

First print



New South Wales

Western Lands Amendment Bill 1995

Explanatory note

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

Overview of Bill

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

- to increase penalties for certain offences relating to the unauthorised clearing or cultivation of land in the Western Division
- to enable offences to be prosecuted summarily before the Land and Environment Court as well as before Local Courts
- to rationalise certain provisions about the forfeiture and transfer of leases of Crown land in the Western Division
- to repeal certain provisions about boundary fences.

The Bill also amends the *Soil Conservation Act 1938* to increase a penalty for an offence relating to the unauthorised clearing of protected land.

Outline of provisions

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

Clause 2 provides for the commencement of the provisions of the proposed Act that deal with penalties and the prosecution of offences on the date of assent to the Act, and for the commencement of the other provisions on a day or days to be proclaimed.

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

Clause 4 is a formal provision giving effect to the amendments to the *Land and Environment Court Act 1979* and the *Soil Conservation Act 1938* set out in Schedule 2.

Schedule 1 Amendment of Western Lands Act 1901

Increased penalties for unauthorised clearing and cultivation

Schedule 1 [12] increases the penalty for certain offences relating to the unauthorised clearing and cultivation of land from 100 penalty units to 1,000 penalty units, that is, from \$10,000 to \$100,000. (Under section 56 of the *Interpretation Act 1987*, one penalty unit is currently equal to \$100.)

The relevant offences are:

- the contravention by a lessee of the requirements of section 18DA (3)—cultivating land without the consent of the Western Lands Commissioner or contrary to a condition to which a consent is subject
- 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 such a licence is subject
- the contravention by a lessee of a direction of the Western Lands Commissioner under section 18D (1) (iv) to take measures to protect land
- the failure by a lessee to comply with a notice under section 47 in connection with a contravention of the requirements of section 18DA (3)—cultivating land without consent or contrary to a condition of consent
- the failure by a lessee to comply with a notice under section 47 in connection with a contravention of the requirements of section 18DB (3)—clearing land without a clearing licence or contrary to a condition to which the licence is subject

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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 use of the land under lease for a purpose that is not a purpose for which the lease was granted or issued
- the contravention by an occupier of the requirements of section 18DA (3)—cultivating land without consent or contrary to a condition of consent, or the failure to comply with a notice under section 47 in connection with such a contravention
- the contravention by an occupier of the requirements of section 18DB (3)—clearing land without a licence or contrary to a 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 1 [14] and [15] 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.

Rationalisation of the provisions relating to forfeiture

The provisions relating to the forfeiture of a Western Land lease to the Crown are rationalised as follows:

Schedule 1 [2] omits section 18, which presently deals with the conditions of a lease and its forfeiture, and re-enacts the provisions about the conditions of a lease and the consequences of their breach. The provisions about forfeiture in existing sections 18 and 50 are re-enacted in proposed Part 12 by Schedule 1 [16].

Schedule 1 [4] provides for the breach of a provision of section 18D, or a direction given by the Commissioner, to give rise to a liability to forfeiture.

Schedule 1 [9] and [13] omit provisions relating to forfeiture, which are made redundant by the enactment of proposed Part 12.

Schedule 1 [16] inserts proposed Part 12, which deals comprehensively with the forfeiture of leases to the Crown. That part contains the following provisions:

- Proposed section 53 provides that a lease can be forfeited in any circumstances in which the Act provides that a lease is liable to forfeiture. As a result of the amendments made by the proposed Act, a lease will be liable to forfeiture if the lessee causes or permits the breach of any condition of the lease, any direction made by the Commissioner under section 18D, any condition of a clearing licence or of a consent relating to the cultivation of land, or any provision of the Act or regulations, that is expressed to give rise to a liability to forfeiture. (Currently, there is no power to forfeit a lease for breach of a direction, regardless of the seriousness of the breach.)

- Proposed section 54 requires the Minister to give the lessee a chance to avoid forfeiture. This is achieved by the issue of a warning notice, informing the lessee that the lease will be forfeited and allowing the lessee to make submissions in relation to the proposed forfeiture. In some cases, the warning notice will specify the action that may be taken to avoid forfeiture.
- Proposed section 55 empowers the Minister to cause a lease to be forfeited (in whole or in part) if the period specified in the warning notice has expired, the lessee has not rectified the breach and no appeal is pending. The proposed section requires the Minister to have regard to any written submissions made in relation to a warning notice.
- Proposed section 56 gives the lessee the right to appeal against the forfeiture of a lease (or part of a lease). An appeal has the effect of suspending the forfeiture.
- Proposed section 57 requires the forfeiture of a lease to be recorded under the *Real Property Act 1900* before it can have effect.
- Proposed section 58 provides that, on the forfeiture of a lease, all money paid to the Crown in respect of the lease is forfeited.
- Proposed section 59 provides that a forfeiture does not extinguish any debt due to the Crown unless the Minister otherwise approves.
- Proposed section 60 provides for the reversal of the forfeiture of a lease.
- Proposed section 61 states that the provisions about forfeiture apply equally to the cancellation or lapse of a lease. (Those terms are used interchangeably in the Act and in some leases and other documents relating to land in the Western Division.)

Rationalisation of obligation to obtain the consent of the Minister to certain matters

The amendments made by the proposed Act rationalise provisions creating an obligation to obtain the Minister's consent to transfers and other dealings with a lease.

Schedule 1 [5] repeals existing section 18G and inserts a new section which requires the Minister's consent for any transfer or assignment of a lease, for the foreclosure of a mortgage of a lease, or for any sublease created for a term of 3 years or more. Other dealings (such as subleases for less than 3 years, grazing rights, agreements to agist stock or mortgages) will no longer require Ministerial consent. Proposed section 18GAA makes provision for the Minister to certify that consent is not required for transactions relating to certain residential and other land.

Schedule 1 [8] makes a consequential amendment, omitting from section 18H the obligation to obtain Ministerial consent to the discharge of a mortgage. Consent will be required only for the foreclosure of a mortgage.

Schedule 1 [11] amends section 35K to clarify that the obligation to obtain Ministerial consent does not apply to a transfer or assignment that takes effect by operation of law.

Obligation to notify Commissioner of certain matters

Schedule 1 [6] inserts proposed section 18GA to impose an obligation on a lessee who grants a mortgage of the lease or a sublease for a term of less than 3 years to notify the Western Lands Commissioner of the grant of the mortgage or sublease. The new provision also imposes a similar obligation on a mortgagee of a lease who enters into possession to notify the Commissioner of that fact.

