

Passed by both Houses



New South Wales

Western Lands Amendment Bill 2009

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2009*



New South Wales

Western Lands Amendment Bill 2009

Act No , 2009

An Act to amend the *Western Lands Act 1901* as a result of a statutory review under section 3B of that Act; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Western Lands Amendment Act 2009*.

2 Commencement

(1) This Act commences on the date of assent to this Act, subject to subsection (2).

(2) Schedule 2 [24] commences on a day 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 and 2.

4 Amendment of other Acts and instruments

Each Act and instrument listed in Schedule 3 is amended as set out in that Schedule.

5 Repeal of Western Lands Amendment Act 2002 No 68

The *Western Lands Amendment Act 2002* is repealed.

6 Repeal of Act

(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.

(2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Principal amendments

(Section 3)

[1] Section 2 Objects of Act

Insert “, and to facilitate new land uses and development opportunities for land in the Western Division” after “Western Division” in section 2 (a).

[2] Section 2 (f)

Insert “, having regard to both the indigenous and non-indigenous cultural heritage of the Western Division” after “Western Division”.

[3] Section 3 Definitions

Omit the definition of *Local Land Board* from section 3 (1). Insert instead:

Local Land Board means a local land board constituted under the *Crown Lands Act 1989*.

[4] Section 8B Western Lands Advisory Council

Omit “14” from section 8B (2). Insert instead “15”.

[5] Section 8B (2) (f)

Insert “Climate Change and” before “the Environment”.

[6] Section 8B (2) (g) and (g1)

Omit section 8B (2) (g). Insert instead:

(g) one is to be appointed to represent the interests of the Minister for Primary Industries, and

(g1) one is to be appointed to represent the interests of the Minister for Mineral Resources, and

[7] Section 9 Power to establish administrative districts

Omit section 9 (2)–(7).

[8] Sections 9A, 10 and 10A

Omit the sections.

[9] Sections 18A and 18B

Omit the sections. Insert instead:

18A Condition of fencing

- (1) The Commissioner may from time to time, by order in writing, direct that:
 - (a) the boundaries of any leased land, or any specified part of those boundaries, or
 - (b) any specified part or parts of leased land,be fenced within such period, and with such kind of fencing, as is specified in the order.
- (2) An order under subsection (1) (a) may apportion the costs of complying with the order between the lessee of the leased land concerned and the owner or lessee of any adjoining land along the boundaries of that land.
- (3) The order is to be served on the lessee of the leased land and, in the case of an order that apportions costs as referred to in subsection (2), on the owner or lessee of the adjoining land.
- (4) Each lease is subject to a condition that the lessee will comply with the requirements of any order in force under this section in relation to the fencing of the leased land.
- (5) An order under this section may authorise the erection or use as a boundary fence of any fence that, although not on a boundary, will in the Commissioner's opinion serve the purposes of a boundary fence.
- (6) An appeal lies to a local land board against any order under this section.

Note. Pursuant to section 26 of the *Crown Lands Act 1989*, a party to proceedings on an appeal under this section may appeal to the Land and Environment Court against the local land board's decision on the appeal.

18B Recovery of contributions from adjoining landowners

- (1) This section applies in circumstances in which an order under section 18A (1) (a) apportions the costs of complying with the order between two or more persons, as referred to in section 18A (2).
- (2) If, in complying with the order, a person incurs costs in excess of his or her due proportion under the order, the person may recover the excess, as a debt in a court of competent jurisdiction, from any other person or persons to whom the order apportions the costs.

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- (3) In any proceedings for recovery of such a debt, the certificate of the Commissioner as to the making and contents of the order is evidence of the matters set out in the certificate.

[10] Section 18C Local land board's decision as to fencing

Omit the section.

[11] Part 9C, heading

Omit “and rights of way”. Insert instead “, **rights of way and easements**”.

