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**The Long Paddock: a legislative history of
travelling stock reserves in NSW**

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by Alec Bombell

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The Long Paddock: a legislative
history of travelling stock reserves in
NSW

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SUMMARY

The ownership and future management of travelling stock routes (TSRs) are currently the subject of review, further to the 2013 report [Crown Lands Management Review](#).

Travelling Stock Routes and Travelling Stock Reserves are parcels of Crown land reserved and managed under legislation for use by travelling stock. They provide routes over which stock can be moved and areas for agistment or camping of stock. In this paper, the term Travelling Stock Reserves refers to both of these aspects collectively – that is, both the areas dedicated as routes and the areas dedicated for stationary uses such as camping and agistment.

The location and extent of TSRs varies depending upon their location in the State. In western NSW, the networks are often made up of chains of TSRs linked together, with watering points at irregular intervals. In central and eastern NSW, TSRs are generally more isolated, with short chains of reserves linked by roads along which stock may be driven. According to the 2013 [Crown Lands Management Review](#):

The 10,415 TSRs in NSW cover almost 2.1 million hectares and are managed by:

- Livestock Health and Pest Authorities (LHPAs), (now Local Land Services) (6,485 TSRs),
- Crown Lands Division (3,919 TSRs),
- councils (47 TSRs),
- other NSW Government agencies (five TSRs), and
- a not-for-profit organisation (one TSR).

As to their traditional and current uses, the 2013 review stated:

Travelling stock reserves (TSRs) were once used to move livestock from farms to markets or railheads. They include stock routes as well as fenced areas for camping or watering stock overnight. Some are still used today for grazing, especially as emergency refuges during floods, bushfire, drought (fodder), as well as some local agistment. TSRs are also used for public recreation, apiary sites and for conservation. **[1.1]**

Ecological benefits of TSRs: TSRs (and particularly those in the Central Division of NSW) have been recognised as providing important biodiversity conservation resources, containing many significant sites of valuable remnant native vegetation, and habitats for a wide variety of species (including threatened and endangered). The [Environment Protection Authority's 2006 State of the Environment Report for NSW](#) states that 80% of TSRs have vegetation communities with high or very high conservation status. **[1.2]**

Cultural and heritage values of TSRs: TSRs were traditionally used for droving – a theme emblazoned throughout Australian folk tradition post-European contact. Droving and the concept of the “Long Paddock”, the nation-wide network of TSRs, became an intrinsic element of the Australian self-image and relationship with the bush.

In 2009, a modern initiative, ARTBack – Sculptures of the Long Paddock, highlighted the ongoing cultural importance of TSRs to rural Australian culture and identity. Many TSRs are also sites of heritage for Aboriginal people, with the presence of scarred trees, middens and artefacts serving as evidence of the first inhabitants' traditional spiritual and cultural connections with the land. [1.4]

Current management of TSRs: Since 1 January 2014, the majority of TSRs are managed and administered by Local Land Services (LLS) under Part 6 of the *Local Land Services Act 2013* (LLS Act) and Part 5 of the *Local Land Services Regulation 2014* (LLS Regs). Local Land Services' role in managing and administering the TSRs involves both regulating their use and attending to their upkeep. [2.1]

Where Local Land Services have been vested with control of TSRs, these are known as "controlled travelling stock reserves". TSRs that are not under the control, care and management of Local Land Services, and stock watering places that are under the control of a body other than a Local Land Service under Part 8 of the LLS Act, are known as "managed travelling stock reserves". But note that the role of Local Land Services, as this is set out under Part 6 of the LLS Act, extends to some degree to the use of all "managed TSRs" or "controlled TSRs", with the legislation noting that Part 6 provides:

- (a) for the *management, and regulation* of the use by travelling stock and persons, of travelling stock reserves that are fully controlled by Local Land Services, and
- (b) for *regulation* of the use by travelling stock and persons of travelling stock reserves that are not fully controlled but are managed by Local Land Services and of public roads. (emphasis added) [2.1.1]

Thus, even TSRs that are not fully controlled by Local Land Services are still, to some degree, regulated by them. However, the Crown Lands Division of the Department of Primary Industries also has certain legislative powers with respect to such TSRs. Reserves ceded back from Local Land Services are dealt with under the provisions of the *Crown Lands Act 1989*. The Minister for Primary Industries cannot exercise powers of sale or lease, or otherwise deal with TSRs ceded back to Crown Lands, unless an assessment of the TSRs has been carried out in accordance with Part 3 of the *Crown Lands Act 1989* (section 35). As part of the assessment process, the potential/preferred uses of the land are identified by reference to: the land's particulars and capabilities; the views of any Government department or public authority etc. that expressed interest in the land; and the "principles of Crown land management" (section 33). [2.1.2]

Current regulation of the use of TSRs: A person must not, without lawful authority, enter or remain on a TSR, occupy or make use of any TSR for any purpose, or engage in any activity that damages, or is likely to damage, a TSR (section 72 LLS Act). Further, a person who owns or has charge of stock must ensure that the stock do not walk or graze on public roads (as defined in the *Roads Act 1993*) (section 73 LLS Act). Breaching either of these provisions attracts a penalty infringement notice of \$300, or summary prosecution with a maximum penalty of \$5,500.

...

If a farmer or drover wishes to use a TSR for stock, he or she can apply to LLS for a “stock permit”. Authorised officers of LLS are empowered under section 78 of the LLS Act to issue stock permits to applicants with respect to a broad range of activities on travelling stock reserves and certain public roads (as defined in the *Roads Act 1993*). Fees are payable in respect of stock permits.

Certain recreational activities, such as horse riding, fishing or swimming, can be carried out in TSRs between sunrise and sunset without any permit (except on TSRs in the Western Division, or in stock watering places). Unless a permit (either a stock permit or a reserve use permit) provides otherwise, certain activities are prohibited in TSRs, including interfering with stock or beehives that are lawfully on a TSR. **[2.2]**

Evolution of TSRs: Starting in the mid-1800s, stock routes rapidly proliferated throughout the more densely occupied portions of pastoral Australia, with alternatives to main routes being established, feeder trails developed, and with this the increasing recognition of the routes at law as well as in custom.

Recently, it has been suggested that many TSRs emerged from networks of travel lines developed by Aboriginal people, criss-crossing the continent prior to European contact. **[3.1]**

Timeline of key legislative and policy developments:

Regulation of TSRs initially arose indirectly through the desire to limit the spread of diseases amongst stock.

Scab in Sheep Act 1832: Enacted to prevent the extension of an infectious disease in sheep generally known as “scab” (a minor form of mange). The Act prohibited the conducting or driving any sheep or lambs infected with the disease on or over “public roads or way used as a public way for driving sheep from one part of the Colony to another” in any month other than February (section 1). **[3.2]**

Crown Lands Occupation Act 1861: Section 5 of the Act permitted the Governor, on the advice of the Executive Council, to withdraw from leased land any lands which may be required for public purposes, including “for any roadway for general traffic or for passage of stock”. The 1861 Act therefore amounted to the first instance of formal reservation of Crown land for the purpose of travelling stock. Provision was also made to protect the interests of both adjoining landholders and subsequent drovers interests in light of the intensive usage of TSRs at this time and the need to conserve feed and water resources along routes. **[3.2]**

Scab in Sheep Prevention Act 1864: It introduced regional “Scab Districts” throughout the colony, established by the Governor with the advice of the Executive Council, and under the auspices of a Chief Inspector of Sheep. The legislation touched on TSRs in a number of ways. If a holder of land which was traversed by a public way (including a public way for stock movements) became aware of infected sheep amongst his flock, he was required to affix a notice at each point of entrance to the public way stating that scab had broken out on his run and also publish a copy of the notice in a locally circulating newspaper

(section 12). Further, any owner of sheep driving or conducting them across or upon any property or public way which intersects a property was required to give between 48 and 24 hours' notice to the owner of the property (section 23). Travelling sheep were to be branded, (section 24), and the owner of a property through which sheep were being conducted was empowered to examine any sheep and detain them "upon reasonable suspicion of their being infected" (section 25). **[3.2]**

Diseases in Sheep Act 1866: This Act introduced a requirement to obtain a type of approval to move certain stock. This took the form of a certificate from the Inspector in order to move sheep from: any district in which infection existed at the time of travel, or had existed within a period of 12 months previously; a district adjoining any such district; or a district adjoining any Colony which may be notified in the Gazette from time to time by the Minister as a Colony in which infection exists; (section 40). Where an owner wanted to move sheep from a district not mentioned above, the Act required the owner to notify the Inspector of the intended date of departure, route and destination of the sheep (section 40). Non-compliance would attract penalties of up to £50. **[3.3]**

1874 Gazette Notices: Notices reserving land for the purposes of routes and reserves for travelling stock started appearing in the NSW Government Gazette in around 1874. **[3.3]**

Diseases in Sheep Acts Amendment Act 1878: A permit system for travelling stock was introduced, along with charges for stock on TSRs (albeit in limited circumstances). The regulatory scheme was also extended to include cattle and horses. The 1878 Act also imposed tighter regulations on how stock were to be moved. **[3.3]**

Local Government (Shires) Act 1905: This Act transferred to the various Shires certain responsibilities under the *Public Watering-Places Act 1900*, including constructing tanks, dams or other facilities adjacent to roads or on reserves to serve as public watering places, and to appoint caretakers of the public watering-places who could provide water to travelling stock at prescribed rates. **[3.3]**

Stock Act 1901: this consolidated and repealed much of the existing legislation concerning stock protection and movements. **[3.4]**

Pastures Protection Act 1902: This Act also consolidated various pieces of legislation. It provided for Pastures Protection Boards, with seven locally elected members for each district. Pastures Protection Districts were to be constituted by the Governor (section 5). 66 Pastures Protection Districts were established and their boundaries remained roughly the same at least until the 1970s (save for certain areas near the urbanised eastern coast). **[3.4]**

Crown Lands Consolidation Act 1913: The Minister was granted the power initially granted to the Governor under the *Crown Lands Act 1884* to define and set apart, by notification in the Gazette, routes up to one mile in width through any land held under lease or license for the passage of stock travelling under section 106 of the *Pastures Protection Act 1912*. The Minister could also define

and set apart camping places for travelling stock not in any case exceeding one square mile. These routes and camping places were to be determined initially by the Local Land Board (section 34). **[3.4]**

Pastures Protection (Amendment) Act 1918 and 1920: The Pasture Protection Boards were given greater responsibility for the management of TSRs. A new regime for permits was established, requiring permits to move large stock (in addition to sheep). The position of Permit Inspector was also introduced. **[3.4]**

Pastures Protection Act 1934: Mainly a consolidation of previous legislation, the 1934 Act vested Pasture Protection Boards with control of TSRs in perpetuity, subject to withdrawal by the Minister of Lands with the approval of both Houses of Parliament. A major change introduced through Part V of the 1934 Act was vesting control of public watering places in the Pastures Protection Boards. Changes were also made to the use of TSRs. For example, under the 1934 Act, no person could move stock along any road or travelling stock reserve or by rail, air or water unless the appropriate documentation was in order and the prescribed fees had been paid (section 48(1)). In terms of documentation, a permit was required for travelling stock and a licence was required for working large stock in districts where fees were imposed to move such stock. **[3.5.1]**

Pastures Protection (Amendment) Act 1951: This amended the 1934 Act to permit the Minister for Lands, upon recommendation by the Minister for Agriculture, to withdraw any reserve or part thereof from the control of a Board. The recommendation could be made by the Minister for Agriculture either after referring matters concerning the withdrawal of a reserve to the local land board, or on the Minister's own motion. The Minister was not bound to adopt any report provided by the local land board and any report could not be subject of an appeal or reference to the Land and Valuation Court. The Nature Conservation Council of NSW noted, in a 1982 report, that there was an upsurge in revocations of TSRs in the decade following the amendment. According to the Council's study, about one-fifth of the total TSR area of Dubbo, amounting to some 15,000 acres, was revoked between 1950 and 1970. **[3.5.2]**

1975 report of the Committee of Inquiry into Pastures Protection Boards: Among its conclusions were that: the main value of travelling stock reserves lay in the main driftways from north to south and to a lesser degree, those to and from the Western Division and to eastern areas and the use of road transport for the movement of stock and the competition by other road users on narrow routes together with increased droving charges were factors curtailing use of travelling stock reserves by travelling stock. The Committee recommended that boards in the Central and Eastern Divisions be encouraged to critically examine the need for retention of travelling stock reserves in their district and to release areas infrequently used in order that the main stock routes could be maintained and improved by the acquisition of additional land where necessary. **[3.5.2]**

1978 Nature Conservation Council of NSW: Concerned with the alienation of Crown lands, the Council published *A Study of Travelling Stock Reserves and Roadside Verges in the Southern Tablelands of NSW*. The Council encouraged Governments and agencies to change their attitudes in respect of the values of TSRs to the community as a whole. This was in light of the considerable decline

in use of TSRs in recent times and the increasing scarcity of natural vegetation Crown Lands in NSW. Key recommendations made by the Council in the conclusion of its study included: that the existing system of Travelling Stock Routes and Reserves be retained under Crown control, and there be no further alienation of uncleared Crown lands anywhere west of the Divide without thorough investigation and public inquiry. In 1979, the Department of Lands adopted a policy to conserve and protect natural areas by, wherever possible, retaining in Crown ownership all lands with scenic, recreational and conservation value.

Aboriginal Land Rights Act 1983: TSRs became claimable Crown lands in defined circumstances. A successful claim over a TSR would lead to the transfer of an estate in fee simple to the Aboriginal Land Council claimant. In the case of non-urban land under the *Western Lands Act 1901*, the successful claimant would be given a perpetual lease under that Act. **[3.5.4]**

Pastures Protection (Amendment) Act 1985: TSRs were further reviewed in the 1982 report of the Crown Lands Office, resulting in legislative amendments in 1985 to provide for recreational uses of TSRs. Tighter provision was also made for persons who damage a TSR under control of a Board. **[3.5.3]**

Crown Lands Act 1989: The *Crown Lands Consolidation Act 1913* and 19 other Acts were repealed by legislation designed to provide a simplified, streamlined and modern approach to the future administration and Crown land management. The Act governed the future disposition and management of vacant and reserved Crown land. A separate Act – the *Crown Lands (Continued Tenures) Act 1989* – provided for the continuation and administration of existing tenures (i.e. tenures in force under the now repealed Acts). Most TSRs were reserved under the forerunners of the 1989 Act. **[3.6]**

Rural Lands Protection Act 1989: The administrative and regulatory framework was again overhauled with the enactment of the RLP Act 1989. This replaced Pastures Protection Districts with Rural Lands Protection Districts, and Pastures Protection Boards with Rural Lands Protection Boards (**RLP Boards**) (sections 4 and 6 of the RLP Act 1989). As previously, the Minister for Agriculture and Rural Affairs could recommend to the Minister for Crown Lands that a TSR be withdrawn from the control of a RLP Board, only now there was a requirement in the legislation to consult with the RLP Board concerned before so recommending (section 84(1)). A new element was the express inclusion in the legislation of the Council of Advice, the executive body of the former Pastures Protection Boards. Regulation of the use of travelling stock reserves, broadly speaking, remained the same. There were, however, some changes to the levels and types of permits required to move stock. A further key change made under the RLP Act 1989 was an increased focus on managing stock near vehicular road traffic, to address the increasing incidence of road accidents arising from the rise in road transport over time. Recreational use of TSRs was carried over from previous legislation. The RLP Boards could also close reserves for conservation and other purposes. The RLP Regulation 1989 set out further detail with respect to TSRs and their usage, including offences in respect to TSRs (the Regulation was replaced by the Rural Lands Protection Regulation 1995 but without substantive changes of note). **[3.6.1]**

Rural Lands Protection Act 1998 and the Rural Lands Protection Regulation 2001: Under the RLP Act 1998, RLP Boards retained their names and were constituted much as they were beforehand. Their responsibilities with respect to TSRs, broadly speaking, also remained the same. However, the RLP Boards were granted more flexibility and autonomy in fulfilling these responsibilities. In return, the State Council (previously the Council of Authority) was given greater oversight of Board activities and a greater role in determining the policies to be applied by the Boards. These policies were to be developed at the annual State Conference of the Boards. RLP Boards were granted further autonomy with respect to the management of TSRs. The Boards were required to prepare draft function management plans for their functions in respect of all TSRs under their care, control and management (section 44). The plans would provide for many matters concerning TSRs previously contained in legislation. As previously, certain RLP Boards were vested with the care, control and management of TSRs. The RLP Act 1998 referred to such TSRs as “controlled travelling stock reserves”. Where an RLP Board had not been granted care, control and management of a TSR in its district, or a TSR had been withdrawn from its care, control and management, the Board still retained some responsibility for the TSR. The RLP Act 1998 referred to these TSRs as “managed travelling stock reserves” (section 84(1)). **[3.6.3]**

2004 review and the Rural Lands Protection Amendment Act 2006: A statutory review of the RLP Act 1998 resulted in making of a number of recommendations, including that: the fee structure be revised to give boards greater flexibility to recover the costs of managing TSRs; the Act be amended to streamline the process by which the withdrawal of the management of TSRs from Boards occurs; the Government consider alternative sources of funding for the management of TSRs for which revocation is not approved and which are being retained by Boards for non-stock purposes; and that, where TSRs are found to contain scarce cultural or biodiversity values, consideration be given to implementing appropriate management and funding regimes. In 2006 amendments were made to the RLP Act 1998 to simplify the administrative requirements of RLP Boards and to maintain financial accountability and reporting requirements. These amendments did not, however, incorporate the Review Group’s recommendations with respect to TSRs. **[3.6.4]**

Rural Lands Protection Amendment Act 2008: In 2008 the financial viability of the RLP Board system was reviewed by Integrated Marketing Communications report. One recommendation of the IMC report was that “the management of TSRs should be ceded back to the NSW Department of Lands in cases where they place an unreasonable financial burden on RLP Boards”. With the Government adopting the report, legislation in 2008 overhauled the RLP Board system in a number of ways. Rural Land Protection Districts were replaced by “Livestock Health and Pest Districts” (new section 5(1) and new Part 6, Division 1 of the RLP Act 1998). RLP Boards were replaced by Livestock Health and Pest Authorities (LHPAs). Further, 47 RLP Boards were amalgamated into 14 LHPAs. The annual State Conference of the RLP Boards was replaced by a State Policy Council, to be held on an annual basis, comprised of two members from each Livestock Health and Pest District. The State Council itself was also altered slightly and its name changed to the State Management Council.

In terms of the amendments impacting on TSRs and travelling stock directly, there were few. Changes were made to the ways in which fees could be set for the various permits to use. Explicit objectives were inserted into the RLP Act 1998 (new section 2A), including:

- (f) to provide for the sustainable management of travelling stock reserves and stock watering places;
- (g) to deal with certain unattended and trespassing stock; and
- (h) to regulate the movement of stock. **[3.7.2]**

2009 review: The question of how TSRs ceded back to the Department of Lands were to be used, and whether or not they were to be sold off, remained a political issue throughout the late 2000s. This included a 2009 assessment of the values of TSRs in the former Maitland and Hunter RLP Board districts, through which a methodology for identifying and assessing the significance of TSRs was developed. The study assumed that all TSRs were to be ceded back to the Department of Lands. From this assumption, the Land and Property Management Authority (LPMA) made recommendations about future use under the *Crown Lands Act 1989*, in line with the Crown land management principles in section 11 of that Act. On this assumption, any reserves gazetted for travelling stock were retained in the Crown estate and the reserve purpose was maintained. Any reserves with high conservation values were reserved for Environmental Protection. **[3.7.3]**

Further review and the Local Land Services Act 2013: Following concern expressed about the Livestock Health and Pest Authority (LHPA) model, the [Ryan Review Report into LHPAs](#) was released in March 2012. Subsequently, under the *Local Land Services Act 2013*, Local Land Services took over the management of TSRs under control of LHPAs. The elements of the *Local Land Services Act 2013* dealing with the control and management of TSRs were a continuation of the position under the *Rural Lands Protection Act 1998*, as amended. **[4.1.2]**

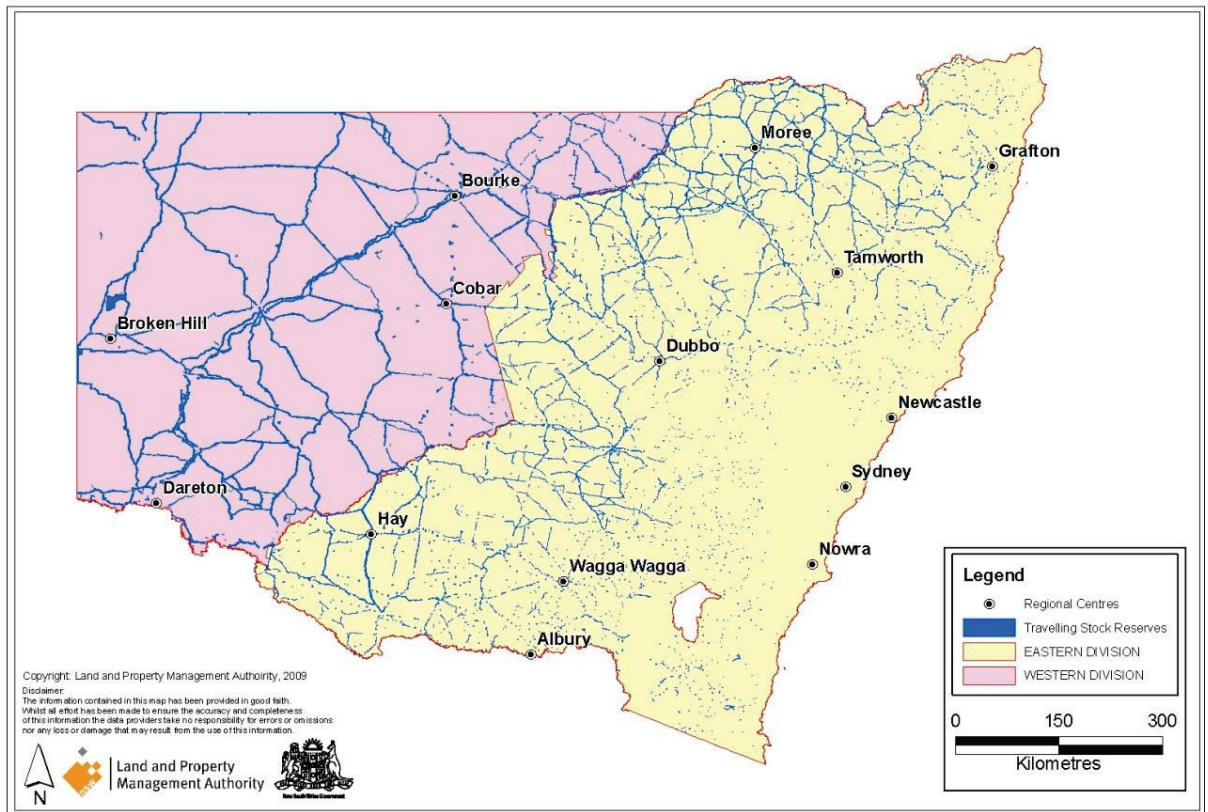
Crown Lands Review 2013: In 2012, the NSW Government set up an inter-agency Steering Committee independently chaired by Michael Carapiet to review the management of Crown lands. It was described as “the first comprehensive review in 25 years”. In respect to TSRs, the [2013 report](#) by the Steering Committee noted that Travelling Stock Routes (TSRs) were once used to move livestock from farms to markets or railheads; and it observed that most are no longer being used for their original purpose. They are used for recreation, other social uses, access and heritage. The report recommended that Local Land Services work with the relevant stakeholders to develop assessment criteria to review all Travelling Stock Routes and determine their future ownership and management. The [Government response](#) stated that “work will commence in 2014 on a pilot program with Local Land Services”; and that “community consultation will occur through the pilot process”. **[4.3]**

The key points in respect to TSRs made in the 2013 report were that:

- Many travelling stock reserves are no longer used for their original purpose.