A lessee or mortgagee who fails to notify the Commissioner within the prescribed period will be liable to a penalty of 10 penalty units (\$1,000).

Provisions dealing with boundary fences

The *Dividing Fences Act 1991* provides for the apportionment of the costs of dividing fences. Sections 18A, 18B and 18C of the *Western Lands Act 1901* currently make different provisions relating to fences, including an obligation for all lessees of Crown land in the Western Division to erect boundary fences and to contribute to their costs. Those provisions override the provisions made by the *Dividing Fences Act 1991* (see section 26 (c) of that Act).

Schedule 1 [3] omits the sections of the *Western Lands Act 1901* that deal with boundary fences. On the repeal of those sections, such matters will be dealt with exclusively under the *Dividing Fences Act 1991*. (The Commissioner retains the power to direct the erection of fencing where it is necessary to protect land: see section 18D (1) (iv) (a).)

Other amendments

Schedule 1 [1] makes clear that the Act applies to the lease of Crown lands in the Western Division (other than lands in an irrigation area) and that notes in the text of the Act do not form part of the Act.

Schedule 1 [6] repeals a redundant provision relating to title (as well as inserting the provision dealing with notification discussed above).

Schedule 1 [7] omits redundant matter relating to mortgages.

Schedule 1 [10] provides for the registration and protection of a right in any improvement on land under lease. This is consequential on the repeal of section 18G (2) and (3).

Schedule 2 Amendment of other Acts

Amendment of Land and Environment Court Act 1979

Schedule 2.1 amends the *Land and Environment Court Act 1979* as a consequence of the amendments made by Schedule 1 [14] and [15].

As a result of the amendments, the Land and Environment Court will be able to hear proceedings for offences against the *Western Lands Act 1901* or the regulations in Class 5 of its jurisdiction and appeals in relation to the forfeiture of leases in Class 4 of its jurisdiction. (Other matters will continue to be heard in Class 3 of the Court's jurisdiction.)

Amendment of Soil Conservation Act 1938

Schedule 2.2 amends the *Soil Conservation Act 1938* to increase the penalty for the unauthorised destruction of trees on land that has been identified as protected land because of its environmental sensitivity (including its liability to be affected by soil erosion, siltation or land degradation). The penalty for the destruction of a tree on such land is increased from 400 penalty units (\$40,000) to 1,000 penalty units (\$100,000).

First print



New South Wales

Western Lands Amendment Bill 1995

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New South Wales

Western Lands Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Western Lands Act 1901* to increase penalties for certain offences relating to the clearing or cultivation of land in the Western Division; to rationalise provisions relating to the transfer and forfeiture of leases over that land; to amend the *Soil Conservation Act 1938* to increase the penalty for an offence; to consequentially amend the *Land and Environment Court Act 1979*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Western Lands Amendment Act 1995*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subclause (2). 5
- (2) Schedule 1 [2]–[11], [13] and [16]–[18] commence on a day or days to be appointed by proclamation.

3 Amendment of Western Lands Act 1901 No 70

The *Western Lands Act 1901* is amended as set out in Schedule 1. 10

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Western Lands Act 1901

(Section 3)

[1] Section 3 Definitions

Insert after the 3 (2):

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- (3) This Act applies to the lease of Crown lands in the Western Division, other than lands within an irrigation area within the meaning of the *Crown Lands Act 1989*.
- (4) Notes in the text of this Act are explanatory notes only and do not form part of this Act.

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[2] Sections 18 and 18AA

Omit section 18. Insert instead:

18 Conditions of a lease

- (1) A lease may contain any conditions that the Minister considers appropriate.
- (2) A lease does not convey any authority to carry on mining operations on the land.

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18AA Consequences of breach of a condition of a lease

- (1) A lease is liable to forfeiture if the lessee causes or permits the breach of any condition of the lease.
- (2) However, a lease may provide that the breach of a condition gives rise to a liability to forfeiture only if certain circumstances exist. (For example, a condition may contain a proviso that the lease is liable to forfeiture for failure to pay rent only if the rent is more than 3 months in arrears.) In such a case, the lease is liable to forfeiture only if the circumstances exist.

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[3] Sections 18A, 18B and 18C

Omit the sections.

[4] Section 18D Provisions governing leases

Insert after section 18D (1):

- (1A) A lease is liable to forfeiture if the lessee causes or permits the breach of any provision of this section or any direction given by the Commissioner under this section. 5

[5] Sections 18G and 18GAA

Omit section 18G. Insert instead:

18G Minister's consent required for certain matters

- (1) The following transactions cannot be validly carried out without the written consent of the Minister: 10
- (a) the transfer of a lease,
 - (b) the assignment of a lease,
 - (c) the sublease of Crown lands in the Western Division for a term of 3 years or more,
 - (d) the exercise of the power of foreclosure in relation to a mortgage over Crown lands in the Western Division. 15
- (2) A transfer by way of discharge of mortgage may be effected without the Minister's consent.
- (3) The Minister's consent is not required for any transaction, or the exercise of any power, in relation to a lease the subject of a Ministerial certificate issued under section 18GAA. 20
- (4) The Registrar-General must not register a transfer or assignment of a lease, or a sublease for which the Minister's consent is required by this section, unless the Registrar-General is satisfied that the Minister has consented to the dealing. 25
- (5) Nothing in this section affects the operation of section 42 (Estate of registered proprietor paramount) of the *Real Property Act 1900*. 30

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- (6) An application for the Minister's consent must be made in the approved form and must be accompanied by the fee prescribed by the regulations.
- (7) In calculating the term of a sublease for the purposes of this section, any option for renewal is to be included as part of the term. 5

18GAA Minister may certify that matters relating to certain land do not require consent

- (1) The Minister may, on application by any person, certify that consent is not required for a dealing in relation to a lease of land having an area of not more than 4,050 square metres, if the lease was granted for residential purposes, or for any other purposes prescribed by the regulations, and the Minister is satisfied that the land is being used for the purposes for which the lease was granted. 10 15
- (2) An application for the Minister's certificate must be made in the approved form and must be accompanied by the fee prescribed by the regulations.
- (3) The Registrar-General must record the issue of such a certificate under the *Real Property Act 1900*, if the certificate is lodged with any dealing in respect of the lease. 20

[6] Section 18GA

Omit the section. Insert instead: 25

18GA Commissioner must be notified of certain matters

- (1) A person who grants a mortgage over Crown lands in the Western Division must notify the Commissioner in writing of the grant of the mortgage within 28 days of the grant, or within such other period as may be prescribed by the regulations. 30

Maximum penalty: 10 penalty units.

