

[Act 2002 No 68]



New South Wales

## Western Lands Amendment Bill 2002

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

#### Overview of Bill

The object of this Bill is to amend the *Western Lands Act 1901* so as:

- (a) to facilitate the creation of a formal network of public roads and rights of way in the Western Division of New South Wales, and
- (b) to establish a new system for making annual rent determinations under that Act,
- (c) to establish a Western Lands Advisory Council to provide advice to the Minister with respect to the administration of the Act, and
- (d) to include an objects clause in the Act, and
- (e) to extend the powers of delegation that may be exercised by the Minister and the Western Lands Commissioner under the Act, and
- (f) to relax the restrictions that currently apply to transfers and other dealings with respect to lands held under a Western lands lease, and

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\* Amended in committee—see table at end of volume.

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- (g) to adopt the provisions of the *Crown Lands Act 1989* with respect to the forfeiture of Western lands leases, while preserving the rights of appeal that currently exist in connection with the forfeiture of such leases, and
- (h) to extend the range of purposes for which land the subject of a Western lands lease may be purchased, and for which Crown lands in the Western Division may be sold, and
- (i) to ensure that the conversion or sale of land the subject of a Western lands lease can proceed only if the purpose for which the land is to be used is ecologically sustainable, and
- (j) to remove a limit on the amount of land that may be withdrawn from a Western lands lease for public purposes, and to allow licences for public purposes to be granted by the Minister over land the subject of a Western lands lease, but only with the consent of the holder of the lease, and
- (k) to enact miscellaneous amendments by way of statute law revision, and
- (l) to enact consequential savings and transitional provisions.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Western Lands Act 1901* set out in Schedules 1–5.

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

The majority of roads and tracks in the Western Division have never been formally established or dedicated, but exist as informal routes of communication identifiable only by their use. **Proposed Part 9C**, to be inserted by **Schedule 1 [1]**, establishes a mechanism for formally recognising their status as public roads and rights of way.

Public roads are dealt with in **proposed Division 1**.

**Proposed section 35Q** enables the Minister to withdraw land from a Western Lands lease and dedicate it as a public road (under the *Roads Act 1993*) if satisfied that the land is being used as a road by members of the public. No compensation will be payable in respect of the dedication of a public road under the proposed section.

Rights of way are dealt with in **proposed Division 2**.

**Proposed section 35R** is a definitions section.

**Proposed section 35S** enables the Minister to create easements for the purposes of a right of way over land in the Western Division (other than freehold land) if satisfied that the land is being used as a road or track by members of the public. Action under the proposed section will only be able to be taken in respect of land held under a Western Lands lease if the lessee of the land concerned requests the creation of the right of way. The instrument creating a right of way will identify which classes of people are to have the benefit of the easement.

**Proposed section 35T** enables the Minister to release an easement referred to in proposed section 35S. Action under the proposed section will only be able to be taken if both the lessee of the encumbered land and each beneficiary of the easement request its release.

**Proposed section 35U** enables a dispute over a proposal to create or release an easement to be referred to a local land board for mediation. Participation in mediation proceedings is to be voluntary. The parties to the proceedings are to bear their own costs. Evidence in the proceedings is to be inadmissible in other proceedings, and the local land board and the parties are to have the same protections and immunities as apply to civil proceedings before a Local Court.

**Schedule 1 [2]** makes a consequential amendment to Schedule A.

## **Schedule 2 Amendments with respect to rent**

The determination of annual rent for Western Lands leases is dealt with by Part 6. Part 6 is to be substituted by **proposed Schedule 2 [2]**.

Preliminary matters are dealt with in **proposed Division 1**.

**Proposed section 19** is a definitions section.

Rural holdings are dealt with in **proposed Division 2**.

**Proposed section 20** provides that, subject to minimum rent requirements, the annual rent for a rural holding (that is, a number of leases in the same ownership that constitute a single holding) is to comprise a base rent, plus a cultivation charge and an intensive agriculture charge, reduced by a rehabilitation rebate.

