



New South Wales

Western Lands Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Western Lands Act 1901* (the **Principal Act**) so as:

- (a) to provide for the creation of easements to maintain the dog-proof fences that are erected, pursuant to the *Wild Dog Destruction Act 1921*, along parts of the New South Wales/Queensland and New South Wales/South Australia borders, and
 - (b) to increase the membership of the Western Lands Advisory Council from 14 to 15, and
 - (c) to clarify the powers that may be exercised in relation to the establishment of fencing conditions for Western Lands leases, and
 - (d) to clarify the powers that may be exercised in relation to the creation of public roads over freehold land in the Western Division, and
 - (e) to clarify the objects of the Principal Act, and
 - (f) to bring the local land boards established for the Western Division into the scheme for local land boards established under the *Crown Lands Act 1989*, and
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(g) to enact other provisions of a minor, consequential or ancillary nature.
This Bill also makes a number of consequential amendments to other Acts and instruments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (other than Schedule 2 [24]) on the date of assent to the proposed Act. Schedule 2 [24] is to commence on a day to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Western Lands Act 1901* set out in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendments to other Acts and instruments set out in Schedule 3.

Clause 5 repeals the *Western Lands Amendment Act 2002*.

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Principal amendments

Easements to maintain the Border Fences

Schedule 1 [13] inserts proposed Division 3 into Part 9C of the Principal Act. The new Division contains the following provisions.

Proposed section 35UA defines *Border Fence*, *fenced portion of the State boundary*, *fencing easement* and *Wild Dog Destruction Board* for the purposes of the proposed Division.

Proposed section 35UB enables easements to be created in favour of the Wild Dog Destruction Board along the fenced portion of the NSW/Queensland and NSW/South Australia State boundaries (*fencing easements*).

Proposed section 35UC provides for the payment of compensation, to be determined in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, in respect of freehold land affected by the creation of a fencing easement. No such compensation is to be payable if the land affected is leased under the Principal Act.

Proposed section 35UD provides for the extinguishment of fencing easements.

Proposed section 35UE requires notice of the creation or extinguishment of a fencing easement to be given to affected landholders.

Proposed section 35UF provides that no duty is payable under the *Duties Act 1997* in respect of the creation or extinguishment of a fencing easement.

Proposed section 35UG provides that the proposed Division does not apply to or in respect of land reserved under the *National Parks and Wildlife Act 1974*. However, proposed amendments to that Act in Schedule 3.8 make it clear that the Minister administering that Act may grant a fencing easement over any such reserved land in favour of the Wild Dog Destruction Board after consultation with the Minister administering the *Western Lands Act 1901*.

Schedule 1 [11] makes a consequential amendment to the heading to Part 9C of the Principal Act.

Western Lands Advisory Council

Schedule 1 [4] amends section 8B of the Principal Act so as to increase the number of members on the Council from 14 to 15.

Schedule 1 [6] amends section 8B of the Principal Act so as to provide for the new member to be appointed to represent the interests of the Minister for Mineral Resources. The same amendment replaces an obsolete reference to the Minister for Agriculture with a reference to the Minister for Primary Industries, while **Schedule 1 [5]** replaces an obsolete reference to the Minister for the Environment with a reference to the Minister for Climate Change and the Environment.

Schedule 1 [17] amends clause 2 of Schedule 5 to the Principal Act so as to replace the existing 3 year terms of office for members of the Council with flexible terms of up to 3 years.

Schedule 1 [16] inserts a saving provision into Schedule 3 to the Principal Act so as to preserve the existing terms of office of existing members of the Council.

Fencing conditions

Schedule 1 [9] substitutes sections 18A and 18B of the Principal Act.

Proposed section 18A makes it clear that the power of the Western Lands Commissioner to set conditions as to fencing in relation to a Western Lands lease can be exercised from time to time, and not just when the lease is granted, and allows the Commissioner to apportion the costs of complying with a fencing order between adjoining landowners.

Proposed section 18B ensures that a landowner may recover from adjoining landowners any excess beyond the contributions for which they are liable in relation to compliance with a fencing order under proposed section 18A.

Schedule 1 [16] inserts a saving provision into Schedule 3 to the Principal Act so as to apply the proposed section 18A to existing Western Lands leases as well as to new Western Lands leases.

Local land boards

There are currently two separate schemes for local land boards: one under the *Crown Lands Act 1989* and the other under the Principal Act. In practice, the two schemes are administered as one. The intention is that there should in future be a single scheme applying throughout the State, that scheme being the scheme established under the *Crown Lands Act 1989*.

Schedule 1 [3] substitutes the definition of *Local Land Board* in section 3 (1) of the Principal Act. The new definition refers to local land boards constituted under the *Crown Lands Act 1989*.

Schedule 1 [7], [8] and [10] omit section 9 (2)–(7) and sections 9A, 10, 10A and 18C of the Principal Act (dealing with the constitution and functions of local land boards).

Schedule 1 [14] amends Schedule 2 to the Principal Act so as to extend to the Western Division the provisions of the *Crown Lands Act 1989* with respect to local land boards.

