

# Crown Lands Legislation

White Paper

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# Crown Lands Legislation White Paper



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ensure that information on which they rely is up to  
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## Foreword

Every day, individuals and families right across NSW enjoy visiting the thousands of parks, beaches, waterways and sports grounds on Crown land.

Communities, businesses and farmers in our great State also rely on access to Crown land that is home to local clubs, community halls, showgrounds, racecourses, holiday parks, golf courses, farms, access roads and grazing paddocks.

However, the current legislation governing Crown land dates back to 1890 and the management of Crown land has not kept pace with the changing needs of the community.

The Crown Lands Management Review started in June 2012 with the aim of improving the management of Crown land and increasing the benefits and returns to the community.

The Review proposed one new piece of contemporary legislation to replace the eight existing acts.

This White Paper sets out a range of legislative proposals which will support Crown land management in the 21st century.

Streamlining the existing legislation will remove unnecessary duplication and red tape. The new legislation will be simpler and easier to understand, which will make it accessible to the many and varied users of Crown land.

I encourage you to read the White Paper and have your say on the legislative proposals. The NSW Government values the input of local communities and key stakeholders, and all submissions will be considered when developing the new Crown lands legislation.



**The Hon. Andrew Stoner MP**

**Deputy Premier**

**Minister for Trade & Investment**

**Minister for Regional Infrastructure & Services**



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## Call for submissions

NSW Trade & Investment is inviting comments on the proposals in this White Paper.

The White Paper sets out recommendations to:

- » create simpler legislation to support Crown land management in the 21<sup>st</sup> century
- » help grow the NSW economy through the more effective management of Crown land
- » continue the key objective of managing Crown land for the benefit of the people of NSW
- » reduce red tape for the community and stakeholders
- » streamline and speed up administration
- » cement the role of local communities in the management of Crown land.

Public notice of the White Paper will appear in the *NSW Government Gazette*, *The Land*, the *Sydney Morning Herald* and the *Telegraph*. The White Paper will be available at [www.crownland.nsw.gov.au](http://www.crownland.nsw.gov.au)

You can submit your comments in writing to NSW Trade & Investment in any of the following ways:

**Post:**

Crown Lands Management Review  
NSW Trade & Investment  
PO Box 2185 DANGAR NSW 2309

**Email:**

[crownlands.whitepaper@trade.nsw.gov.au](mailto:crownlands.whitepaper@trade.nsw.gov.au)

**The closing date for submissions is 20 June 2014 at 5.00 pm.**

### What happens to submissions?

NSW Trade & Investment will review all submissions received by the closing date. A summary of submissions will be published, which will generally identify the individuals and bodies who made submissions.

Please advise NSW Trade & Investment if you do not want to be identified in the summary. Your request will be respected, unless legislation (for example the *NSW Government Information (Public Access) Act 2009*) requires disclosure.

Submissions received will be taken into account when developing the new Crown lands legislation.





# 1. Introduction

Crown land is an important asset for the community of NSW, providing opportunities for a vast range of community and economic activities, and preserving important heritage and environmental values.

## *What is Crown land?*

The proposals in this White Paper cover only Crown land administered by NSW Trade & Investment Crown Lands Division, which comprises some 42 per cent of NSW.

Crown land for the purposes of this White Paper includes:

- » Crown land held under lease, licence or permit,
- » Crown reserves managed by local councils and community trusts,
- » Crown land retained in public ownership for environmental purposes,
- » land within the Crown public roads network,
- » many non-tidal waterways and most tidal waterways, and
- » other unallocated Crown land.

National parks, state forests and community lands held by local councils were not part of the Crown Lands Management Review and are not covered in this White Paper: they are special categories of public land managed for specific purposes by other entities.

## 1.1 The need for legislative change

There is a need to ensure that Crown land can be used for its optimal purpose, that those who manage it are empowered to do so as efficiently as possible, and that there is sufficient flexibility to provide for changing community standards and expectations on how Crown land is managed into the future.

Crown land is currently administered under eight different pieces of legislation, which together create a complex web of overlapping and confusing requirements. This is to a large extent an inevitable but unintended consequence of legislative change since the 1890s.

This arrangement can be a source of frustration for the NSW community and adds administrative costs without delivering benefits. The recent Crown Lands Management Review identified problems such as:

- » delays and backlogs resulting from multiple layers of decision-making and consent requirements which do not add value,
- » lack of clarity for the community about which government agency controls particular land,
- » inconsistent provisions in different legislation for similar land and activities, and
- » requirements duplicated in more than one Act.

## 1.2 The way forward

This White Paper proposes that the best way to support the management of the Crown estate in the twenty-first century is to develop one new piece of legislation to replace the following eight Acts:

- » *Crown Lands Act 1989*
- » *Crown Lands (Continued Tenures) Act 1989*
- » *Western Lands Act 1901*
- » *Commons Management Act 1989*
- » *Trustees of Schools of Arts Enabling Act 1902*
- » *Public Reserves Management Fund Act 1987*
- » *Wentworth Irrigation Act 1890*
- » *Hay Irrigation Act 1902.*

This was a key recommendation arising from a comprehensive Crown Lands Management Review (see Appendix 1). Although it would be possible to update each individual Act, this would be unlikely to remove the duplication and complexities that result from having multiple Acts, or to address consistency issues.

There are also a number of Acts that could be repealed because they are no longer necessary (see Chapters 9.4 and 9.5):

- » *Wagga Wagga Racecourse Act 1993*
- » *Hawkesbury Racecourse Act 1996*
- » *Orange Show Ground Act 1897*
- » *Irrigation Areas (Reduction of Rents) Act 1974*
- » *Murrumbidgee Irrigation Areas Occupiers Relief Act 1934.*

This new Crown lands legislation will not amend the *Aboriginal Land Rights Act 1983*, which is being considered in a separate review process. Crown land will continue to be available under the provisions of that Act as compensation for the dispossession of Aboriginal people.

In developing the new legislation, the requirements of the Commonwealth's native title legislation will need to be considered.

The new Crown lands legislation will be consistent with, but will not duplicate, the proposed new local government and planning frameworks and the existing environmental legislation.

## 1.3 Benefits of change

- » The new legislation will be simpler and more direct than the current suite of Crown lands legislation, and will be easier for non-lawyers to understand.

- » The aim is to provide the simplest possible legislative framework to manage Crown land by streamlining existing legislative requirements and reducing red tape, particularly for the management of Crown reserves and the administration of Western Lands leases. The new legislation will also achieve the specific outcomes below.

### ***Allow use of Crown land by the people of NSW***

Existing provisions to manage Crown land for the benefit of the people of NSW will continue, including provisions to reserve land for public access and use, and provisions for public use and multiple use of Crown land where appropriate.

Simplifying the provisions for the management of Crown land will make it easier for the community to benefit from Crown land under tenures and reserves.

### ***Underpin effective management and protection of Crown land***

Effective management and protection of Crown land will continue to be a core concern for the NSW Government. This will be reflected in the objects of the new Act.

The new legislation will feature simpler, more transparent structures and processes. For example, it will:

- » reduce the current three-tier Crown reserve management system to two tiers,
- » simplify the various types of land ownership, and
- » be consistent with other legislative frameworks, particularly the local government and planning frameworks, and will not include provisions that duplicate other legislation.

Environmental protection measures in the existing legislation, including provisions to prevent overstocking and overgrazing on Western Lands grazing leases, will be continued. Provisions that duplicate the protections in other legislation (such as the *Native Vegetation Act 2003*) will not be retained.

Practical and effective enforcement provisions and a bigger 'compliance toolbox' are also proposed. For example, remediation and removal notices will be provided for. This will enable action to be taken to more easily protect Crown land and to remediate any damage.

### ***Streamline decision-making at the local level***

Thousands of Crown reserves are currently managed by local communities under trust arrangements, which require councils and community trusts to comply with complex, duplicative and sometimes contradictory requirements.

It is proposed that this will be streamlined so that Crown land will be managed by the most appropriate level of government. Land with primarily local uses and values will be managed by councils under the local government legislation, using the same procedures that apply to land already owned by councils. These include the community engagement processes that are part of the Integrated Planning and Reporting systems used by councils.

This change will reduce the complexity and red tape for councils and allow local communities to have more of a say about how public land in their local area is managed. Proposals to reduce reporting requirements will also help.

### ***Reduce red tape and transaction costs***

Simplified Crown lands legislation will reduce the delays and frustration currently experienced by individuals, reserve trusts, communities and councils. In particular, getting approval for activities on Crown land often involves unnecessary paperwork and delay.