**Proposed section 21** sets out the means by which the base rent of a holding is to be calculated. The amount is to be set by an amount of money per hectare that reduces as the size of the holding increases.

**Proposed section 22** sets out the means by which the cultivation charge of a holding is to be calculated. The amount of the charge is to be set by reference to the area of land in the holding on which cultivation is permitted under the Act, with one rate for land on which cultivation is permitted on a temporary basis, and a higher rate for land on which cultivation is permitted on a permanent basis.

**Proposed section 23** sets out the means by which the intensive agriculture charge of a holding is to be calculated. The amount of the charge is to be set by reference to the area of land in the holding that is used for or in connection with intensive agriculture.

**Proposed section 24** sets out the means by which the rehabilitation rebate for a holding is to be calculated. The amount of the rebate is to be set by reference to the area of land in the holding that is under managed rehabilitation, with one rate for land that is under temporary rehabilitation and a higher rate for land that is under permanent rehabilitation.

**Proposed section 25** requires annual rents to be assessed each year on the basis of the circumstances of each holding as at 1 April. The rent for a holding becomes due on 1 July.

**Proposed section 26** provides for a review by a local land board of any decision of the Western Lands Commissioner as to whether specified land is or is not a single holding, whether cultivation is or is not permitted under the Act on the whole or any part of a holding, whether the whole or any part of a holding is being used for or in connection with intensive agriculture, or whether managed rehabilitation is or is not being carried out on the whole or any part of a holding.

**Proposed section 27** provides for an appeal to the Land and Environment Court from a decision of the local land board under proposed section 26.

**Proposed section 27A** enables the Minister to establish guidelines with respect to the assessment of annual rents for rural holdings following consultation with the proposed Western Lands Advisory Council.

Urban leases are dealt with in **proposed Division 3**.

**Proposed section 27B** provides that, subject to minimum rent requirements, the annual rent for an urban lease is to be calculated by multiplying the land value of the land by a percentage fixed by the regulations.

**Proposed section 27C** requires annual rents to be assessed each year on the basis of the land values as at 1 April. The rent for an urban lease becomes due on 1 July.

Miscellaneous matters are dealt with in **proposed Division 4**.

**Proposed section 27D** enables the Minister to publish an order in the Gazette declaring different classes of Western lands leases to be either rural leases or urban leases for the purposes of the proposed Part.

**Proposed section 27E** enables the Minister to waive, reduce, remit or postpone payment of annual rent with respect to different classes of Western lands lessees and different classes of lands prescribed by the regulations.

**Proposed Schedule 2 [1], [3] and [4]** are consequential amendments.

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

A Western Lands Advisory Council is to be constituted by proposed sections 8B and 8C (**Schedule 3 [1]**).

**Proposed section 8B** establishes the Council, and provides that the Council is to have 14 members representative of various persons and bodies having an interest in the Western Division.

**Proposed section 8C** sets out the principal functions of the Western Lands Advisory Council, which are to be as follows:

- (a) to advise the Minister on matters relevant to the objects of the 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.

Further provisions with respect to the constitution and procedure of the Western Lands Advisory Council are set out in proposed Schedule 5 (**Schedule 3 [2]**).

## Schedule 4 Miscellaneous amendments

### Objects clause

**Schedule 4 [1]** inserts an objects clause (**proposed section 2**) into the Act. The proposed objects of the 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.

### Delegation powers of Minister and Western Lands Commissioner

It is proposed to extend the delegation powers of the Minister and the Western Lands Commissioner so as to enable them to delegate their functions to public and local authorities (**Schedule 4 [2] and [3]**). In substituting the relevant sections (sections 8A and 12A), those provisions that merely replicate corresponding provisions in section 49 of the *Interpretation Act 1987* have been omitted.

### Dealings in leased land

It is proposed to substitute section 18G (**Schedule 4 [5]**). The new section prohibits the conveyance (of “old system” land) or transfer (of “Torrens title” land) in respect of land held under a Western lands lease except with the consent of the Minister. The requirement for consent can be excluded by the Minister (in relation only to small parcels of land used for residential or commercial purposes) by notice published in the Gazette. The prohibition does not extend to conveyances effected for the purpose of creating or extinguishing a sublease, mortgage or easement, but certain conditions are to be imposed on the granting of subleases.

