

Inclosed Lands Protection Act 1901

As at 14 January 2018

Reprint history (since 1972):

Reprint No 1

6 March 1978

Reprint No 2

28 August 1980

Reprint No 3

14 June 1984

Reprint No 4

29 September 1988

Reprint No 5

9 March 1995

Reprint No 6

20 November 2001

Long Title

An Act to consolidate the enactments relating to the protection of inclosed lands from intrusion and trespass.

1 Name of Act

This Act may be cited as the *Inclosed Lands Protection Act 1901*.

2 (Repealed)

3 Definitions

(1) In this Act: "**child care service**" means any service that is provided by a person for the purpose of educating, minding or caring for one or more children (disregarding any children who are related to the person providing the service), but does not include any such service if the service is:

- (a) provided by a person at the premises at which the children reside, or
- (b) out-of-home care provided by a designated agency or an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

"**hospital**" means any of the following:

- (a) a public hospital within the meaning of the *Health Services Act 1997*,
- (b) a private health facility within the meaning of the *Private Health Facilities Act 2007*.

"Inclosed lands" means:

- (a) prescribed premises, or
- (b) any land, either public or private, inclosed or surrounded by any fence, wall or other erection, or partly by a fence, wall or other erection and partly by a canal or by some natural feature such as a river or cliff by which its boundaries may be known or recognised, including the whole or part of any building or structure and any land occupied or used in connection with the whole or part of any building or structure.

"prescribed premises" means land occupied or used in connection with any of the following:

- (a) a government school or a registered non-government school within the meaning of the *Education Act 1990*,
- (b) a child care service,
- (c) a hospital,
- (d) a nursing home within the meaning of the *Public Health Act 2010*,

and any building or structure erected on that land, but does not include all or part of any building or structure that is for the time being occupied or used for a purpose unconnected with the conduct of such a school, child care service, hospital or nursing home. **"Road"** means any land proclaimed, dedicated, resumed or otherwise provided as a public thoroughfare or way or any land defined, reserved or left as a road in any subdivision of lands.

(2) Where a road is lawfully inclosed with the lands of any person, those lands, but not the road, shall be deemed for the purposes of this Act to be the inclosed lands of the person.

4 Unlawful entry on inclosed lands

(1) Any person who, without lawful excuse (proof of which lies on the person), enters into inclosed lands without the consent of the owner, occupier or person apparently in charge of those lands, or who remains on those lands after being requested by the owner, occupier or person apparently in charge of those lands to leave those lands, is liable to a penalty not exceeding:

- (a) 10 penalty units in the case of prescribed premises, or
- (b) 5 penalty units in any other case.

(1A) A drover or person in charge of stock being driven on a road lawfully inclosed within the lands of any person has a lawful excuse for entering those lands for the purpose of preventing the stock from straying, or regaining control of stock that have strayed, from that road.

(2) Where a road is lawfully inclosed with the lands of any person, and such road is not clearly defined but there is a reasonably defined track commonly used by persons passing through such lands, the centre of such track shall, for the purposes of this Act, be deemed to be the centre of the road.

(3) Where a road is lawfully inclosed with the lands of any person and such road is not clearly defined and there is no reasonably defined track through such lands a person passing through such inclosed lands shall not be guilty of an offence unless it is shown that the route taken by such person in so passing was, having regard to the circumstances, unreasonable.

(4) In this section, **"stock"** includes horses, cattle, sheep, goats, pigs and camels.

4AA Unlawful re-entry on inclosed lands

(1) A person who, without reasonable excuse, knowingly enters an event venue during an organised event in contravention of a re-entry prohibition given to the person is guilty of an offence. Maximum penalty: 10 penalty units.

(2) A **"re-entry prohibition"** is a direction given by a responsible authority for an organised event, after a person has been directed to leave the organised event, that directs

the person:

- (a) not to re-enter the event venue during the organised event, or
- (b) not to enter any specified event venue during an organised event for which the responsible authority is the responsible authority,

or both.

(3) A re-entry prohibition may be given orally in person or in writing.

(4) The responsible authority must, at the time of giving the re-entry prohibition:

- (a) specify the event venue or venues, and organised event or events, to which the re-entry prohibition applies, and
- (b) specify the duration of the re-entry prohibition, and
- (c) state the reason why the re-entry prohibition is being given, and
- (d) warn the person subject to the re-entry prohibition that it is an offence to contravene the re-entry prohibition.

(5) Proof of reasonable excuse under this section lies on the person charged with the offence.

(6) If a person who enters an event venue in contravention of a re-entry prohibition is also prohibited or banned from entering the event venue under another Act or law, the person cannot be found guilty of both an offence under this Act and an offence under the other Act or law in respect of the same conduct.

