

FIRST PRINT

**WESTERN LANDS (LAND PURCHASE) AMENDMENT
BILL 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

- (a) to restore the right of the holders of leases in the Western Division for agriculture, mixed farming or a similar purpose to apply for their leaseholds to be converted to freehold; and
- (b) to provide appropriate controls on the clearing of land so converted; and
- (c) to increase penalties for certain offences; and
- (d) to enable offences to be prosecuted summarily before the Land and Environment Court as well as before Local Courts.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 provides for the amendment of the Western Lands Act 1901 as set out in Schedules 1 and 2.

Clause 4 amends the Land and Environment Court Act 1979 as a consequence of the amendment made by Schedule 2 (3) (a).

**SCHEDULE 1—AMENDMENTS RELATING TO PURCHASE AND
CLEARING OF CERTAIN LAND**

Conversion of certain leaseholds to freehold

Prior to 1985, section 28BB of the Western Lands Act 1901 permitted the holder of:

- (a) a lease for the purpose of agriculture or mixed farming, or a similar purpose; or
- (b) a lease for residence, business purposes, motel purposes or similar purposes,

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to apply to convert the lease into a conditional purchase. In 1985, the section was amended by the Western Lands (Amendment) Act 1985 to permit only the holder of a lease for residence, business purposes, motel purposes or similar purposes to apply to purchase the lease.

The amendment made by **Schedule 1 (3)** restores the pre-1985 position in this respect.

The provisions of Schedule D to the Western Lands Act 1901 (Provisions relating to purchases of certain leased land) will apply to applications to purchase land in the restored categories. The application of those provisions will enable the conversion of the leases to incomplete purchases. Under the Crown Lands (Continued Tenures) Act 1989, the holder of an incomplete purchase, by virtue of clause 6 (1) of Part 1 of Schedule 2 to that Act, has an estate in fee simple in the land comprised in the purchase.

Because, as a consequence of this amendment, a person may own the freehold estate in land, the person could grant a lease of the land. Section 3 is amended by **Schedule 1 (1)** to make it clear that private leases are not restricted by the other provisions of the Western Lands Act 1901 that regulate leases of land (that is, leases of Crown land).

Clearing of land converted to freehold

The proposed Act also applies appropriate controls to the clearing of land converted to freehold title under the proposed amendment to section 28BB.

Schedule 1 (2) (c) amends the definition of "clear", in relation to land, in section 18DB to make it clear that the cutting down and felling of trees is land clearing. The amended definition is similar in its terms to section 21C of the Soil Conservation Act 1938.

Schedule 1 (2) (b) extends the application of section 18DB to land so converted. Section 18DB prevents the clearing of land except in accordance with the provisions of a clearing licence issued for the land by the Western Lands Commissioner. **Schedule 1 (2) (i)** applies these controls to land owned by or occupied by the Crown.

Schedule 1 (2) (a) and (d)–(h) and (4)–(7) make consequential amendments.

SCHEDULE 2—AMENDMENTS RELATING TO PENALTIES

Schedule 2 (1) increases from 5 penalty units to 50 penalty units the penalty for a breach of a regulation made under the Western Lands Act 1901. (Under section 56 of the Interpretation Act 1987, one penalty unit is equal to \$100.)

