

WESTERN LANDS (AMENDMENT) BILL 1985

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Water (Penalties) Amendment Bill 1985;
Forestry (Clearing Licences) Amendment Bill 1985.

The objects of this Bill are—

- (a) to prevent the clearing of trees (not having economic value) from land under lease in the Western Division except in accordance with a licence issued by the Western Lands Commissioner (the taking of trees having economic value being regulated by licences issued under the Forestry Act 1916);
- (b) to provide that, for the purposes of enforcing the Western Lands Act 1901—
 - (i) the Commissioner may suspend or revoke a consent to cultivate land or a clearing licence;
 - (ii) the Commissioner may require a lessee to rectify a contravention of a condition of the lease and, if not rectified, may carry out the work at the lessee's cost;
 - (iii) the lessee is guilty of an offence for contravening certain specified conditions of the lease; and
 - (iv) the Minister may, before forfeiting a lease, issue a warning notice specifying the measures required to rectify the contravention of the lease; and
- (c) to effect a number of miscellaneous amendments to the Western Lands Act 1901 and amendments by way of statute law revision.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence partly on the date of assent to the Act (in respect of formal and minor provisions) and partly on a day or days appointed by the Governor-in-Council (in respect of substantive amendments).

Clause 3 defines the Principal Act.

Clause 4 lists the Schedules to the proposed Act.

Clause 5 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Clause 6 is a formal provision that gives effect to the Schedule of savings, transitional and other provisions.

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING AND CULTIVATION

Schedule 1 (1) (a) makes it clear, for the purposes of section 18DA of the Principal Act, that a reference to a lease for a grazing or other purpose is a reference to a lease expressed to be for that purpose, whether or not the land the subject of the lease may be used for other purposes under the conditions of the lease.

Schedule 1 (1) (b) provides that a consent to cultivation under section 18DA of the Principal Act does not authorise the clearing of land for which a clearing licence is to be required under amendments made by Schedule 1 (2).

Schedule 1 (1) (c), (e) and (f) empower the Commissioner to suspend or revoke a consent to the cultivation of land subject to a grazing or other lease.

Schedule 1 (1) (d) and (g) enable a person to appeal directly to the Land and Environment Court against a decision of the Commissioner relating to the refusal to give a consent to the cultivation of land the subject of a grazing or other lease, the imposition of conditions on such a consent or the suspension or revocation of such a consent.

Schedule 1 (2) prevents the clearing of trees (not having economic value) from land under lease in the Western Division except in accordance with a clearing licence issued by the Commissioner. A clearing licence is not required for land less than ½ hectare in area or in certain other cases. The Commissioner may issue a clearing licence subject to conditions and may suspend or cancel a clearing licence. An appeal is provided to the Land and Environment Court against a decision of the Commissioner relating to the refusal to issue a clearing licence, the imposition of conditions on a clearing licence or the suspension or cancellation of a clearing licence. The Commissioner is not authorised to issue a clearing licence for land in a State forest, timber reserve or flora reserve. At present, clearing licences for land in the Western Division are regulated under the Forestry Act 1916.

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ENFORCEMENT PROVISIONS

Schedule 2 (1) is consequential on the enactment of proposed section 50 (Schedule 2 (5)).

Schedule 2 (2) provides, in connection with the proposed enforcement provisions inserted by Schedule 2 (5), for statutory conditions applicable to all leases in respect of certain matters (instead of some of those matters being left to the conditions imposed by the Minister on a lease). In particular, a lessee is required—

- (a) to take measures as directed by the Commissioner to protect the land under lease, including measures to prevent overstocking, to prevent unsuitable agricultural practices, to preserve trees and vegetation and to take any measures recommended by the Commissioner of the Soil Conservation Service to prevent soil erosion and other damage to the land;

- (b) to obtain the approval of the Commissioner to the erection of buildings outside local government areas;
- (c) to erect gates on public roads;
- (d) to repair improvements; and
- (e) to furnish returns to the Commissioner.

Schedule 2 (3) removes the liability of a lease to forfeiture if the lessee sublets, grants grazing rights over, or agists stock on, the land without the consent of the Minister. A contravention is to constitute an offence under proposed section 49 of the Principal Act (Schedule 2 (5)).

Schedule 2 (4) increases the maximum amount of penalty that may be imposed for a contravention of the regulations from \$20 to \$500.

Schedule 2 (5) inserts into the Principal Act a new Part containing the following provisions relating to the enforcement of the Principal Act:

- (a) Proposed section 46 defines "condition" to include, in relation to a lease, all covenants, restrictions, etc., applying or attaching to the lease and, in particular, to include the statutory requirements relating to the cultivation and clearing of land subject to a lease. The proposed section applies the new Part of the Principal Act (except the provisions creating offences) to contraventions of conditions that occurred before the commencement of that new Part.
- (b) Proposed section 47 enables the Commissioner to serve a notice requiring a lessee to comply with any condition of a lease and to take specified measures to rectify the contravention of the condition.
- (c) Proposed section 48 enables the Commissioner, where a notice under proposed section 47 is not complied with, to enter the leased area, take the measures specified in the notice and recover the costs from the lessee.
- (d) Proposed section 49 makes a lessee guilty of an offence for contravening certain conditions of the lease, including—
 - (i) clearing land except in accordance with a clearing licence (maximum penalty: \$10,000);
 - (ii) failure to comply with directions of the Commissioner for the protection of the land (maximum penalty: \$10,000);
 - (iii) failure to repair improvements (maximum penalty: \$10,000);
 - (iv) failure to fence in accordance with section 18A (maximum penalty: \$10,000);
 - (v) erecting a building without approval (maximum penalty: \$2,000); and
 - (vi) subletting, granting grazing rights or agisting stock without consent (maximum penalty: \$1,000).

A lessee is also guilty of an offence (maximum penalty: \$10,000) for a failure to comply with a notice under proposed section 47 in connection with a contravention of conditions relating to cultivation and clearing of land and the use of land for purposes not authorised by the lease. A person is also guilty of an offence for aiding or abetting a lessee in the commission of an offence.

- (e) Proposed section 50 provides that the Minister may, before forfeiting a lease, issue a warning notice specifying the measures required to be taken to rectify the contravention of the lease (an appeal is provided to the Land and Environment Court should the liability to forfeiture be disputed).
- (f) Proposed section 51 makes it clear that different proceedings may be taken for the same contravention of a condition of a lease.
- (g) Proposed section 52 provides that proceedings for an offence shall be disposed of summarily before a Local Court and shall not be instituted without the consent of the Commissioner or a prescribed officer.

Schedule 2 (6) is consequential on the amendments made by Schedule 2 (2).

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

Schedule 3 (1) enables the Minister, with the agreement of the lessee, to determine any matter (including the rent of a lease) instead of the local land board.

Schedule 3 (2) is consequential on the amendments made by Schedule 3 (19).

Schedule 3 (3), (5), (10), (12), (14), (16), (18) and (20) remove the requirement that a report or recommendation of the Commissioner is a prerequisite to the exercise of certain powers of the Minister under the Principal Act.

Schedule 3 (4), (8) and (9) provide for an increase in the maximum rate of rent payable in respect of a grazing lease from 25 cents to 35 cents per sheep.

Schedule 3 (6) empowers the Minister to waive payment of the survey fee payable by an applicant for a lease.

Schedule 3 (7) authorises the Minister to alter the terms relating to the payment of rent or other money under a lease when altering conditions of a lease with the consent of the lessee.

Schedule 3 (11) increases the period in which the Minister may lodge an appeal with the Land and Environment Court against a decision of the local land board to grant applications for leases of certain land.

Schedule 3 (13) (a)—

- (a) prevents any further conversions to conditional purchases of leases for the purpose of agriculture or mixed farming, or a similar purpose; and
- (b) enables the holder of a lease for residence, business purposes, motel purposes, or similar purposes, to convert 2 or more adjoining leases into a conditional purchase instead of only a single lease.

Schedule 3 (13) (b) removes the requirement that a conversion of a lease to a conditional purchase may only be granted as to such part of the land the subject of the lease together with land owned by the lessee as would not substantially exceed 1 home maintenance area (an area which is sufficient for the maintenance of an average family).

Schedule 3 (13) (c) is a minor amendment to enable the Minister to clarify the meaning of "public purpose" in section 28BB of the Principal Act.