- (2) A mortgagee of a lease who enters into possession of land subject to that lease must notify the Commissioner in writing of that entry into possession within 28 days of the entry, or within such other period as may be prescribed by the regulations. 5
Maximum penalty: 10 penalty units.
- (3) A person who grants a sublease of Crown lands in the Western Division, where that sublease is for a term of less than 3 years, must notify the Commissioner in writing of the grant of the sublease within 28 days of the grant, or within such other period as may be prescribed by the regulations. 10
Maximum penalty: 10 penalty units.
- (4) In calculating the term of a sublease for the purposes of this section, any option for renewal is to be included as part of the term. 15
- (5) This section does not impose any obligations in relation to Crown lands that are within an irrigation area within the meaning of the *Crown Lands Act 1989*.
- [7] Section 18H Mortgages and devolutions 20**
Omit "applied for after the commencement of the *Western Lands (Amendment) Act 1934*, or a lease extended to a lease in perpetuity (whether before or after such commencement)," wherever occurring from section 18H (1) and (2).
- [8] Section 18H (1) 25**
Omit "The mortgagee shall not foreclose the mortgage or transfer the lease, except by way of discharge of mortgage, without the consent of the Minister." from section 18H (1).
- [9] Section 28BA Forfeiture of lease 30**
Omit the section.

[10] Section 29A

Insert after section 29:

29A Rights in improvements

- (1) This section applies to a tenant right in any improvement on land, or addition to or extension of any improvement on land, granted under section 29 (2). 5
- (2) A right to which this section applies is capable of being recorded as a charge under the *Real Property Act 1900* and is taken to be a charge for the purposes of that Act.
- (3) The liability under such a right is to be determined by the local land board in accordance with section 31. 10
- (4) The Registrar-General may delete a recording of a right:
 - (a) on the application of the person to whom the right was granted, or
 - (b) on the lapsing of the right, or 15
 - (c) in any other circumstance where the Registrar-General is satisfied that the right has been paid out or otherwise extinguished.
- (5) A right to which this section applies must be in the form approved under the *Real Property Act 1900* for a charge. 20

[11] Section 35K Transfers by operation of law or under legal process

Omit section 35K (2). Insert instead:

- (2) To avoid doubt, Ministerial consent is not required for any sale, transfer or disposition referred to in this section. 25

[12] Section 49 Offences

Omit "100 penalty units" wherever occurring from section 49 (1) (a), (a1) and (b), (2), (2A) and (2B).

Insert instead "1,000 penalty units". 30

[13] Section 50

Omit the section.

[14] Section 52 Proceedings for offences

Insert after "alone" in section 52 (1) "or summarily before the Land and Environment Court".

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[15] Section 52

Insert after section 52 (1):

- (1A) If proceedings for an offence against this Act or the regulations made under this Act are brought before 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 of the offence, whichever is the lesser.

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[16] Part 12

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Insert after section 52:

Part 12 Forfeiture of leases

53 Minister may forfeit lease

The Minister may cause a lease to be forfeited in any circumstances in which this Act provides that a lease is liable to forfeiture.

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Note. The circumstances in which this Act provides that a lease is liable to forfeiture include the following:

- (a) the lessee breaches any condition of the lease (see section 18),
- (b) the lessee breaches a provision of section 18D or any direction made by the Commissioner under that section,
- (c) the lessee or occupier cultivates any part of the land the subject of a lease in contravention of section 18DA or in contravention of any condition imposed on a consent to cultivate granted under that section,
- (d) the lessee or occupier clears any part of the land the subject of a lease in contravention of section 18DB or any condition of a clearing licence granted under that section.

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54 Minister must give lessee a chance to avoid forfeiture

- (1) The Minister must not cause a lease to be forfeited unless the Minister has first served a notice in writing on the lessee warning that the Minister intends to cause the lease to be forfeited. 5
- (2) The warning notice must inform the lessee that the lessee is entitled to make a submission to the Minister as to why the lease should not be forfeited.
- (3) In addition, the warning notice may, where appropriate, specify what the lessee must do to avoid forfeiture. That is, the warning notice may specify what action the Minister would regard as remedying the breach that gave rise to the liability to forfeiture. 10
- (4) The warning notice must specify the period during which the submission must be made, or the action must be completed. That period must be at least 28 days after the issue of the notice, but may be longer. 15
- (5) The Minister may, in any case in which the Minister considers that it is appropriate to do so, serve a copy of a warning notice on a mortgagee of the land to which the notice relates. 20
- (6) A notice (or copy of a notice) served under this section may be served either personally or by post, and may be varied, replaced or withdrawn by a further notice.

55 Minister may cause lease to be forfeited 25

- (1) The Minister may cause a lease to be forfeited if:
 - (a) a warning notice has been served on the lessee under section 54, and
 - (b) the period specified in the notice has expired, and
 - (c) the Minister has had regard to any submission made to the Minister by a lessee within the period specified in the notice, and 30
 - (d) any action specified in the notice has not been taken, or has not been taken to the satisfaction of the Minister. 35

- (2) The Minister must not cause a lease to be forfeited unless the Minister is satisfied that, having regard to all the circumstances of the case, it is reasonable to do so.
- (3) The Minister may cause a lease to be forfeited either as to the whole of the land comprised in the lease or as to a part of that land specified in the notice of forfeiture. 5
- (4) The Minister must notify the lessee in writing of the forfeiture of a lease (or of part of a lease). That notice must specify that the lessee has a right to appeal against the forfeiture to the Land and Environment Court. 10
- (5) A notice under this section may be given either personally or by post.

56 Lessee has right to appeal against forfeiture

- (1) A lessee may appeal to the Land and Environment Court against the forfeiture of a lease (or part of a lease). 15
- (2) An appeal must be commenced within 28 days of the service of the notice of forfeiture.
- (3) If an appeal has been made the Court may, pending its final determination, make an order directing the lessee to discontinue the breach that gave rise to the liability to forfeiture and to undertake such action as may be necessary to protect the land or the improvements on the land. 20

57 Forfeiture must be recorded on Register

- (1) The Minister must give notice in the Gazette of the forfeiture of a lease (or part of a lease). That notice cannot be given unless the period for making an appeal against the forfeiture has passed and either no appeal has been made, or any appeal made has been withdrawn or dismissed. 25
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- (2) The Minister must notify the Registrar-General of the forfeiture of a lease (or part of a lease). This notification cannot be made unless the Minister has first given notice of the forfeiture in the Gazette.