[12] Section 35QA

Insert after section 35Q:

35QA Public roads over freehold land

The Minister may create public roads over freehold land by acquiring the land under Part 12 of the *Roads Act 1993* and dedicating the land so acquired as a public road under Part 2 of that Act.

[13] Part 9C, Division 3

Insert after Division 2 of Part 9C:

Division 3 Easements to maintain Border Fences

35UA Definitions

In this Division:

Border Fence means the Queensland Border Fence, or the South Australian Border Fence, within the meaning of the *Wild Dog Destruction Act 1921*.

fenced portion of the State boundary means:

- (a) so much of the boundary between New South Wales and Queensland as extends west from a point at latitude 29° 0' 0" South, longitude 144° 34' 1.6" East, for a distance of approximately 349 kilometres to the intersection of the New South Wales, Queensland and South Australia State boundaries, and
- (b) so much of the boundary between New South Wales and South Australia as extends north from a point at latitude 31° 1' 37.4" South, longitude 141° 0' 0" East, for a distance of approximately 257 kilometres to the intersection of the New South Wales, Queensland and South Australia State boundaries.

fencing easement means an easement created under section 35UB.

Wild Dog Destruction Board means the Wild Dog Destruction Board constituted under the *Wild Dog Destruction Act 1921*.

35UB Fencing easements to be created

- (1) This section applies to land situated within the prescribed distance of the fenced portion of the State boundary.
- (2) The Minister may, by notice published in the Gazette, declare that the following easements are vested in the Wild Dog Destruction Board over land to which this section applies:
 - (a) an easement for repairs in relation to the Border Fences,
 - (b) a right of access in relation to the Border Fences,
 - (c) such other easements as are appropriate to the maintenance of those fences and that right of access.
- (3) The power conferred on the Minister by subsection (2) may only be exercised in relation to freehold land with the consent of each person having an estate or interest in that land.
- (4) On publication of the notice, each easement specified in the notice is vested in the Wild Dog Destruction Board to the extent to which it was not so vested immediately before publication.
- (5) If, by the operation of subsection (4), an easement over land under the provisions of the *Real Property Act 1900* becomes vested in the Wild Dog Destruction Board, the Board must forthwith make a request to the Registrar-General under section 46C of the *Real Property Act 1900* in relation to the easement.
- (6) On receipt of a request under section 46C of the *Real Property Act 1900* in relation to any such easement, the Registrar-General may record, in any folio of the Register kept under that Act for land affected by the creation of the easement, such particulars as the Registrar-General considers appropriate.
- (7) Section 89 of the *Conveyancing Act 1919* does not apply to an easement created under this section.
- (8) In this section, *prescribed distance* means 100 metres or such greater distance (not exceeding 200 metres) as the regulations may specify in relation to the whole or any part of the fenced portion of the State boundary.

35UC Compensation

- (1) A person who has an estate or interest in any freehold land over which a fencing easement is created, or who, but for this Act, would have had such an estate or interest, is entitled to receive compensation from the Crown in respect of the creation of the easement.
- (2) The *Land Acquisition (Just Terms Compensation) Act 1991* applies (with such modifications as may be prescribed by the regulations) to the payment of any such compensation as if the creation of the fencing easement were effected by an acquisition notice under that Act.
- (3) If there is any disagreement between the Crown and any person claiming compensation under this section as to the amount of compensation, the claim may be heard and disposed of in accordance with section 24 of the *Land and Environment Court Act 1979*.
- (4) No compensation is payable to any person in relation to any loss or damage arising from the creation of a fencing easement over land other than freehold land.

35UD Fencing easements may be extinguished

- (1) The Minister may, by notice published in the Gazette, declare that any fencing easement that is vested in the Wild Dog Destruction Board is extinguished.
- (2) On publication of the notice, each fencing easement specified in the notice is extinguished to the extent to which it subsisted immediately before publication.
- (3) On receipt of a request under section 46C of the *Real Property Act 1900* in relation to any fencing easement extinguished under this section, the Registrar-General may record, in any folio of the Register kept under that Act for land affected by the extinguishment of the easement, such particulars as the Registrar-General considers appropriate.