Schedule 3 (15) removes the requirement that the local land board prepare a report before the Minister may add forfeited or surrendered land to adjoining or adjacent leases, etc., and makes it clear that the addition of any such land may be made only with the consent of the holder of the lease, etc., and the payment by that holder of any prescribed costs.

Schedule 3 (17) provides that the Minister may reserve a road out of any leased land which was the subject of a surrendered lease for any purpose instead of only for the use of travelling stock.

Schedule 3 (19) empowers the Minister to withdraw land (not exceeding 80 hectares) from a lease for any public purpose declared by the Minister. Any land so withdrawn may be dealt with under the Principal Act or under the Crown Lands Consolidation Act 1913 (whether by way of dedication or reservation or otherwise). The proposed provision replaces section 17A of the Principal Act.

Schedule 3 (21) removes any doubt as to the application to the Western Division of provisions in the Crown Lands Consolidation Act 1913 relating to permissive occupancies.

SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION

The amendments include the deletion of obsolete provisions and the revision of superseded references.

SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

The Schedule includes—

- (a) a transitional provision delaying the effect of the increase in rent proposed by Schedule 3 (4), (8) and (9) (clause 1);
 - (b) a validation of certain actions that are authorised by the amendments made by Schedule 3 (7) and (15) (clause 2);
 - (c) a provision which nullifies the effect of all pending applications (with specified exceptions) under section 28BB (1) of the Principal Act to convert to conditional purchases leases for the purpose of agriculture or mixed farming, or a similar purpose; and
 - (d) a power to make regulations for further savings and transitional provisions (clause 4).
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WESTERN LANDS (AMENDMENT) BILL 1985

No. , 1985

A BILL FOR

An Act to amend the Western Lands Act 1901 with respect to the clearing and cultivation of land in the Western Division and the enforcement of conditions of leases, and in other respects.

See also Water (Penalties) Amendment Bill 1985; Forestry (Clearing Licences) Amendment Bill 1985.

Western Lands (Amendment) 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Western Lands (Amendment) Act 1985".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence
10 on the date of assent to this Act.

(2) The several provisions of Schedules 1-3, and section 5 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

15 Principal Act

3. The Western Lands Act 1901 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

20 SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO CLEARING AND CULTIVATION

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO ENFORCEMENT PROVISIONS

25 SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO THE
PRINCIPAL ACT

SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT BY
WAY OF STATUTE LAW REVISION

SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS

*Western Lands (Amendment) 1985***Amendment of Act No. 70, 1901**

5. The Principal Act is amended in the manner set forth in Schedules 1-4.

Savings, transitional and other provisions

5 6. Schedule 5 has effect.

SCHEDULE 1

(Sec. 5)

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION**

10 (1) (a) Section 18DA (1)—

Before “for the purpose” wherever occurring, insert “expressed to be granted or issued”.

(b) Section 18DA (2)—

15 After “cultivated”, insert “, but does not include the clearing of land within the meaning of section 18DB”.

(c) Section 18DA (3)—

20 Omit “without first having obtained the written consent of the Commissioner to the cultivation of that part”, insert instead “unless the Commissioner consents in writing to the cultivation of that part of the land and the consent is in force”.

(d) Section 18DA (7)—

Omit the subsection.

(e) Section 18DA (8A)—

After section 18DA (8), insert:

25 (8A) The Commissioner may, on the ground that any condition to which a consent under this section is subject has been contravened or on any other ground—

(a) suspend the consent; or

30 (b) after affording the lessee an opportunity to be heard—
revoke the consent.

*Western Lands (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION—*continued*

(f) Section 18DA (9)—

After “consent” where lastly occurring, insert “unless it is sooner revoked or surrendered”.

(g) Section 18DA (10), (11)—

5 Omit the subsections, insert instead:

(10) A person may appeal to the Land and Environment Court against—

(a) the refusal of the Commissioner to give a consent under this section to the person;

10 (b) any condition to which a consent given to the person under this section is subject; or

(c) the suspension or revocation of a consent given under this section to the person or the person’s predecessor in title.

15 (11) For the purpose only of enabling an appeal to be made under subsection (10), a failure by the Commissioner to determine an application for a consent under this section within 6 months after the application is received by the Commissioner constitutes a refusal by the Commissioner to give the consent.

(2) Section 18DB—

20 After section 18DA, insert:

Clearing licences

25 18DB. (1) This section applies to a lease for any purpose, whether granted or issued before or after the commencement of this section, except where the land the subject of the lease has an area of one-half of a hectare or less.

Western Lands (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION—*continued*

(2) In this section—

“clear”, in relation to land, means ringbark or otherwise kill or destroy trees on the land, being trees which do not have economic value;

5 “tree” includes a sapling or seedling of a tree.

(3) The lessee of a lease to which this section applies shall not clear any part of the land the subject of the lease unless the Commissioner has issued a clearing licence which authorises the clearing of that part of the land and the licence is in force.

10 (4) The lessee of a lease to which this section applies is not required to obtain a clearing licence—

(a) to do a thing pursuant to a licence or other authority under the Forestry Act 1916;

15 (b) to clear land for the purpose of obtaining timber for use on the land subject to the lease for building, fencing or firewood; or

(c) in such other circumstances as may be prescribed.

20 (5) Application for a clearing licence shall be made to the Commissioner in a form approved by the Commissioner and shall be accompanied by the prescribed fee.

(6) The Commissioner may issue a clearing licence unconditionally or subject to such conditions as the Commissioner may specify in the licence or may refuse to issue the licence.

25 (7) The Commissioner may, on the ground that any condition to which a clearing licence is subject has been contravened or on any other ground—

(a) suspend the licence; or

30 (b) after affording the lessee an opportunity to be heard—cancel the licence.

*Western Lands (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION—*continued*

(8) A clearing licence remains in force for such period as the Commissioner may specify in the licence unless it is sooner cancelled or surrendered.

5 (9) A person may appeal to the Land and Environment Court against—

(a) the refusal of the Commissioner to issue a clearing licence to the person;

(b) any condition to which a clearing licence issued to the person is subject; or

10 (c) the suspension or cancellation of a clearing licence issued to the person or the person's predecessor in title.

15 (10) For the purpose only of enabling an appeal to be made under subsection (9), a failure by the Commissioner to determine an application for a clearing licence within 6 months after the application is received by the Commissioner constitutes a refusal by the Commissioner to issue the licence.

20 (11) A lease to which this section applies is liable to forfeiture if any part of the land the subject of the lease is cleared in contravention of this section or of any conditions to which a clearing licence is subject.

25 (12) No act, matter or thing which a lessee, under or in conformity with a clearing licence, does on or in relation to the land the subject of the lease renders the lease liable to forfeiture under this Act merely because the doing of the act, matter or thing contravenes any covenant, condition or provision applicable to the lease.

(13) Nothing in this section authorises the Commissioner to issue a clearing licence—

30 (a) in respect of land within a State forest, timber reserve or flora reserve under the Forestry Act 1916; or

*Western Lands (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION—*continued*

- (b) in respect of protected land (within the meaning of section 21A of the Soil Conservation Act 1938)—except with the consent of the Catchment Areas Protection Board constituted under that Act.
- 5 (14) Nothing in this section affects the operation of—
- (a) section 27 of the Forestry Act 1916; or
- (b) section 26D of the Water Act 1912.

SCHEDULE 2

(Sec. 5)

10 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS

- (1) Section 10B—
Omit the section.
- (2) (a) Section 18D (iv)—
- 15 Omit the paragraph, insert instead:
- (iv) A lessee shall take such measures as the Commissioner may direct to protect the land under lease and, without affecting the generality of the foregoing, the Commissioner may direct the lessee—
- 20 (a) to prevent the use by stock of any part of the land for such periods as the Commissioner considers necessary and to erect fencing for that purpose;
- (b) to prevent the overstocking of the land;
- 25 (c) to prevent any part of the land being used for such agricultural practices of such types and for such periods as the Commissioner considers necessary;

*Western Lands (Amendment) 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

- (d) to foster and cultivate edible shrubs and plants on the land;
- (e) to preserve trees, scrub and vegetative cover on the land; and
- 5 (f) to take such measures to protect the land (including measures to prevent soil erosion or other damage to the land) as the Commissioner of the Soil Conservation Service may recommend.
- (b) Section 18D (v)—
- 10 Omit “, and the lessee shall comply with any directions of the Commissioner to prevent or discontinue overstocking”.
- (c) Section 18D (vii)–(x)—
- After section 18D (vi), insert:
- 15 (vii) A lessee shall not erect a building on the land under lease (not being land in a local government area within the meaning of the Local Government Act 1919) except with the prior approval of the Commissioner and in accordance with any condition to which the approval is subject.
- 20 (viii) A lessee shall, if the Commissioner so directs, erect gates on public roads on the land under lease.
- (ix) A lessee shall carry out such repairs to improvements on the land under lease as the Commissioner may direct.
- 25 (x) A lessee shall furnish such returns and statements as the Commissioner may from time to time require on any matter connected with the land under lease or any other land (whether within or outside the Western Division) in which the lessee has an interest.