- A detailed review is required to determine which travelling stock reserves are required for the delivery of core government services and to determine appropriate funding resources.
- The establishment of Local Land Services provides an opportunity to develop a regional process to consider the future use of the travelling stock reserve network consistent with the NSW Government's commitment to the devolution of decision-making to local communities. [5]

Map Showing Travelling Stock Reserves (TSRs) in NSW



Source: Land and Property Management Authority (2010) [*Assessing the Values and Management of the NSW Travelling Stock Reserve Network for Biodiversity and Optimal Management in the Hunter Valley. Report on Methodology and Findings.*](#)

1. INTRODUCTION AND BACKGROUND

The ownership and future management of travelling stock routes (TSRs) are currently the subject of review, further to the 2013 report [Crown Lands Management Review](#). The report said that:

There are issues around ownership, governance, future use and the role of government. In particular, it needs to be determined whether the NSW Government should continue to own and control TSRs.

The review also commented on the changing uses of TSRs, stating:

The use of TSRs has changed: most are no longer being used for their original purpose. They are used for recreation, other social uses, access and heritage. TSRs also provide some insurance during drought and flood. Many are still important because of their location in over-cleared landscapes and because of significant Aboriginal cultural heritage and ecological values.

This paper begins with a brief commentary on these various uses and on the place of TSRs in Australia's cultural history. Its focus, however, is on the legislative history of TSRs, starting with an overview of the current arrangements and then presenting a chronological account of the many relevant regulatory developments in this field, from 1832 to 2014.

1.1 What are Travelling Stock Reserves?

Travelling Stock Routes and Travelling Stock Reserves are parcels of Crown land reserved and managed under legislation for use by travelling stock.¹ They provide routes over which stock can be moved and areas for agistment or camping of stock.² In this paper, the term Travelling Stock Reserves (shortened to **TSRs** in most places) refers to both of these aspects collectively – that is, both the areas dedicated as routes and the areas dedicated for stationary uses such as camping and agistment.

TSRs have existed in some form or other in NSW since the early 1800s. Their origin and early development was based on practicality, reflected in the location of many TSRs today along the more productive land in NSW and near watercourses, for ease of watering and feeding stock. With the advent of motorised livestock transport on road and rail in the 1900s, usage declined. However, recently more and more farmers have turned to TSRs for support during floods and drought.³ With the rise in fuel prices and the turn to

¹ NSW Trade and Investment, Crown Lands, "[Travelling Stock Reserves](#)", undated [online – accessed 12 September 2014]

² NSW Local Land Services, "[Stock Routes](#)", undated [online – accessed 12 September 2014]; Bev Smiles, Cathy Merchant and Kirstin Proft, National Parks Association of NSW, [The NSW travelling stock routes and reserves network](#), June 2011 at p. 6

³ NSW Rural Lands Protection Board, *The long paddock: a directory of travelling stock routes and reserves in NSW*, Rural Lands Protection Boards in association with NSW Agriculture – Resource Information Unit, Sydney, 2001 (Foreword)

sustainable and locally sourced agriculture amongst consumers, this increase in use may continue.⁴

The location and extent of TSRs varies depending upon their location in the State. In western NSW, the networks are often made up of chains of TSRs linked together, with watering points at irregular intervals.⁵ In central and eastern NSW, TSRs are generally more isolated, with short chains of reserves linked by roads along which stock may be driven.⁶

There are currently over 6,500 TSRs in the Central and Eastern divisions NSW with a total area of approximately 740,000 hectares.⁷ This does not include TSRs in the Western Division, which are managed by landholders under the terms of their respective leases. According to the 2013 [Crown Lands Management Review](#):

The 10,415 TSRs in NSW cover almost 2.1 million hectares and are managed by:

- Livestock Health and Pest Authorities (LHPAs), (now Local Land Services) (6,485 TSRs),
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As to their traditional and current uses, the 2013 [Crown Lands Management Review](#) stated:

Travelling stock reserves (TSRs) were once used to move livestock from farms to markets or railheads. They include stock routes as well as fenced areas for camping or watering stock overnight. Some are still used today for grazing, especially as emergency refuges during floods, bushfire, drought (fodder), as well as some local agistment. TSRs are also used for public recreation, apiary sites and for conservation.

Beyond their traditional agricultural and economic uses, more recently, there has been an increased focus on the ecological, cultural and social importance of TSRs.⁸

1.2 Ecological benefits of Travelling Stock Reserves

TSRs (and particularly those in the Central Division of NSW)⁹ have been recognised as providing important biodiversity conservation resources,

⁴ Bev Smiles et al, above n2, at p. 16

⁵ NSW Rural Lands Protection Board, above n3

⁶ Ibid.

⁷ NSW Trade and Investment, Crown Lands, "[Travelling Stock Reserves](#)", undated [online – accessed 16 September 2014]

⁸ Bev Smiles et al, above n2, at p. 6

⁹ Ibid, at p. 7

containing many significant sites of valuable remnant native vegetation, and habitats for a wide variety of species (including threatened and endangered).¹⁰ The [Environment Protection Authority's 2006 State of the Environment Report for NSW](#) states that 80% of TSRs have vegetation communities with high or very high conservation status.¹¹

TSRs contain temperate woodlands, such as Box and Ironbark, and also nationally listed endangered ecological communities including the critically endangered White Box-Yellow Box- Blakely's Red Gum Woodland and Derived Native Grassland.¹² The location of many TSRs in highly fertile areas (alongside agricultural land) means that TSRs are often the best remnants of woodland ecosystems that are adapted to fertile soil conditions.¹³ The woodlands in these TSRs also provide habitat for a number of threatened animal species, particularly woodland birds, arboreal mammals and bats.¹⁴

Further, the layout of TSRs enables them to contribute to biodiversity conservation on a wider scale. According to a National Parks Association of NSW Report prepared in 2011, "TSRs act as corridors and 'stepping stones', connecting fragmented vegetation across the landscape. In particular, they connect the remnants of a north-south corridor of woodland in eastern Australia. The links provided by TSRs allow animals to disperse between remnant vegetation areas, promoting interbreeding between populations and allowing species to colonise new or abandoned habitats".¹⁵

1.3 Economic benefits of Travelling Stock Reserves

Traditionally, the economic uses of TSRs were associated with agricultural uses arising from the ability to move stock to and from market. Their economic value as emergency pasture and agistment during drought also became apparent over the years. Other agricultural uses, aside from grazing and agisting of stock, include as sites for bee hives under licences issued to apiarists.¹⁶

Tourism is emerging as a further benefit of the NSW TSR network. There are examples of certain regions attracting ornithologists and amateur bird watchers, drawn by the high variety of birdlife in the reserves.¹⁷

TSRs are also used for recreation, providing natural spaces in which to go bushwalking, horseriding, picknicking, fishing and swimming.¹⁸

¹⁰ Ibid

¹¹ Environment Protection Agency, "[NSW State of the Environment 2006](#)", December 2006, Section 6.2

¹² Bev Smiles et al, above n2, at p. 8

¹³ Ibid, at p. 9

¹⁴ Ibid.

¹⁵ Ibid, at p. 12

¹⁶ Ibid, at p. 16

¹⁷ Ibid, at p. 17

¹⁸ NSW Rural Lands Protection Board, above n3 (foreword)

1.4 Cultural and heritage values of Travelling Stock Reserves

Initially at least, TSRs were used for droving – a theme emblazoned throughout Australian folk tradition post-European contact. Droving and the concept of the “Long Paddock”, the nation-wide network of TSRs, became an intrinsic element of the Australian self-image and relationship with the bush.¹⁹

Australian poets A. B. Banjo Patterson (1864-1941), Henry Lawson (1867-1922) and singer John Williamson (1945-present) have romanticised the life of the drover and TSRs:

*Now this is the law of the Overland that all in the West obey -
A man must cover with travelling sheep a six-mile stage a day;
But this is the law which the drovers make, right easily understood,
They travel their stage where the grass is bad, but they camp
Where the grass is good;*

- From *Saltbush Bill*, by A. B. ‘Banjo’ Patterson

*Our Andy’s gone to battle now
‘Gainst Drought, the red marauder;
Our Andy’s gone with cattle now
Across the Queensland border.*

*He’s left us in dejection now;
Our hearts with him are roving.
It’s dull on this selection now,
Since Andy went a-droving.*

-From *Andy’s Gone with Cattle* by Henry Lawson

*We must never let ‘em take this life away
Old stock routes belong to one and all
Drovers, dreamers all agree, poets, Aborigines
We have a right to light a campfire on the road.*

- From *Campfire on the Road* by John Williamson²⁰

In 2009, a modern initiative, ARTBack – Sculptures of the Long Paddock, highlighted the ongoing cultural importance of TSRs to rural Australian culture and identity.²¹ Several large sculptures were placed in towns along the “Long Paddock” Cobb highway route, which remained in place for some time as a tourist attraction.²²

Many TSRs are also sites of heritage for the Aboriginal peoples of Australia,

¹⁹ Bev Smiles et al, above n2, at p. 21

²⁰ These three extracts were produced in Bev Smiles et al, above n2, at p. 22

²¹ Bev Smiles et al, above n2, at p. 21

²² Ibid.

with the presence of scarred trees, middens and artefacts serving as evidence of the first inhabitants' traditional spiritual and cultural connections with the land.²³

2. CURRENT ADMINISTRATION OF TRAVELLING STOCK RESERVES

2.1 Management of TSRs

Since 1 January 2014, the majority of TSRs are managed and administered by Local Land Services (LLS) under Part 6 of the *Local Land Services Act 2013* (LLS Act) and Part 5 of the *Local Land Services Regulation 2014* (LLS Regs). The role of Local Land Services in managing and administering the TSRs involves both regulating their use and attending to their upkeep.

The LLS Act defines travelling stock reserves as:

- (a) any route or camping place reserved for travelling stock route or camping place under the [Crown Lands Act 1989](#); or
- (b) any reserve for travelling stock, water reserve, reserve for access or crossing (where the reserve is for the purpose of providing travelling stock with access to or a crossing of water, whether expressly notified for that purpose or not), or
- (c) any stock watering place.
(section 61 LLS Act).

The Minister administering the *Crown Lands Act 1989* is empowered to reserve any Crown land from sale, lease or licence or for future public requirements or other public purpose, including for use by travelling stock (section 87 of the *Crown Lands Act 1989*). However, most TSRs were reserved under the forerunners of the *Crown Lands Act 1989*, discussed in the sections below.

Certain Local Land Services are vested with the care, control and management of TSRs in their respective regions, having inherited control from their predecessors, the Livestock Health and Pest Authorities under previous legislation (clause 12 of Schedule 6). The Minister administering the *Crown Lands Act 1989* can, by order published in the Gazette, also vest Local Land Services with the care, control and management of any TSR in NSW²⁴ (section 62(1)). The current control by Local Land Services of TSRs has been the product of several generation of local boards and authorities since 1918 (the Pastures Protection Boards, Rural Lands Protection Boards, and Livestock Health and Pest Authorities), and progressive changes to the legislation have transferred control, care and management of the TSRs to successive iterations. However, compared to the previous administrative bodies responsible for TSRs, Local Land Services offices have less strict obligations imposed on them by the legislation.

²³ Ibid, at p. 18

²⁴ Except for TSRs in a State forest or in the Western Division subject to a lease from the Crown

The Minister administering the *Crown Lands Act 1989* may, by order published in the Gazette, withdraw the care, control and management of a TSR from Local Land Services but only on the recommendation of the Minister administering the LLS Act (sections 63(1) and (2) of the LLS Act). The Minister administering the LLS Act, in making such a recommendation, must take into consideration any views of Local Land Services in deciding whether or not to recommend that an order withdrawing control be made (section 63(3)). The Minister is also able to refer the matter to the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services, who must inquire into the matter and submit a report of his or her findings in writing to the Minister (sections 63(4) and (5)). The Minister is not, however, bound to accept the report (section 63(6)).

The Minister administering the *Crown Lands Act 1989* (currently the Minister for Primary Industries) may also, by order published in the Gazette, withdraw from a TSR under the care, control and management of Local Land Services any land that is required as a site for a town or village or for any public purpose, other than the purpose of settlement under the Crown Lands Acts (section 64(1)). Again, such an order can only be made on recommendation by the Minister administering the LLS Act, and only after considering the views of LLS (sections 64(2) and (3)).

2.1.1 Travelling stock reserves under the control of Local Land Services

Where Local Land Services has been vested with control of TSRs, these TSRs are known as “controlled travelling stock reserves.” Local Land Services has the following management powers and responsibilities with respect to “controlled stock reserves”:

- Removing timber from up to 1 ha of land within controlled TSRs for the purposes of improving the TSR. To remove timber from more than 1 ha of land, Local Land Services must give notice 3 months’ beforehand to the Forestry Corporation under the *Forestry Act 2012* (sections 66 and 67 of the LLS Act);
- Closing a controlled TSR, in whole or in part, for the purposes of taking appropriate measures to conserve soil or vegetation, prevent or mitigate soil erosion, regenerate or plant trees or pasture, or to exercise any other functions of Local Land Services in relation to the reserve (sections 70(1)(a) and 70(2));
- Suspending any authorities to use a controlled TSR for recreational activities or any permits granted for stock to use a controlled TSR if use of the TSR for the purposes of the activity concerned or authorised in the permit could result in damage to the TSR (or part of it) or to any structure or other thing located on the TSR, or nuisance or annoyance to any members of the public (sections 70(1)(b), 70(1)(c), and 70(3));

Stock watering places, being portions of Crown land declared as such by the Minister administering the *Crown Lands Act 1989*, are also controlled and maintained by Local Land Services – with the exception of stock watering

places that are not declared by the Minister to be town water supplies, which are controlled by the relevant Council for the local government area (sections 107 and 108 of the LLS Act).

Stock watering places are a subset of “travelling stock reserves” and are taken to be “controlled travelling stock reserves” (section 61). As such, the provisions of the LLS Act applicable to controlled TSRs discussed above also apply to stock watering places. In addition, Local Land Services are empowered to construct and improve storage works on stock watering places (section 109), and to grant leases of stock watering places for up to 15 years (section 111 of the LLS Act and clause 78 of the LLS Regs).

Local Land Services and any lessee of stock watering places must:

(a) supply water (if available) to:

- i. persons requiring water for household purposes;
- ii. a local authority or Government agency that has obtained the approval of the controlling authority to use water from the stock watering place in the construction, improvement or maintenance of public roads;
- iii. persons requiring water for personal use related to a commercial purpose (such as supply of water to the patrons of a hotel, motel or other place providing accommodation to the public);
- iv. drivers of vehicles who require water for the operation of their vehicles;
- v. stock that are being agisted by the lessee of a stock watering place in accordance with the terms of the lease;
- vi. travelling stock that are subject to a stock permit under the LLS Act;
- vii. travelling stock that are subject to an order made or a permit issued under the [Stock Diseases Act 1923](#);
- viii. horses that are accompanied by riders

provided that the relevant fee determined by Local Land Services has been paid (section 112(a) of the LLS Act and clause 79 of the LLS Regs);or

(b) allow stock to depasture at the stock watering place in the circumstances, and in accordance with any conditions, prescribed by the LLS Regs (section 112(b)).²⁵

TSRs that are not under the control, care and management of Local Land Services, and stock watering places that are under the control of a body other

²⁵ At the time of writing, the LLS Regs did not make further provision with respect to the matters raised in section 112(b).

than a Local Land Service under Part 8 of the LLS Act, are known as “managed travelling stock reserves”.

But note that the role of Local Land Services, as this is set out under Part 6 of the LLS Act, extends to some degree to the use of all “managed TSRs” or “controlled TSRs”, with the legislation noting that Part 6 provides:

(a) for the *management, and regulation* of the use by travelling stock and persons, of travelling stock reserves that are fully controlled by Local Land Services, and

(b) for *regulation* of the use by travelling stock and persons of travelling stock reserves that are not fully controlled but are managed by Local Land Services and of public roads. (emphasis added)

The permit system in place under the LLS Act is discussed below.

Local Land Services is also responsible for controlling noxious weeds, pest animals and insects on TSRs, and for the provision and maintenance of fencing, watering points and stock holding yards.²⁶ Certain authorised Local Land Services officers and police officers are also empowered to request that stock on any part of a public road or TSR be mustered and inspected (section 103 LLS Act).

Local Land Services is not liable for damage or injury attributed to diseased travelling stock or the use of pesticides or chemicals on TSRs provided notice is given in accordance with the LLS Regs as to the relevant risks (sections 100 and 101 LLS Act).

2.1.2 Travelling stock routes ceded to Crown Lands (Trade and Investment)

As discussed above, even TSRs not fully controlled by Local Land Services are still, to some degree, regulated by them. However, the Crown Lands Division of the Department of Primary Industries also has certain legislative powers with respect to such TSRs.

Reserves ceded back from Local Land Services are dealt with under the provisions of the *Crown Lands Act 1989*.²⁷ The Minister for Primary Industries cannot exercise powers of sale or lease, or otherwise deal with TSRs ceded back to Crown Lands, unless an assessment of the TSRs has been carried out in accordance with Part 3 of the *Crown Lands Act 1989* (section 35). As part of the assessment process, the potential/preferred uses of the land are identified

²⁶ Local Land Services, “[Stock Routes](#)”, undated, accessed online on 17 September 2014. With respect to fencing, see sections 88 to 99 of the LLS Act

²⁷ Land and Property Management Authority, “[Assessing the values and management of the NSW travelling stock reserve network for biodiversity and optimal management in the Hunter Valley](#)”, Report on methodology and findings, August 2009, Land and Property Management Authority, at p. 10

by reference to: the land's particulars and capabilities; the views of any Government department or public authority etc. that expressed interest in the land; and the "principles of Crown land management" (section 33). The principles of Crown land management are:

- (a) that environmental protection principles be observed in relation to the management and administration of Crown land;
- (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible;
- (c) that public use and enjoyment of appropriate Crown land be encouraged;
- (d) that, where appropriate, multiple use of Crown land be encouraged;
- (e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity; and
- (f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

The Minister for Primary Industries is empowered to sell, lease, exchange or otherwise dispose of or deal with Crown land in accordance with the provisions of Part 4 of the *Crown Lands Act 1989* (section 34), and that power is not limited simply by the land in question being a reserve (including a TSR) (section 34AA).

However, if the Minister wishes to grant a licence, permit, easement or right-of-way over a Crown reserve, the Minister can only do so if he or she is of the opinion that the use or occupation of the Crown reserve under the proposed lease, permit etc. would be in the public interest and would not be likely to materially harm its use or occupation for the reserved purpose (section 34AA(1)). The matters relevant to determining whether the reserved purpose would likely be materially harmed include:

- (a) the proportion of the area of the Crown reserve that may be affected by the lease, permit etc.;
 - (b) if the activities to be conducted under the lease, permit etc. will be intermittent, the frequency and duration of the impacts of those activities;
 - (c) the current condition of the Crown reserve; and
 - (d) the geographical, environmental and social context of the Crown reserve
- (section 34AA(3) of the *Crown Lands Act 1989*).

The Minister is also able to grant a lease, licence or permit in respect of a reserve (including a TSR) or grant an easement or right-of-way over it, for the purposes of any facility or infrastructure or for any other purpose the Minister thinks fit (section 34A). The Minister cannot ultimately grant such an interest unless he or she is satisfied that it is in the public interest to do so, and has had due regard to the principles of Crown land management (section 34A(2)(c)).

As discussed in a later section of this paper, the *Crown Lands Act 1989* is currently under review. At the time of writing, further progress with the review has been postponed until 2015.

2.2 Regulation of the use of TSRs

This section deals with the usage of TSRs, whether “managed TSRs” or “controlled TSRs” regulated by Local Land Services through a prohibition/permit system.

A person must not, without lawful authority, enter or remain on a TSR, occupy or make use of any TSR for any purpose, or engage in any activity that damages, or is likely to damage, a TSR (section 72 LLS Act). Further, a person who owns or has charge of stock must ensure that the stock do not walk or graze on public roads (as defined in the *Roads Act 1993*) (section 73 LLS Act).²⁸ Breaching either of these provisions attracts a penalty infringement notice of \$300, or summary prosecution with a maximum penalty of \$5,500.

If a farmer or drover wishes to use a TSR for stock, he or she can apply to LLS for a “stock permit”. Authorised officers of LLS are empowered under section 78 of the LLS Act to issue stock permits to applicants with respect to a broad range of activities on travelling stock reserves and certain public roads (as defined in the *Roads Act 1993*). Stock permits may be issued:

to any person authorising the person to do anything (or omit to do anything) on or in relation to any public road or travelling stock reserve (whether controlled or managed) specified in the permit in respect of stock owned or in the charge of the person and that would otherwise contravene [Division 5 of Part 6 of the LLS Act] (section 78(1) LLS Act).

The LLS Act provides that, without limiting the range of activities that may be the subject of stock permits, stock permits may authorise a person to do any one or more of the following:

- (a) enter a controlled TSR with stock;
- (b) remain on a controlled TSR with stock;
- (c) walk stock on a public road or TSR; or
- (d) graze stock on a public road or controlled TSR;

(section 78(2) LLS Act).

These categories broadly correspond to the four types of stock permits specified on the [Local Land Services Website](#):

- Walking stock permit: used for long distance travel by travelling stock

²⁸ It is not an offence against section 73 if the stock are being walked or grazed under the authority of a stock permit or an order made or permit issued under the *Stock Diseases Act 1923* and in a number of other circumstances set out in clause 59 of the LLS Regs

walking from one region to another. Local stock may also use this type of permit in times of drought to travel throughout a particular region.

- Grazing stock permit: generally issued to landholders adjoining an enclosed TSR for use over an extended period. It is a condition of the permit that travelling stock are still permitted to access the TSR.
- Roadside grazing stock permit: issued for a short period of time over a specific section of road in times of drought or for hazard reduction.
- Annual stock movement permits: apply to routine movements of stock between two properties owned or occupied by the same person. Usually issued to local stock owners.²⁹

Stock permits authorising a person to graze stock (other than travelling stock³⁰) on a public road may not be issued without the concurrence of the local authority (if the road is not a Crown road) or the Minister administering the *Crown Lands Act 1989* (section 78(3) LLS Act). Permits may not be issued with respect to any freeways or tollways within the meaning of the *Roads Act 1993* (section 78(4) LLS Act).

Local Land Services may specify conditions in a stock permit which must be complied with. The precise conditions may vary depending upon the particular region, but the [LLS Website](#) suggests the following will generally apply:

- Stock must be deemed free of disease before entering a TSR or public road;
- Walking stock are limited to the route set out on the permit;
- Stock may only be walked over TSRs between sunrise and sunset – they must be yarded at night in a secure holding paddock or approved freestanding break.

The LLS Regulations impose a condition on all permits requiring the permit to be produced for inspection on demand by an authorised officer and to comply with any reasonable request made, or direction given, by an authorised officer (clause 73 LLS Regs).

In addition, persons moving or grazing stock in accordance with stock permits must ensure that the LLS Act and LLS Regulations are complied with (section 84 LLS Act). The LLS Regulations prescribe a number of matters concerning stock movements and grazing on TSRs and public roads, including:

- Preventing stock moving onto any carriageways on public roads between sunset and sunrise (clause 58);
- Keeping stock under control while the stock are on a public road or TSR (clause 64);

²⁹ Local Land Services, "[Stock Permits](#)", undated, accessed online – 17 September 2014

³⁰ "Travelling stock" means stock that are being moved by being walked, and include travelling stock that are grazing

- Minimum distances of travel for journeys lasting more than 24 hours, with additional fees payable to move at a slower rate (clause 74);
- Displaying stock warning signs and managing stock on or near public roads (clauses 53 to 57)

Fees are payable in respect of stock permits (section 79 of the LLS Act; clause 71(4) of the LLS Regulations). Fees for permits solely authorising a person to walk stock on TSRs are set by the relevant Local Land Service. The fees for permits solely authorising a person to graze stock on a public road or on a TSR are currently:

- (a) for small stock³¹—\$1 per day for each 10 or less small stock;
- (b) for large stock³² (other than horses and camels)—\$1 per day for each animal;
- (c) for horses and camels—\$2 per day for each animal.

Other permits, called reserve use permits, are available for recreation uses and apiary activities, subject to certain conditions (section 77 LLS Act).

