



1. Introduction.....	1
2. Facts and figures.....	1
3. History of legislation	4
4. Crown Lands (Continued Tenures) Act 1989.....	5
5. Crown Lands Act 1989	6
6. Western Lands Act 1901	10
7. Proposed reforms.....	12
8. Conclusion.....	14

Crown land management

by Lenny Roth

1. Introduction

In March 2014, the NSW Government announced substantial changes to the management of Crown land in NSW, following a review by an inter-agency Steering Committee. The Minister for Trade and Investment, Andrew Stoner, said:

The NSW Government will cut red tape, return decision making to local communities and protect community land uses such as surf clubs, scout halls and bowling clubs under the most significant reforms to Crown land management in a generation.¹

Over 600 submissions were made in response to the reform proposals, reflecting the economic, social and environmental significance of Crown land. The Government has indicated that new legislation will not be introduced until 2015.²

This e-brief presents some facts and figures about Crown land, it provides a brief history and summary of the legislation governing Crown land, and it outlines the proposed reforms. The paper does not cover Indigenous claims over Crown land.³

2. Facts and figures

There are three main types of public land: national parks (around 7 million hectares), State forests (over 2 million hectares) and Crown land (around 34 million hectares).⁴ The 2013 inter-agency Steering Committee report noted that the Crown estate:

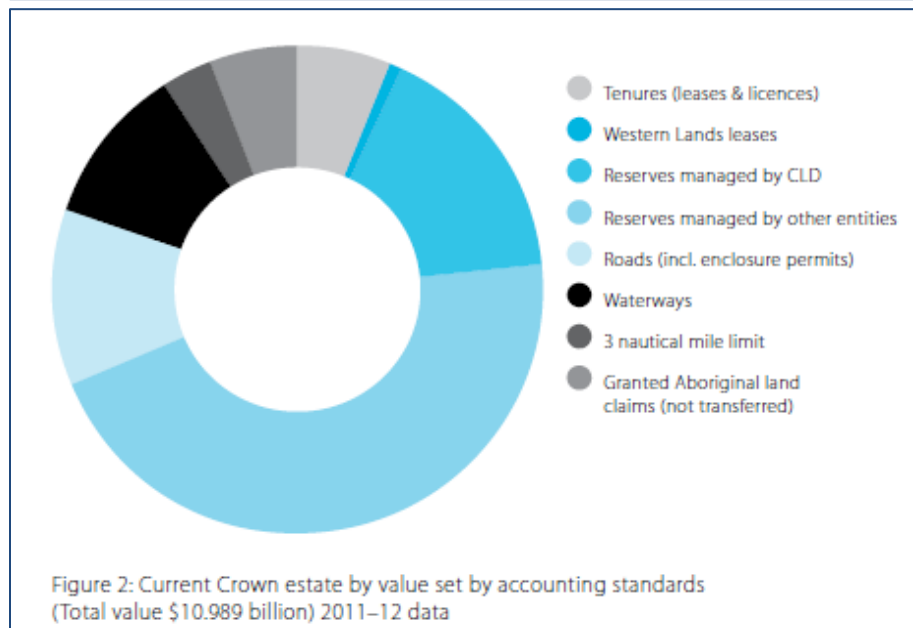
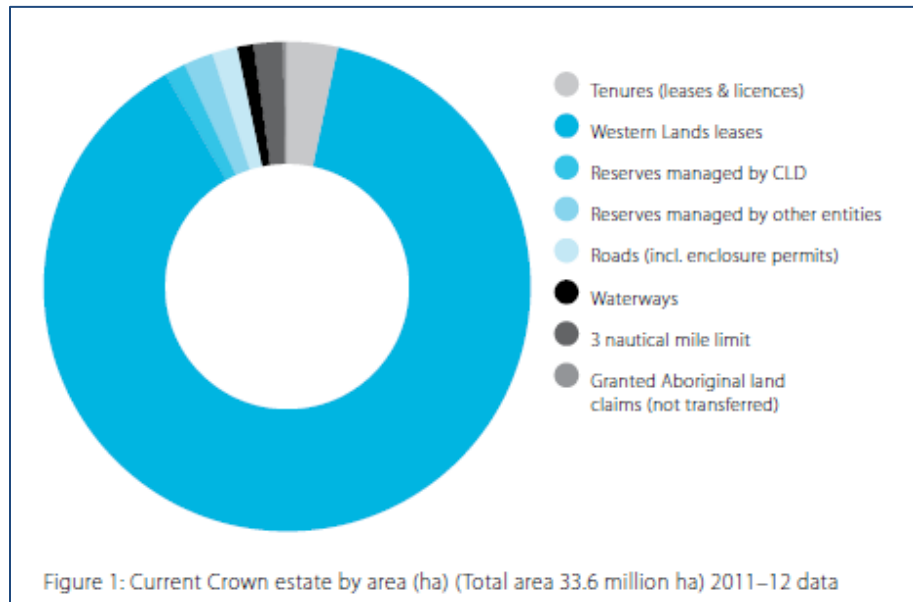
...makes up about 42 per cent of the State. The estate has a wide range of uses, including commercial ventures (such as marinas, kiosks, restaurants and caravan parks), telecommunications, access, grazing and agriculture, residential, sporting and community purposes, tourism and industry, waterfront occupations, travelling stock routes, recreation facilities and green space, cemeteries, environmental protection, and government infrastructure and services.

