

Western Lands Regulation 1997

As at 1 September 2003

Part 1 - Preliminary

1 Name of Regulation

This Regulation is the *Western Lands Regulation 1997*.

2 Commencement

This Regulation commences on 1 September 1997.

3 Definitions

In this Regulation:

approved deposit, **approved fee** or **approved form** means a deposit, fee or form approved by the Minister for the purposes of the provision in which the expression is used.

Department means the Department of Land and Water Conservation.

lessee means a lessee under a Western Lands lease.

the Act means the *Western Lands Act 1901*.

Western Lands lease means a lease granted under the Act.

4 Notes

The explanatory note and table of contents do not form part of this Regulation.

Part 2 - Local land boards

5 Qualifications for appointment as Chairperson of Local Land Boards: section 9

For the purposes of section 9 (2A) (b) of the Act, the following offices or qualifications are prescribed:

- (a) the office of Magistrate,
- (b) qualification as a barrister or solicitor of the Supreme Court of New South Wales,
- (c) qualification as a barrister or solicitor, or as a barrister and solicitor, of any court of any other State, or of any Territory, of Australia or of the High Court of Australia,
- (d) the qualification of having knowledge and experience of the Western Division or other relevant knowledge and experience.

6 Registrars of local land boards

- (1) The Commissioner may appoint a Registrar for each administrative district.
- (2) The Commissioner may appoint the same Registrar for 2 or more administrative districts.

7 Matters to be brought before local land board

The Chairperson (or, if a document is required to be lodged with a Registrar, the Registrar) must bring all matters before a local land board as soon as practicable after they are received (unless the Chairperson or Registrar has power to deal with them).

8 Chairperson's power to deal with certain matters: section 9

The Chairperson may deal with any matter specially referred by the Minister or Commissioner to a local land board for investigation with a request that it be dealt with under section 9 (5) (b) of the Act.

9 Notice of proceedings before local land board

(1) Notice of the time and place appointed for any proceedings before a local land board, and of the nature of the proceedings:

(a) is to be in the approved form, and

(b) is to be served on the parties to the proceedings not less than 14 days before the time appointed for the proceedings (or such lesser period as may be directed by the Chairperson).

(2) If at the time and place appointed it appears that notice has not been given to a party, the board may:

(a) order notice to be given for some future day (which may be less than 14 days from the giving of the notice), and

(b) in the meantime, adjourn the proceedings.

10 Board's power where notice given and party fails to appear

If a local land board or the Chairperson is satisfied that notice of the time and place of any proceeding has been given to a party, the board or Chairperson may proceed and adjudicate in the absence of that party.

11 Appeals

Except as otherwise provided by the Act, any party to proceedings before a local land board or Chairperson may appeal to the Land and Environment Court from the decision of the local land board or Chairperson at any time within 28 days after it has been given:

(a) by filing an application in accordance with the *Land and Environment Court Rules 1996*, and

(b) by paying the appropriate fees in accordance with the *Land and Environment Court (Fees) Regulation 1994*.

Part 3 - Western Lands leases

Division 1 - Extension of terms of Western Lands leases

12 Application for extension of term of Western Lands lease: sections 18E and 28B

(1) An application for extension under section 18E or 28B of the Act of the term of a Western Lands lease must be made to the Commissioner in the approved form.

(2) A number of Western Lands leases may be included in one application if they are worked as one holding.

(3) The relevant fee specified in Schedule 1 must be lodged with the application.

(4) If a Western Lands lease is mortgaged, the concurrence of the mortgagee must appear on the application.

Division 2 - Purchase of land held under certain Western Lands leases

13 Applications to purchase: section 28BB

(1) An application under section 28BB of the Act to purchase the whole or any part of the land comprised in a Western Lands lease must be made to the Commissioner in the approved form accompanied by the approved deposit.

(2) If the deposit is in excess of the cost of dealing with the application the balance must be applied, firstly, to any necessary stamp duty and, secondly, to payment of any amount due on the purchase.

(3) If the lease is mortgaged, the mortgagee must join in the application.

