

COMPREHENSIVE REVIEW OF NSW CROWN LANDS MANAGEMENT

A fairer and more consistent approach to Crown land tenures

APRIL 2017

To deliver modern, streamlined and transparent management of the state's vast Crown land, the NSW Parliament passed the Crown Land Management Act 2016 (CLM Act). It is anticipated the majority of the CLM Act will commence in early 2018, implementing reforms identified in the white paper and comprehensive review of Crown land management. This fact sheet describes some of the issues found and how the CLM Act addresses them.

Eliminating inconsistencies in tenure conditions

The review found the existing Crown land legislation contains inconsistent provisions for different types of tenures (leases, licences and enclosure permits over Crown roads and waterways). The inconsistencies are generally due to historical reasons, including different drafting styles and policy drivers at the time.

Leases and licences also often had provisions that were outdated.

How the CLM Act deals with this issue

- The CLM Act applies uniform provisions to all tenures, where possible and ensures provisions in other property and conveyancing legislation are not duplicated.
- The CLM Act provides for more flexible licensing, including sublicensing and a simpler process for short-term licences over reserves.
- The maximum term of leases will be 100 years, including options. The only exception will be in the Western Division, where it will still be possible to grant perpetual leases, due to the special existing tenure arrangements in that part of the state.
- Land currently owned by the Land Administration Ministerial Corporation under the *Wentworth Irrigation Act 1890* and the *Hay Irrigation Act 1902* (the Irrigation Acts) will become Crown land and new leases granted on this land will be standard Crown land leases.
- Lease holders under the Irrigation Acts and under the *Crown Lands (Continued Tenures) Act 1989* (CLCT Act) that are currently subject to restrictions on dealing with their leases, will be permitted to sublease without consent, however, notification of subleases will be required.
- All permissive occupancies under the CLCT Act will be converted to standard Crown land licences, greatly simplifying arrangements for occupying Crown land.
- The new legislation provides for additional compatible uses to occur on leased Crown land, for example telecommunications towers requiring hilltop Crown land already leased for grazing. It will allow the grant of special leases and licences on leased land. Permitted purposes will continue to include windfarms, but will also include telecommunications and the removal of certain materials



Figure 1. Crown land occupied under licence, Oxford Falls.

Ensuring a consistent, fair and transparent approach to applying rents

The review found there was support for a more consistent approach to rent. Currently there are eight different pieces of legislation covering rent, many of which contain varying and inconsistent approaches.

The review supported rent being set in a manner that recognises the value of Crown land while retaining the ability to grant rebates and waivers in appropriate circumstances. For example, where Crown land is rented by charities or other groups that provide, or can demonstrate, community benefits from the use of Crown land.

How the CLM Act deals with this issue

- The CLM Act sets market rent as the default rent that applies to all new and re-determined tenures, except Western Lands Leases, where the existing rent calculation formulae will apply.
- To ensure equity between all holders of tenures over Crown land, a statutory minimum rent of \$472, adjusted in line with the consumer price index (CPI), will apply across all tenures, except to those that contain a clause exempting the holder from paying minimum rents.
- Crown land tenure holders will continue to have available rebates, waivers and concessions. The details of rebates, waivers and concessions will be published in the Department of Industry–Lands' publically available policy to ensure transparency around entitlements and processes.
- The CLM Act will allow the department to negotiate appropriate rental terms with tenants and licensees, rather than take a one-size-fits-all approach.
- Where rent is determined, the Secretary of the Department of Industry will re-determine rent at least every five years, and not more than once a year, to make sure a fair approach is balanced against ensuring appropriate returns to government.
- In most circumstances, tenure holders can object to re-determinations of rent to the Secretary of the Department of Industry.
- Prior to the transfer of any holding, all rent arrears must to be paid so new holders are not liable for their predecessors' debts.

Clarifying procedures when there is a change in the owner of land that is benefiting from a licence over Crown land

Sometimes a licence over Crown land benefits adjacent private land, for example to permit the use of a jetty on Crown land adjoining a waterfront private property.

The review identified that when this land is sold, sometimes the seller and/or purchaser fails to notify the Department of Industry–Lands of the sale of the private land. This can lead to a number of issues, including outstanding debts, the seller remaining responsible for a licence they cannot use and the purchaser not able to use the adjoining Crown land, even when it solely benefits their property.