*Western Lands (Amendment) 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

(3) Section 18G (4A)—

5 Omit “shall be liable to forfeiture if the holder sublets the lease or any part thereof, or grants any grazing rights over the lease or any part thereof, or agists”, insert instead “shall be subject to the condition that the holder of the lease shall not sublet the lease or any part thereof, or grant any grazing rights over the lease or any part thereof, or agist”.

(4) Section 36—

Omit “twenty dollars”, insert instead “\$500”.

10 (5) Part XI—

After Part X, insert:

PART XI

ENFORCEMENT PROVISIONS

Interpretation and application.

15 46. (1) In this Part, “condition”, in relation to a lease, includes—

- (a) any covenant, term, reservation, exception, exemption or provision attaching or applying to the lease, whether by the terms of the lease or by this Act or otherwise; and
- 20 (b) without affecting the generality of paragraph (a)—the requirement under section 18DA not to cultivate land without a consent under that section, the requirement under section 18DB not to clear land without a clearing licence and a condition to which any such consent or
- 25 licence is subject.

(2) This Part (except section 49) applies to and in respect of a contravention of a condition of a lease notwithstanding that the contravention occurred before the commencement of this Part.

*Western Lands (Amendment) 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued***Notice to lessee to rectify contravention, etc.**

5 47. (1) Where a lessee contravenes, whether by act or omission, any condition of a lease under this Act, the Commissioner may serve on the lessee a notice in writing requiring the lessee—

- (a) to comply with the condition; and
- (b) to take such measures to rectify the contravention as the Commissioner considers appropriate and as are specified in the notice.

10 (2) A notice under this section—

- (a) shall specify the period within which any measures referred to in subsection (1) (b) are to be taken;
- (b) may be served either personally or by post; and
- (c) may be varied or revoked by a further notice.

15 (3) The Commissioner may, in any case in which the Commissioner considers that it is appropriate to do so, serve a copy of a notice under this section on a mortgagee of the lease to which the notice relates.

Commissioner may rectify contravention and recover costs

20 48. (1) Where the lessee does not take any of the measures specified in a notice under section 47 within the period required by the notice, the Commissioner may, by the Commissioner's agents or contractors, enter the land the subject of the lease and take those measures.

25 (2) Any costs incurred by the Commissioner in taking any such measures—

- (a) may be recovered by the Commissioner from the lessee as a debt in a court of competent jurisdiction; and
 - (b) shall be a charge against the lease until the costs are paid to or recovered by the Commissioner.
- 30

*Western Lands (Amendment) 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued***Offences**

- 5 49. (1) A lessee who contravenes, whether by act or omission, any of the following conditions of a lease is guilty of an offence and liable to a penalty not exceeding the amount of penalty specified opposite the condition:
- 10 (a) The requirements of section 18DB (3) (clearing land without a clearing licence or contrary to any condition to which such a licence is subject)—penalty: \$10,000.
- (b) The condition in section 18D (iv) (directions of Commissioner for protection of land)—penalty: \$10,000.
- (c) The condition in section 18D (ix) (repairs to improvements)—penalty: \$10,000.
- (d) The condition in section 18A (fencing)—penalty: \$10,000.
- 15 (e) The condition in section 18D (vii) (erection of building without approval)—penalty: \$2,000.
- (f) The condition in section 18G (4A) (subletting, grazing rights or agistment without consent)—penalty: \$1,000.
- (g) The condition in section 18D (x) (returns, etc., to be furnished to Commissioner)—penalty: \$1,000.
- 20 (h) The condition in section 18D (viii) (gates to be erected on public roads)—penalty: \$1,000.
- (i) A condition of the lease that is prescribed by the regulations made under this Act for the purpose of this section—penalty: \$500.
- 25 (2) A lessee who fails to comply with a notice under section 47 in connection with a contravention of any of the following conditions of the lease is guilty of an offence and liable to a penalty not exceeding \$10,000:
- 30 (a) The requirements of section 18DA (3) (cultivating land without consent of Commissioner or contrary to any condition to which such a consent is subject).
- (b) The requirements of section 18DB (3) (clearing land without a clearing licence or contrary to any condition to which such a licence is subject).

*Western Lands (Amendment) 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

(c) The use of the land under lease for a purpose that is not a purpose for which the lease was granted or issued.

5 (3) A person who aids, abets, counsels or procures the commission of an offence against this section shall be deemed to have committed that offence and is punishable accordingly.

(4) Where an act or omission constitutes an offence under separate provisions of this section or under this section and any other Act, the offender is not liable to be punished twice in respect of the offence.

10 **Forfeiture of leases**

50. (1) In this section, “forfeiture” includes cancellation.

(2) Where—

(a) a lessee has contravened, whether by act or omission, a condition of a lease under this Act; and

15 (b) the lease is, because of that contravention, liable to be forfeited under this Act,

20 the Minister may serve on the lessee a notice in writing stating that the lease will be declared to be forfeited in accordance with this Act unless that lessee complies with the condition and takes such measures to rectify the contravention as the Minister considers appropriate and as are specified in the notice.

(3) A notice under this section—

(a) shall specify the period within which any measures referred to in subsection (2) are to be taken;

25 (b) may be served either personally or by post; and

(c) may be varied or revoked by a further notice.

*Western Lands (Amendment) 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

(4) The Minister may, in any case in which the Minister considers that it is appropriate to do so, serve a copy of a notice under this section on a mortgagee of the lease to which the notice relates.

5 (5) Nothing in this section prevents a lease being declared forfeited in accordance with this Act without the service of a notice under this section.

10 (6) A lessee may appeal to the Land and Environment Court against a determination made by the Minister, in a notice under this section or otherwise, that the lessee has contravened a condition of the lease and that the lease is, because of that contravention, liable to be forfeited under this Act.

15 (7) The Land and Environment Court may, where any such appeal is made, provisionally waive any declaration of the forfeiture of a lease pending the determination of the appeal.

Different proceedings may be taken for same contravention

20 51. The fact that proceedings have been taken under one of the provisions of this Part for a contravention of a condition of a lease does not preclude different proceedings being taken under this Part or otherwise for the same contravention.

Proceedings for offences

25 52. (1) Proceedings for an offence against this Act or the regulations made under this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against this Act or the regulations made under this Act shall not be instituted without the written consent of the Commissioner or a prescribed officer.

30 (3) In any proceedings for an offence against this Act or the regulations made under this Act, a consent to institute the proceedings, purporting to have been signed by the Commissioner or a prescribed officer, shall be evidence of that consent without proof of the signature of the Commissioner or the prescribed officer, as the case may be.

*Western Lands (Amendment) 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

- (6) Schedule A, paragraphs (d), (f)–(h)—
Omit the paragraphs.

SCHEDULE 3

(Sec. 5)

5 MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

- (1) Section 10c—

Before section 11, insert:

Minister may deal with matters by agreement

10 10c. (1) In this section, “determine” includes redetermine, assess, inquire into, report upon, recommend and any other prescribed act or proceeding.

- (2) Where—

(a) by or under this Act, it is provided that a local land board shall determine any matter; and

15 (b) the applicant or lessee who would be affected by the determination, if made, agrees in writing to the Minister’s dispensing with that determination or determining that matter in a specified manner,

20 the Minister may, without the holding of a hearing, dispense with that determination or determine that matter in the specified manner, as the case may be.

25 (3) Where, in the opinion of the Minister, any person other than an applicant or a lessee would be directly affected by a determination by a local land board of any matter, if made, the Minister shall not take any action under subsection (2) in relation to the determination unless that person agrees in writing to that action being taken.

*Western Lands (Amendment) 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) Where the Minister dispenses with a determination as referred to in subsection (2) in relation to a matter—

- 5 (a) the local land board shall be deemed to have no jurisdiction in the matter; and
- (b) any requirement to refer matters to the local land board shall, in so far as it would, but for this subsection, apply to the matter, be deemed to be repealed.