Division 3 - Payment of rent, interest and survey fees

14 Minimum rent: section 19E

The amount prescribed as the minimum rent for the purposes of section 19E of the Act is \$70.

15 Concessional rent: section 20

For the purposes of section 20 (1) of the Act, a rebate of rent may be granted to:

- (a) a lessee under a Western Lands lease for the purpose of residence or a similar purpose, being a lessee:
 - (i) whose principal place of residence is a dwelling on the land the subject of the lease, and
 - (ii) who is an eligible pensioner (within the meaning of the *Local Government Act 1993*) or is, in the opinion of the Minister, suffering hardship, and
- (b) a lessee under a Western Lands lease for the purpose of grazing, agriculture, grazing and agriculture combined, mixed farming, irrigation or any similar purpose, being a lessee:
 - (i) who receives household support from the Rural Assistance Authority, or
 - (ii) who is, in the opinion of the Minister, suffering hardship, and
- (c) a lessee that is a community service, sporting or recreational organisation:
 - (i) that is the holder of an authority under the *Charitable Fundraising Act 1991*, or
 - (ii) that is incorporated under the *Associations Incorporation Act 1984*, or
 - (iii) that the Minister is satisfied is a non-profit organisation,whose Western Lands lease is used for the purpose of a help or service facility of benefit to the general community or an active sporting, passive recreational or youth advancement facility of general benefit to a local community.

16 Interest on arrears: section 36B

For the purposes of section 36B (2) (d) of the Act, the prescribed rate is the rate prescribed for the time being under section 148 (2) of the *Crown Lands Act 1989*.

17 Interest on sums payable: section 36C

For the purposes of section 36C (2) (c) of the Act, the prescribed rate is the rate prescribed for the time being under section 148 (2) of the *Crown Lands Act 1989*.

18 Waiver or refund of rent or interest

The Minister may waive or refund the whole or any part of any rent or interest paid or payable under the Act or this Regulation.

19 Holdings in respect of which incoming holder liable to pay arrears: sections 36D and 36E

For the purposes of sections 36D (1) (a) and 36E (1) of the Act, a Western Lands lease is a prescribed class of holding.

20 Survey fees: sections 18E, 18I and 35C

- (1) For the purposes of section 18I of the Act, the survey fee payable in respect of a Western Lands lease is to be calculated on the aggregate area of land comprised in the lease according to the scale set out in Schedule 2.
- (2) The cost of any necessary survey payable under section 18E (4) (d) of the Act (extension of part of a Western Lands lease) must be paid within such period and by such amounts as may be determined by the Commissioner.
- (3) A survey fee (other than a subdivision fee) is not to be charged:

- (a) to a lessee claiming title through a previous holder who has paid the survey fee, or
 - (b) if the Minister has granted permission for the survey to be done by a licensed surveyor employed by the lessee.
- (4) For the purposes of section 35C (2) (b) of the Act (addition of certain lands to leases), a survey cost calculated according to the scale in Schedule 2 is prescribed.
- (5) Survey fees or costs are payable to the Commissioner.

Division 4 - Transfer of Western Lands leases

21 Minister's consent to transfer: section 18G

- (1) An application for the Minister's consent under section 18G (1) is to be accompanied by the relevant fee specified in Schedule 1.
- (2) A consent given under the former section 18G within the period of 6 months before the substitution of that section by the *Western Lands Amendment Act 2002* is taken to be a consent under the new section 18G.
- (3) An application for a Minister's certificate under subsection (1E) of the former section 18G that had not been determined before the substitution of that section by the *Western Lands Amendment Act 2002* is to be determined in accordance with that section as if it had not been substituted.
- (4) A Minister's certificate under subsection (1E) of the former section 18G, including a certificate issued under that subsection pursuant to subclause (3), is taken to be a declaration under subsection (3) of the new section 18G.

22, 23 (Repealed)

Division 5 - Miscellaneous

24 Alteration of conditions of Western Lands leases: section 18J

An application for the variation, modification or revocation of or addition to a covenant, condition, purpose or provision of a Western Lands lease may be made to the Commissioner in the approved form accompanied by the approved deposit.