In the new legislation, consent and notification requirements will be streamlined to ensure the most effective consultation mechanisms are supported and unnecessary bureaucracy is removed.

Duplication of provisions in other legislation will also be removed.

The existing requirements for councils and other reserve trusts and managers to report to the NSW Government will be considerably reduced, with the emphasis shifted to local accountability to the community.

Opportunities to diversify or expand activities will be provided to leaseholders of Western Lands leases in rural areas by removing approval requirements to undertake additional activities, subject to certain conditions. Western Lands grazing leaseholders with current cultivation consents will be able to apply to convert their leases to freehold, subject to meeting certain requirements.

There are seven different processes under the existing legislation for converting leases to freehold on application. This includes leases administered under the Continued Tenures Act, the two Irrigation Acts and the Western Lands Act. The proposed changes could introduce a common approach to how Crown land is sold to leaseholders, or if that is not practicable a more streamlined approach.

## **1.4 Issues for comment**

Public comment is invited on all the recommendations and proposals in the White Paper. In particular, your views are sought on any or all of the following questions, which are repeated throughout the document in the relevant sections.

### **Proposed legislation**

1. How would developing one new piece of legislation to manage the Crown land estate benefit the community?
2. Are the objects and provisions proposed for the new legislation appropriate to support Crown land management in the 21<sup>st</sup> Century?

### **Improved management arrangements for Crown reserves**

3. Do you have any comments on the proposal to allow local councils to manage Crown land under local government legislation rather than under the Crown Lands Act?
4. What are your views about the proposed new management structure for Crown reserves?
5. Do you have any further suggestions to improve the governance standards for Crown reserves?

### **Other streamlining measures**

6. Are there any additional activities that should be considered as 'low impact' activities in order to streamline landowner's consent?
7. Are there any other ways to streamline arrangements between the State and local governments?
8. In addition to the suggestions provided, are there any other ways to ensure that the public is notified of the proposed use or disposal of Crown land - and their views taken into account - that would be appropriate to include in the new legislation?

### **Better provisions for tenures and rents**

9. Do you support the concept of a consistent, market based approach to rents, with rebates and waivers for hardship and public benefits for certain uses of Crown land applied where appropriate?
10. Is five years a reasonable amount of time to give tenure holders who currently pay below the statutory minimum rent to move to paying the minimum level of rent as required under the new legislation.
11. To avoid rent arrears issues for incoming tenure-holders, should the new legislation automatically transfer any rental debt to a new tenure-holder on settlement, or require any outstanding arrears to be paid prior to transfer or settlement?
12. What kinds of lease conditions should be considered 'essential', for the purposes of providing for civil penalties?
13. Should Crown land be able to be used for all forms of carbon sequestration activities?

### **Greater flexibility for Western Lands leases**

14. What additional activities do you think should be permitted on Western Lands leases without the need for approval?
15. Bearing in mind the fragile nature of much land in the Western Division, in what situations do you think it would be appropriate to allow Western Lands leases to be converted to freehold?

### **Stronger enforcement provisions**

16. What are your views about the proposal to strengthen the compliance framework for Crown lands?
17. Do you have any suggestions or comments about proposals for the following:
  - Auditing
  - Officer powers
  - Offences and penalties
  - Other provisions

### **Minor legislation**

18. Do you support the repeal of the minor legislation listed?
19. Do you see any disadvantages that would need to be addressed?

## 2. Existing legislation

The NSW Crown estate is administered under three core pieces of legislation:

- » *Crown Lands Act 1989* (Crown Lands Act)
- » *Crown Lands (Continued Tenures) Act 1989* (Continued Tenures Act)
- » *Western Lands Act 1901* (Western Lands Act)

There are strong similarities between these three Acts, the most obvious being that they all include tenure provisions.

The Crown Lands Act and the Western Lands Act are complex and detailed, largely because both Acts have evolved over many decades. They are also outdated in many respects. The interaction between the two Acts is complicated and many of the provisions of the Crown Lands Act also apply to land in the Western Division. This results in inefficiencies, duplication and a lack of clarity.

The following Acts are also overdue for review:

- » *Public Reserves Management Fund Act 1987* (PRMF Act)
- » *Commons Management Act 1989* (Commons Act)
- » *Trustees of Schools of Arts Enabling Act 1902* (Schools of Arts Act)
- » *Wentworth Irrigation Act 1890 and the Hay Irrigation Act 1902* (Irrigation Acts).

### ***Crown Lands Act***

The Crown Lands Act is essentially concerned with the allocation and management of Crown land, including the administration of tenures and Crown reserves, and also deals with the acquisition and sale of Crown land.

Crown reserves are parcels of Crown land set aside for public use, such as recreation and sporting facilities, green space, beaches and foreshores, cemeteries, environmental protection, holiday accommodation, infrastructure or Government services. Many reserves are used for multiple purposes. There are currently around 35,000 Crown reserves.

Tenures allow the occupation of Crown land for specific purposes, including commercial ventures (such as marinas, kiosks, restaurants, and caravan parks), telecommunications, access, grazing and agriculture, residential, sporting and community purposes, tourism and industry, and waterfront occupations. There are more than 59,500 tenures over Crown land, including around 20,000 over Crown reserves.

### ***Western Lands Act***

The Western Lands Act establishes the Western Lands Commissioner and the Western Lands Advisory Council, and provides for the administration of Western Lands leases. The Western Division covers just over a third of NSW and there are around 6,400 Western Lands leases.

### ***Continued Tenures Act***

The Continued Tenures Act created a number of tenure types (perpetual leases, term leases, special leases, permissive occupancies and incomplete purchases) to consolidate the much larger range of tenures that existed under former legislation. There are currently in the region of 2,000 leases and around 3,800 permissive occupancies.

### ***Public Reserves Management Fund Act***

The PRMF Act is administered by Crown Lands Division and facilitates the management and upgrading of Crown reserves through the operation of a fund that provides grants and loans for these purposes.

### ***Commons Act***

The Commons Act provides for the management of public land set aside for use as a common for the benefit of enrolled commoners (see Chapter 9.1). Historically, commons provided agricultural or grazing land adjacent to towns or mines for local residents, usually for grazing small quantities of stock to provide milk and food.

Commons are generally Crown land or other land held for a public purpose. The provisions for trusts and trust boards in the Commons Act are similar in many respects to the reserve management provisions in the Crown Lands Act, except that commons exist for the benefit of commoners rather than the broader public. There are currently around 130 commons.

### ***Schools of Arts Act***

The Schools of Arts Act provides powers for trustees of land used for schools of arts, mechanics institutes and literary institutes to deal with that land (see Chapter 9.2). Schools and institutes were established on private as well as public (i.e. Crown) land, and the Act applies to both types of land. There are currently 141 remaining schools and institutes, 72 on private land and 69 on public land. In most cases, these are now used for general community purposes, including recreation, rather than for their original purpose of promoting knowledge of arts and sciences among tradespeople.

### ***Irrigation Acts***

The Irrigation Acts provide for the ownership of certain land in the Wentworth and Hay areas by the Lands Administration Ministerial Corporation, a statutory corporation created to help the Minister administer the Crown Lands Act, and for the leasing of that land to farmers (see Chapter 9.3). The Acts allow lessees to apply to convert their leases to freehold, which many have done. There are currently around 140 leases remaining unconverted under these two Acts.



### 3. An overview of the proposed legislation

The new Act will include provisions in relation to:

- » objects
- » powers
- » land ownership
- » tenures
- » sale and disposal of land
- » Crown reserves
- » compliance and enforcement
- » administrative and miscellaneous matters.

The new legislation will apply to all land currently administered under the Crown Lands Act, the Continued Tenures Act and the Western Lands Act. Some land currently regulated under the minor Crown land legislation will also be consolidated into the new Act (see Chapter 9).

Where possible, the legislation will replace inconsistent provisions in the existing Acts with standard provisions. For example, the requirements for granting leases under the two Irrigation Acts are different to those in the Crown Lands Act. Reconciling the differences between inconsistent provisions will make the new legislation easier to understand and simpler to administer.

Specific provisions will be included where necessary. For example, certain requirements will continue for Western Lands leases and tenures under the Continued Tenures Act and the Irrigation Acts that are unique to those leases.

The legislation will also include robust enforcement provisions to provide a consistent compliance framework (see Chapter 8). This will address unclear and inadequate provisions in some of the existing Acts.

In the new legislative framework, provisions will be allocated more appropriately between the Act, its schedules, the Regulation and departmental policies than is the case in the existing legislation. This will include moving relevant provisions from the Crown Lands (General Reserves) By-Law 2006 into the new Regulation and repealing the By-Law.