Certain recreational activities may be carried out in TSRs between sunrise and sunset without any permit (except on TSRs in the Western Division, or in stock watering places), such as:

- Horse or camel riding;
- Picknicking;
- Fishing;
- Swimming;
- Pedal cycling

(section 74 of the LLS Act; clause 62 of the LLS Regs).

Unless a permit (either a stock permit or a reserve use permit) provides otherwise, the following activities are prohibited in TSRs:

- Wasting water provided on the TSR for stock;
- Diverting or in any other way interfering with the natural flow of water on the TSR;
- Swimming or bathing in a water tank or dam installed or constructed on the reserve;
- Lighting a fire in the TSR at any time when the lighting of fires in the reserve is prohibited by Local Land Services by signs displayed on or

³¹ “Small stock” is defined as all stock that is not horses, cattle, camels or deer (clause 3(1) of the LLS Regs).

³² “Large stock” is defined as horses, cattle, camels or deer (see Dictionary to the LLS Act).

near the reserve or at any other time except in a fireplace designated by Local Land Services;

- Damaging or interfering with structures, appliances or other articles forming part of or lawfully on a TSR; or
- Interfering with stock or beehives that are lawfully on a TSR;

(clause 63 of the LLS Regs).

3. EVOLUTION OF TSRs

3.1 Origins

The origins of the network of TSRs in NSW are not fully documented. A key work is Tom L. McKnight's *The Long Paddock: Australia's Travelling Stock Routes*, which is drawn on substantially throughout this section of this paper. McKnight views the evolution of the regulation and administration of TSRs in two broad legislative tendencies:

- the need to regulate increasing use of the TSR network; and
- the desire to develop a system of pastoral districts to enable administrative functions (which included controlling TSRs) to be managed on a regional basis.³³

According to McKnight's research, the first stock routes were developed in two stages as pragmatic responses to contemporary needs. The first stage was during the initial settlement of new country, where cattle and sheep were "overlanded" to the new pastoralist settlements. In NSW, this is likely to have occurred in the early to mid-1800s.³⁴ The second stage involved the need to move the stock back towards key markets once these settlements had become more established.³⁵ He writes that the initial routes were likely laid out along a path of "least resistance", in close proximity to feed and water and where the topography was kind to stock movements.³⁶

Stock routes then rapidly proliferated throughout the more densely occupied portions of pastoral Australia, with alternatives to main routes being established, feeder trails developed, and with this the increasing recognition of the routes at law as well as in custom.³⁷

Recently, it has been suggested³⁸ that many TSRs emerged from networks of

³³ Tom L. McKnight, *The Long Paddock: Australia's Travelling Stock Routes*, University of New England, 1977 at p. 42

³⁴ *Ibid* at pp. 35-37

³⁵ *Ibid* at pp. 36 to 37

³⁶ *Ibid* at p. 35

³⁷ *Ibid* at p. 41

³⁸ See P Spooner, M Firman, Yalmambirra, "Origin of Travelling Stock Routes. 1. Connections to Indigenous traditional pathways", 2010 *The Rangeland Journal* 32, pp. 329-339, referred to in Bev Smiles et al at p. 18

travel lines developed by the original inhabitants of this land, criss-crossing the continent prior to European contact. The travel lines connected food and water sources and were used for travel, trade and ceremonial purposes.³⁹ These routes, like the early TSRs, would have followed the most accessible routes thought the landscape and keeping close to water sources. It is thought that many TSRs may have developed from pastoralists observing the original inhabitants' use of these trails, or through transfers of knowledge between pastoralists and local guides and trackers.⁴⁰

3.2 1830s to 1860s Initial Regulation – the Scab in Sheep Acts and early Crown Land legislation

Regulation of TSRs initially arose indirectly through the desire to limit the spread of diseases amongst stock.

In 1832, Governor Bourke enacted the *Scab in Sheep Act 1832*, to prevent the extension of an infectious disease in sheep generally known as “scab” (a minor form of mange).⁴¹ The Act prohibited the conducting or driving any sheep or lambs infected with the disease on or over “public roads or way used as a public way for driving sheep from one part of the Colony to another” in any month other than February (section 1).

During February, if infected stock were conducted or driven on the public roads or ways, the drover or other person responsible for the sheep was required to “cause public notice to be given of such infection by affixing the same in writing in distinct legible characters at some conspicuous place at each end of such public road or way” (section 2). Hefty penalties applied for breaching either of these provisions.

The *Scab in Sheep Act 1832* was found at the time to be effective and was made perpetual in 1834.⁴² In 1835, the application of the Act was extended to apply throughout the Colony (it was initially limited to land “within the boundaries of the Colony prescribed for location to settlers” and “public road[s] or way[s] used as a public way for driving sheep”).⁴³ The *Catarrh in Sheep Act 1838* imposed a similar prohibition with respect to driving or conducting sheep afflicted by catarrh or influenza.

Numerous amending acts were passed throughout the 1830s and 1840s concerning diseases in sheep, and these were consolidated in the *Scab in Sheep Act 1846*.

The *Scab in Sheep Act 1846* imposed a fine of between £5 and £50 for any person who permitted sheep infected with scab, influenza or catarrh to enter

³⁹ Bev Smiles et al at p. 18

⁴⁰ Ibid

⁴¹ McKnight, above n33, at p. 43

⁴² *Scab in Sheep Act Perpetuation Act 1834 5 Gul IV No. 19*

⁴³ *Scab in Sheep Act 1835 6 Gul IV No. 10*

onto or be kept on land within a quarter of a mile of any public road or way used as a public way or any other land not owned by or in the possession of the driver of the sheep (sections 2 and 3). If infected sheep were kept or depastured upon any land intersected by a public road or a public way, the proprietor or person in charge of the sheep was required to give public notice of the infection at the entry to the road or way intersecting the land (section 4).

The *Scab in Sheep Act 1846* was repealed and replaced in 1853 by the *Scab in Sheep Act 1853*. The 1853 Act made further provision for managing infections and dealing with infected sheep, but the extent to which public ways were regulated remained unchanged. Parts of the 1853 Act were repealed and replaced by provisions of the *Scab in Sheep Act 1854*.

The 1854 Act principally concerned the destruction of infected sheep and compensation to landowners. The 1854 Act also retained provisions requiring notice to be affixed to the entrances of public ways intersecting runs on which infection had broken out (section 12), and provided for the appointment by the Governor of the State's first Sheep Inspectors (section 16). Their role was to examine sheep and to assist generally in carrying the provisions of the 1854 Act into effect.

The 1854 Act was repealed and re-enacted in 1855 by the *Scab in Sheep Act 1855*. The 1855 added a requirement that:

Every shepherd or other person in charge of sheep which shall be driven or carried along or over any place beyond the boundaries of location other than the run on which the same shall ordinarily be kept and depastured shall give oral and written notice of the approach of the said sheep to the owner or person in charge of every run beyond such boundaries of location through which it may be intended that they shall pass at least twelve hours before such sheep are expected to arrive at the boundary of the said run unless there shall be a fenced line of road through or alongside such run and in default of giving such notice as aforesaid every such shepherd or other person so in charge of sheep as aforesaid shall forfeit and pay for every such offence a penalty not exceeding five pounds (section 16).

Inspectors were empowered to stop and examine travelling sheep (section 19).

A new *Scab in Sheep Act 1861* was enacted to renew the provisions under previous legislation, which had lapsed under a sunset clause. This Act included a new requirement to brand travelling sheep whether they were infected or not (section 12).⁴⁴

Also in 1861, the *Crown Lands Occupation Act 1861* and *Crown Lands Alienation Act 1861* were enacted to unlock land occupied by squatters. Under the *Crown Lands Occupation Act 1861*, it became possible to lease land outside of settled town boundaries for certain purposes, including pastoral purposes. Section 5 of the Act permitted the Governor, on the advice of the Executive

⁴⁴ Previously only infected stock needed to be branded

Council, to withdraw from leased land any lands which may be required for public purposes, including “for any roadway for general traffic or for passage of stock”. The 1861 Act therefore amounted to the first instance of formal reservation of Crown land for the purpose of travelling stock. Further, section 19 of the Act provided:

Any person driving horses cattle or sheep along any track used or required for the purpose of travelling may depasture the same on any Crown Lands within the distance of one half mile of such track notwithstanding any lease of any such lands for pastoral purposes. Provided that unless prevented by rain or flood such horses or cattle shall be moved at least seven miles and such sheep at least four miles in one and the same direction within every successive period of twenty-four hours.

These provisions, it has been suggested, were made to protect the interests of both adjoining landholders and subsequent drovers interests in light of the intensive usage of TSRs at this time and the need to conserve feed and water resources along routes.⁴⁵

By this time it was clear that previous attempts to control the spread of disease were ineffective. For this reason, the *Scab in Sheep Prevention Act 1864* was enacted.⁴⁶ It introduced regional “Scab Districts” throughout the colony, established by the Governor with the advice of the Executive Council, and under the auspices of a Chief Inspector of Sheep.⁴⁷

Owners of sheep in each district were required to pay rates and elect Directors for each Scab District (sections 37-40 of the 1864 Act). The Directors would then nominate sheep Inspectors, the Directors themselves also being Inspectors (section 7). The Inspectors were empowered to inspect and examine any sheep in their Scab District, and any owner who discovered infected sheep amongst their flock was required to notify the Inspectors, who would issue the owner with a licence to keep the sheep (sections 11 and 13).

The legislation touched on TSRs in a number of ways. If a holder of land which was traversed by a public way (including a public way for stock movements) became aware of infected sheep amongst his flock, he was required to affix a notice at each point of entrance to the public way stating that scab had broken out on his run and also publish a copy of the notice in a locally circulating newspaper (section 12).

Further, any owner of sheep driving or conducting them across or upon any property or public way which intersects a property was required to give between 48 and 24 hours’ notice to the owner of the property (section 23). Travelling sheep were to be branded, (section 24), and the owner of a property through which sheep were being conducted was empowered to examine any sheep and

⁴⁵ McKnight, above n33, at p. 43

⁴⁶ Ibid.

⁴⁷ Ibid.

detain them “upon reasonable suspicion of their being infected” (section 25).

3.3 1860s to 1900s: The Diseases in Sheep Acts - Towards a more formal framework

The *Scab in Sheep Prevention Act 1864* was repealed in 1866 and replaced by the *Diseases in Sheep Act 1866*. This Act retained the core elements of the 1864 legislation, including the branding and notice giving requirements, but made further provision for the operation of Scab Districts (renamed “Sheep Districts”) and provided a tighter regulatory framework.

The 1866 Act also introduced, for the first time, a requirement to obtain a type of approval to move certain stock. This took the form of a certificate from the Inspector in order to move sheep from:

- any district in which infection existed at the time of travel, or had existed within a period of 12 months previously;
- a district adjoining any such district; or
- a district adjoining any Colony which may be notified in the Gazette from time to time by the Minister as a Colony in which infection exists;

(section 40).

The certificate necessary to move the sheep certified that the sheep were free from scab and that they were permitted to travel via the specified route (Schedule I).

Where an owner wanted to move sheep from a district not mentioned above, the Act required the owner to notify the Inspector of the intended date of departure, route and destination of the sheep (section 40). Non-compliance would attract penalties of up to £50.

Meanwhile, Gazette Notices reserving land for the purposes of routes and reserves for travelling stock started appearing in the NSW Government Gazette in around 1874.⁴⁸ That same year, the first government reference to TSRs appeared in the livestock report section of the first Annual Report of the Department of Mines and Agriculture, Stock and Brands Branch.⁴⁹ The Report stated that:

These reserves are very far from being in a satisfactory state. A great deal too few have been proclaimed, and the most suitable land for them is being fast taken up by selectors along the main droving roads; while those that have been proclaimed are rendered comparatively valueless to drovers by the occupants of the adjoining land consuming the grass.⁵⁰

⁴⁸ Tim Dauth and Michael Flynn, “A Timeline History of Travelling Stock Reserves in NSW”, NSW Crown Solicitor’s Office, Client Seminar 22 September 2010, at p. 4

⁴⁹ P. G. Spooner, “On Squatters, Settlers and Early Surveyors”, (2005) 36 *Australian Geographer* 55, at p. 64

⁵⁰ Extracted in P. G. Spooner, *ibid* at p. 64

This was followed, also in 1874, by circulars and correspondence tabled in proceedings of the NSW Legislative Assembly as “Reserves for Travelling Stock.” In these documents, district stock inspectors expressed their urgency to gazette and formalise the existing network of informal stock routes and reserves to protect them from settlers.⁵¹

In 1878 the *Diseases in Sheep Acts Amendment Act 1878* was enacted, amending the *Diseases in Sheep Act 1866*. The 1878 Act imposed further requirements on sheep movements in certain districts declared by the Governor by notice in the Gazette (section 14(1)). In these declared districts, every owner intending to travel 200 or more sheep from any run was required to forward to the inspector of the particular district a statement in writing setting out the number, description, brands, and marks of their sheep and their intended route and destination prior to travel (section 14(1)). The owners needed to obtain a permit from the Inspector, which would specify the route and destination (section 14(1)).

In addition to imposing the first permit system for travelling stock, the 1878 Act also introduced the first travelling charges for stock on TSRs, albeit in limited circumstances. If the sheep moved under a permit were moved again within four months after completing their first journey, the owner was required to obtain a renewed permit for every second or subsequent movement. For these second and subsequent permits, a travelling charge of twopence per one hundred sheep per mile was payable (section 14(2)). These charges were also payable if travelling sheep were brought back to the run from which they started to travel, or to any run in the same district. The charge would be based on the full distance of the round trip (i.e. not just the return leg of the journey) (section 14(3)).

The 1878 Act also expanded the regulatory framework to include cattle and horses, as well as sheep, in certain situations. In addition to the requirements for sheep set out in section 14 of the 1878 Act and section 40 of the *Diseases in Sheep Act 1866*, every drover in charge of travelling sheep, horses and/or cattle was to be provided at the time of departure with a “travelling statement” signed by the owner of the stock (section 15 of the 1878 Act). These statements were to indicate the number of stock, their description, marks and brandings and whether they were diseased or sound. The statements were to be produced, along with any permits required with respect to travelling sheep, upon demand to any Inspector, police constable, justice or occupier of any run through which or along the boundary-road of which the stock were to proceed (section 15).

Routes set out in travelling statements or permits could be altered, with the approval of any Director or Inspector of Stock, if for sufficient cause the route could not be followed or if stock were sold on the road (section 16).

⁵¹ Ibid.

The 1878 Act also imposed tighter regulations on how stock were to be moved. Drovers were to take stock by “any direct road ordinarily used for the purpose of travelling stock to the place of destination mentioned in the permit or travelling statement for such stock” (section 16). Further, unless bona fide prevented by rain or a flood, the Act required sheep to be moved at least six miles per day, and cattle or horses at least ten miles per day, in one direction along the route (section 16).

Travelling sheep (but not, it appears, other stock) could be kept with the sanction of the Inspector for up to 48 hours on any reserve for travelling stock for the purpose of branding the sheep or for carrying out any other necessary provision of the relevant legislation (section 16).

It became an offence to take or depasture any stock upon any Crown lands reserved for travelling stock unless they were bona fide “travelling stock” (section 19). “Travelling stock” was a defined term meaning any stock travelling to any place upwards of forty miles distant from that on which they were when their permit to travel or travelling statement was granted (section 3). Essentially, this meant that only stock with the appropriate permit or travelling statement could use Crown land travelling stock reserves.

The regulatory measures implemented under the *Diseases in Sheep Act 1866* and the *Diseases in Sheep Acts Amendment Act 1878* would remain in place for some time. Outside of the ambit of the Diseases in Sheep Acts, there were other legislative developments touching on TSRs throughout the late 1800s:

- The *Pastures and Stock Protection Act 1880*

Under this Act, the Boards of directors for each of the Sheep Districts (now simply called “Districts”) were expanded from five to eight members, with the additional three members being owners of large stock (i.e. cattle) in the district.⁵² The Boards were granted powers with respect to controlling “noxious animals” such as rabbits, marsupials and dingoes. Save for the change in structure of the Boards, there was no change to the regulation of TSRs. The Act was repealed and replaced in similar terms in 1898 by the *Pastures and Stock Protection Act 1898*. Again, the Boards under the 1898 Act were principally concerned with the eradication of noxious animals. No changes to the regulation of TSRs were made by this Act.

- The *Public Watering Places (No. 2) Act 1884*

Section 3 of this 1884 Act empowered the Governor to make and revoke reserves “for the purpose of establishing public watering-places and for the accommodation and agistment of travelling stock.” The Act also provided for the construction of tanks, dams or other works for storing water (section 5). The Governor was also empowered to appoint inspectors and overseers for the purpose of the Act, and caretakers of

⁵² McKnight, above n33, at p. 43

particular reserves were to be appointed. Any owner or person in charge of stock using a public watering place or travelling stock or camping reserve under the Act was required to show the caretaker (or other person in charge of the reserve) their proper permit or travelling statement (issued under the Diseases in Sheep legislation discussed above)⁵³ on demand.

The Act was repealed and substantially re-enacted in the same form in the *Public Watering-Places Act 1900*.

- The *Local Government (Shires) Act 1905*

This Act transferred to the various Shires certain responsibilities under the *Public Watering-Places Act 1900*, including constructing tanks, dams or other facilities adjacent to roads or on reserves to serve as public watering places, and to appoint caretakers of the public watering-places who could provide water to travelling stock at prescribed rates (section 9 and Schedule 1 of the *Local Government (Shires) Act 1905*).

- The *Crown Lands Act 1884*

This Act repealed (inter alia) the *Crown Lands Occupation Act 1861*. It divided the State into three divisions – the Eastern, Central and Western Divisions. It also established land districts (separate to the Districts under Pastures and Stock Protection legislation) and Local Land Boards, which were responsible for (amongst other things) dealing with applications for interests and tenures in Crown land.⁵⁴ In addition, the Act made renewed provision for the Governor by notification in the Gazette to:

define and set apart routes not exceeding one mile in width through any leasehold or any land held under occupation licence for the passage of stock travelling pursuant to the provisions contained in the fifteenth section of the Act forty-first Victoria number nineteen or any Act amending same and may also define and set apart camping places for travelling stock not in any case exceeding one square mile. Such routes and camping places shall be determined in the first instance by the Local Land Board and the lessee or licensee of any lands within which such routes or camping places are situate shall not be entitled to impound any stock travelling as aforesaid or to maintain any action for trespass in respect thereof while such stock shall keep within the boundaries of the said routes or camping places.

⁵³ Namely, the *Diseases in Sheep Act 1866 30 Vic No. 16*, the *Diseases in Sheep Amendment Act 1876 40 Vic No. 4*, and the *Diseases in Sheep Acts Amendment Act 1878 41 Vic No. 19*

⁵⁴ For a more in depth discussion of the *Crown Lands Act 1884* and its context within the development of Crown lands management in NSW, see Roth, L., "[Crown land management](#)", e-brief No. 15/2014, NSW Parliamentary Research Service, November 2014

3.4 1900s to 1930s: Consolidated legislation and the first Pasture Protection Boards

McKnight writes that, by the 1900s, the legislative framework for stock routes, districts, and boards had become increasingly complicated and convoluted, largely as a result of the various *Pasture and Stock Protection Acts* and separate “Rabbit Nuisance” Acts and district-based boards.⁵⁵

The *Stock Act 1901* consolidated and repealed much of the existing legislation concerning stock protection and movements, including the *Diseases in Sheep Act 1866* and the *Diseases in Sheep Acts Amendment Act 1878*. The Act simply re-enacted much of the previous legislation,⁵⁶ including the provisions of the *Diseases in Sheep Acts* pertaining to travelling stock (Divisions 8 and 9 of the *Stock Act 1901*). However, separate acts remained for rabbit and other pest control, with separate administrative bodies.

The *Pastures Protection Act 1902* was passed to remedy the situation by consolidating the various acts. It provided for Pastures Protection Boards, with seven locally elected members for each district. Pastures Protection Districts were to be constituted by the Governor (section 5). 66 Pastures Protection Districts were established and their boundaries remained roughly the same at least until the 1970s (save for certain areas near the urbanised eastern coast).⁵⁷

Divisions 3 and 4 of Part 4 of the *Pastures Protection Act 1902* re-enacted (with minor changes) Divisions 8 and 9 of the *Stock Act 1901*, thereby continuing the regime of certificates, permits and travelling statements for travelling stock established by the *Diseases in Sheep Act 1866* and the *Diseases in Sheep Acts Amendment Act 1878*. The minor changes with respect to travelling stock were:

- Previously, as discussed above, an owner needed a permit to move 300 or more sheep in certain districts declared by the Governor.⁵⁸ The 1902 Act initially reduced this threshold so that owners moving only 200 or more sheep needed a permit (section 96(1)). By amendment in 1906, the threshold was removed completely, and a permit was required regardless of how many sheep were being moved,⁵⁹
- Previously permits to move sheep were only required before leaving the district in which the sheep originated. Amendments to the 1902 Act in 1906 imposed a requirement to obtain a permit before the sheep left their *run* (i.e. property or landholding). A permit was not necessary where sheep were being removed from one run to another belonging to the

⁵⁵ McKnight, above n33, at p. 46

⁵⁶ King, C. J., *An outline of closer settlement in New South Wales*, Part 1, Division of Marketing and Agricultural Economics, Department of Agriculture, NSW, 1957, p. 141

⁵⁷ McKnight, above n33, at p. 46

⁵⁸ Section 14 of the [Diseases in Sheep Acts Amendment Act 1878 41 Vic No. 19](#); section 67(1) of the *Stock Act 1901*

⁵⁹ Section 36(a) of the *Pastures Protection (Amendment) Act 1906*

same owner, as long as the two runs were not more than 40 miles apart;⁶⁰ and

- Where a change of route to that set out in a permit or travelling statement was sought, the 1902 Act gave the relevant Inspector the power to impose an additional travelling charge from the point where the change of route begins to the destination if, in the opinion of the inspector, the sheep involved were travelling in search of grass or of a purchaser (section 98(3)).

Further consolidation of the legislation occurred with the enactment of the *Pastures Protection Act 1912*. No changes were made to the provisions concerning travelling stock or TSRs.

However, subsequent amendments to the 1912 Act by the *Pastures Protection (Amendment) Act 1918* and the *Pastures Protection (Amendment) Act 1920* saw Pasture Protection Boards, in certain circumstances, given greater responsibility for the management of TSRs:

- New definitions for “travelling stock reserve” and “camping reserve” were introduced, meaning “any travelling stock route, reserve for travelling stock, or camping reserve, or water reserve or reserve for crossing and access notified or dedicated as such either separately or otherwise under the provisions of the Crown Lands Acts”.⁶¹ Thus the provisions with respect to the reservation of specific land for TSRs were formally connected with the legislation controlling their use for the first time.

