

Western and Crown Lands Amendment (Special Purpose Leases) 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* and the *Crown Lands Act 1989* so as to facilitate the granting of special purpose leases in relation to land within the Western Division of New South Wales. Special purpose leases will be able to co-exist with other tenures under those Acts in relation to the same land. In the case of land that is already the subject of some other tenure, it will only be possible to grant a special purpose lease with the consent of the holder of that tenure.

Under the amended Acts it will be possible, for example, to grant a special purpose lease to enable the establishment of a wind farm (to generate electricity) over land that is currently leased for grazing purposes. While most of the land may remain available for grazing, any particular part of it (other than the site of a dwelling-house or other significant improvement) could become the site of a windmill or other structure ancillary to a wind farm.

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 on assent.

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

Clause 4 is a formal provision that gives effect to the amendments to the *Crown Lands Act 1989* set out in Schedule 2.

Clause 5 amends the definition of *landholder* in section 30 of the *Forestry Act 1916* so as to exclude from that definition any lessee under a special purpose lease granted under the *Crown Lands Act 1989* or the *Western Lands Act 1901* (as amended by the proposed Act). The effect of the amendment is to exclude such lessees from any entitlement to royalty for timber taken from the land under the lease.

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 Amendment of Western Lands Act 1901

Special purpose leases

Schedule 1 [4] inserts proposed Part 9E into the Act. The new Part contains the following provisions:

Proposed section 35XA

This provision defines the expressions *designated purpose*, *development*, *development district*, *general purpose lease*, *significant improvement* and *special purpose lease* for the purposes of the proposed Part.

Proposed section 35XB

This provision enables the Minister to declare any land to be a development district for the purposes of the proposed Part. The declaration will designate the purposes for which a special purpose lease may be granted over such land, being purposes that are approved for the purposes of the proposed section. Approved purposes include the construction and operation of facilities to harness energy and convert it into electricity and such other purposes as are approved by a proclamation under proposed section 44B of the *Crown Lands Act 1989* (to be inserted by Schedule 2 [5]). Further declarations will be able to alter the district's boundaries, abolish the district or vary its designated purposes.

Proposed section 35XC

This provision enables the Minister to lease any Crown land within a development district for the purpose of enabling development for a designated purpose to be carried out on that land. In the case of land the subject of a mining lease (under the *Mining Act 1992*) or a production lease (under the *Petroleum (Onshore) Act 1991*) the granting of such a lease will require the consent of the Minister administering the

Act concerned. A lease granted under the proposed section will have a maximum term of 100 years. Land the subject of a general purpose lease can be leased under the proposed section, but only with the consent of the lessee under that lease (such consent to be irrevocable and to bind successors in title). A lease granted under the provision will be subject to the provisions of the *Crown Lands Act 1989* and not to

any provisions of the *Western Lands Act 1901* other than the proposed Part.

Proposed section 35XD

This provision ensures that a general purpose lease is (or remains) a lease even though, as a consequence of the granting of a special purpose lease, it does not confer (or no longer confers) exclusive possession of the land over which it is granted. The provision also imputes into the general purpose lease a condition prohibiting the lessee under that lease from doing anything that has the effect of restricting or impeding the lessee under the special purpose lease from exercising the rights conferred by that lease, and a further condition prohibiting the carrying out of development for the purposes of any dwelling-house, garden or significant improvement except with the consent of the lessee under the special purpose lease (such consent not to be unreasonably withheld). The conditions imposed pursuant to this provision will flow through to any sublease of the general purpose lease.

Proposed section 35XE

This provision ensures that a special purpose lease is (or remains) a lease even though, as a consequence of the granting of a general purpose lease, it does not confer (or no longer confers) exclusive possession of the land over which it is granted. The provision also imputes into the special purpose lease a condition prohibiting the lessee under that lease from exercising any rights under the lease over land within the

vicinity of any dwelling-house, garden or significant improvement except with the consent of the lessee under the general purpose lease (such consent to be irrevocable and to bind successors in title). The prohibition will not apply to the use of existing roads and tracks. The provision also allows the special purpose lease to include conditions agreed between the lessee under that lease and the lessee under the general purpose lease. The conditions imposed pursuant to this provision will flow through to any sublease of the special purpose lease. The agreed conditions will be enforceable between the lessees (and any sublessees) as if they were contained in a deed entered into between them.

Miscellaneous amendments

Schedule 1 [1] amends section 2A of the Act (which determines how the *Crown Lands Act 1989* is to apply to leases under the Act) so as to ensure that proposed section 35XC (6) (which determines how the *Crown Lands Act 1989* is to apply to special purpose leases) will prevail over section 2A.

Schedule 1 [2] omits the definition of **Crown lands** from section 3 (1) of the Act and replaces it with a new definition that states that **Crown land** is to have the same meaning as in the *Crown Lands Act 1989*. This amendment is merely law revision.