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- (3) The forfeiture of a lease (or part of a lease) is not effective until it has been recorded under the *Real Property Act 1900*.
 - (4) The Minister may withdraw a forfeiture at any time before it is so recorded. The Minister must notify the lessee in writing of the withdrawal of a forfeiture. 5
 - (5) A notice under this section may be given either personally or by post.

58 Consequences of forfeiture

When a lease (or part of a lease) is forfeited, all money paid to the Crown in respect of the lease is forfeited. If part only of a lease is forfeited, the Minister may adjust rent and other money payable under the lease to take that into account. 10

59 Forfeiture does not extinguish debt to Crown or certain other liabilities 15

- (1) The forfeiture of a lease (or part of a lease) does not operate to extinguish any debt to the Crown unless the Minister otherwise approves.
- (2) The Minister may approve of the extinguishment of the whole or part of a debt to the Crown irrespective of when the lease was forfeited. 20
- (3) The forfeiture of a lease does not operate to release the lessee from any obligation to comply with a condition or provision which, by its nature, is required to be complied with after the lease is terminated. 25

60 Forfeiture may be reversed

- (1) The Minister may, conditionally or unconditionally, reverse the forfeiture of a lease (or part of a lease), by notification in the Gazette. 30
- (2) The Minister must notify the Registrar-General of the reversal of the forfeiture of a lease (or part of a lease).
- (3) The reversal of the forfeiture of a lease (or part of a lease) is not effective until it has been recorded under the *Real Property Act 1900* in respect of the lease. 35

61 Cancellation and lapsing of lease

If the terms of any lease create a liability to cancellation of a lease, or to having the lease declared to have lapsed, then, for the purposes of this Part, that liability is to be regarded as a liability to forfeiture.

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[17] Schedule C Savings, transitional and other provisions

Omit the heading relating to the Western Lands (Crown Lands) Amendment Act 1989.

Insert instead:

Part 1 General

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1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

Western Lands Amendment Act 1995

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- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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- (a) to affect, in a manner prejudicial to any person (other than the State or any authority of the State), the rights of that person existing before the date of its publication, or

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- (b) to impose liabilities on any person (other than the State or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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**Part 2 Provisions consequent on enactment of
Western Lands (Crown Lands) Amendment
Act 1989**

[18] Schedule C

Insert after clause 3:

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**Part 3 Provisions consequent on enactment of
Western Lands Amendment Act 1995**

4 Definition

In this Part:

amending Act means the *Western Lands Amendment Act 1995*. 10

5 Conditions of existing leases

The repeal and re-enactment of section 18 by the amending Act does not affect any lease granted before the commencement of Schedule 1 [2] of that Act. 15

6 Forfeiture of leases

- (1) If the Minister had, before the commencement of Schedule 1 [13] to the amending Act, issued a notice under section 50 to a lessee in relation to the proposed forfeiture of a lease, section 50 (as in force immediately before its repeal by the amending Act) applies to that notice, and to any subsequent forfeiture of that lease, as if that section had not been repealed. 20
- (2) The Minister may issue a warning notice to a lessee under section 54, and may cause the forfeiture of a lease (or part of a lease) under section 55, as a consequence of a liability to forfeiture arising from the breach of a provision of the Act or the regulations, or of a condition of a lease, a clearing licence or any condition imposed on a cultivation consent, where that breach occurred before the commencement of the amending Act. 25
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- (3) However, the Minister may not issue a warning notice to a lessee under section 54, or cause the forfeiture of a lease (or part of a lease) under section 55, as a consequence only of a liability to forfeiture arising from the breach of a direction made by the Commissioner if that breach occurred before the commencement of the amending Act. 5

7 Boundary fences

- (1) On and from the commencement of Schedule 1 [3] to the amending Act, any condition of a lease that creates an obligation to perform fencing work is of no effect. 10
- (2) Sections 18A, 18B and 18C of the Act (as in force immediately before their repeal by the amending Act) continue to operate in respect of any matter pending as a result of a work completed under those sections, any claim made under those sections or any proceedings in relation to such a claim as if the sections had not been repealed by the amending Act. 15
- (3) Otherwise, the *Dividing Fences Act 1991* applies to and in respect of fencing work whether carried out before or after the commencement of Schedule 1 [3] to the amending Act. 20
- (4) This clause does not affect the operation of section 18D (1) (iv) (a).

8 Notification of Commissioner

The obligation to notify the Commissioner of the grant of a mortgage or a sublease, or of the exercise of a mortgagee's right of possession, created by section 18GA does not apply to the grant of a mortgage or sublease, or to the exercise of a right, before the date of commencement of Schedule 1 [6] to the *Western Lands Amendment Act 1995*. 25 30

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Land and Environment Court Act 1979 No 204

[1] Section 20 Class 4—environmental planning protection and development contract civil enforcement 5

Insert after section 20 (1) (dc):

(dd) proceedings under Part 12 of the *Western Lands Act 1901*, and

[2] Section 21 Class 5—environmental planning and protection summary enforcement 10

Insert after section 21 (hb):

(hc) proceedings under section 52 of the *Western Lands Act 1901*, and

2.2 Soil Conservation Act 1938 No 10

Section 21C Destruction of trees on protected land prohibited except under authority 15

Omit “400 penalty units” from section 21C (4).

Insert instead “1,000 penalty units”.

