

The Office of the Minister for Lands

**Review of the
*Western Lands Act 1901***

**Undertaken by the Department of Lands
on behalf of the Hon. Tony Kelly, MLC, Minister for Lands**

June 2008

New South Wales Government

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Minister's Foreword

The Western Division of NSW is a diverse semi arid landscape comprising almost one half of the state. Whilst the landscape varies, some themes are common throughout the Division including low average rainfall and extremely high average summer temperatures, sparsely populated areas and limited land use opportunities.

The majority of the Division is held as Crown leasehold lands. Crown lands are major assets that deliver important social, environmental and economic benefits to the state and regional economies. They also provide opportunities for business investment, public infrastructure and public-private partnerships.

The *Western Lands Act 1901* has long served as an appropriate mechanism which integrates land administration with land management and contributes to the preservation of the inherent values of this unique and fragile environment. The Act has been reviewed on a number of occasions to meet the changing needs of the community.

The outcomes of the current Review complement the existing provisions contained in the *Western Lands Act 1901* and seek to address the more contemporary requirements of the region.

Public consultation has been an important aspect of the Review. The members of the Western Lands Advisory Council were invited to identify issues they considered should be included in the Review, and public consultation was sought on the resulting Issues Paper earlier this year.

I would like to thank all those who made a submission to the Review. These submissions have facilitated a greater understanding of the current issues facing the Western Division.

This report summarises the submissions received and the findings of the Review. Key issues identified as requiring further consideration or action will be progressed by the Department of Lands in consultation with relevant stakeholders including the Western Lands Advisory Council.

I am pleased to submit this report to Parliament.

Tony Kelly MLC
Minister for Lands

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1. Introduction

The *Western Lands Amendment Act 2002* commenced in part on 1 December 2002 and provided significant amendments to the *Western Lands Act 1901*.

The amendments introduced s.3B into the Act which requires the Minister for Lands to conduct a formal review to determine whether the policy objectives of the Act remain relevant and whether the Act's provisions remain appropriate for securing those objectives.

The Act requires the Minister for Lands to prepare a report on the outcomes of the Review, which must be tabled within both houses of Parliament. The Review is to be completed no later than six years from the date of assent of the *Western Lands Amendment Act 2002*.

This report contains the outcomes of the Review of the *Western Lands Act 1901* as required above. Section 2 provides background information regarding the *Western Lands Act 1901* and the composition of the Western Division. Section 3 of the report explains how the Review has been conducted. The report's findings and recommendations are set out in Sections 4, 5, 6 and 7.

2. Background

The Western Division of NSW is some 32.5 million hectares in area, making up over 40% of the area of the State and lies west of a line from the Queensland border at Mungindi to Balranald near the Victorian border. The vast majority of land in the Western Division is held under Western Lands leases granted under the *Western Lands Act 1901*. Most leases are perpetual (ongoing) and can only be used for the purpose for which the lease is issued. If different or additional uses are sought, an application, which is subject to a detailed merit based assessment, must be made to the Crown Lands Division (Western Region) of the Department of Lands.

The *Western Lands Amendment Act 2002* gave effect to many of the proposals arising from the former Western Lands Review undertaken by a team led by the Honourable John Kerin between 1998 and 2000. The key amendments to the *Western Lands Act 1901* introduced in 2002 included:

- New modern objects;
- Measures to facilitate the progressive establishment of a public legal road network;
- The creation of legal access to all rural landholdings through a system of easements;
- The establishment of a broadly based Western Lands Advisory Council;
- A new system for setting rents for Western Lands leases;
- The repeal of redundant, archaic and overly restrictive provisions;

- The removal of restrictions on the conversion to freehold of leases for agriculture and other similar leases;
- Measures to enable greater flexibility in tenure and lease purpose arrangements, including sub-leasing;
- Introduction of licence and lease forfeiture provisions consistent with those of the *Crown Lands Act 1989*; and
- An extension of the powers of delegation that may be exercised by the Minister and the Western Lands Commissioner under the *Western Lands Act 1901*.

3. Process for Conducting the Review

By letter dated 24 September 2007, the Director General of the Department of Lands invited all members of the Western Lands Advisory Council (WLAC) to identify issues they considered should be included in the Review of the *Western Lands Act 1901*. The membership of the WLAC is considered to be representative of all interests in the Western Division and members were encouraged to consult with the individuals and organisations they represent to identify issues they wished to have included in the Review.

Five organisations and individuals (WLAC, NSW Department of Primary Industries, Pastoralists Association of West Darling, NSW Farmers Association and a private individual) provided written submissions in response to this request.

An Issues Paper was then prepared by the Department of Lands to provide background and context for the Review, to highlight matters for consideration and to assist stakeholders and members of the general public who may be interested in making a submission.

The Issues Paper, with an invitation to comment, was distributed to a total of 29 stakeholders, with known interests in the Western Division, including all members of the WLAC, on 14 January 2008.

The issues raised in the Paper were as follows:

1. New Land Uses and Opportunities in the Western Division
2. Mineral Exploration and Agro-forestry
3. Access
4. Boundary Fencing
5. Western Lands Commissioner Powers
6. Carbon Rights and Ecosystem Services
7. Ecologically Sustainable Development
8. Western Lands Advisory Council

9. Conversion to Freehold

10. Other Matters

The general public were invited to comment on the Issues Paper via the Department of Lands website and press advertisements were placed in nine national and local newspapers between 23-30 January 2008, with the Issues Paper being made available to any interested party on request or via the Department of Lands website.

The closing date for submissions was originally notified as being 29 February 2008, however, this period was subsequently extended. Submissions closed on 20 March 2008. However, all submissions received up to the time of preparing this report (including submissions received after the nominated closing date) have been considered when finalising this Review.

The following organisations and individuals have made written submissions to the Issues Paper:

- NSW Department of Primary Industries
- Bevan's Black Opal and Cactus Nursery
- Balranald Shire Council
- NSW Department of Planning
- Mr P. Maxwell
- NSW Farmers Association
- Mr B. Wheeldon
- Cobar Rural Lands Protection Board
- Shires Association of NSW – Western Division Group
- Mr T.H. Davis
- Dharriwaa Elders Group
- County of Finch Landholders (G & D O'Brien, P & S Scoles, D Wilson)
- NSW Aboriginal Land Council
- Western Lands Advisory Council
- Lightning Ridge Miners' Association Ltd
- Department of Environment and Climate Change
- Mr N.W. Schrader
- Pastoralists Association of West Darling
- National Parks Association of NSW & The Wilderness Society.

4. Report on Review Findings

The *Western Lands Act 1901* is the primary Act governing the administration and management of land in the Western Division of NSW. The Objects of the Act at s.2 are:

- (a) *to establish an appropriate system of land tenure for the Western Division,*
- (b) *to regulate the manner in which land in the Western Division may be dealt with,*
- (c) *to provide for the establishment of a formal access network, by means of roads and rights of way, in the Western Division,*
- (d) *to establish the rights and responsibilities of lessees and other persons with respect to the use of land in the Western Division,*
- (e) *to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development referred to in section 6(2) of the Protection of the Environment Administration Act 1991,*
- (f) *to promote the social, economic and environmental interests of the Western Division,*
- (g) *to make other provision for the effective integration of land administration and natural resource management in the Western Division.*

The Minister for Lands is required to review the Act and report back to Parliament on the findings of this Review. The purpose of the Review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Public comment was invited on the Issues Paper. Several submissions highlighted opportunities to further improve and clarify the Act in relation to a number of the identified issues. In a number of instances submissions from different organisations/parties requested amendments to the Act that are opposed to each other. In these circumstances it is necessary to determine whether the provisions of the Act provide an adequate balance between alternative approaches to the issue in question.

