A consent given under the former section 18G of the Act within the period of 6 months before the replacement of that section by the *Western Lands Amendment Act 2002* is taken to be a consent under the new section 18G of the Act.
- (3) An application for a Minister's certificate under subsection (1E) of the former section 18G of the Act that had not been determined before the replacement of that section by the *Western Lands Amendment Act 2002* is to be determined in accordance with that section as if it had not been replaced.
- (4) A Minister's certificate under subsection (1E) of the former section 18G of the Act, including a certificate issued under that subsection pursuant to subclause (3), is taken to be a declaration under subsection (3) of the new section 18G of the Act.

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Clause 25 Western Lands Regulation 2004

Part 3 Western Lands leases

Division 5 Miscellaneous

25 Fencing claims and disputes: section 18B

- (1) A claim under section 18B of the Act for a contribution towards a fence or the cost of maintenance and repair of a fence, or any other dispute or claim as to fencing, may be brought before a local land board by lodging with the Commissioner a notice in the approved form accompanied by the approved deposit towards the cost of dealing with the claim or dispute.
- (2) The local land board may decline to take any action on the claim unless the claimant causes a copy of the notice to be served on the other party, or parties, within 14 days of its lodgment with the Commissioner.

26 Alteration of conditions of Western Lands leases: section 18J

An application for the variation, modification or revocation of or addition to a covenant, condition, purpose or provision of a Western Lands lease may be made to the Commissioner in the approved form accompanied by the approved deposit.

Part 4 Consents to cultivation

27 Land for which consent to cultivation is required: section 18DA

- (1) For the purposes of section 18DA (1A) of the Act, the following classes of land are prescribed:
 - (a) land held under the following tenures continued in force under the *Crown Lands (Continued Tenures) Act 1989*:
 - (i) a permissive occupancy,
 - (ii) a conditional lease,
 - (iii) a homestead selection,
 - (b) a reserve within the meaning of Part 5 of the *Crown Lands Act 1989* for which there is a reserve trust or of which a local government authority has the care, control and management,
 - (c) a common within the meaning of the *Commons Management Act 1989* having an area of more than 5,000 square metres,
 - (d) a stock watering place within the meaning of the *Rural Lands Protection Act 1998* having an area of more than 5,000 square metres,
 - (e) land authorised to be used or occupied under a licence under Part 4 of the *Crown Lands Act 1989*.
- (2) For the purposes of paragraph (a) of the definition of *occupier* in section 18DA (2) of the Act, a homestead selection referred to in subclause (1) (a) (iii) is a prescribed tenure.
- (3) The fees to be lodged with applications under section 18DA of the Act for consent to cultivate land are specified in Schedule 1.

28 Circumstances in which consent to cultivation is not required: section 18DA

- (1) Consent to the cultivation of land is not required to be obtained under section 18DA of the Act in any of the circumstances specified in Schedule 4.
- (2) An exemption from the requirement for consent to cultivation does not authorise:
 - (a) cultivation in contravention of conditions applying to a Western Lands lease under the Act, or
 - (b) cultivation that is contrary to any direction given by the Commissioner, or

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Clause 28 Western Lands Regulation 2004

Part 4 Consents to cultivation

- (c) cultivation on a sand dune or sandhill, except in the circumstances referred to in clause 3 of Schedule 4, or
 - (d) cultivation in a State forest, timber reserve or flora reserve under the *Forestry Act 1916*.
- (3) Cultivation without consent in the circumstances referred to in clause 4 or 5 of Schedule 4 may be carried out only if:
- (a) written notification of the intention to cultivate was given to the nearest office of the Western Division of the Department not less than 2 weeks before the commencement of cultivation, and
 - (b) a written authorisation (which may be subject to conditions) was obtained from the Commissioner before commencement of the cultivation.
- (4) A written notification and written authorisation as specified in subclause (3) are also required if rabbit ripping is to be undertaken without consent in the circumstances referred to in clause 3 of Schedule 4 within 20 metres on the landward side of the bed or bank of a lake, or of an ancient lake.
- (5) Cultivation without consent in the circumstances referred to in clause 6 of Schedule 4 may be carried out only if a written authorisation (which may be subject to conditions) was obtained from the Commissioner before commencement of the cultivation.
- (6) Despite the exemptions in this clause, the Commissioner may, if the Commissioner considers it appropriate, require an application for consent under section 18DA of the Act in respect of any cultivation to which that section applies.
- (7) In subclause (4), ***ancient lake*** means land that formerly constituted a lake and that is distinguishable from its surrounding land by such features as its soil and vegetation and by a reasonably defined shore.