For instance, previously section 107 of the *Pastures Protection Act 1912* required all travelling stock to be taken by their drover simply by “any direct road ordinarily used for the purpose of travelling stock to the place of destination mentioned in the permit or travelling statement”.⁶² The amendments explicitly required drovers to take stock via the travelling stock or camping reserves dedicated under the Crown Lands Acts, where there were such reserves available *en route* to their destination.⁶³

- The Minister for Lands was empowered to place travelling stock reserves and camping reserves under the control of Pasture Protection Boards for 5 years or more (except for reserves within a State forest or the Western Division). The Boards would be responsible for the general management, maintenance and control of the reserves. For instance, the Boards were required to take proper measures to protect the reserves from trespass and from rabbits and other noxious animals. They were also required to maintain and improve the reserves by clearing scrub, noxious weeds and

⁶⁰ Sections 36(b) and (c) of the *Pastures Protection (Amendment) Act 1906*

⁶¹ Section 4(i)(f) of the *Pastures Protection (Amendment) Act 1918*; section 3 of the *Pastures Protection (Amendment) Act 1920*

⁶² This section was originally introduced as section 16 of the *Diseases in Sheep Acts Amendment Act 1878 41 Vic No. 19*, discussed above

⁶³ Section 4(xxiv) of the *Pastures Protection (Amendment) Act 1918*

plants, ringbarking or felling trees (with the concurrence of the Forestry Commission), fencing and providing water sources.⁶⁴

These measures were taken as part of a deal brokered between the Government and the various Boards. For some time in the lead up to the legislation, the Government had been seeking to “unlock” a substantial amount of land within the travelling stock routes and reserves for settlement. In 1917, it was agreed that the Pasture Protection Boards would hand over to the Government some 500,000 acres of land comprised of obsolete travelling stock reserves and routes to be used for settlement. In return, the Government would hand over control and management of the travelling stock reserves to the Pastures Protection Boards for a trial period of five years.⁶⁵

- Pasture Protection Boards were also empowered to impose and collect a rate on all travelling stock and working large stock⁶⁶ driven along or over travelling stock reserves, camping reserves, or roads in the Eastern Division and Central Division. These rates were to be used to form a “Reserves Improvement Fund” for each district to assist the Boards with their new responsibility to improve and maintain the reserves.⁶⁷
- The Boards were also able, subject to the approval of the Minister for Lands, to grant permits to graze (as opposed to moving stock) over any travelling stock reserve or camping reserves for periods of up to 12 months, with proceeds from the permits to be allocated to the relevant district’s Reserves Improvement Fund.⁶⁸
- The Boards were, subject to the written consent of the Minister for Lands, able to appear before the Local Land Boards where the Boards were considering a proposed curtailment of a travelling stock or camping reserve.⁶⁹
- The Minister for Lands was also given the power to withdraw from travelling stock or camping reserves any lands required as sites for towns or villages, or for any other public purpose under the Crown Lands Acts in force at the time.⁷⁰

⁶⁴ Section 2 of the *Pastures Protection (Amendment) Act 1918*, inserting new section 26A into the *Pastures Protection Act 1912*; Section 3 of the *Pastures Protection (Amendment) Act 1920* amending section 26A(2) of the *Pastures Protection Act 1912*

⁶⁵ NSW Parliamentary Debates, 1918, p. 2992.

⁶⁶ Such as horses and cattle use for transportation purposes

⁶⁷ Section 2 of the *Pastures Protection (Amendment) Act 1918*, inserting new section 26C into the *Pastures Protection Act 1912*; section 3 of the *Pastures Protection (Amendment) Act 1920*, inserting new section 26C(1A) into the *Pastures Protection Act 1912*

⁶⁸ Section 2 of the *Pastures Protection (Amendment) Act 1918*, inserting new section 26D into the *Pastures Protection Act 1912*

⁶⁹ Section 4(v) of the *Pastures Protection (Amendment) Act 1918*, inserting new section 17A into the *Pastures Protection Act 1912*

⁷⁰ Section 2 of the *Pastures Protection (Amendment) Act 1918*, inserting new section 26B into the *Pastures Protection Act 1912*

A new regime for permits was established, altering the permit and travelling statement system retained since its introduction by the *Diseases in Sheep Acts Amendment Act 1878*. Before the 1918-20 amendments to the *Pastures Protection Act 1912*, only owners of *sheep* being moved from certain districts were required to obtain a permit and pay travelling charges.⁷¹ Owners of stock other than sheep were merely required to issue their drovers with a “travelling statement” setting out their route, destination and details of the stock.⁷² Under the changed arrangements:

- Permits were required to move large stock, as well as sheep, in the relevant districts declared by the Governor, and those permits were to be issued on application in writing to the Permit Inspector or Inspector for the District.⁷³ The position of Permit Inspector was a new addition to the regulatory framework, designed to make the permit process more convenient for isolated graziers.⁷⁴ Travelling charges where stock were moved again within four months of completing their initial journey were also extended to large stock, as well as sheep.⁷⁵
- Permits were not required:
 - to move large stock up to 20 miles within certain identified Districts on the northern coast. This was because of the small scale of grazing activities in these Districts and the relative lack of travelling stock routes⁷⁶; or
 - to move sheep or large stock from one run to another belonging to the same owner provided those two runs are not more than 12 miles apart.⁷⁷ This represented a tightening of control through permits, as previously permits were not required where the stock was being moved no more than *40 miles*, and the two runs were in the same ownership. The reduction was intended to militate against the risk of stock theft.⁷⁸

Owners who fell into these categories only had to issue their drovers with a travelling statement setting out the route, destination and stock details

⁷¹ Section 105(1) of the *Pastures Protection Act 1912*

⁷² Section 106(1) of the *Pastures Protection Act 1912*

⁷³ Section 3 of the *Pastures Protection (Amendment) Act 1920*, inserting a replacement subsection 105(1) into the *Pastures Protection Act 1912*

⁷⁴ NSW Parliamentary Debates, 1 December 1920, p. 2976

⁷⁵ Section 4(xxii) of the *Pastures Protection (Amendment) Act 1918*, amending section 105(1) of the *Pastures Protection Act 1912*

⁷⁶ New South Wales Parliamentary Debates, 1 December 1920, p. 2976

⁷⁷ Section 4(xxii) of the *Pastures Protection (Amendment) Act 1918*, amending section 105(1) of the *Pastures Protection Act 1912*

⁷⁸ Indeed there was substantial debate on the second reading of the Bill as to the appropriate distance over which stock could be moved between runs without a permit. See NSW Parliamentary Debates, 1 December 1920, pp. 2976-2983.

prior to departure.⁷⁹ Travelling statements ceased to be required in any other situation.

Meanwhile, changes were also made to the Crown Lands legislation under which land was reserved or dedicated for use by travelling stock. Under the new *Crown Lands Consolidation Act 1913*:

- The Minister was granted the power initially granted to the Governor under the *Crown Lands Act 1884* to define and set apart, by notification in the Gazette, routes up to one mile in width through any land held under lease or license for the passage of stock travelling under section 106 of the *Pastures Protection Act 1912*. The Minister could also define and set apart camping places for travelling stock not in any case exceeding one square mile. These routes and camping places were to be determined initially by the Local Land Board (section 34).

This power was in addition to the Minister's general power to dedicate Crown lands for public purposes (section 24) and to reserve land from sale, lease or licence for any public purpose (sections 28 to 33).

- Further, the holders of certain leases under the *Crown Lands Consolidation Act 1913* in the Eastern or Central Divisions could apply to convert their leases into more secure tenures, such as a conditional purchase lease or homestead selection (section 190). If any of the land the subject of such applications falls within (wholly or in part) a travelling stock reserve, camping reserve, or water reserve, additional notification requirements were imposed (section 190(4)).
- The Governor was empowered under section 197 of the *Crown Lands Consolidation Act 1913* to acquire, for the purpose of a travelling stock route, camping reserve, watering place or for any public purpose any land of any tenure.⁸⁰
- Lessees or licensees of lands containing travelling stock routes or camping places were expressly disentitled from impounding any stock travelling pursuant to the provisions of the *Pastures Protection Act 1912*, or from bringing any action for trespass, as long as the stock kept within the boundaries of the routes/reserves or camping places (section 250(3) *Crown Lands Consolidation Act 1913*).

In 1919, with the passage of the *Local Government Act 1919*, local councils were granted various powers with respect to public roads.⁸¹ One of these

⁷⁹ Section 3 of the *Pastures Protection (Amendment) Act 1920*, inserting a replacement section 106(1) into the *Pastures Protection Act 1912*

⁸⁰ Similar provision was made with respect to land within defined settlement areas under the *Closer Settlement Acts* and land within the Western Division under the *Western Lands Act 1901*. See, respectively, the section 13 of the *Closer Settlement (Amendment) Act 1914* and section 6(2) of the *Western Lands (Amendment) Act 1918*

⁸¹ "Public road" was defined as any road which the public are entitled to use, and includes any road dedicated as a public road by any person or notified, proclaimed or dedicated as a public road under the authority of any Act

powers included the ability to provide, maintain and regulate watering and camping sites for use by the public and travelling stock on or near roads, and charge a fee for such use (section 249(w) of the *Local Government Act 1919*).

According to McKnight, the period between World War One and World War Two saw TSRs in NSW heavily used, albeit erratically and depending upon seasonal conditions.⁸² Typical movements included replacement sheep being taken to western properties, market-bound sheep being brought eastward, fat stock going to saleyards and abattoirs, and a continuing flow of cattle and sheep across NSW to Victorian markets.⁸³ The routes and reserves were also populated from time to time with cattle overlanding across NSW from Queensland to Victoria, which were, at the time, required by law to be quarantined for 180 days after leaving Queensland before entering Victoria.⁸⁴ During this time, it was common for drovers to slowly walk their cattle along the north-south stock routes in NSW.⁸⁵

During periods of drought, the routes and reserves were increasingly used by stock in search of food and water.⁸⁶ This led to complaints in the 1920s and 30s about TSRs being “skinned” by stock from adjacent runs to the detriment of genuine travelling stock.⁸⁷

3.5 1930s to 1980s – Changing roles for TSRs and the *Pastures Protection Act 1934*

The *Pastures Protection Act 1934* repealed and replaced the amended *Pastures Protection Act 1912*. Previous sections of this paper have considered incremental changes to the regulatory framework over time. It is now useful to provide an overview of the consolidated regulatory framework under the *Pastures Protection Act 1934*, as first enacted.

Most of the 1934 Act was a consolidation and re-enactment of the provisions of the *Pastures Protection Act 1912*, as amended. However, there were also some significant and controversial changes. When seeking leave to introduce the Bill, the then Labor Minister for Agriculture, John Trefle, stated that:

The present Act relating to pastures protection has been in operation for twenty-one years, during which time a number of anomalies have been discovered in it... the necessary amendments are so numerous that it has been considered necessary to recast the whole measure. For that purpose the present *Pastures Protection Act* is being repealed and an entirely remodelled measure brought in.

⁸² McKnight, above n33, at p. 53

⁸³ Ibid, p. 55

⁸⁴ This was a quarantine period to help control pleuropneumonia, a disease endemic in cattle in northern Queensland at the time

⁸⁵ McKnight, above n33, at p. 55

⁸⁶ Ibid.

⁸⁷ Ibid.

Some of the key changes, which are discussed more fully in the summary of the 1934 Act below, included:

- Securing the Pasture Protection Boards' control over TSRs, and making it harder for the Minister to remove their management powers or to withdraw land from the TSRs; and
- The vesting in Pasture Protection Boards with the management and control of public watering places.

3.5.1 The *Pastures Protection Act 1934* as first enacted

Administration and management of travelling stock routes and reserves

As with previous legislation, the 1934 Act established Pasture Protection Boards for each District, comprised of eight locally elected unpaid Directors.⁸⁸

The Boards were now vested with control of TSRs in perpetuity, subject to withdrawal by the Minister for Lands with the approval of both Houses of Parliament. Section 41(1) of the 1934 Act stated that:

Every travelling stock reserve, camping reserve,⁸⁹ or part thereof under the control of a board at the commencement of this Act or placed under the control of a board pursuant to this Act, shall remain under the control of the board until the reserve or part is withdrawn from such control in pursuance of the provisions of this Part.

The Minister for Lands was able to grant a Board control and management of any travelling stock reserve, camping reserve or part thereof, unless the reserve in question was within the Western Division (section 41(2)).

⁸⁸ Section 6(1) of the *Pastures Protection Act 1934*; Hampton, D., "Review of Multiple Use Options for the Management of Travelling Stock Reserves in New South Wales", Discussion Paper, Crown Lands Office Land Resources and Environment Branch, 1982, at p. 10. The mechanics of how the Boards were elected and the payment of rates (distinct from travelling stock rates) are not discussed in this paper. For a fuller summary of the regime in place under the *Pastures Protection Act 1934* see McKnight, above n33, at pp. 46-48.

⁸⁹ "**Travelling stock reserve**" or "**reserve**" was defined as any travelling stock route, camping place or reserve for a camping place, reserve for travelling stock, water reserve, reserve for access to or crossing of water, or reserve for the use of teamsters, notified, reserved, or dedicated for any one or more of such purposes under the provisions of the Crown Lands Acts or the Western Lands Acts, the notification, reservation, or dedication of which has not been revoked at the commencement of this Act, and any public watering place. "**Camping reserve**" did not have a separate definition for itself, but rather appears to have been subsumed within the definition of "travelling stock reserve".

"**Travelling stock**" was defined as stock driven or carried by rail or otherwise on land or by air or by water while not being used by the owner for transport purposes, whilst "**stock**" was defined as cattle, horses, sheep and camels. "**Teamster**" meant the person for the time being in charge of any team of "**working large stock**", being large stock in use for purposes of transport. "Large stock" referred to horses, cattle or camels.

Under the *Pasture Protection Act 1912*, the Boards had been vested with control of the reserves for five year periods. However, the Minister for Lands had the option not to re-grant control of the reserves to the Boards at the end of each period. In the early 1930s, during the Lang Ministry of 1930-32, political reasons saw the then Government decline to grant renewed approval and the routes and reserves reverted to the Crown.⁹⁰ The Minister for Agriculture in the Stevens-Bruxner Ministry, Hugh Main, during the second reading of the Bill, stated that:

In the past we have had the peculiar happening that when the five-years' leases given to the pastures protection boards of their various reserves fell in, it was for the Minister for Lands to say whether the boards should be given renewals, or whether the land should be taken away from them altogether. Mr Tully, the Minister for Lands in the last Administration, made a point of not renewing any lease of reserves which expired during his regime. That meant a very serious inroad upon the facilities available to stock-owners...⁹¹

The granting of the reserves to the Boards in perpetuity was intended to address this issue. The Minister for Lands retained the ability to withdraw a reserve that was not required in the interests of travelling stock from the control of a Board, but only with the Board's consent. If the Board did not consent, the Minister needed the approval of both Houses of Parliament (section 42(1)). As the Minister for Agriculture said in the second reading of the Bill:

This means that the responsibility for action will rest with Parliament, and no longer with the Minister for Lands. All the latter will have to do in the future is to put up a sufficiently good case to Parliament; no power will be given, as has been the case for so many years past, to a Minister to remove these reserves merely at his own will.⁹²

Boards vested with control of the reserves took on the responsibility for general management, maintenance and control of the reserves, and were required to:

take proper measures to protect such reserves or parts thereof from trespass and to suppress and destroy noxious animals, and to improve such reserves by clearing scrub, noxious weeds and plants, ringbarking, felling, suckering, fencing, providing water and in such other manner as the interests of travelling stock may require (section 41(3)).

Where the Minister for Lands considered that a Board had not taken proper measures as required, the Minister could notify the board to that effect. If the Minister considered that the situation had not been remedied within three months of that notice, the Minister was empowered to take such action as he deemed proper to protect and improve the reserve in question, and could recover the cost from the Board (section 41(4)).

⁹⁰ King, above n56, at p. 143

⁹¹ NSW Parliamentary Debates, 30 August 1933, p. 197

⁹² NSW Parliamentary Debates, 30 August 1933, pp. 197-198

Inspectors of stock could be appointed by the Governor for one or more districts, and would operate under the control of the Minister for Agriculture (section 21). The Minister for Agriculture could also appoint Permit Officers (section 23) to aid in the distribution of permits.

A major change introduced through Part V of the 1934 Act was vesting control of public watering places in the Pastures Protection Boards. Previously, public watering places were governed by separate legislation and were under the auspices of the Public Works Department. Control was then handed to the local shire councils in 1906 in accordance with the *Local Government (Shires) Act 1905*.⁹³

Under the 1934 Act, public watering places were able to be declared by the Governor (with the concurrence of the Minister for Lands) out of Crown land, or land acquired under the Crown Lands Acts for a watering place, or any land acquired for that purpose by a council under the *Local Government Act 1919* (sections 68(1) and (2) of the 1934 Act). Public watering places declared under previous legislation were deemed to be a public watering place declared under the 1934 Act (section 3(k) of the 1934 Act).

The 1934 Act provided that the controlling authority of a public watering place was to be the Pasture Protection Board for the District containing the watering place (section 69(b)).⁹⁴

Boards in the Central and Eastern Divisions were able to construct, erect and maintain tanks, dams or other structures, machinery or works for storing or providing water upon or otherwise improving any public watering place (section 70(1)). Boards in the Western Division required the prior written approval of the Minister in order to undertake such works (section 70(2)).

The Boards could also grant leases over public watering places for up to ten years, via auction or public tender. A further extension for five years could be granted without public competition where the Board considered that the extension is justified by improvements made by the lessee (section 72(1)). Boards in the Western Division required the approval of the Minister before granting any lease or extension of a lease (section 72(1)).

Boards, lessees of public watering places and Councils in charge of public watering places, were required under the 1934 Act to supply water to persons and stock declared by the regulations to be entitled thereto at such rates and during such periods as may be prescribed, and were to allow such stock to depasture on public watering places for such period and under such conditions as may be prescribed (section 72(3)). It was an offence to obstruct stock in the lawful use of any public watering place (section 73).

⁹³ NSW Parliamentary Debates, 30 August 1933, pp. 200.

⁹⁴ Except for certain public watering places declared by the Minister for Agriculture to be a town water supply, which were under the control of the council of the relevant municipality or shire (section 69(a)).

Lessees of public watering places and holders of grazing permits over travelling stock reserves were, upon being notified that travelling stock would be travelling through or over the public watering place or reserve, required to remove their stock from the reserves to avoid their stock mixing with the travelling stock (section 63).

Use of travelling stock reserves

Rates were to be imposed by regulations upon all travelling stock which travelled along or over travelling stock reserves or camping reserves, or any other roads for which the 1934 Act required a permit (section 43(1)). The rate was not to exceed ten pence per hundred head per 10 miles for sheep, and one shilling per 25 head per 10 miles for large stock (section 43(2)). Rates were not payable for journeys or parts of journeys within the Western Division (section 43(6)).

The Governor, by regulations, could authorise Boards to collect fees on working large stock used by a teamster or carrier on any travelling stock reserve in its district under a license from the Board, not to exceed two shillings per quarter or part for every head of working large stock with a minimum fee of one pound per quarter (sections 44(1) and (2)).

Boards were also able to grant permits allowing stock to graze over any travelling stock reserve, camping reserve or part thereof under the Board's control, for up to one year or such greater period as approved by the Minister (section 45). Boards could also grant permits to use a portion of any travelling stock reserve or camping reserve under their control as an apiary (section 46).

Moneys received by Boards from rates to use the travelling stock routes, licenses for working stock, or permits, were to be carried to an account for each board called a "Reserves Improvement Fund" (section 47). The moneys were then to be used in carrying out the duties of the Board in relation to the reserves under its control (section 47).

The permit system was altered slightly from its forerunner under the *Pastures Protection Act 1912*. Under the 1934 Act, no person could move stock along any road or travelling stock reserve or by rail, air or water unless the appropriate documentation was in order and the prescribed fees had been paid (section 48(1)). In terms of documentation, a permit was required for travelling stock and a licence was required for working large stock in districts where fees were imposed to move such stock.

With respect to certain stock movements, neither a permit nor a license was required; the person in charge of the stock simply needed to have in their possession a travelling statement (section 48(1)(a)(iii)). The stock movements this applied to were:

- (a) large stock being moved not more than 20 miles within one or more prescribed districts;

- (b) sheep or large stock being moved from one run to another of the same owner by the most direct route where such runs were by such route not more than 12 miles apart; or
- (c) sheep or large stock being moved by the most direct route to a contiguous holding;
(section 48(2)).

Where stock were moved under a permit, and they were to be moved again within three months of completing their journey, the owner of the stock was required to obtain a renewed permit for every further journey. An additional travelling charge, on top of the standard travelling rate that applied to all stock movements, was payable for the successive journeys (section 49(1)). A renewed permit was not required to return stock unsold at a saleyard to their place of origin (section 49(3)), or for a purchaser to move stock purchased at a saleyard to their new destination (section 49(4)). Routes specified in permits could be altered with the approval of the District's Inspector, but an additional travel charge on top of the standard rate was payable for the varied leg of the journey (section 48(5)).

The person in charge of travelling stock or working large stock was required to produce the permit, licence or travelling statement (as the case may have been), on demand by an inspector, permit officer, police officer, inspector under the *Stock Diseases Act 1923*, or the occupier of any land through which or along the boundary road of which such travelling stock or working large stock were travelling (section 50).

The 1934 Act also put in place further restrictions on moving stock along routes. It made scope for regulations to be made prohibiting any person travelling stock along a travelling stock reserve in certain districts from using any made road unless impracticable to do otherwise (section 52). It became an offence in prescribed Districts to drive or carry stock along any road or reserve during the period one hour after sunset and one hour before sunrise without the consent of the Inspector or a director of the Board (section 53). When stock crossed from one District into another, notice was to be given to the Inspector of that District (section 54).

Travelling stock were to be taken by the route specified in the permit or travelling statement. That route was to be made up of dedicated travelling stock routes; where no such travelling stock route existed, it was permissible to take the stock by the most direct road ordinarily used for the purpose of travelling stock (section 57).

As before, minimum distances were prescribed. For journeys taking more than 24 hours, large stock were to be moved at least 10 miles between 6am on the first day and 6am on the following day, and sheep or working large stock working on the journey were to be moved at least six miles within that period (section 58(1)) This did not apply to any period in which the stock could not be moved due to weather or other unavoidable cause, any period in which the

stock were detained elsewhere than on a road or travelling stock reserve, or other prescribed cases (section 58(3)).

Where drovers were moving stock along parts of TSRs or roads which intersected or adjoined any holding greater than 500 acres and the reserve or road was not separated from the holding by a fence, the drovers were required to give the occupiers of such holdings notice (section 55).

It was an offence to leave unattended stock or rubbish on any travelling stock reserve (section 56). It was also an offence to abandon any travelling stock on any land holding (or any unfenced road or reserve intersecting or adjoining any land holding), unless the stock were abandoned with the consent of the occupier of the holding (section 60).

Stock unlawfully on a travelling stock reserve were deemed to be trespassing stock, and the owner or person ordinarily in charge of the stock was guilty of an offence (section 66).

3.5.2 TSRs as drought relief and supplementary pasture

During the Second World War, stock routes remained in steady use, despite some deterioration in their condition due to a shortage of resources and staff to maintain watering facilities and combat noxious weeds and rabbits.⁹⁵ Drovers too were in short supply, but the scarcity of motorised transport throughout the war years meant that most livestock was moved on hoof.⁹⁶

In 1949, the responsibilities of Boards for travelling stock reserves under their control were expanded to include taking proper measures for the conservation of soil and the prevention or mitigation of soil erosion in the reserves.⁹⁷ To this end, the Minister was empowered to direct a Board to close a reserve (in whole or part) to stock (including travelling stock) for such period as the Minister approved.⁹⁸

Tensions between the Government and Pastures Protection Boards flared up again in 1950 and 1951. The disagreement concerned the surrender and withdrawal of certain land no longer essential for stock route or reserve purposes.⁹⁹ Under the 1934 Act, the Minister for Lands could only withdraw land from a reserve with the consent of the Board of the relevant District, or with the approval of both Houses of Parliament.

In 1951, the 1934 Act was amended to permit the Minister for Lands, upon recommendation by the Minister for Agriculture, to withdraw any reserve or part thereof from the control of a Board. The recommendation could be made by

⁹⁵ McKnight, above n33, at p. 55

⁹⁶ Ibid.

⁹⁷ Section 2(f) of the *Pastures Protection (Amendment) Act 1949*

⁹⁸ Ibid.

⁹⁹ King, above n56, at p. 145

the Minister for Agriculture either after referring matters concerning the withdrawal of a reserve to the local land board, or on the Minister's own motion. The Minister was not bound to adopt any report provided by the local land board and any report could not be subject of an appeal or reference to the Land and Valuation Court.¹⁰⁰ The Nature Conservation Council of NSW noted, in a 1982 report, that there was an upsurge in revocations of TSRs in the decade following the amendment.¹⁰¹ According to the Council's study, about one-fifth of the total TSR area of Dubbo, amounting to some 15,000 acres, was revoked between 1950 and 1970.¹⁰²

During the Second Reading of the Bill, the Minister for Agriculture, EH Graham, stated that:

For some time now it has been my view that some adjustment should be made to the law to enable travelling stock reserves to be converted into land for private settlement with more expediency than at present. If it were merely a matter of revoking a reserve here and there, having regard to purely local factors, I might be inclined to agree that the present requirement that each case must be approved by Both Houses of Parliament is justified. But that, in my opinion, is not the position to-day. No one realised better than I do that necessary reserves must not be interfered with. However, modern developments in stock transport have made some reserves unnecessary and have reduced the numbers of stock travelling over others...