10 (5) Where the Minister determines a matter under subsection (2), the local land board shall be deemed to have no jurisdiction in the matter and the Minister's determination shall have the same effect as if it were a determination of the local land board.

(6) Where the Minister—

- 15 (a) dispenses with a determination as referred to in subsection (2) in relation to a matter; or
- (b) determines a matter under subsection (2),

20 and the Minister would, but for this subsection, be prohibited from doing a thing in relation to the matter, except after receiving a recommendation or report from a local land board, the Minister may do the thing notwithstanding that no such report or recommendation is received.

25 (7) Where the Minister has determined a matter under subsection (2) with the agreement of a person or persons whose agreement is necessary to enable the Minister to make the determination, the Minister may, if that person agrees or those persons agree in writing to the Minister's reversing the determination or to the Minister's altering or amending the determination in a specified manner, reverse, alter or amend in accordance with the agreement the determination so made and, thereupon, the provisions of subsections (5) and (6) cease to apply to the determination so made but apply to the determination as reversed, altered or amended in accordance with this subsection.

30

Western Lands (Amendment) 1985

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Section 17A—

Omit the section.

(3) (a) Section 18—

Omit “after report from the Commissioner,”.

5 (b) Section 18—

Omit “, on the recommendation of the Commissioner,”.

(4) Section 18E (11), proviso—

Omit “twenty-five”, insert instead “35”.

(5) Sections 18H (1), 28A (1), 29 (2)—

10 Omit “, after report by the Commissioner,” wherever occurring.

(6) Section 18i (2)—

At the end of section 18i, insert:

(2) The Minister may waive payment of the whole or any part of any such survey fee.

15 (7) Section 18J—

After “terms”, insert “(including terms relating to the rent or other money payable under the lease)”.

(8) Section 19B (3), proviso—

Omit “twenty-five”, insert instead “35”.

20 (9) Section 19D (4), proviso—

Omit “twenty-five”, insert instead “35”.

*Western Lands (Amendment) 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(10) Section 20—

Omit “and after report from the Commissioner”.

(11) (a) Section 26 (4)—

5 Omit “: Provided that the Minister may, within twenty-eight days after the decision of the local land board has been given, refer it for determination to the Land and Environment Court, and in such case the decision of the Land and Environment Court shall be final”.

(b) Section 26 (5)—

10 After section 26 (4), insert:

(5) Notwithstanding subsection (4), the Minister may, at any time within 60 days after a decision of the local land board has been given under this section or within such further time as the Land and Environment Court may either generally or in any particular case allow, refer the decision to the Land and Environment Court for determination, and the decision of the Land and Environment Court in the matter shall be final.

(12) Section 28A (1)—

Omit “, on the report of the Commissioner,”.

20 (13) (a) Section 28BB (1)—

Omit the subsection, insert instead:

(1) The holder of a lease—

(a) which is for residence, business purposes, motel purposes, or similar purposes, but not for grazing, agriculture, farming or any other purpose; and

(b) which is not liable to forfeiture,

may apply to convert the lease (as to the whole or any part of the land comprised in the lease) or any 2 or more of those leases if adjoining into a conditional purchase.

30 (b) Section 28BB (2) (b), (b1)—

Omit the paragraphs.

*Western Lands (Amendment) 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) Section 28BB (5A)—

After section 28BB (5), insert:

(5A) In subsections (4) and (5), “public purpose” means a purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose within the meaning of this section.

(14) (a) Section 33A (1)—

Omit “on the recommendation of the Commissioner”.

(b) Section 33A (3)—

Omit “, upon the recommendation of the Commissioner and”.

(15) (a) Section 35C—

Omit “after report by the local land board,”.

(b) Section 35C—

Omit “determined by the local land board”, insert instead “determined by the Minister”.

(c) Section 35C (2)—

At the end of section 35C, insert:

(2) Any such forfeited or surrendered lands or any such revoked reserves shall not be added to a lease, license, purchase or homestead grant except—

(a) with the consent of the holder of the lease, license, purchase or homestead grant; and

(b) on the payment by that holder of such costs as may be prescribed.

(16) Section 38—

Omit “after report by the Commissioner”.

*Western Lands (Amendment) 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(17) Section 41 (2)—

Omit “for the use of travelling stock”.

(18) Section 43—

Omit “upon the recommendation of the Commissioner”.

5 (19) Section 43B—

Before section 44, insert:

Power to withdraw for public purposes

10 43B. (1) The Minister may, by notification published in the Gazette, withdraw from lease (whether the lease was granted or issued before or after the commencement of this section), without compensation except for existing improvements, any land (not exceeding 80 hectares) required for any purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose within the meaning of this section.

15 (2) Upon withdrawal of land from a lease under this section, the rent of the lease shall be reduced in proportion to the area withdrawn.

(3) Land withdrawn from a lease under this section may be dealt with in accordance with this Act or the Crown Lands Acts.

20 (20) Section 44 (3)—

Omit “, upon the recommendation of the Commissioner,”.

(21) Section 45—

After section 44A, insert:

Permissive occupancies

25 45. For the avoidance of doubt it is declared that section 136K of the Crown Lands Consolidation Act 1913 and any other provision of that Act relating to a permission to occupy Crown lands or a permissive occupancy of Crown lands apply, and shall be deemed always to have applied, to land in the Western
30 Division.

Western Lands (Amendment) 1985

SCHEDULE 4

(Sec.5)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION

- 5 (1) Part I, heading—
Omit "*Preliminary and general*", insert instead "PRELIMINARY".
- (2) Part II, heading—
Before section 4, insert:
- ADMINISTRATION
- 10 (3) Sections 4 (4), 44 (4) (b)—
Omit "Revenue" wherever occurring.
- (4) (a) Section 6 (1)—
Omit "Public Service Act, 1902, or any Act amending that Act," wherever occurring, insert instead "Public Service Act 1979".
- 15 (b) Section 6 (2)—
Omit the subsection.
- (c) Section 6 (3)—
Omit "Public Service Act, 1902, or under the Superannuation Act, 1916–1944, or any Act amending such Acts," insert instead "Public Service Act 1979 or under the Superannuation Act 1916".
- 20 (d) Section 6 (4)—
Omit "widow", insert instead "spouse".
- (e) Section 6 (4)—
Omit "Public Service Act, 1902, or the Superannuation Act, 1916–1930, or any Act amending or replacing those Acts", insert instead "Public Service Act 1979 or the Superannuation Act 1916".
- 25 (f) Section 6 (4)—
Omit "Public Service Act, 1902, as amended by subsequent Acts", insert instead "Public Service Act 1979".
- 30 (5) Section 11—
Omit the section, insert instead:

*Western Lands (Amendment) 1985*SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued***Appointment of staff**

11. Such staff as may be necessary to enable the Commissioner to exercise the Commissioner's functions shall be employed under the Public Service Act 1979.

- 5 (6) Part III, heading—
Omit "*Land may be brought under this Act*", insert instead "LAND MAY BE BROUGHT UNDER THIS ACT".
- (7) Part IV, heading—
Omit the heading.
- 10 (8) Sections 14, 15, 17, 17C, 17CC, 17CCC, 17D, 28B, 35E, 35I, 35J, 44C—
Omit the sections.
- (9) Part V, heading—
Omit "*Terms and conditions of leases*", insert instead "CONDITIONS OF LEASES".
- 15 (10) Section 18—
Omit "All leases issued or brought under the provisions of this Act shall, except as otherwise provided in this Act, expire on the thirtieth day of June in the year one thousand nine hundred and forty-three except leases extended in accordance with the provisions of section 17 and special leases as hereinafter provided. Where an extension of lease has been granted under section 14, the lessee shall surrender his present lease or certificate of confirmation or grant, and a new lease shall be issued to him from the date of such surrender, and such lease as well as every new lease", insert instead "Every lease".
- 20
- 25 (11) Section 18CC—
Omit "Minister for Lands", insert instead "Minister for Natural Resources".
- (12) (a) Section 18E (2) (d)—
Omit the paragraph.
- (b) Section 18E (2) (e)—
- 30 Omit "or of a holder of the class referred to in paragraph (d)".