How the CLM Act deals with this issue

- The CLM Act provides that if the private property owner sells the benefited private land, the owner is able to request that the licence terminates on or before the sale. Approval will be given if any arrears on the licence are paid and any structures required to be removed have been removed.
- If the licence is not terminated prior to the sale, the licence will remain in force and the new owner of the private land will become liable for payment of rent (including any arrears) due under the existing licence.
- A notification will be able to be put on title to private land that is benefited by a licence over Crown land to ensure purchasers are aware of their potential liability.

Preventing use of Crown land without permission

The review raised the issue of Crown land being used by individuals or organisations without permission.

How the CLM Act deals with this issue

- The CLM Act allows a licence to be issued where a person or organisation has been using Crown land without the necessary authorisation.
- The licence will bind the user and will require the user to pay rent and comply with the terms of the licence.
- These licenses will only be issued if the use of the land is appropriate and consistent with the objects of the CLM Act.
- The grant of a licence will not remove the need for the licensee to obtain any planning or other approvals required under any other legislation.

Reducing red tape for low-impact activities

Currently landowner's consent is required from the Minister for Lands for all development on Crown land that requires development approval, even when the Crown land is under a perpetual lease.

The white paper found there were many situations where duplicate consents which do not add value are required for particular activities, resulting in unnecessary delay and use of resources.

How the CLM Act deals with this issue

- Under the CLM Act landowner's consent will continue to be required from the Minister for Lands for development on tenured land, consistent with normal leasing practice.
- However, to recognise the quasi-freehold nature of perpetual leases, landowner's consent will be taken to have been given for land under a perpetual lease for certain lower-impact activities. This will include repairs, maintenance, restoration and renovation of existing buildings and fencing.
- The Minister's consent will still be required for significant development, including subdivision, remediation works, the erection of buildings and changes in uses.

Simplifying processes to purchase leases

Some lessees of Crown land have rights under the terms of their leases and under legislation to purchase the land they lease. The right only applies under certain types of leases.

The review noted the possibility of having a streamlined process for the conversion of leasehold land to freehold, rather than the seven existing processes.

The review also considered the current built-in incentives to encourage purchase by lessees and whether there would be value in introducing time limits on the exercise of existing purchase rights.

How the CLM Act deals with this issue

- The CLM Act simplifies the numerous existing processes and encourages purchase where lessees currently have rights to purchase their lease. This will provide an appropriate return to the state where the land is sold and minimise the number of different types and total number of tenures, reducing red tape and administrative costs.

- The current incentives and concessions contained within the existing legislation, such as below market value purchase prices, will only continue for a limited time. This will:
 - encourage lessees to exercise their rights
 - ensure lessees with purchase rights go through the same purchase processes as other lessees of Crown land after the incentive period, ensuring equity across all Crown land.
- For perpetual lessees under the CLCT Act who currently have rights to purchase their leases, those rights will continue for a period of two years after the commencement of the new Crown land legislation.
- After two years the absolute right to purchase will become a right to apply to the Minister to purchase the land. This is still a valuable right, as lessees will not be subject to standard open tender requirements.
- Where there is currently only a right for the lessee to apply to the Minister to purchase the land, that right will be maintained as right to apply only.
- For leases with a set term under the CLCT Act and Irrigation Acts that include rights in relation to purchasing the land, those rights will continue for a period of five years after the commencement of the CLM Act.
- After five years the lessee will lose their rights to purchase the land they hold under lease.
- In most cases the purchase price will be able to be paid by instalments over 20 years, subject to a minimum annual instalment of \$2,500.

Simplifying and bringing consistency to re-determining rents under CLCT Act and Irrigation Acts leases

Rents for CLCT Act and Irrigation Acts leases have not been assessed consistently and certain lessees have not had their rents re-determined for a considerable period of time. There is also an unnecessary level of complexity, with inconsistent rent provisions and different processes different tenure types.

How the CLM Act deals with this issue

- The CLM Act streamlines and introduces greater consistency to rent re-determinations.
- It effectively resets rent determinations, with all current CLCT Act and Irrigation Acts leases re-determined on the second anniversary of the commencement of the new legislation. This will give a significant notice period and time to prepare for the rent re-determinations.
- After the leases have been reset, those leases that provide for ongoing re-determination will be treated in an identical way to other leases that are subject to re-determination under the Act—they will have to be re-determined at least every five years and not more than once a year.

More information

For information on tenures in the Western Division of New South Wales, refer to the fact sheet *Facilitating a sustainable and prosperous Western Division*.

For more information contact the Department of Industry–Lands on 1300 886 235 or legislation@crowmland.nsw.gov.au

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