25 Fencing claims and disputes: section 18B

- (1) A claim under section 18B of the Act for a contribution towards a fence or the cost of maintenance and repair of a fence, or any other dispute or claim as to fencing, may be brought before a local land board by lodging with the Commissioner a notice in the approved form accompanied by the approved deposit towards the cost of dealing with the claim or dispute.
- (2) The claimant must cause a copy of the notice to be served on the other party, or parties, within 14 days of its lodgment with the Commissioner.

26 (Repealed)

Part 4 - Consents to cultivation and clearing licences

27 Land for which consent to cultivation or clearing licence required: sections 18DA and 18DB

- (1) For the purposes of sections 18DA (1A) and 18DB (1) of the Act, the following classes of land are prescribed:
- (a) land held under the following tenures continued in force under the *Crown Lands (Continued Tenures) Act 1989* :
 - (i) a permissive occupancy,
 - (ii) a conditional lease,
 - (iii) a homestead selection,
 - (b) a reserve within the meaning of Part 5 of the *Crown Lands Act 1989* for which

there are trustees or administrators or of which a local government authority has the care, control and management,

(c) a common within the meaning of the *Commons Management Act 1989* having an area of more than 0.5 hectares,

(d) a stock watering place within the meaning of the *Rural Lands Protection Act 1998* having an area of more than 0.5 hectares,

(e) land authorised to be used or occupied under a licence under Part 4 of the *Crown Lands Act 1989*.

(2) For the purposes of paragraph (a) of the definition of **occupier** in sections 18DA (2) and 18DB (2) of the Act, a prescribed tenure is the tenure referred to in subclause (1) (a) (iii).

(3) The fees to be lodged with applications under section 18DA of the Act for consent to cultivate land, and under section 18DB of the Act for clearing licences or extensions of clearing licences, are specified in Schedule 1.

28 Circumstances in which consent to cultivation is not required: section 18DA

(1) Consent to the cultivation of land is not required to be obtained under section 18DA of the Act in any of the circumstances specified in Schedule 3.

(2) An exemption from the requirement for consent to cultivation does not authorise:

(a) cultivation in contravention of section 21CA of the *Soil Conservation Act 1938*, or

(b) cultivation in contravention of conditions applying to a Western Lands lease under the Act, or

(c) cultivation that is contrary to any direction given by the Commissioner, or

(d) cultivation on a sand dune or sandhill, except in the circumstances referred to in Schedule 3 (3), or

(e) cultivation in a State forest, timber reserve or flora reserve under the *Forestry Act 1916*.

(3) Cultivation without consent in the circumstances referred to in Schedule 3 (4) or (5) may be carried out only if:

(a) written notification of the intention to cultivate was given to the nearest office of the Western Division of the Department not less than 2 weeks before the commencement of cultivation, and

(b) a written authorisation (which may be subject to conditions) was obtained from the Commissioner before commencement of the cultivation.

(4) Cultivation without consent in the circumstances referred to in Schedule 3 (6) may be carried out only if a written authorisation (which may be subject to conditions) was obtained from the Commissioner before commencement of the cultivation.

(5) A written notification and written authorisation as specified in subclause (3) are also required if rabbit ripping is to be undertaken without consent in the circumstances referred to in Schedule 3 (3):

(a) within 20 metres on the landward side of the bed or bank of a lake, or of an ancient lake, or

(b) within 20 metres of a river which has been prescribed for the purposes of section 21AB of the *Soil Conservation Act 1938* (whether perennial or intermittent).

(6) Despite the exemptions in this clause, the Commissioner may, if the Commissioner considers it appropriate, require an application for consent under section 18DA of the Act in respect of any cultivation to which that section applies.

29 Exemptions from requirement to obtain clearing licence: section 18DB

(1) A lessee under a Western Lands lease or the occupier of any other land is not required to obtain a clearing licence under section 18DB of the Act to do any of the things specified in Schedule 4.