Schedule 1 [16] inserts a saving provision into Schedule 3 to the Principal Act so as to deem existing local land boards under that Act to be local land boards under the *Crown Lands Act 1989*.

Public roads

Schedule 1 [12] inserts proposed section 35QA into the Principal Act. The new section makes it clear that 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. Section 35Q already provides for the creation of public roads over leasehold land.

Objects

Schedule 1 [1] and [2] amend section 2 so as to reflect the new uses contemplated by the “special purpose lease” provisions of the Principal Act (included in the Act by the *Western and Crown Lands Amendment (Special Purpose Leases) Act 2008*) and the ongoing obligation to respect the indigenous and non-indigenous cultural heritage of the Western Division.

Additional savings and transitional provisions

Schedule 1 [15] amends clause 1AAA of Schedule 3 to the Principal Act so as to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Miscellaneous amendments

Except for the following, the amendments made by this Schedule are either consequential on the amendments to the Principal Act that are to be made by Schedule 1 or of a minor law revision nature only.

Schedule 2 [4] substitutes the definition of *Western Division* in section 3 (1) of the Principal Act as a consequence of proposed Schedule 3.3 [4], which includes such a definition in section 4 of the *Crown Lands Act 1989*.

Schedule 2 [7] updates section 18CC of the Principal Act. Much of the existing section has been rendered obsolete by the *Crown Proceedings Act 1988*.

Schedule 2 [12] amends section 18DB of the Principal Act as a consequence of the enactment of the *Native Vegetation Act 2003*.

Schedule 2 [14] repeals section 18I of the Principal Act (which deals with survey fees). No such fees are currently imposed.

Schedule 2 [18] repeals section 35L of the Principal Act (which provides for the amendment of various instruments). The section deals with matters that are more properly dealt with administratively.

Schedule 2 [19] substitutes section 36B of the Principal Act (which imposes interest on late payments of rent under a Western Lands lease issued before 1 July 1969) and repeals section 36C of that Act (which imposes interest on late payments of rent under a Western Lands lease issued after 1 July 1969) so as to provide that the rate of interest payable on late payments of any Western Lands lease is to be prescribed by the regulations. This reflects the current position.

Schedule 2 [20] substitutes section 46 (1) of the Principal Act so as to clarify the meaning of *condition* in Part 11 of that Act (which deals with the enforcement of the conditions of a Western Lands lease) so as to ensure that the expression extends to all conditions that the Principal Act imposes on such a lease.

Schedule 2 [24] replicates an uncommenced amendment that is currently contained in the *Western Lands Amendment Act 2002*, and so enables that Act to be repealed, as is proposed in clause 5 of the proposed Act.

Schedule 3 Amendment of other Acts and instruments

The amendments made by this Schedule are consequential on, or complementary with, the amendments to the Principal Act to be made by Schedule 1. The following amendments are of particular significance.

Amendment of the Conveyancing Act 1919

Schedule 3.2 [1] amends section 7A of the Act so as to provide that a plan of land the subject of a special purpose lease under Division 3A of Part 4 of the *Crown Lands Act 1989*, or Part 9E of the Principal Act, is not a current plan for the purposes of the Act.

Schedule 3.2 [2] amends section 23G of the Act so as to exclude the granting of a special purpose lease, and any subsequent transaction with respect to a special purpose lease, from the operation of section 23F of the Act. Section 23F allows the Registrar-General to refuse to register a land transaction unless it relates to an existing lot in a current plan.

Amendment of the Crown Lands Act 1989

Schedule 3.3 [2] substitutes the definition of *land district* in section 3 (1) of the Act. The new definition extends to land districts established under section 9 of the Principal Act. The effect of this extension is that section 8 of the Act (which provides for the establishment of local land boards for each land district) will therefore apply to land districts in the Western Division. See also Schedule 1 [14] referred to above.

Schedule 3.3 [3] and [5] amend sections 4 and 5 of the Act so as to make it clear that the Act does not, of its own force, apply to land in the Western Division or Lord Howe Island. Section 2A of, and Schedule 2 to, the Principal Act apply certain provisions of the Act to land in the Western Division.

Schedule 3.3 [4] inserts proposed subsection (2A) into section 4 of the Act. The new subsection defines the Western Division by reference to a deposited plan recorded in the office of the Registrar-General.

Amendment of the Dividing Fences Act 1991

Schedule 3.4 [2] inserts proposed paragraph (g) into section 4 of the Act. The new paragraph requires a local land board to have regard to certain orders under the Principal Act when dealing with fencing disputes affecting land the subject of a Western Lands lease.

Schedule 3.4 [3] amends section 13 of the Act so as to preclude a Local Court (which has a general jurisdiction to deal with matters arising under the Act) from dealing with matters that affect land the subject of a Western Lands lease.

Amendment of the National Parks and Wildlife Act 1974

Schedule 3.8 inserts proposed section 153E into the Act to make it clear that the Minister administering the Act may, after consultation with the Minister administering the *Western Lands Act 1901*, grant an easement over any reserved land in favour of the Wild Dog Destruction Board for the purpose of facilitating the repair and maintenance of the dog-proof fence located along the NSW/Queensland and NSW/South Australia State boundaries.