The 33.6 million hectares that comprise the Crown estate are managed under 59,500 tenures (33 million hectares) and around 35,000 Crown reserves (2.7 million hectares)...It is a complex arrangement: Crown Lands Division [within NSW Trade and Investment] administers the land through a mix of contractual arrangements, tenures, leases and devolution to

local trusts managed by community groups and local councils. In particular, multiple tenures can be issued over Crown reserves resulting in some double counting.⁵

Two prominent examples of Crown land are Hyde Park and Bondi Beach. Note that Crown land includes submerged land: i.e. most coastal estuaries, many large riverbeds, many wetlands and the State's territorial waters, which extend 3 nautical miles out to sea. There are also Crown roads, which provide access to freehold and leasehold land where little or no subdivision has occurred since the original Crown subdivision of NSW.⁶

The 2013 report contained several charts and maps of Crown land.⁷ Figures 1 and 2 show the Crown estate area and value by category of Crown land; Figures 4, 5 and 6 are maps of Crown land by category. As shown, leases of land in the Western Division of NSW comprise the vast majority of the 33.6 million hectares of Crown land. In contrast, Crown reserves make up most of the \$10.9 billion in total value of Crown land.



Crown land management

Figure 4: NSW Crown land by lease, licence or enclosure permit

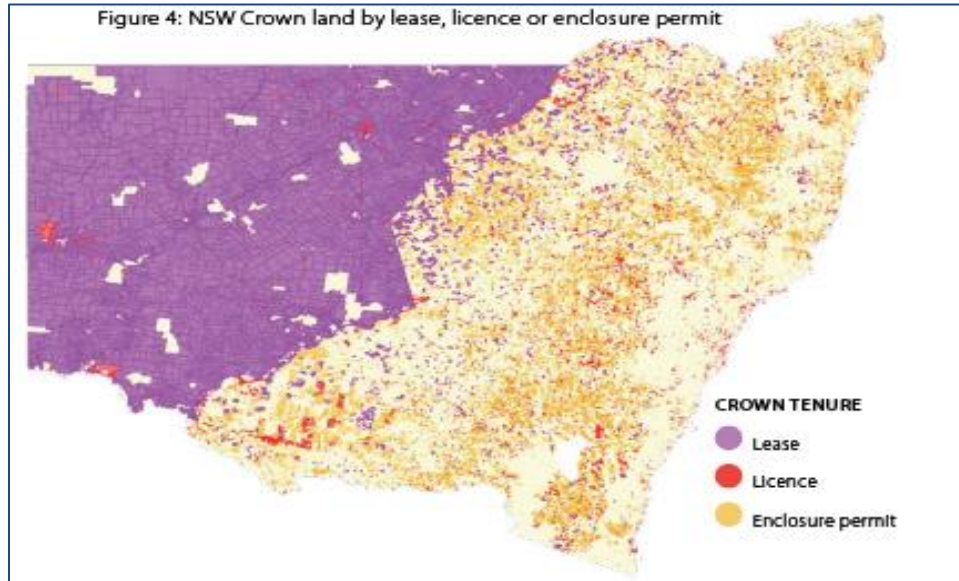


Figure 5: NSW Crown reserves

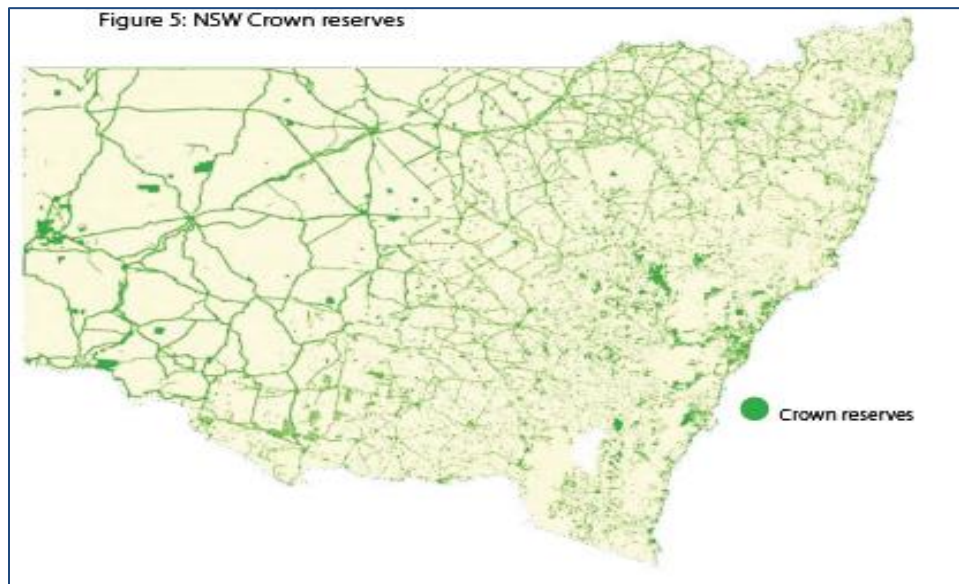
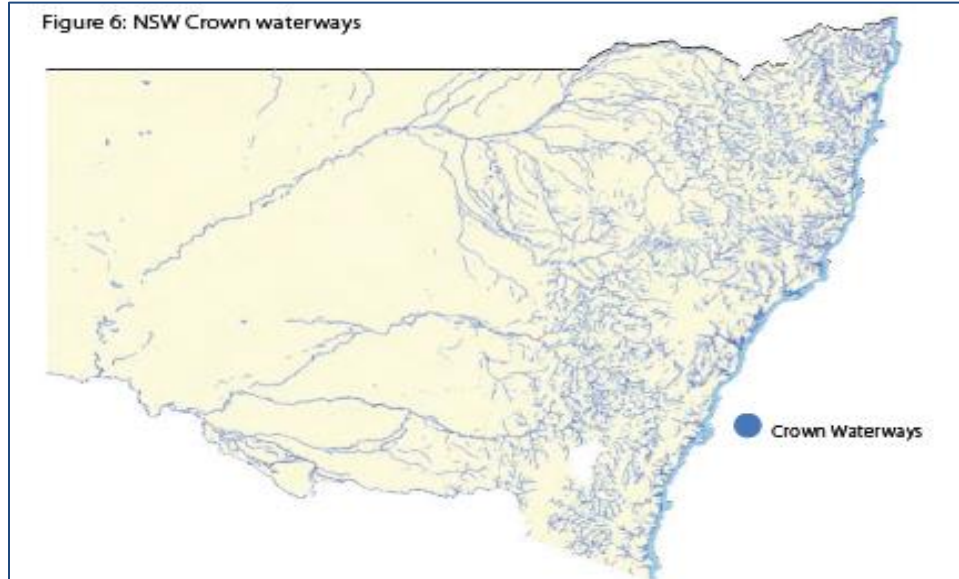


Figure 6: NSW Crown waterways



3. History of legislation

1788 to 1988:⁸ From British settlement in 1788 the lands of the colony vested in the Crown. Originally, the Crown made free land grants to military officers, free settlers and former convicts. A “quitrent” was usually reserved, requiring the grantee to pay a sum of money annually to the Crown. From the 1820s, the Crown began selling land at a commercial price.