A summary of these submissions and the responses can be found at Annexure A. Key issues requiring further consideration or action are discussed in Section 5 below. As indicated in the conclusion to this report, these matters will be the subject of further consideration and progression by the Department of Lands in consultation with relevant stakeholders, including the Western Lands Advisory Council.

5. Key Issues

5.1 Objects of the Act

The majority of submissions to the Review raised no concerns as to the objects of the Act and it has been concluded that the policy objectives of the Act remain generally valid.

Accordingly, it is proposed that the objectives of the Act remain unchanged except to the extent that may be necessary to facilitate new land uses and development opportunities in the Western Division, and to provide clarity that the scope of the objects, as they relate to the social, economic and environmental interests of the State, include matters relating to both indigenous and non-indigenous cultural heritage.

5.2 New Land Uses and Opportunities in the Western Division

A Western Lands lease may be used only for the purpose for which it is granted and uses ancillary thereto. Diversification is possible by altering the purpose of the lease to include additional lease purposes. These provisions have, for many years, validated additional uses on grazing leases such as farm tourism, cultivation, feedlots, film making, and recreational hunting.

Diversification is also possible by granting licences over leases to a third party with the lessee's consent. This provision enables the grant of licences over a Western Lands lease, but only with the consent of the Western Lands lessee (except where the licence is for the extraction of sand, gravel or rock, in which case the consent of the lessee is not required).

Whilst this provision facilitates a range of additional uses on leases by third parties, there may be circumstances where the licence does not provide adequate security for any proposed major development and proponents for such developments may require the security provided by a lease. Further, the change of use proposed may be better accommodated by a specific lease.

It is proposed that the *Western Lands Act 1901* be amended to provide for the grant of a lease under the *Crown Lands Act 1989*, for certain specified purposes, but only with the consent of any current lessee. The new lease would co-exist with any existing tenure, whilst maintaining the Crown's interest and equity in the land.

This proposal has already been significantly progressed. It is the subject of the Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008, introduced into Parliament in early June 2008. The Bill provides that a lease of this nature may be granted for the purposes of the construction and operation of facilities for the harnessing of energy from any source (including the sun or wind) and its conversion into electricity, and such other purposes as may be approved by proclamation following consultation with the Minister for Planning. The new

provisions will facilitate certain major infrastructure ventures on Crown leasehold lands in the Western Division.

A further initiative that will facilitate a range of land uses in the Western Division is the Filming Related Legislation Amendment Bill 2008, also introduced into Parliament in early June 2008. The purpose of this Bill is to amend various Acts and instruments, including the *Western Lands Act 1901*, to support the screen industry by reducing or simplifying regulatory impediments to the carrying out of filming projects. There are many localities in the Western Division which provide ideal locations and landscapes for film making. The proposal is not part of the review of the *Western Lands Act 1901* but is being progressed in parallel with it.

5.3 Mining, Exploration and Agro-Forestry

A number of submissions have been made regarding access through Western Lands leases for mining and exploration; agro-forestry; and the establishment of Conservation Agreements and Wildlife Refuges over Western Lands leases and how these relate to leaseholder rights under the *Western Lands Act 1901*, and provisions contained in the *Mining Act 1992*, *Forestry Act 1916* and *National Parks & Wildlife Act 1974*.

It is considered appropriate that provisions applicable to the abovementioned activities over lands held under Western Lands lease should be consistent with the provisions as they apply to all other lands in NSW. In the circumstances, an amendment to the *Western Lands Act 1901* does not appear to be appropriate at this time.

Nonetheless, it is proposed that further consultation be undertaken with the Department of Primary Industries and the Department of Environment and Climate Change to ensure that appropriate cross Government procedures and processes are in place and to ensure that the wide range of issues identified in submissions are adequately dealt with. If appropriate, consideration will be given to amendment of the relevant Acts.

5.4 Wild Dog Management & Access to the Dog Proof Fence

Management of wild dogs is an important issue within the Western Division. Although the matter is generally covered by the *Wild Dog Destruction Act 1921*, the maintenance, safety and sustainability of the dog proof fence for the future is of critical importance. This responsibility rests with the Wild Dog Destruction Board. The role of the Board is to maintain an effective barrier in the form of a dog proof fence, which is 600kms in length and runs along part of the borders between NSW, Queensland and South Australia. The fence effectively prevents wild dogs, including dingoes, from entering NSW from Queensland and South Australia and attacking and killing livestock.

The *Wild Dog Destruction Act 1921* allows for any authorised person to enter upon land in the vicinity of the dog proof fence to erect, maintain or repair the fence, however, the position is not conclusive with respect to the broad land management functions necessary to access and maintain the fence. Further, these rights of access are not recorded on the title to lands on which the dog proof fence is erected.

It is imperative that the dog proof fence is retained and that the Wild Dog Destruction Board has certainty of access to the dog proof fence to carry-out inspections, maintenance and repair works as required. Creation of an easement 100 metres wide (or of appropriate width to facilitate the operation of the fence, including for maintenance) along the entire length of the fence would meet these requirements. It will also provide a mechanism to record this right of access on to the title of affected land, ensuring every landholder is aware of these rights.

It is proposed that the *Western Lands Act 1901* and, if appropriate, the *Wild Dog Destruction Act 1921*, be amended to enable creation of an easement 100 metres wide (or of appropriate width to facilitate the operation of the fence, including for maintenance) for access and maintenance works across all NSW land parcels adjoining or in the vicinity of the fence. In light of the fact that the land in question is already being used for access to the dog proof fence, and such access is provided for under the Wild Dog Destruction Act, it is envisaged that consent of the leaseholder or other landholder would generally not be required and compensation would not be payable. However, to the extent that the easement traverses freehold land, creation of the easement may be subject to the consent of the landholder.

Noting that the *National Parks and Wildlife Act 1974* has provision for the creation of easements, further consultation will be undertaken with the Department of Environment and Climate Change to effect the creation of the easement within the Sturt National Park.

An additional issue in relation to the dog proof fence is the extent to which the current environmental planning and related requirements hamper the ongoing maintenance program for the dog proof fence. The Wild Dog Destruction Board has for many years conducted a program involving 'claying' the top of sand dunes adjoining the fence. This procedure involves the removal of soil with a clay base at various locations in the vicinity of the fence, and applying this clay base material onto the top of sand dunes. This process has the effect of stabilising the sand dune, prevents holes blowing out under the fence, and the build-up of sand against the fence which can occur gradually over time, or in a very short period of time during wind storms. A build-up of sand against the fence can entirely engulf the fence, thus affecting the integrity of the fence and its effectiveness as a dog proof barrier. The stabilised base of clay material allows accumulated sand to be easily and safely graded away from the fence. The extraction of this clay base material is an activity which requires an environmental assessment and approval under the *Environmental Planning and Assessment Act 1979*.

