

# Inclosed Lands Protection Act 1901 No 33

[1901-33]



New South Wales

## Status Information

### Currency of version

Current version for 21 November 2019 to date (accessed 29 December 2024 at 3:59)

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—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes. Text of the legislation is not affected.

This version has been updated.

### Authorisation

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# Inclosed Lands Protection Act 1901 No 33



New South Wales

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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## 2 (Repealed)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—

**agricultural land** means inclosed lands on which any of the following businesses or undertakings are carried on—

- (a) a farm, being any business or undertaking for agricultural purposes (including an orchard, market garden, mushroom farm, vineyard, plant nursery or turf farm),
- (b) any other business or undertaking in which cattle, poultry, pigs, goats, horses, sheep or other livestock are kept or bred for commercial purposes (for example, a dairy, saleyard or feedlot),
- (c) a business or undertaking for the commercial production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals, including abattoirs, knackereries, tanneries, woolscours and rendering plants,
- (d) a business or undertaking for forestry (including timber mills) or aquaculture.

**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 Act 1990*,
- (b) a child care service,
- (c) a hospital,
- (d) a nursing home within the meaning of the *Public Health Act 2010*,

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.

#### **4AA Unlawful re-entry on inclosed lands**

- (1) A person who, without reasonable excuse, knowingly enters an event venue during an organised event in contravention of a re-entry prohibition given to the person is guilty of an offence.

Maximum penalty—10 penalty units.

- (2) A **re-entry prohibition** is a direction given by a responsible authority for an organised event, after a person has been directed to leave the organised event, that directs the person—
  - (a) not to re-enter the event venue during the organised event, or
  - (b) not to enter any specified event venue during an organised event for which the responsible authority is the responsible authority,or both.
- (3) A re-entry prohibition may be given orally in person or in writing.
- (4) The responsible authority must, at the time of giving the re-entry prohibition—

- (a) specify the event venue or venues, and organised event or events, to which the re-entry prohibition applies, and
  - (b) specify the duration of the re-entry prohibition, and
  - (c) state the reason why the re-entry prohibition is being given, and
  - (d) warn the person subject to the re-entry prohibition that it is an offence to contravene the re-entry prohibition.
- (5) Proof of reasonable excuse under this section lies on the person charged with the offence.
- (6) If a person who enters an event venue in contravention of a re-entry prohibition is also prohibited or banned from entering the event venue under another Act or law, the person cannot be found guilty of both an offence under this Act and an offence under the other Act or law in respect of the same conduct.
- (7) In this section—

**event organiser** in relation to an organised event means the person in charge or apparently in charge of the organised event and who has the power to admit persons to or exclude persons from attending the organised event.

**event venue** means that part of inclosed lands used for an organised event to which right of entry is conferred by a ticket, membership or similar arrangement.

**organised event** means—

- (a) an organised sporting event, and includes any performance, ceremony or formalities conducted in conjunction with the event, or
- (b) an organised public exhibition, fair, convention, performance, ceremony, festival or similar event, or
- (c) an event of a kind prescribed by the regulations.

**responsible authority** for an organised event means—

- (a) the owner, occupier or person apparently in charge of the event venue used or to be used for the organised event, or
- (b) the event organiser.

#### **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.

#### **4B Aggravated unlawful entry on inclosed lands**

- (1) A person is guilty of an offence under this section if the person commits an offence under section 4 in relation to inclosed lands on which any business or undertaking is conducted and, while on those lands—
- (a) interferes with, or attempts or intends to interfere with, the conduct of the business or undertaking, or
  - (b) does anything that gives rise to a serious risk to the safety of the person or any other person on those lands, or
  - (c) introduces or increases a risk of a biosecurity impact (within the meaning of the *Biosecurity Act 2015*) for those inclosed lands, or
  - (d) intends to commit on those inclosed lands an offence under any of the following provisions—
    - (i) section 126, 503, 505 or 506 of the *Crimes Act 1900*,
    - (ii) section 16 of the *Game and Feral Animal Control Act 2002*,
    - (iii) section 28J of the *Summary Offences Act 1988*, or
  - (e) without reasonable excuse, possesses, places or uses any net, trap, snare, poison, explosive, ammunition, knife, hunting device or hunting equipment, or
  - (f) without reasonable excuse, possesses or discharges a firearm (within the meaning of the *Firearms Act 1996*) or a prohibited weapon (within the meaning of the *Weapons Prohibition Act 1998*), or
  - (g) is accompanied by a dog of a breed ordinarily used for hunting, or
  - (h) damages property on agricultural land, or
  - (i) wilfully or negligently releases any livestock.

Maximum penalty—

- (a) for an offence that occurs on agricultural land—
    - (i) 120 penalty units or imprisonment for 12 months, or both, or
    - (ii) 200 penalty units or imprisonment for 3 years, or both if—
      - (A) the offender was accompanied by 2 or more persons when the offence occurred, or
      - (B) the aggravating circumstances were those set out in subsection (1)(b), or
  - (b) for an offence that occurs on land other than agricultural land—50 penalty units.
- (2) If, on the trial of a person for an offence under this section, the court is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 4, the court may find the accused not guilty of the offence charged but guilty of an offence under section 4, and the accused is liable to punishment accordingly.
- (3) Proof of reasonable excuse under this section lies on the person charged with the offence.

#### **4C Direct, incite, counsel, procure, commission or induce aggravated unlawful entry**

A person must not direct, incite, counsel, procure, commission or induce the commission, on agricultural land, of an offence against section 4B.

Maximum penalty—100 penalty units or imprisonment for 12 months, or both.

#### **5 Leaving gate open**

- (1) A person who enters into or upon the inclosed lands of any other person and wilfully or negligently leaves open, removes or disables a gate is guilty of an offence.

Maximum penalty—15 penalty units.

- (2) A person who enters into or upon any road lawfully inclosed within the lands of any other person through a gate (not being a public gate within the meaning of the [Roads Act 1993](#)) and wilfully or negligently leaves open, removes or disables the gate is guilty of an offence.

Maximum penalty—15 penalty units.

- (3) In this section—

**gate** includes a cattle grid or any moveable thing used to inclose land including a slip panel or moveable fence.

#### **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.

## **7A Act does not prevent permitted union activities or industrial action**

- (1) Nothing in this Act makes it an offence for a person (including a representative of an industrial organisation) to enter or remain on inclosed land for the purposes of activities permitted under the [Industrial Relations Act 1996](#) or the [Fair Work Act 2009](#) of the Commonwealth.

- (2) In this section—

***industrial organisation*** means—

- (a) an industrial organisation of employees, or the State peak council for employees, within the meaning of the [Industrial Relations Act 1996](#), or
- (b) an employee organisation, or a peak council of employee organisations, within the meaning of the [Fair Work Act 2009](#) of the Commonwealth.

## **8 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily—
  - (a) by the Local Court, or

(b) by the Supreme Court in its summary jurisdiction.

(2) The maximum term of imprisonment that the Local Court may impose for an offence against this Act or the regulations is 2 years or the maximum term of imprisonment provided by law for the offence, whichever is the shorter term.

## 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 notices

(1) A police officer may issue a penalty notice to a person if it appears to the police officer that the person has committed an offence against this Act.

(2) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

### Note—

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

(3) The amount payable under a penalty notice issued under this section is the amount

prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).

- (4) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that 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.