*Western Lands (Amendment) 1985*SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued*

- (c) Section 18E (2) (e)—
Omit “or holder, as the case may be”.
- (d) Section 18E (4) (b)—
Omit “date:”, insert instead “date;”.
- 5 (e) Section 18E (4) (b), proviso—
Omit the proviso.
- (13) Section 18F (2) (a)—
Omit “Commissioners of the Western Land Board of New South Wales”,
insert instead “Commissioner”.
- 10 (14) Section 18G (1), (4A)—
After “section 17CCC” wherever occurring, insert “(as in force immediately
before the commencement of Schedule 4 to the Western Lands (Amendment)
Act 1985)”.
- (15) Part VI, heading—
15 Omit “*Determination of rentals and license fees*”, insert instead
“DETERMINATION OF RENTALS”.
- (16) Section 19B (1)—
Omit the subsection.
- (17) Part VII, heading—
20 Omit “*Disposal of Crown lands available for lease*”, insert instead “DISPOSAL
OF CROWN LANDS AVAILABLE FOR LEASE”.
- (18) (a) Section 24 (4) (c)—
Omit “, and any Act amending or replacing the same”.
- (b) Section 24 (6)—
25 Omit “the Mining Act, 1973, or the Coal Mining Act, 1973, or the Forestry
Act, 1916–1933, or any Act amending or replacing the same Acts”, insert
instead “the Mining Act 1973, the Coal Mining Act 1973 or the Forestry Act
1916”.

Western Lands (Amendment) 1985

SCHEDULE 4—*continued*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued*

- (c) Section 24 (6)—
Omit “Secretary for Mines”, insert instead “Secretary, Department of Mineral Resources”.
- (d) Section 24 (6)—
5 Omit “Forestry Act, 1916–1933,” where secondly occurring, insert instead “Forestry Act 1916,”.
- (19) Section 28BB (9)—
Omit “as so amended,”.
- (20) Part VIII, heading—
10 Omit “*Improvements, ownership, and payment therefor*”, insert instead “IMPROVEMENTS”.
- (21) Section 30 (1), proviso—
Omit paragraph (a).
- (22) (a) Section 31 (2)—
15 Omit “, as subsequently amended”.
- (b) Section 31 (5)—
Omit “Water Conservation and Irrigation Commission”, insert instead “Water Resources Commission”.
- (23) Part IX, heading—
20 Omit “*Extension of area*”, insert instead “SURRENDER OF LEASE”.
- (24) Part IXA, heading—
Before section 35A, insert:
- GENERAL
- (25) Section 35k (1)—
25 Omit “a district court”, insert instead “the District Court”.
- (26) Part IXB, heading—
Omit “*Productivity Schemes*”, insert instead “PRODUCTIVITY SCHEMES”.

*Western Lands (Amendment) 1985*SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued*

(27) Part X, heading—

Omit "*Regulations by the Governor*", insert instead "MISCELLANEOUS".

(28) Section 36 (2)—

Omit:

5 Such regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

10 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

15 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

insert instead:

(2) Section 41 of the Interpretation Act 1897 applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act 1969.

20 (29) Sections 36A, 37, 44, short headings—

Omit the short headings.

(30) Section 39 (1)—

25 Omit "Where any withdrawal in pursuance of section 17 was made or deemed to have been made from the surrendered lease and the term of such lease was not extended in accordance with that section, the term of the lease of each subdivided portion shall, if not extended to a lease in perpetuity under the provisions of section 18E, be extended by the Governor in the manner provided in subsection (5) of section 17, irrespective of whether the term of the lease of each subdivided portion has or has not been extended in
30 pursuance of section 17C."

(31) Schedules F, G, H, I—

Omit the Schedules.

Western Lands (Amendment) 1985

SCHEDULE 5

(Sec. 6)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Savings provision—rents

- 5 1. The amendments made by Schedule 3 (4), (8) and (9) do not apply in respect of any lease until a determination or redetermination of rent for the lease is due under the Principal Act after the commencement of those amendments.

Validations

2. Any act, matter or thing done or purporting to have been done—
- 10 (a) under section 18J of the Principal Act before the commencement of Schedule 3 (7); or
- (b) under section 35C of the Principal Act before the commencement of Schedule 3 (15),

15 which would have been valid had the Principal Act, as amended by this Act, been in force at the time at which the act, matter or thing was done is validated.

Clearing licences

3. A clearing licence issued, before the commencement of Schedule 1 (2), under section 27G of the Forestry Act 1916 in respect of land the subject of a lease under the Principal Act (not being land within a State forest or timber reserve under the Forestry Act 1916)
- 20 shall be deemed to have been issued under section 18DB of the Principal Act, as inserted by this Act, and shall be subject to the same conditions to which it was subject immediately before that commencement.

Conditional purchases

4. (1) Subject to subclause (2), any application made under section 28BB (1) of the
- 25 Principal Act before the commencement of Schedule 3 (13) (a) in respect of a lease referred to in section 28BB (1) (a) of that Act and not determined before that commencement shall cease to have effect.

- (2) An application made under section 28BB (1) of the Principal Act before the commencement of Schedule 3 (13) (a) in respect of Western Lands Leases numbers 5226,
- 30 6087 and 12989 shall be dealt with and determined as if that section had not been amended by this Act.

Regulations

5. (1) The regulations under the Principal Act may make provisions of a savings or transitional nature consequent on the enactment of this Act.
- 35 (2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later day.

Western Lands (Amendment) 1985

SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- 5 (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 therein; 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 therein.
- 10 (4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

WESTERN LANDS (AMENDMENT) ACT 1985 No. 132

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 132, 1985

An Act to amend the Western Lands Act 1901 with respect to the clearing and cultivation of land in the Western Division and the enforcement of conditions of leases, and in other respects. [Assented to, 25th November, 1985.]

See also Water (Penalties) Amendment Act 1985; Forestry (Clearing Licences) Amendment Act 1985.

Western Lands (Amendment) 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Western Lands (Amendment) Act 1985".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) The several provisions of Schedules 1-3, and section 5 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Western Lands Act 1901 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO CLEARING AND CULTIVATION

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO ENFORCEMENT PROVISIONS

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO THE
PRINCIPAL ACT

SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT BY
WAY OF STATUTE LAW REVISION

SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS

*Western Lands (Amendment) 1985***Amendment of Act No. 70, 1901**

5. The Principal Act is amended in the manner set forth in Schedules 1-4.

Savings, transitional and other provisions

6. Schedule 5 has effect.

SCHEDULE 1

(Sec. 5)

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION**

(1) (a) Section 18DA (1)—

Before “for the purpose” wherever occurring, insert “expressed to be granted or issued”.

(b) Section 18DA (2)—

After “cultivated”, insert “, but does not include the clearing of land within the meaning of section 18DB”.

(c) Section 18DA (3)—

Omit “without first having obtained the written consent of the Commissioner to the cultivation of that part”, insert instead “unless the Commissioner consents in writing to the cultivation of that part of the land and the consent is in force”.

(d) Section 18DA (7)—

Omit the subsection.

(e) Section 18DA (8A)—

After section 18DA (8), insert:

(8A) The Commissioner may, on the ground that any condition to which a consent under this section is subject has been contravened or on any other ground—

(a) suspend the consent; or

(b) after affording the lessee an opportunity to be heard—
revoke the consent.

Western Lands (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION—*continued*

(f) Section 18DA (9)—

After “consent” where lastly occurring, insert “unless it is sooner revoked or surrendered”.

(g) Section 18DA (10), (11)—

Omit the subsections, insert instead:

(10) A person may appeal to the Land and Environment Court against—

- (a) the refusal of the Commissioner to give a consent under this section to the person;
- (b) any condition to which a consent given to the person under this section is subject; or
- (c) the suspension or revocation of a consent given under this section to the person or the person’s predecessor in title.

(11) For the purpose only of enabling an appeal to be made under subsection (10), a failure by the Commissioner to determine an application for a consent under this section within 6 months after the application is received by the Commissioner constitutes a refusal by the Commissioner to give the consent.

(2) Section 18DB—

After section 18DA, insert:

Clearing licences

18DB. (1) This section applies to a lease for any purpose, whether granted or issued before or after the commencement of this section, except where the land the subject of the lease has an area of one-half of a hectare or less.

Western Lands (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION—*continued*

(2) In this section—

“clear”, in relation to land, means ringbark or otherwise kill or destroy trees on the land, being trees which do not have economic value;

“tree” includes a sapling or seedling of a tree.