(7) In this section: "**event organiser**" in relation to an organised event means the person in charge or apparently in charge of the organised event and who has the power to admit persons to or exclude persons from attending the organised event. "**event venue**" means that part of inclosed lands used for an organised event to which right of entry is conferred by a ticket, membership or similar arrangement. "**organised event**" means:

- (a) an organised sporting event, and includes any performance, ceremony or formalities conducted in conjunction with the event, or
- (b) an organised public exhibition, fair, convention, performance, ceremony, festival or similar event, or
- (c) an event of a kind prescribed by the regulations.

"**responsible authority**" for an organised event means:

- (a) the owner, occupier or person apparently in charge of the event venue used or to be used for the organised event, or
- (b) the event organiser.

4A Offensive conduct while on inclosed lands

(1) Any person, who remains upon the inclosed lands of another person after being requested by the owner or occupier or the person apparently in charge of those lands to leave those lands and while remaining upon those lands conducts himself or herself in such a manner as would be regarded by reasonable persons as being, in all the circumstances, offensive, is liable to a penalty not exceeding:

- (a) 20 penalty units in the case of prescribed premises, or
- (b) 10 penalty units in any other case.

(2) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.

4B Aggravated unlawful entry on inclosed lands

(1) A person is guilty of an offence under this section if the person commits an offence under section 4 in relation to inclosed lands on which any business or undertaking is conducted and, while on those lands:

- (a) interferes with, or attempts or intends to interfere with, the conduct of the business or undertaking, or
- (b) does anything that gives rise to a serious risk to the safety of the person or any other person on those lands, or

- (c) introduces or increases a risk of a biosecurity impact (within the meaning of the *Biosecurity Act 2015*) for those inclosed lands, or
- (d) intends to commit on those inclosed lands an offence under any of the following provisions:
 - (i) section 126, 503, 505 or 506 of the *Crimes Act 1900*,
 - (ii) section 16 of the *Game and Feral Animal Control Act 2002*,
 - (iii) section 28J of the *Summary Offences Act 1988*, or
- (e) without reasonable excuse, possesses, places or uses any net, trap, snare, poison, explosive, ammunition, knife, hunting device or hunting equipment, or
- (f) without reasonable excuse, possesses or discharges a firearm (within the meaning of the *Firearms Act 1996*) or a prohibited weapon (within the meaning of the *Weapons Prohibition Act 1998*), or
- (g) is accompanied by a dog of a breed ordinarily used for hunting.

Maximum penalty: 50 penalty units.

(2) If, on the trial of a person for an offence under this section, the court is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 4, the court may find the accused not guilty of the offence charged but guilty of an offence under section 4, and the accused is liable to punishment accordingly.

(3) Proof of reasonable excuse under this section lies on the person charged with the offence.

5 Penalty on leaving gate open

(1) Any person who enters into or upon the inclosed lands of any other person, and wilfully or negligently leaves open or down any gate or slip-panel, shall be liable to a penalty not exceeding 2 penalty units.

(2) Any person who enters into or upon any road lawfully inclosed with the lands of any other person through any gate (not being a public gate within the meaning of the *Roads Act 1993*), or slip panel, and wilfully or negligently leaves open or down such gate or slip-panel, shall be liable to a penalty not exceeding 2 penalty units.

6 Offender may be apprehended

(1) Any person found committing any offence against this Act, and who refuses, when required to do so, to give his or her name and place of abode, may be apprehended by the owner, occupier, or person in charge of the inclosed lands upon or in relation to which the offence was committed, and delivered to the custody of the nearest constable to be taken before a Magistrate or an authorised officer within the meaning of the *Criminal Procedure Act 1986* to be dealt with according to law.

(2) Any person who, upon being so required to give his or her name and place of abode, gives any false name or place of abode, shall be liable to a penalty not exceeding 0.5 penalty unit.

7 Owner may destroy goats

(1) Any owner, occupier, or person in charge of inclosed land may destroy any goat found trespassing thereon.

(2) Subsection (1) does not authorise the destruction of any goat that:

- (a) is legibly branded, or
- (b) has around its neck a collar with the name and address of its owner legibly engraved on it, or
- (c) has an ear mark, or
- (d) is wearing an ear tag.

8 Penalties

All penalties under this Act may be recovered before the Local Court.

9 Limitation of civil action

Any civil action against any person for anything done in pursuance of this Act shall be commenced within two months after the fact was committed, and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action.

9A Particulars to be furnished

- (1) If a defendant charged with an offence under this Act:
 - (a) has requested the informant to furnish to the defendant reasonable particulars of the behaviour or conduct the subject of the charge, and
 - (b) the informant, or some person on his or her behalf, has not so furnished those particulars,

the court before which the defendant is charged is to adjourn the charge pending the furnishing of those particulars or may dismiss the charge.