Comprehensive transitional provisions will be included in the new Act to make sure that all necessary requirements are carried across from the existing legislation.

It is proposed that the new legislation will include the provisions outlined below.

#### ***Objects***

The new Act will preserve the overarching intent to achieve community benefits and will include objects that reflect the different Acts that are being consolidated. The following objects are proposed:

- a. To provide for the management of Crown land for the benefit of the people of NSW
- b. To provide a system of management for Crown land that is efficient, fair and transparent

- c. To integrate social, economic and environmental considerations in decisions
- d. To provide for the management of Crown land by local government, other entities and the community as well as by the NSW Government
- e. To provide that the disposal of Crown land be for the benefit of the people of NSW
- f. To ensure that Crown land is put to its best use in the public interest
- g. To encourage public use, enjoyment and, where appropriate, multiple use of Crown land
- h. To preserve cultural heritage (Aboriginal and non-Aboriginal) on Crown land
- i. To encourage Aboriginal use, and where appropriate co-management, of Crown land
- j. To provide an appropriate system of land tenure and to facilitate diversification of land use in the Western Division of NSW.

### ***Powers***

To be consistent with the current legislation, the new Act will continue to provide for the Minister to have certain powers, including the power to deal with and do work on land, enter into commercial contracts, grant leases and licences, create easements, and grant any interest over a Crown reserve provided that this is in the public interest.

The new Act will define the powers to be given to the Lands Administration Ministerial Corporation.

The legislation will also provide that the Minister can appoint commissioners (such as the Western Lands Commissioner), and establish advisory committees and councils, which could include the Western Lands Advisory Council and any other advisory committees or councils that are considered necessary for the management of Crown reserves.

### ***Land ownership***

The existing Acts provide for a number of different ways of owning or holding land, some of which were created for specific purposes, and most of which are no longer necessary (see Chapter 5.1). This is a good opportunity to review and reduce the number of options, which create uncertainty and legal complexity. The new legislation will rationalise how land can be owned.

### ***Tenures***

The new Act will contain comprehensive provisions relating to tenures (i.e. leases and licences), including in relation to rents, forfeiture and surrender.

It is likely that leases and licences granted for commercial purposes will in future be more similar to commercial leases and licences granted in the private sector. These leases and licences would essentially operate outside the Crown lands legislation (see Chapter 6.2).

There are some provisions that relate only to Western Lands leases that will need to be included in the new legislation, for example in relation to lease conditions, over-stocking, cultivation consents, freehold conversion and the road access program. Similarly, some provisions specific to the Irrigation Acts will be retained.

Provisions for continued tenures will be included as savings and transitional provisions.

### ***Sale and disposal of land***

The new legislation will retain existing provisions for the sale or other disposal of Crown land where it is in the public interest, including more transparent and streamlined requirements for notification and advertising of proposed sales, leases and other disposals.

### ***Crown reserves***

The legislation will continue to provide for the reservation and dedication of land and the management of reserves. It will clearly define the method of appointment for Crown reserve managers, and their role, powers and governance arrangements.

The new Act will also include provisions to continue a Public Reserves Management Fund to raise funds to provide loans and grants for maintenance and improvements to reserves. This will make it possible to repeal the PRMF Act.

The legislation will continue to support multiple use of reserves.

The approval requirements for proposed actions on reserves will be streamlined, as will notification and advertising requirements.

### ***Compliance and enforcement***

The legislation will include compliance tools to suit different degrees of non-compliance with the legislation. This will include provisions for auditing, remediation and removal orders, and stop-work orders.

Appropriate offences and penalties for damage to and unlawful use of Crown land will be included, as well as more effective powers of investigation for authorised officers and more appropriate provisions for commencing court action.

### ***Administrative and miscellaneous matters***

The new Act will include administrative and miscellaneous provisions such as the power to make regulations and provisions relating to the delegation of powers by the Minister and the Director General.

### **Questions:**

1. How would developing one new piece of legislation to manage the Crown land estate benefit the community?
2. Are the objects and provisions proposed for the new legislation appropriate to support Crown land management in the 21<sup>st</sup> Century?

## 4. Improved management arrangements for Crown reserves

### *Summary*

The current management arrangements for Crown reserves are unnecessarily complicated and restrictive. The new legislation will:

- » remove duplication and red tape by allowing councils to manage Crown reserves under the local government legislation
- » simplify the management structure for reserves by replacing reserve trusts and reserve trust managers with reserve managers
- » allow governance standards to be set for reserve managers
- » reduce the number of approvals and reporting requirements.

### 4.1 Streamlining the management of Crown reserves by councils

There are 7,765 Crown reserves managed by councils, either as reserve trusts or through direct management. This number includes 46 trusts over commons and one School of Arts trust. The total area of reserves managed by councils is approximately 116,275 hectares.

Councils manage Crown reserves under the Crown Lands Act; but they manage their own community land under the Local Government Act. This is confusing, and particularly causes problems where councils are managing a parcel of community land and an adjacent Crown reserve.

The two Acts have different management requirements, which means that adjacent land cannot be managed as one entity and that one plan of management cannot cover both a Crown reserve and community land.

For example, there are different requirements for Minister's consent to tenures on community land and Crown reserves. As well, the requirements for plans of management in the Crown Lands Act are less prescriptive than under the Local Government Act, and plans are not compulsory for Crown reserves whereas they currently are for community land.

Another issue is that councils are not always aware of the distinction between different parcels of land they are managing, so they can inadvertently apply the wrong legislation. The current situation can be equally confusing for local communities.

As well, all reserve trusts are required to provide annual reports on the reserves they manage to NSW Trade & Investment. Where reserve trusts are managed by councils, this duplicates councils' own reporting requirements to the Minister for Local Government and raises questions about whether the NSW Government or councils have ultimate liability for these reserves.

Allowing councils to manage Crown reserves under local government legislation rather than under the Crown Lands Act will produce multiple benefits, including streamlining the management of reserves, removing inconsistencies in the management by councils of community land and Crown reserves, and reducing complexity and red tape.

This will also devolve management of Crown reserves for the benefit of local communities, who will have greater involvement through the consultation and advisory opportunities provided under the local government legislation. For example, the final Local Government Acts Taskforce Report recommends holding public hearings where it is proposed to change the dominant use of community land, or to sell it.

Crown reserves managed under the local government legislation will retain their reserve purpose unless the use of those reserves changes through processes under the local government legislation.

## 4.2 New management structure for Crown reserves

NSW currently has a three-tier management structure consisting of Crown reserves, reserve trusts, and reserve trust managers. This arrangement is complex and confusing, especially for reserve trust managers.

The formation of reserve trusts is provided for in the Crown Lands Act. The role of reserve trusts is to care for, control and manage reserves, but a reserve trust can delegate any of its functions, with the Minister's consent, to any other person or body.

To put in place management by a reserve trust under the current legislative provisions, the Minister must:

- » first reserve a parcel of Crown land for a public purpose
- » then establish a reserve trust over it, which is charged with care, control and management of the land and granted a fee simple estate over the land for the purposes of Part 5 of the Crown Lands Act only
- » finally, appoint a reserve trust manager, which could include a council, corporation or a trust board comprised of community members.

NSW is unusual in having a three-tier Crown reserve system: other states and territories mostly have only Crown reserves and reserve managers.

The requirement for reserve trusts was added to the Crown lands legislation in 1989 as a way of providing some protection from liability for individuals administering Crown reserves. It is possible to provide the same protection for individual board members by establishing the new Crown reserve managers as corporations where they are not already incorporated.

As there are no apparent benefits of the three-tier structure, it is proposed to move to a two-tier structure by removing reserve trusts and reserve trust managers and having all reserves administered by Crown reserve managers. This change is illustrated in Figure 1.