This issue requires further consultation with the Departments of Planning and Environment and Climate Change to determine appropriate environmental planning mechanisms to facilitate this ongoing maintenance program, through the proposed environmental planning instrument for the Unincorporated Area, and other relevant environmental planning instruments such as State Environmental Planning Policy (Infrastructure) 2007, to determine how these requirements might be made more manageable.

5.5 Boundary Fencing

Western Lands leaseholders, the Western Lands Advisory Council and other stakeholder groups all identified an urgent need to make amendments to the *Western Lands Act 1901* in regard to boundary fencing provisions and the powers of the Western Lands Commissioner relating to fencing.

It has been stated that current fencing provisions and the powers of the Western Lands Commissioner in this regard must be strengthened to ensure that all Western Lands lessees contain stock within their property boundaries, particularly in regard to sheep that shed hair and have the potential to contaminate the wool of other sheep.

It is proposed that the *Western Lands Act 1901* be amended to include fencing definitions, standards and requirements similar to those that exist in the *Dividing Fences Act 1991* to ensure all stock are contained within property boundaries and to strengthen provisions as they relate to ongoing maintenance, repairs and upgrading of boundary fences.

It is also proposed that the *Western Lands Act 1901* be amended to include provisions for the Western Lands Commissioner to enforce fencing standards and conditions through notices or directions in regard to boundary fencing upgrades, repairs and/or replacement. Provisions in the *Western Lands Act 1901* for leaseholders to refer disputes to the Local Land Board, with appeal rights through the Land and Environment Court, will be retained.

5.6 Western Lands Commissioner Powers - Planning Controls in the Unincorporated Area of NSW

The powers of the Commissioner under the current *Western Lands Act 1901* are generally considered adequate and suitable, with the exception of matters relating to boundary fencing (referred to above) and matters relating to environmental planning in the Western Division.

In the Unincorporated Area of the Western Division where there is no local government, there is an inequity in relation to development and planning controls on land depending on whether the land is freehold or held under a Western Lands lease (under the *Western Lands Act 1901*) and an inconsistency with the planning regime that operates within the remainder of NSW. Developments and activities carried out

on leasehold land are subject to lease conditions and other controls via the *Western Lands Act 1901* and through assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*. Conversely, development on freehold land is able to be undertaken in many circumstances without any type of consent or development control unless the provisions of the Western Division Regional Environmental Plan No.1 – Extractive Industries or relevant State Environmental Planning Policies are applicable to the proposal. Overall, there is a paucity of planning controls in the Unincorporated Area which reduces the ability to achieve consistency in planning decisions and processes within the Unincorporated Area and with the remainder of NSW.

A particular concern in respect of uncontrolled development on freehold land is in relation to the village of Silverton. The village contains a number of heritage items listed on the State Heritage Register and the village itself potentially has high heritage significance. The unique qualities of the village mean that it is frequently used for location filming for movies and television shows. Within the village centre and in surrounding areas are located a combination of developed and undeveloped freehold lots. Silverton is currently subject to growing development pressure due to increased levels of tourism and the possibility of additional speculative developments occurring in and around the village associated with future commercial ventures in the area. As no planning controls exist for most development types on freehold land within the Unincorporated Area, this means that most development carried out on freehold land within Silverton can be undertaken without any form of development consent. This may have adverse impacts on the heritage significance of the village and its associated tourism potential.

It is proposed that a comprehensive environmental planning instrument (eg State Environmental Planning Policy or Local Environmental Plan) be prepared that applies to all development in the Unincorporated Area. This will align the planning powers and processes within the Unincorporated Area with the rest of the State and provide for greater equity between development carried out on leasehold and freehold land within the Unincorporated Area. There will be an initial focus on planning for areas faced with significant potential development. Subsequently the work will be expanded to apply to development on other land within the Unincorporated Area. It is also proposed that the Western Lands Commissioner be established as the consent authority under the environmental planning instrument for development within the Unincorporated Area. There will be extensive consultation with the Department of Planning in developing this proposal. This will include consultation to address matters relevant to certification of building and subdivision works within the Unincorporated Area under the *Environmental Planning and Assessment Act 1979*.

5.7 Western Lands Advisory Council – Membership

The Western Lands Advisory Council comprises specified individuals and representatives of groups who have an interest in the Western Division. The principal functions of the Western Lands Advisory Council are:

- to advise the Minister on matters relevant to the objects of the *Western Lands Act 1901*;
- to advise the Minister on matters affecting the administration of the Western Division; and
- to consult with persons and bodies having an interest in any matter affecting the administration of the Western Division.

The *Western Lands Act 1901* provides that the Council is to have 14 members comprising:

- an independent chairperson;
- the Western Lands Commissioner;
- four people representing lessees in the Western Division, with two to be nominated by the NSW Farmers Western Division Council, one to represent pastoralists of West Darling (Pastoralists Association of West Darling), and one to be non-aligned;
- a person representing the interests of environment protection groups;
- two people representing local councils;
- a person representing catchment management boards;
- two people representing the interests of Aboriginal people;
- a person representing the Minister for the Environment; and
- a person representing the Minister for Agriculture.

The Western Lands Advisory Council is generally working effectively in its role of representing the various interests in the Western Division. However, mining is a major industry and employer in the Western Division and there is currently no specific member to represent mining interests on the Council.

Accordingly it is proposed that the *Western Lands Act 1901* be amended to include a nominee of the Minister for Mineral Resources within the membership of the Western Lands Advisory Council.

5.8 Western Lands Advisory Council – Term of Appointment

Under current provisions of the *Western Lands Act 1901* the members of the Western Lands Advisory Council are appointed for a three year term. This provision is unnecessarily rigid. A term of up to three years would build flexibility into the appointment process and ensure that the expertise and knowledge within the Council is retained and used to develop and enhance the skills of new Council members.

The ability to appoint members for up to three years will also be of benefit should a sitting member resign or retire part-way through a term.

It is proposed that the *Western Lands Act 1901* be amended to allow for the appointment of members of the Western Lands Advisory Council for a term of up to three years.

5.9 Conversion to Freehold

Current provisions within the *Western Lands Act 1901* allow for applications to be made for the conversion to freehold of leases issued under that Act which are held for purposes including residence, business, motel, community, agriculture or similar purposes and only where the land use is considered to be ecologically sustainable. Leases held for grazing or pastoral purposes are not permitted to be converted.

There are diametrically opposing views on the appropriateness of allowing the conversion to freehold of grazing leases in the Western Division. The most recent comprehensive review of the Western Division, conducted and completed by the Honourable John Kerin in 2000, did not support freeholding of these types of leases.

The general approach to public land management and administration is that tenure is tailored to the intensity of land use and the inherent value of the land. This is consistent with the approach taken to rangeland management, particularly in high risk, fragile environments, in the majority of other Australian states (including the Northern Territory) and in other countries.

Amendments to the *Western Lands Act 1901* which would enable the conversion of grazing or similar leases in the Western Division to freehold are not supported. Hence it is proposed that the *Western Lands Act 1901* remain unchanged in relation to the issue of conversion of grazing leases to freehold.