(3) The lessee of a lease to which this section applies shall not clear any part of the land the subject of the lease unless the Commissioner has issued a clearing licence which authorises the clearing of that part of the land and the licence is in force.

(4) The lessee of a lease to which this section applies is not required to obtain a clearing licence—

(a) to do a thing pursuant to a licence or other authority under the Forestry Act 1916;

(b) to clear land for the purpose of obtaining timber for use on the land subject to the lease for building, fencing or firewood; or

(c) in such other circumstances as may be prescribed.

(5) Application for a clearing licence shall be made to the Commissioner in a form approved by the Commissioner and shall be accompanied by the prescribed fee.

(6) The Commissioner may issue a clearing licence unconditionally or subject to such conditions as the Commissioner may specify in the licence or may refuse to issue the licence.

(7) The Commissioner may, on the ground that any condition to which a clearing licence is subject has been contravened or on any other ground—

(a) suspend the licence; or

(b) after affording the lessee an opportunity to be heard—cancel the licence.

Western Lands (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION—*continued*

(8) A clearing licence remains in force for such period as the Commissioner may specify in the licence unless it is sooner cancelled or surrendered.

(9) A person may appeal to the Land and Environment Court against—

- (a) the refusal of the Commissioner to issue a clearing licence to the person;
- (b) any condition to which a clearing licence issued to the person is subject; or
- (c) the suspension or cancellation of a clearing licence issued to the person or the person's predecessor in title.

(10) For the purpose only of enabling an appeal to be made under subsection (9), a failure by the Commissioner to determine an application for a clearing licence within 6 months after the application is received by the Commissioner constitutes a refusal by the Commissioner to issue the licence.

(11) A lease to which this section applies is liable to forfeiture if any part of the land the subject of the lease is cleared in contravention of this section or of any conditions to which a clearing licence is subject.

(12) No act, matter or thing which a lessee, under or in conformity with a clearing licence, does on or in relation to the land the subject of the lease renders the lease liable to forfeiture under this Act merely because the doing of the act, matter or thing contravenes any covenant, condition or provision applicable to the lease.

(13) Nothing in this section authorises the Commissioner to issue a clearing licence—

- (a) in respect of land within a State forest, timber reserve or flora reserve under the Forestry Act 1916; or

Western Lands (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CLEARING
AND CULTIVATION—*continued*

- (b) in respect of protected land (within the meaning of section 21A of the Soil Conservation Act 1938)—except with the consent of the Catchment Areas Protection Board constituted under that Act.
 - (14) Nothing in this section affects the operation of—
 - (a) section 27 of the Forestry Act 1916; or
 - (b) section 26D of the Water Act 1912.
-

SCHEDULE 2

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS

(1) Section 10B—

Omit the section.

(2) (a) Section 18D (iv)—

Omit the paragraph, insert instead:

- (iv) A lessee shall take such measures as the Commissioner may direct to protect the land under lease and, without affecting the generality of the foregoing, the Commissioner may direct the lessee—
 - (a) to prevent the use by stock of any part of the land for such periods as the Commissioner considers necessary and to erect fencing for that purpose;
 - (b) to prevent the overstocking of the land;
 - (c) to prevent any part of the land being used for such agricultural practices of such types and for such periods as the Commissioner considers necessary;

Western Lands (Amendment) 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

- (d) to foster and cultivate edible shrubs and plants on the land;
- (e) to preserve trees, scrub and vegetative cover on the land; and
- (f) to take such measures to protect the land (including measures to prevent soil erosion or other damage to the land) as the Commissioner of the Soil Conservation Service may recommend.

(b) Section 18D (v)—

Omit “, and the lessee shall comply with any directions of the Commissioner to prevent or discontinue overstocking”.

(c) Section 18D (vii)–(x)—

After section 18D (vi), insert:

- (vii) A lessee shall not erect a building on the land under lease (not being land in a local government area within the meaning of the Local Government Act 1919) except with the prior approval of the Commissioner and in accordance with any condition to which the approval is subject.
- (viii) A lessee shall, if the Commissioner so directs, erect gates on public roads on the land under lease.
- (ix) A lessee shall carry out such repairs to improvements on the land under lease as the Commissioner may direct.
- (x) A lessee shall furnish such returns and statements as the Commissioner may from time to time require on any matter connected with the land under lease or any other land (whether within or outside the Western Division) in which the lessee has an interest.

Western Lands (Amendment) 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

(3) Section 18G (4A)—

Omit “shall be liable to forfeiture if the holder sublets the lease or any part thereof, or grants any grazing rights over the lease or any part thereof, or agists”, insert instead “shall be subject to the condition that the holder of the lease shall not sublet the lease or any part thereof, or grant any grazing rights over the lease or any part thereof, or agist”.

(4) Section 36—

Omit “twenty dollars”, insert instead “\$500”.

(5) Part XI—

After Part X, insert:

PART XI

ENFORCEMENT PROVISIONS

Interpretation and application.

46. (1) In this Part, “condition”, in relation to a lease, includes—

- (a) any covenant, term, reservation, exception, exemption or provision attaching or applying to the lease, whether by the terms of the lease or by this Act or otherwise; and
- (b) without affecting the generality of paragraph (a)—the requirement under section 18DA not to cultivate land without a consent under that section, the requirement under section 18DB not to clear land without a clearing licence and a condition to which any such consent or licence is subject.

(2) This Part (except section 49) applies to and in respect of a contravention of a condition of a lease notwithstanding that the contravention occurred before the commencement of this Part.

*Western Lands (Amendment) 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued***Notice to lessee to rectify contravention, etc.**

47. (1) Where a lessee contravenes, whether by act or omission, any condition of a lease under this Act, the Commissioner may serve on the lessee a notice in writing requiring the lessee—

- (a) to comply with the condition; and
- (b) to take such measures to rectify the contravention as the Commissioner considers appropriate and as are specified in the notice.

(2) A notice under this section—

- (a) shall specify the period within which any measures referred to in subsection (1) (b) are to be taken;
- (b) may be served either personally or by post; and
- (c) may be varied or revoked by a further notice.

(3) The Commissioner may, in any case in which the Commissioner considers that it is appropriate to do so, serve a copy of a notice under this section on a mortgagee of the lease to which the notice relates.

Commissioner may rectify contravention and recover costs

48. (1) Where the lessee does not take any of the measures specified in a notice under section 47 within the period required by the notice, the Commissioner may, by the Commissioner's agents or contractors, enter the land the subject of the lease and take those measures.

(2) Any costs incurred by the Commissioner in taking any such measures—

- (a) may be recovered by the Commissioner from the lessee as a debt in a court of competent jurisdiction; and
- (b) shall be a charge against the lease until the costs are paid to or recovered by the Commissioner.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued***Offences**

49. (1) A lessee who contravenes, whether by act or omission, any of the following conditions of a lease is guilty of an offence and liable to a penalty not exceeding the amount of penalty specified opposite the condition:

- (a) The requirements of section 18DB (3) (clearing land without a clearing licence or contrary to any condition to which such a licence is subject)—penalty: \$10,000.
- (b) The condition in section 18D (iv) (directions of Commissioner for protection of land)—penalty: \$10,000.
- (c) The condition in section 18D (ix) (repairs to improvements)—penalty: \$10,000.
- (d) The condition in section 18A (fencing)—penalty: \$10,000.
- (e) The condition in section 18D (vii) (erection of building without approval)—penalty: \$2,000.
- (f) The condition in section 18G (4A) (subletting, grazing rights or agistment without consent)—penalty: \$1,000.
- (g) The condition in section 18D (x) (returns, etc., to be furnished to Commissioner)—penalty: \$1,000.
- (h) The condition in section 18D (viii) (gates to be erected on public roads)—penalty: \$1,000.
- (i) A condition of the lease that is prescribed by the regulations made under this Act for the purpose of this section—penalty: \$500.

(2) A lessee who fails to comply with a notice under section 47 in connection with a contravention of any of the following conditions of the lease is guilty of an offence and liable to a penalty not exceeding \$10,000:

- (a) The requirements of section 18DA (3) (cultivating land without consent of Commissioner or contrary to any condition to which such a consent is subject).
- (b) The requirements of section 18DB (3) (clearing land without a clearing licence or contrary to any condition to which such a licence is subject).

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

(c) The use of the land under lease for a purpose that is not a purpose for which the lease was granted or issued.

(3) A person who aids, abets, counsels or procures the commission of an offence against this section shall be deemed to have committed that offence and is punishable accordingly.