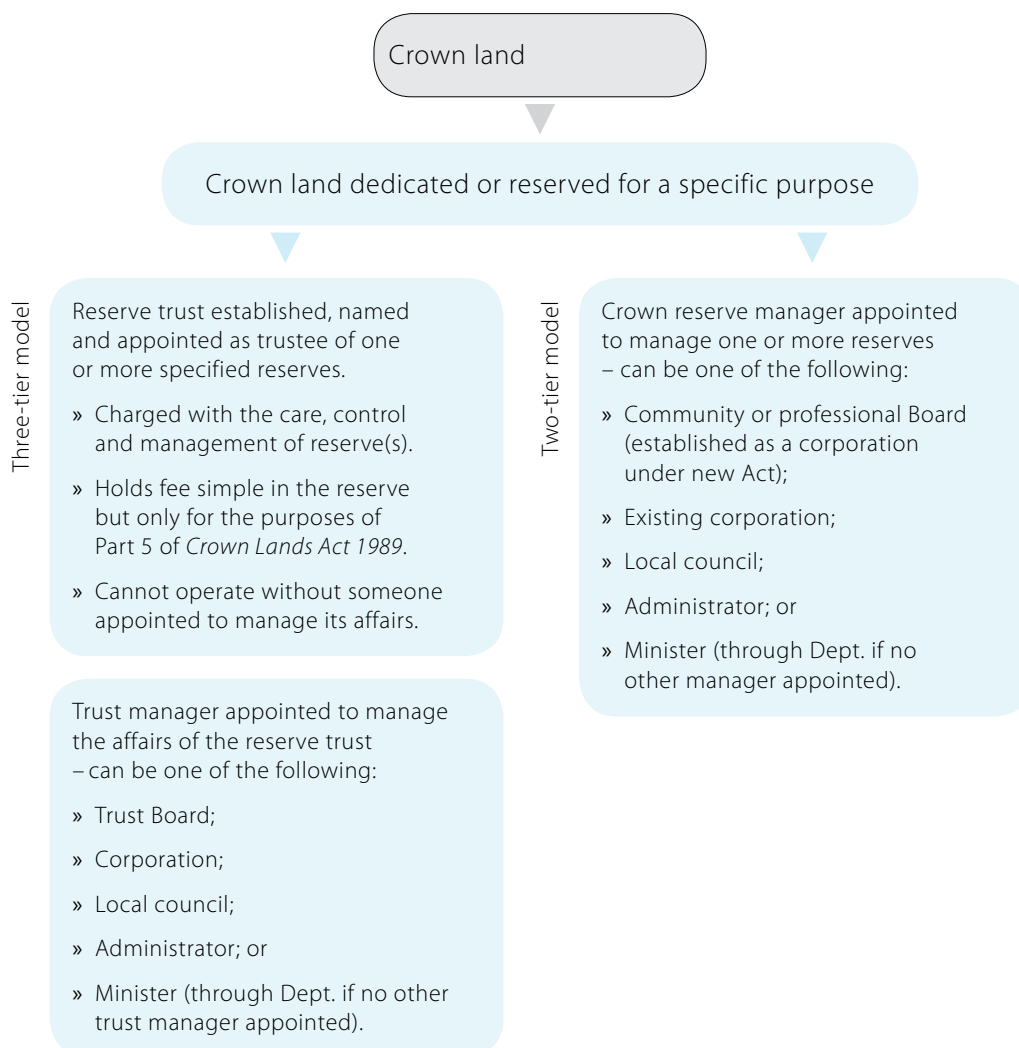
In most cases, Crown reserve managers will continue to be responsible for the day-to-day management of reserves. The legislation will set out the role and responsibilities of Crown reserve managers to issue leases and licences over reserves and to take on day-to-day management and operations.

Currently, individual Crown reserves can have their own trust and manager, or a single trust can manage a number of Crown reserves. It is proposed that the new legislation and management structure will continue to allow for both arrangements.

Streamlining management structures will make it easier for multiple reserves to be managed by a single Crown reserve manager. For example, it makes sense for a council to be appointed once as the manager of a number of reserves, rather than being appointed separately for each reserve.

The simplest way of transitioning from the existing management structure would be for the legislation to provide that existing reserve trusts and reserve trust managers will automatically be converted to a single Crown reserve manager when the new legislation commences. It may still be necessary for the new Act to contain transitional provisions for reserve trusts.

**Figure 1: Existing and proposed management structures for Crown reserves**



### **4.3 Stronger management requirements for Crown reserves**

There are currently some 650 community trusts appointed to manage Crown reserves. Community input to reserve management is an important principle of Crown land management and will continue in the new legislation, which will provide for both governing and advisory structures.

In recognition of the increasing expectations of governing bodies, the legislation will allow for governance standards to be set for Crown reserve managers.

### **4.4 Fewer approval and reporting requirements for Crown reserves**

Changes are proposed to approval and reporting requirements to further streamline management processes. The Minister will be given flexibility to determine the extent of control to be exercised over the work of a Crown reserve manager. This could include requiring the Minister's approval to the granting of tenures and the allocation of funds, and the nature and extent of reporting requirements.

The level of approval and reporting requirements will be tailored to match the complexity of the reserve management task and the competence and professional expertise of the Crown reserve manager.

For example, where reserves with primarily local significance are managed by councils under the local government legislation, approval might be required only for significant proposals. There would be no need for any reporting requirements, but the Minister would retain a right to request information about a particular reserve and councils would still have reporting obligations under the local government legislation.

Landowner's consent is required under the planning legislation for proposals by a third party to carry out activities on a Crown reserve. See Chapter 5.4 for proposals in relation to this specific type of approval.

Some of the other streamlining measures discussed in Chapter 5 will also be relevant to Crown reserves.

#### **Questions:**

3. Do you have any comments on the proposal to allow local councils to manage Crown land under local government legislation rather than under the Crown Lands Act?
4. What are your views about the proposed new management structure for Crown reserves?
5. Do you have any further suggestions to improve the governance standards for Crown reserves?

## 5. Other streamlining measures

### *Summary*

Many provisions in the existing legislation can be streamlined to reduce unnecessary red tape. Other provisions can be removed entirely because they are no longer needed. Historical arrangements will be transitioned into the new legislation to avoid disruption.

Streamlining measures include:

- » simplifying land ownership options to reduce the number of ways in which Crown land can be held
- » removing the existing land assessment requirements
- » streamlining requirements for landowner's consent to enable a development application to be made under the planning legislation
- » providing more transparent, simple and accessible processes to notify the community about proposals for the use or disposal of Crown land
- » abolishing land districts.

### 5.1 Simplify land ownership options

There are several different ways in which land subject to the current legislation can be held by or on behalf of the Crown. There are historical reasons for this multiplicity of land ownership options, many of which are no longer relevant.

Current types of land ownership include:

- » Crown land vested in Her Majesty, with the State of NSW recorded on the land title
- » dedicated land held by trustees including councils
- » land in the name of the Minister
- » land held in the name of another Minister or public authority and dealt with as if it were Crown land.

It is confusing and unnecessary to have so many different types of land ownership. For example, the deemed ownership given to a reserve trust to allow it to grant leases and licences is a complex mechanism. It is not necessary provided that Crown reserve managers are given adequate statutory powers to grant leases and licences.

Having different types of ownership can create administrative inefficiencies. For example, under existing legislation, the Minister can grant easements over Crown land but not over some other types of ownership, such as land gifted to the Crown.

The aim is to bring all land to be managed under the new legislation into a single, simplified framework. The new legislation will rationalise the options for land ownership and provide that the management arrangements for Crown reserves will be the same regardless of the type of ownership.



## 5.2 Abolish land assessment requirements

The Crown Lands Act requires a land assessment before Crown land can be sold, leased, dedicated or reserved. The assessment process can currently be waived if the proposed action is in the public interest and the principles of Crown land management have been considered.

Land assessment requirements were intended to ensure that consideration is given to the appropriate use of land. Parcel-by-parcel assessment is time consuming, inefficient, and not aligned to broader planning processes.

A more strategic approach would see Crown land assessed as part of the process of developing local plans under the new planning framework, meaning that a separate statutory process under the Crown lands legislation would not be necessary. The local plan process would inform decisions at the strategic level, while the Minister would still need to take into account any relevant considerations before approving a proposed change of use.

## 5.3 Landowner's consent

There are many situations where multiple consents, including planning approval, are required for particular activities. For example, an application to build a jetty can involve landowner's consent from Crown Lands Division to lodge a development application, as well as approvals from Fisheries NSW (in relation to fish habitat protection), Roads and Maritime Services (in relation to navigation) and the council (planning approval). A tenure over the land in question would then need to be granted by Crown Lands Division.

The current situation results in unnecessary delay and frustration for proponents as well as duplication of effort by councils and government agencies.

To address this, streamlined processes will be introduced to enable landowner's consent to be given more quickly. This approach could apply to low-impact activities, for example the erection of pump sheds, shade sails over playgrounds, and rainwater tanks, provided these are consistent with the existing use of the land. It could also be used where detailed assessments of a proposal are already carried out by councils or other government agencies as part of the consent process.

## 5.4 Notification requirements

The Crown Lands Act and other relevant Acts contain detailed provisions for notification of the reservation and revocation of Crown reserves, and proposed dealings with Crown land such as a sale or lease.