In 1829, the “limits of settlement” had been fixed within 19 counties, spreading out from Sydney and covering 22 million acres. Settlement beyond these limits was illegal. Nevertheless, squatters began occupying this land. In response, the NSW Governor issued regulations in the 1830s providing for leases of “runs” of Crown land for grazing purposes. In the 1830s, further regulations allowed occupants of land beyond the settled districts to have a licence for pastoral purposes. In the 1840s, legislation allowed the grant of leases to pastoralists outside the settled districts.

After responsible government was established in 1855, the NSW Parliament passed legislation with the aim of unlocking land occupied by squatters. The *Crown Lands Alienation Act 1861* allowed a person to select for purchase between 40 and 320 acres of Crown land outside town boundaries; a deposit of 25% was payable with the balance payable three years and three months later. The *Crown Lands Occupation Act 1861* provided for leases of land outside town boundaries for various purposes including pastoral, on certain conditions. Leased land was open to selection and sale at any time. The principle of free selection was greatly abused by free selectors and squatters and led to a bitter struggle between them.

In 1884, following a Commission of Inquiry into the state of public lands and land laws in NSW, Parliament enacted the *Crown Lands Act 1884*, which repealed the 1861 Acts. The Act divided the State into three divisions: Eastern, Central and Western. It established land districts and local land boards to deal with applications for land. It also created a number of new tenures, including conditional leases, special leases, annual leases, and occupation licences. Legislation enacted in 1895 established additional tenures, in the form of homestead selections and settlement leases. In 1901, land in the Western Division was separated from the other divisions, with the enactment of the *Western Lands Act 1901*.