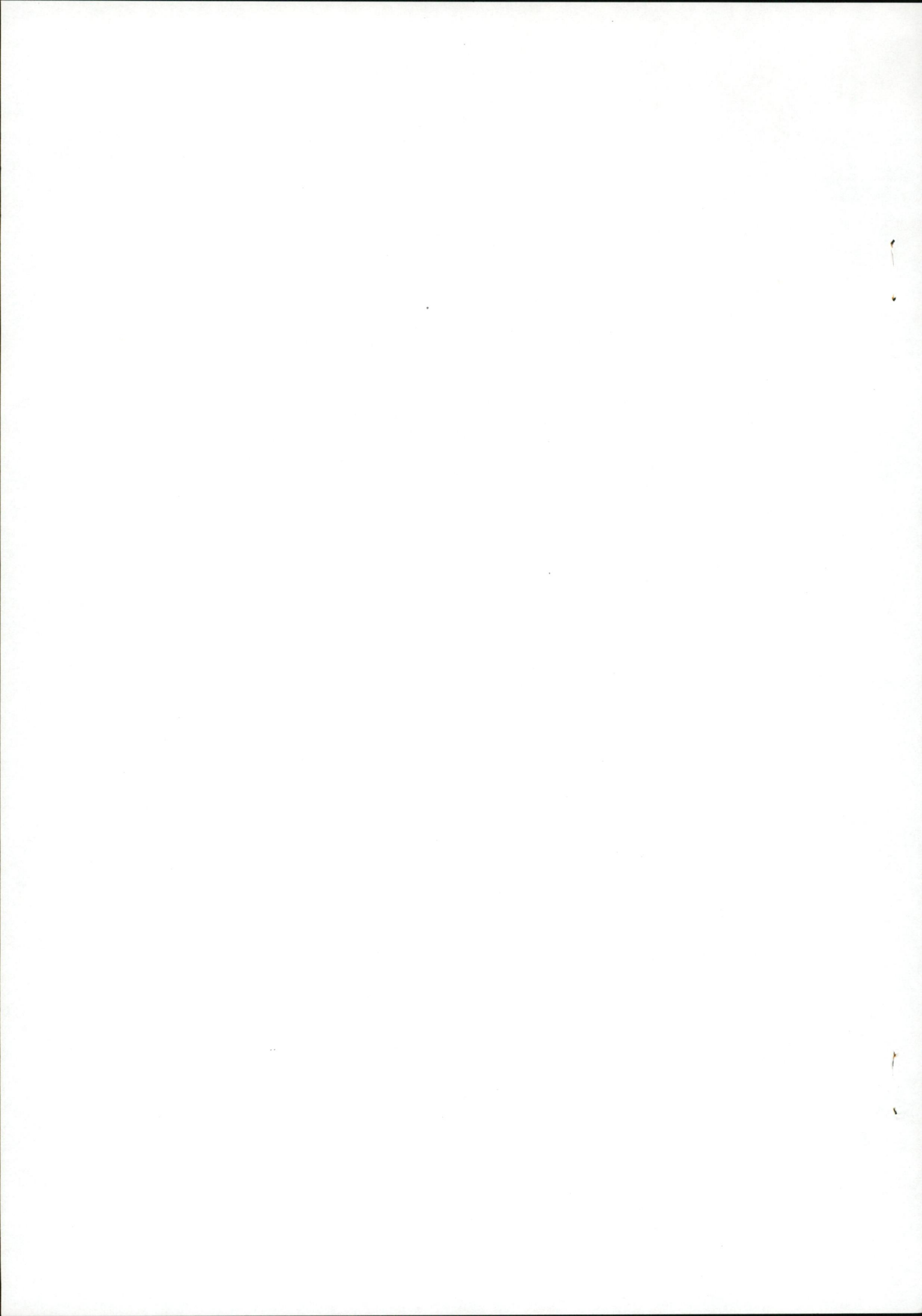
Schedule 2 (2) increases from 100 penalty units to 500 penalty units the penalty for the following offences:

- the contravention by a lessee of the requirements of section 18DB (3)—clearing land without a clearing licence or contrary to any condition to which the licence is subject
- the contravention by a lessee of a direction of the Commissioner under section 18D (1) (iv) to take measures to protect land

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- the failure by a lessee to comply with a notice under section 47 in connection with a contravention of a condition of a lease relating to the requirements of section 18DB (3)—clearing land without a clearing licence or contrary to a condition to which the licence is subject
- the contravention by an owner or occupier of the requirements of section 18DB (3)—clearing land without a clearing licence or contrary to any condition to which the licence is subject, or the failure to comply with a notice under section 47 in connection with such a contravention.

Schedule 2 (3) will enable proceedings for offences to be brought in either a Local Court or the Land and Environment Court. The maximum penalty that a Local Court may impose will be 100 penalty units or the maximum penalty provided for the offence, whichever is the lesser.