LEGISLATIVE COUNCIL

Western Lands Amendment Bill 1995

First Print

Amendments to be moved in Committee

- No 1 Page 7, Schedule 1 [12], line 30. Omit "1,000". Insert instead "500".
- No 2 Page 10, Schedule 1 [16], lines 4-6. Omit all words on those lines.
- No 3 Page 10, Schedule 1 [16], line 8. Omit "(or of part of a lease)".
- No 4 Page 10, Schedule 1 [16], line 15. Omit "(or part of a lease)".
- No 5 Page 10, Schedule 1 [16], line 26. Omit "(or part of a lease)".
- No 6 Page 10, Schedule 1 [16], line 32. Omit "(or part of a lease)".
- No 7 Page 11, Schedule 1 [16], line 1. Omit "(or part of a lease)".
- No 8 Page 11, Schedule 1 [16], line 10. Omit "(or part of a lease)".
- No 9 Page 11, Schedule 1 [16], line 17. Omit "(or part of a lease)".
- No 10 Page 11, Schedule 1 [16], line 29. Omit "(or part of a lease)".
- No 11 Page 11, Schedule 1 [16], line 32. Omit "(or part of a lease)".
- No 12 Page 11, Schedule 1 [16], lines 33 and 34. Omit "(or part of a lease)".
- No 13 Page 13, Schedule 1 [18], line 26. Omit "(or part of a lease)".
- No 14 Page 14, Schedule 1 [18], line 3. Omit "(or part of a lease)".
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Second print



New South Wales

Western Lands Amendment Bill 1995

Explanatory note

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

Overview of Bill

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

- to increase penalties for certain offences relating to the unauthorised clearing or cultivation of land in the Western Division
- to enable offences to be prosecuted summarily before the Land and Environment Court as well as before Local Courts
- to rationalise certain provisions about the forfeiture and transfer of leases of Crown land in the Western Division
- to repeal certain provisions about boundary fences.

The Bill also amends the *Soil Conservation Act 1938* to increase a penalty for an offence relating to the unauthorised clearing of protected land.

Outline of provisions

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

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

Clause 4 is a formal provision giving effect to the amendments to the *Land and Environment Court Act 1979* and the *Soil Conservation Act 1938* set out in Schedule 2.

Schedule 1 Amendment of Western Lands Act 1901

Increased penalties for unauthorised clearing and cultivation

Schedule 1 [12] increases the penalty for certain offences relating to the unauthorised clearing and cultivation of land from 100 penalty units to 1,000 penalty units, that is, from \$10,000 to \$100,000. (Under section 56 of the *Interpretation Act 1987*, one penalty unit is currently equal to \$100.)

The relevant offences are:

- the contravention by a lessee of the requirements of section 18DA (3)—cultivating land without the consent of the Western Lands Commissioner or contrary to a condition to which a consent is subject
- 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 such a licence is subject
- the contravention by a lessee of a direction of the Western Lands Commissioner under section 18D (1) (iv) to take measures to protect land
- the failure by a lessee to comply with a notice under section 47 in connection with a contravention of the requirements of section 18DA (3)—cultivating land without consent or contrary to a condition of consent
- the failure by a lessee to comply with a notice under section 47 in connection with a contravention of the requirements of section 18DB (3)—clearing land without a clearing licence or contrary to a condition to which the licence is subject

Explanatory note

- 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 use of the land under lease for a purpose that is not a purpose for which the lease was granted or issued
- the contravention by an occupier of the requirements of section 18DA (3)—cultivating land without consent or contrary to a condition of consent, or the failure to comply with a notice under section 47 in connection with such a contravention
- the contravention by an occupier of the requirements of section 18DB (3)—clearing land without a licence or contrary to a 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 1 [14] and [15] 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.

Rationalisation of the provisions relating to forfeiture

The provisions relating to the forfeiture of a Western Land lease to the Crown are rationalised as follows:

Schedule 1 [2] omits section 18, which presently deals with the conditions of a lease and its forfeiture, and re-enacts the provisions about the conditions of a lease and the consequences of their breach. The provisions about forfeiture in existing sections 18 and 50 are re-enacted in proposed Part 12 by Schedule 1 [16].

Schedule 1 [4] provides for the breach of a provision of section 18D, or a direction given by the Commissioner, to give rise to a liability to forfeiture.

Schedule 1 [9] and [13] omit provisions relating to forfeiture, which are made redundant by the enactment of proposed Part 12.

Schedule 1 [16] inserts proposed Part 12, which deals comprehensively with the forfeiture of leases to the Crown. That part contains the following provisions:

- Proposed section 53 provides that a lease can be forfeited in any circumstances in which the Act provides that a lease is liable to forfeiture. As a result of the amendments made by the proposed Act, a lease will be liable to forfeiture if the lessee causes or permits the breach of any condition of the lease, any direction made by the Commissioner under section 18D, any condition of a clearing licence or of a consent relating to the cultivation of land, or any provision of the Act or regulations, that is expressed to give rise to a liability to forfeiture. (Currently, there is no power to forfeit a lease for breach of a direction, regardless of the seriousness of the breach.)

Explanatory note

- Proposed section 54 requires the Minister to give the lessee a chance to avoid forfeiture. This is achieved by the issue of a warning notice, informing the lessee that the lease will be forfeited and allowing the lessee to make submissions in relation to the proposed forfeiture. In some cases, the warning notice will specify the action that may be taken to avoid forfeiture.
- Proposed section 55 empowers the Minister to cause a lease to be forfeited (in whole or in part) if the period specified in the warning notice has expired, the lessee has not rectified the breach and no appeal is pending. The proposed section requires the Minister to have regard to any written submissions made in relation to a warning notice.
- Proposed section 56 gives the lessee the right to appeal against the forfeiture of a lease (or part of a lease). An appeal has the effect of suspending the forfeiture.
- Proposed section 57 requires the forfeiture of a lease to be recorded under the *Real Property Act 1900* before it can have effect.
- Proposed section 58 provides that, on the forfeiture of a lease, all money paid to the Crown in respect of the lease is forfeited.
- Proposed section 59 provides that a forfeiture does not extinguish any debt due to the Crown unless the Minister otherwise approves.
- Proposed section 60 provides for the reversal of the forfeiture of a lease.
- Proposed section 61 states that the provisions about forfeiture apply equally to the cancellation or lapse of a lease. (Those terms are used interchangeably in the Act and in some leases and other documents relating to land in the Western Division.)

Rationalisation of obligation to obtain the consent of the Minister to certain matters

The amendments made by the proposed Act rationalise provisions creating an obligation to obtain the Minister's consent to transfers and other dealings with a lease.

Schedule 1 [5] repeals existing section 18G and inserts a new section which requires the Minister's consent for any transfer or assignment of a lease, for the foreclosure of a mortgage of a lease, or for any sublease created for a term of 3 years or more. Other dealings (such as subleases for less than 3 years, grazing rights, agreements to agist stock or mortgages) will no longer require Ministerial consent. Proposed section 18GAA makes provision for the Minister to certify that consent is not required for transactions relating to certain residential and other land.