In 1913, all legislation governing Crown lands, except the *Western Lands Act*, was consolidated into the *Crown Lands Consolidation Act 1913*. Between 1913 and 1989, the 1913 Act was amended almost 100 times, often to implement major policy changes of different governments. These changes added yet more tenures to the Crown lands system. This resulted in the 1913 Act becoming one of the most complex statutes in force in the State. By 1988 there were 21 different purchase tenures and 29 different forms of leases, licences and permits. All of these different tenures were governed by the 1913 Act and 19 other Acts.

1989 to 2014: In 1989, the 1913 Act and 19 other Acts were repealed by the *Crown Lands Act 1989*. The Government noted that:

The new legislation represents major legislative reform designed to provide a simplified, streamlined and modern approach to the future administration and

Crown land management

management of the Crown estate. It reflects a change in emphasis from land settlement to land management.⁹

The Act governed the *future* disposition and management of vacant and reserved Crown land. A separate Act – the *Crown Lands (Continued Tenures) Act 1989* – provided for the continuation and administration of *existing* tenures (i.e. tenures in force under the now repealed Acts).

Since 1989, there have been various amendments to the *Crown Lands Act*. The most wide-ranging reforms were introduced by the *Crown Lands Legislation Amendment Act 2005*. The NSW Government stated:

The Government is moving away from the old colonial office mentality of Crown land management, and bringing it in line with modern community expectations. Crown land is a valuable public asset and it is essential that it is managed wisely for the benefit of all. The strong and detailed reforms in this bill will put the management of Crown land on a more sustainable footing by slashing red tape; freeing up resources and providing greater flexibility in the day-to-day management of Crown land. They represent the most significant reform of the Crown land legislative framework in the State's history.¹⁰

Reforms have also been made to the *Western Lands Act 1901*, most notably by the *Western Lands Amendment Act 2002*, which arose from a major review. When introducing the reforms, the NSW Government stated:

The [Bill] represents the most important and historic package of reforms to the management of the Western Division to come before this Parliament in the more than 100 years since the enactment of the Western Lands Act in 1901. The bill will enable a system of legal roads to be established, together with legal access to all rural properties. It will replace the outmoded rental system with a new scheme that is more equitable and simpler to administer. It will establish a broadly based advisory council to advise the Minister on matters affecting the Western Division. In addition, the bill contains many other reforms that will introduce greater efficiency and flexibility into dealings with, and management of, western lands leases.¹¹

The following sections summarise the three main pieces of current legislation governing Crown land: the *Crown Lands (Continued Tenures) Act 1989*, the *Crown Lands Act 1989*, and the *Western Lands Act 1901*.

4. Crown Lands (Continued Tenures) Act 1989

As noted above, this Act provides for the continuation and administration of tenures in force under Acts that were repealed in 1989. There were three broad types of tenures under these Acts:

- (i) incomplete (conditional) purchases;
- (ii) perpetual and term leases; and
- (iii) permissive occupancies.

Incomplete purchases: The holder of an incomplete purchase must comply with the provisions under the repealed Act in respect to paying the balance of the purchase money: Sch 2, Pt 1. The holder must also comply with any conditions recorded on the folio of the Register kept under the *Real Property Act 1900*; and comply with requirements of any law relating

to the use or management of the land: Sch 2, Pt 1. The Act sets a minimum annual instalment payable in respect of an incomplete purchase: Pt 1B.

Perpetual and term leases: Leaseholders must comply with the provisions of the repealed Act in respect to paying rent: Sch 2, Pts 2-3. There are provisions setting minimum rent, providing for annual CPI adjustments to rent, and providing for rent redeterminations: Pt 1A and Sch 6. Leaseholders must also comply with any conditions recorded on the folio of the Register kept under the *Real Property Act 1900*; comply with requirements of any law relating to the use or management of the land; and comply with any conditions attaching to the Minister's consent: Sch 2, Pts 2-3. There are currently around 2,000 leases governed by the Act.¹²

Permissive occupancies: The holder of a permissive occupancy must comply with the provisions of the repealed Act in respect to paying rent: Sch 2, Pt 6. There are provisions setting minimum rent, providing for annual CPI adjustments to rent, and providing for rent redeterminations: Pt 1A and Sch 2, Pt6. The permissive occupancy remains subject to the conditions that it was subject to before the Act commenced: Sch2, Pt 6. It is terminable at will by the Minister: Sch 2, Pt 6. There are currently over 4,000 permissive occupancies governed by the Act.¹³

5. Crown Lands Act 1989

This Act provides for the administration and management of Crown land in the Eastern and Central Division of the State (other than land governed by the *Crown Lands (Continued Tenures) Act 1989*).