The new section differs from the old in that the old section currently requires the Minister's consent for almost all dealings in respect of land held under a Western lands lease. A consequential amendment is made to section 49 (**Schedule 4 [10]**).

### **Forfeiture of leases**

It is proposed to amend Schedule B so as to adopt the provisions of the *Crown Lands Act 1989* with respect to the forfeiture of leases (**Schedule 4 [17]**). Consequential amendments are made by **Schedule 4 [4]** (comprising the substitution of section 18 in a simplified form), **[6]** and **[11]**.

### **Purchase by way of conversion of lease to sale**

Currently, the holder of a Western lands lease can convert the lease to a purchase only if the land is used for residential, business, motel or similar purposes. It is proposed to amend section 28BB so as to extend the range of purposes to include agricultural and community purposes, subject to appropriate protection of native title interests, so that the only land not able to be converted in this manner will be land the subject of a lease for grazing or pastoral purposes (**Schedule 4 [7]**). A similar amendment is made to Schedule B in relation to the purposes for which land in the Western Division may be sold pursuant to the adopted provisions of the *Crown Lands Act 1989* (**Schedule 4 [13]**).

### **Promotion of ecologically sustainable development**

It is proposed to amend Schedule B (with respect to the sale of land pursuant to the adopted provisions of the *Crown Lands Act 1989*) and Schedule D (with respect to the conversion of land pursuant to section 28BB) so as to ensure that the sale or conversion will proceed only if the Minister is satisfied that the use of the land concerned for the purchaser's proposed purpose is ecologically sustainable (**Schedule 4 [14]** and **[20]**).

### **Withdrawal of land from lease for public purposes**

Currently, the maximum area of land that can be withdrawn from a lease for public purposes is 80 hectares. It is proposed to amend section 43B so as to remove this limit (**Schedule 4 [9]**). It is further proposed to amend Schedule B so as to enable the Minister to grant a licence over land the subject of a Western lands lease pursuant to the adopted provisions of the *Crown Lands Act 1989*, but only with the consent of the holder of the lease (**Schedule 4 [15]**).

### **Miscellaneous amendments**

Other minor amendments include:

- (a) an amendment to section 35N so as to extend the range of matters in respect of which the Minister can enter into an agreement under that section (**Schedule 4 [8]**), and
- (b) an amendment to Schedule A so as to update certain references in paragraph (c) with respect to noxious weeds (**Schedule 4 [12]**), and
- (c) an amendment to Schedule B so as to extend the operation of the adopted provisions of the *Crown Lands Act 1989* with respect to easements over “Torrens title” land and land the subject of a lease in perpetuity (**Schedule 4 [16]**), and
- (d) an amendment to Schedule D so as to omit clauses 14 and 15 and so enable a more flexible approach to be taken to payments made in relation to land being purchased under the provisions of section 28BB (**Schedule 4 [21]**).

### **Savings and transitional provisions**

**Schedule 4 [18]** amends Schedule C so as to enable regulations of a savings or transitional nature to be made in connection with the proposed Act.

**Schedule 4 [19]** amends Schedule C so as to enact specific savings and transitional provisions in connection with the proposed Act.

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

**Schedule 5** makes a number of amendments to the Act by way of statute law revision, including:

- (a) the repeal of obsolete provisions (**Schedule 5 [6], [9], [10], [12] and [15]–[20]**), and
- (b) the renumbering of Schedules A–D as Schedules 1–4 so as to facilitate the conversion of legislation into an SGML (Standard Generalised Markup Language) format (**Schedule 5 [2], [3], [11] and [21]–[24]**), and
- (c) the updating of certain obsolete references (**Schedule 5 [5], [7] and [8]**), and
- (d) the enactment of other minor and consequential amendments (**Schedule 5 [1], [4], [13] and [14]**).