5.10 Roads and Access

The amendments made in 2002 to the *Western Lands Act 1901* inserted provisions to enable the creation of a legal road and access network for the Western Division in the form of public roads and rights of way. These provisions facilitate the creation of a system of public roads linking cities, towns and villages and providing access to places of significant public interest, and provide a legal means of access to land-locked properties. They also provide a mechanism to eliminate the uncertainty with regard to public rights of access in the Western Division, and associated concerns relating to public liability should an accident occur on privately held leasehold lands.

These provisions enable the withdrawal of any land from a Western Lands lease which is being used as a public road, without compensation, and for the dedication of that land as public road. It is anticipated that approximately 20,000 kilometres of road in the Western Division will be defined and dedicated in this manner. These roads are maintained by the Roads and Traffic Authority and by Shire Councils in the

Western Division. The *Western Lands Act 1901* also makes provision for a Western Lands lessee to apply for the creation of an easement, in the form of a right of way, over land which is considered as being used as a road or a track. This provision facilitates a legal access for land-locked properties, where frontage to a legal road does not exist.

These amendments, however, do not make provisions for formally establishing existing roads where they exist on land in the Western Division other than through Western Lands leases. There is a need to formally establish roads, which are currently publicly accessible, through lands which are held under other forms of tenure or title in the Western Division. These lands include freehold, National Parks, Nature Reserves, State Forests, Commons and Public Watering Places.

Accordingly, it is proposed that further provision be made to effect the creation of the legal road network across all types of land in the Western Division by amendments to the existing 'road and access' provisions contained in the *Western Lands Act 1901*. Where appropriate, this will also be achieved through other existing legislative mechanisms.

6. Conclusion

In view of the above, and having regard to the submissions received, it is concluded that the policy objectives of the Act remain generally valid. Accordingly, this Review recommends the objectives of the *Western Lands Act 1901* remain unchanged except to the extent that may be necessary to facilitate new land uses and development opportunities in the Western Division and to provide clarity that the scope of the objects, as they relate to the social, economic and environmental interests of the State, include matters relating to both indigenous and non-indigenous cultural heritage.

A number of the submissions raised legitimate concerns about certain aspects of the provisions of the Act. Key issues have been identified that warrant further consideration and progression by the Department of Lands in consultation with relevant stakeholders, including the Western Lands Advisory Council.

7. Recommendations

1. The existing objectives of the *Western Lands Act 1901* remain unchanged except to the extent that may be necessary to facilitate new land uses and development opportunities in the Western Division, and to provide clarity that the scope of the objects, as they relate to the social, economic and environmental interests of the State, include matters relating to both indigenous and non-indigenous cultural heritage.
2. The *Western Lands Act 1901* be amended to provide for the grant of a lease under the *Crown Lands Act 1989*, for certain specified purposes, but only with the

consent of any current lessee, in the manner proposed in the Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008 which was introduced into Parliament in early June 2008.

3. In relation to mining, exploration and agro-forestry, further consultation be undertaken with the Department of Primary Industries and the Department of Environment and Climate Change to ensure that appropriate cross Government procedures and processes are in place and to ensure that the wide range of issues identified in submissions are adequately dealt with. If appropriate, consideration will be given to amendment of the relevant legislation.
4. The *Western Lands Act 1901* and, if appropriate, the *Wild Dog Destruction Act 1921*, be amended to enable creation of an easement 100 metres wide (or of appropriate width to facilitate the operation of the fence, including for maintenance) for access and maintenance works across all NSW land parcels adjoining or in the vicinity of the dog proof fence. Noting that the *National Parks and Wildlife Act 1974* has provision for the creation of easements, further consultation will be undertaken with the Department of Environment and Climate Change to effect the creation of the easement to enable appropriate access to the dog proof fence within the Sturt National Park.
5. The *Western Lands Act 1901* be amended to include fencing definitions, standards and requirements similar to those that exist in the *Dividing Fences Act 1991* to ensure all stock are contained within property boundaries and to strengthen provisions as they relate to ongoing maintenance, repairs and upgrading of boundary fences.
6. The *Western Lands Act 1901* be amended to include provisions for the Western Lands Commissioner to enforce fencing standards and conditions through notices or directions in regard to boundary fencing upgrades, repairs and/or replacement. Provisions in the *Western Lands Act 1901* for the Western Lands Commissioner and leaseholders to refer disputes to the Local Land Board, with appeal rights through the Land and Environment Court, will be retained.
7. A comprehensive environmental planning instrument be prepared that applies to development within the Unincorporated Area, with an initial focus on planning for areas faced with significant potential development. The Western Lands Commissioner is to be established as the consent authority. There will be extensive consultation with the Department of Planning, Department of Environment and Climate Change and other agencies as appropriate in developing this proposal, including consultation to address matters relevant to certification of building and subdivision works, and environmental planning provisions associated with the dog proof fence maintenance works carried out by the Wild Dog Destruction Board.
8. The *Western Lands Act 1901* be amended to include a nominee of the Minister for Mineral Resources within the membership of the Western Lands Advisory Council.

9. The *Western Lands Act 1901* be amended to allow for the appointment of members of the Western Lands Advisory Council for a term of up to three years.
10. Further provision be made to effect the creation of the legal road network across all types of land in the Western Division by amendments to the existing 'road and access' provisions contained in the *Western Lands Act 1901*. Where appropriate, this will also be achieved through other existing legislative mechanisms.
11. There be no legislative change or other action in relation to the other issues raised in the Issues Paper and submissions to the Review at this time including that the *Western Lands Act 1901* remain unchanged in relation to the issue of conversion of grazing leases to freehold.

Annexure A - Summary of Submissions & Response

Issue/Comments	Response
<p>Validity of the Objectives of the Western Lands Act</p> <ul style="list-style-type: none"> The majority of submissions raised no concerns as to the objects of the Act remaining valid. One submission requested that objective 2(f) be amended to require promotion of Aboriginal cultural heritage values. This submission also raised concerns as to the application of objective 2(e) in respect of ecologically sustainable development (ESD) in the granting of licences for the removal of timber and minerals in the Western Division. Two submissions suggested that the objectives of the Act needed to be strengthened in relation to cultural heritage, biodiversity issues and ecological sustainability. One submission indicated that objective 2(e) be reconsidered in the light of climate change and recent Court decisions regarding consideration of ecologically sustainable development and another submission indicated that objective 2(e) should be maintained and not removed or changed in any way. 	<ul style="list-style-type: none"> Objective 2(f) of the Act requires that there be promotion of the social, economic and environmental interests of the Western Division. This broad requirement is considered to include the promotion of cultural heritage values within the Western Division, including Aboriginal cultural heritage. Nonetheless, it is proposed that this objective be amended to provide clarity that its scope includes matters relating to both indigenous and non-indigenous cultural heritage. Objective 2(e) requires that land in the Western Division is used in accordance with the principles of ecologically sustainable development and accordingly ecological sustainability is a prime consideration for any activities carried out pursuant to the Western Lands Act. Retention of this objective is seen as vital and consistent with contemporary natural resource legislation and government policy generally. The granting of licences for the removal of timber and minerals in the Western Division is carried out through the Department of Primary Industries under relevant mining and forestry legislation and not under the <i>Western Lands Act 1901</i>. Objective 2(g) requires other provision to be made for the effective integration of land administration and natural resource management in the Western Division, which is considered to include matters relevant to biodiversity. It is considered that the existing objectives of the Act are generally adequate and valid without need for amendment or alteration except to the extent that may be necessary to facilitate new land uses and development opportunities in the Western Division, and to provide clarity that the scope of the objects, as they relate to the social, economic and environmental interests of the State, include matters relating to both indigenous and non-indigenous cultural heritage. <p>It is recommended that the existing objectives of the <i>Western Lands Act 1901</i> remain unchanged except to the extent that may be necessary to facilitate new land uses and development opportunities in the Western Division, and to provide clarity that the scope of the objects, as they relate to the social, economic and environmental interests of the State, include matters relating to both indigenous and non-indigenous cultural heritage.</p>