Assessment of Crown land: Part 3 of the Act provides for the Minister to institute a program for the assessment of Crown land, which consists of:

- preparing an inventory of Crown land,
- assessing the capabilities of the land, and
- identifying the suitable uses for the land.

Minister's powers to deal with Crown land: The Minister may, in such manner and subject to such terms and conditions as the Minister determines: (a) sell, lease, exchange or otherwise deal with Crown land or (b) grant easements or rights-of-way over, or licences or permits in respect of, Crown land: s 34. A recent amendment bill proposes to exclude "Crown beach and coastal land" from "Crown land" in (a).¹⁴

The Minister can only exercise these powers if the land has been assessed as provided under Part 3, unless:

- the Minister is satisfied that it is in the public interest to exercise the powers and the Minister has had due regard to *the principles of Crown land management*; or
- the powers are to be exercised in respect of the grant of an enclosure permit, or a licence which does not authorise the erection of a structure other than fencing or the removal of material: s 35.

Crown land management

The *principles of Crown land management* are outlined in section 11:

- (a) that environmental protection principles be observed in relation to the management and administration of Crown land,
- (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,
- (c) that public use and enjoyment of appropriate Crown land be encouraged,
- (d) that, where appropriate, multiple use of Crown land be encouraged,
- (e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and
- (f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

There are special provisions that apply to the granting of a lease, licence, permit, easement or right of way in respect of a Crown reserve (these are discussed below “Granting of tenures over Crown reserves”).

Sale of Crown land: A notice of intention to sell the land must be published in a newspaper circulating in the relevant locality or generally in the State: s 34(3). The Minister may include in a contract of sale of Crown land such conditions as the Minister determines, including a condition with respect to the erection of a building on the land by the purchaser within a specified period, and/or a condition for an option or right for the Minister to repurchase the land on behalf of the Crown: s 36. The Minister may also impose on the land, such restrictions on use or public positive covenants for any one of the following purposes: protecting the environment, protecting or managing natural resources; protecting cultural, heritage or other significant values of the land or any item or work on the land: s 77A

Leases of Crown land: The term of a lease of Crown land (including any option for the grant of a further term) granted by the Minister is not to exceed 100 years: s 41. The Act also provides for the granting of special purpose leases in respect of land declared by the Minister to be a development district. The special purposes can include the construction and operation of facilities for the harnessing of energy from any source (including the sun or wind) or such other purposes as may be approved by proclamation: s 44C. Crown Lands Division [notes](#):

A lease of Crown land enables exclusive use over a particular piece of land for a specified term and purpose. Generally, leases are sought over Crown land where longer-term security of tenure is an important factor to the user of the land - such as where commercial uses are proposed and major financial outlay is required. Examples include extensive agricultural initiatives, long term extractive industries, irrigation, commercial and trading purposes, marina sites and caravan parks.¹⁵

There are currently around 400 leases in force.¹⁶

Licence over Crown Land: A licence may authorise the use or occupation of Crown land for such purposes and for such term as the Minister thinks fit: s 45. Licences are revocable at will by the Minister or on such notice as

may be specified in the licence: s 47. A licence may be granted subject to the payment of such rent, royalty, fees or other amount as the Minister may determine in respect of the licence: s 50. Crown Lands Division [notes](#):

Crown Lands issues licences to individuals, businesses and community organisations for a number of purposes, including:

- waterfront structures (e.g. jetties, boat ramps and slipways). Lands below the high water mark of foreshore properties are Crown lands and occupation of such lands must be authorised...
- grazing of stock (excluding areas with high environmental sensitivity);
- extraction industry operations (eg. quarries and dredging of sand and gravel from waterways);
- agriculture and cultivation;
- water supply and access (i.e. pumpsites and pipelines for domestic use and irrigation); and
- short term purposes such as sporting events, minor extractive operations not covered by the [Mining Act 1992](#) and site investigation associated with potentially acceptable development proposals.¹⁷

There are around 14,000 licences in force.¹⁸

Enclosure permits: The Minister may, on application being made by a holder of land, grant a permit to enclose wholly or in part any road or watercourse by which the land is traversed or bounded, subject to payment of such annual rent as may be determined by the Minister: s 61. An enclosure permit may be granted subject to such conditions as the Minister determines, including conditions requiring the erection of gates or the provision of some other means of access (so as not to unnecessarily interfere with any traffic): s 61. The Minister may cancel an enclosure permit: s 66. Crown Lands Division [notes](#):

