



The Western Division of NSW

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Sydney:	02 9262 6989
Northern Rivers:	1800 626 239
Rest of NSW:	1800 626 239

Overview

Land is managed differently in the Western Division because, unlike the rest of NSW, most land is held under lease from the Government under 'Western lands leases' with only a small area of land being held as freehold.

In addition to this, many State planning and development laws do not apply in the Western Division because most areas outside of the major towns are not included in Local Government Areas.

This Fact Sheet explains the legal framework for managing land in the Western Division of NSW, also called 'Western Lands'. It covers the main legislation regulating the Western Division, the *Western Lands Act 1901* (NSW).² The Act regulates how land in the Western Division can be used, how roads and rights of way are created, and how leases are issued. The Act also aims to ensure that Western Division land is used in accordance with the principles of ecologically sustainable development.³

For information about natural resource management, clearing of native vegetation, and water law, see the other Fact Sheets on Natural Resources in Topic 5.

¹ http://www.edonsw.org.au/legal_advice

² Other relevant laws are the *Western Lands Regulation 2011* (NSW) and parts of the *Crown Lands Act 1989* (NSW).

³ *Western Lands Act 1901*, s. 2 (Objects).

Where is the Western Division?

The Western Division makes up 42% of the total area of NSW.⁴ It covers approximately 32.5 million hectares. The eastern boundary of the Western Division begins at the Queensland border at Mungindi and runs south to the Murray River near Balranald near the Victorian border, following the Barwon and Murrumbidgee Rivers along the way.



Who is responsible for regulating land in the Western Division?

Western Lands Commissioner

The Western Lands Commissioner is responsible for administering the Act, subject to the control and direction of the Minister for Primary Industries.⁵

Department Primary Industries

The Western Division is managed by the Crown Lands Division of the [NSW Department of Primary Industries](#).

Western Lands Advisory Council

The Western Lands Advisory Council comprises 15 members representing groups that have an interest in the Western Division including, for example, leaseholders, members of the NSW Farmers Association, local councils,

⁴ The Western Division comprises that part of the State depicted in Lot 1901, Deposited Plan 1133899, recorded in the office of the Registrar-General. See: *Crown Lands Act 1989* (NSW), s. 4(2A).

⁵ *Western Lands Act 1901* (NSW), s. 4.

Aboriginal people, the Nature Conservation Council, and Local Land Services boards.

The Advisory Council advises the Minister about the management of the Western Division and consults with people and bodies who have an interest in the administration of the Western Division.⁶

Local Land Boards

The Minister can establish administrative districts within the Division.⁷ The Governor or the Minister can then appoint Local Land Boards, which are made up of three people, for each land district.⁸

The Local Land Boards can operate an open court forum to hear matters such as claims in relation to fencing,⁹ disputes in relation to easements for public access, road reservations, and issues relating to rent for leasehold land.

Any party to proceedings before a Local Land Board can appeal the merits of the decision to the Land and Environment Court.¹⁰ Appeals must be made within 28 days after the decision is made. The Court may allow further time to appeal.¹¹

After taking evidence, a Local Land Board can choose to refer a matter directly to the Land and Environment Court.¹²

Do State planning laws apply in the Western Division?

Yes, but only in those areas, such as larger towns, which are incorporated as local government areas.¹³ These towns include the areas covered by Balranald Shire Council, Bourke Shire Council, Brewarrina Shire Council, Broken Hill City Council, and Cobar Shire Council.¹⁴

State planning and development laws apply in these areas (e.g. zoning regulations and rules about development applications),¹⁵ as do the provisions governing local councils.¹⁶

⁶ *Western Lands Act 1901* (NSW), s. 8C.

⁷ *Western Lands Act 1901* (NSW), s. 9.

⁸ *Crown Lands Act 1989* (NSW), ss. 19-20.

⁹ *Western Lands Act 1901* (NSW), s. 18A; *Crown Lands Act 1989* (NSW) s. 22; *Rural Lands Protection Act 1998* (NSW), s. 242; *Western Lands Regulation 2011*, cl. 19.

¹⁰ *Crown Lands Act 1989* (NSW), ss. 26(1), 29.