Part 5 General

29 Fencing, enclosure of roads

- (1) An application for:
 - (a) permission to erect a “give-and-take” fence, or
 - (b) exemption from fencing any boundary, or
 - (c) extension of time to complete fencing, or
 - (d) suspension of the condition of fencing or improvement, or
 - (e) permission to enclose a road,is to be made to the Commissioner in the approved form accompanied by the approved fee.
- (2) The Commissioner is to give notice of the time and place appointed for consideration of an application to the holder of any land that appears to be directly affected by it.

30 Surrenders: section 33A

- (1) A surrender under section 33A of the Act of any land the subject of a Western Lands lease is to be lodged with the Commissioner in the approved form endorsed (if any land to be surrendered is mortgaged) with the consent of the mortgagee.
- (2) Unless the surrender is made at the instance or for the benefit of the Crown, the approved deposit towards the cost of dealing with the surrender must accompany the instrument of surrender.
- (3) The Minister may continue to take any action under section 33A of the Act (including in relation to the transfer of Crown land in exchange for freehold land) that had been begun before the amendment of that section by the *Western Lands Amendment Act 2002*, and section 33A, as in force immediately before that amendment, continues to have effect in relation to anything arising from that action as if that section had not been so amended.

31 Waiver or refund of fees, costs, deposits or interest

The Minister may waive or refund the whole or any part of any fee, cost, deposit or interest paid or payable under the Act or this Regulation.

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Clause 32 Western Lands Regulation 2004

Part 5 General

32 Repeal

- (1) The *Western Lands Regulation 1997* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Western Lands Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Fees

(Clauses 12, 24 and 27)

| | | |
|---|--|-------|
| 1 | Application under section 18E or 28B of the Act for extension of the term of a Western Lands lease (clause 12) | \$186 |
| | And, in addition, for each Western Lands lease in the application after the first lease | \$21 |
| 2 | Application under section 18G (1) of the Act for the consent of the Minister to transfer (clause 24) | \$186 |
| | And, in addition, where consideration of the application involves an inspection of the land | \$265 |
| 3 | Application under section 18DA of the Act for consent to cultivate land (clause 27) | \$529 |

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Schedule 2 Amounts represented by "k"

Schedule 2 Amounts represented by "k"

(Clause 17)

| Symbol | Land to which symbol relates | \$ Amount |
|-----------------|--|------------------|
| k ₁ | each hectare of the first 1,000 hectares of a rural holding | 0.30 |
| k ₂ | each hectare of the second to fifth 1,000 hectares (inclusive) of a rural holding | 0.05 |
| k ₃ | each hectare of the sixth to tenth 1,000 hectares (inclusive) of a rural holding | 0.03 |
| k ₄ | each hectare of the eleventh to twentieth 1,000 hectares (inclusive) of a rural holding | 0.015 |
| k ₅ | each hectare of the twenty-first to thirtieth 1,000 hectares (inclusive) of a rural holding | 0.008 |
| k ₆ | each hectare of the thirty-first to fiftieth 1,000 hectares (inclusive) of a rural holding | 0.003 |
| k ₇ | each hectare in a rural holding after the fifty-thousandth | 0.001 |
| k ₈ | each hectare of land in a rural holding on which cultivation is permitted under the Act for a limited period of time pursuant to a consent under section 18DA of the Act | 0.30 |
| k ₉ | each hectare of land in a rural holding on which cultivation is permitted under the Act indefinitely | 0.40 |
| k ₁₀ | each hectare in a rural holding which, in the opinion of the Commissioner, is being used for or in connection with intensive agriculture | 2.30 |
| k ₁₁ | each hectare in a rural holding on which, in the opinion of the Commissioner, managed rehabilitation is being carried out on a temporary basis | 0.30 |
| k ₁₂ | each hectare in a rural holding on which, in the opinion of the Commissioner, managed rehabilitation is being carried out on a permanent basis | 0.40 |