An enclosure permit...allows a property owner to enclose a Crown road or watercourse within their property by fencing. An enclosure permit (EP):

- authorises grazing, which is the only permissible use of an enclosure permit.
- requires that the land must remain available for access if required; and
- does not provide the holder with any title to the Crown road or watercourse;

The value of an EP to a landowner is not only the land's grazing value, but also the saving in the cost of fencing the road out from their adjoining property.¹⁹

There are around 30,000 enclosure permits in force.²⁰

Minimum rent, redeterminations, and rebates: The Act sets a minimum annual rent (by way of a formula which takes account of CPI movements) which is payable in respect of a lease, licence or enclosure permit: s 141A. The minimum annual rent is currently \$458.²¹

Crown land management

In redetermining the rent of a lease or licence (the conditions of which provide for the redetermination) or determining or redetermining rent for an enclosure permit, several principles apply including that the rent shall be the market rent for the relevant land having regard to any restrictions or conditions to which it is subject: s 143.

The Minister may grant a rebate of rent in respect of a prescribed class of holder or in respect of a holding which is used for a prescribed purpose: s 151. The prescribed classes and purposes include: a pensioner whose holding is occupied as the sole place of residence; a community service, sporting or recreational organisation whose holding is used as a help or service facility of benefit to the general community; and a local council whose holding is used to provide free facilities for the benefit of the general community: cl 43, *Crown Lands Regulation 2006*.

Vesting land in councils: Subject to section 35 (which relates to assessment of land under Part 3) the Minister may vest any prescribed land in a council for an estate in fee simple if the Minister is of the opinion that:

(a) the land:

(i) is a public reserve within the meaning of the [Local Government Act 1993](#) or is suitable for use as such a public reserve, or

(ii) is used, or is suitable for use, for any other purpose for which land may be acquired by a council under the [Local Government Act 1993](#), and

(b) it is proper that, having regard to the purpose (if any) for which the land is used, the land should be vested in the council: [s 75(1)]

Land is not to be vested in the council unless the council agrees and the land is wholly within the council's area: s 75 (2). A vesting of land under this section takes effect subject to the reservations and exceptions contained in the notification by which the vesting is effected: s 75(5). It appears that the power to vest land in councils is seldom used.²²

Crown reserves: The Minister may dedicate Crown land for a public purpose: s 80. The Minister may revoke the whole or part of a dedication but either House of Parliament may disallow a proposed revocation: s 84. The Minister may also reserve any Crown land from sale, lease or licence for future public requirements or other public purpose: s 87. The Minister may revoke the whole or part of a reservation (there is no similar provision for disallowance by the Parliament): s 90.

Both dedicated land and reserved land are defined as "reserves" for the purpose of Part 5 of the Act (as is land that was a reserve under Part 3B of the 1913 Act): s 78. Crown Lands Division [notes](#):

Crown reserves are land set aside on behalf of the community for a wide range of public purposes including environmental and heritage protection, recreation and sport, open space, community halls, special events and government services. This results in a diversity of reserve types, ranging from state parks, beaches and national surfing reserves, caravan and camping grounds, cemeteries, racecourses, showgrounds, community halls, sporting fields and parks, walking tracks, canoe and kayak trails, smaller ports and harbours to wharfs.²³

There are almost 35,000 Crown reserves.²⁴

The Minister may establish and name a reserve trust and appoint it as trustee of any one or more specified reserves: s 92(1). The affairs of a reserve trust are to be managed by:

- the Minister;
- if a trust board is appointed – by the trust board;
- if a corporation (including a council) is appointed – by the corporation; or
- if an administrator is appointed – by the administrator: s 92(6).

Around 18,000 of the 35,000 reserves are managed by the Minister (through the Crowns Land Division). Over 7,000 reserves are managed by reserve trusts: over 5,500 of these trusts are managed by local councils; almost 900 trusts are managed by corporations (e.g. Scout Association of Australia) and almost 700 trusts are managed by community trust boards. Over 2,000 other reserves are also managed by local councils; and over 6,000 other reserves for travelling or grazing stock (known as travelling stock reserves) are managed by Local Land Services.

The Minister may cause a draft plan of management to be prepared for a reserve: s 112(1). A reserve trust may with the Minister's consent, and if the Minister so directs shall, prepare a draft plan of management: s 112(2). If a draft plan is prepared, the Minister must provide a copy of it to the reserve trust for consideration (unless it was prepared by the trust); and must place a copy of it on public display. The Minister may then adopt a plan of management: s 114(1). If a plan is adopted, the reserve trust is required to give effect to it: s 114(2). The Minister may alter or cancel the plan: s 115.