Note. For example, it may be necessary to extinguish one easement in order to replace it with another with different terms.

35UE Notice to be given of creation or extinguishment of fencing easements

As soon as practicable after a fencing easement is created or extinguished under this Division, the Minister must cause notice of that fact to be given to each owner (in relation to freehold land)

or lessee or licensee (in relation to land other than freehold land) of land affected by the creation or extinguishment of the easement.

35UF Fencing easements not dutiable

No duty is payable under the *Duties Act 1997* in respect of the creation or extinguishment of a fencing easement under this Division.

35UG Division not to apply to national parks etc

This Division does not apply to or in respect of land reserved under the *National Parks and Wildlife Act 1974*.

[14] Schedule 2 Applicable provisions of the Crown Lands Act 1989

Insert at the end of the matter under the heading “**Part 2 Administration**”:

Division 2 (Local land boards)—the whole Division.

[15] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1AAA (1):

Western Lands Amendment Act 2009

[16] Schedule 3, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Western Lands Amendment Act 2009

12 Definition

In this Part, *the 2009 amending Act* means the *Western Lands Amendment Act 2009*.

13 Local land boards

- (1) Each local land board established under section 9, as in force immediately before its amendment by the 2009 amending Act, is taken to be a local land board constituted under section 20 of the *Crown Lands Act 1989*.
- (2) The person who, immediately before section 9 was amended by the 2009 amending Act, was the Chairperson of Local Land Boards under that section is taken to have been appointed as a Chairperson of Local Land Boards under section 19 (1) of the *Crown Lands Act 1989*.

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- (3) A person who, immediately before section 9 was amended by the 2009 amending Act, was a member of a local land board under that section is taken to have been appointed as a member of that board under section 20 of the *Crown Lands Act 1989* and, unless he or she sooner vacates office, continues in office for the balance of the term for which he or she was originally appointed.
 - (4) Subject to this Act, proceedings that were commenced before any such local land board before section 9 was amended by the 2009 amending Act are to be disposed of in accordance with the relevant provisions of the *Crown Lands Act 1989*.

14 Term of appointment of members of Western Lands Advisory Council

The amendment made by the 2009 amending Act to clause 2 of Schedule 5 does not apply to the term of office of any member of the Western Lands Advisory Council who was appointed before the commencement of that amendment.

15 Application of section 18A

- (1) Section 18A, as substituted by the 2009 amending Act, extends to leases granted or issued, and to fences erected, before the commencement of that section.
- (2) Any determination, exemption, allowance or authorisation that, immediately before section 18A was substituted by the 2009 amending Act, was in force under that section is taken to be an order to the same effect under that section, as so substituted.

[17] Schedule 5 Provisions with respect to constitution and procedure of Western Lands Advisory Council

Omit “holds office for 3 years” from clause 2.

Insert instead “holds office for such term (not exceeding 3 years) as is specified in the member’s instrument of appointment”.

Schedule 2 Miscellaneous amendments

(Section 3)

[1] Section 3 Definitions

Omit “Part 2 of the *Public Sector Management Act 1988*” wherever occurring in the definitions of *Assistant Commissioner* and *Commissioner* in section 3 (1).

Insert instead “Chapter 1A of the *Public Sector Employment and Management Act 2002*”.

[2] Section 3 (1), definition of “Department”

Omit the definition. Insert instead:

Department means the Department of Lands.

[3] Section 3 (1), definition of “Leased land”

Insert in alphabetical order:

Leased land means land held under a lease granted or issued under this Act.

[4] Section 3 (1), definition of “Western Division”

Omit the definition. Insert instead:

Western Division has the same meaning as it has in the *Crown Lands Act 1989*.

[5] Section 3B Review of Act

Omit the section.

[6] Section 11 Appointment of staff

Omit “*Public Sector Management Act 1988*”.