Schedule 3 Survey fees

(Clause 23)

Area in square metres

| | |
|---|-------|
| 2,000 or less | \$434 |
| exceeding 2,000 but not exceeding 4,000 | \$492 |
| exceeding 4,000 but less than 10,000 | \$578 |

Area in hectares

| | |
|---|---------|
| 1 or more but not exceeding 5 | \$810 |
| exceeding 5 but not exceeding 10 | \$984 |
| exceeding 10 but not exceeding 25 | \$1,158 |
| exceeding 25 but not exceeding 50 | \$1,444 |
| exceeding 50 but not exceeding 75 | \$1,734 |
| exceeding 75 but not exceeding 100 | \$1,906 |
| exceeding 100 but not exceeding 150 | \$2,196 |
| exceeding 150 but not exceeding 200 | \$2,488 |
| exceeding 200 but not exceeding 300 | \$2,890 |
| exceeding 300 but not exceeding 400 | \$3,295 |
| exceeding 400 but not exceeding 500 | \$3,643 |
| exceeding 500 but not exceeding 600 | \$3,987 |
| exceeding 600 but not exceeding 800 | \$4,392 |
| exceeding 800 but not exceeding 1,000 | \$4,915 |
| exceeding 1,000 but not exceeding 1,200 | \$5,375 |

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Schedule 3 Survey fees

| | |
|---|--|
| exceeding 1,200 but not exceeding 1,500 | \$5,779 |
| exceeding 1,500 but not exceeding 2,000 | \$6,646 |
| exceeding 2,000 but not exceeding 8,000 | \$6,646 plus \$289 for every 500 hectares (or part of 500 hectares) in excess of 2,000 |
| exceeding 8,000 | \$10,113 plus \$289 for every 1,000 hectares (or part of 1,000 hectares) in excess of 8,000 |

Schedule 4 Circumstances in which consent to cultivation is not required

(Clause 28)

- 1** If the land is held under a Western Lands lease, or under a licence or other tenure, granted or issued for the purpose of agriculture, grazing and agriculture combined or mixed farming, or for any similar purpose.
- 2** If the cultivation is in connection with rehabilitation works undertaken by or under the direct guidance of the Department.
- 3** If the cultivation is in connection with rabbit ripping undertaken as part of a planned rabbit control program.
- 4** If the cultivation is to be carried out on a once only basis to control noxious plants on land that is not:

 - (a) within 20 metres of the bank of a stream or watercourse, or
 - (b) on a sand dune or a sandhill, or
 - (c) within 20 metres of the edge of the carriageway of the constructed portion of a road under the control of the Roads and Traffic Authority or a local government authority.
- 5** If the cultivation is to be carried out on a once only basis to allow the introduction of native or introduced pasture.
- 6** If the cultivation is to be carried out on research, experimental or demonstration plots (not exceeding a total area of 10 hectares) that have been established as part of a program conducted by officers of the Department or by officers of the Department of Agriculture, the Commonwealth Scientific and Industrial Research Organisation or any other organisation approved by the Commissioner.
- 7** If the cultivation is being carried out to provide a firebreak not more than 30 metres wide (or 100 metres where mallee species predominate on adjacent land) and is not within one kilometre of any other land held by the lessee, licensee or occupier which has been cultivated for a firebreak.
- 8** If the land is not more than 30 metres wide and is being cultivated in direct connection with the formation of a road, the construction

of tank drains for water diversion or the maintenance of the perimeters of an airstrip.

- 9** If the cultivation is to be of an area of 5,000 square metres or less, failure to cultivate would impede the authorised use of the land and the cultivation is being undertaken by or at the direction of a reserve trust, commons trust, rural lands protection board or local government authority with direct responsibility for the care, control and management of the land.