

Evaluation of the Crown Land Management Act 2016

A Discussion Paper

March 2021



Find out more:

<https://www.industry.nsw.gov.au/lands/what-we-do/crown-land-commissioner>

March 2021

Acknowledgements

We wish to acknowledge Aboriginal people as the traditional custodians of this land and pay our respects to their Elders – past, present and future. Crown land has significant spiritual, social, cultural, environmental and economic importance to the Aboriginal people of NSW. The Department of Planning, Industry and Environment has a key role in ensuring Aboriginal peoples' interests and rights in Crown land are recognised and realised through facilitating Aboriginal Land Rights, Native Title rights and Aboriginal peoples' interests and involvement in the management of Crown land.

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What is Crown land?

Crown land represents approximately 34 million hectares of land, making up about 42% of the state. The majority of this (approximately 85%) is in the Western Division of NSW and is used for grazing, cropping, mining and renewable energy.

The remainder is mostly made up of Crown reserves including:

- parks
- land for environmental purposes
- land for community uses such as showgrounds, racecourses, scouts and guide halls, caravan parks and surf clubs
- Crown roads
- cemeteries
- most beaches, estuaries and waterways.

Crown land is unique in that it cannot be bought or sold except under special provision and Aboriginal people have legal rights and interests over Crown land.

Who manages Crown land?

NSW Crown land is held in trust by the NSW Department of Planning Industry and Environment – Crown Lands on behalf of the people of NSW. Crown land can be reserved or dedicated for specific purposes and it can also be leased or licensed to individuals or organisations. It can be managed by the department, local government, community-based groups, corporations, incorporated associations, Aboriginal Land Councils and native title holders.

Foreword

Purpose of review

The NSW Crown estate is a large and significant asset that contributes to the prosperity, sustainability and wellbeing of our community. Crown land also has a deep and ongoing connection to Aboriginal people and Country. As we are faced with changes in our economy, lifestyles and climate, we need to collaborate and rethink the future of the estate so that it delivers multiple benefits to the people of NSW.

The *Crown Land Management Act 2016* (CLM Act) was built on several years of review. It sets forth a commitment to enhance the strategic vision for Crown land and create strong accountability for the use and management of land. The CLM Act enables Crown land to be used for a diverse range of purposes to facilitate and deliver positive environmental, social and economic outcomes.

The intent of this discussion paper is to help with my independent statutory responsibility as Crown Land Commissioner to review the effectiveness of the implementation of the new legislation. I want to capture the diverse views of the community, land managers, and the Crown Lands branch of the department, as well as other government agencies, and engage in a public dialogue on the success of Crown land management since the CLM Act commenced in July 2018.

This discussion paper examines and presents areas of focus for evaluating the performance of the CLM Act and provides a framework to guide stakeholder input into the evaluation. Your input will inform recommendations that will guide continual improvement to the legislation and the operations of the department to underpin and drive the best use of the NSW Crown estate.

The first State Strategic Plan for Crown land is nearing completion. The plan will set out the vision, priorities, outcomes and overarching strategy for managing Crown land for the next 10 years. The plan is a cornerstone of the CLM Act,



Professor Richard Bush, Crown Land Commissioner.

and I see this evaluation of the Act as a way to enable us to look at how the legislation and the mechanics of the department can better facilitate the delivery of the plan.

I have the privilege to talk with a wide range of people about Crown land and it is clear from my conversations that the estate is highly valued and people are passionate about the future of Crown land. This evaluation provides an opportunity for all stakeholders to reflect on how Crown land is being managed and used under the new legislation and to consider new and innovative ways to evolve and better manage Crown land in the future.

I encourage you to communicate with clarity and courage on how Crown land can support you and NSW. Please take the opportunity to engage and contribute your experiences, expectations and ideas.

Professor Richard Bush
Crown Land Commissioner

Key objectives

This discussion paper is part of an independent statutory review by the Crown Land Commissioner of the implementation of the *Crown Land Management Act 2016* (CLM Act) over the last two and a half years since commencement. A report on the findings and recommendations of the review will be provided to the NSW Government.

