

Inclosed Lands Protection Act 1901 No 33

[1901-33]



New South Wales

Status Information

Currency of version

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Provisions in force

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

Notes—

- **Does not include amendments by**
[Public Health Act 2010 No 127](#) (not commenced — to commence on 1.9.2012)

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2 (Repealed)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) out-of-home care provided by a designated agency or an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

hospital means any of the following:

- (a) a public hospital within the meaning of the *Health Services Act 1997*,
- (b) a private health facility within the meaning of the *Private Health Facilities Act 2007*.

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.

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 *Public Health Act 1991*,

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 Magistrate or an authorised officer within the meaning of the [Criminal Procedure Act 1986](#) 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 the Local Court.

9 Limitation of civil action

Any civil action 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.

9A Particulars to be furnished

- (1) If a defendant charged with an offence under this Act:
 - (a) has requested the informant to furnish to the defendant reasonable particulars of the behaviour or conduct the subject of the charge, and
 - (b) the informant, or some person on his or her behalf, has not so furnished those particulars,

the court before which the defendant is charged is to adjourn the charge pending the furnishing of those particulars or may dismiss the charge.
- (2) If, at the hearing of a charge for an offence referred to in subsection (1):
 - (a) the evidence discloses behaviour or conduct that constitutes such an offence, and
 - (b) that behaviour or conduct is different from the behaviour or conduct of which particulars have been given to the defendant under subsection (1),

the court may, on the application of the defendant and if it is of the opinion that the defendant was deceived by those particulars, adjourn the hearing on such terms as it thinks fit.

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 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

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

Criminal Legislation Amendment Act 2009
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than

the date of its publication on the NSW legislation website, 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 its 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 its publication.

Part 2 Provisions consequent on enactment of [Criminal Legislation Amendment Act 2009](#)

2 Definition

In this Part:

amending Act means the [Criminal Legislation Amendment Act 2009](#).

3 Limitation period for prosecutions

Section 9, as amended by the amending Act, does not apply in respect of an offence that is alleged to have been committed before the commencement of that amendment, and that section, as in force immediately before that commencement, continues to apply in respect of any such offence.

4 Particulars to be furnished

Section 9A, as inserted by the amending Act, does not apply in respect of an offence alleged to have been committed before the commencement of that section.