Issue/Comments	Response
<p>New Land Uses and Opportunities in the Western Division – New Development Activities</p> <ul style="list-style-type: none"> • The majority of submissions made no comments in respect of a possible amendment to the Act raised in the Issues Paper to allow for the issue of a licence by the Minister over leased land without the leaseholders consent when the proposed activity is for a public purpose (eg, communication towers, power lines, pipelines). One submission indicated that this power should be strictly limited to licences for public purposes. • One submission suggested that the Act needs to address inadequacies associated with granting leases for infrastructure purposes and another supported the need to provide security of tenure for third parties investing in development within the Western Division. • Two submissions opposed compulsory withdrawal of leasehold land by the Minister for purposes such as wind farms and suggested that ‘intensive industry’ be incorporated as an allowable lease purpose to permit the development of wind farms in the Western Division. • Another submission proposed that additional lease purposes be made available to leaseholders to allow for diversification. • One submission requested that any proposals to diversify lease purposes under the Act should only occur after an assessment of ecological impacts and that no allowance should be made for third party tenure over leases. This submission also suggested that the removal of the provision for the Minister’s consent to mortgage a lease is not strong enough and that provisions for sub-leasing should be strengthened rather than weakened, with all approval resting with the Minister. • One submission suggested that new industries could be developed that rely on Aboriginal knowledge of natural resources and their management if areas of high biodiversity and high conservation value are protected within the Western Division. 	<ul style="list-style-type: none"> • There are existing opportunities under the Western Lands Act to allow for the diversification of uses and the promotion of new activities. Diversification is possible by altering the purpose of the lease to include additional purposes or granting licences over leases to a third party with the lessees consent. Although the provision to grant a licence over a lease facilitates a range of additional uses on leases by third parties, a licence may not be considered as providing sufficient security for some forms of development. Proponents for large scale ventures may require the security provided by a lease. There is also provision within the existing Act to enable the withdrawal of leasehold land for public purposes. • Amendments to the Western Lands Act could enable leasing provisions that apply to Crown land under the Crown Lands Act to be utilised in the Western Division in certain circumstances, both in relation to unleased Western Division land, and leased Western Division land but only with the consent of the affected lessee. This would allow the Minister to issue another lease that co-exists with the existing lease but for a purpose that is different to that for which the existing lease was granted. • Diversification under the Act currently requires consideration of ecological impacts in the context of the objects of the Act and by way of statutory environmental impact assessment procedures relevant under the <i>Environmental Planning and Assessment Act 1979</i>. No weakening of the <i>Western Lands Act 1901</i> is proposed in respect of sub-leasing. <p>It is recommended that the <i>Western Lands Act 1901</i> be amended to provide for the grant of a lease under the <i>Crown Lands Act 1989</i>, for certain specified purposes, but only with the consent of any current lessee, in the manner proposed in the <i>Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008</i> which was introduced into Parliament in early June 2008.</p>

Issue/Comments	Response
<p>New Land Uses and Opportunities in the Western Division – Monitoring and Conservation Outcomes</p> <ul style="list-style-type: none"> • One submission suggested that greater emphasis be placed on achieving conservation outcomes and the Department of Lands measuring these outcomes and monitoring rangeland condition in the Western Division. • One submission wished to ensure that all environmental protection provisions in the current Act be retained or improved to maintain and improve positive nature conservation outcomes. • One submission suggested that Conservation Agreements, Wildlife Refuges and covenants in the Western Division should be promoted and actively supported by the whole of Government. • One submission raised concerns as to clearing of invasive native shrubs and suggested an embargo be introduced on such clearing practices to enable further ecological assessment of impacts. 	<ul style="list-style-type: none"> • There are existing provisions within the <i>Western Lands Act 1901</i> to ensure adequate and appropriate monitoring of rangeland condition and to facilitate conservation outcomes. No derogation of these provisions is proposed as part of the Review. • Environmental monitoring of land within the Western Division occurs whenever the Department of Lands receives an application for a change of land use, transfer of lease, or other activity. The Department also monitors land condition through the enforcement of lease conditions and use of the Western Lands Commissioner’s existing powers under the Act, such as requiring properties to be de-stocked. • The Rangeland Assessment Program (RAP) has been in existence for over 20 years and is currently administered by the Department of Environment and Climate Change. The information from this program assists the Department of Lands with assessing land condition. • The Department of Lands is supportive of Voluntary Conservation Agreements, Wildlife Refuges and covenants in certain circumstances and a number of these have been created over leased land. • Native vegetation issues are addressed via vegetation legislation administered by the Minister for Climate Change and the Environment and no changes are proposed to the <i>Western Lands Act 1901</i> in this respect. <p>It is recommended that no legislative amendments be made to the provisions of the Western Lands Act in respect of this issue.</p>

Issue/Comments	Response
<p>Mining, Exploration and Agro-Forestry</p> <ul style="list-style-type: none"> • One submission suggested that amendments are required to the Western Lands Act to facilitate use of land for mining, exploration and forestry including review of relevant covenants and restrictions on titles held under Western Lands leases. • Another submission suggested that matters relevant to mining and exploration are best addressed through appropriate mining legislation and matters relevant to forestry through appropriate forestry legislation rather than via the Western Lands Act. • Two submissions raised concern as to the establishment of Conservation Agreements and Wildlife Refuges over Western Lands leases and associated conflicts with mining and forestry rights. These submissions requested that consent from the Department of Primary Industries and the Minister for Mineral Resources respectively be required before such Conservation Agreements and Wildlife Refuges were established. Three submissions were opposed to the Minister for Mineral Resources being involved in this process. Another submission suggested that Western Lands leases subject to a Wildlife Refuge or Conservation Agreement should not be altered and conflicting sections within the <i>Western Lands Act 1901</i> be amended to support the <i>National Parks Act 1974</i> as these areas are important for biodiversity or ecological protection. • One submission requested that a comprehensive, adequate and representative reserve system be established in the Western Division. This submission also requested that no changes be made to the <i>National Parks and Wildlife Act 1974</i> in respect of offences associated with Conservation Agreements. • One submission requested consideration be given to whether responsibilities for Crown timber on Western Lands leases which are incompatible with Forests NSW commercial imperatives could be included in the <i>Western Lands Act 1901</i> rather than in the <i>Forestry Act 1916</i>. 	<ul style="list-style-type: none"> • It is considered that existing lease conditions applicable to Western Lands leases and the Western Lands Act adequately reserve to the Crown ongoing access to natural resources including minerals, native fish, marketable timber and other forestry products. Provisions within other legislation, including the <i>Mining Act 1992</i>, facilitate the grant of access to these resources on Western Lands leases. • Other issues raised in the submissions are more appropriately addressed within appropriate mining and/or forestry legislation so they are consistent throughout the State and not only applicable within the Western Division. • Concurrence and consultation requirements in respect of the establishment of Conservation Agreements and Wildlife Refuges are provided for in other relevant legislation not administered by the Department of Lands. It is adopted procedure for the Department of Lands to reference the Department of Primary Industries when it is proposed to establish a Conservation Agreement or a Wildlife Refuge over land held under Western Lands lease and this internal practice is proposed to be retained. This referencing process is considered justified and appropriate given the impact of the establishment of these agreements on the Crown's continuing right to grant access to other resources, in particular opal mining. • The Department of Environment and Climate Change has clarified that the granting of a conservation area does not prevent the carrying out of mining and mineral exploration, except in the case of opal mining. The impact on opal mining is the major issue raised by other stakeholder groups in the mining industry. • In respect of the establishment of a reserve system within the Western Division, there is already a reserve system comprising Crown reserves, national parks and nature conservation areas and this system continues to be enhanced and developed in accordance with existing legislation and policy requirements. • No changes are proposed to offences under the <i>National Parks and Wildlife Act 1974</i> as part of the Review. <p>It is recommended that further consultation be undertaken with the Department of Primary Industries and the Department of Environment and Climate Change to ensure that appropriate cross Government procedures and processes are in place and to ensure that the wide range of issues identified in submissions are adequately dealt with. If appropriate, consideration will be given to amendment of the relevant legislation.</p>

