

Inclosed Lands Protection Act 1901 No 33

[1901-33]



New South Wales

Status Information

Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Children and Young Persons Legislation \(Repeal and Amendment\) Act 1998 No 158](#) (not commenced)
[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Inclosed Lands Protection Act 1901 No 33



New South Wales

An Act to consolidate the enactments relating to the protection of inclosed lands from intrusion and trespass.

1 Name of Act

This Act may be cited as the *Inclosed Lands Protection Act 1901*.

2 Repeal

The Acts mentioned in the Schedule are, to the extent therein expressed, hereby repealed.

3 Definitions

(1) In this Act:

child care service means any service that is provided by a person for the purpose of educating, minding or caring for one or more children (disregarding any children who are related to the person providing the service), but does not include any such service if the service is:

- (a) provided by a person at the premises at which the children reside, or
- (b) provided by the holder of a fostering authority (within the meaning of the *Children (Care and Protection) Act 1987*) in accordance with the authority.

hospital means any of the following:

- (a) a public hospital within the meaning of the *Health Services Act 1997*,
- (b) a private hospital within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*.

Inclosed lands means:

- (a) prescribed premises, or
- (b) any land, either public or private, inclosed or surrounded by any fence, wall or other erection, or partly by a fence, wall or other erection and partly by a canal or

by some natural feature such as a river or cliff by which its boundaries may be known or recognised, including the whole or part of any building or structure and any land occupied or used in connection with the whole or part of any building or structure.

Justice means justice of the peace.

prescribed premises means land occupied or used in connection with any of the following:

- (a) a government school or a registered non-government school within the meaning of the *Education Reform Act 1990*,
- (b) a child care service,
- (c) a hospital,
- (d) a nursing home within the meaning of the *Nursing Homes Act 1988*,

and any building or structure erected on that land, but does not include all or part of any building or structure that is for the time being occupied or used for a purpose unconnected with the conduct of such a school, child care service, hospital or nursing home.

Road means any land proclaimed, dedicated, resumed or otherwise provided as a public thoroughfare or way or any land defined, reserved or left as a road in any subdivision of lands.

- (2) Where a road is lawfully inclosed with the lands of any person, those lands, but not the road, shall be deemed for the purposes of this Act to be the inclosed lands of the person.

4 Unlawful entry on inclosed lands

- (1) Any person who, without lawful excuse (proof of which lies on the person), enters into inclosed lands without the consent of the owner, occupier or person apparently in charge of those lands, or who remains on those lands after being requested by the owner, occupier or person apparently in charge of those lands to leave those lands, is liable to a penalty not exceeding:
 - (a) 10 penalty units in the case of prescribed premises, or
 - (b) 5 penalty units in any other case.
- (1A) A drover or person in charge of stock being driven on a road lawfully inclosed within the lands of any person has a lawful excuse for entering those lands for the purpose of preventing the stock from straying, or regaining control of stock that have strayed, from that road.

- (2) Where a road is lawfully inclosed with the lands of any person, and such road is not clearly defined but there is a reasonably defined track commonly used by persons passing through such lands, the centre of such track shall, for the purposes of this Act, be deemed to be the centre of the road.
- (3) Where a road is lawfully inclosed with the lands of any person and such road is not clearly defined and there is no reasonably defined track through such lands a person passing through such inclosed lands shall not be guilty of an offence unless it is shown that the route taken by such person in so passing was, having regard to the circumstances, unreasonable.
- (4) In this section, **stock** includes horses, cattle, sheep, goats, pigs and camels.

4A Offensive conduct while on inclosed lands

- (1) Any person, who remains upon the inclosed lands of another person after being requested by the owner or occupier or the person apparently in charge of those lands to leave those lands and while remaining upon those lands conducts himself or herself in such a manner as would be regarded by reasonable persons as being, in all the circumstances, offensive, is liable to a penalty not exceeding:
 - (a) 20 penalty units in the case of prescribed premises, or
 - (b) 10 penalty units in any other case.
- (2) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.

5 Penalty on leaving gate open

- (1) Any person who enters into or upon the inclosed lands of any other person, and wilfully or negligently leaves open or down any gate or slip-panel, shall be liable to a penalty not exceeding 2 penalty units.
- (2) Any person who enters into or upon any road lawfully inclosed with the lands of any other person through any gate (not being a public gate within the meaning of the [Roads Act 1993](#)), or slip panel, and wilfully or negligently leaves open or down such gate or slip-panel, shall be liable to a penalty not exceeding 2 penalty units.

6 Offender may be apprehended

- (1) Any person found committing any offence against this Act, and who refuses, when required to do so, to give his or her name and place of abode, may be apprehended by the owner, occupier, or person in charge of the inclosed lands upon or in relation to which the offence was committed, and delivered to the custody of the nearest constable to be taken before a justice to be dealt with according to law.

- (2) Any person who, upon being so required to give his or her name and place of abode, gives any false name or place of abode, shall be liable to a penalty not exceeding 0.5 penalty unit.

7 Owner may destroy goats

- (1) Any owner, occupier, or person in charge of inclosed land may destroy any goat found trespassing thereon.
- (2) Subsection (1) does not authorise the destruction of any goat that:
 - (a) is legibly branded, or
 - (b) has around its neck a collar with the name and address of its owner legibly engraved on it, or
 - (c) has an ear mark, or
 - (d) is wearing an ear tag.

8 Penalties

All penalties under this Act may be recovered before any justice.

9 Limitation of action

All actions and prosecutions against any person for anything done in pursuance of this Act shall be commenced within two months after the fact was committed, and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action.

10 Penalty notice for certain offences

- (1) A police officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) Any such notice may be served personally or by post.
- (4) If the amount of any penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment of a penalty in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor in any way as affecting or prejudicing any civil claim, action or proceeding arising out of the same occurrence.

- (6) The regulations may prescribe the amount of penalty payable for an offence against this Act if dealt with in accordance with this section.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

11 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule

(Section 2)

Year and Number of Act	Title or short title	Extent of repeal
18 Vic No 27	An Act for protecting inclosed lands from intrusion and trespass.	The whole, except s 5.
36 Vic No 18	<i>Angora Goats Protection Act of 1873.</i>	The unrepealed portion, except so far as it relates to s 5 of 18 Vic, No 27.