¹¹ *Crown Lands Act 1989* (NSW), s. 26(2).

¹² *Crown Lands Act 1989* (NSW), s. 27.

¹³ Under the *Local Government Act 1993* (NSW).

¹⁴ Note: some of these local government areas or parts may not be subject to the *Local Government Act 1993* (NSW) or the *Environmental Planning and Assessment Act 1979* (NSW) because of special statutory exceptions or other exceptions under regulations.

¹⁵ *Environmental Planning and Assessment Act 1979* (NSW), s. 54 allows the Planning Minister to make a LEP where there is a local government area, or in any other areas of the State as the Minister determines.

¹⁶ Under the *Local Government Act 1993* (NSW).

Unincorporated areas

Land outside of local government areas is called ‘unincorporated’). About 29 per cent of the Western Division (which is 11 per cent of NSW) is unincorporated, which means it has no local government. This area includes the villages of Silverton, Tibooburra and Milparinka.

Unincorporated areas are managed by the Crown Lands Division of the Department of Primary Industries.¹⁷

In the unincorporated areas of the Western Division, applications for the construction of buildings on leasehold land must be made to the Western Lands Commissioner, rather than a development application being made to a local council.¹⁸

Do Federal environment laws apply in the Western Division?

Yes, Federal environmental law¹⁹ applies to all land in the Western Division. [See our EPBC Act Fact Sheet](#) for more information on Commonwealth environmental laws.

Western Land leases

The Minister is responsible for granting leases in the Western Division. These are known as Western Lands Leases.²⁰

About 95% of the Western Division is Crown land held under lease, including:²¹

- 4,250 grazing leases;
- 520 agricultural leases;
- 2,090 residential leases; and
- 240 business leases.

All activities on land in the Western Division are governed almost exclusively by the terms of the lease granted to the leaseholder.

Activities which are controlled by leases

Each lease sets out the type of activities which are allowed on that parcel of land (e.g. grazing, agriculture, mixed farming),²² the type of cultivation which is

¹⁷ Under the *Western Lands Act 1901* (NSW).

¹⁸ *Western Lands Act 1901* (NSW), s. 18D(1)(f).

¹⁹ Namely, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

²⁰ *Western Lands Act 1901* (NSW), s. 28A.

²¹ Department of Primary Industries, Western Land Leases-

http://www.lpma.nsw.gov.au/crown_land/western_region/western_land_leases

²² *Western Lands Act 1901* (NSW), s. 28A.

permitted, the permitted stock levels, and requirements concerning the removal of vegetation or timber.

If the leaseholder wishes to use the land for additional or different purposes they must make an application to change the lease purpose.

All leases are subject to certain conditions such as requirements relating to fencing²³ and the removal of timber and other material from the land.²⁴ The Commissioner can direct how the land must be managed. For example, the Commissioner can direct a leaseholder to take specific measures to protect land,²⁵ such as:

- taking stock off certain parts of the land;
- preventing overstocking;
- preventing any part of the land being used for specified types of agriculture;
- preserving trees and scrub and vegetative cover;
- taking measures to prevent soil erosion; and
- erecting gates on public roads.

Buildings must not be constructed on land held under lease without approval from the Commissioner.²⁶

Where a lease is not used in good faith for the purpose for which it was granted, or where the conditions of a lease are breached, the lease can be forfeited.²⁷

The Government retains ownership of minerals, sand, gravel, timber, and commercial fisheries, and can authorise others to use these resources.²⁸

Term of leases

Leases are granted either in perpetuity (forever) or for a term not exceeding 40 years.²⁹

Leases that are granted in perpetuity require the leaseholder to improve and maintain the water supply, and destroy invasive animals such as rabbits, wild dogs.³⁰

²³ *Western Lands Act 1901* (NSW), ss. 18A, 18B, 18C.

²⁴ *Western Lands Act 1901* (NSW), ss. 18D(1)(ii), (iii), 18DB.

²⁵ *Western Lands Act 1901* (NSW), s. 18D(1).

²⁶ *Western Lands Act 1901* (NSW), s. 18D(1)(f).

²⁷ *Western Lands Act 1901* (NSW), s. 28BA.