- (2) If, at the hearing of a charge for an offence referred to in subsection (1):
 - (a) the evidence discloses behaviour or conduct that constitutes such an offence, and
 - (b) that behaviour or conduct is different from the behaviour or conduct of which particulars have been given to the defendant under subsection (1),

the court may, on the application of the defendant and if it is of the opinion that the defendant was deceived by those particulars, adjourn the hearing on such terms as it thinks fit.

10 Penalty notices

- (1) A police officer may issue a penalty notice to a person if it appears to the police officer that the person has committed an offence against this Act.
- (2) The *Fines Act 1996* applies to a penalty notice issued under this section. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (3) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (4) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

11 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 Savings, transitional and other provisions

Part 1 – General

1 Regulations

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

Criminal Legislation Amendment Act 2009

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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, 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.

Part 2 – Provisions consequent on enactment of Criminal Legislation Amendment Act 2009

2 Definition

In this Part:

"**amending Act**" means the *Criminal Legislation Amendment Act 2009*.

3 Limitation period for prosecutions

Section 9, as amended by the amending Act, does not apply in respect of an offence that is alleged to have been committed before the commencement of that amendment, and that section, as in force immediately before that commencement, continues to apply in respect of any such offence.

4 Particulars to be furnished

Section 9A, as inserted by the amending Act, does not apply in respect of an offence alleged to have been committed before the commencement of that section.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Inclosed Lands Protection Act 1901 No 33*. Assented to 30.10.1901. This Act has been amended as follows:

1939	No 9	<i>Inclosed Lands Protection (Amendment) Act 1939</i> . Assented to 6.9.1939.
1964	No 14	<i>Inclosed Lands Protection (Amendment) Act 1964</i> . Assented to 20.4.1964.
1965	No 33	<i>Decimal Currency Act 1965</i> . Assented to 20.12.1965. Date of commencement of sec 4, 14.2.1966, secs 1 (3), 2 (1) and the <i>Currency Act 1965</i> (Commonwealth), sec 2 (2).
1970	No	<i>Supreme Court Act 1970</i> . Assented to 14.10.1970. Date of commencement, Part 9 excepted, 1.7 1972, sec 2 (1) and GG No 59 of 2.6.1972, p 2018.

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1973	No 9	<i>District Court Act 1973</i> . Assented to 10.4 1973. Date of commencement, 1.7.1973, sec 2 and GG No 75 of 8.6.1973, p 2158.
1979	No 73	<i>Inclosed Lands Protection (Summary Offences) Amendment Act 1979</i> . Assented to 11.5.1979. Date of commencement of sec 3, 1.8.1979, sec 2 (2) and GG No 96 of 20.7.1979, p 3512.
1983	No 188	<i>Inclosed Lands Protection (Amendment) Act 1983</i> . Assented to 31.12.1983. Date of commencement of Sch 1, 13.2.1984, sec 2 (2) and GG No 19 of 10.2.1984, p 621.
1987	No 39	<i>Inclosed Lands Protection (Amendment) Act 1987</i> . Assented to 21.5.1987. Date of commencement of Sch 1, 14.6.1987, sec 2 (2) and GG No 87 of 29.5.1987, p 2500.
	No 63	<i>Miscellaneous Acts (Education and Public Instruction) Repeal and Amendment Act 1987</i> . Assented to 3.6.1987. Date of commencement of Sch 2, 17.8.1987, sec 2 (2) and GG No 126 of 31.7.1987, p 4254.
1989	No 199	<i>Inclosed Lands Protection (Amendment) Act 1989</i> . Assented to 21.12.1989. Date of commencement, 11.3.1990, sec 2 and GG No 35 of 9.3.1990, p 1990.
1993	No 33	<i>Roads Act 1993</i> . Assented to 8.6.1993. Date of commencement, 1.7.1993, sec 2 and GG No 73 of 1.7.1993, p 3343.
	No 47	<i>Statute Law (Penalties) Act 1993</i> . Assented to 15.6.1993. Date of commencement, assent, sec 2.
1994	No 95	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1994</i> . Assented to 12.12.1994. Date of commencement of Sch 3, assent, sec 2.
1997	No 97	<i>Inclosed Lands Protection Amendment Act 1997</i> . Assented to 18.11.1997. Date of commencement, 2.1.1998, sec 2 and GG No 1 of 2.1.1998, p 6.
1998	No 158	<i>Children and Young Persons Legislation (Repeal and Amendment) Act 1998</i> . Assented to 14.12.1998. Date of commencement of Sch 2.17, 9.12.2011, sec 2 and 2011 (625) LW 9.12.2011.
1999	No 31	<i>Statute Law (Miscellaneous Provisions) Act 1999</i> . Assented to 7.7.1999. Date of commencement of Sch 3.10, assent, sec 2 (2).
2001	No 121	<i>Justices Legislation Repeal and Amendment Act 2001</i> . Assented to 19.12.2001. Date of commencement of Sch 2, 7.7.2003, sec 2 and GG No 104 of 27.6.2003, p 5978.
2002	No 33	<i>Pastoral and Agricultural Crimes Legislation Amendment Act 2002</i> . Assented to 24.6.2002. Date of commencement, 27.9.2002, sec 2 and GG No 154 of 27.9.2002, p 8371.
2004	No 87	<i>Health Legislation Further Amendment Act 2004</i> . Assented to 30.11.2004. Date of commencement, 1.1.2005, sec 2 and GG No 200 of 17.12.2004, p 9305.
2007	No 9	<i>Private Health Facilities Act 2007</i> . Assented to 15.6.2007. Date of commencement, 1.3.2010, sec 2 and 2010 (53) LW 26.2.2010.
	No 94	<i>Miscellaneous Acts (Local Court) Amendment Act 2007</i> . Assented to 13.12.2007. Date of commencement of Sch 2, 6.7.2009, sec 2 and 2009 (314) LW 3.7.2009.
2009		<i>Criminal Legislation Amendment Act 2009</i> . Assented to 19.5.2009. Date of