This statutory review has three objectives:

Determine the extent to which the reform has achieved the desired outcomes for the community

Determine how successfully the department has brought the CLM Act into operation

Provide recommendations that address the key factors affecting the success of the Crown land reforms

Areas of focus

This discussion paper looks at seven focus areas. These address a spectrum of outcomes the reforms sought to achieve, which have become prominent during the implementation of the Act.



Innovation and the State Strategic Plan for Crown Land



Aboriginal connection



Accessibility and usability



Enhanced community involvement



Local council-managed Crown land



Western lands opportunities



Compliance and protection of land

A cornerstone of the CLM Act is the State Strategic Plan for Crown Land. The plan will enable us to think big and be aspirational about what we want for Crown land today, tomorrow and in years to come.

It will provide the opportunity to be strategic and innovative, and to collaborate to achieve the best outcomes from the Crown estate.

Innovation and the State Strategic Plan for Crown Land

The [State Strategic Plan for Crown Land](#) will be a 10-year plan that sets the vision, priorities and outcomes for Crown land and will ensure the objects of the CLM Act are achieved. It will focus on enabling job growth and economic opportunities in regional NSW, protecting, enhancing and activating our built and natural assets, expanding quality open space, building climate change resilience, strengthening our communities and working with Aboriginal communities to realise their land rights.

Throughout 2020, valuable input and feedback from Crown land stakeholders all around the state enabled a visionary draft plan to be developed. The final plan will be published in the coming months and will clarify the key outcomes and accountabilities to ensure delivery for Crown land. The plan, and its implementation, will seek to empower and provide the tools for stakeholders to collaborate with the department to achieve outcomes.

It is critical we ensure the CLM Act is fit for the future – that it will enable the strategic outcomes in the plan to be achieved, while meeting the needs and expectations of different stakeholders more broadly. We want to hear your ideas and encourage you to think 'outside the box' about how the legislation and its implementation can help you best achieve results. This could include 'blue sky' ideas or looking to other jurisdictions, research and evidence on new and innovative ways of managing and activating public land. No idea is too big or small.

Key questions

Question 1

Do you think the legislation is fit for the future and will it enable outcomes in the State Strategic Plan for Crown Land to be achieved?