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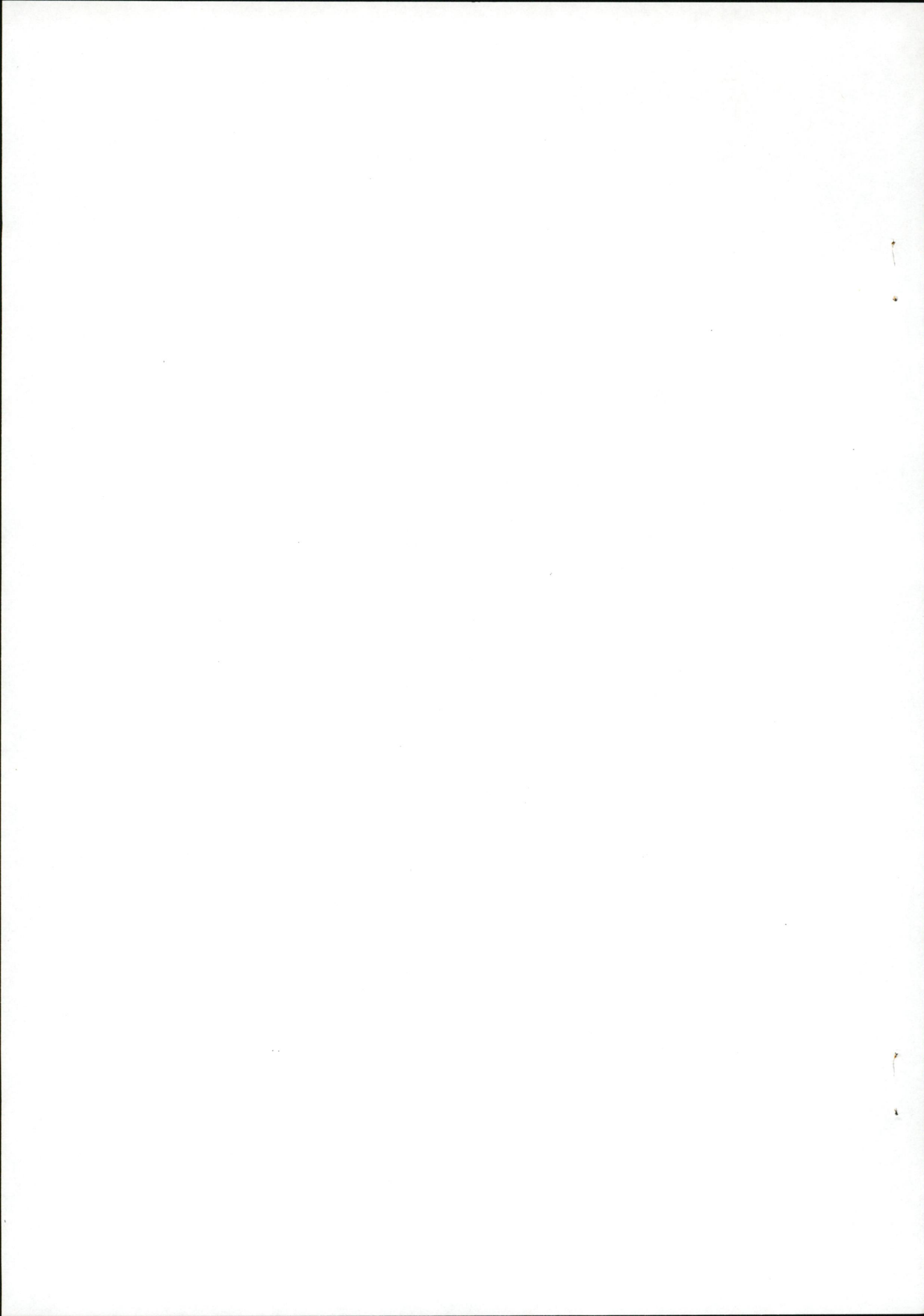


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OF CERTAIN LAND

SCHEDULE 2—AMENDMENTS RELATING TO PENALTIES



**WESTERN LANDS (LAND PURCHASE) AMENDMENT
BILL 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Western Lands Act 1901 to enable the purchase and to regulate the clearing of certain land; to increase penalties for certain offences; to consequentially amend the Land and Environment Court Act 1979; and for other purposes.

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The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Western Lands (Land Purchase) Amendment Act 1994.

5 **Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Western Lands Act 1901 No. 70

10 3. The Western Lands Act 1901 is amended as set out in Schedules 1 and 2.

Amendment of Land and Environment Court Act 1979 No. 204, s. 21 (Class 5—environmental planning and protection summary enforcement)

15 4. Section 21 of the Land and Environment Court Act 1979 is amended by inserting after paragraph (ha) the following paragraph:
(hb) proceedings under section 52 of the Western Lands Act 1901; and

SCHEDULE 1—AMENDMENTS RELATING TO PURCHASE AND CLEARING OF CERTAIN LAND

(Sec. 3)

20 (1) Section 3 (**Definitions**):

Insert after the definition of "Holding" in section 3 (1):

"Lease" means a lease of Crown land in the Western Division.

(2) Section 18DB (**Clearing licences**):

25 (a) In section 18DB (1) (a), before "a lease", insert "land subject to".