These safeguards are important, but the existing provisions are unnecessarily complex and confusing. For example, the Crown Lands Act requires reserve trusts to advertise any proposal to sell, lease or mortgage a reserve. They then have to get approval from the Minister, and the Minister's intention to consent to the proposal also has to be advertised.

There are some cases, for example where proposed dealings will be publicised in other ways, where additional notification under the Crown lands legislation might not be necessary and will merely result in delay and red tape.

The arrangements for informing the public about proposals for the use or disposal of Crown land need to be transparent, simple and accessible. The current provisions do not achieve this because the processes are so complex.

In future, the focus for notification should be on providing for effective community engagement, and on developing more modern notification processes. In allowing for consultation on proposals, a balance will need to be struck between efficient administration and providing the opportunity for input where people have a legitimate interest.

It is proposed to include more streamlined and flexible provisions in the new legislation, which could include:

- » creating an online portal that the public can access to find out about any proposals
- » clarifying when the opportunities for community engagement arise and how the community can have input, which may be through processes under other legislation, such as the strategic planning process under the proposed planning framework
- » requiring only one notification in relation to a proposal.

## **5.5 Land boards and land districts**

The Crown Lands Act divides the State of NSW into land districts and until recently provided that there would be a local land board for every land district. The role of the land boards included hearing referrals and appeals to it under the Crown Lands Act and some other Acts. The Minister could also refer matters to a local land board for inquiry and report.

The NSW Civil and Administrative Tribunal (NCAT) commenced on 1 January 2014, consolidating the jurisdiction of a number of tribunals including local land boards. This new body will have some of the appeals function of the land boards. The land boards were abolished when the NCAT commenced.

Therefore the new legislation will not include provisions relating to land boards or land districts, but it will still be open to the Minister to initiate inquiries.

### **Questions:**

6. Are there any additional activities that should be considered as 'low impact' activities in order to streamline landowner's consent?
7. Are there any other ways to streamline arrangements between the State and local governments?
8. In addition to the suggestions provided, are there any other ways to ensure that the public is notified of the proposed use or disposal of Crown land – and their views taken into account – that would be appropriate to include in the new legislation?

## 6. Better provisions for tenures and rents

### *Summary*

The existing Acts and regulations contain various provisions for different types of tenures (i.e. leases and licences), rent requirements and other aspects including forfeiture and surrender of tenures. These provisions are not consistent across the different pieces of legislation.

Proposals in relation to tenures and rents include:

- » having consistent provisions for tenures, except where specific provisions are required for certain types of tenure
- » treating large-scale commercial tenures like equivalent tenures in the private sector, in relation to lease conditions, market rent and appeal provisions
- » adopting market rent as the default position and applying rebates and waivers where appropriate
- » allowing the Minister to issue licences where Crown land is being used without permission
- » addressing rent arrears and breach of tenure conditions
- » providing for the sale of Crown land to lessees
- » converting all permissive occupancies under the Continued Tenures Act to licences
- » allowing the Minister the right to grant or approve broad carbon rights.

### 6.1 Consistent provisions for tenures

The types of leases and licences issued under the existing Acts are in many cases inconsistent. This is generally for historical reasons, including different drafting styles and policy drivers.

The intention is, where possible, to have standard provisions that can apply to all tenures. This is likely to be achieved through a combination of provisions in the Act and the use of standard lease and licence templates. Additional provisions will be included to deal with special circumstances that are not otherwise addressed in legislation.

It is also sensible to include provisions in the legislation that would otherwise have to be included in large numbers of individual leases and licences as conditions, for example where many tenures share the same arrangements for rental redetermination.

To avoid duplicating provisions available elsewhere, the new legislation will include only those tenure provisions that are not adequately covered by the common law, the *Conveyancing Act 1919* or the *Real Property Act 1900*, such as:

- » the Minister's power to grant tenures and impose conditions
- » creating perpetual Western Lands leases
- » stocking and grazing on Western Lands leases
- » forfeiture and surrender.

Another consistency issue relates to the different arrangements for leases and licences granted under the Crown Lands Act and those granted under other legislation such as the Local Government Act. These issues should to a large extent be addressed by allowing councils to manage Crown reserves under the local government legislation. However, it is intended to make conditions consistent with those in other legislation where relevant.

There are also differences between tenures on submerged lands administered by Crown Lands Division and those managed by Roads and Maritime Services. The two agencies are keen to harmonise the management of submerged land, but this is likely to involve policy rather than legislative change in most cases.

## 6.2 Commercial tenures

In the private sector, leases and licences rely on the common law, relevant provisions in the *Conveyancing Act 1919* and the *Real Property Act 1900*, and the conditions attached to each individual lease or licence. Tenures granted over Crown land rely on all of these but are additionally bound by provisions in the Crown Lands Act.

The requirements of the Crown Lands Act are, in many cases, not appropriate for large-scale commercial tenures, for example leases for caravan parks, marinas and commercial buildings.

In recent years, most tenures granted over Crown land for commercial activities have been prepared along the same lines as private commercial leases, i.e. most conditions are set out in the leases or licences. Therefore there is not much difference between a commercial lease over Crown land and over private land.

In recognition of this, the new legislation will clearly state that leases and licences can exclude the operation of provisions of the Crown Lands Act where those provisions would otherwise be in conflict with lease or licence conditions. For example, a commercial tenure might include different requirements for rent redetermination to the provisions in the Crown Lands Act.

This approach is less suited to generic types of tenure over Crown land, where consistent provisions need to apply to large numbers of leases or licences, such as domestic waterfront tenures, enclosure permits and grazing licences.

## 6.3 Rents

The overall objective of managing Crown land for the benefit of the community should guide the determination of rents charged. The legislation will enshrine the use of market rent as the default position with rebates and waivers applied where appropriate.

There is no proposal to change the arrangements for calculating rents for Western Lands leases or for current tenures under the Irrigation Acts.

Another objective is to ensure a consistent approach to statutory minimum rents (currently \$454 per annum). It is proposed to retain the current provisions in the Crown Lands Act that set minimum rents. It is further proposed to implement transitional arrangements for tenure holders who currently pay below the statutory minimum rent, for example over a five year period. This will ensure that a consistent approach to rent is applied across NSW. It is important to note that rebates and waivers will continue

to be available to reduce the actual rent payable, based on considerations including hardship and the public benefits of certain uses of Crown land. This is consistent with the approach adopted by the Independent Pricing and Regulatory Tribunal.

The current legislation includes provisions for the redetermination of rent and for appeals against redeterminations (except for Western Lands leases). Currently objections to rent redeterminations can be made to the Minister and there is then a right of appeal to the NCAT (formerly local land boards) and/or the Land and Environment Court.

Redetermination provisions will be continued where they currently apply, or where redetermination is specified in tenure agreements.

For large-scale commercial tenures, it is proposed that appeals against rent redetermination should in the first instance be through dispute resolution mechanisms provided for in the tenure agreement, as is the case in the private sector.

Where rents are set for classes of tenures, the right of appeal will be by way of an objection to the Minister.

## **6.4 Use of Crown land without permission**

Crown land is frequently used by individuals or organisations without permission. In many cases these uses would be approved if a licence was sought.

To address this issue, it is proposed to include in the new legislation a power for the Minister to issue a licence for the use of land where a user has not applied for one, that will require the payment of rent. This will create equity by ensuring that all users of Crown land pay equally for the privilege.

## **6.5 Rent arrears**

It is important to ensure that where a lease or licence (linked to a freehold parcel) changes hands, any rent arrears accrued by the existing lessee or licensee are provided for to avoid issues for incoming tenure-holders.

To address this, the new legislation could take a number of approaches, including:

- a. automatically transferring any rental debt to a new tenure-holder on settlement, as is the case currently under the Crown Lands Act, or
- b. requiring any outstanding arrears to be paid prior to transfer or settlement.

## **6.6 Enforcement in relation to leases and licences**

Both the Crown Lands Act and the Western Lands Act provide for the forfeiture of a lease or licence. Another remedy available for the breach of tenure conditions is civil action for remedies including damages for loss resulting from breach of contract.

In addition, the Western Lands Act provides for the Western Lands Commissioner to serve a notice requiring a lessee to rectify breaches of their lease conditions. If the lessee fails to do so, the breach of certain conditions can give rise to a criminal offence.

While it might not be appropriate to make the breach of tenure conditions a criminal offence outside of the Western Division, the new legislation could provide for civil penalties that can be equally effective in terms of their deterrence value.

Certain conditions of leases and licences could be specified as 'essential' and breach of those conditions could result in civil penalties or the issue of remediation directions. Other breaches could be dealt with through dispute resolution.

