

## COMPREHENSIVE REVIEW OF NSW CROWN LANDS MANAGEMENT

# Greater powers to stop illegal activity on Crown land

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.*

### Providing a more effective compliance and enforcement framework

During the review there was broad support for a stronger compliance and enforcement regime to help protect Crown land against illegal activity that threatens environmental values and/or public use and enjoyment.

The review found that enforcement provisions under the existing legislation are generally outdated and less comprehensive than those found in most other legislation regulating the management of public land.

The white paper identified significant impediments to effective compliance action including:

- the six-month limitation period for commencing action
- not being able to issue remediation directions
- low penalty levels that do not act as deterrents
- the difficulty of identifying offenders.

The review found that the wording of some of the offences is problematic and the existing offences do not cover all situations. For example, additional offences are needed in relation to illegally moored boats.

### How the CLM Act deals with this issue

- The CLM Act contains updated and expanded enforcement and compliance provisions for Crown land, providing powers to stop illegal activity on Crown land and to ensure it is appropriately used and managed.
- The Minister for Lands will have the power to require the Department of Industry—Lands to instigate audits of compliance with the legislation, leases and licences.
- Provision has been made for a broader pool of authorised officers with expanded powers similar to those under the existing *Protection of the Environment Operations Act 1997*.
- The Minister for Lands will have the power to appoint staff of the Department of Industry—Lands, a Crown Land Manager (current reserve trust manager) or any other government agency as an authorised officer
- Authorised officers will be able to seek the assistance of a member of the NSW Police Force where assistance is needed to ensure compliance.
- Local councils will be able to use their compliance powers under local government legislation.

### Imposing stronger penalties for illegal activity

The review found that current penalties do not act as a strong deterrent for offenders.

### How the CLM Act deals with this issue

- Under the CLM Act, penalties have been increased to ensure they act as a deterrent, and corporations will be subject to higher penalties than individuals. Examples of the changes are shown in the following table.

Example of offences on Crown land	Current maximum penalty	Maximum penalty in new legislation
<ul style="list-style-type: none"> <li>Residing on Crown Land</li> <li>Erecting a structure</li> <li>Grazing stock</li> <li>Driving stock</li> <li>Clearing, digging or cultivating Crown land</li> <li>Littering</li> <li>Enclosing Crown land</li> </ul>	20 penalty units	Where intentional offence causing or likely to cause harm or for non-compliance with a stop activity order for activities that threaten public safety or the environment: <ul style="list-style-type: none"> <li>corporation: 2,000 penalty units + 200 penalty units for each day the offence continues</li> <li>individual: 1,000 penalty units + 100 for each day the offence continues (individual).</li> </ul>
<ul style="list-style-type: none"> <li>Polluting or contaminating Crown land or waters</li> <li>Failure to comply with a Stop-Activity Order</li> </ul>	Not applicable (new offence)	All other offences (in most cases): <ul style="list-style-type: none"> <li>200 penalty units + 20 penalty units for each day the offence continues (corporation)</li> <li>100 penalty units + 10 for each day the offence continues (individual).</li> </ul>
<ul style="list-style-type: none"> <li>False or misleading conduct during an investigation</li> <li>Obstruction of an authorised officer (AO)</li> <li>Damaging an AO's equipment</li> <li>Impersonation of an AO</li> </ul>	10–100 penalty units	2,000 penalty units + 200 penalty units for each day the offence continues (corporation). 1,000 penalty units + 100 penalty units for each day the offence continues (individual).

### Introducing remediation, stop-work orders and other powers

The review found that in many cases, the most effective way of rectifying an offence would be to require remediation of a piece of Crown land, but the current legislation does not provide for remediation notices or stop-work orders.

The review also found that there were no clear powers to order the removal of illegal structures and substances from Crown land.

### How the CLM Act deals with this issue

- The CLM Act provides for a broad range of notices and orders to address compliance issues on Crown land.

- Where damage or contamination has occurred, authorised officers will be able to issue rectification and remediation notices to ensure Crown land is restored to its former condition.
- Where the order is not complied with in the required period, the Department of Industry – Lands may undertake the necessary work and recover its costs.
- Removal directions can be made to ensure people are required to remove materials or structures unlawfully placed on Crown land.
- Stop-activity orders will be included to stop unlawful, unsafe, or dangerous activities being carried out on Crown land.
- The courts will also be able to require a person convicted of a relevant offence to undertake rectification and remediation action, to remove works or to pay compensation.

### Ensuring effective court actions

The white paper found the current situation in which prosecutions can only be brought in the local court is not appropriate. Local courts are often not equipped to deal with the complexity of issues and the severity of some offences in relation to Crown land. Also, penalties in the local court are generally limited to \$11,000.

The white paper also raised the issue of the limitation periods being different under each of the current Acts.

For example, proceedings under the *Western Lands Act 1901* must be started not later than 12 months after the time when the matter giving rise to the proceedings occurred, while the *Crown Lands Act 1989* requires proceedings to be started not later than six months from the date of the offence.

The review found that the six month time limit for bringing proceedings is unrealistic.

In many cases, due to the size and scale of the Crown Estate, the government only becomes aware of an incident several weeks or even months after it has occurred. A number of breaches have run out of time before prosecutions could be started.

### How the CLM Act deals with this issue

Under the CLM Act:

- Prosecutions will be able to be brought in either the Local Court or in the Land and Environment Court.
- The courts will have broad powers to make orders in addition to the power to impose penalties.
- The timeframe for commencement of proceedings for offences on Crown land will be increased from the current six months to two years. This allows for a more realistic timeframe, given the time it can take to identify offences on the vast Crown Estate and the time required to gather evidence for proceedings.

### More information

For more information contact the Department of Industry–Lands on 1300 886 235 or [legislation@crowmland.nsw.gov.au](mailto:legislation@crowmland.nsw.gov.au)

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