Issue/Comments	Response
<p>Access – General & Creation of Easements for Rights of Way</p> <ul style="list-style-type: none"> • One submission requested that a standard condition be inserted into all Western Lands leases to require that where an agreement exists for access to land by Aboriginal people for cultural purposes that the lessee shall not interfere with that access. • One submission requested that the law recognise that lessees cannot prevent access to Aboriginal people on western lands where a road or a track exists. Another submission raised concerns that previous changes to the Act have restricted access to a large portion of the Western Division to the public and that restriction of access to the public should only be for areas around homesteads, stock work yards and watering points. • Two submissions were supportive of the existing Legal Road Network project but requested more funding be made available to this project. • One submission disagreed with any proposal that would allow for easements to be created over land without the lessee's consent and expressed a preference for agreement to be made between all parties before such easements are granted. • One submission suggested that licences be granted for electricity infrastructure rather than easements being created for this purpose. 	<ul style="list-style-type: none"> • Alteration of existing Western Lands leases to insert additional standard conditions would represent a diminishment of the existing rights of the lessees. • There are existing provisions available under the Western Lands Act to alter lease conditions to facilitate access if there is the agreement of the lessee and this provision could be used in circumstances where an agreement for access to land by Aboriginal people has been made. • There are provisions available under the Aboriginal Land Rights Act to allow for negotiated access to land for hunting, fishing and gathering and to make claims for land. • The Legal Road Network project is currently ongoing. Resource and funding matters are not applicable to this Review. • Under current provisions, a lessee of land which is proposed to be burdened by an easement is consulted prior to the creation of an easement and their consent must be obtained. • Where there is a recognised public road or thoroughfare through a Western Lands lease this access remains available for public use and access. Other roads or tracks within leased lands remain for private use. The grant of a Western Lands Lease conveys exclusive possession to the lessee. • In respect of provision for electricity infrastructure this is generally a matter for the electricity supplier to determine. Both easements or licences could be used for this purpose under the existing provisions of the Western Lands Act (where electricity suppliers are not relying on exemption under the <i>Electricity Supply Act 1995</i>). <p>It is recommended that no legislative amendments be made to the general easement provisions of the Western Lands Act.</p> <p>Proposals relating to the dog proof fence and 'road and access' provisions contained in the <i>Western Lands Act 1901</i> to facilitate creation of the road network across all types of land in the Western Division are discussed further at 5.4 and 5.10 of the Report.</p>

Issue/Comments	Response
<p>Access – Access for Mineral Exploration</p> <ul style="list-style-type: none"> • Two submissions requested that the special easement provisions under the Western Lands Act and rights of way provisions under the Mining Act be clarified. These submissions suggest that informal rights of way have long been used for access to opal prospecting areas. • One submission suggested that existing provisions under the Mining Act that allow for the development of Access Management Plans provide the best mechanism to address access to lands held under Western Lands lease for both the mining party and the leaseholder. • One submission indicated that no changes should be made to the Western Lands Act in respect of mineral exploration access. 	<ul style="list-style-type: none"> • It is considered that matters relevant to access for mining exploration within the Western Division are best addressed within relevant mining legislation to ensure consistency with mining operations carried out in other parts of the State. • Existing provisions under mining legislation (Parts 9 and 10 of the <i>Mining Act 1992</i>) to allow for the development of Access Management Plans provide an appropriate mechanism to permit mining and exploration activities to occur on Western Lands leases rather than relying on tracks in use as under the Western Lands Act. • It is not considered appropriate that those who hold a mining title have full and unfettered right of access across the myriad of station tracks which may exist on a Western Lands property. • Access should be appropriately negotiated between the mining title holder and the Western Lands lessee. This position has consistently been applied by the Department of Lands and detailed to the Department of Primary Industries as being the preferred approach to address access for mineral exploration and mining. <p>It is recommended that further consultation be undertaken with the Department of Primary Industries and the Department of Environment and Climate Change to ensure that appropriate cross Government procedures and processes are in place and to ensure that the wide range of issues identified in submissions are adequately dealt with. If appropriate, consideration will be given to amendment of the relevant legislation.</p>

Issue/Comments	Response
<p>Access - Wild Dog Management & Access to the Dog Proof Fence</p> <ul style="list-style-type: none"> Two submissions supported the proposal to provide for an easement running the entire length of the dog proof fence to facilitate access by the Wild Dog Destruction Board for maintenance. One submission was opposed to the creation of powers within the Western Lands Act for creation of such an easement within the area of the Sturt National Park. 	<ul style="list-style-type: none"> It is considered imperative that the dog proof fence is retained and that the Wild Dog Destruction Board has certainty of access to the dog proof fence to carry-out inspections, maintenance and repair works as required. Creation of an easement 100 metres wide (or of appropriate width to facilitate the operation of the fence, including for maintenance) for access and maintenance works across all NSW land parcels adjoining or in the vicinity of the fence is considered essential. Amendment to the <i>Western Lands Act 1901</i> and possibly the <i>Wild Dog Destruction Act 1921</i>, will ensure ongoing and reliable access to the dog proof fence. <p>It is recommended that the <i>Western Lands Act 1901</i> and, if appropriate, the <i>Wild Dog Destruction Act 1921</i>, be amended to enable creation of an easement 100 metres wide (or of appropriate width to facilitate the operation of the fence, including for maintenance) for access and maintenance works across all NSW land parcels adjoining or in the vicinity of the fence. Noting that the <i>National Parks and Wildlife Act 1974</i> has provision for the creation of easements, further consultation will be undertaken with the Department of Environment and Climate Change to effect the creation of the easement to enable appropriate access to the dog proof fence within the Sturt National Park.</p> <p>Proposals relating to environmental planning issues associated with maintenance of the dog proof fence are discussed further at 5.4 of the Report.</p>