This proposal requires more consideration, particularly in relation to which conditions should be specified as 'essential', and how this would be done.

## **6.7 Sale of Crown land to lessees**

The right of lessees to purchase Crown leases has traditionally been referred to as freehold conversion. The right to convert only applies to certain types of lease, but any lessee can apply to the Minister at any time to purchase their lease.

The Acts that will be consolidated into the new legislation contain seven different processes for converting the following types of Crown lease to freehold:

- » Western Lands residential leases (except Lightning Ridge residential leases)
- » other Western Lands leases (except Western Lands grazing leases)
- » perpetual leases in the Eastern and Central divisions
- » continued tenures not in special land districts
- » perpetual continued tenures in special land districts
- » Wentworth Irrigation leases
- » Hay Irrigation leases.

The principle when selling Crown land in the future will be to apply a market value, but to allow a range of equity conditions to be applied to reduce the sale price.

Those lessees with existing rights to purchase will retain those rights.

## **6.8 Permissive occupancies**

As already noted there are currently around 3,800 permissive occupancies created and regulated under the Continued Tenures Act.

These forms of tenure can be revoked by the Minister or a reserve trust at any time, so they are no different to licences under the Crown Lands Act. There is no reason to retain permissive occupancies as a separate tenure, so it is proposed that all existing permissive occupancies will become licences.

## **6.9 Carbon sequestration and forestry rights**

The Crown Lands Act and the Western Lands Act both contain provisions relating to the grant of carbon sequestration and forestry rights.

These provisions allow the Minister to grant forestry rights over Crown reserves and perpetual lessees with the Minister's consent.

These provisions currently relate only to carbon sequestration arising from forestry activities, which was the only activity approved under the NSW Government's former Greenhouse Gas Abatement Scheme. However, the Commonwealth Government's current Carbon Farming Initiative applies to a wider range of activities including soil carbon measures.

It is proposed to include broad provisions in the new legislation to facilitate all forms of carbon sequestration activities, which will benefit tenure holders.

**Questions:**

9. Do you support the concept of a consistent, market based approach to rents, with rebates and waivers for hardship and public benefits for certain uses of Crown land applied where appropriate?
10. Is five years a reasonable amount of time to give tenure holders who currently pay below the statutory minimum rent to move to paying the minimum level of rent as required under the new legislation.
11. To avoid rent arrears issues for incoming tenure-holders, should the new legislation automatically transfer any rental debt to a new tenure-holder on settlement, or require any outstanding arrears to be paid prior to transfer or settlement?
12. What kinds of lease conditions should be considered 'essential', for the purposes of providing for civil penalties?
13. Should Crown land be able to be used for all forms of carbon sequestration activities?

## 7. Greater flexibility for Western Lands leases

### *Summary*

The Western Division is mainly property held under Western Lands leases issued under the Western Lands Act, together with a small amount of freehold land.

Crown land in the Western Division makes up around 88 per cent of the total Crown estate.

Most of the Western Division is classified as a semi-arid rangeland that is mainly suitable for livestock grazing, although some areas have more resilient land that is suitable for cultivation and other intensive agricultural activities.

Rangelands are particularly sensitive to disturbance (including drought and overgrazing) and are slow to recover. It is important to continue to protect this fragile environment.

There is an opportunity to introduce greater flexibility into land management in the semi-arid parts of the Western Division, without weakening the protections provided by the leasehold system.

Flexibility measures proposed include:

- » allowing lessees of Western Lands grazing leases that have current cultivation consents to apply for freehold conversion
- » reviewing the requirement that the land use proposed following conversion must be ecologically sustainable
- » allowing certain activities to occur on Western Lands leases in rural areas without the need for approval
- » creating certain streamlining measures.

### **7.1 Conversion of Western Lands grazing leases to freehold**

Western Lands leases granted for residential or business use can currently be converted to freehold. Leases granted for agriculture or cultivation can also be converted, but only where the landscape has been significantly altered and there are limited environmental values. Grazing leases cannot currently be converted.

Some Western Lands lessees have argued that economic development in the Western Division is constrained by the current leasehold system and that conversion of grazing leases to freehold should be allowed.

On the other hand, the view of the Western Lands Advisory Council is that perpetual leases are appropriate and effective in limiting damage to sensitive rangelands. As well, the stocking and grazing conditions that can be attached to Western Lands grazing leases are not provided for in other NSW environmental legislation. It is also worth noting that other Australian jurisdictions and relevant overseas jurisdictions have leasehold systems for their rangelands.

However, it is proposed that one category of Western Lands grazing leases should be eligible for conversion in the future. These are perpetual Western Lands grazing leases that have a current cultivation consent over part or all of the lease area and where that land has been developed. There are currently around 800 cultivation consents over Western Lands leases, mostly in the eastern parts of the Western Division.



The fact that a cultivation consent has been granted indicates that the land is sufficiently robust to be suitable for cultivation and that the environmental risks are lower than in the more fragile areas of the Western Division.

Under this proposal, lessees will be required to show that their proposed land use will be ecologically sustainable, as is the case for the conversion of other Western Lands leases.

## 7.2 Issues with the ecological sustainability requirement

For conversion of Western Lands leases granted for agriculture/cultivation, the current interpretation of the 'ecological sustainability' requirement is that at least 75 per cent of the area of the lease has been cleared and developed. Lessees have expressed concerns about the current interpretation.

To address these concerns, the requirement and its interpretation will be reviewed. The test could be changed or made more flexible.

Other approaches could include:

- » using land capability rather than ecological sustainability to determine eligibility
- » relying on land system and land unit mapping
- » requiring applicants to obtain an independent assessment of the values of the land they are applying to convert.

Any approach would need to consider the dominant land use and the type of activity proposed.

## 7.3 Flexibility and streamlining measures

It is proposed that the current leasehold system be more flexible to reduce unnecessary red tape and delays. Although procedures improved considerably after the Kerin Review (1998 – 2000), there is still room for improvement.

One proposal that will eliminate red tape and facilitate diversification is to permit certain additional activities to occur on Western Lands leases in rural areas without the need for approval.

For example, this might include uses such as farm tourism using existing farm buildings and infrastructure, or fodder production up to a maximum of 50 hectares for on-farm use only.

These additional uses and any constraints attaching to them would be included in regulations or in a schedule to the Act. Any proposals for additional uses received in submissions will be considered for inclusion.

The following streamlining measures are also proposed:

- » relaxation of the current requirements for approval to transfer a lease
- » the requirements for transferring a Western Lands lease to a company will be simplified
- » the new legislation will not include requirements for fencing, which will remove duplication with the *Dividing Fences Act 1991*.

### Questions:

14. What additional activities do you think should be permitted on Western Lands leases without the need for approval?
15. Bearing in mind the fragile nature of much land in the Western Division, in what situations do you think it would be appropriate to allow Western Lands leases to be converted to freehold?

## 8. Stronger enforcement provisions

### *Summary*

Compliance is a broad term that generally includes a hierarchy of responses or tools to suit different degrees of non-compliance with legislation. These tools can include:

- » audit processes that provide guidance on how to comply with legislation
- » powers to issue directions or notices to do or not do certain things to comply with the legislation
- » penalty notices and prosecutions for serious breaches of legislation.

An effective compliance framework is an important part of all legislation. It is needed to ensure that the Government's intentions are carried out.

It is generally more effective to encourage voluntary compliance with legislative requirements, but there will always be the need for strong penalties in cases of willful non-compliance.

Consideration should also be given to whether compliance functions on Crown land can be shared with other NSW Government agencies or other bodies.

The new legislation will include:

- » an auditing framework
- » appropriate powers for departmental officers
- » clearly-expressed offences and penalty levels that will act as a deterrent
- » a realistic limitation period in which to bring proceedings
- » the introduction of civil penalties
- » powers to order remediation and removal and to issue stop-work orders.

### 8.1 Enforcement provisions in existing legislation

The Crown Lands Act, Commons Act and Western Lands Act create certain offences and provide for the appointment and powers of authorised inspectors and persons.

The Hay Irrigation Act does not contain enforcement provisions, but the powers of entry and inspection in the Crown Lands Act are applied.

The Continued Tenures Act, the Schools of Arts Act, the PRMF Act and the Wentworth Irrigation Act do not contain any enforcement provisions. The Continued Tenures Act and the two Irrigation Acts provide for offences with a low maximum penalty level to be created by regulation but no offences have been created in this way. Some offence provisions in the Crown Lands Act also apply to some continued tenures.