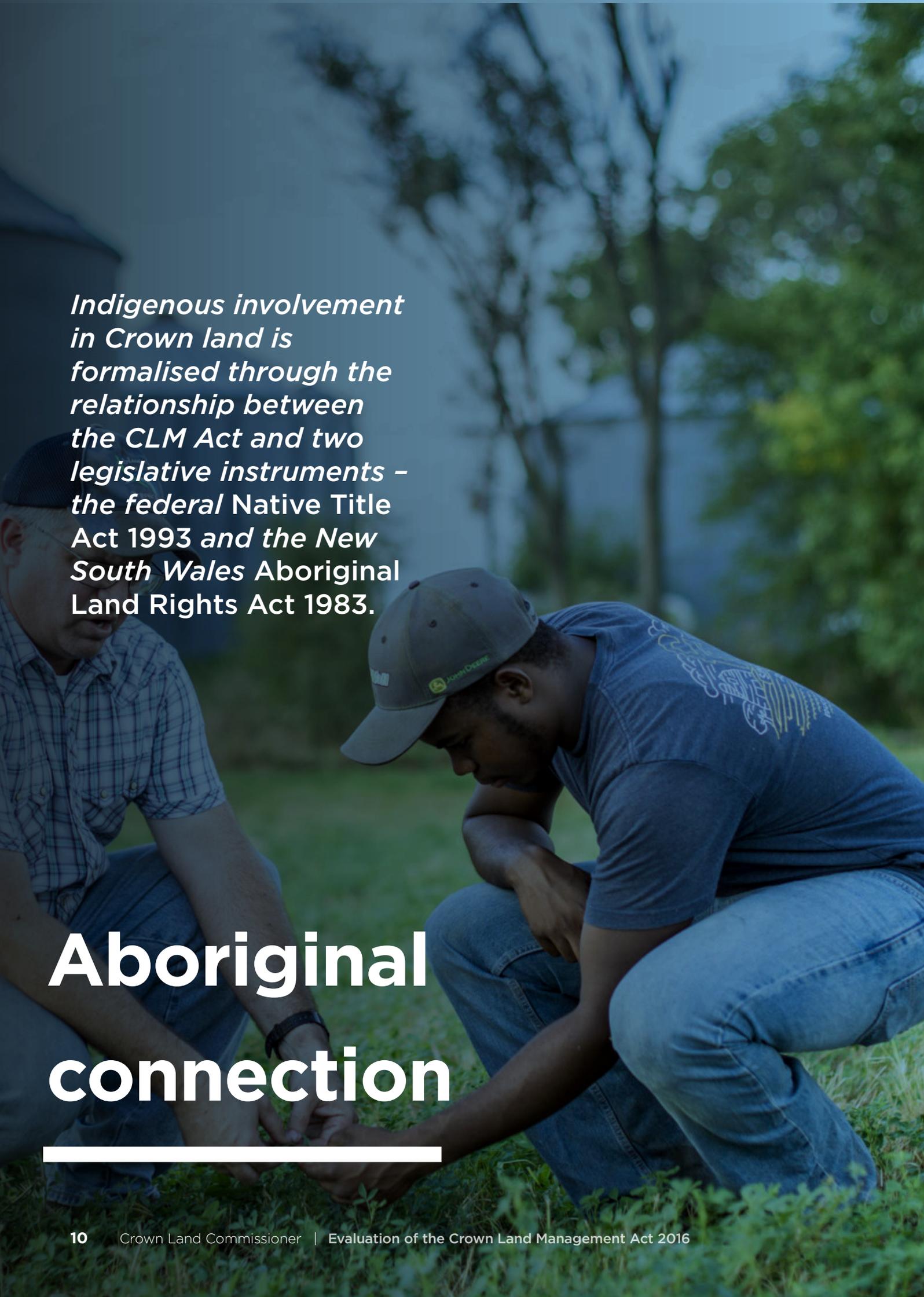
Question 2

Is the CLM Act helping or hindering you from innovating on Crown land? What should be changed?

Question 3

Do you have any blue sky ideas on new or innovative ways of managing and activating Crown land?



A photograph of two men crouching in a grassy field. The man on the left is wearing a plaid shirt and a dark cap. The man on the right is wearing a blue t-shirt, blue jeans, and a grey cap with a logo. They appear to be examining something on the ground together. The background shows trees and a building under a clear sky.

Indigenous involvement in Crown land is formalised through the relationship between the CLM Act and two legislative instruments – the federal Native Title Act 1993 and the New South Wales Aboriginal Land Rights Act 1983.

Aboriginal connection

The objects of the CLM Act specify the parliament's commitment to protecting the interests of Aboriginal people in its dealings with Crown land. This includes facilitating Aboriginal peoples' use of Crown land and emphasising the need to enable co-management of dedicated or reserved Crown land, where appropriate.

Changes to the *NSW Aboriginal Land Rights Act 1983* and *Native Title Act 1993* were not a feature of the reform. However, the CLM Act is the first Crown land legislation to recognise the operation of both the state and federal land legislation. For native title, the CLM Act includes express requirements for land being vested in local government to be subject to native title rights and interests and for local councils to employ or engage a certified native title manager.

The implementation of the reforms corresponded with and facilitated the delivery of the Land Negotiation Program, designed to enable voluntary transfers of locally significant land between the state, local councils and Aboriginal Land Councils. While it was intended to achieve land ownership outcomes for local councils, as well as for Aboriginal Land Councils in line with the *Aboriginal Land Rights Act 1983*, a recent review in 2020 was critical of the outcomes and highlighted several areas for improvement. The department is now implementing recommendations that will deliver improved outcomes in a more efficient and effective way.

We need to learn lessons from the past to ensure the objects of the CLM Act are realised effectively for Aboriginal stakeholders and that their rights and interests in Crown land are acknowledged and facilitated. This includes looking at how state and federal legislation can better coexist.

Key questions

Question 1

Do you think the CLM Act enables recognition and facilitation of Aboriginal peoples' rights and interests in Crown land, in line with the objects in the Act?

Question 2

What impact has the implementation of the CLM Act had on the realisation of outcomes for native title holders?

Question 3

Would you like to suggest any process improvements for aboriginal land claims?

Question 4

What improvements could be made to Crown land legislation and/or processes to achieve better outcomes for Aboriginal people?





The introduction of the CLM Act sought to reduce complexity and remove duplications and red tape from Crown land management – thereby making it more accessible, usable, fit and appropriate for the 21st century.