²⁸ *Western Lands Act 1901* (NSW), s. 50A.

²⁹ *Western Lands Act 1901* (NSW), s. 28A(3).

³⁰ *Western Lands Act 1901* (NSW), s. 18E(5).

The term of a lease can be extended by application to the Commissioner.³¹ A leaseholder can apply to have their lease extended in perpetuity.³²

Leasehold land can be purchased

Holders of certain leases can apply to purchase their land.³³

The holder of a lease granted before 23 December 1996 for residential, business, motel, community, agricultural or mixed farming purposes can apply to the Minister (in practice, the Commissioner)³⁴ to purchase the whole or part of their land.³⁵ The Minister must not allow leasehold land to be sold unless satisfied that the land will be used in an ecologically sustainable manner.³⁶

Where the lease is for grazing or pastoral purposes, the land cannot be purchased by the leaseholder.³⁷

The purpose of allowing leasehold land to be purchased by leaseholders and converted into freehold is to encourage the social and economic development of the Western Division.

Cultivation permits

Because land in the Western Division is particularly fragile, special rules apply to cultivation. The purpose of the rules is to prevent damage to land, such as soil erosion, caused by cropping and ploughing.

A person must not cultivate land without a cultivation permit from the Commissioner.³⁸ 'Cultivate' includes preparing land for cultivation, and cultivating land which has previously been cultivated.³⁹ It does not include clearing native vegetation or land protected under native vegetation laws.⁴⁰

The requirement to obtain a cultivation permit applies to land held under a grazing lease and certain other land tenures.⁴¹ There are a number of exceptions where a permit is not required,⁴² such as for rabbit ripping undertaken as part of a planned rabbit control program, or the control of noxious plants on certain

³¹ *Western Lands Act 1901* (NSW), s. 28B; *Western Lands Regulation 2011* (NSW), cl. 4.

³² *Western Lands Act 1901* (NSW), s. 18E(1), and *Western Lands Regulation 2011* (NSW), cl.4.

³³ *Western Lands Act 1901* (NSW), s. 28BB.

³⁴ *Western Lands Regulation 2011* (NSW), cl. 6.

³⁵ *Western Lands Act 1901* (NSW), s. 28BB, Sch 4.

³⁶ *Western Lands Act 1901* (NSW), Sch. 2 (Part 4), Sch. 4, cl. 3(3).

³⁷ *Western Lands Act 1901* (NSW), s. 28BB(1)(a).

³⁸ *Western Lands Act 1901* (NSW), ss. 18DA(1), (3).

³⁹ *Western Lands Act 1901* (NSW), s. 18DA(2)(a).

⁴⁰ Namely the *Native Vegetation Act 2003* (NSW). See: *Western Lands Act 1901* (NSW), s. 18DA(2)(b).

⁴¹ *Western Lands Regulation 2011* (NSW), cl. 17 sets out other types of land tenure to which the obligation to obtain a cultivation consent applies. These include a reserve, a stock watering place, and land held under a permissive occupancy, conditional lease, homestead selection, or a licence.

⁴² *Western Lands Regulation 2011* (NSW). Sch. 4.

areas of land, although written notification at least 2 weeks before and a written authorisation is still required.⁴³ Despite the exemptions, the Commissioner can still decide that a permit is necessary so it is best to check before undertaking any cultivation activities.⁴⁴

The Commissioner can suspend or revoke a cultivation permit in certain circumstances, such as where a permit has been breached.⁴⁵ A person can appeal to the Land and Environment Court against a refusal to grant a permit, a condition of a permit, or a suspension or revocation of a permit (see case study below).⁴⁶

A lease can be forfeited if any part of the land is cultivated without a cultivation permit or in breach of the conditions of a permit.⁴⁷

Case study: Court refuses to reinstate cultivation permit at Walgett⁴⁸

The holders of a Western Lands Lease held a cultivation permit which allowed them to cultivate part of their leasehold land after a flood event. The lease and cultivation permit covered parts of the usually dry lake bed of Narran Lake, near Walgett. Under the permit, the leaseholders grew wheat, barley, sorghum and other crops on the lakebed.