Schedule 1 [8] makes a consequential amendment, omitting from section 18H the obligation to obtain Ministerial consent to the discharge of a mortgage. Consent will be required only for the foreclosure of a mortgage.

Schedule 1 [11] amends section 35K to clarify that the obligation to obtain Ministerial consent does not apply to a transfer or assignment that takes effect by operation of law.

Obligation to notify Commissioner of certain matters

Schedule 1 [6] inserts proposed section 18GA to impose an obligation on a lessee who grants a mortgage of the lease or a sublease for a term of less than 3 years to notify the Western Lands Commissioner of the grant of the mortgage or sublease. The new provision also imposes a similar obligation on a mortgagee of a lease who enters into possession to notify the Commissioner of that fact.

A lessee or mortgagee who fails to notify the Commissioner within the prescribed period will be liable to a penalty of 10 penalty units (\$1,000).

Provisions dealing with boundary fences

The *Dividing Fences Act 1991* provides for the apportionment of the costs of dividing fences. Sections 18A, 18B and 18C of the *Western Lands Act 1901* currently make different provisions relating to fences, including an obligation for all lessees of Crown land in the Western Division to erect boundary fences and to contribute to their costs. Those provisions override the provisions made by the *Dividing Fences Act 1991* (see section 26 (c) of that Act).

Schedule 1 [3] omits the sections of the *Western Lands Act 1901* that deal with boundary fences. On the repeal of those sections, such matters will be dealt with exclusively under the *Dividing Fences Act 1991*. (The Commissioner retains the power to direct the erection of fencing where it is necessary to protect land: see section 18D (1) (iv) (a).)

Other amendments

Schedule 1 [1] makes clear that the Act applies to the lease of Crown lands in the Western Division (other than lands in an irrigation area) and that notes in the text of the Act do not form part of the Act.

Schedule 1 [6] repeals a redundant provision relating to title (as well as inserting the provision dealing with notification discussed above).

Schedule 1 [7] omits redundant matter relating to mortgages.

Schedule 1 [10] provides for the registration and protection of a right in any improvement on land under lease. This is consequential on the repeal of section 18G (2) and (3).

Schedule 2 Amendment of other Acts

Amendment of Land and Environment Court Act 1979

Schedule 2.1 amends the *Land and Environment Court Act 1979* as a consequence of the amendments made by Schedule 1 [14] and [15].

As a result of the amendments, the Land and Environment Court will be able to hear proceedings for offences against the *Western Lands Act 1901* or the regulations in Class 5 of its jurisdiction and appeals in relation to the forfeiture of leases in Class 4 of its jurisdiction. (Other matters will continue to be heard in Class 3 of the Court's jurisdiction.)

Amendment of Soil Conservation Act 1938

Schedule 2.2 amends the *Soil Conservation Act 1938* to increase the penalty for the unauthorised destruction of trees on land that has been identified as protected land because of its environmental sensitivity (including its liability to be affected by soil erosion, siltation or land degradation). The penalty for the destruction of a tree on such land is increased from 400 penalty units (\$40,000) to 1,000 penalty units (\$100,000).

Second print



New South Wales

Western Lands Amendment Bill 1995

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New South Wales

Western Lands Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Western Lands Act 1901* to increase penalties for certain offences relating to the clearing or cultivation of land in the Western Division; to rationalise provisions relating to the transfer and forfeiture of leases over that land; to amend the *Soil Conservation Act 1938* to increase the penalty for an offence; to consequentially amend the *Land and Environment Court Act 1979*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Western Lands Amendment Act 1995*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2). 5
- (2) Schedule 1 [2]–[11], [13] and [16]–[18] commence on a day or days to be appointed by proclamation.

3 Amendment of Western Lands Act 1901 No 70

The *Western Lands Act 1901* is amended as set out in Schedule 1. 10

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Western Lands Act 1901

(Section 3)

[1] Section 3 Definitions

Insert after the 3 (2):

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(3) This Act applies to the lease of Crown lands in the Western Division, other than lands within an irrigation area within the meaning of the *Crown Lands Act 1989*.

(4) Notes in the text of this Act are explanatory notes only and do not form part of this Act.

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[2] Sections 18 and 18AA

Omit section 18. Insert instead:

18 Conditions of a lease

(1) A lease may contain any conditions that the Minister considers appropriate.

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(2) A lease does not convey any authority to carry on mining operations on the land.

18AA Consequences of breach of a condition of a lease

(1) A lease is liable to forfeiture if the lessee causes or permits the breach of any condition of the lease.

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(2) However, a lease may provide that the breach of a condition gives rise to a liability to forfeiture only if certain circumstances exist. (For example, a condition may contain a proviso that the lease is liable to forfeiture for failure to pay rent only if the rent is more than 3 months in arrears.) In such a case, the lease is liable to forfeiture only if the circumstances exist.

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[3] Sections 18A, 18B and 18C

Omit the sections.

[4] Section 18D Provisions governing leases

Insert after section 18D (1):

- (1A) A lease is liable to forfeiture if the lessee causes or permits the breach of any provision of this section or any direction given by the Commissioner under this section. 5

[5] Sections 18G and 18GAA

Omit section 18G. Insert instead:

18G Minister's consent required for certain matters

- (1) The following transactions cannot be validly carried out without the written consent of the Minister: 10
- (a) the transfer of a lease,
 - (b) the assignment of a lease,
 - (c) the sublease of Crown lands in the Western Division for a term of 3 years or more,
 - (d) the exercise of the power of foreclosure in relation to a mortgage over Crown lands in the Western Division. 15
- (2) A transfer by way of discharge of mortgage may be effected without the Minister's consent.
- (3) The Minister's consent is not required for any transaction, or the exercise of any power, in relation to a lease the subject of a Ministerial certificate issued under section 18GAA. 20
- (4) The Registrar-General must not register a transfer or assignment of a lease, or a sublease for which the Minister's consent is required by this section, unless the Registrar-General is satisfied that the Minister has consented to the dealing. 25
- (5) Nothing in this section affects the operation of section 42 (Estate of registered proprietor paramount) of the *Real Property Act 1900*. 30

-
- (6) An application for the Minister's consent must be made in the approved form and must be accompanied by the fee prescribed by the regulations.
- (7) In calculating the term of a sublease for the purposes of this section, any option for renewal is to be included as part of the term. 5

18GAA Minister may certify that matters relating to certain land do not require consent

- (1) The Minister may, on application by any person, certify that consent is not required for a dealing in relation to a lease of land having an area of not more than 4,050 square metres, if the lease was granted for residential purposes, or for any other purposes prescribed by the regulations, and the Minister is satisfied that the land is being used for the purposes for which the lease was granted. 10 15
- (2) An application for the Minister's certificate must be made in the approved form and must be accompanied by the fee prescribed by the regulations.
- (3) The Registrar-General must record the issue of such a certificate under the *Real Property Act 1900*, if the certificate is lodged with any dealing in respect of the lease. 20

[6] Section 18GA

Omit the section. Insert instead: 25

18GA Commissioner must be notified of certain matters

- (1) A person who grants a mortgage over Crown lands in the Western Division must notify the Commissioner in writing of the grant of the mortgage within 28 days of the grant, or within such other period as may be prescribed by the regulations. 30

Maximum penalty: 10 penalty units.

