

# Western Lands Regulation 2011

[2011-462]



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**
  - [Local Land Services Act 2013 No 51](#) (not commenced — to commence on 1.1.2014)
  - [Civil and Administrative Legislation \(Repeal and Amendment\) Act 2013 No 95](#) (not commenced — to commence on 1.1.2014)

### Authorisation

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New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	4
1 Name of Regulation .....	4
2 Commencement .....	4
3 Definitions .....	4
<b>Part 2 Western Lands leases</b> .....	4
<b>Division 1 Extension of terms of Western Lands leases</b> .....	4
4 Application for extension of term of Western Lands lease: sections 18E and 28B .....	4
5 Extension of term of mortgaged Western Lands lease to be notified to mortgagee .....	5
<b>Division 2 Purchase of land held under certain Western Lands leases</b> .....	5
6 Applications to purchase land: section 28BB .....	5
<b>Division 3 Payment of rent, interest and survey fees</b> .....	5
7 Scaling factor for rent: section 19 .....	5
8 Minimum rent for rural holdings and urban leases: sections 20 and 27B .....	6
9 Calculations: amounts of money represented by “k” .....	6
10 Annual rent for urban leases: section 27B .....	6
11 Concessional rent: section 27E .....	6
12 Interest on arrears: section 36B .....	7
13 Holdings in respect of which incoming holder liable to pay arrears: sections 36D and 36E .....	7
14 Survey fees: section 18E .....	8
<b>Division 4 Transfer of Western Lands leases</b> .....	8

15 Minister’s consent to transfer: section 18G .....	8
<b>Division 5 Miscellaneous</b> .....	8
16 Alteration of conditions of Western Lands leases: section 18J .....	8
<b>Part 3 Consents to cultivation</b> .....	8
17 Land for which consent to cultivation is required: section 18DA .....	8
18 Circumstances in which consent to cultivation is not required: section 18DA .....	9
<b>Part 4 General</b> .....	9
19 Fencing, enclosure of roads .....	9
20 Local land board hearings—rural lands protection appeals .....	10
21 Surrenders: section 33A .....	10
22 Waiver or refund of fees, costs, deposits or interest.....	10
23 Savings.....	10
<b>Schedule 1 Fees</b> .....	11
<b>Schedule 2 Amounts represented by “k”</b> .....	11
<b>Schedule 3 Circumstances in which consent to cultivation is not required</b> .....	12

# Western Lands Regulation 2011



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Western Lands Regulation 2011*.

### 2 Commencement

This Regulation commences on 1 September 2011.

#### Note—

This Regulation replaces the *Western Lands Regulation 2004* which is repealed on 1 September 2011 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) 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.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Western Lands leases

### Division 1 Extension of terms of Western Lands leases

#### 4 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.

#### **5 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**

#### **6 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.

### **Division 3 Payment of rent, interest and survey fees**

#### **7 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 2011 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 2011 is 1.09.

(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<sub>1</sub>** represents the CPI for the December quarter for the calendar year immediately preceding the financial year for which the scaling factor is to be determined.

**C<sub>2</sub>** represents the CPI for the December quarter for the calendar year immediately preceding the calendar year referred to in the definition of C<sub>1</sub>.

### **8 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.

### **9 Calculations: amounts of money represented by “k”**

For the purposes of the calculations required by sections 21–24 of the Act, the symbols **k<sub>1</sub>–k<sub>12</sub>** in those sections represent the amounts of money specified in Schedule 2 in respect of each of those symbols.

### **10 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%.

### **11 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 2009](#), or
    - (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.

## **12 Interest on arrears: section 36B**

For the purposes of section 36B (1) of the Act, the prescribed rate is the rate prescribed for the time being under section 148 (2) of the [Crown Lands Act 1989](#).

## **13 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.

#### **14 Survey fees: section 18E**

- (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) 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.
- (3) Survey fees or costs are payable to the Commissioner.

### **Division 4 Transfer of Western Lands leases**

#### **15 Minister's consent to transfer: section 18G**

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.

### **Division 5 Miscellaneous**

#### **16 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 3 Consents to cultivation**

#### **17 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.

#### **18 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 3, subject to any conditions set out in that Schedule.
- (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
  - (c) cultivation on a sand dune or sandhill, or
  - (d) cultivation in a State forest, timber reserve or flora reserve under the *Forestry Act 2012*.
- (3) 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.