Hon. Members opposite have said that to-day more stock are moved by motor vehicle than was the case twenty years ago, and that consequently reserves which were adequate then are more than adequate to-day.... We are constantly reminded by all responsible sections of the community of the need for greater food production in Australia, and I consider that it would be of great assistance in achieving this objective if large areas of highly productive land within reserves could be made available for settlement.¹⁰³

The Minister indicated that the growing practice of using TSRs as a source of food during drought was not encouraged:

The Government will maintain such reserves and watering facilities as are necessary to allow the movement of stock during droughts from one part of the State to another for agistment. However, travelling stock reserves are not intended to be used as a relief grazing country.¹⁰⁴

Usage of TSRs declined further in the early 1950s, in part, according to

¹⁰⁰ Section 2(d) of the *Pastures Protection (Amendment) Act 1951*, inserting a replacement section 42(1) into the *Pastures Protection Act 1934*

¹⁰¹ Hibberd, John K. (Ed.), *A Study of Travelling Stock Reserves, Routes and Roadside Verges in the Southern Tablelands of NSW*, 1978, Nature Conservation Council of NSW, Sydney, p. 17

¹⁰² McKnight, above n33, at p. 63

¹⁰³ NSW Parliamentary Debates, 21 November 1951, p. 4500

¹⁰⁴ NSW Parliamentary Debates, 21 November 1951, pp. 4500-4501

McKnight, due to a series of wet years and the rise of motor transport.¹⁰⁵ A drought in 1957 saw an abrupt increase in usage of the routes, indicating that, despite the Government's views, they were continuing to be seen as a relief grazing source during emergencies.¹⁰⁶

Around this same time, the 1934 Act was amended so that where a person was convicted of moving stock slower than the rate prescribed, the Court was required to order that person to pay the relevant Pasture Protection Board(s) agistment fees for the number of days the stock were travelled in excess of the number of days it would have taken the stock to complete the journey at the permitted rate.¹⁰⁷ This was implemented due to concern expressed by the Boards over the practice of delaying the movement of stock along the routes as a means of providing agistment, and the measure was intended to compensate the Boards for such "unwarranted" use.¹⁰⁸

In the same amending Act, the role of Stock Inspectors was split between two new positions. Veterinary inspectors were to take over Stock Inspectors' veterinarian and disease control work, and "Rangers" were to take over their non-veterinarian work, including field work associated with reserves and public watering places improvements, the control of travelling stock movements, and dealing with trespassing stock on reserves.¹⁰⁹

According to John Hibberd,¹¹⁰ in the early 1960s, the Department of Agriculture began to increase its pressure on the Pastures Protection Boards to relinquish more TSR land, with some Districts being surveyed to assess what 'surplus' land could be withdrawn.¹¹¹ He reports that it was deemed that Reserves throughout the State were in excess of travelling stock needs, and much of the land released from reserves was added to adjacent pastoral holdings. The poorer areas, he states, were either taken over by the Forestry Department or kept as Flora and Fauna reserves.¹¹²

Further amendments were made in 1964 to the 1934 Act enabling the Court to order agistment fees be paid when a person was convicted of having stock trespass on reserves.¹¹³ At this time, amendments also permitted stock being moved between two holdings in the same ownership/occupation more than 12 miles apart to travel by travelling statement (as opposed to the more onerous permit) where the stock were solely being moved by motor transport.¹¹⁴

¹⁰⁵ McKnight, above n33, at p. 55

¹⁰⁶ Ibid, pp. 55-56

¹⁰⁷ Section 2(p)(ii) of the *Pastures Protection (Amendment) Act 1957*

¹⁰⁸ NSW Parliamentary Debates, 19 November 1957, p. 1901

¹⁰⁹ Section 2 of the *Pastures Protection (Amendment) Act 1957*; NSW Parliamentary Debates, 19 November 1957, pp. 1899-1900

¹¹⁰ Above n101

¹¹¹ Hibberd, above n101 at p. 17

¹¹² Ibid

¹¹³ Section 5(g) of the *Pastures Protection (Amendment) Act 1964*

¹¹⁴ Section 5(c) of the *Pastures Protection (Amendment) Act 1964*

A particularly severe drought occurred between 1964 and 1967, and it was at the time estimated that hundreds of thousands of sheep and cattle were “walking the already eaten-out reserves and stock routes”.¹¹⁵ According to McKnight, several stock routes were closed because of a lack of water and others because of a lack of feed.¹¹⁶ McKnight cites, as a case in point, the Hay District, which fared comparably well throughout the drought years. As a result:

...literally dozens of mobs of starving sheep from northern New South Wales were floated to the district and put on the long paddock in the hope of finding sustenance. The TSRs became severely overcrowded and the slow travel of the under-nourished animals left nothing on the routes for mobs that might follow. The Chairman of the Hay PP Board reported that it was practically impossible to move a mob of sheep past the town of Hay, as the previous mobs had eaten all the feed for a radius of eleven miles and the travelling stock were not strong enough to move that far without food. But there was no legal way for the Board to prevent stock from being brought to the District, and local stockowners were sorely vexed that the routes were made untrafficable by out-of-district stock.¹¹⁷

In 1970 further amendments were made to the 1934 Act. The amendments clarified that travelling charges, payable on renewed permits when stock undertake further journeys within one month of completing a previous journey, were charged *in addition to* the standard travelling rate, and that these travelling charges could now be charged by Boards in the Western Division.¹¹⁸

Changes were also made in the 1970 amendments to the provisions of the 1934 Act concerning loitering stock. It had, since 1943, been permissible for stock to move less than the prescribed distance per day if by reason of the condition of the stock or other circumstances as prescribed, it was impractical to travel the specified distance and the distance travelled was reasonable in the circumstances.¹¹⁹ The Boards were finding that this was being pleaded in defence to prosecutions for moving stock too slow, with the result that Courts could not order agistment fees to be paid for the extra time taken (as these could only be ordered if there was a successful prosecution).¹²⁰ The 1970 amendments therefore provided that stock could be moved less than the minimum rate, by reason of the stock’s condition or other prescribed reason, if the distance was reasonable in the circumstances *and* that agistment fees had been paid.¹²¹

¹¹⁵ McKnight, above n33, at p. 56, quoting Don Campbell, *Drought: Causes, Effects, Solutions*, F.W. Cheshire, Sydney, 1968, p. 63

¹¹⁶ McKnight, above n33, at p. 56

¹¹⁷ *Ibid.*

¹¹⁸ Section 2(1)(g) of the *Pastures Protection (Amendment) Act 1970*; NSW Parliamentary Debates, 11 March 1970, pp. 4187-4188

¹¹⁹ Section 58(2A) of the *Pastures Protection Act 1934*, inserted by section 4(k) of the *Pastures Protection (Amendment) Act 1943*

¹²⁰ NSW Parliamentary Debates, 11 March 1970, p. 4188

¹²¹ Section 2(1)(h) of the *Pastures Protection (Amendment) Act 1970*

The 1970 amendments also introduced new rules for halting and camping stock overnight on reserves, which frequently presented a hazard to motor vehicle traffic. New section 58A of the 1934 Act authorised Pastures Protection Boards to declare structures or enclosures on travelling stock reserves to be holding places.¹²² New section 58B made it an offence to halt travelling stock for the night where there was an unoccupied holding place within 1 mile.¹²³ Drivers who halted travelling stock otherwise than in a holding place were required to place appropriate signage in prescribed positions to warn traffic of their presence.¹²⁴

Further, John Hibbard writes that in 1970, the Department of Agriculture requested each Board to create an inventory of all TSR land under its control, in an effort to rationalise the State's TSR system:

Three factors were the stimulus for this programme – pressure of urban expansion, the need for new reserves to accompany new or enlarged saleyards or abattoirs, and the continuing goal of eliminating TSR land that was redundant to the requirements of travelling stock. In a radical change from former procedure, most of the land resumed from Board control under this programme was to be offered for freehold ownership, the revenue from sales to be placed in a State-wide fund for the purchase and establishment of new TSRs when and where required...¹²⁵

In 1974, a Committee of Inquiry into Pastures Protection Boards was appointed by the Askin Government. One of the terms of reference for the Inquiry was “to examine the functions and responsibilities of pastures protection boards and to make recommendations regarding any variation of existing functions”. The Committee of Inquiry's report was published in February 1975, and drew the following conclusions about the Boards' functions in respect to TSRs:

- The main value of travelling stock reserves lay in the main driftways from north to south and to a lesser degree, those to and from the Western Division and to eastern areas.
- The use of road transport for the movement of stock and the competition by other road users on narrow routes together with increased droving charges were factors curtailing use of travelling stock reserves by travelling stock;
- The emphasis should be on the improvement of main routes to enable the safe movement of travelling stock in conjunction with the general public, the by-passing of the main towns and the relinquishment and disposal of unnecessary reserves.
- Land under pasture protection board control is often not in the most suitable areas and every consideration and encouragement should be given to boards

¹²² Section 2(1)(i) of the *Pastures Protection (Amendment) Act 1970*; NSW Parliamentary Debates, 11 March 1970, pp. 4189

¹²³ Section 2(1)(i) of the *Pastures Protection (Amendment) Act 1970*

¹²⁴ Section 58B(2) of the *Pastures Protection Act 1934*, inserted by section 2(1)(i) of the *Pastures Protection (Amendment) Act 1970*

¹²⁵ Hibberd, above n101 at p. 17

to relinquish reserves of little value and to acquire land to augment those considered of major economic importance. The disposal of reserves infrequently used would relieve boards of the cost of maintenance of such land and enable available funds to be used in areas of greater importance.¹²⁶

The Committee recommended that boards in the Central and Eastern Divisions be encouraged to critically examine the need for retention of travelling stock reserves in their district and to release areas infrequently used in order that the main stock routes could be maintained and improved by the acquisition of additional land where necessary.¹²⁷

Further changes were made to the 1934 Act in 1976 to make it easier to move stock in several circumstances. Amendments were inserted to permit certain stock owners to be appointed as “special permit officers”, whereby they could obtain a book of permits from their Board and issue themselves permits to move stock by motor vehicle only.¹²⁸ Other amendments permitted stock owners in the Western Division to move stock up to 80km between two properties held by them without a permit (previously the limit was 20km/12miles).¹²⁹ Another amendment clarified the areas in NSW in which it was permitted to carry stock by road or rail transport overnight.¹³⁰

3.5.3 TSRs for conservation and recreation purposes

In the late-1970s, calls were made to formally recognise and develop uses of travelling stock reserves for purposes other than droving and supplementary agistment. By many accounts, reserves had, for some time, been used for recreational purposes by individuals and groups. The Pastures Protection Boards frequently permitted such use, although they did not have any ability to do so under the relevant legislation.¹³¹

In 1978, the Nature Conservation Council of NSW published *A Study of Travelling Stock Reserves, Routes and Roadside Verges in the Southern Tablelands of NSW*.¹³² The Council had long been concerned with the alienation of Crown lands, particularly land capable of playing a role in environmental protection.¹³³ It believed that the use of land for recreation, scenic, nature or habitat conservation or preservation was a valid economic use of land in the late twentieth century.¹³⁴ As a first step of putting this policy into

¹²⁶ Report of the Committee of Inquiry on the Pastures Protection Boards of NSW, NSW Parliamentary Papers, 1974-1975, Volume 5, at p. 1441

¹²⁷ Ibid.

¹²⁸ See, generally, Schedule 1 of the *Pastures Protection (Amendment) Act 1976*; NSW Parliamentary Debates, 4 March 1976, p. 3939

¹²⁹ Clause (14)(b) of the *Pastures Protection (Amendment) Act 1976*

¹³⁰ Clause (16)(a) of the *Pastures Protection (Amendment) Act 1976*

¹³¹ NSW Parliamentary Debates, 1 October 1985, p. 7299

¹³² Hibberd, above n101

¹³³ Ibid, at p. (i)

¹³⁴ Ibid, at p. (ii)

practice, the Executive of the Council applied to the NSW Government for a research grant to examine the community values of TSRs.

The Council investigated 95 out of 129 reserves in the study area, being the County of King and the County of Georgiana south of the Abercrombie River. 33% of the surveyed reserves were being grazed by small numbers of unattended domestic stock at the time of visiting. Another 18% showed signs of recent use.¹³⁵ The reserves were also examined for their recreational potential on the basis of their physical features and a subjective assessment of their attractiveness. Approximately 6% of the reserves visited were identified as suitable for intensive recreational activities,¹³⁶ although these tended to be the larger reserves and therefore occupied more than 50% of the survey area. 13.7% of the reserves were suitable for camping, and 42.1% would be suitable for “casual visits” by passers-by. 37.9% of the reserves were identified as not having any potential for public recreation.¹³⁷

In terms of the conservation values, data collected by the Council showed that 45% of the remaining forested land in the study area was Crown land and of this, over half was unleased crown land. Although only 5.2% of this forested unleased Crown land was dedicated as TSRs, this small portion was considered to be of great importance and in excess of their purely numerical percentage of the surveyed area.¹³⁸ 75% of the TSRs examined supported discrete units of natural vegetation.¹³⁹ 21 different species off eucalypt were identified on the surveyed TSRs, as were small pockets of Acacia shrubs and native grasses.¹⁴⁰ The report emphasised the importance of smaller areas of naturally vegetated land (such as TSRs) because:

... they function as ‘corridors’ between larger reserves (e.g. National Parks and Nature Reserves) and, as such, can link such larger reserves into a system which is capable of sustaining viable populations of most of the plants and animals native to any region.¹⁴¹

The report was particularly critical of the use of grazing permits to allow grazing of stock on the reserves in periods outside of extreme drought events:

There is little dispute over the important function that [TSRs] fulfil in times of drought and few people would deny the right of graziers to utilise such areas in order to maintain their stock. However, the function of TSRs is not to permit stocking of lands to a level in excess of carrying capacity in poor years in the hope (and often knowledge) public lands will be made available if conditions are tough. When droughts are proclaimed, emergency agistment should be

¹³⁵ Hibberd, above n101 at p. 35

¹³⁶ Such as activities requiring the provision of water, toilets, shelter, BBQ facilities and rubbish bins (see Hibberd, above n101 at p. 55).

¹³⁷ Ibid, at p. 37

¹³⁸ Ibid, at p. 48

¹³⁹ Ibid.

¹⁴⁰ Ibid, at pp. 31-32

¹⁴¹ Ibid, at p. 52

permitted, but every effort should be made ... to ensure that reasonable levels of stocking occur and that numbers are not unrealistically expanded in 'good' years.¹⁴²

The Council noted complaints for decades from users of TSRs about their being "skinned" by adjacent landholders. The report also stated that agistment seriously effects the ability of tree cover to regenerate and considered it to be potentially the greatest single threat to the biological and landscape qualities of the TSRs.¹⁴³ In the Council's view:

It seems totally unjustified in this day and age, that individuals should be using, what are after all, public lands, in a manner which is seriously impairing their long-term value to the community as a whole – not to mention other pastoralists.¹⁴⁴

In its report, the Council found that:

TSRs could have substantial importance as both refuges and corridors for native plants and animals, as routeways for travelling stock..., as passive recreation areas for the travelling public, and as components of aesthetic qualities in the landscape and especially in areas substantially changed by agricultural activities.¹⁴⁵

The Council encouraged Governments and agencies to change their attitudes in respect of the values of such lands to the community as a whole. This was in light of the considerable decline in use of TSRs in recent times and the increasing scarcity of natural vegetation Crown Lands in NSW.¹⁴⁶ Key recommendations made by the Council in the conclusion of its study included:

- That the existing system of Travelling Stock Routes and Reserves be retained under Crown control, and there be no further alienation of uncleared Crown lands anywhere west of the Divide without thorough investigation and public inquiry;¹⁴⁷
- That the significant use of the majority of TSRs be for the pasturage, resting and watering of travelling stock;¹⁴⁸
- That management plans be drawn up for those Travelling Stock Reserves and those Routes over 200 metres in width which have been identified as having significant community values, which plans will reflect the potential use of TSRs for traditional travelling stock uses, as well as to protect flora, fauna, landscape and aesthetic qualities, and to provide passive recreational facilities for public use;¹⁴⁹

¹⁴² Ibid, at p. 53

¹⁴³ Ibid.

¹⁴⁴ Ibid, at p. 54

¹⁴⁵ Hibberd, above n101 at p. 4

¹⁴⁶ Hibberd, above n101 at p. 77

¹⁴⁷ Ibid, at p. 78

¹⁴⁸ Ibid.

¹⁴⁹ Ibid, at pp. 79-80

- That representatives from the Department of Agriculture or the Soil Conservation Service of NSW be appointed to Pastures Protection Boards across the State, increasing Board sizes from 8 to 10 members;¹⁵⁰
- Separate Travelling Stock Review Boards be established, one in each Pasture Protection Board District, to be responsible for the protection, management and use of TSRs. Such TSR Boards should derive part of their income from a proportion of the rates presently paid to the Boards and their membership should include (among others) representatives from the Department of Agriculture or Soil Conservation Service of NSW and the National Parks and Wildlife Service of NSW, local residents, representatives from the Planning and Environment Commission and representatives from the Nature Conservation Council of NSW;¹⁵¹
- That leasing of Travelling Stock Reserves for agistment (except to property owners from areas of proclaimed drought) should no longer be permitted;¹⁵²
- That the NSW Government make funds available to conduct further surveys in coastal regions and the Western Division to assess TSR values in those areas.¹⁵³

To attempt to avoid further loss of travelling stock reserves, then Minister for Lands in the Wran Government, WF Crabtree, issued a special circular to the Lands Department entitled "Disposal of land relinquished from travelling stock and camping reserves and disposal of Crown land adjoining or having access to main traffic arteries". The circular directed the Lands Department to only dispose such land when:

- (a) the land involved –
- i. was not timbered;
 - ii. was indistinguishable from the farming land immediately adjoining;
 - iii. was not required to meet the needs of the travelling public; and
 - iv. was not required for any other purpose.

The circular continued:

This review has taken place in view of the greater emphasis being placed upon the retention of land in the interests of recreation, including resting places for the travelling public, preservation of flora and fauna and conservation orientated processes.

Where access by the public is expected to be reasonably constant, occupation of the land is not to be approved.

In other cases, limited occupancy under Permissive Occupancy may be permitted for the purpose of grazing only where fencing is erected, occupation

¹⁵⁰ Ibid, at pp. 81-82

¹⁵¹ Ibid, at p. 82

¹⁵² Ibid, at p. 83

¹⁵³ Ibid, at p. 86

is to be subject to display of notices indicating the right of the public to use the land. Demands for occupation of land under more secure tenure than Permissive Occupancy are to be resisted.

The Minister elaborated upon his reasons for issuing the circular during Question Time on 1 March 1977:

...[A]s a general rule, the State has been divesting itself of [travelling stock reserves] over a number of years... this is a most unsatisfactory situation. I have now directed that there be a change in policy, and that any future disposal of travelling stock reserves will be limited under very strict conditions.

...

My intention and the intention of the Wran Government is to retain any travelling stock reserves that become available as vacant Crown land for appropriate future development for conservation or recreation purposes.¹⁵⁴

In 1979, the Department of Lands adopted a policy to conserve and protect natural areas by, wherever possible, retaining in Crown ownership all lands with scenic, recreational and conservation value.¹⁵⁵ It was restated in 1982 in a Special Circular issued by the Director of Crown Lands, which directed that Crown land was not to be disposed by way of sale if it contained:

- strips required as access to and fronting inland watercourses, lakes, water storages, lagoons and tidal waters;
- land required to be retained for – scenic and catchment area protection; preservation of the habitat of native fauna; preservation of native flora; soil conservation purposes;
- land required for recreation; and
- land required for revegetation.¹⁵⁶

Land which contained any of the above would also not be allocated by way of lease or permissive occupancy where those requirements would be adversely affected.¹⁵⁷

Against this background, the Crown Lands Office became concerned with achieving a balance between the demand for greater utilisation of TSRs as public land and the need to preserve an integrated State-wide network of TSRs. It began to assess whether TSR land was best managed on a single or multiple

¹⁵⁴ NSW Parliamentary Debates, 1 March 1977, p. 4562

¹⁵⁵ Hampton, D., "Review of Multiple Use Options for the Management of Travelling Stock Reserves in New South Wales", Discussion Paper, 1982, Crown Lands Office Land Resources and Environment Branch, pp. 3-5

¹⁵⁶ Special Circular No. 82/7D, 28 July 1982, "Policy on Conservation Issues in Respect of Disposal of Crown Land, Conversion of Leases, etc.", extracted in Hampton, above n155, at pp. 4-5

¹⁵⁷ Ibid.

use basis, and what policy could best guide future development of the land.

The Crown Lands Office's Report, published as a discussion paper in 1982,¹⁵⁸ noted the emerging recognition of the conservation value of TSRs and their potential use as roadside rest stops and other recreational uses.¹⁵⁹ It also noted the now widely recognised role played by TSRs as emergency agistment during drought (the pattern was shown to continue, with an upsurge in use of TSRs during the 1980-81 drought) and supplementary agistment at other times.¹⁶⁰ With regard to emergency agistment, the Report stated that:

Intensive use of TSRs during these crises has demonstrated that TSRs which have already been degraded by drought conditions and extensive local agistment are less able to withstand continual use by travelling stock during drought than at any other time. However, the severity of the current drought has indicated that the use of TSRs for emergency agistment is necessary and that a viable TSR network should be maintained to meet the needs of such a crisis.

It is essential that adequate restoration be undertaken on TSRs that have experienced intensive use during periods of drought.

Consideration should also be given to restricting emergency agistment on TSRs which have been identified as having significant conservation value.¹⁶¹

In relation to TSRs as supplementary local agistment, the Report stated that the use of TSRs by local landowners needed to be controlled to prevent the deterioration of those areas.¹⁶² It noted the objections raised by the Nature Conservation Council in its 1978 Report, discussed above, concerning the impact of such use on conservation values of the TSRs. The Crown Lands Office Report also noted counter arguments raised by Pastures Protection Boards that local agistment is necessary in order to provide the Boards with sufficient funds to maintain and improve TSRs, and by local landholders that the rates paid to the Boards by local landholders gave them the right to use TSRs during "normal" periods for grazing.¹⁶³ The Crown Lands Office stated, however, that:

... the proportion of rates paid by landowners for the use of TSRs should not be seen as justification to over-graze this public land resource. As Pastures Protection Board rates are not utilized for improvement or maintenance of TSRs, (but rather for animal health resources, etc.), the payment of rates does not entitle local landholders to any special rights. Unfortunately, the practice of granting permits for grazing to local pastoralists over a long period of time has encouraged a minority of these landowners to consider the land as their own or to increase their stock numbers beyond the carrying capacity of their

¹⁵⁸ Hampton, above n155

¹⁵⁹ Ibid, at pp. 19-27

¹⁶⁰ Ibid, at p. 15

¹⁶¹ Ibid.

¹⁶² Ibid, at p. 16

¹⁶³ Ibid, at pp. 16-17

own properties. This undermines the long term management of the TSR network as a public land resource.¹⁶⁴

The Report recommended that the continued use of TSRs for local and emergency agistment should be reviewed.¹⁶⁵

A number of potential options were put forward to manage the potential for conflicts arising out of the newly identified uses of TSRs. The Report concluded that a multiple use policy within the then legislative and administrative framework represented the most viable alternative for short term implementation. It put forward guidelines for the development of a multiple use policy for TSRs in the Eastern and Central Divisions of NSW.¹⁶⁶

The Report recommended that:

1. The Crown Lands Office, in association with the Department of Agriculture, the Pastures Protection Boards and other interested parties, develop and implement a policy for the multiple use of TSRs for the Eastern and Central Divisions of NSW, within the existing legislative and administrative structure in order to achieve certain objectives in the short term (next five years);
2. A regional or local policy be developed on the basis of the general policy guidelines, through liaison between the local Land Board Office and Pastures Protection Boards.
3. Identification and classification of all TSRs be undertaken to determine the potential value of those TSRs for future use;
4. The Crown Lands Office, Department of Agriculture and the Pastures Protection Boards should establish pilot schemes in several Land Districts to examine the suitability of the multiple use proposals in different areas of the Eastern and Central Divisions;
5. Management plans be developed for TSRs which are experiencing intensive public use or have been identified as having important conservation value;
6. The question of leasing TSRs to local landowners for grazing be examined. The possible restriction of agistment on some TSRs of significant conservation value should also be determined;
7. As part of the regional policy developed by the local Land Board Offices and the Pastures Protection Boards provision be made for the installation of facilities on those TSRs experiencing reasonably intensive public use, subject to funds being available; and
8. The policy restricting disposal of lands within TSRs with recreational, conservation or scenic value be strictly enforced to ensure that these

¹⁶⁴ Ibid, at p. 17

¹⁶⁵ Ibid.