Western Lands Amendment Bill 1995

Schedule 1 Amendment of Western Lands Act 1901

- (2) A mortgagee of a lease who enters into possession of land subject to that lease must notify the Commissioner in writing of that entry into possession within 28 days of the entry, or within such other period as may be prescribed by the regulations. 5
Maximum penalty: 10 penalty units.
- (3) A person who grants a sublease of Crown lands in the Western Division, where that sublease is for a term of less than 3 years, must notify the Commissioner in writing of the grant of the sublease within 28 days of the grant, or within such other period as may be prescribed by the regulations. 10
Maximum penalty: 10 penalty units.
- (4) In calculating the term of a sublease for the purposes of this section, any option for renewal is to be included as part of the term. 15
- (5) This section does not impose any obligations in relation to Crown lands that are within an irrigation area within the meaning of the *Crown Lands Act 1989*.
- [7] Section 18H Mortgages and devolutions 20**
Omit "applied for after the commencement of the *Western Lands (Amendment) Act 1934*, or a lease extended to a lease in perpetuity (whether before or after such commencement)," wherever occurring from section 18H (1) and (2).
- [8] Section 18H (1) 25**
Omit "The mortgagee shall not foreclose the mortgage or transfer the lease, except by way of discharge of mortgage, without the consent of the Minister." from section 18H (1).
- [9] Section 28BA Forfeiture of lease 30**
Omit the section.

[10] Section 29A

Insert after section 29:

29A Rights in improvements

- (1) This section applies to a tenant right in any improvement on land, or addition to or extension of any improvement on land, granted under section 29 (2). 5
- (2) A right to which this section applies is capable of being recorded as a charge under the *Real Property Act 1900* and is taken to be a charge for the purposes of that Act.
- (3) The liability under such a right is to be determined by the local land board in accordance with section 31. 10
- (4) The Registrar-General may delete a recording of a right:
 - (a) on the application of the person to whom the right was granted, or
 - (b) on the lapsing of the right, or 15
 - (c) in any other circumstance where the Registrar-General is satisfied that the right has been paid out or otherwise extinguished.
- (5) A right to which this section applies must be in the form approved under the *Real Property Act 1900* for a charge. 20

[11] Section 35K Transfers by operation of law or under legal process

Omit section 35K (2). Insert instead:

- (2) To avoid doubt, Ministerial consent is not required for any sale, transfer or disposition referred to in this section. 25

[12] Section 49 Offences

Omit "100 penalty units" wherever occurring from section 49 (1) (a), (a1) and (b), (2), (2A) and (2B).

Insert instead "1,000 penalty units". 30

[13] Section 50

Omit the section.

[14] Section 52 Proceedings for offences

Insert after "alone" in section 52 (1) "or summarily before the Land and Environment Court".

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[15] Section 52

Insert after section 52 (1):

(1A) If proceedings for an offence against this Act or the regulations made under this Act are brought before 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 of the offence, whichever is the lesser.

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[16] Part 12

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Insert after section 52:

Part 12 Forfeiture of leases

53 Minister may forfeit lease

The Minister may cause a lease to be forfeited in any circumstances in which this Act provides that a lease is liable to forfeiture.

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Note. The circumstances in which this Act provides that a lease is liable to forfeiture include the following:

- (a) the lessee breaches any condition of the lease (see section 18),
- (b) the lessee breaches a provision of section 18D or any direction made by the Commissioner under that section,
- (c) the lessee or occupier cultivates any part of the land the subject of a lease in contravention of section 18DA or in contravention of any condition imposed on a consent to cultivate granted under that section,
- (d) the lessee or occupier clears any part of the land the subject of a lease in contravention of section 18DB or any condition of a clearing licence granted under that section.

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54 Minister must give lessee a chance to avoid forfeiture

- (1) The Minister must not cause a lease to be forfeited unless the Minister has first served a notice in writing on the lessee warning that the Minister intends to cause the lease to be forfeited. 5
- (2) The warning notice must inform the lessee that the lessee is entitled to make a submission to the Minister as to why the lease should not be forfeited.
- (3) In addition, the warning notice may, where appropriate, specify what the lessee must do to avoid forfeiture. That is, the warning notice may specify what action the Minister would regard as remedying the breach that gave rise to the liability to forfeiture. 10
- (4) The warning notice must specify the period during which the submission must be made, or the action must be completed. That period must be at least 28 days after the issue of the notice, but may be longer. 15
- (5) The Minister may, in any case in which the Minister considers that it is appropriate to do so, serve a copy of a warning notice on a mortgagee of the land to which the notice relates. 20
- (6) A notice (or copy of a notice) served under this section may be served either personally or by post, and may be varied, replaced or withdrawn by a further notice.

55 Minister may cause lease to be forfeited 25

- (1) The Minister may cause a lease to be forfeited if:
 - (a) a warning notice has been served on the lessee under section 54, and
 - (b) the period specified in the notice has expired, and
 - (c) the Minister has had regard to any submission made to the Minister by a lessee within the period specified in the notice, and 30
 - (d) any action specified in the notice has not been taken, or has not been taken to the satisfaction of the Minister. 35

- (2) The Minister must not cause a lease to be forfeited unless the Minister is satisfied that, having regard to all the circumstances of the case, it is reasonable to do so.
- (3) The Minister may cause a lease to be forfeited either as to the whole of the land comprised in the lease or as to a part of that land specified in the notice of forfeiture. 5
- (4) The Minister must notify the lessee in writing of the forfeiture of a lease (or of part of a lease). That notice must specify that the lessee has a right to appeal against the forfeiture to the Land and Environment Court. 10
- (5) A notice under this section may be given either personally or by post.

