

# COMPREHENSIVE REVIEW OF NSW CROWN LAND MANAGEMENT

## Recognising and protecting the values of commons

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*The NSW Government has passed the Crown Land Management Act 2016 to deliver modern, streamlined and transparent management of the state's vast Crown land. The Bill implements reforms identified in the white paper and comprehensive review of Crown land management. This fact sheet describes some of the issues and how the legislation addresses them.*

### The rich history of commons and commoners

Commons, which have their origins in medieval England, have been established in NSW since at least 1805. Commons are land in which a group of people, known as commoners, have traditional rights. In Australia commons were originally used by commoners for the purpose of small scale grazing and watering of livestock. The use of the common supplemented the small allotment holdings of ex-convicts living in or close to towns. After the 1850s, commons became regulated by elected boards of trustees, whose decisions were guided by regulations and rules.

### The management of commons

Commons are currently regulated under the *Commons Management Act 1989* (the Commons Act). The Commons Act establishes a commons trust for each common, with most trusts managed by boards who are elected by commoners (although they can also be managed by local councils or administrators). The commons trust is responsible for the care, control and management of the common for which the trust is established on behalf of the commoners.

The ultimate control of commons is by the State, and, as with Crown land, the approval of the Minister for Lands is required for almost all dealings by commons trusts, including all leasing and sale. The Minister is also able to revoke a common, in which case the commons trust has no rights in the land and the land is treated as if it were ordinary Crown land.

### The evolution of the common

Commons were traditionally established on the edge of small villages, with most of the residents entitled to use the commons. As these small villages have grown, the common has often become part of the village, with new residents often unaware of any rights to be entered into the roll of commoners.

This means that commons are often a key green space adjoining settlements. However, unlike ordinary Crown land reserves commons are held for the sole benefit of a particular group of people. The broader public does not have rights to benefit and use the common.

The use of many commons has also changed. Today, commons can and are used for multiple purposes, including commercial and recreation purposes. Some examples of contemporary uses include golf, marathons, equine endurance competitions, fishing, fire service training, camping, and conservation. Traditional uses such as grazing do still continue in many cases – but in practice, many commons could facilitate community uses in ways that would bring significant benefits to the communities in which they are located.

### The need for a new approach – ensuring protections for commons and their values

The comprehensive review of NSW Crown Land Management that began in 2012 recognised that the traditional rationale for commons has changed.

The increasing level and diversification of uses of commons and their central location in communities means there is a much greater interest in the future management arrangements for commons. There is also a recognition that public land should provide benefits to the broader community rather than primarily to small groups of people. It is increasingly less appropriate for a small number of people to benefit from how the land is managed and used.

There is also a great diversity in how commons are being managed on a day to day basis. While some commons trusts function professionally and provide excellent management, in a number of cases commons trusts are less functional. In some cases, trust board members have died or vacated their positions and replacements have not been elected meaning that there is no-one managing the common. This has affected public confidence in the management of all commons.

The fact that commons are now often key green spaces in more urbanised communities means that commons often have very significant environmental values. The Commons Act does not contain any provision for the protection of these values. Similarly, commons often have significant cultural values – some contain important Aboriginal artefacts, while others contain heritage items from the early days of the colony.

There needs to be a regime to recognise and protect these values. These attributes are valued by the broader public, and there is a risk that they may not be protected or effectively managed, which is at odds with community expectations. For example, many commons are overgrazed and contain unauthorised structures, while others have inadequate fencing. The enforcement and compliance provisions contained in the Commons Act are not adequate to efficiently address these matters.

### Modern and fit for purpose legislation that protects commons and their values

As described above, commons are now used for multiple purposes and have values that are important to the community of NSW. These values need to be protected within a legislative framework that recognises the history of commons. The legislative framework also seeks to ensure that commons remain in the control of local communities and that the expertise of existing commons trusts and trust board members is retained.

### Proposed framework to deal with this issue

The proposed legislative framework maintains a number of the key characteristics of the current regime under the Commons Management Act, with some changes to recognise the multiple uses of commons and their value to all the people of NSW.

- The proposed legislation will ensure that current managers of commons trusts (including existing commons trust boards) continue to be responsible for the care, control and management of the common. This will be done by providing that the commons trust becomes the Crown land manager of the common. Crown land managers have the same responsibilities for land that they manage as trusts do under the Commons Act.
- The appointment of the commons trust as Crown land manager will allow for the retention of the name of the common – commons will be able to continue to be known as “ABC common” and the commons trust will be known as the “ABC common land manager.”
- Existing trust board members appointed under the Commons Act will continue as board members of the new Crown land manager entity. This will ensure that the expertise of existing commons managers continues to be available to guide the management of the common.



- The common will be Crown land that is reserved for three purposes – a common, community use, and protection of cultural and environmental values. This recognises the multiple values that commons now have and bring to the communities that have grown up around them. The Crown land manager will be responsible for ensuring all uses of the land and dealings with the land are consistent with these purposes.
- The Minister will have the power to put a notation on the certificate of title to all commons that the land has historically been used as a common [and continues to be reserved for use as a common, in addition to other reserve purposes], to ensure that the traditional use is recognised.
- Crown land commons will be able to access grants and funding under the Public Reserves Management Fund that is established under the new legislation. All Crown land managers are able to apply to the Public Reserves Management Fund for funds to invest in the maintenance and improvement of reserves.

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