## **Part 4 General**

### **19 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.

## **20 Local land board hearings—rural lands protection appeals**

An appeal made to a local land board under section 242 of the *Rural Lands Protection Act 1998* is to be in an approved form and is to be accompanied by the approved fee.

## **21 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.

## **22 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.

## **23 Savings**

Any act, matter or thing that, immediately before the repeal of the *Western Lands Regulation 2004*, had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Fees

(Clauses 4, 15 and 17)

1	Application under section 18E or 28B of the Act for extension of the term of a Western Lands lease (clause 4)	\$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 15)	\$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 17)	\$529

## Schedule 2 Amounts represented by “k”

(Clause 9)

Symbol	Land to which symbol relates	\$ Amount
k <sub>1</sub>	each hectare of the first 1,000 hectares of a rural holding	0.30
k <sub>2</sub>	each hectare of the second to fifth 1,000 hectares (inclusive) of a rural holding	0.05
k <sub>3</sub>	each hectare of the sixth to tenth 1,000 hectares (inclusive) of a rural holding	0.03
k <sub>4</sub>	each hectare of the eleventh to twentieth 1,000 hectares (inclusive) of a rural holding	0.015
k <sub>5</sub>	each hectare of the twenty-first to thirtieth 1,000 hectares (inclusive) of a rural holding	0.008
k <sub>6</sub>	each hectare of the thirty-first to fiftieth 1,000 hectares (inclusive) of a rural holding	0.003
k <sub>7</sub>	each hectare in a rural holding after the fifty-thousandth	0.001
k <sub>8</sub>	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 <sub>9</sub>	each hectare of land in a rural holding on which cultivation is permitted under the Act indefinitely	0.40
k <sub>10</sub>	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 <sub>11</sub>	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<sub>12</sub> 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 Circumstances in which consent to cultivation is not required**

(Clause 18)

- 1** Cultivation on land 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** Cultivation in connection with rehabilitation works undertaken by or under the direct guidance of the Commissioner.
- 3** Cultivation in connection with rabbit ripping undertaken as part of a planned rabbit control program on land that is not:
  - (a) within 20 metres of the bank of a stream or watercourse, or
  - (b) within 100 metres of the bank of a lake or an ancient lake, or
  - (c) on a sand dune or a sandhill, or
  - (d) 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.
- 4** Cultivation 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) within 100 metres of the bank of a lake or an ancient lake, or
  - (c) on a sand dune or a sandhill, or
  - (d) 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,but only if:
  - (e) written notification of the intention to cultivate was given to the nearest office of the Commissioner not less than 2 weeks before the commencement of cultivation, and
  - (f) a written authorisation (which may be subject to conditions) was obtained from the Commissioner before commencement of the cultivation.
- 5** Cultivation carried out on a once only basis to allow the introduction of local, endemic native species on land that is not:
  - (a) within 20 metres of the bank of a stream or watercourse, or
  - (b) within 100 metres of the bank of a lake or an ancient lake, or

- (c) on a sand dune or a sandhill, or
- (d) 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,

but only if:

- (e) written notification of the intention to cultivate was given to the nearest office of the Commissioner not less than 2 weeks before the commencement of cultivation, and
- (f) a written authorisation (which may be subject to conditions) was obtained from the Commissioner before commencement of the cultivation.

- 6** Cultivation 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 approved by the Commissioner, but only if a written authorisation (which may be subject to conditions) was obtained from the Commissioner before commencement of the cultivation.
- 7** Cultivation carried out to provide a firebreak but only if:
  - (a) the firebreak is not within one kilometre of any other land held by the lessee, licensee or occupier which has been cultivated for a firebreak, and
  - (b) the total width of clearing for the firebreak is not more than:
    - (i) where mallee species do not predominate—30 metres, or
    - (ii) where mallee species predominate—100 metres.
- 8** Cultivation on land that is not more than 30 metres wide and that 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** Cultivation is to be of an area of 5,000 square metres or less, but only if 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, livestock health and pest authority or local government authority with direct responsibility for the care, control and management of the land.
- 10** In this Schedule, **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.