(4) Where an act or omission constitutes an offence under separate provisions of this section or under this section and any other Act, the offender is not liable to be punished twice in respect of the offence.

Forfeiture of leases

50. (1) In this section, "forfeiture" includes cancellation.

(2) Where—

(a) a lessee has contravened, whether by act or omission, a condition of a lease under this Act; and

(b) the lease is, because of that contravention, liable to be forfeited under this Act,

the Minister may serve on the lessee a notice in writing stating that the lease will be declared to be forfeited in accordance with this Act unless that lessee complies with the condition and takes such measures to rectify the contravention as the Minister considers appropriate and as are specified in the notice.

(3) A notice under this section—

(a) shall specify the period within which any measures referred to in subsection (2) are to be taken;

(b) may be served either personally or by post; and

(c) may be varied or revoked by a further notice.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

(4) The Minister may, in any case in which the Minister considers that it is appropriate to do so, serve a copy of a notice under this section on a mortgagee of the lease to which the notice relates.

(5) Nothing in this section prevents a lease being declared forfeited in accordance with this Act without the service of a notice under this section.

(6) A lessee may appeal to the Land and Environment Court against a determination made by the Minister, in a notice under this section or otherwise, that the lessee has contravened a condition of the lease and that the lease is, because of that contravention, liable to be forfeited under this Act.

(7) The Land and Environment Court may, where any such appeal is made, provisionally waive any declaration of the forfeiture of a lease pending the determination of the appeal.

Different proceedings may be taken for same contravention

51. The fact that proceedings have been taken under one of the provisions of this Part for a contravention of a condition of a lease does not preclude different proceedings being taken under this Part or otherwise for the same contravention.

Proceedings for offences

52. (1) Proceedings for an offence against this Act or the regulations made under this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against this Act or the regulations made under this Act shall not be instituted without the written consent of the Commissioner or a prescribed officer.

(3) In any proceedings for an offence against this Act or the regulations made under this Act, a consent to institute the proceedings, purporting to have been signed by the Commissioner or a prescribed officer, shall be evidence of that consent without proof of the signature of the Commissioner or the prescribed officer, as the case may be.

*Western Lands (Amendment) 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ENFORCEMENT PROVISIONS—*continued*

- (6) Schedule A, paragraphs (d), (f)–(h)—
Omit the paragraphs.

SCHEDULE 3

(Sec. 5)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

- (1) Section 10c—

Before section 11, insert:

Minister may deal with matters by agreement

10c. (1) In this section, “determine” includes redetermine, assess, inquire into, report upon, recommend and any other prescribed act or proceeding.

- (2) Where—

- (a) by or under this Act, it is provided that a local land board shall determine any matter; and
- (b) the applicant or lessee who would be affected by the determination, if made, agrees in writing to the Minister’s dispensing with that determination or determining that matter in a specified manner,

the Minister may, without the holding of a hearing, dispense with that determination or determine that matter in the specified manner, as the case may be.

- (3) Where, in the opinion of the Minister, any person other than an applicant or a lessee would be directly affected by a determination by a local land board of any matter, if made, the Minister shall not take any action under subsection (2) in relation to the determination unless that person agrees in writing to that action being taken.

Western Lands (Amendment) 1985

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) Where the Minister dispenses with a determination as referred to in subsection (2) in relation to a matter—

- (a) the local land board shall be deemed to have no jurisdiction in the matter; and
- (b) any requirement to refer matters to the local land board shall, in so far as it would, but for this subsection, apply to the matter, be deemed to be repealed.

(5) Where the Minister determines a matter under subsection (2), the local land board shall be deemed to have no jurisdiction in the matter and the Minister's determination shall have the same effect as if it were a determination of the local land board.

(6) Where the Minister—

- (a) dispenses with a determination as referred to in subsection (2) in relation to a matter; or
- (b) determines a matter under subsection (2),

and the Minister would, but for this subsection, be prohibited from doing a thing in relation to the matter, except after receiving a recommendation or report from a local land board, the Minister may do the thing notwithstanding that no such report or recommendation is received.

(7) Where the Minister has determined a matter under subsection (2) with the agreement of a person or persons whose agreement is necessary to enable the Minister to make the determination, the Minister may, if that person agrees or those persons agree in writing to the Minister's reversing the determination or to the Minister's altering or amending the determination in a specified manner, reverse, alter or amend in accordance with the agreement the determination so made and, thereupon, the provisions of subsections (5) and (6) cease to apply to the determination so made but apply to the determination as reversed, altered or amended in accordance with this subsection.

Western Lands (Amendment) 1985

SCHEDULE 3—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Section 17A—

Omit the section.

(3) (a) Section 18—

Omit “after report from the Commissioner.”.

(b) Section 18—

Omit “, on the recommendation of the Commissioner.”.

(4) Section 18E (11), proviso—

Omit “twenty-five”, insert instead “35”.

(5) Sections 18H (1), 28A (1), 29 (2)—

Omit “, after report by the Commissioner,” wherever occurring.

(6) Section 18I (2)—

At the end of section 18I, insert:

(2) The Minister may waive payment of the whole or any part of any such survey fee.

(7) Section 18J—

After “terms”, insert “(including terms relating to the rent or other money payable under the lease)”.

(8) Section 19B (3), proviso—

Omit “twenty-five”, insert instead “35”.

(9) Section 19D (4), proviso—

Omit “twenty-five”, insert instead “35”.

*Western Lands (Amendment) 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(10) Section 20—

Omit “and after report from the Commissioner”.

(11) (a) Section 26 (4)—

Omit “: Provided that the Minister may, within twenty-eight days after the decision of the local land board has been given, refer it for determination to the Land and Environment Court, and in such case the decision of the Land and Environment Court shall be final”.

(b) Section 26 (5)—

After section 26 (4), insert:

(5) Notwithstanding subsection (4), the Minister may, at any time within 60 days after a decision of the local land board has been given under this section or within such further time as the Land and Environment Court may either generally or in any particular case allow, refer the decision to the Land and Environment Court for determination, and the decision of the Land and Environment Court in the matter shall be final.

(12) Section 28A (1)—

Omit “, on the report of the Commissioner,”.

(13) (a) Section 28BB (1)—

Omit the subsection, insert instead:

(1) The holder of a lease—

(a) which is for residence, business purposes, motel purposes, or similar purposes, but not for grazing, agriculture, farming or any other purpose; and

(b) which is not liable to forfeiture,

may apply to convert the lease (as to the whole or any part of the land comprised in the lease) or any 2 or more of those leases if adjoining into a conditional purchase.

(b) Section 28BB (2) (b), (b1)—

Omit the paragraphs.

*Western Lands (Amendment) 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) Section 28BB (5A)—

After section 28BB (5), insert:

(5A) In subsections (4) and (5), “public purpose” means a purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose within the meaning of this section.

(14) (a) Section 33A (1)—

Omit “on the recommendation of the Commissioner”.

(b) Section 33A (3)—

Omit “, upon the recommendation of the Commissioner and”.

(15) (a) Section 35C—

Omit “after report by the local land board,”.

(b) Section 35C—

Omit “determined by the local land board”, insert instead “determined by the Minister”.

(c) Section 35C (2)—

At the end of section 35C, insert:

(2) Any such forfeited or surrendered lands or any such revoked reserves shall not be added to a lease, license, purchase or homestead grant except—

(a) with the consent of the holder of the lease, license, purchase or homestead grant; and

(b) on the payment by that holder of such costs as may be prescribed.

(16) Section 38—

Omit “after report by the Commissioner”.

Western Lands (Amendment) 1985

SCHEDULE 3—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(17) Section 41 (2)—

Omit “for the use of travelling stock”.

(18) Section 43—

Omit “upon the recommendation of the Commissioner”.

(19) Section 43B—

Before section 44, insert:

Power to withdraw for public purposes

43B. (1) The Minister may, by notification published in the Gazette, withdraw from lease (whether the lease was granted or issued before or after the commencement of this section), without compensation except for existing improvements, any land (not exceeding 80 hectares) required for any purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose within the meaning of this section.

(2) Upon withdrawal of land from a lease under this section, the rent of the lease shall be reduced in proportion to the area withdrawn.

(3) Land withdrawn from a lease under this section may be dealt with in accordance with this Act or the Crown Lands Acts.

(20) Section 44 (3)—

Omit “, upon the recommendation of the Commissioner,”.