Issue/Comments	Response
<p>Boundary Fencing</p> <ul style="list-style-type: none"> There was general support for the proposal for boundary fencing provisions within the Act to be strengthened to allow for upgrading boundary fencing to a reasonable and sufficient standard on an ongoing basis and for the Western Lands Commissioner to determine and enforce fencing standards similar to those that exist within the <i>Dividing Fences Act 1991</i>. 	<ul style="list-style-type: none"> There is merit in amending the Western Lands Act to strengthen provisions as they relate to ongoing maintenance, repair and upgrading of boundary fencing and the powers of the Western Lands Commissioner in determining and enforcing fencing standards and conditions. This will enable the Department of Lands to enforce the containment of stock within property boundaries, in particular breeds of sheep that shed hair and have the potential to contaminate the neighbouring wool (merino) sheep. This has been the subject of considerable consultation in recent years between the Department of Lands, Western Lands leaseholders and the Western Lands Advisory Council, all of which agree that these provisions need to be strengthened. <p>It is recommended that the <i>Western Lands Act 1901</i> be amended to include fencing definitions, standards and requirements similar to those that exist in the <i>Dividing Fences Act 1991</i> to ensure all stock are contained within property boundaries and to strengthen provisions as they relate to ongoing maintenance, repairs and upgrading of boundary fences.</p> <p>It is also recommended that the <i>Western Lands Act 1901</i> be amended to include provisions for the Western Lands Commissioner to enforce fencing standards and conditions through notices or directions in regard to boundary fencing upgrades, repairs and/or replacement. Provisions in the <i>Western Lands Act 1901</i> for the Western Lands Commissioner and leaseholders to refer disputes to the Local Land Board, with appeal rights through the Land and Environment Court, will be retained.</p>

Issue/Comments	Response
<p>Western Lands Commissioner Powers</p> <ul style="list-style-type: none"> • Two submissions requested that the existing powers of the Western Lands Commissioner should be maintained and not diminished in any way. • One submission suggested that the powers of the Commissioner were excessive and that the Western Division was over regulated. • One submission raised concerns as to any new powers of the Commissioner where this may provide overriding authority for a range of land care related activities. • Another submission suggested that the powers of the Commissioner should be reviewed so as to clearly identify any responsibilities that exist under other legislation. This submission also suggested that the Commissioner's powers could be extended to become a consent authority for development on freehold land where no environmental planning instrument is in place to address inequities between leasehold and freehold land. 	<ul style="list-style-type: none"> • The powers of the Commissioner under the current Western Lands Act are considered adequate and suitable, with the exception of powers related to environmental planning and the other matters raised in this paper regarding boundary fencing. • It is agreed that there needs to be uniformity and consistency in respect of planning and development matters within the Western Division and this should be addressed in consultation with the Department of Planning. It is considered that the development of an environmental planning instrument for the Unincorporated Area, with an initial focus on planning for areas faced with significant potential development, would provide an appropriate mechanism to address planning and development within this area, with the Western Lands Commissioner as the consent authority. <p>It is recommended that a comprehensive environmental planning instrument be prepared that applies to development within the Unincorporated Area, with an initial focus on planning for areas faced with significant potential development. The Western Lands Commissioner is to be established as the consent authority. There will be extensive consultation with the Department of Planning, Department of Environment and Climate Change and other agencies as appropriate in developing this proposal, including consultation to address matters relevant to certification of building and subdivision works, and environmental planning provisions associated with the dog proof fence maintenance works carried out by the Wild Dog Destruction Board.</p>
<p>Carbon Rights and Ecosystem Services</p> <ul style="list-style-type: none"> • Two submissions requested that carbon sequestration and related forestry rights be linked to the Western Lands lease applicable to the land. • Another submission requested that concurrence from the Minister for Primary Industries be sought prior to the granting of any carbon rights associated with potential forestry resources on land held under Western Lands lease. • One submission requested an amendment to the Act to enable landholders to link carbon credits from soil and existing vegetation to Western Lands leases. • One submission requested that further public discussion be held regarding any changes to the Act associated with carbon rights and ecosystem services. 	<ul style="list-style-type: none"> • There is already provision within the Western Lands Act which allows for carbon sequestration through forestry. This is an emerging area and accordingly income sharing arrangements for these projects are determined on an individual basis as markets for these new services develop. • The current carbon credits scheme in NSW is subject to specific requirements and limitations. If the current scheme is expanded or new schemes developed, this issue can be revisited at that time. Expansion of the NSW scheme, however, is beyond the scope of the Western Lands Act Review. • The question of potential forestry timber and products that may occur within proposed vegetation offset areas through the Property Vegetation Plan process is considered to be beyond the scope of the Western Lands Act Review and is more appropriately addressed between Catchment Management Authorities and the Department of Primary Industries. <p>It is recommended that no legislative amendments be made to the provisions of the Western Lands Act in respect of this issue.</p>

Issue/Comments	Response
<p>Ecologically Sustainable Development (ESD)</p> <ul style="list-style-type: none"> • One submission raised concerns that the ESD requirements under the Act were onerous. Another submission wanted to ensure that the provisions in the <i>Western Lands Act 1901</i> would facilitate sustainable growth and not restrict restructuring and diversification within the Western Division. • One submission was opposed to any removal or alteration of ESD considerations within the objectives of the Act. • One submission indicated that the ESD provisions currently within the Act should be maintained and appropriately implemented. This submission also requested closer scrutiny be given to the issue of licences to remove minerals and timber from Crown land. • Another submission indicated that the Act should not restrict sustainable growth in the Western Division. • Two submissions indicated that ecological sustainability needed to be further strengthened within the Act. • Tied in with ESD considerations, one submission requested that environmental policy considerations of the former Fisher and Kerin Reviews and CSIRO initiatives for rangelands be addressed as part of the current Review process. 	<ul style="list-style-type: none"> • Objective 2(e) of the Act requires that land in the Western Division is used in accordance with the principles of ecologically sustainable development and accordingly ecological sustainability is a prime consideration for any activities carried out pursuant to the Western Lands Act. • This includes ESD and the need to ensure sustainable growth being considered when proposals to undertake new or diversified activities on land held under a Western Lands lease are assessed as part of the environmental impact assessment requirements under the <i>Environmental Planning and Assessment Act 1979</i>. • The rights to access minerals and forestry are outside the scope of the <i>Western Lands Act 1901</i> and are addressed within relevant mining and forestry legislation which is administered by the Department of Primary Industries and not by the Department of Lands. • The Fisher Review was prepared some 20 years ago. The recommendations arising from the Kerin Review were considered by Government and, where appropriate, have been implemented within the existing provisions of the Western Lands Act. <p>It is recommended that no legislative amendments be made to the provisions of the Western Lands Act in respect of this issue.</p>