The Crown Lands Act creates two broad categories of offences – those that relate to things that must not be done on Crown land and those that involve obstructing authorised inspectors in the performance of their duties. These latter offences currently attract a maximum penalty of \$11,000 whereas the public land offences have maximum penalties of between \$550 and \$2200.

The Commons Act contains fewer offences than the Crown Lands Act, and these offences carry maximum penalties ranging from \$220 to \$2200.

It is generally considered that the Crown Lands Act and the Commons Act do not currently provide an effective enforcement framework. In particular, the wording of some of the offences is problematic.

Part 11 of the Western Lands Act contains the most effective enforcement provisions in any of the legislation relating to Crown land. These provisions allow the Western Lands Commissioner (or any delegated officer) to serve notices on lessees to rectify contraventions of lease conditions, and create offences for the breach of certain lease conditions. The maximum penalty for these offences is \$11,000. The Western Lands Act also provides for the issue of remediation notices.

The enforcement provisions in the Crown Lands Act, including those relating to authorised inspectors, also apply to Crown land in the Western Division that is not subject to Western Lands leases.

Offences under the Crown Lands Act, Commons Act and Western Lands Act can be brought in the local court only, but the limitation periods in the three Acts are different. For example, proceedings under the Western Lands Act 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 requires proceedings to be started not later than six months from the date of the offence.

As an alternative to enforcement action, leases granted under the Crown Lands Act, the Continued Tenures Act and the Western Lands Act can all be forfeited for failure to pay rent and for breach of lease conditions.

## 8.2 Compliance issues on Crown land

The main compliance issue in the Western Division is overstocking and overgrazing. The Western Lands Commissioner can issue destocking notices, but in most cases it is possible to reach voluntary, informal agreements with lessees to reduce stock numbers without having to issue a notice. To help identify overstocking and other breaches of lease conditions, the Commissioner implements a Rangelands Condition Assessment Program that involves inspecting approximately 140 properties each year. Other significant compliance issues in the Western Division include boundary fence disputes and access issues.

There are issues with the management of commons, including over-grazing and the erection of unauthorised structures.

Currently there are no compliance powers over commons except for the power to see the books of the trust boards and to conduct an investigation of trust affairs, and a power to make a regulation creating an offence.

In general the most significant compliance issues arising on Crown land relate to:

- » Crown roads – access, structures, vegetation clearing, cultivation and construction
- » waterways – illegal structures, extraction, mooring and occupation
- » Crown reserves – occupation, structures, rubbish, vegetation clearing and the removal of timber, extraction, cultivation, exploration and mining, tenure conditions.

More than half of all alleged breaches relate to Crown roads.

The most significant impediments to effective compliance action are: the six-month limitation period; not being able to issue remediation directions; low penalty levels that do not act as a deterrent; and the difficulty of identifying offenders in certain cases.

As noted above, the existing enforcement provisions in the Crown Lands Act are not adequate. Some provisions are poorly worded and government has been unable to use them to bring prosecutions.

As well, not all situations are covered by the existing offences in the Crown Lands Act. Additional offences are required to deal effectively with these situations, for example in relation to boats illegally moored on waterways.

In some cases, provisions in the Crown Lands Act duplicate or overlap with provisions in other legislation. For example it is possible to prosecute a person for clearing native vegetation on a Crown reserve under the Crown Lands Act as well as under the *Native Vegetation Act 2003*, but the provisions in the two Acts are not consistent.

In many cases, the most effective way of rectifying an offence would be to require remediation of a piece of Crown land, but currently the Crown Lands Act does not provide for remediation notices or stop-work orders. Although remediation outcomes have, on occasion, resulted from prosecutions, this has only been by agreement.

A clear power to order the removal of illegal structures and substances from Crown land is also required.

### **8.3 Improved provisions for the new legislation**

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

The provisions in the new legislation will be more up to date, effective and flexible.

#### **8.3.1 Auditing**

Auditing is widely regarded as an important part of the compliance 'toolbox'. Auditing is often an effective way of improving compliance with legislative requirements, because it encourages people to raise standards without taking punitive action.

Auditing can be done without express provisions in legislation, but it provides additional purpose and clarity for provisions to be included in legislation.

As already noted, the Western Lands Commissioner runs an annual audit program to monitor compliance with the terms and conditions included in Western Lands leases. Including auditing provisions in the new legislation will enable the extension of auditing activities in the future.

#### **8.3.2 Officer powers**

The current benchmark for effective provisions relating to the appointment, powers and protection of authorised officers is the *Protection of the Environment Operations Act 1997* (POEO Act). The powers in the POEO Act to require information and records, to question and identify persons, and to enter and inspect property and vehicles were imported into the *Coastal Protection Act 1979* through amendments made in 2010, together with provisions to protect officers acting in the course of their duties from threats and intimidation. These powers and protections currently apply to beaches but not to other Crown land.

It is important to have ‘best practice’ powers to be able to use the offence provisions effectively. It would also be desirable to have consistent provisions applying across all land falling under the new legislation. Therefore consideration should be given to including all or most of the POEO Act powers in the new legislation.

### ***8.3.3 Offences and penalties***

The offences in the existing legislation will be reviewed, and a new suite of offences developed to cover all relevant aspects of the new, consolidated legislation.

In relation to penalties, there needs to be a consistent approach so that offences with similar levels of seriousness attract the same or similar penalties. It should also be considered to what extent it is appropriate for penalties under the new Act to be consistent with penalties under other relevant legislation.

Continuing offence provisions will be included so that an offence that continues for more than one day will incur an additional penalty for each additional day. There will also be higher penalties for corporations than for individuals.

Provision will be made for penalty notice offences, with the prescribed penalties to be included in the Regulation.

The NSW Department of Attorney General and Justice will be consulted in the development of appropriate offences and penalties.

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 that arise in relation to Crown land. Also, penalties in the local court are generally limited to \$11,000. Other legislation allows prosecutions to be brought in either the local court or in the Land and Environment Court, and it should be considered whether the new legislation should adopt this approach.

As already noted, the current six-month time limit for bringing proceedings is unrealistic and does not take into account that an offence might not be discovered immediately, or the time required to gather the necessary evidence. In many cases, due to the size and scale of the 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.

It is therefore considered that a longer limitation period should be included in the new legislation, and that the time limit should commence from the date of knowledge of the alleged offence. It is proposed that proceedings should be able to be brought within two years of the Minister becoming aware of the offence, which is consistent with other relevant legislation.

### ***8.3.4 Other provisions***

It is proposed that the new legislation will allow authorised officers to issue stop-work orders, remediation notices and removal notices, and that the courts should be able to make restoration orders as well as, or instead of, imposing a penalty.

A stop-work order could be issued where an activity is being carried out on Crown land without permission, or where an activity poses a threat to public safety or the environment. Remediation could include the restoration

or remediation of Crown land to its former condition where damage or contamination has occurred. A removal direction could be issued to make a person remove materials and structures unlawfully placed on Crown land.

As already discussed in Chapter 6.6, the new legislation could provide for civil penalties for the breach of certain conditions in leases and licences other than Western Lands leases.

## 8.4 Compliance-sharing with other agencies

Enforcement could also be improved by other NSW Government agencies taking on compliance functions under the Crown lands legislation, which could result in significant efficiencies.

For example, Roads and Maritime Services has greater resources for compliance on waterways than Crown Lands Division. Therefore the On-Water Compliance Taskforce has been asked to consider the benefits and logistics of Roads and Maritime Services staff members being appointed as authorised officers under the Crown lands legislation.

Another possibility that could be considered, in consultation with the Office of Environment and Heritage, is for national parks rangers to take on compliance activities on intertidal Crown land that adjoins national parks.

For interagency compliance to be effective, officers from other agencies taking on compliance in respect of Crown land would be fully trained in the offences arising under the Crown lands legislation.

### Questions:

16. What are your views about the proposal to strengthen the compliance framework for Crown lands?
17. Do you have any suggestions or comments about proposals for the following:
  - Auditing
  - Officer powers
  - Offences and penalties
  - Other provisions.

## 9. What will happen to the minor legislation?

### *Summary*

There are a number of minor Acts that are no longer required and should be repealed. The required provisions can be continued in the new legislation through transitional provisions.

Some affected land could be converted to Crown land, in which case the general provisions of the new legislation will apply to it.

Some land used for Schools of Arts could be transferred to councils and managed under the local government legislation. Other Schools of Arts land might stay in private ownership.

Some Acts might simply no longer be required, in which case they can be repealed without any further action.