Insert instead “*Public Sector Employment and Management Act 2002*”.

[7] Section 18CC

Omit the section. Insert instead:

18CC Recovery of debts

Money due to the Crown under this Act may be recovered, as a debt, in any court of competent jurisdiction.

[8] Section 18D Provisions governing leases

Omit “granted or issued either before or after the passing of the *Western Lands (Amendment) Act of 1905*” from section 18D (1).

[9] Section 18D (1)

Renumber paragraphs (i)–(x) as paragraphs (a)–(i), and subparagraphs (a)–(f) of paragraph (iv) as subparagraphs (i)–(vi), respectively.

[10] Section 18DA Cultivation of certain land

Omit “whether granted or issued before or after the day appointed and notified under section 2 (3) of the *Western Lands (Leases and Productivity Schemes) Amendment Act 1979*” from section 18DA (1).

[11] Section 18DA (2), definition of “cultivate”

Omit paragraph (b). Insert instead:

- (b) does not include any clearing of native vegetation, or clearing of State protected land, to which the condition referred to in section 18DB (3) applies.

[12] Section 18DB Condition relating to clearing native vegetation and protected land

Omit section 18DB (2) and (3). Insert instead:

- (2) In this section, *clearing* and *native vegetation* have the same meanings as they have in the *Native Vegetation Act 2003*, and *State protected land* has the same meaning as it has in clause 4 of Schedule 3 to that Act.
- (3) It is a condition of any lease to which this Act applies that any native vegetation on the land the subject of the lease, and any part of that land that is State protected land, must not be cleared except in accordance with the *Native Vegetation Act 2003* (including the *Native Vegetation Conservation Act 1997* as applied by that Act and the regulations under that Act).

[13] Section 18E Subsisting leases: extension

Omit section 18E (4A) and (4B).

[14] Section 18I Survey fee

Omit the section.

[15] Section 18J Conditions attaching to leases: alteration by consent

Omit “whether before or after the commencement of the *Western Lands (Amendment) Act 1934*”.

[16] Section 28A Granting of leases

Insert after section 28A (1A):

- (1B) The purposes listed in subsection (1) (a)–(e1) do not limit the purposes for which a declaration may be made under subsection (1) (f).

[17] Section 28B Extension of term of lease

Omit “before or after the insertion of this section by the *Western Lands (Amendment) Act 1989*” from section 28B (1).

[18] Section 35L Amendment of applications etc

Omit the section.

[19] Section 36B

Omit sections 36B and 36C. Insert instead:

36B Interest on arrears

- (1) Any amount payable under a lease, or under this Act in relation to a lease, bears interest at the rate prescribed by the regulations.
- (2) No interest is payable if the amount is paid within 3 months after the date on which payment falls due.
- (3) The Minister may waive, postpone or remit payment of interest under this section.

[20] Section 46 Application of Part

Omit section 46 (1). Insert instead:

- (1) In this Part, a reference to a *condition* of a lease includes a reference to any covenant, term, reservation, exception, exemption, provision or prohibition attaching or applying to the lease, whether by the terms of the lease or the provisions of this Act or otherwise.

[21] Section 49 Offences

Omit “requirements of” wherever occurring in section 49 (1) (a1), (2) (a) and (2A) (a).

Insert instead “prohibition in”.

[22] Section 49 (1) (b), (c), (e), (g) and (h)

Omit “(iv)”, “(ix)”, “(vii)”, “(x)” and “(viii)”.

Insert instead “(d)”, “(h)”, “(f)”, “(i)” and “(g)”, respectively.

[23] Schedule 1, heading

Omit the heading to Schedule 1. Insert instead:

Schedule 1 General lease conditions

(Section 18)

[24] Schedule 1, paragraph (e)

Omit “, roads, or tracks”.

[25] Schedule 3 Savings, transitional and other provisions

Insert after clause 1AAB:

1AAC Application of section 18D

Section 18D extends to leases granted or issued before the commencement of the *Western Lands (Amendment) Act of 1905*.