Issue/Comments	Response
<p>Western Lands Advisory Council – Membership</p> <ul style="list-style-type: none"> • Two submissions supported the suggestion made by the Department of Primary Industries (referred to within the Issues Paper) regarding inclusion of a member on the WLAC to represent mining interests. One of these submissions indicated that this would need to be a member of the NSW Mineral Council rather than any other similar body. Another submission was opposed to the inclusion of a WLAC member specifically representing mining interests. • One submission suggested that there should be two conservation representatives on the Council from nationally recognised environmental organisations. • One submission raised concerns as to the current vacancy of the Nature Conservation Council nominated representative on the WLAC and as to matters pertaining to Aboriginal people and the environment not being adequately addressed in the Issues Paper. • One submission supported the appointment of two Aboriginal representatives on the WLAC but raised concerns as to the integrity of those persons appointed. 	<ul style="list-style-type: none"> • The Western Lands Advisory Council is generally working effectively in its role of representing the various interests in the Western Division. • Mining is a major industry and employer in the Western Division and there is currently no specific member to represent mining interests on the Council. • Prior to the preparation of the Issues Paper all current members and the organisations or interests which they represent (including those organisations with current vacancies on the Council such as the Nature Conservation Council) were requested to provide input on matters of concern in respect of the Western Lands Act and within the Western Division generally. All parties were again requested to provide comment following public exhibition of the Issues Paper. • In respect of environmental interests, these are currently represented by a member appointed to represent the interests of the Minister for the Environment and a member to represent the interests of environmental protection groups, as nominated by the NSW Nature Conservation Council. • The appointment of the current NSW Nature Conservation Council nominee to the WLAC remains the subject of consultation. • The process for appointing members to the WLAC is via appointment by the Minister and one of the members to represent the interests of Aboriginal people is appointed on the nomination of the NSW Aboriginal Land Council. This process is considered appropriate for ensuring adequate representation for the interests of Aboriginal people on the WLAC. <p>It is recommended that the <i>Western Lands Act 1901</i> be amended to include a nominee of the Minister for Mineral Resources within the membership of the Western Lands Advisory Council.</p>
<p>Western Lands Advisory Council – Term of Appointment</p> <ul style="list-style-type: none"> • Prior to the Issues Paper, there was a suggestion that the term of appointment for WLAC members should be altered to a period of up to three years and for a staggering of appointments to the Council to occur. • Two submissions indicated that the current three year term for appointments to the WLAC is appropriate and no changes are required. • No other comments on WLAC appointment were included in the submissions. 	<ul style="list-style-type: none"> • A term of up to three years will build flexibility into the appointment process, and will ensure that the expertise and knowledge within the Council is retained and used to develop and enhance the skills of new Council members. <p>It is recommended that the <i>Western Lands Act 1901</i> be amended to allow for the appointment of members of the Western Lands Advisory Council for a term of up to three years.</p>

Issue/Comments	Response
<p>Conversion to Freehold</p> <ul style="list-style-type: none"> • Five submissions considered that grazing leases should be able to be converted to freehold. Two of these submissions indicated that freeholding should only occur when it could be demonstrated that the use of the land will remain ecologically sustainable. • One submission raised concern that conversion to freehold may negatively impact on agreements between lessees and Aboriginal people for access and requested that if leased lands were converted to freehold, covenants, easements or conditions should be applied to that land to protect any Aboriginal interests. • Two submissions requested that similar covenants and restrictions should be imposed to protect any ecological or environmental interests associated with the land and that careful assessment would be required prior to any conversion to freehold being carried out. One of these submissions also indicated that any conversion applications should be subject to a process of concurrence from the Minister for Climate Change and the Environment to determine whether the conversion would be ecologically sustainable and that any assessment and transfer of title is adequately recorded and forms part of a transparent and accountable public process, including publishing of monthly statistics of all conversions. • Three submissions opposed the conversion of grazing leases to freehold and a further submission suggested that any proposal to freehold grazing leases should form the subject of a separate review and further stakeholder consultation. One of the submissions opposing freehold conversion suggested that an advocate be employed to monitor requests for freehold conversion on behalf of Aboriginal interests and when applications are made to convert that the local Aboriginal community and the NSW Aboriginal Land Council be first asked if they wish to lease the land. • One submission objected to any freeholding of land within mineral prospecting areas and another objected to the conversion to freehold of any Western Lands lease issued for the purpose of 'residence' over former mineral claims with a residential status on the Lightning Ridge opal fields. • One submission suggested that applications to convert land leased for tourism purposes to freehold not be required to have an existing legal access and that these should be considered on their merits. • One submission raised objection to the requirement to pay market value for the conversion of agricultural leases to freehold. 	<ul style="list-style-type: none"> • Of all issues raised in the Review, the conversion of leased lands to freehold appeared to be of the most interest to those parties and individuals making submissions. It is clearly evident that freeholding grazing leases is an issue with stakeholder groups, sometimes diametrically opposed. • As discussed in the Issues Paper, the matter of freehold conversion of grazing leases was considered in the former Kerin Review of the Western Lands Act where it was held that a system of leasehold tenure was the most relevant to low productivity areas of rangelands due to the ability of leasehold tenure to accommodate multiple uses as opposed to exclusive use by freeholding. • It is considered that this position is appropriate and is consistent with the approach taken to rangeland management particularly in high risk, fragile environments in the majority of other Australian states and in other countries. • Freeholding of leased lands held for purposes other than grazing (eg, residence, business, agriculture) is possible under the provisions of the existing Act when criteria, including ecological sustainability and legal access, can be appropriately addressed. These provisions to enable freeholding are not proposed to be amended. • It is considered appropriate to continue the current system of ensuring that legal access is available to any land proposed to be freeholded. • The conversion of Western Lands leases to freehold does not prohibit the negotiation of agreements for access by Aboriginal Land Councils pursuant to s.47 of the <i>Aboriginal Land Rights Act 1983</i> or the issuing of access rights by the Court pursuant to s.48. Claims under this Act are also not diminished as Western Lands leases are not claimable as the land is lawfully used and occupied. It is not appropriate to retrospectively reduce lessee rights if leased lands are converted to freehold as these leases are purchased on the open market with a right to exclusive possession for the lessee. • With respect to opal prospecting areas, existing schemes to freehold residential leases across the Western Division do not extend to residential leases issued over residential mineral claims. Western Lands leases held for grazing within opal mining areas are also not able to be converted to freehold. • Existing provisions with regard to freeholding under the Western Lands Act require the payment of full market value of the land at the date of application. There are no proposals to alter the existing repayment terms at this time. <p>It is recommended that the <i>Western Lands Act 1901</i> remain unchanged in relation to the issue of conversion of grazing leases to freehold.</p>

Issue/Comments	Response
<p>Other Matters – Local Land Boards</p> <ul style="list-style-type: none"> Two submissions requested that Local Land Boards and the existing arrangements under which they operate be retained. 	<ul style="list-style-type: none"> Noted. <p>It is recommended that no legislative amendments be made to the provisions of the Western Lands Act in respect of this issue.</p>
<p>Other Matters – Rent Provisions</p> <ul style="list-style-type: none"> One submission requested that existing rental provisions within the Western Lands Act be retained. 	<ul style="list-style-type: none"> Noted. <p>It is recommended that no legislative amendments be made to the provisions of the Western Lands Act in respect of this issue.</p>
<p>Other Matters – Compliance with Lease Conditions</p> <ul style="list-style-type: none"> One submission requested that lessees who do not comply with lease conditions be required to pay for rehabilitation costs or be charged additional rents in respect of non compliances. 	<ul style="list-style-type: none"> There are existing provisions under the Western Lands Act to address compliance issues applicable to lease conditions, including enforcement and penalty provisions (ss.46-52). These provisions are considered to be working effectively and enable breaches of lease conditions to be appropriately addressed by the Department of Lands. <p>It is recommended that no legislative amendments be made to the provisions of the Western Lands Act in respect of this issue.</p>