9	No 27	commencement, assent, sec 2.
2010	No 127	<i>Public Health Act 2010</i> . Assented to 7.12.2010. Date of commencement of Sch 4, 1.9.2012, sec 2 and 2012 (275) LW 29.6.2012.
2014	No 59	<i>Crimes Legislation Amendment Act 2014</i> . Assented to 23.10.2014. Date of commencement, assent, sec 2.
2016	No 7	<i>Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016</i> . Assented to 22.3.2016. Date of commencement of Sch 1, 1.6.2016, sec 2 and 2016 (277) LW 1.6.2016.
2017	No 22	<i>Statute Law (Miscellaneous Provisions) Act 2017</i> . Assented to 1.6.2017. Date of commencement of Sch 3, 7.7.2017, sec 2 (3).
	No 62	<i>Rural Crime Legislation Amendment Act 2017</i> . Assented to 23.11.2017. Date of commencement of Sch 1.4, assent, sec 2 (1).
	No 63	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2017</i> . Assented to 23.11.2017. Date of commencement of Sch 4.23, 14.1.2018, sec 2 (3).

Table of amendments No reference is made to certain amendments made by the *Decimal Currency Act 1965*, and Schedule 3 (amendments replacing gender-specific language) to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1994*.

Sec 2	Rep 2009 No 27, Sch 1.7 [1].
Sec 3	Am 1939 No 9, sec 2 (a); 1979 No 73, sec 3 (a); 1987 No 63, Sch 2; 1997 No 97, Sch 1 [1]-[3]; 1998 No 158, Sch 2.17; 1999 No 31, Sch 3.10; 2001 No 121, Sch 2.124 [1]; 2004 No 87, Sch 6.8; 2007 No 9, Sch 5.15; 2010 No 127, Sch 4.12; 2017 No 63, Sch 4.23.
Sec 4	Am 1939 No 9, sec 2 (b); 1964 No 14, sec 2 (a); 1979 No 73, sec 3 (b); 1987 No 39, Sch 1 (1); 1989 No 199, Sch 1 (1); 1993 No 47, Sch 1; 1997 No 97, Sch 1 [4] [5].
Sec 4A	Ins 2014 No 59, Sch 1.9.
Sec 4A	Ins 1979 No 73, sec 3 (c). Am 1983 No 188, Sch 1; 1987 No 39, Sch 1 (2); 1989 No 199, Sch 1 (2); 1993 No 47, Sch 1; 1997 No 97, Sch 1 [6].
Sec 4B	Ins 2016 No 7, Sch 1. Am 2017 No 62, Sch 1.4 [1] [2].
Sec 5	Am 1939 No 9, sec 2 (c); 1964 No 14, sec 2 (b); 1987 No 39, Sch 1 (3); 1989 No 199, Sch 1 (3); 1993 No 33, Sch 1; 1993 No 47, Sch 1.
Sec 6	Am 1964 No 14, sec 2 (c); 1993 No 47, Sch 1; 2001 No 121, Sch 2.124 [2].
Sec 7	Am 1939 No 9, sec 2 (d); 2002 No 33, Sch 2 [1].
Sec 8	Am 2001 No 121, Sch 2.124 [3]; 2007 No 94, Sch 2.
Sec 9	Am 1970 No 52, Second Sch; 1973 No 9, Sch 2; 2009 No 27, Sch 1.7 [2].
Sec 9A	Ins 2009 No 27, Sch 1.7 [3].
Sec 10	Ins 2002 No 33, Sch 2 [2]. Subst 2017 No 22, Sch 3.37.
Sec	Ins 2002 No 33, Sch 2 [2].

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Sch	Rep 2009 No 27, Sch 1.7 [4].
Sch	Ins 2009 No 27, Sch 1.7 [4].
1	