Schedule 1 [3] inserts proposed subsection (3) into section 3 of the Act. The new subsection states that notes in the text to the Act (such as the note at the end of proposed section 2A (5) to be inserted by Schedule 1 [1]) do not form part of the Act.

Schedule 1 [5] amends Schedule 2 to the Act so as to provide that, when applying the provisions of sections 34 and 34A of the *Crown Lands Act 1989* to leases under the *Western Lands Act 1901*, references in those sections to a special purpose lease extend to a special purpose lease under proposed Part 9E of the *Western Lands Act 1901*.

Schedule 2 Amendment of Crown Lands Act 1989

Special purpose leases of land within the Western Division

Schedule 2 [5] inserts proposed Division 3A into Part 4 of the Act. The new Division contains the following provisions:

Proposed section 44A

This provision defines the expressions **designated purpose**, **development**, **development district**, **general purpose lease**, **significant improvement** and **special purpose lease** for the purposes of the proposed Division.

Proposed section 44B

This provision enables the Minister to declare any land within the Western Division to be a development district for the purposes of the proposed Division. The declaration will designate the purposes for which a special purpose lease may be granted over such land, being purposes that are approved for the purposes of the proposed section. Approved purposes include the construction and operation of facilities to harness energy and convert it into electricity and such other purposes as are approved by proclamation. Further declarations will be able to alter the district's boundaries, abolish the district or vary its designated purposes.

Proposed section 44C

This provision enables the Minister to lease any Crown land within a development district for the purpose of enabling development for a designated purpose to be carried out on that land. In the case of land the subject of a mining lease (under the *Mining Act 1992*) or a production lease (under the *Petroleum (Onshore) Act 1991*) the granting of such a lease will require the consent of the Minister administering the

Act concerned. A lease granted under the proposed section will have a maximum term of 100 years. Land the subject of a general purpose lease can be leased under the proposed section, but only with the consent of the lessee under that lease (such consent to be irrevocable and to bind successors in title).

Proposed section 44D

This provision ensures that a general purpose lease is (or remains) a lease even though, as a consequence of the granting of a special purpose lease, it does not confer (or no longer confers) exclusive possession of the land over which it is granted. The provision also imputes into the general purpose lease a condition prohibiting the lessee under that lease from doing anything that has the effect of restricting or impeding the lessee under the special purpose lease from exercising the rights conferred by that lease, and a further condition prohibiting the carrying out of development for the purposes of any dwelling-house, garden or significant improvement except with the consent of the lessee under the special purpose lease (such consent not to be unreasonably withheld). The conditions imposed pursuant to this provision will flow through to any sublease of the general purpose lease.

Proposed section 44E

This provision ensures that a special purpose lease is (or remains) a lease even though, as a consequence of the granting of a general purpose lease, it does not confer (or no longer confers) exclusive possession of the land over which it is granted. The provision also imputes into the special purpose lease a condition prohibiting the lessee under that lease from exercising any rights under the lease over land within the

vicinity of any dwelling-house, garden or significant improvement except with the consent of the lessee under the general purpose lease (such consent to be irrevocable and to bind successors in title). The prohibition will not apply to the use of existing roads and tracks. The provision also allows the special purpose lease to include conditions agreed between the lessee under that lease and the lessee under the general purpose lease. The conditions imposed pursuant to this provision will flow through

to any sublease of the special purpose lease. The agreed conditions will be enforceable between the lessees (and any sublessees) as if they were contained in a deed entered into between them.

Miscellaneous amendments

Schedule 2 [1] inserts a definition of *land district* into section 3 (1) of the Act. The definition includes not only the land districts currently referred to in section 8 of the Act, but also any development districts in the Western Division that are established under proposed Division 3A of Part 4 of the Act (to be inserted by Schedule 2 [5]) or under proposed Part 9E of the *Western Lands Act 1901* (to be inserted by Schedule 1 [4]). The effect of this amendment is to enable land boards to be constituted for the development districts. These land boards will have a role in dealing with disputes that arise in relation to special purpose leases granted in respect of land within those districts.

Schedule 2 [2] inserts proposed subsection (7) into section 34 of the Act. The new subsection provides that Crown land the subject of a special purpose lease (within the meaning of proposed Division 3A of Part 4) may be leased under that section, but only if the granting of a lease under that section is authorised by, and complies with, the terms of the special purpose lease.

Schedule 2 [3] amends section 34A (6) (a) of the Act so as to apply proposed Division 3A of Part 4 to leases granted under section 34A.

Schedule 2 [4] inserts proposed subsection (9) into section 34A of the Act. The new subsection provides that a Crown reserve the subject of a special purpose lease (within the meaning of proposed Division 3A of Part 4) may be leased under that section, but only if the granting of a lease under that section is authorised by, and complies with, the terms of the special purpose lease.