¹⁶⁶ Ibid, at p. 31

lands remain in Crown ownership.¹⁶⁷

The Report was acted upon and a multiple use policy was developed jointly by the Department of Agriculture and the Departments of Lands with the assistance of members of the Council of Advice to Pastures Protection Boards. Proposals for legislation were considered at the Annual Pastures Protection Boards Conference in 1983. This led to amendments being introduced to the *Pastures Protection Act 1934* in 1985 to provide for recreational uses of TSRs.¹⁶⁸

Under new section 46A of the *Pastures Protection Act 1934*:

A travelling stock reserve which is under the control of a board may, in so far as may be provided by or under the regulations, be used:

- (a) for the purpose of any recreational activity; or
- (b) for the purpose of any other activity, whether of a like or a different nature;

being a prescribed activity or any other activity authorised for the time being in relation to the reserve by the board in accordance with the regulations.¹⁶⁹

The Crown was to indemnify the Pastures Protection Boards in respect of any amount for which the Boards became liable as a consequence of any claim for damages for injury or for damage to property arising out of or in the course of the use of a travelling stock reserve for the purpose of an activity referred to in section 46A (new section 46B of the *Pastures Protection Act 1934*).¹⁷⁰

The Boards were empowered to close travelling stock reserves for the purposes of:

- (a) taking proper measures for the conservation of soil and the prevention or mitigation of soil erosion; or
- (b) the Board's exercising any power or performing any other duty, whether of a like or a different nature, of the Board

(new section 46C(1)).

The Boards could also prohibit the use of a TSR for recreational purposes, or for any other purpose where the use could result in damage being caused to the reserve, or nuisance or annoyance being caused to the public or any other person (new section 46C(2)). These measures were intended to enable the Boards to manage competing uses of TSRs by travelling stock, which were to be given priority in appropriate circumstances.¹⁷¹ The Minister could intervene and require the Boards to exercise or *not* exercise the powers to close or

¹⁶⁷ Ibid, pp. 51-52

¹⁶⁸ NSW Parliamentary Debates, 26 September 1985, p. 7189

¹⁶⁹ Clause (1) of Schedule 1 of the *Pasture Protection (Amendment) Act 1985*

¹⁷⁰ Ibid.

¹⁷¹ NSW Parliamentary Debates, 26 September 1985, p. 7189

prohibit use of a TSR. Penalties were imposed for persons who entered or used TSRs the subject of closure or prohibition (new section 46C(5)).

Tighter provision was made for persons who damage a TSR under control of a Board or any structure or work situated on any such reserve (new section 56A).¹⁷² A penalty of up to \$2,000 was also imposed for any person who deposited any rubbish or the carcass of an animal on any TSR. Abandoning any vehicle, equipment, etc., not being rubbish or the carcass of an animal would attract a penalty of \$1,000 (new section 65A).¹⁷³

The amendments also created scope for regulations to provide further for other uses of TSRs, permits to use TSRs for recreational purposes and the payment of fees to Boards for such uses, and the removal of trespassers on TSRs.¹⁷⁴ The Minister for Agriculture, Jack Hallam, in the second reading speech of the Bill in the Legislative Council, indicated that guidelines would also be developed and issued. He provided further insight into the kinds of matters to be dealt with by the regulations and policies:

It is proposed that subject to regulations prescribed under the Act, general recreational activities such as walking, horseriding, picnicking, swimming and fishing be permitted where such use is of a daily nature. Activities such as camping and lighting of fires or barbecues would not be permitted without prior approval by the board unless in areas specifically set aside for these purposes and signposted to this effect. In the case of activities involving groups or individuals obtaining prior approval of the board, it would be necessary for them to procure an appropriate public liability insurance policy. For the casual use of reserves by individuals the Department of Lands would obtain an extension on its present public liability policy pertaining to other reserves.

Pastures protection boards will be able to liaise with the local land office in determining which reserves are suitable for alternative uses and the requirements of travelling or agisted stock will need to be given priority in relation to the use of such reserves. ...The approach developed will allow for those pursuing activities requiring board approval ... to request the local pastures protection board to give approval to use of a specified area of travelling stock reserve for particular activities and at an agreed time. The approval will be subject to conditions as mentioned above, including the provision of public liability insurance by the group concerned, and may require lodgement of a bond against failure to remove rubbish or rectification of damage to the reserve...Boards will be empowered to collect a fee for the use of the reserve. Such fees would be credited to the Reserves Improvement Fund of the boards and be applied towards administrative costs and inspection of the scheme.¹⁷⁵

Opposition members supported the amendments, but stressed that conflicts could arise out of the multiple use approach and stressed the need for the Wran

¹⁷² Clause (4) of Schedule 1 of the *Pastures Protection (Amendment) Act 1985*

¹⁷³ Clause (5) of Schedule 1 of the *Pastures Protection (Amendment) Act 1985*

¹⁷⁴ Clause (6) of Schedule 1 of the *Pastures Protection (Amendment) Act 1985*

¹⁷⁵ NSW Parliamentary Debates, 26 September 1985, p. 7189

Government to work closely with the Pastures Protections Boards to formulate and implement the guidelines.¹⁷⁶

3.5.4 Aboriginal Land Rights legislation

In 1983, the *Aboriginal Land Rights Act 1983* (NSW) was enacted. Section 36 of the Act entitles Aboriginal Land Councils to claim certain “claimable Crown lands” NSW.¹⁷⁷

Claimable Crown lands are lands vested in Her Majesty (i.e. Crown lands) that:

- (a) are able to be lawfully sold or leased, or are reserved or dedicated for any purpose under the *Crown Lands Consolidation Act 1913* or the *Western lands Act 1901*;
 - (b) are not lawfully used or occupied;
 - (b1) do not compromise lands which, in the opinion of a Crown Lands Minister, are needed or are likely to be needed as residential lands;
 - (c) are not needed, nor likely to be needed, for an essential public purpose;
 - (d) do not comprise lands that are the subject of an application for a determination of native title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the *Native Title Act 1993* (Cth);
 - (e) do not comprise lands that are the subject of an approved determination of native title (within the meaning of the *Native Title Act 1993* (Cth)) (other than an approved determination that no native title exists in the lands);
- (section 36(1) of the *Aboriginal Land Rights Act 1983*, as amended).¹⁷⁸

TSRs fall within above paragraph (a). Therefore, provided that the land satisfies the criteria in above paragraphs (b) to (e) as well, the TSRs can be claimable Crown lands.¹⁷⁹

A successful claim over a TSR would lead to the transfer of an estate in fee simple to the Aboriginal Land Council claimant. In the case of non-urban land under the *Western Lands Act 1901*, the successful claimant would be given a perpetual lease under that Act.¹⁸⁰

¹⁷⁶ NSW Parliamentary Debates, 1 October 1985, pp. 7298 - 7300

¹⁷⁷ Peter Butt, *Land Law*, Lawbook Co, Sydney, 6th Ed., 2010, p. 1029

¹⁷⁸ Subclauses 36(1)(b1), (d) and (e) were not in the original enactment of the *Aboriginal Land Rights Act 1983*, but were added subsequently.

¹⁷⁹ TSRs could also be subject to claims under the *Native Title Act 1993* (Cth). For further detail on claims under the *Aboriginal Land Rights Act 1983* (NSW) and the *Native Title Act 1993* (Cth), see: T Drabsch, [Indigenous Australians and Land in New South Wales](#), NSW Parliamentary Research Service, Briefing Paper No. 9/2004, July 2004.

¹⁸⁰ Peter Butt, above n177, at p. 1036

3.6 1980s to 2000s: The Rural Lands Protection Acts

In 1989, the *Crown Lands Consolidation Act 1913* and 19 other Acts were repealed by the *Crown Lands Act 1989*. This legislation represented major legislative reform designed to provide a simplified, streamlined and modern approach to the future administration and Crown land management. The Act governed the future disposition and management of vacant and reserved Crown land. A separate Act – the *Crown Lands (Continued Tenures) Act 1989* – provided for the continuation and administration of existing tenures (i.e. tenures in force under the now repealed Acts).

Most TSRs were reserved under the forerunners of the 1989 Act, as discussed in previous sections of this paper.

3.6.1 The *Rural Lands Protection Act 1989*

In 1989, the administrative and regulatory framework was again overhauled with the enactment of the *Rural Lands Protection Act 1989 (RLP Act 1989)*.

The Greiner Government's RLP Act 1989 replaced Pastures Protection Districts with Rural Lands Protection Districts, and Pastures Protection Boards with Rural Lands Protection Boards (**RLP Boards**) (sections 4 and 6 of the RLP Act 1989). The change in name was requested by the Boards themselves, and was intended to be more indicative of the broad range of duties they performed in the rural community.¹⁸¹

The RLP Boards remained responsible for a wide range of matters pertaining to rural land and agriculture, including the care, control and management of travelling stock reserves and camping reserves in their District (section 9(2)(c) of the RLP Act 1989). They were also responsible for the care, control and management of stock watering places in their district (section 9(2)(d) of the RLP Act 1989). Each RLP Board was to maintain a rural lands protection fund for its District, into which would be paid all subsidies, commissions, rates or other money paid to or recovered by the RLP Board. This money was to cover expenses relating to elections of the directors and other expenses incurred in the exercise of its functions (section 31). Each RLP Board in the Eastern and Central Divisions was also to maintain a reserves improvement fund, into which it would pay all money it received through its control and management of travelling stock reserves. This money was to be used in exercising the RLP Boards' functions in relation to TSRs and watering places under their control (section 33(1)-(3)). RLP Boards in the Western Division were required to keep a stock watering places fund. RLP Boards could transfer money from their reserves improvement funds/stock watering placement funds to their rural lands protection funds, but the maximum amount that could be transferred in any year was to be fixed by regulation (section 33(4)).

¹⁸¹ NSW Parliamentary Debates, 21 November 1989, p. 12915

The specific responsibilities of RLP Boards for TSRs were similar to those under the *Pastures Protection Act 1934*. They were responsible for:

- (a) taking appropriate measures to prevent unauthorised persons, animals and vehicles from trespassing on the reserve;
 - (b) suppressing and destroying noxious animals and noxious insects within the reserve;
 - (c) taking measures to remove or destroy trees that were likely to prevent the passage of travelling stock;
 - (d) taking measures to control and eradicate noxious plants;
 - (e) taking appropriate measures to conserve soil within the reserve and to prevent or mitigate the erosion of that soil;
 - (f) fencing such parts of the reserve as the board considered necessary to ensure its effective and efficient use as a travelling stock reserve and
 - (g) so far as practicable, providing sufficient water for the use of travelling stock;
- (section 81(1)).

The RLP Boards were also given broad powers in relation to TSRs to exercise any other lawful function it considers necessary in relation to the reserves (section 81(2)).

As previously, the Minister for Agriculture and Rural Affairs could recommend to the Minister for Crown Lands that a TSR be withdrawn from the control of a RLP Board, only now there was a requirement in the legislation to consult with the RLP Board concerned before so recommending (section 84(1)). The Minister for Crown Lands could only withdraw control from a RLP Board after receiving such a recommendation (section 84(5)).

As under the *Pastures Protection Act 1934*, RLP Boards were responsible for and controlled stock watering places (other than town water supplies) and the infrastructure located within the watering places (sections 118 and 119). The ability to lease stock watering places was continued under the RLP Act 1989 (section 121). The RLP Boards and any lessees of the stock watering places were required to allow stock to depasture and supply water (subject to fees as prescribed), on request, to persons and stock (section 122).

A new element was the express inclusion in the legislation of the Council of Advice, the executive body of the former Pastures Protection Boards.¹⁸² The Council of Advice was to:

- (a) be a medium of communication between the RLP Boards and the Government;
- (b) on request by the Minister for Agriculture and Rural Affairs, hold inquiries into any matters within the Minister's portfolio relating to primary industry or rural lands;

¹⁸² NSW Parliamentary Debates, 21 November 1989, p. 12918

- (c) represent the RLP Boards on committees that the Minister established in relation to primary industry or rural lands;
- (d) make recommendations to the Minister concerning the RLP Boards for industrial relations purposes;

(section 50(1)).

The Council of Advice was also required to prepare a consolidated annual report with respect to all RLP Boards' activities to be provided to the Minister and tabled in Parliament (section 52). The RLP Boards were required to provide reports of their activities to the Council of Advice each year for inclusion in the consolidated annual report (section 45). This was designed to improve accountability of the Boards by making reporting their activities more practical.¹⁸³

Regulation of the use of travelling stock reserves, broadly speaking, remained the same. There were, however, some changes to the levels and types of permits required to move stock, which warrant further examination. Permits to move stock were split into two categories:

- **walking stock permits**, which were required to move stock on hoof and operated much the same as permits under the *Pastures Protection Act 1934*, including fees calculated according to numbers of stock and distance travelled, and prescribed minimum distances to be covered each day (sections 90 to 92 of the RLP Act 1989 and clauses 69 to 82 of the Rural Lands Protection Regulation 1990 (**RLP Regulation 1990**)); and
- **transported stock statements**, which were required to move stock by vehicle on a public road or TSR or to consign stock via rail, water or air transport (section 88 of the RLP Act 1989). The statements could be issued to carriers of stock by RLP Boards either individually, or in books of statements, and only needed to be completed and signed by the carrier or owner of the stock prior to the journey. A copy of each completed statement was to be kept in the book and returned to the relevant RLP Board once the book was exhausted (section 89 of the RLP Act 1989 and clauses 62 to 65 of the RLP Regulation 1990). Fees were imposed on the issue of statements, but no fees were charged on a distance basis as with walking stock permits (section 89 of the RLP Act 1989 and clause 66 of the RLP Regulation 1990).

Stock licenses were a lesser order of permit, similar to "travelling statements" under the *Pastures Protection Act 1934* and the *Pastures Protection Act 1902*. These were required instead of transported stock statements or walking stock permits to:

- (a) move sheep or goats over any public road or TSR for a distance of not more than 10km;
- (b) move horses, cattle or deer over a public road or TSR for a distance of not more than 16km; and

¹⁸³ NSW Parliamentary Debates, 21 November 1989, p. 12918

(c) to move any stock by vehicle over any public road or TSR up to prescribed distances for each particular district;

provided the journey, if by vehicle, was not more than 24 hrs, and if on foot, was completed between sunrise and sunset (section 99(1) of the RLP Act 1989).

The RLP Regulation 1989 set out further circumstances in which stock could be moved under a stock license instead of a permit, despite the distances being greater than those prescribed. These included:

- by vehicle - moving stock within a district between two holdings occupied by the same occupier, to or from dip sites, or moving calves to saleyards (clause 91(1) of the RLP Act 1989); and
- by hoof - moving stock between any 2 holdings occupied by the same occupier, moving stock to any place for the purposes of being sheared, dipped, branded, earmarked etc., returning stock from a saleyard unsold to the holding from which they travelled for sale (clause 91(4) of the RLP Act 1989).

In certain circumstances, stock could be moved without a walking stock permit, transported stock statement, or stock license. For instance, neither a transported stock statement nor stock license was required:

- to move horses to or from any agricultural show etc., or to move racehorses or harness racing horses;
- to move stock into NSW from another State and travel for up to 30 kilometres before immediately proceeding back into the original State; or
- to move stock to receive veterinary treatment;

(clause 63 of the RLP Regulation 1989).

Stock could be moved on hoof without a walking stock permit or stock licence where:

- the stock being horses, they were accompanied by riders;
- the stock were being used to pull a sulky, wagon or other vehicle; or
- the stock were being moved to receive veterinary treatment;

(clause 70 of the RLP Regulation 1989).

As under previous legislation, RLP Boards could issue grazing permits to allow stock to be grazed on TSRs (section 93). Possibly in response to some of the issues raised in the 1980s concerning “skinning” of the TSRs by locally agisted stock, the Minister was granted the power to revoke permits considered to be improperly issued (section 93(7)). There was no legislative limit on how long grazing could be permitted, although the Boards could give notice to a permit holder that travelling stock would be using the TSR, in which case the permit

holder would have to remove the grazing stock from the TSR to allow the travelling stock to pass through (section 93(8)).

In addition to grazing permits, RLP Boards could now issue stock holding authorities. The holders of such authorities could take stock onto, and keep them on, a specified travelling stock reserve for such period as specified in the authority (section 95(3) of the RLP Act 1989) for purposes to be prescribed in the regulations. These included:

- (a) for the purpose of resting or grazing them;
 - (b) to carry out any other activity connected with their proper management;
- (clause 98 of the Rural Lands Protection Regulation 1995¹⁸⁴).

One of the changes in the RLP Act 1989 was tighter provision with respect to the carrying and inspection of the permits and licenses required to be held under the RLP Act 1989 to target stock theft (sections 88(4)-(9) and 90(2)-(10)). As the Minister, Ian Armstrong, said during the Second Reading of the Bill:

The travelling stock amendments were recommended by a working party which included representatives from pastures protection boards, the Department of Agriculture and Fisheries, the police stock squad, the New South Wales Farmers Association, the Cattlemen's Union, local government and the Meat Industry Authority. That working party consulted with individual boards and other industry groups on the matter. The travelling stock amendments, together with new provisions relating to the identification of stock to which I will refer later, will also assist in deterring stock theft and will assist in the tracing of stolen stock. The crime of stock theft is on the increase and the police have indicated that these new provisions will greatly assist their endeavours to reduce the incidence of such crime.¹⁸⁵

A further key change made under the RLP Act 1989 was an increased focus on managing stock near vehicular road traffic, to address the increasing incidence of road accidents arising from the rise in road transport over time.¹⁸⁶ For example, signs were to be displayed when stock were being walked or grazed along or within 300m of a public road and the RLP Regulation 1989 set detailed standards and requirements with respect to such signage (clause 83).¹⁸⁷ Previously such signage was only required when stopping stock overnight – not during daytime movements or stays. Further, those in charge of stock walking along a public road were to ensure that, so far as reasonably practicable, the stock did not stray onto bitumen or road surfaces (sections 96 and 97). It was also an offence for a person to fail to control stock under their control where “to

¹⁸⁴ The RLP Regulation 1989 did not prescribe any purposes – they were only so prescribed in the second set of regulations issued under the RLP Act 1989 in 1995.

¹⁸⁵ NSW Parliamentary Debates, 21 November 1989, p. 12917

¹⁸⁶ NSW Parliamentary Debates, 21 November 1989, p. 12916

¹⁸⁷ The Minister for Agriculture and Rural Affairs stated in the second reading speech for the Bill that this “would bring to an end the era of homemade corrugated iron warning signs” - NSW Parliamentary Debates, 21 November 1989, p. 12916

control” meant to take such action designed to ensure the stock did not move to a location, or behave in a manner, which would be hazardous to passing traffic or to the general public (clauses 84(1) and (2) of the RLP Regulation 1989). Stock also could not be permitted to disperse along an unreasonable length of a public road or TSR (clause 84(7)).

Recreational use of TSRs was carried over from previous legislation. Certain activities, between sunrise and sunset, did not require any approval (section 86(1) of the RLP Act 1989). These included: walking, horseriding, picnicking, fishing, swimming and cycling (regulation 53(1) of the RLP Regulation 1989).¹⁸⁸ Individuals or groups could apply to use TSRs for an authority to carry out any other activity on TSRs (section 86(3)).

The RLP Boards could also close reserves for the purpose of:

- (a) taking appropriate measures for the conservation of the soil, the prevention or mitigation of soil erosion, or the regeneration or planting of trees, or
 - (b) enabling the Board to exercise any of its other functions in relation to the reserve;
- (section 87).

The RLP Regulation 1989 set out further detail with respect to TSRs and their usage. It listed a number of offences with respect to TSRs, including doing any of the following otherwise than in accordance with a permit, licence or other authority under the RLP Act 1989:

- being on the reserve between sunset and sunrise;
 - lighting a fire otherwise than in a designated site;
 - remove soil, water, timber or other material from the reserve;
 - diverting or interfering with the natural flow of water on the reserve; or
 - swimming or bathing in any water tank or dam on the reserve;
- (clause 54(1) of the RP Regulation 1989).

3.6.2 Amendments to the *Rural Lands Protection Act 1989*

The RLP Act 1989 was amended a number of times in the 1990s, but only rarely did the amendments concern travelling stock reserves.

In 1993, the RLP Boards were given the additional general responsibility to take such steps as the Boards considered to be appropriate for proper land care, and the conservation of native trees, plants, birds and animals within TSRs (new section 81(h) of the RLP Act 1989).¹⁸⁹ Boards could also not remove trees

¹⁸⁸ Exceptions were made for certain reserves where these activities were not permitted without approval (Clause 53(2) of the RLP Regulation 1989).

¹⁸⁹ Inserted by clause (1) of Schedule 3 of the *Rural Lands Protection (Miscellaneous Amendments) Act 1993*

from TSRs without first consulting the Director of National Parks and Wildlife (new section 82(11)).¹⁹⁰

Also in 1993, the requirements with respect to signage to warn traffic of the presence of stock on TSRs were relaxed. A new defence to a charge of failing to display signage correctly was provided if it could be proved that compliance with the signage laws was not necessary because the presence of the stock did not result in any reasonably foreseeable danger to any person, animal, or vehicle, or that the failure to comply with the signage laws was due to circumstances that were beyond the control of and could not reasonably have been foreseen by the person in charge of the stock (new section 96(3A)).¹⁹¹ This was to address situations that had arisen since enactment of the 1989 Act where stock owners were placed in difficult positions and led to the display of a "proliferation of signs which, in practical terms, [were] not necessary".¹⁹²

The RLP Regulation 1989 was replaced by the Rural Lands Protection Regulation 1995; however, no substantive changes were made to the regulation of TSRs.

By the mid-1990s, the role of TSRs for drought relief and conservation purposes appears to have been beyond doubt. Annual reports of the RLP Boards Association in this period continually acknowledged the increasing use of TSRs during drought and recognised their value in this regard.¹⁹³ In 1994, the Association received funding and approval from the National Resource Management Scheme administered by the Department of Water Resources under the National Landcare Program for funding to employ an Environmental Officer.¹⁹⁴ The Environmental Officer was to prepare a management strategy for the conservation of native vegetation in conjunction with the grazing of stock on TSRs. The project targeted 120,000ha of TSRs in the Central West and had four objectives:

1. Identify and audit native remnant vegetation on TSR reserves and record the audit into a database to document the status of strands of native vegetation on the TSRs, to be provided as a resource for RLP Boards, Landcare Groups, conservation agencies and the broader community for the purposes of arresting the fragmentation of natural habitats;
2. Identify any native vegetation on the TSRs which was under immediate threat and take action to arrest the threat to ensure preservation and regeneration;

¹⁹⁰ Inserted by clause (2) of Schedule 3 of the *Rural Lands Protection (Miscellaneous Amendments) Act 1993*

¹⁹¹ Inserted by clause (7) of Schedule 3 of the *Rural Lands Protection (Miscellaneous Amendments) Act 1993*

¹⁹² NSW Parliamentary Debates, 2 March 1993, p. 182

¹⁹³ Annual Report of the Rural Lands Protection Boards' Association of NSW, 1994, at p. 42; Annual Report of the Rural Lands Protection Boards' Association of NSW, 1995, at p. 3; Annual Report of the Rural Lands Protection Boards' Association of NSW, 1996, at p. 25

¹⁹⁴ Annual Report of the Rural Lands Protection Boards' Association of NSW, 1994, p.42

3. Develop through consultation a management strategy for the sustainable preservation of native remnant vegetation on TSRs that is sensitive to the needs of the community and the agencies, in terms of the interaction between travelling stock and the conservation of native vegetation;
4. Train staff of RLP Boards in the identification of native remnant vegetation, endangered flora and fauna, soil erosion, encroaching salinity, to increase the level of awareness and understanding amongst the rural community of the importance of the preservation of native remnant vegetation.¹⁹⁵

3.6.3 The *Rural Lands Protection Act 1998* and the Rural Land Protection Regulation 2001

In 1998, under the Carr Government, substantial changes were made to the administrative framework by the new *Rural Lands Protection Act 1998 (RLP Act 1998)*, which upon its commencement in 2001 replaced the RLP Act 1989.