Accessibility and usability

The CLM Act consolidated several Acts into one, with the intention of providing easier-to-understand legislation and facilitating streamlined processes. As reflected in the objects of the Act, the legislation also seeks to enable consistent, efficient, fair and transparent management of Crown land.

New governance standards were introduced to provide greater consistency for the various types of land managers and different tenure holders. Administrative arrangements for non-council land managers have moved from a 3-tier to a 2-tier structure, removing red tape. Reduced and streamlined approvals for landowners consent are also intended to improve efficiencies and enable better synergies with planning processes and other government approvals.

The department is developing rules, strategies and a number of policies and guidelines to support the legislation and associated processes. The implementation of these reforms has sought to improve accessibility and usability by making it easier and more attractive for people to conduct business and invest on Crown land.

The following acts were repealed in July 2018 when the CLM Act commenced:

- *Crown Lands Act 1989*
- *Crown Lands (Continued Tenures) Act 1989*
- *Hay Irrigation Act 1903*
- *Irrigation Areas (Reduction of Rents) Act 1974*
- *Murrumbidgee Irrigation Areas Occupiers Relief Act*
- *Orange Show Ground Act 1897*
- *Public Reserves Management Fund Act 1987*
- *Trustees of Schools of Arts Enabling Act 1902*
- *Wentworth Irrigation Act 1890*
- *Western Lands Act 1901*
- *Western Lands Amendment Act 2009*

Key questions

Question 1

Have you found the new legislation easy to understand, interpret and use?

Question 2

Do you think approvals (including with other government agencies) have been streamlined, and has this enabled more efficient dealings on Crown land?

Question 3

As a land manager or tenure holder, do you feel you have been provided with the tools and support to do your job effectively (including the transition to new governance standards and administrative arrangements)?

Question 4

Do you have any suggestions to improve the legislation or processes to make it easier to conduct business and invest on Crown land?



The CLM Act included a requirement to prepare and implement a community engagement strategy. The strategy sets out how the department must involve the community as part of the decision-making process about future Crown land use and management.

Enhanced community involvement

The [Crown land Community Engagement Strategy](#) is a key element of the CLM Act. It has moved engagement away from a limited notification approach to a thorough and meaningful process of involving the community. The strategy is specific with its requirements for when and how the community is to be engaged.

The implementation of this new approach provides for tailored and more inclusive engagement so that Crown land decisions of greatest impact trigger an appropriate and effective level of public participation. Under the strategy, impacts are assessed as ‘minimal’, ‘moderate’ or ‘high’ – each of which have different scales of community engagement.

The aim of the strategy is to provide meaningful engagement with the community when land use or management changes have a potential impact on the community’s use or enjoyment of Crown land. The intent is to give those most affected by changes a genuine say and enable a more transparent process for decision making on Crown land, to ensure outcomes are achieved in the best interest of the community and the state.

Key questions

Question 1

Has the Community Engagement Strategy enabled greater and more meaningful opportunities for the community to have their say in the future use and management of Crown land?

Question 2

Would you say the application of the Community Engagement Strategy has resulted in better outcomes for the community and the state?

Question 3

Do you have any suggestions to improve the Community Engagement Strategy?



A woman in a light-colored t-shirt and dark pants is walking on a rocky path through a dense forest. The path is made of large, moss-covered rocks. The forest is lush with green foliage and tall trees. Sunlight filters through the leaves, creating a dappled light effect. The overall scene is peaceful and natural.

The CLM Act enables council Crown land managers to manage Crown land under the Local Government Act 1993. The process requires plans of management to be prepared for all local council-managed Crown reserves.

Local council-managed Crown land

A key element of reform is to ensure Crown land is managed at the most appropriate level of government. For locally-significant Crown land, this is typically the relevant local government area authority. Under the reforms, local councils will manage this Crown land as if it is council-owned public land under the *Local Government Act 1993*. The CLM Act requires that all local councils have a native title manager to ensure all Crown land is managed by councils in a manner that is consistent with the *Native Title Act 1993*.

Some anticipated benefits of enabling local councils to manage Crown land in this way include:

- consolidating council land portfolios under one streamlined regime
- reducing duplication, red tape, administrative complexity and confusion
- enabling the community to contribute to the management of Crown reserves by engaging in the plan of management process
- aligning the use of Crown reserves with native title rights.