[26] Schedule 3, clause 1ABA

Insert after clause 1AB:

1ABA Application of section 18J

Section 18J extends to leases granted or brought under this Act before the commencement of the amending Act.

[27] Schedule 3, Part 1AAA

Insert after Part 1A:

**Part 1AAA Provisions consequent on enactment of
Western Lands (Leases and Productivity
Schemes) Amendment Act 1979**

1ABB Application of section 18DA

Section 18DA extends to leases granted or issued before the commencement of that section.

[28] Schedule 3, clause 1AG

Insert after clause 1AF:

1AG Application of sections 28B and 28BA

Sections 28B and 28BA extend to leases granted under section 28A before the insertion of those sections by the amending Act.

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

Omit “Part 2 of the *Public Sector Management Act 1988*” from clause 7 (1).

Insert instead “Chapter 2 of the *Public Sector Employment and Management Act 2002*”.

Schedule 3 Amendment of other Acts and instruments

(Section 4)

3.1 Commons Management Act 1989 No 13

Section 3 Definitions

Omit the definition of *local land board* from section 3 (1). Insert instead:

local land board means a local land board constituted under the *Crown Lands Act 1989*.

3.2 Conveyancing Act 1919 No 6

[1] Section 7A Current plan

Insert at the end of section 7A (3) (b):

or

- (c) land the subject of a special purpose lease within the meaning of Division 3A of Part 4 of the *Crown Lands Act 1989* or Part 9E of the *Western Lands Act 1901*,

[2] Section 23G Exceptions to sec 23F

Insert after section 23G (m):

- (n) a transaction that comprises:
 - (i) the granting of a special purpose lease within the meaning of Division 3A of Part 4 of the *Crown Lands Act 1989* or Part 9E of the *Western Lands Act 1901*, or
 - (ii) the transfer, conveyance, sublease, variation or mortgage of a leasehold interest so created.

3.3 Crown Lands Act 1989 No 6

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Eastern and Central Division—see section 4 (2).

Lord Howe Island has the same meaning as *Island* has in the *Lord Howe Island Act 1953*.

Western Division—see section 4 (2A).

[2] Section 3 (1), definition of “land district”

Omit the definition. Insert instead:

land district means a land district referred to in section 8 (1), or established under section 8 (1A) or (2), and includes:

- (a) an administrative district established under section 9 of the *Western Lands Act 1901*, and
- (b) a development district declared under section 44B of this Act or section 35XB of the *Western Lands Act 1901*.

[3] Section 4 Divisions of the State

Omit section 4 (2) (a). Insert instead:

- (a) such part of the State as is not within Lord Howe Island or the Western Division, and

[4] Section 4 (2A)

Insert after section 4 (2):

- (2A) Subject to any regulations made under subsection (3), the Western Division comprises that part of the State depicted in Lot 1901, Deposited Plan 1133899, recorded in the office of the Registrar-General.

[5] Section 5 Application of Act

Insert after section 5 (3):

- (4) This Act does not apply to or in respect of Lord Howe Island.

3.4 Dividing Fences Act 1991 No 72

[1] Section 3 Definitions

Omit “or under the *Western Lands Act 1901*” from the definition of *local land board*.

[2] Section 4 Determination as to “sufficient dividing fence”

Insert after section 4 (f):

- (g) in the case of a dividing fence affecting land the subject of a lease under the *Western Lands Act 1901*, any order in force under section 18A of that Act.

[3] Section 13 Jurisdiction of Local Court or local land board

Insert after section 13 (1):

- (1A) Despite subsection (1), only a local land board has jurisdiction to hear and determine matters affecting land the subject of a lease under the *Western Lands Act 1901*.

3.5 Forestry Act 1916 No 55

Section 27 Penalty for unlawfully taking timber, products or forest materials

Omit “18D (ii)” from section 27 (3) (b). Insert instead “18D (b)”.