56 Lessee has right to appeal against forfeiture

- (1) A lessee may appeal to the Land and Environment Court against the forfeiture of a lease (or part of a lease). 15
- (2) An appeal must be commenced within 28 days of the service of the notice of forfeiture.
- (3) If an appeal has been made the Court may, pending its final determination, make an order directing the lessee to discontinue the breach that gave rise to the liability to forfeiture and to undertake such action as may be necessary to protect the land or the improvements on the land. 20

57 Forfeiture must be recorded on Register

- (1) The Minister must give notice in the Gazette of the forfeiture of a lease (or part of a lease). That notice cannot be given unless the period for making an appeal against the forfeiture has passed and either no appeal has been made, or any appeal made has been withdrawn or dismissed. 25
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- (2) The Minister must notify the Registrar-General of the forfeiture of a lease (or part of a lease). This notification cannot be made unless the Minister has first given notice of the forfeiture in the Gazette.

-
- (3) The forfeiture of a lease (or part of a lease) is not effective until it has been recorded under the *Real Property Act 1900*.
- (4) The Minister may withdraw a forfeiture at any time before it is so recorded. The Minister must notify the lessee in writing of the withdrawal of a forfeiture. 5
- (5) A notice under this section may be given either personally or by post.

58 Consequences of forfeiture

When a lease (or part of a lease) is forfeited, all money paid to the Crown in respect of the lease is forfeited. If part only of a lease is forfeited, the Minister may adjust rent and other money payable under the lease to take that into account. 10

59 Forfeiture does not extinguish debt to Crown or certain other liabilities 15

- (1) The forfeiture of a lease (or part of a lease) does not operate to extinguish any debt to the Crown unless the Minister otherwise approves.
- (2) The Minister may approve of the extinguishment of the whole or part of a debt to the Crown irrespective of when the lease was forfeited. 20
- (3) The forfeiture of a lease does not operate to release the lessee from any obligation to comply with a condition or provision which, by its nature, is required to be complied with after the lease is terminated. 25

60 Forfeiture may be reversed

- (1) The Minister may, conditionally or unconditionally, reverse the forfeiture of a lease (or part of a lease), by notification in the Gazette. 30
- (2) The Minister must notify the Registrar-General of the reversal of the forfeiture of a lease (or part of a lease).
- (3) The reversal of the forfeiture of a lease (or part of a lease) is not effective until it has been recorded under the *Real Property Act 1900* in respect of the lease. 35

61 Cancellation and lapsing of lease

If the terms of any lease create a liability to cancellation of a lease, or to having the lease declared to have lapsed, then, for the purposes of this Part, that liability is to be regarded as a liability to forfeiture.

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[17] Schedule C Savings, transitional and other provisions

Omit the heading relating to the Western Lands (Crown Lands) Amendment Act 1989.

Insert instead:

Part 1 General

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1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

Western Lands Amendment Act 1995

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- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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- (a) to affect, in a manner prejudicial to any person (other than the State or any authority of the State), the rights of that person existing before the date of its publication, or

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- (b) to impose liabilities on any person (other than the State or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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**Part 2 Provisions consequent on enactment of
Western Lands (Crown Lands) Amendment
Act 1989**

[18] Schedule C

Insert after clause 3:

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**Part 3 Provisions consequent on enactment of
Western Lands Amendment Act 1995**

4 Definition

In this Part:

amending Act means the *Western Lands Amendment Act 1995*.

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5 Conditions of existing leases

The repeal and re-enactment of section 18 by the amending Act does not affect any lease granted before the commencement of Schedule 1 [2] of that Act.

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6 Forfeiture of leases

- (1) If the Minister had, before the commencement of Schedule 1 [13] to the amending Act, issued a notice under section 50 to a lessee in relation to the proposed forfeiture of a lease, section 50 (as in force immediately before its repeal by the amending Act) applies to that notice, and to any subsequent forfeiture of that lease, as if that section had not been repealed.
- (2) The Minister may issue a warning notice to a lessee under section 54, and may cause the forfeiture of a lease (or part of a lease) under section 55, as a consequence of a liability to forfeiture arising from the breach of a provision of the Act or the regulations, or of a condition of a lease, a clearing licence or any condition imposed on a cultivation consent, where that breach occurred before the commencement of the amending Act.

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- (3) However, the Minister may not issue a warning notice to a lessee under section 54, or cause the forfeiture of a lease (or part of a lease) under section 55, as a consequence only of a liability to forfeiture arising from the breach of a direction made by the Commissioner if that breach occurred before the commencement of the amending Act. 5

7 Boundary fences

- (1) On and from the commencement of Schedule 1 [3] to the amending Act, any condition of a lease that creates an obligation to perform fencing work is of no effect. 10
- (2) Sections 18A, 18B and 18C of the Act (as in force immediately before their repeal by the amending Act) continue to operate in respect of any matter pending as a result of a work completed under those sections, any claim made under those sections or any proceedings in relation to such a claim as if the sections had not been repealed by the amending Act. 15
- (3) Otherwise, the *Dividing Fences Act 1991* applies to and in respect of fencing work whether carried out before or after the commencement of Schedule 1 [3] to the amending Act. 20
- (4) This clause does not affect the operation of section 18D (1) (iv) (a).

8 Notification of Commissioner 25

The obligation to notify the Commissioner of the grant of a mortgage or a sublease, or of the exercise of a mortgagee's right of possession, created by section 18GA does not apply to the grant of a mortgage or sublease, or to the exercise of a right, before the date of commencement of Schedule 1 [6] to the *Western Lands Amendment Act 1995*. 30

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Land and Environment Court Act 1979 No 204

[1] Section 20 Class 4—environmental planning protection and development contract civil enforcement 5

Insert after section 20 (1) (dc):

(dd) proceedings under Part 12 of the *Western Lands Act 1901*, and

[2] Section 21 Class 5—environmental planning and protection summary enforcement 10

Insert after section 21 (hb):

(hc) proceedings under section 52 of the *Western Lands Act 1901*, and

2.2 Soil Conservation Act 1938 No 10

Section 21C Destruction of trees on protected land prohibited except under authority 15

Omit “400 penalty units” from section 21C (4).
Insert instead “1,000 penalty units”.