- (2) The trustees of a reserve or common, a rural lands protection board or a local government authority (with regard to land of which it has the care, control and management) are not required to obtain a clearing licence to kill or destroy isolated trees on land or to clear areas of 0.5 hectares or less of land if:
- (a) the presence of the trees impedes the authorised use of the land, or
 - (b) the presence of an isolated tree is considered to create a safety hazard.
- (3) An exemption from the requirement for a clearing licence does not authorise:
- (a) the clearing of trees having economic value, or
 - (b) clearing in contravention of section 21C of the *Soil Conservation Act 1938*, or
 - (c) clearing in contravention of conditions applying to a Western Lands lease, or
 - (d) clearing that is contrary to any direction given by the Commissioner, or
 - (e) clearing of trees on a sandhill, or
 - (f) clearing in a State forest, timber reserve or flora reserve under the *Forestry Act 1916*.
- (4) If land to be cleared without a clearing licence for a purpose mentioned in Schedule 4 (2) (a), (b) or (c) is within one kilometre of other land (held by the same lessee or occupier) cleared for any of those purposes, the lessee or occupier must obtain the prior written approval of the Commissioner to the clearing.
- (5) Clearing without a clearing licence for a purpose mentioned in Schedule 4 (2) (a)-(i) (in respect of a sandhill on or bordering riverine floodplains), (2) (j), (4), (7), (8), (10) or (11) may be carried out only if:
- (a) written notification of the intention to clear was given to the nearest office of the Western Division of the Department not less than 2 weeks before commencement of the clearing, and
 - (b) written authorisation (which may be subject to conditions) was obtained from the Commissioner before commencement of the clearing.
- (6) Written notification and written authorisation as specified in subclause (5) are also required if it is intended to clear land of trees for the purpose of rabbit ripping without a clearing licence in the circumstances referred to in Schedule 4 (13), and the trees are:
- (a) within 20 metres of the landward side of the bed or bank of a lake, or of an ancient lake, or
 - (b) within 20 metres of a river which has been prescribed for the purposes of section 21AB of the *Soil Conservation Act 1938* (whether perennial or intermittent).
- (7) A lessee or occupier who clears land by the use of fire for a purpose mentioned in Schedule 4 (8) or (11) without a clearing licence must ensure that a fire is only lit, or allowed to remain alight, under conditions in which a reasonable person would expect that the fire could not escape from the land.
- (8) Despite the exemptions in this clause, the Commissioner may, if the Commissioner considers it appropriate, require a clearing licence to be obtained in accordance with section 18DB of the Act in respect of any clearing to which that section applies.
- (9) This clause does not affect any obligations a lessee or occupier may have under the *Bush Fires Act 1949* or the *Rural Fires Act 1997* or any liability a lessee or occupier may incur because of damage resulting from fire.

Part 5 - General

30 Fencing, enclosure of roads

- (1) An application for:
- (a) permission to erect a "give-and-take" fence, or
 - (b) exemption from fencing any boundary, or
 - (c) extension of time to complete fencing, or

(d) suspension of the condition of fencing or improvement, or

(e) permission to enclose a road,

is to be made to the Commissioner in the approved form accompanied by the approved fee.

(2) The Commissioner is to give notice of the time and place appointed for consideration of an application to the holder of any land which appears to be directly affected by it.

31 Exchanges: section 33A

(1) An application under section 33A of the Act to acquire Crown land in exchange for freehold land is to be made to the Commissioner in the approved form.

(2) Unless the application is made at the instance or for the benefit of the Crown, the approved deposit towards the cost of dealing with the application must accompany the application.

(3) If any land to be surrendered is mortgaged, the consent of the mortgagee must appear on the application.

(4) An application may be withdrawn by the applicant or, with the consent of the applicant, be modified by the Minister.

32 Surrenders: section 33A

(1) A surrender under section 33A of the Act of any leased or freehold land is to be lodged with the Commissioner in the approved form.

(2) Unless the surrender is made at the instance or for the benefit of the Crown or arises from an application under clause 31, the approved deposit towards the cost of dealing with the surrender must accompany the instrument of surrender.

(3) If the surrendered land is mortgaged, the mortgagee must join in the surrender.

(4) The Minister may continue to take any action under section 33A that had been begun before the amendment of that section by the *Western Lands Amendment Act 2002*, and section 33A, as in force before that amendment, continues to have effect in relation to anything arising from that action as if that it had not been so amended.