The long title of the RLP Act 1998 was:

An Act to provide for the protection of rural lands; to provide for the constitution and functions of rural lands protection boards and a State Council of Rural Lands Protection Boards; to repeal the *Rural Lands Protection Act 1989*; to amend the *Impounding Act 1993* to provide for the boards to exercise functions as impounding authorities under that Act; to make consequential amendments to various other Acts and for other purposes.

Under the RLP Act 1998, RLP Boards retained their names and were constituted much as they were beforehand. Their responsibilities with respect to TSRs, broadly speaking, also remained the same. However, the RLP Boards were granted more flexibility and autonomy in fulfilling these responsibilities. In return, the State Council (previously the Council of Authority) was given greater oversight of Board activities and a greater role in determining the policies to be applied by the Boards.

The change in the accountability structure arose from a review of the RLP Boards carried out between 1994 and 1997. Richard Amery, then Minister for Agriculture and Minister for Land and Water Conservation, stated in the Second Reading Speech of the Bill:

[The *Pastures Protection Act 1934* and the *Rural Lands Protection Act 1989*] were drafted in a very prescriptive manner leading to inflexibility with regard to the manner in which boards undertake their duties. In 1994 a working group was set up to review the legislation. Also Coopers and Lybrand were commissioned to undertake a broad-based review of boards and the role of the Council of Advice.

The Coopers and Lybrand review highlighted the need for change within the board system, including the lack of accountability of individual boards. Coopers

¹⁹⁵ Ibid, pp. 42-43

and Lybrand also recommended a number of changes to improve the management of boards and to make boards more accountable for their actions. In 1996 I established a task force to examine the feasibility of implementing the recommendations in the Coopers and Lybrand report. Finally, in late 1996 I formed a new review team made up of representatives of the original working group and the task force to complete the review of the Act. The bill is substantially the result of recommendations made by the review team and reflects a great deal of consultation with the Council of Advice and rural lands protection boards.¹⁹⁶

The State Council's expanded roles under the new legislation included:

- in consultation with the RLP Boards, the formulation and co-ordination of the implementation by Boards of general policies for the protection of rural lands on a State and National Basis;
- the co-ordination and supervision of the implementation by Boards of those policies in districts;
- the provision of advice and assistance about, and the monitoring of the implementation by Boards of function management plans;
- issuing guidelines to a Board with respect to the exercise of any of the Board's functions; and
- requesting a Board to take specified action with respect to carrying out a function of the Board;

(sections 24 to 25 of the RLP Act 1998).

The general policies governing the exercise of RLP Boards' functions were to be developed at a State Conference of the Boards, convened by the State Council, each year (section 17 of the RLP Act 1998).

RLP Boards were granted further autonomy with respect to the management of TSRs. The Boards were required to prepare draft function management plans for their functions in respect of all TSRs under their care, control and management (section 44). The draft function management plans were to contain a scheme of management practice with respect to the TSRs. This included matters pertaining to:

- (a) the management of TSRs for the benefit of travelling stock;
- (b) the adoption of appropriate stocking practices;
- (c) the conservation of wildlife (including the conservation of critical habitat and threatened species, populations and ecological communities and their habitat); and
- (d) the protection of the TSRs against soil erosion and diminution of water quality;

(section 45 of the RLP Act 1998).

The plans would thus provide for many matters concerning travelling stock

¹⁹⁶ NSW Parliamentary Debates, 14 October 1998, pp. 8356-8357

reserves previously contained in legislation.¹⁹⁷ The draft plans were to be publically exhibited for comment (section 46), then submitted to the State Council. The State Council was required to consult with the Director-General of National Parks and Wildlife, the Director-General of Land and Water Conservation, and the Director of NSW Fisheries. The State Council could either agree to the implementation of the function management plan, or refer the draft back to the Board for further consideration (section 47).

Slight changes were made to the process for withdrawing TSRs from RLP Board control. As before, the Minister for Land and Water Conservation could withdraw the care, control and management of a TSR from an RLP Board, but only upon the recommendation of the Minister for Agriculture (sections 86(1) and (2)). Now, the Minister for Agriculture was obliged to take into consideration the views of the RLP Board concerned and the State Council in determining whether or not to recommend the withdrawal of a TSR from Board control (section 86(3)).

As previously, certain RLP Boards were vested with the care, control and management of TSRs. The RLP Act 1998 referred to such TSRs as “controlled travelling stock reserves”. Where an RLP Board had not been granted care, control and management of a TSR in its district, or a TSR had been withdrawn from its care, control and management, the Board still retained some responsibility for the TSR. The RLP Act 1998 referred to these TSRs as “managed travelling stock reserves” (section 84(1)).

RLP Boards responsible for “controlled travelling stock reserves” could make an order closing a controlled travelling stock reserve for the purpose of taking appropriate measures for the conservation of soil or vegetation, the prevention or mitigation of soil erosion, the regeneration or planting of trees or pasture, or to enable the Board to exercise any of its other functions in relation to the reserve (sections 93(1)(a) and (2)). A Board responsible for a controlled travelling stock reserve could also suspend the operation of any permits, entitlements or authorities to use the controlled travelling stock reserve if use of the reserve for the purposes of the activity authorised in the permit could result in damage to the reserve (or part thereof) or to any structure or other thing located on the reserve, or any annoyance to any members of the public (sections 93(1)(b) and (3)).

The way in which the use of TSRs (whether “controlled” or “managed”) was controlled remained largely the same, albeit with some minor differences. The types and names of the permits issued under the RLP Act 1989 were altered. “Stock permits” were required to authorise uses by stock of controlled and managed travelling stock reserves and public roads (section 101). These permits would cover entering, walking along, remaining and grazing on TSRs (section 101(2)).

¹⁹⁷ NSW Parliamentary Debates, 21 October 1998, p. 8731

Fees to move stock were set at \$1.00 per 100 head of small stock and \$1 per 10 head of large stock for every 10km travelled. For grazing, the fees were \$1 for 10 head of small stock per day, and \$1 per each head of large stock per day (clause 44(4) of the Rural Land Protection Regulation 2001 (**RLP Regulation 2001**)). Stock (of all kinds) were to be moved at least 10km per day (clause 47(1) of the RLP Regulation 2001). Approval could be obtained to travel slower, but this attracted additional fees (clauses 47(3) and (8)).

Stock permits were required for stock being moved by vehicle, as well as on hoof. Initially, the RLP Regulation 2001 permitted stock being moved by vehicle to be moved under a transported stock statement as an alternative to a stock permit. Transported stock statements operated much as they did under the previous RLP Act 1989 (Division 4 of the RLP Regulation 2001). That part of the Regulation was subsequently replaced in 2002 by a new Part 10A inserted into the RLP Act 1998 dealing with transport of stock by vehicle, which again incorporated transported stock statements and powers to stop and search vehicles transporting stock.¹⁹⁸

Recreational use of TSRs remained similarly regulated. No authority or permit was required to go walking, running, horse riding, picnicking, fishing, swimming or cycling in a TSR, other than closed TSRs or TSRs that were public watering places, or TSRs that were in the Western Division (section 97 of the RLP Act 1998; clause 26 of the RLP Regulation 2001). A “reserve use” permit was required to use any TSR for any other purpose (section 100 of the RLP Act 1998).

Aside from certain exemptions pertaining to the use of public roads (clause 23 of the RLP Regulation 2001), the legislation did not specify any particular circumstances where the relevant permit or authority was not required to use TSRs. Instead, the RLP Boards were granted the power to set their own exemptions in accordance with guidelines issued by the State Council (section 128).

The provisions with respect to the control, management and leasing of stock watering places remained much the same as under previous legislation (Part 9 of the RLP Act 1998).

3.6.4 Ongoing concerns with over-use of TSRs for grazing

In 2003, amendments were made to the RLP Act 1998, one of which gave RLP Boards the ability to set a lower amount for fees to use TSRs than that set by the RLP Regulation 2001. The lesser amount had to be set by reference to a class of persons, public roads, travelling stock reserves or activities, or situations that fell within circumstances described in the determination (new section 102(2A) of the RLP Act 1998).¹⁹⁹ This was to give RLP Boards flexibility in setting fees for the use of TSRs for walking and grazing stock, particularly in

¹⁹⁸ Schedule 3 of the *Pastoral and Agricultural Crimes Legislation Amendment Act 2002*

¹⁹⁹ Schedule 1.[12] and [13] of the *Rural Lands Protection Amendment Act 2003*

light of the importance of the TSR network for emergency grazing during droughts and other natural disasters. The Boards could, for example, apply a different fee to all TSRs within a particular division of the Board's district, or to the grazing of stock in good seasons when traditional use of the TSRs is low.²⁰⁰

These amendments were supported by the Opposition, although concerns were expressed by the NSW Greens during the second reading debate in the Legislative Council concerning the risk of overgrazing as a key threat to the conservation and ecological values of TSRs.²⁰¹

Further, on 28 June 2004, Ian Cohen of the NSW Greens asked the Minister for Primary Industries a question without notice as to alleged long term "leases" by RLP Boards of TSRs:

Why are rural lands protection boards advertising three-year leases for travelling stock reserves? Does that not defeat the purpose of TSRs? Will the Government give a commitment that it will not sell or enter into long-term leases for TSRs?²⁰²

In response, the Minister for Primary Industries, Ian Macdonald, advised that:

It is not true that the Boards are offering three-year leases of TSRs. The Act does not generally enable a Board to issue leases of TSRs. The only exception to this relates to a special category of TSR known as a Stock Watering Place, which are mainly in the Western Division of the State.

Although Boards are not enabled to issue leases of TSRs generally, they are allowed to issue Stock Permits on such lands under the Act. These Stock Permits can relate to travelling or grazing stock on TSRs.

Boards have for many years issued annual permits for the grazing of stock on TSRs. In more recent times there have been instances where Boards have sought tenders or other expressions of interest for longer-term permits, including some for three years.

There are several reasons why it is necessary for Boards to issue permits to graze stock for periods of three years. The management of TSRs is very expensive, and often the income derived from the issue of shorter-term permits is insufficient to meet the costs of maintaining the facilities. Weed control is one of the more expensive activities associated with TSR management, and the cost of herbicides alone is a significant burden on Board finances.

To address the problem of insufficient income being derived from shorter-term permits, the issue of longer-term permits is a means of improving the situation. When longer-term permits are issued, the Board can require the permit holder to undertake activities such as weed control and maintain watering facilities as

²⁰⁰ NSW Parliamentary Debates, 20 April 2003, p. 109

²⁰¹ NSW Parliamentary Debates, 20 May 2003, p. 679

²⁰² NSW Parliamentary Debates, 28 June 2004, p. 10288

part of the conditions of the permit. In some circumstances Boards have been able to require holders of longer-term permits to erect new boundary fencing under the conditions of a permit.

It would not be practical to impose such conditions on permits of 12 months duration, because it would be an unrealistic expectation on the holder of the short-term permit. In other words, a permit holder would usually require tenancy of about three years to warrant the work undertaken on weed control and the like.

Members would be aware that TSRs were primarily established to cater for travelling stock. However, their use by travelling stock is periodic, depending on seasonal conditions and other variables. The advent of the movement of stock by motor vehicles has also diminished their use by travelling stock. They are consequently more readily available for grazing purposes in many areas.

The grazing of TSRs by stock can in itself assist in weed control. Such grazing also often significantly diminishes what would otherwise be a fire hazard caused by rank pasture growth. At the same time it is recognised that TSRs often provide important habitat for native fauna and flora. The Boards are well aware of this attribute of TSRs and concurrently meet the needs of stock and protect native fauna and flora where appropriate.

In view of the fact that TSRs have been primarily established for use by stock I do not consider that the issue of Stock Permits for three-year periods defeats the purpose of TSRs. They are not National Parks or declared nature conservation areas and thus are subject to their own management parameters.

As far as the sale of TSRs is concerned, there are no plans for the widespread abolition or sale of TSRs. However, there are isolated instances where a Board considers that it has no further use of a particular TSR and it may seek to have it revoked from its control. Such revocation can also occur in instances where there is urban expansion around a town, and a TSR is untenable in the new urban environment. The revocation of TSRs from Board control is relatively infrequent.

The establishment of a TSR under Board control involves two steps, firstly the proclamation of the relevant Crown land as a TSR under the Crown Lands Act 1989, and secondly the placement of the TSR under Board control under the Rural Lands Protection Act 1998. Even if a particular TSR was removed from Board control, its status as Crown land would not automatically change.

I can therefore advise that there is no intention of conducting a widespread sale of TSRs. Similarly, there will be no general long-term leases of TSRs. However, because of the circumstances I have just outlined I see no reason to ban the issue of three-year Grazing Permits. The advantages of such permits being issued far outweigh any perceived disadvantages.²⁰³

²⁰³ [NSW Parliamentary Debates](#), 31 August 2004, p. 10472

3.6.4 2004 Review of the *Rural Lands Protection Act 1998*

A statutory review of the RLP Act 1998 was carried out by the NSW Government Review Group in 2004, to determine whether the policy objectives of the Act remained valid and whether the terms of the Act remained appropriate for securing those objectives.²⁰⁴

The [Final Report](#) of the Review Group²⁰⁵ was published in November 2004. It noted that the objective, gleaned from the long title of the RLP Act 1998 was broadly to “protect rural lands”. This raised a number of issues:

- Whether the objective should be literally interpreted, such that it refers to protecting land specifically, i.e. Protecting land from erosion, or, whether it was intended to describe the broader suite of activities now undertaken by boards, such as the control of certain diseases and pests; and
- Whichever way the stated objective is interpreted, why was regulatory power required, rather than relying solely on the abilities of landholders to ‘protect’ their own land (or business).²⁰⁶

The Review Group concluded that the intention of the Government had been to provide a regulatory mechanism to address certain pest and disease control problems where industry wide coordination was required to achieve efficient control, and to administer TSRs for certain purposes and in a manner that avoids their over-exploitation as a common property resource. The Review Group recommended that the RLP Act 1998 be amended to define its long title and objectives as follows:

Long title: An Act to establish rural lands protection boards and to confer functions on the boards, and for other purposes.

The objectives of this Act are as follows:

- to establish districts, boards and a State Council;
- to provide for functions of boards at a State, district and property level, including the coordination and delivery of certain animal health, animal production and pest control activities, and drought and natural disaster support activities;
- to provide for obligations and powers necessary for those activities;
- to provide for the sustainable management of Travelling Stock Reserves; and
- to provide a framework for funding the activities of boards.²⁰⁷

²⁰⁴ As required by section 248 of the RLP Act 1998

²⁰⁵ NSW Government Review Group, “[Statutory Review of the Rural Lands Protection Act 1998 – Final Report](#)”, 2004

²⁰⁶ *Ibid*, at p. 22

²⁰⁷ *Ibid*, at p. 27

The Review Group then considered the TSR provisions of the RLP Act 1998 specifically. It examined the use and management of the approximately 600,000 ha of Crown land managed by RLP Boards as TSRs, usually at a significant net loss.²⁰⁸ Data provided by the State Council to the Review Group indicated that during a typical year such as 2001, only one of the 48 RLP Boards made profit on their TSRs, and only one third of RLP Boards made a profit during a high demand drought year in 2002.²⁰⁹

Further, data provided by three TSRs (Gloucester, Mudgee-Merriwa and Narrabri) indicated that a low proportion of rate payers used TSRs for various purposes. The Report noted that if this trend was indicative of broader TSR usage patterns, then, together with the data illustrating a general loss on the TSRs, it demonstrated that non-TSR using ratepayers were heavily subsidising TSR users.²¹⁰

The Review Group drew the following conclusions with respect to the regulation of TSRs under the RLP Act 1998:

- The provision of subsidised grazing on Crown land was probably an inefficient means of supporting farm businesses suffering from the effect of drought;
- No fodder-related justification for forcing the majority of board ratepayers to make up the difference between the cost of TSR maintenance and TSR revenue could be found;
- Production-related benefits could justify the maintenance of some TSRs, such as the use of TSRs for the movement and/or watering of stock, and the use of TSRs as flood refuges;
- Individual TSRs that have been retained for productive purposes should therefore be managed on a cost recovery basis, where possible, and cross-subsidisation by non-TSR users should only occur where a Board can demonstrate that the majority of ratepayers support the TSR's retention;
- The present system of setting stock walking and grazing permit fees by regulation prevents Boards from pursuing full cost recovery. RLP Boards should therefore be given greater discretion in relation to the setting of such fees so that the amount charged can better correspond to the productive value of the service provided;
- The historical, social, or cultural significance to the community of many TSRs support the retention of public ownership and the ongoing development and implementation of particular management strategies. The ongoing funding of TSRs with certain significance by a subset of the community – ratepayers under the RLP Act 1998 – may impose an

²⁰⁸ Ibid, at p. 39

²⁰⁹ Ibid.

²¹⁰ Ibid.

inappropriate cost on those ratepayers, and there is an argument for the provision of cultural services through TSRs to be funded outside of the RLP Act 1998;

- Similarly, there is an argument for the cost of environmental services provided by the TSRs to be funded by the broader community, not solely by ratepayers under the RLP Act 1998. The Review Group noted, however, that at a local level, farmers may benefit from biodiversity preservation on TSRs through the provision of shelter, positive ground water effects etc. The Report noted that the question of who should pay for biodiversity conservation in the reserves was complex. It concluded that an alternative authority, with singularly focused objectives on managing scarce environmental values, may be appropriate for some TSRs. This would relieve RLP Boards of that funding burden.
- Concerns surrounding withdrawal of TSRs from RLP Board control that are based on assertions that the entities taking control of the reserves would not maintain them sufficiently, leading to increases in pests, do not constitute valid justification for the continued cross-subsidisation of TSR maintenance by non-user ratepayers. Further, the Minister should not be able to refuse to withdraw a TSR that an RLP Board no longer wishes to maintain.
- In general, the provisions of the RLP Act 1998 in relation to TSRs appeared to impose on RLP Boards competing objectives of managing TSRs for the benefit of stock, as well as for the preservation of biodiversity.²¹¹

The Review Group made four recommendations concerning TSRs under the RLP Act 1998:

Recommendation 9: The Review Group recommends amending the Act to revise the fee structure to give boards greater flexibility to recover the costs of managing TSRs.

Recommendation 10: The Review Group recommends that the Act be amended to streamline the process by which the withdrawal of the management of TSRs from Boards occurs.

Recommendation 11: The Review Group recommends that the NSW Government consider alternative sources of funding for the management of TSRs for which revocation is not approved and which are being retained by Boards for non-stock purposes.

Recommendation 12: The Review Group recommends that, where TSRs are found to contain scarce cultural or biodiversity values, consideration be given to implementing appropriate management and funding regimes.

²¹¹ Ibid, at pp. 42 to 44

In 2006 amendments were made to the RLP Act 1998 to simplify the administrative requirements of RLP Boards and to maintain financial accountability and reporting requirements.²¹² These amendments did not, however, incorporate the Review Group's recommendations with respect to TSRs, which were, at the time, indicated to be the subject of a subsequent bill following further consideration by the Government.²¹³

3.7 2008 to 2013: the Livestock Health and Pest Authorities

3.7.1 Integrated Marketing Communications Review of the Board System

In 2007 the State Council initiated an external review of the Rural Lands Protection regime due to concerns about the financial performance of the RLP Board system, the number of Boards experiencing operational difficulties and the ability of the organisation to respond to the changing needs of its ratepayers.²¹⁴

The review was undertaken by Integrated Marketing Communications and the final report was presented to the NSW Government in June 2008 (**IMC Report**).²¹⁵ *The Land* reported on 12 June 2008 that the IMC Report indicated that the RLP Boards were losing an average of about \$60,000 per year on TSRs, and only six of the 47 boards operated at a profit.²¹⁶ According to the 2008 Annual Report of the Rural Lands Protection Boards, the major recommendations outlined in the IMC Report included:

- The number of RLP Boards be reduced from 47 to 14 across the State. The 14 boards would be managed locally and overseen by a nine member State Board of Management;
- General policy and strategic directions would be set by a new State Policy Council consisting of 28 members – two from each Board;
- The core business of the RLP Board system should be animal health and pest animal and insect management, operating within the national biosecurity framework; and
- The management of TSRs should be ceded back to the NSW Department of Lands in cases where they place an unreasonable financial burden on RLP Boards.²¹⁷

²¹² *Rural Lands Protection Amendment Act 2006*; NSW Parliamentary Debates, 24 October 2006, p. 3286

²¹³ NSW Parliamentary Debates, 24 October 2006, p. 2386

²¹⁴ State Council of Livestock Health and Pest Authorities, "Rural Lands Protection Boards 2008 Annual Report", 2010, Orange, at p. 5

²¹⁵ *Ibid.*

²¹⁶ *The Land*, "Government to take costly stock routes", 12 June 2008, p. 7

²¹⁷ State Council of Livestock Health and Pest Authorities, "Rural Lands Protection Boards 2008 Annual Report", 2010, Orange, at p. 5

Then Minister for Agriculture, Ian Macdonald, reportedly announced at the 2008 State Conference of the RLP Boards that the Government had adopted the recommendations in the IMC Report.²¹⁸ *The Land* also reported that the State Council of RLP Boards supported the majority of the IMC Report's recommendations.²¹⁹ However, drovers, some farmers, scientists, and environmental groups expressed concern, particularly as to handing over unprofitable TSRs to the Department of Lands.²²⁰

3.7.2 2008 Amendments and the Livestock Health and Pest Authorities

The *Rural Lands Protection Amendment Act 2008* was passed in December 2008, amending the RLP Act 1998 to give effect to many of the IMC Report's recommendations concerning the RLP Board system.

The 2008 Act overhauled the RLP Board system in a number of ways. Rural Land Protection Districts were replaced by "Livestock Health and Pest Districts" (new section 5(1) and new Part 6, Division 1 of the RLP Act 1998).²²¹ RLP Boards were replaced by Livestock Health and Pest Authorities (LHPAs). The 2008 Act was accompanied by a proclamation published in the NSW Government Gazette amalgamating the 47 RLP Boards into 14 LHPAs.²²²

The annual State Conference of the RLP Boards was replaced by a State Policy Council, to be held on an annual basis, comprised of two members from each Livestock Health and Pest District. The State Policy Council's functions included determining general policies to be implemented by LHPAs for the protection of rural lands, appointing members of the State Council and determining its policies (new section 16(1) of the RLP Act 1998).²²³

The State Council itself was also altered slightly and its name changed to the State Management Council. In broad terms its overall functions remained the same, but it was now required to be accountable to the Minister for Primary Industries in the exercise of those functions.²²⁴ The other amendments put in place by the 2008 Act largely involved changes to elections and membership of LHPAs, and related structural amendments.²²⁵

²¹⁸ Ibid; *The Land*, "Rush to RLPB reform...and some hope for stock routes", 19 June 2008, p. 7

²¹⁹ *The Land*, "Farmers face new landscape", 12 June 2008, p. 6

²²⁰ *The Land*, "Big Mac: We won't sell TSRs – really we won't!", 11 September 2008, p. 5; *The Land*, "Plea for future graziers", 24 July 2008, p. 7; *The Land*, "Rush to RLPB reform...and some hope for stock routes", 19 June 2008, p. 7

²²¹ Inserted by Schedule 1.[2] and [15] of the *Rural Lands Protection Amendment Act 2008*

²²² NSW Government Gazette No. 158, 19 December 2008, pp. 12867-12905

²²³ Inserted by Schedule 1.[9] of the *Rural Lands Protection Amendment Act 2008*

²²⁴ NSW Parliamentary Debates, 14 November 2008, p. 11535

²²⁵ Ibid.