Two and a half years into the implementation of the CLM Act, there is a question mark over whether the benefits listed above are being realised under the current framework. Resourcing constraints have emerged that prevent the local government sector from fully responding to the new requirements in an effective and timely fashion.

Key questions

Question 1

Do you think the new provisions facilitate more streamlined and better management of Crown land by local councils?

Question 2

What is the resourcing gap being experienced by your local council under the new requirements?

Question 3

Do you have any suggestions for improving the management of locally-significant Crown land?



An aerial photograph of a rural landscape in Western Australia. A dirt road winds through the terrain, which is a mix of brownish soil, sparse vegetation, and some green fields. In the lower half of the image, a small town or village is visible, with several buildings and a cluster of trees. The sky is clear and blue, suggesting a bright day.

The CLM Act introduced a new approach to the Western Division that aims to support the productive use of agricultural land. The Western Division makes up almost half of NSW, most of which is Crown land and includes some of the most environmentally-sensitive lands in the state.

Western lands opportunities

The CLM Act sought to address concerns that former processes in the Western Division were constraining flexible land management and inhibiting productivity and the sustainable growth of the Western Division lands.

The CLM Act allows for the conversion of perpetual leases in the Western Division to freehold titles in an effort to stimulate productivity and growth. Changes also seek to simplify the process of purchasing agricultural land. The CLM Act encourages leaseholders to diversify their activities through streamlining approvals. The CLM Act permits local activities to occur without the need for onerous consents.

We must understand the impact of these reforms to determine if and how they are facilitating productivity and growth. We also need to ensure the land's resources are being sustained in perpetuity and in the best interests of the community and the state.

Key questions

Question 1

Do you think the new provisions are facilitating the productive use of agricultural land in the Western Division?

Question 2

What evidence best shows that these new provisions are ensuring land is being managed in a sustainable way and in the best interests of the community and the state?

Question 3

What improvements could be made to stimulate productivity and growth while also ensuring Western lands resources are sustained in perpetuity?





To underpin effective management and protection of Crown land, the CLM Act introduced enhanced enforcement provisions and a bigger 'compliance toolbox'.

This allows greater action to be taken to protect Crown land and remediate any damage.

Compliance and protection of land

The intention of the CLM Act's reforms for compliance and enforcement was to ensure modern and robust provisions were introduced for investigating and enforcing compliance with the CLM Act, as well as the various tenures and holdings granted under it. It aimed to demonstrate the value of Crown lands to the public and the importance of dealing strongly with offences related to Crown lands.

The implementation of compliance capacity within the CLM Act aimed to be consistent with the principles of a modern regulator by taking into consideration the compliance programs used by other government agencies, Crown land managers, and local government.

More recently, the [Crown Lands Compliance Strategy 2020-23](#) has been developed, outlining short-term compliance priorities to guide Crown lands in meeting specific regulatory management objectives, protect the environment and ensure equitable use of public land.

Key questions

Question 1

In your experience, have the enhanced enforcement provisions in the CLM Act enabled better protection of land from damage and inappropriate use?

Question 2

How effective do you believe the Department's compliance program has been to date in enabling better protection and remediation of Crown land?

Question 3

What improvements could be made to the enforcement provisions and/or compliance program and priorities to better protect Crown land?



What's next?

Stakeholder participation in the CLM Act review process is critical to understanding the impacts of the reform, as well as any transitional issues. In the context of the reform, we want meaningful feedback and discussion about what is important to our stakeholders, how we can ensure long-term benefits, how we can identify areas that require immediate focus, how we can think 'outside of the box', and how we should approach designing and implementing any potential changes.

We are releasing this discussion paper as part of a broader review on the effectiveness of the new legislation's implementation, in an effort to enable community and stakeholder input into the process.

Although this discussion paper focuses on key areas, we welcome comment on any aspect of the reform that is important to you. The commissioner encourages all stakeholders to make written submissions. These can be of any length and do not need to cover every issue raised.

The discussion paper will be on exhibition until Thursday 25th March 2021. We will collate and analyse all the submissions and data and develop recommendations that will be put forward to the NSW Government in June 2021.

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