33 Waiver or refund of fees, deposits or costs

The Minister may waive or refund the whole or any part of any fee, deposit or cost paid or payable under the Act or this Regulation.

34 Repeal

(1) The *Western Lands Regulation 1992* is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the *Western Lands Regulation 1992*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Fees

(Clauses 12, 21, 27)

tion under section 18E or 28B for extension of the term of a Western Lands lease
12)

addition, for each Western Lands lease in the application after the first lease

tion under section 18G (1) for the consent of the Minister to transfer (clause 21)

addition, where consideration of the application involves an inspection of the land

tion under section 18DA for consent to cultivate land (clause 27)

tion under section 18DB for a clearing licence (clause 27)

tion under section 18DB to extend the period a clearing licence remains in force
27)

Schedule 2 Survey fees

(Clause 20)

square metres

r less

ng 2,000 but not exceeding

ng 4,000 but less than 10,000

hectares

re but not exceeding 5

ng 5 but not exceeding 10

ng 10 but not exceeding 25

ng 25 but not exceeding 50

ng 50 but not exceeding 75

ng 75 but not exceeding 100

ng 100 but not exceeding 150

ng 150 but not exceeding 200

ng 200 but not exceeding 300

ng 300 but not exceeding 400

ng 400 but not exceeding 500

ng 500 but not exceeding 600

ng 600 but not exceeding 800

ng 800 but not exceeding

ng 1,000 but not exceeding

ng 1,200 but not exceeding

ng 1,500 but not exceeding

ng 2,000 but not exceeding plus \$249 for every 500 hectares (or part of 500 hectares) in
of 2,000

ng 8,000 plus \$249 for every 1,000 hectares (or part of 1,000 hectares) in
of 8,000

Schedule 3 Circumstances in which consent to cultivation is not required

(Clause 28)

(1)

If the land is held under a Western Lands lease, or under a licence or other tenure, granted or issued for the purpose of agriculture, grazing and agriculture combined or mixed farming, or for any similar purpose.

(2)

If the cultivation is in connection with rehabilitation works undertaken by or under the direct guidance of the Department.

(3)

If the cultivation is in connection with rabbit ripping undertaken as part of a planned rabbit control program on land that is not protected land within the meaning of section 21AB of the *Soil Conservation Act 1938*.

(4)

If the cultivation is to be carried out on a once only basis to control noxious plants on land that is not:

(a) protected land within the meaning of section 21AB of the *Soil Conservation Act 1938*
, or

(b) within 20 metres of the bank of a stream or watercourse, or

(c) on a sand dune or a sandhill, or

(d) within 20 metres of the edge of the carriageway of the constructed portion of a road under the control of the Roads and Traffic Authority or a local government authority.

(5)

If the cultivation is to be carried out on a once only basis to allow the introduction of native or introduced pasture.

(6)

If the cultivation is to be carried out on research, experimental or demonstration plots (not exceeding a total area of 10 hectares) that have been established as part of a program conducted by officers of the Department or by officers of the Department of Agriculture, the

Commonwealth Scientific and Industrial Research Organisation or any other organisation approved by the Commissioner.

(7)

If the cultivation is being carried out to provide a firebreak not more than 30 metres wide (or 100 metres where mallee species predominate on adjacent land) and is not within one kilometre from any other land held by the lessee, licensee or occupier which has been cultivated for a firebreak.

(8)

If the land is not more than 30 metres wide and is being cultivated in direct connection with the formation of a road, the construction of tank drains for water diversion or the maintenance of the perimeters of an airstrip.

(9)

If the cultivation is to be of an area of 0.5 hectares or less, failure to cultivate would impede the authorised use of the land and the cultivation is being undertaken by or at the direction of a reserve trust, commons trust, rural lands protection board or local government authority with direct responsibility for the care, control and management of the land.

Schedule 4 Exemptions from requirement to obtain clearing licence

(Clause 29)

(1)

Clear land not more than 20 metres either side of the line of an existing or a proposed fence, being a fence which is or is to be of a permanent nature.