On 14 June 2002, the Western Lands Commissioner revoked the cultivation permit because the leaseholders had breached it by cultivating more than 1,000 hectares in excess of what was allowed under the permit. Keech was in process of acquiring the lease and discovered that the permit had been revoked. Keech appealed to the Land and Environment Court against the revocation, concerned that the loss of the permit would reduce the value of the lease.

The Court refused to reinstate the cultivation permit. The Court found that the breach caused environmental harm, including a reduction in flora and fauna regeneration following future floods, and soil cracking. This harm was found to outweigh the economic hardship caused to the new permit holder. In making its decision, the Court took the objects of the *Western Lands Act 1901* into account, particularly the object to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development.

Other development arrangements

Licences to use leasehold land

Even though leaseholders are restricted in the ways they can use their land by the conditions of their lease, there is some flexibility allowed in land use. The

⁴³ *Western Lands Regulation 2011* (NSW), cl. 28(3) and (4).

⁴⁴ *Western Lands Regulation 2011* (NSW), cl. 28(6).

⁴⁵ *Western Lands Act 1901* (NSW), s. 18DA(8A).

⁴⁶ *Western Lands Act 1901* (NSW), s. 18DA(10).

⁴⁷ *Western Lands Act 1901* (NSW), s. 18DA(12).

⁴⁸ *Keech v Western Lands Commissioner* [2003] 132 LGERA 23.

Minister is able to grant a licence for any purpose over leasehold land, so long as the leaseholder gives consent (except for gravel and sand extraction).⁴⁹

For example, a licence could be granted to allow infrastructure such as telecommunications or pipelines to be built, or to enable the land to be used for one-off activities such as rallies or gymkhanas.

Gravel and sand extraction

The Minister can grant a licence for the removal of gravel, sand or any other material that is not a 'mineral' under mining law.⁵⁰ The consent of the leaseholder is not required prior to the grant of these licences.⁵¹

Productivity schemes

The Minister can enter into an agreement with the owner or leaseholder of land in the Western Division for carrying out a scheme for the productivity, conservation, environmental protection, or monitoring of land in the Western Division.⁵²

The benefit of an agreement like this is that the Minister may provide assistance towards any work that the owner or leaseholder is required to undertake, and pay for some of the costs involved in implementing the scheme.⁵³

Development districts

The Minister for Primary Industries can declare any land within the Western Division to be a development district.⁵⁴ A development district can be declared for things like solar or wind energy generation, or any other purpose that the Minister recommends.⁵⁵ A development district cannot be declared over any land which is subject to a mining lease or a petroleum production lease unless the Minister for Resources and Energy also gives consent.⁵⁶ Where a development district has been declared, the land can be leased for up to 100 years.⁵⁷

⁴⁹ *Western Lands Act 1901* (NSW), s. 2, Sch. 2, Part 4.

⁵⁰ *Western Lands Act 1901* (NSW), Sch. 2, Part 4. For a list of minerals, see *Mining Act 1992* (NSW), Dictionary and *Mining Regulation 2010* (NSW), Sch. 1.

⁵¹ *Western Lands Act 1901* (NSW), Sch. 2, Part 4.

⁵² *Western Lands Act 1901* (NSW), s. 35N.

⁵³ *Western Lands Act 1901* (NSW), ss. 35N(2)(c) and 35O.

⁵⁴ *Western Lands Act 1901* (NSW), ss. 35XA - XE; *Crown Lands Act 1989* (NSW), s. 44B.

⁵⁵ *Crown Lands Act 1989* (NSW), s. 44B.

⁵⁶ *Crown Lands Act 1989* (NSW), s. 44C.

⁵⁷ *Crown Lands Act 1989* (NSW), s. 44C(3).

Glossary

Key to terms used in this Fact Sheet

Act means the *Western Lands Act 1901* (NSW)

Advisory Council means the Western Lands Advisory Council

Commissioner means the Western Lands Commissioner

Minister means the Minister for Primary Industries

Useful websites

The [Crown Lands Division](#) has useful information on Western Division land, including [Fact Sheets on the Western Region](#) and a range of [Western Region forms](#), including an application to alter conditions of lease, and an application to purchase land held under lease.