(21) Section 45—

After section 44A, insert:

Permissive occupancies

45. For the avoidance of doubt it is declared that section 136k of the Crown Lands Consolidation Act 1913 and any other provision of that Act relating to a permission to occupy Crown lands or a permissive occupancy of Crown lands apply, and shall be deemed always to have applied, to land in the Western Division.

Western Lands (Amendment) 1985

SCHEDULE 4

(Sec.5)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION

(1) Part I, heading—

Omit "*Preliminary and general*", insert instead "PRELIMINARY".

(2) Part II, heading—

Before section 4, insert:

ADMINISTRATION

(3) Sections 4 (4), 44 (4) (b)—

Omit "Revenue" wherever occurring.

(4) (a) Section 6 (1)—

Omit "Public Service Act, 1902, or any Act amending that Act," wherever occurring, insert instead "Public Service Act 1979".

(b) Section 6 (2)—

Omit the subsection.

(c) Section 6 (3)—

Omit "Public Service Act, 1902, or under the Superannuation Act, 1916–1944, or any Act amending such Acts," insert instead "Public Service Act 1979 or under the Superannuation Act 1916".

(d) Section 6 (4)—

Omit "widow", insert instead "spouse".

(e) Section 6 (4)—

Omit "Public Service Act, 1902, or the Superannuation Act, 1916–1930, or any Act amending or replacing those Acts", insert instead "Public Service Act 1979 or the Superannuation Act 1916".

(f) Section 6 (4)—

Omit "Public Service Act, 1902, as amended by subsequent Acts", insert instead "Public Service Act 1979".

(5) Section 11—

Omit the section, insert instead:

Western Lands (Amendment) 1985

SCHEDULE 4—*continued*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued*

Appointment of staff

11. Such staff as may be necessary to enable the Commissioner to exercise the Commissioner's functions shall be employed under the Public Service Act 1979.

(6) Part III, heading—

Omit "*Land may be brought under this Act*"; insert instead "LAND MAY BE BROUGHT UNDER THIS ACT".

(7) Part IV, heading—

Omit the heading.

(8) Sections 14, 15, 17, 17c, 17cc, 17ccc, 17D, 28B, 35E, 35I, 35J, 44C—

Omit the sections.

(9) Part V, heading—

Omit "*Terms and conditions of leases*"; insert instead "CONDITIONS OF LEASES".

(10) Section 18—

Omit "All leases issued or brought under the provisions of this Act shall, except as otherwise provided in this Act, expire on the thirtieth day of June in the year one thousand nine hundred and forty-three except leases extended in accordance with the provisions of section 17 and special leases as hereinafter provided. Where an extension of lease has been granted under section 14, the lessee shall surrender his present lease or certificate of confirmation or grant, and a new lease shall be issued to him from the date of such surrender, and such lease as well as every new lease", insert instead "Every lease".

(11) Section 18cc—

Omit "Minister for Lands", insert instead "Minister for Natural Resources".

(12) (a) Section 18E (2) (d)—

Omit the paragraph.

(b) Section 18E (2) (e)—

Omit "or of a holder of the class referred to in paragraph (d)".

*Western Lands (Amendment) 1985*SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued*

- (c) Section 18E (2) (e)—
Omit “or holder, as the case may be”.
- (d) Section 18E (4) (b)—
Omit “date:”, insert instead “date;”.
- (e) Section 18E (4) (b), proviso—
Omit the proviso.
- (13) Section 18F (2) (a)—
Omit “Commissioners of the Western Land Board of New South Wales”,
insert instead “Commissioner”.
- (14) Section 18G (1), (4A)—
After “section 17CCC” wherever occurring, insert “(as in force immediately
before the commencement of Schedule 4 to the Western Lands (Amendment)
Act 1985)”.
- (15) Part VI, heading—
Omit “*Determination of rentals and license fees*”, insert instead
“DETERMINATION OF RENTALS”.
- (16) Section 19B (1)—
Omit the subsection.
- (17) Part VII, heading—
Omit “*Disposal of Crown lands available for lease*”, insert instead “DISPOSAL
OF CROWN LANDS AVAILABLE FOR LEASE”.
- (18) (a) Section 24 (4) (c)—
Omit “, and any Act amending or replacing the same”.
- (b) Section 24 (6)—
Omit “the Mining Act, 1973, or the Coal Mining Act, 1973, or the Forestry
Act, 1916–1933, or any Act amending or replacing the same Acts”, insert
instead “the Mining Act 1973, the Coal Mining Act 1973 or the Forestry Act
1916”.

*Western Lands (Amendment) 1985*SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued*

- (c) Section 24 (6)—
Omit “Secretary for Mines”, insert instead “Secretary, Department of Mineral Resources”.
- (d) Section 24 (6)—
Omit “Forestry Act, 1916–1933,” where secondly occurring, insert instead “Forestry Act 1916,”.
- (19) Section 28BB (9)—
Omit “as so amended,”.
- (20) Part VIII, heading—
Omit “*Improvements, ownership, and payment therefor*”, insert instead “IMPROVEMENTS”.
- (21) Section 30 (1), proviso—
Omit paragraph (a).
- (22) (a) Section 31 (2)—
Omit “, as subsequently amended”.
- (b) Section 31 (5)—
Omit “Water Conservation and Irrigation Commission”, insert instead “Water Resources Commission”.
- (23) Part IX, heading—
Omit “*Extension of area*”, insert instead “SURRENDER OF LEASE”.
- (24) Part IXA, heading—
Before section 35A, insert:
- GENERAL
- (25) Section 35K (1)—
Omit “a district court”, insert instead “the District Court”.
- (26) Part IXB, heading—
Omit “*Productivity Schemes*”, insert instead “PRODUCTIVITY SCHEMES”.

Western Lands (Amendment) 1985

SCHEDULE 4—*continued*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued*

(27) Part X, heading—

Omit "*Regulations by the Governor*", insert instead "MISCELLANEOUS".

(28) Section 36 (2)—

Omit:

Such regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

insert instead:

(2) Section 41 of the Interpretation Act 1897 applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act 1969.

(29) Sections 36A, 37, 44, short headings—

Omit the short headings.

(30) Section 39 (1)—

Omit "Where any withdrawal in pursuance of section 17 was made or deemed to have been made from the surrendered lease and the term of such lease was not extended in accordance with that section, the term of the lease of each subdivided portion shall, if not extended to a lease in perpetuity under the provisions of section 18E, be extended by the Governor in the manner provided in subsection (5) of section 17, irrespective of whether the term of the lease of each subdivided portion has or has not been extended in pursuance of section 17C."

(31) Schedules F, G, H, I—

Omit the Schedules.

Western Lands (Amendment) 1985

SCHEDULE 5

(Sec. 6)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Savings provision—rents

1. The amendments made by Schedule 3 (4), (8) and (9) do not apply in respect of any lease until a determination or redetermination of rent for the lease is due under the Principal Act after the commencement of those amendments.

Validations

2. Any act, matter or thing done or purporting to have been done—

(a) under section 18J of the Principal Act before the commencement of Schedule 3 (7); or

(b) under section 35C of the Principal Act before the commencement of Schedule 3 (15),

which would have been valid had the Principal Act, as amended by this Act, been in force at the time at which the act, matter or thing was done is validated.

Clearing licences

3. A clearing licence issued, before the commencement of Schedule 1 (2), under section 27G of the Forestry Act 1916 in respect of land the subject of a lease under the Principal Act (not being land within a State forest or timber reserve under the Forestry Act 1916) shall be deemed to have been issued under section 18DB of the Principal Act, as inserted by this Act, and shall be subject to the same conditions to which it was subject immediately before that commencement.

Conditional purchases

4. (1) Subject to subclause (2), any application made under section 28BB (1) of the Principal Act before the commencement of Schedule 3 (13) (a) in respect of a lease referred to in section 28BB (1) (a) of that Act and not determined before that commencement shall cease to have effect.

(2) An application made under section 28BB (1) of the Principal Act before the commencement of Schedule 3 (13) (a) in respect of Western Lands Leases numbers 5226, 6087 and 12989 shall be dealt with and determined as if that section had not been amended by this Act.

Regulations

5. (1) The regulations under the Principal Act may make provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later day.

Western Lands (Amendment) 1985

SCHEDULE 5—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, 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 therein; 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 therein.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule.

BY AUTHORITY

D. WEST. GOVERNMENT PRINTER, NEW SOUTH WALES—1985