(2)

Clear land not more than 30 metres wide for any of the following purposes:

- (a) an access trail,
- (b) a cut-line for stock movement,
- (c) a firebreak,
- (d) a road,
- (e) a telephone line or cable,
- (f) a power line or cable,
- (g) a drain to a water storage,
- (h) a bore drain,
- (i) a pipeline,
- (j) an irrigation channel.

(3)

Clear land not more than 100 metres wide for a firebreak where mallee species predominate.

(4)

Clear an area of land sufficient to meet civil aviation standards for the purpose of constructing an airstrip.

(5)

Clear land, not more than 5 hectares in area for the construction of a house, shearing shed, machinery shed, ground tank, dam, stock yard or similar utility, subject to the construction being permitted under the Act or any relevant Western Lands lease or any licence.

(6)

Clear land of seedlings and regrowth where the land was cleared or cultivated during the preceding 20 years under the provisions of the Act or the *Forestry Act 1916*, except where the tree cover predominantly comprises one or more of the following species:

- Eucalyptus camaldulensis (river red gum)
- Casuarina cristata (belah)
- Casuarina pauper (belah)
- Callitris glaucophylla (white cypress pine).

(7)

Clear land of trees which are less than 3 metres high where one or more of the following species predominates:

- Eucalyptus largiflorens (black box)
- Eucalyptus camaldulensis (river red gum)
- Eucalyptus populnea (bimble box)
- Eucalyptus coolabah (coolibah)
- Callitris glaucophylla (white cypress pine)
- Casuarina cristata (belah)
- Casuarina pauper (belah).

(8)

Clear land where the predominant species are "woody weeds" which, for the purpose of this paragraph, are:

- Eremophila sturtii (turpentine)
- Eremophila mitchellii (budda, false sandalwood)
- Dodonaea viscosa subsp. spatulata (broadleaf hopbush)
- Dodonaea viscosa subsp. angustissima (narrowleaf hopbush)
- Senna artemisioides subsp. filifolia (punty bush)
- Senna artemisioides nothosubsp. artemisioides (silver cassia).

(9)

Lop trees to provide stockfeed in times of drought where the method and extent of the lopping ensures the continued survival and health of the trees.

(10)

Selectively push mulga trees in dense mulga stands for stock feeding purposes subject to the following conditions:

- (a) the retention of mulga trees at spacings of no more than 20 metres,
- (b) in selecting trees for retention priority is given to trees with a trunk diameter exceeding 12 centimetres.

(11)

Clear land (by the use of fire) where mallee trees are the predominant species for the purpose of promoting the growth of pasture species or reducing hazardous or potentially hazardous fuel build-up, but not so as to result in the significant killing of the below-ground parts of the predominant species or the significant destruction of other trees.

(12)

Clear land where the predominant species is one of the following:

- Prosopis (mesquite)
- Lycium ferocissimum (African boxthorn).

(13)

Clear land in connection with rabbit ripping (being undertaken as part of a planned rabbit control program on land that is not protected land within the meaning of section 21AB of the *Soil Conservation Act 1938*), but only if the clearing is limited to trees which must be removed in

order to destroy a rabbit warren.

(14)

Kill or otherwise destroy trees of the following species:

- Tamarix aphylla (athol pine)
- Ailanthus altissima (tree of heaven)
- Schinus ariera (peppercorn)
- Acacia nilotica (prickly acacia).

Historical notes

Table of amending instruments *Western Lands Regulation 1997* published in Gazette No 95 of 29.8.1997, p 7540 and amended as follows: *Rural Lands Protection Act 1998 No 143* . Assented to 8.12.1998. Date of commencement of Sch 6, 28.9.2001, sec 2 and GG No 146 of 28.9.2001, p 8183. *Western Lands Amendment Regulation 2001* (GG No 190 of 14.12.2001, p 9967) *Western Lands Amendment Regulation 2002* (GG No 225 of 22.11.2002, p 9871)

Table of amendments

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| 17 | 12.2001. |
| | 2.11.2002. |
| 23, 26 | .11.2002. |
| | 8 No 143, Sch 6.30. |
| | 11.2002. |
| | 11.2002. |