In terms of the amendments impacting on TSRs and travelling stock directly, there were few. Explicit objectives were inserted into the RLP Act 1998 (new section 2A).²²⁶ The objectives included:

- (i) to provide for the sustainable management of travelling stock reserves and stock watering places;
- (j) to deal with certain unattended and trespassing stock; and
- (k) to regulate the movement of stock.

Changes were also made to the ways in which fees could be set for the various permits to use TSRs under the RLP Act 1998. Previously, all the fees were set by regulations. After the amendments, the fees for most permits could be set by the LHPAs, and LPHAs were given the option of setting the fees for grazing permits by auction or public tender (new section 102(2) of the RLP Act 1998).²²⁷ It also became possible for lessees of stock watering places to transfer their lease to another person, with the approval of the relevant LPHA, Council or other controlling authority (new section 134(3)).²²⁸

There was considerable debate surrounding the 2008 amendments during its passage through Parliament. The key concern was with the reduction in Board numbers from 47 to 14 and an anticipated loss of local knowledge and expertise.²²⁹ Whilst there was no provision in the Bill for any major changes to TSRs, an administrative change was proposed where each Board (now LPHA) would review its TSRs and how they were being managed and used.²³⁰ In light of this, and the IMC Report's recommendations to return unprofitable TSRs to the Department of Lands, Members of Parliament also expressed concerns surrounding proposals for the future of TSRs.

During the Second Reading debate in the Legislative Council, Nationals MLC Rick Colless stated that:

While we are reasonably comfortable with the Department of Lands managing those travelling stock reserves, there is a great deal of concern about what might happen down the track. Once National Parks decides to get its hands on some of those lands they will be lost to the local management forever.²³¹

NSW Greens MLC Ian Cohen stated:

The Government should rethink this bill. The insertion of new section 2A, which refers to new objects of the Act, fails to protect the ecological values and ecological functions of travelling stock reserves and stock watering places, and to maintain a network of travelling stock reserves that connects livestock production areas to livestock markets as an alternative to transport of livestock

²²⁶ Inserted by Schedule 2.[5] of the *Rural Lands Protection Amendment Act 2008*

²²⁷ Inserted by Schedule 5.[20] of the *Rural Lands Protection Amendment Act 2008*

²²⁸ Inserted by Schedule 5[22] of the *Rural Lands Protection Amendment Act 2008*

²²⁹ NSW Parliamentary Debates, 27 November 2008, pp. 11991ff

²³⁰ NSW Parliamentary Debates, 27 November 2008, p. 12005

²³¹ NSW Parliamentary Debates, 2 December 2008, p. 12128

by road. The Greens want a continuation of board management of TSRs that are better placed to conjoin their biosecurity mandate with broader land use management. We have an opportunity to maintain and build upon an ecologically important vegetation and wildlife corridor, and support a range of users. Unless the resumption of TSRs by the Department of Lands can be ruled out and specific measures adopted to guide the new authorities to manage TSRs for a range of ecological, agricultural, historic and cultural values, the Greens cannot support the bill.²³²

In reply, the Minister, Ian Macdonald, stated that:

The New South Wales Government has no intention of selling off the travelling stock reserves network...The IMC review found that between 2005 and 2007 the board system spent more than \$800 million on maintaining travelling stock reserves. That represents 18 per cent of all board expenditure and a significant cost to ratepayers...

The IMC review also noted the decline in use of travelling stock reserves for their original purpose – to transport stock – as a result of improvements in vehicle transport. In this context, the IMC report sensibly recommended that boards should look closely at how their travelling stock reserves are being used and managed. If the reserves are no longer required for the purpose of moving and feeding stock, then boards may not be the appropriate land managers. Once the new boards are in place, they will be required to review the use and management of their travelling stock reserves according to criteria developed by the State [Management] Council to ensure a consistent assessment process. They will then be required to report to the new State Management Council on whether they should retain management responsibility for the travelling stock reserves in their district or whether the management responsibilities should be returned to the Minister responsible for Crown lands.

The review process will consider much more than just a business case. The Government is committed to ensuring that farmers continue to have access to travelling stock reserves during times of need, such as during droughts or floods, and that the current level of stewardship delivered by boards will be maintained on reserves managed by the Department of Lands. Honourable members will remember that the Department of Lands already manages a vast number of travelling stock reserves in the Western Division of New South Wales. If travelling stock reserves are returned to the Department of Lands, it will be at that stage that the environmental, social and cultural use of the land will be considered. The assessment will take place under the Crown Lands Act and the regulations that support the Act. The assessment will be done by the Department of Lands. In response to the question raised by Mr Ian Cohen, the final evaluation of the travelling stock reserves will be done within the context of the Department of Lands and will take into account the environmental factors.²³³

²³² NSW Parliamentary Debates, 2 December 2008, pp. 12135-12136

²³³ NSW Parliamentary Debates, 2 December 2008, p. 12137

The Bill passed the Legislative Council with the support of the Shooters and Fishers Party and Christian Democratic Party, assured by the Government that there would be no major threat to the TSR network.²³⁴

3.7.3 Assessment of TSR Values by the Land and Property Management Authority

The question of how TSRs ceded back to the Department of Lands were to be used, and whether or not they were to be sold off, remained a political issue throughout the late 2000s.

During budget estimates hearings in 2009, the Minister for Lands, in response to a question asked by Nationals MP John Turner, stated that all travelling stock reserves returned to the Department of Lands would be assessed to determine their existing and potential use, along with their environmental, social and cultural values and whether any potential community use exists in addition to the existing travelling stock reservation. The Minister reportedly stated that "Subject to the outcomes of the assessment, users of travelling stock reserves under the administration of the Department of Lands will be charged on the same basis as other Crown land tenants having regard to the provisions of the Crown Lands Act."²³⁵

In 2009 an investigation and assessment of the values of TSRs within the former Maitland and Hunter RLP Board districts was undertaken. The [Report](#), published in August 2009, states that:

The study was undertaken against the stated government policy position enunciated by the Minister for Lands and the Minister for Primary Industries that all TSR's [sic] whether they stay under the management of the RLPB's or the Land and Property Management Authority as Crown Reserves would retain their specific reservation of TSR and form part of an integrated Crown reserve system.²³⁶

159 TSRs were assessed in an attempt to develop a methodology for State-wide application to assess a wide range of land attributes and values of the TSRs.²³⁷

The project concluded that:

- to properly manage the TSR estate, further TSR identification, consistent naming of TSRs and accurate mapping along with updating reserve purpose and management details were necessary;

²³⁴ NSW Parliamentary Debates, 2 December 2008, pp. 12131 and 12136

²³⁵ John Turner MP, "Travelling Stock Routes – revenue raising", Media Release, 9 July 2009

²³⁶ Land and Property Management Authority, "[Assessing the values and management of the NSW travelling stock reserve network for biodiversity and optimal management in the Hunter Valley](#)", Report on methodology and findings, August 2009, Land and Property Management Authority, p. 4

²³⁷ Ibid.

- the majority of TSRs are in overcleared landscapes, that most have high to very high ecological values and many have high catchment values;
- other important TSR values include cultural heritage, a wide range of social uses, land degradation protection, solutions to access management issues (particularly where TSRs provide the sole access to freehold properties), drought and flood relief for graziers, “driver reviver” areas and primitive camping sites for travellers. The Report noted, however, that these values have to be balanced with the rural and environmental factors and values of TSRs.²³⁸

The project successfully developed a methodology for identifying and assessing the significance on a wide range of values of TSRs.²³⁹

Part of the assessment methodology included identifying the preferred land use of TSRs. For the purposes of this part of the project, it was assumed that all TSRs within the study area were to be ceded back to the Department of Lands. From this assumption, the Land and Property Management Authority (LPMA) made recommendations about future use under the Crown Lands Act 1989, in line with the Crown land management principles in section 11 of that Act.²⁴⁰ On this assumption, any reserves gazetted for travelling stock were retained in the Crown estate and the reserve purpose was maintained.²⁴¹ Any reserves with high conservation values were reserved for Environmental Protection.

The Report stated that:

The LPMA intends to retain all lands under the Crown estate but their management may vary through the interests of relevant agencies (e.g. [the Department of Environment, Climate change and Water]), Local Government Councils, and community groups, including Aboriginal Land Councils. These interested parties may become trustees under the Crown Lands Act to manage specific reserves where a clear case can be established that this is the most desired and practical outcome.

The Report noted that LPMA (Lands) would only consider disposal of a parcel of TSR where it met the following criteria:

- High socio-economic values (potential development)
- Small in area (i.e. under 4ha);
- Poor stock route and landscape connectivity;
- No significant environmental, cultural/social values; and
- Sale price to reflect best use.²⁴²

²³⁸ Ibid, p. 50

²³⁹ Ibid.

²⁴⁰ Ibid, p. 29

²⁴¹ Ibid, pp. 29-30

²⁴² Ibid, p. 30

The Report continued:

For TSRs ceded back to LPMA (Lands), there is a prime responsibility that future management options be considered initially, in accordance with the principles of the *Crown Lands Act 1989*. Essentially, these are triple-bottom-line principles, of environmental values, and the social and economic needs of a community with growing needs. Often, two and sometimes all of these principles may produce an interrelated and multi-use outcome which is encouraged by the enabling legislation and policies of LPMA (Lands).

It is therefore appropriate that in accordance with stated Ministerial policy all TSRs ceded back to management by LPMA (Lands) will continue to be retained as travelling stock reserves, and managed within the Crown land estate as part of the state wide Crown Reserve Corridors Program. Additional reservation purposes will be encouraged to reflect multifunctional use including for conservation purposes where these values are considered significant.²⁴³

The Department of Lands Annual Reports for 2008/2009 and 2009/2010, the Land and Property Management Authority Annual Reports for 2010 and subsequent annual reports of the Department of Finance and Services do not give an indication of how many TSRs have been ceded back to Crown lands.

4. RECENT DEVELOPMENTS AND ISSUES

4.1 From Livestock Health and Pest Authorities to Local Land Services

4.1.1 The Ryan Review of the Livestock Health and Pest Authorities

On 21 July 2011, Katrina Hodgkinson, the Minister for Primary Industries, [announced a review](#) of the Livestock Health and Pest Authority (LHPA) model in response to “widespread concern expressed by farmers and other rural landholders since the LHPA came into place in 2009”.²⁴⁴ A series of complaints had been made concerning the operations of the LHPA and the increases in their rates, following on from the restructure from 47 RLP Boards to the 14 LHPAs in 2009. The amalgamation of boards led to increases of rates for many ratepayers due to rationalisation of rate structures across the amalgamated boards.²⁴⁵

Mr Terry Ryan, an independent agricultural and energy economic consultant, was appointed to conduct the review, under the auspices of a Steering Committee made up of Government and industry representatives.²⁴⁶

²⁴³ Ibid.

²⁴⁴ Katrina Hodgkinson MP, Minister for Primary Industries, “[Minister to undertake a review of Livestock Health and Pest Authority model](#)”, Ministerial Media Release, 21 July 2011

²⁴⁵ Terry Ryan, “[Report on the Review of the NSW Livestock Health and Pest Authority \(LHPA\) Model: a review commissioned by the Minister for Primary Industries](#)”, February 2012, at p. 19

²⁴⁶ Katrina Hodgkinson MP, Minister for Primary Industries, “[Terry Ryan to lead LHPA review](#)”, Ministerial Media Release, 17 August 2011

The [Ryan Review Report into LHPAs](#) was released in March 2012. Most of the findings of the Ryan Review were concerned with the biosecurity role of LHPA and rating issues. As concerns LHPA's roles in relation to TSRs, the report made the following findings and conclusions:

- Currently, very few TSRs (if any) are used for their original purpose of moving livestock from farms to markets or railheads, with livestock now being moved by trucks on the road;
- As a fodder resource for a widespread drought in NSW, the area of TSRs relative to private grazing lands in NSW is insignificant. They are not an effective reserve for drought and depending upon how usage of them is allocated and utilized, they could be providing a subsidy to users in competition against private sector suppliers of fodder or agistment opportunities in NSW;
- The full costs of maintaining TSRs are unknown as the HLPAs do not undertake full costs centre accounting. It is also unclear if grazing rights on TSRs are allocated on a commercial agistment basis. On an economic efficiency approach, the usage of TSRs should not only cover the costs of maintenance and any improvements but also deliver a return on the capital values of the lands being used;
- There was general acceptance by all participants in the review's public meetings that ratepayers alone should not be expected to pay for the public benefits of TSRs, such as environmental remnant native vegetation, wildlife corridors, inland fishing and heritage values;
- The responsibility for all TSRs should be devolved to appropriate NSW Government agencies. The regional biosecurity delivery organisations should have the opportunity to put business cases for them to retain and manage TSRs. However, the primary default position should be development unless appropriate business cases can be mounted;
- It should be an immediate priority to devolve the TSRs to the Crown as there is likely to be little benefit for ratepayers in ensuring a focus on core biosecurity issues if resources are continually diverted to TSR management;²⁴⁷
- While particular parcels of the TSR system may deliver values, such as nature conservation and recreation, to the broader NSW community and some grazing opportunities for a small section of the LHPA ratepayer base, there is no longer a robust case for landholders to continue to manage reserved public lands to support these values;²⁴⁸

Key recommendations from the Ryan Report included that the Government:

1. Dissolve the existing 14 LHPAs and State Management Council and establish an interim single State-wide LHPA, with an independent skills-based Board of Management that reports directly to the Minister for Primary Industries;

...

²⁴⁷ Terry Ryan, "[Report on the Review of the NSW Livestock Health and Pest Authority \(LHPA\) Model: a review commissioned by the Minister for Primary Industries](#)", February 2012, at pp. 44-47

²⁴⁸ *Ibid*, at p. 8

8. Devolve management responsibility for all the public lands currently dedicated as TSRs to the Department of Primary Industry Division of Catchments and Lands. The new single State-wide LHPA is to make a public benefit case at the local level for it to retain management of any individual area of Crown lands for livestock purposes;
9. Develop a new regional advisory and delivery framework with a view to establishing a system where:
 - a. The LHPA Board of Management retains control of implementing NSW Government policy and emergency response and other regionally delivered services to rural landholders are integrated into a single delivery framework; and
 - b. Robust management systems ensure operation and accountability throughout the system to the NSW Government and to ratepayers;
10. Broaden the new single LHPA involvement in the delivery of frontline biosecurity functions to include delivery of frontline plant biosecurity services and participation with other agencies in joint compliance and advisory functions on pests, diseases and weeds;
11. Create a new regional service delivery organisation to deliver a broader array of the services currently provided to landholders separately by the (state wide) LHPA, catchment management authorities, the Department of Primary Industries, and weeds authorities; and
- ...
13. Establish the new regional advisory and delivery framework with a formal structure that draws on local advisory committees. It should have local advisory responsibilities under the direction of the state-wide Board of Management.²⁴⁹

Stakeholder reaction to the Ryan Review Report was mixed. The NSW Farmers Association rejected the Report's main recommendations. The majority of its concerns pertained to rating distribution and issues, but with respect to TSRs in particular, the Association recommended:

That control of travelling stock routes should remain vested with LHPAs; and the Government should make a contribution towards the operational costs associated with the maintenance of travelling stock routes. This is in recognition of the public good that arises from the operation of TSRs, which is not captured by rate payers; and that these maintenance costs would be borne by Government should the management of TSRs be transferred to DPI – Crown Lands.²⁵⁰

The Land reported that, in a leaked document sent by the then existing LHPA State Management Council to the Minister for Primary Industries, the State Management Council heavily criticised the Report for containing “misleading conclusions” “based on anecdotal or selective unrepresentative examples”.²⁵¹

²⁴⁹ Ibid, at pp. 10-18

²⁵⁰ NSW Farmers' Association, “[LHPA Review: Response to the Ryan Report](#)”, May 2012, at p. 21

²⁵¹ *The Land*, “[LHPA review misleading](#)”, 7 May 2012, accessed online on 28 November 2014

Mr Ryan reportedly stood by the Report's findings and encouraged LHPAs to raise their concerns during the submissions period following the release of the Report.²⁵²

4.1.2 The *Local Land Services Act 2013*

On 4 October 2012, Minister for Primary Industries, Katrina Hodgkinson, announced the creation of Local Land Services, to replace the 14 LHPAs and 13 Catchment Management Authorities, and to provide agricultural advisory services provided by Agriculture NSW (within the Department of Primary Industries).²⁵³

In a media release, the Minister stated that:

Local Land Services will see the end of multiple agencies providing uncoordinated, highly duplicative, inequitable and unnecessarily expensive services to farmers and regional landowners... The current structures are stifling innovation, reducing productivity and making it harder for farmers and landowners to manage their land.²⁵⁴

NSW Natural Resources Commissioner Dr John Keniry AM was appointed to Chair a Reference Panel to oversee the construction of the new Local Land Services.

The NSW Farmers Association was "cautiously optimistic" about the proposed change in administrative structure.²⁵⁵ Greening Australia and Landcare reportedly also welcomed the announcement.²⁵⁶

The Local Land Services Bill 2013 was introduced to the NSW Parliament on 28 May 2013, and had passed both Houses by 25 June 2013, with minor amendments. The [Local Land Services Act 2013 \(LLS Act 2013\)](#), as proposed, replaced the LHPAs and Catchment Management Authorities with one State-wide, regionally based body called Local Land Services (LLS) with 11 local boards throughout the State. The local boards have seven members, three elected by ratepayers of the particular region, and four appointed by the Minister (except in the Western Division, where the ratio is 4:5).²⁵⁷ A Board of Chairs, which includes the Chairpersons from each local board, was established and given responsibility for developing a ten-year Strategic Plan to set the overarching vision and priorities for Local Land Services across the State.²⁵⁸

²⁵² *The Land*, "Ryan defends his LHPA review", 10 May 2012, p. 16

²⁵³ Katrina Hodgkinson, Minister for Primary Industries, "*Local Land Services* to transform service delivery to NSW farmers and landowners", Ministerial Media Release, 4 October 2012

²⁵⁴ *Ibid.*

²⁵⁵ NSW Farmers' Association, "[New agency means major changes for farmers](#)", Media Release, PR/096/12, 4 October 2012

²⁵⁶ *The Land*, "Service long overdue", 11 October 2012, p. 6

²⁵⁷ [NSW Parliamentary Debates](#), 20 June 2013, p. 21755

²⁵⁸ *Ibid.*

Local Land Services has a range of functions, including to administer, develop and fund local land services, develop and implement appropriate governance arrangements for the delivery of local land services, provide and facilitate education and training in connection with agricultural production, biosecurity, natural resource management and emergency management, make and levy rates, levies and contributions on rateable and other land for the purpose of carrying out its functions and provide advice on matters referred to it by the Minister (section 14 of the LLS Act). Local Land Services are also to develop a State Strategic Plan to set the vision, priorities and overarching strategy for local land services in the State, with a focus on appropriate economic, social and environmental outcomes (section 36).

The functions of the 11 local Local Land Services Boards include preparing a local strategic plan in respect of the delivery of local land services in the region, monitoring the performance of Local Land Services in the region, including by reference to the local strategic plan, making recommendations to the Board in relation to the making of rates, levies and contributions on rateable and other land in the region and communicating, consulting and engaging with the community in developing plans and in respect of the delivery of programs and services by Local Land Services in the region (section 29). The local Local Land Services Boards were also given delegated authority to set certain fees for services.²⁵⁹

The local strategic plans required to be prepared by the local Local Land Services Boards are to provide for the outcomes that are expected to be achieved by the implementation of the plan in relation to the region and the timeframes for achieving those outcomes and requirements for reporting on whether those outcomes and timeframes have been achieved (section 47). In Committee in the Legislative Council, the Opposition moved, with the support of the Greens, an amendment that would have explicitly permitted local strategic plans to provide for the sustainable management of traveling stock reserves and stock watering places. However, the amendments were negatived.²⁶⁰

Local Land Services also took over the management of TSRs under control of LHPAs. The elements of the *Local Land Services Act 2013* dealing with the control and management of TSRs were a continuation of the position under the *Rural Lands Protection Act 1998*, as amended.²⁶¹ The current position under the *Local Land Services Act 2013* is discussed above in Chapter 2 of this Paper.

4.2 Crown Lands Multiple Uses Act

In November 2013, the [Crown Lands \(Multiple Land Use\) Act 2013](#) was commenced, amending provisions of the *Crown Lands Act 1989* with respect to reserves, including TSRs.

²⁵⁹ Ibid.

²⁶⁰ [NSW Parliamentary Debates](#), 25 June 2013, pp. 21948ff

²⁶¹ [NSW Parliamentary Debates](#), 29 May 2013, p. 21240

The amending Act inserted provisions into the *Crown Lands Act 1989* pertaining to the Minister for Primary Industry's power to deal with Crown reserves. These are discussed in the context of the *Crown Lands Act 1989* in above section 2.1.2 of this Paper. In addition, the Act inserted provisions to validate existing secondary tenures.

This 2013 Act was the result of a court decision relating to the secondary use of tenures on Crown land, *Minister Administering the Crown Lands Act 1989 v New South Wales Aboriginal Land Council*, 2012J NSWCA 358. In that case, the court found that a grazing licence granted over a parcel of Crown land reserved for the purpose of "public recreation" was unlawful. In the second reading speech for the Bill, Deputy Premier Andrew Stoner spelt out the potential impact of the ruling, stating:

Information available from the Crown Land Division's database indicates that there are more than 8,000 secondary tenures issued by the New South Wales Government over Crown reserves in New South Wales. There is a good chance that up to 90 per cent of them are potentially subject to challenge because they are for purposes that are not "in furtherance of or incidental to" the primary purpose of the reserve.²⁶²

According to Mr Stoner, TSRs were among those reserves considered to be affected by the ruling. He went on to observe:

In summary, this bill will provide certainty for all land users and continuity for activities across the Crown reserves. It reflects the important multiple use principle in the Crown Lands Act that encourages the use of Crown reserves for multiple community and economic purposes.²⁶³

4.3 Crown Lands Review 2013

In 2012, the NSW Government set up an inter-agency Steering Committee independently chaired by Michael Carapiet to review the management of Crown lands. It was described as "the first comprehensive review in 25 years". In respect to TSRs, the [2013 report](#) by the Steering Committee noted that Travelling Stock Routes (TSRs) were once used to move livestock from farms to markets or railheads; and it observed that most are no longer being used for their original purpose. They are used for recreation, other social uses, access and heritage. The report recommended that Local Land Services work with the relevant stakeholders to develop assessment criteria to review all Travelling Stock Routes and determine their future ownership and management.

According to the 2013 report:

There are issues around ownership, governance, future use and the role of government. In particular, it needs to be determined whether the NSW

²⁶² *NSW Parliamentary Debates*, 12 September 2013, p 44.

²⁶³ *Ibid.*

Government should continue to own and control TSRs.

The key points in respect to TSRs made in the 2013 report were that:

- Many travelling stock reserves are no longer used for their original purpose.
- A detailed review is required to determine which travelling stock reserves are required for the delivery of core government services and to determine appropriate funding resources.
- The establishment of Local Land Services provides an opportunity to develop a regional process to consider the future use of the travelling stock reserve network consistent with the NSW Government's commitment to the devolution of decision-making to local communities.

The [Government response](#) stated that “work will commence in 2014 on a pilot program with Local Land Services”; and that “community consultation will occur through the pilot process”.

5. CONCLUSION

Writing in 1977, Tom McKnight observed:

The Australian system of Travelling Stock Routes has been striking in its development, remarkable in its extent, unusual in its longevity, and unique in its functioning. Ten years from now it may simply be a phenomenon of history. And yet, who would be surprised if TSRs persisted indefinitely?²⁶⁴

TSRs are certainly part of the Australian physical and cultural landscape, changing in significance and use, under seemingly perpetual review as to their regulation, ownership and management, always evolving to find new relevance to meet contemporary needs. Their future ownership and management is again under review, further to the 2013 [Crown Lands Management Review](#) report.

²⁶⁴ McKnight, above n33, at p. 129.