Proposals for each of the minor Acts are:

- » repeal the Commons Act and convert commons to Crown land
- » transitional arrangements will be developed for the Schools of Arts Act
- » repeal the Irrigation Acts and include provisions in the new legislation to continue the tenures under those Acts until such time as they are converted to freehold
- » repeal the Wagga Wagga and Hawkesbury Racecourse Acts because they have fulfilled their purpose
- » repeal the Orange Show Ground Act and administer the showground under the new legislation
- » repeal the two Acts that provide for rent reductions and occupiers relief in irrigation areas because similar arrangements are provided elsewhere in the legislation.

### **9.1 Commons Management Act 1989**

The only real difference between commons and Crown reserves is that commons are held for the sole benefit of a group of commoners whereas Crown reserves are held for the benefit of the broader public.

Some commons are owned by commons trusts, while others are Crown land. Regardless of ownership, the Minister retains a number of controls over commons, including the power to appoint a local authority to manage a trust and a consent role in relation to land transactions and plans of management. Many of these powers are similar to the Minister's powers under the Crown Lands Act.

Many commons are used for various forms of grazing, farming and agistment. However, there are almost as many additional uses as there are commons, and many commons are used for a number of activities. A wide range of public uses such as horse riding, camping, golf and archery take place on around 50 commons. Other activities occurring on commons include mining, public utilities and film making. Many commons have environmental and Aboriginal or other heritage values.



The Commons Act requires all commons to have a trust. Commons trusts must be managed by a trust board, a local authority (i.e. a council) or an administrator. Trust boards consist of elected commoners. Records indicate that ten commons currently have no trust.

Commons trusts are required to submit annual reports to the Minister concerning their activities for that year. Trust board elections are required every three years. These requirements are not always met, which means that the public cannot have confidence in the management arrangements for all commons. It appears that as many as 40 trusts may not have a current board.

There have also been management issues with a number of commons which have required intervention by the NSW Government. For example, many commons are overgrazed and contain unauthorised structures, while others have inadequate fencing. As well, government officers are often called on to mediate disputes between commoners (for example regarding stock ownership) or between commoners and members of the broader community.

The concept of commons could be considered to be outdated because the traditional rationale for commons no longer exists. Also, public land should provide benefits to the broader community rather than primarily to small groups of commoners. The Commons Act currently contains provisions allowing the Minister to revoke commons without paying compensation. It is therefore proposed that commons should be abolished as a separate category of land and the Act repealed.

Possible options for the future use of commons include:

- » converting commons to Crown land and managing them as Crown reserves
- » converting commons to Crown land, with commoners continuing to use the land through lease or licence arrangements
- » disposing of commons to commoners, adjoining landowners or otherwise.

## 9.2 Trustees of Schools of Arts Enabling Act 1902

Land held for Schools of Arts, Mechanics Institutes and Literary Institutes is held in the names of its trusts and trustees. As noted earlier, some of this land is private land and some is public land, and the Act provides powers for trustees to deal with this land.

When the Act was created there was no legislation that provided trustees with practical powers to deal with land. The Act now has limited value because similar provisions are contained in other legislation including the *Trustee Act 1925* and the *Incorporated Associations Act 2009*.

In 2012 a policy to deal with land containing Schools of Arts, Mechanics Institutes and Literary Institutes with a view to ultimately repealing the Act was adopted. All known trusts, including councils, were informed of this policy and of the options on offer (see below). On the basis of responses received, only around ten per cent of public and private trusts wanted to remain under the Act.

### ***Public land***

Public trusts were given the option of transferring land to councils or to the Crown, or maintaining the status quo. Similar numbers of trusts indicated a preference for transfer to councils and transfer to the Crown. A larger number said they wanted to transfer but did not specify a preference.

It is proposed that where public land is already managed by councils, it could be offered to those councils. Other public land should be consolidated into the Crown estate.

### ***Private land***

Private trusts were given the option of transferring land to councils, becoming full legal owners themselves, or maintaining the status quo.

It is proposed that where councils are trusts or are managing private land under the Act, the land should be offered to those councils. The vesting of private trust land is already provided for by section 54B of the *Local Government Act 1993*.

Other private land could continue to be held by the existing trustees under the provisions of the *Trustee Act 1925*, or those trustees could be given the land outright.

## **9.3 Irrigation Acts**

Under the two Irrigation Acts, certain land in the former Hay and Curlwaa irrigation areas is held by the Lands Administration Ministerial Corporation and leased to farmers. As well as leasehold land, the Irrigation Acts also regulate some additional remnant land in the same areas.

Land in adjacent areas is Crown land administered under the Crown Lands Act and the Continued Tenures Act. This means that the rules for leasehold land in the same locality will differ depending on which legislation applies to the land, because the provisions of the various Acts are not consistent. For example, there are different processes for converting leases to freehold and also different rent provisions.

It is considered that the remaining lessees should be encouraged to convert their leases to freehold. This is possible under both Irrigation Acts but take-up has been low to date.

It is therefore proposed to repeal the Irrigation Acts, and to include transitional provisions in the new Crown lands legislation. This would include continuing the existing conversion rights of lessees under these Acts.

## **9.4 Racecourse and Showground Acts**

The *Wagga Wagga Racecourse Act 1993* and the *Hawkesbury Racecourse Act 1996* give the trustees of the Murrumbidgee and Hawkesbury Turf Clubs the status of a reserve trust under the Crown Lands Act. The main purpose of these Acts was to allow the Turf Clubs to own assets once they were corporatised.

Both Turf Clubs are now incorporated and their assets have been transferred to the Clubs. There is no continuing need for the Acts and they can therefore be repealed.

Orange showground is held under a private trust set up under a private Act, the *Orange Show Ground Act 1897*, and a private deed. However, the Minister has powers of consent in relation to any proposed sale or mortgage, the power to require reports and the power to appoint new trustees. Orange Council is the current trustee and manager of the showground.

The powers the Minister has under this Act are similar to the Minister's powers over Crown reserves under the Crown Lands Act. Other showgrounds are mostly Crown reserves and do not have their own legislation. There does not appear to be any reason to treat this land any differently to any other Crown reserve and it is therefore proposed that the Act be repealed and the showground administered under the Crown lands legislation.

## **9.5 Acts providing for rent reductions and occupiers relief in irrigation areas**

The *Irrigation Areas (Reduction of Rents) Act 1974* was created to provide rent reductions to eligible pensioners on some leases falling under the Continued Tenures Act and the Wentworth Irrigation Act.

The *Murrumbidgee Irrigation Areas Occupiers Relief Act 1934* applies to leases in the Yanco and Marool irrigation areas, and allows rents and debts relating to irrigation farm leases or purchases to be reduced.

It appears that these Acts are now rarely used to grant rent reductions as this can also be done under other Crown lands legislation. It is proposed that the ability to provide rent relief and rebates will continue to be available under the new legislation and these Acts are therefore no longer required. Therefore the Acts should be repealed.

### **Questions:**

18. Do you support the repeal of the minor legislation listed?
19. Do you see any disadvantages that would need to be addressed?

## Appendix 1: The Crown Lands Management Review

In June 2012 the NSW Government embarked on a comprehensive review of Crown land management, the first in more than 25 years.

The Crown Lands Management Review was carried out by NSW Trade & Investment and overseen by a Steering Committee that included representatives from other NSW Government agencies and an independent Chair, Mr Michael Carapiet.

The specific aims of the Review were to identify and recommend:

- » key public benefits (social, environmental and economic) derived from Crown land
- » the NSW Government's future role in the management and stewardship of Crown land
- » the basis of an appropriate return on the Crown land estate, including opportunities to enhance revenue
- » business, financial and governance structures that enable achievement of desired outcomes within financial and resource constraints
- » opportunities for efficiency improvement and cost reduction, consistent with red tape reduction objectives and accountability
- » introduction by the NSW Government of incentives to enable the department to manage and develop the Crown land estate in line with NSW Government objectives
- » a contemporary legislative framework.

The Crown Lands Management Review adopted principles established by NSW Government policy or arising from other current reviews, in particular:

- » the NSW Government's intention to devolve decision-making to local communities and for land to be managed by the most appropriate level of government
- » that government should only hold property to support core functions and services
- » the NSW Government's commitment to cut red tape and reduce regulatory duplication, which is also a theme of the proposed local government reforms along with a desire for simpler and more flexible legislation
- » the planning reform proposal to involve local communities up-front at the strategic planning stage, rather than in the later stages of the development application process
- » the need for a genuine customer focus, i.e. understanding the needs of customers, simplifying access to services and removing the need to deal with multiple agencies.

The Review report proposes a range of reforms to improve the management of the Crown estate, including the development of a contemporary legislative framework.