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SCHEDULE 1—AMENDMENTS RELATING TO PURCHASE
AND CLEARING OF CERTAIN LAND—*continued*

(b) After section 18DB (1) (a), insert:

(a1) land held in fee simple where the fee simple estate was acquired as the result of an application to purchase under section 28BB, granted on or after the commencement of the Western Lands (Land Purchase) Amendment Act 1994, a lease for agriculture, mixed farming, or a similar purpose, unless the land comprises an area of one-half of a hectare or less; and 5
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(a2) land referred to in paragraph (a1) that is subject to a lease; and

(c) In the definition of “clear” in section 18DB (2), before “ringbark”, insert “cut down, fell,”. 15

(d) From section 18DB (2), omit the definition of “occupier”, insert instead:

“**occupier**” means:

(a) the person who, under the Crown Lands Acts, the Commons Management Act 1989 or the Rural Lands Protection Act 1989: 20

(i) is the holder of a permissive occupancy, a licence, a conditional lease or any other prescribed tenure; or

(ii) has the care, control and management of land prescribed for the purposes of this section as referred to in subsection (1) (b); or 25

(b) a person, other than the owner, who occupies land referred to in subsection (1) (a1); 30

“**owner**” means an owner of land referred to in subsection (1) (a1);

(e) From section 18DB (3), omit “of land the subject of a lease to which this section applies, or the occupier of any other”, insert instead “, occupier or owner of any”. 35

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SCHEDULE 1—AMENDMENTS RELATING TO PURCHASE
AND CLEARING OF CERTAIN LAND—*continued*

- (f) From section 18DB (3), omit “leased or occupied”.
- 5 (g) From section 18DB (4), omit “Neither the lessee of land the subject of a lease to which this section applies nor the occupier of any other land to which this section applies is”, insert instead “A person is not”.
- (h) From section 18DB (7) (b), omit “lessee or occupier”, insert instead “licensee”.
- 10 (i) After section 18DB (14), insert:
(15) This section binds the Crown.
- (3) Section 28BB (**Purchase of land held under certain leases**):
From section 28BB (1), omit the definition of “lease”, insert instead:
- 15 “lease” means a lease (as defined in section 3 (1)):
- (a) that is for:
- (i) agriculture, mixed farming, or a similar purpose; or
- (ii) residence, business purposes, motel purposes, or similar purposes; and
- 20 (b) that is not liable to forfeiture.
- (4) Section 47 (**Notice to rectify contravention**):
- (a) After section 47 (1A), insert:
- 25 (1B) If an owner within the meaning of section 18DB contravenes that section whether by act or omission, the Commissioner may serve on the owner a notice in writing requiring the owner:
- (a) to comply with that section; and
- 30 (b) to take such measures to rectify the contravention as the Commissioner considers appropriate and as are specified in the notice.

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**SCHEDULE 1—AMENDMENTS RELATING TO PURCHASE
AND CLEARING OF CERTAIN LAND—*continued***

- (b) In section 47 (2) (a), after “subsection (1) (b)”, insert “or (1B) (b)”.
- (5) **Section 48 (Commissioner may rectify contravention and recover costs):** 5
- (a) From section 48 (1) and (2), omit “or occupier” wherever occurring, insert instead “, occupier or owner of land”.
- (b) From section 48 (1) and (2), omit “leased or occupied” wherever occurring. 10
- (6) **Section 49 (Offences):**
- In section 49 (2B), before “who”, insert “or an owner within the meaning of that section”.
- (7) **Schedule B (Applicable provisions of the Crown Lands Act 1989):** 15
- In Schedule B, omit from the matter relating to Division 1 of Part 4 “residential, business, motel, community or similar purposes,”, insert instead “a purpose included in the definition of “lease” in section 28BB (1) of the Western Lands Act 1901 or community purposes,”. 20

SCHEDULE 2—AMENDMENTS RELATING TO PENALTIES

(Sec. 3)

- (1) **Section 36 (Regulations):**
- From section 36 (2), omit “5”, insert instead “50”.
- (2) **Section 49 (Offences):** 25
- (a) From section 49 (1) (a) and (b) and (2B), omit “100” wherever occurring, insert instead “500”.
- (b) Omit section 49 (2) (b).

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SCHEDULE 2—AMENDMENTS RELATING TO PENALTIES—
continued

(c) After section 49 (2), insert:

5 (2AA) A lessee who fails to comply with a notice under
section 47 in connection with a contravention of a
condition of the lease relating to the requirements of
section 18DB (3) (clearing land without a clearing licence
or contrary to a condition to which the licence is subject)
is guilty of an offence.

10 Maximum penalty: 500 penalty units.

(3) Section 52 (**Proceedings for offences**):

(a) After “alone” in section 52 (1), insert “or summarily
before the Land and Environment Court”.

(b) After section 52 (1), insert:

15 (1A) If proceedings for an offence against this Act or
the regulations made under this Act are brought in a Local
Court, the maximum penalty that the Court may impose in
respect of the offence is 100 penalty units or the maximum
penalty provided by this Act or the regulations in respect
20 of the offence, whichever is the lesser.