3.6 Freedom of Information Regulation 2005

Schedule 3 Public authorities

Omit “Local land board under the *Western Lands Act 1901*” from Part 3.

Insert instead “Local land board under the *Crown Lands Act 1989*”.

3.7 Local Government Act 1993 No 30

Section 682 Power to appear before local land boards

Omit “or the *Western Lands Act 1901*”.

3.8 National Parks and Wildlife Act 1974 No 80

Section 153E

Insert after section 153D:

153E Easements to repair and maintain the Border Fence

- (1) For the purpose of the repair and maintenance of the Border Fence, the Minister may grant easements or rights of way in favour of the Wild Dog Destruction Board through, on or in any land reserved under this Act.
- (2) An easement or right of way under this section may be granted subject to such terms and conditions as the Minister may determine.
- (3) The Minister may from time to time revoke or vary any grant under this section of an easement or right of way.

- (4) The Minister is required to consult the Minister administering the *Western Lands Act 1901* before exercising a power conferred by this section.
- (5) This section does not operate to limit a power under any other section of this Part to grant easements or rights of way through, on or in any land reserved under this Act.
- (6) In this section:
 - Border Fence** means the Queensland Border Fence, or the South Australian Border Fence, within the meaning of the *Wild Dog Destruction Act 1921*.
 - Wild Dog Destruction Board** means the Wild Dog Destruction Board constituted under the *Wild Dog Destruction Act 1921*.

3.9 Native Vegetation Regulation 2005

Clause 3 Definitions

Omit “*Western Lands Act 1901*” from the definition of **Western Division** in clause 3 (1).

Insert instead “*Crown Lands Act 1989*”.

3.10 Passenger Transport Regulation 2007

Clause 3 Definitions

Omit the definition of **Western Division** from clause 3 (1). Insert instead:

Western Division has the same meaning as it has in the *Crown Lands Act 1989*.

3.11 Roads Act 1993 No 33

Dictionary

Omit “or the *Western Lands Act 1901*, as the case may be,” from the definition of **local land board**.

3.12 Rural Lands Protection Act 1998 No 143

Dictionary

Omit the definition of **appropriate local land board**. Insert instead:

appropriate local land board, in relation to any land, means the local land board for the land district (within the meaning of the *Crown Lands Act 1989*) in which the land is situated.

3.13 Soil Conservation Act 1938 No 10

Section 3 Definitions

Omit “*Crown Lands Consolidation Act 1913*” from the definition of **Local land board** in section 3 (1).

Insert instead “*Crown Lands Act 1989*”.

3.14 Trees (Disputes Between Neighbours) Act 2006 No 126

[1] Section 11 Trees on Crown land referred to local land board

Omit “or section 10A of the *Western Lands Act 1901*” from section 11 (1).

[2] Section 11 (1) (b)

Omit “or the *Western Lands Act 1901*”.

3.15 Valuation of Land Act 1916 No 2

Section 4 Definitions

Omit the definition of **Western Division** from section 4 (1). Insert instead:

Western Division has the same meaning as it has in the *Crown Lands Act 1989*.

3.16 Water Act 1912 No 44

Section 4 Definitions

Omit the definition of **Western Division**. Insert instead:

Western Division has the same meaning as it has in the *Crown Lands Act 1989*.

3.17 Western Lands Regulation 2004

[1] Part 2 Local land boards

Omit the Part.

[2] Clause 20 Interest on arrears: section 36B

Omit “36B (2) (d)”. Insert instead “36B (1)”.

[3] Clause 21 Interest on sums payable: section 36C

Omit the clause.

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Schedule 3 Amendment of other Acts and instruments

[4] Clause 23 Survey fees: section 18E

Omit clause 23 (2).

[5] Clause 25 Fencing claims and disputes: section 18B

Omit the clause.

[6] Schedule 3 Survey fees

Omit the Schedule.