Relevant to the management of Crown reserves is the Public Reserves Management Fund Program, which provides funding by way of grants and low interest loans for the development, maintenance and improvement of public reserves.²⁵ It is a competitive funding program. More than \$135 million has been allocated for the program over the last 10 years.

Granting tenures over Crown reserves: The Minister may grant a lease, licence or permit over a Crown reserve but only if of the opinion that the use or occupation of the reserve pursuant to that tenure would be in the public interest and would not be likely to materially harm its use or occupation for the purpose for which the land was dedicated or reserved: s 34AA(2). A reserve trust must not sell, lease or mortgage land, or grant a licence in respect of a reserve unless the Minister has consented: s 102. The requirements of section 34AA (above) also apply to a lease or licence granted by a reserve trust in respect of a reserve (as if a reference to the Minister were a reference to the reserve trust): s 102B.²⁶ The NSW Government has granted 8,000 secondary tenures over Crown reserves and reserve trusts have also granted “thousands” of secondary tenures.²⁷

6. Western Lands Act 1901

This Act provides for the administration and management of Crown land in the Western Division. The eastern boundary of the Division runs from Mungindi on the Queensland border to the Murray River near Balranald.²⁸

Crown land management

Administration: A Western Lands Commissioner is, subject to the direction and control of the Minister, charged with the administration of this Act, and is to exercise and perform the powers, authorities, duties and functions conferred and imposed by the Act: s 4. A Western Lands Advisory Council is to advise the Minister on matters affecting the administration of the Western Division: ss 8B, 8C.

Application of Crown Lands Act 1989: The provisions of the *Crown Lands Act 1989* ("the 1989 Act") listed in Schedule 2 of the Western Lands Act apply to and in respect of land in the Western Division: s 2A. The provisions in Schedule 2 include most of the 1989 Act provisions relating to the sale of land, granting of licences (but not granting of leases), vesting of land in councils, and the dedication and reservation of land. Note, however, that the Minister cannot sell land in the Western Division unless satisfied that the use of the land for the purposes for which the purchaser proposes to purchase it is ecologically sustainable: Sch 2

Leases: The Minister may dispose of Crown land by way of a lease for grazing, agriculture, or agriculture and grazing combined, or mixed farming, or another purpose declared by the Minister to be a permitted purpose: s 28A(1). A lease granted under this section may be (a) a lease in perpetuity; or (b) a lease for a term not exceeding 40 years: s 28A(3).

Each lease must contain: (a) the covenants, reservations and exemptions in Schedule 1 of the Act, or (b) such of those covenants, reservations and exemptions as the Minister considers applicable: s 18. The general lease conditions in Schedule 1 include: paying rent annually in advance; not to obstruct or interfere with any reserves, roads, or tracks, or the use thereof by any person; and reservations in favour of the Crown of all minerals, metals etc. Part 5 of the Act contains various other lease conditions. For example section 18D(1)(d) states that the Commissioner may direct the lessee to prevent the use by stock of any part of the land for such periods as the Commissioner considers necessary; to prevent overstocking the land; and to preserve trees, scrub and vegetative cover on the land.

Part 6 sets out methods for calculating the annual rent payable in respect of rural leases and, separately, for urban leases; the Minister can declare that a lease is a rural or urban lease for the purposes of the Act: s 27D.

Crown Lands Division [notes](#) that the West Region of Crown Lands Division:

...administers over 6,400 Western Lands Leases, including 4,280 for grazing, 444 for agriculture, 1,537 for residence and 157 for businesses. In addition, it oversees more than 1,200 Crown Reserves leases, 300 Crown and Irrigation Area leases, and 800 licences to occupy Crown Land.²⁹

Purchase of leased land: Leases granted for the purposes of residential, business, agriculture, mixed farming, cultivation or similar purposes are eligible to be purchased (i.e. converted into freehold title) but leases held for grazing or pastoral purposes are not eligible: s 28BB. Schedule 4 contains provisions on the purchase of leased land. Most Western Land leases for residential purposes have been converted into freehold (1,700 out of 2,112) but only a small proportion of other leases have been converted (28 out of 522 agriculture/mixed farming/cultivation/horticulture leases; and 20 out of 185 other – commercial/conservation leases).³⁰

7. Proposed reforms

In 2012, the NSW Government set up an inter-agency Steering Committee independently chaired by Michael Carapiet to review the management of Crown lands. It was described as “the first comprehensive review in 25 years”.³¹ The 2013 [report](#) by the Steering Committee made wide-ranging recommendations for reform including:

- devolving Crown land of local interest to local councils
- developing new consolidated legislation
- revising the framework for managing Crown reserves
- allowing conversion of Western Lands grazing leases to freehold
- reviewing all Travelling Stock Routes
- reviewing land valuation and making rent rebates more transparent
- transforming Crown Lands Division into a Public Trading Enterprise

The report noted that some of the reforms would need to be implemented with legislation while others could be implemented through policy.³²

In March 2014, the NSW Government published its [response](#), which supported (in principle or fully) all but one of the recommendations; the one not supported was to remove the Act’s provisions in respect of dedication of Crown land, leaving only the reservation provisions.³³ At the same time, the Government released a [Crown Lands Legislation White Paper](#).³⁴ The consultation period on the paper closed on 20 June 2014 and over 600 submissions were made. The Government has said that new legislation will not be introduced until after the 2015 State election.³⁵

Devolving local land to local councils: The 2013 review report recommended that the Government devolve land of local interest to local councils.³⁶ As part of this, it recommended that the Government conduct a strategic assessment to determine which Crown land is required for core service delivery or has state or regional values; and that a pilot program be conducted to test and refine state and local land criteria and to develop an implementation plan for the transfer of local land. The Government supported these recommendations in principle and stated that consultation with local government stakeholders would be required in the first instance.³⁷

The report noted that councils already managed a significant proportion of Crown reserves; and it outlined several potential benefits of a local land approach, including “the capacity for councils to manage adjoining local land and community land as one entity”; “the flexibility to consider options for alternative use or disposal of local land, and reinvestment as part of council’s broader asset management portfolio”; and “increased flexibility to develop commercial opportunities and increase revenue from local land”.

The report stated that it was “not known whether all councils would be able to take advantage of this proposal”. It explained:

Councils’ views are likely to depend on their current financial position. It could be difficult for councils with a weak financial position or high infrastructure backlog, or with sparsely populated areas with low land prices and sluggish markets. The model for transfer needs to ensure that it minimises the extent to which existing inequalities, either regional or council-specific, constrain engagement with the proposal.

Crown land management

This approach is not without its challenges to both councils and communities. It is for this reason that the transfer or divestment process should aim to provide maximum benefit to both the State and local governments. It should ensure that both levels of government are best placed to make accurate and informed decisions.³⁸

The report also identified as a potential issue for taxpayers the possibility that councils could realise a significant windfall gain through the disposal of land that had been gifted to them. The report noted that it may be wrong to assume that any gains by councils are at the expense of the taxpayer but that this issue could be addressed by a caveat giving the NSW Government a share of any 'windfall gain'. The report also stated that the public's interest in local land would be protected by provisions in local government legislation which require public consultations on all proposals to convert community land to operational land; and by local zoning provisions.

The report observed that the pilot program would need to consider how the identification of local land and its potential transfer to local government would interact with native title and Aboriginal land rights.

Consolidated legislation and reforms to Crown reserves and Western land leases: The white paper proposes developing one new piece of consolidated legislation to replace the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989*, the *Western Lands Act 1901* and various other Acts (e.g. *Commons Management Act 1989*).³⁹

Another legislative proposal in the white paper is to create improved management arrangements for Crown reserves.⁴⁰ Part of this involves allowing councils to manage Crown reserves under local government legislation (which currently applies to management of "community land"). In addition, it is proposed to remove reserve trusts from the legislation, and have all reserves administered by Crown reserve managers (a two-tier structure instead of a three-tier structure). It was noted:

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.⁴¹

In relation to Crown reserves, it is also proposed to change the approval and reporting requirements. The Minister will be given flexibility to determine the extent of control to be exercised over the work of a Crown reserve manager. 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.

The white paper also proposes measures to provide greater flexibility for Western Lands leases.⁴² This includes allowing lessees of Western Lands grazing leases that have current cultivation consents to apply for conversion to freehold title. Lessees will be required to show that their proposed land use will be ecologically sustainable. Another measure in relation to Western Lands leases in rural areas is to permit certain additional activities to occur without the need for approval: e.g. farm tourism using existing farm buildings and infrastructure.

The white paper outlines several “other streamlining measures” in relation to the legislation, one of which is to abolish the requirement for a land assessment before Crown land can be sold, leased, dedicated or reserved.⁴³ The white paper noted that “parcel by parcel assessment is time consuming, inefficient, and not aligned to broader planning processes”. It stated that “a more strategic approach would see Crown land assessed as part of local plans under the new planning framework”.

Travelling stock routes: The 2013 review report noted that Travelling Stock Routes (TSRs) were once used to move livestock from farms to markets or railheads; and it observed that most are no longer being used for their original purpose.⁴⁴ They are used for recreation, other social uses, access and heritage. The report recommended that Local Land Services work with the relevant stakeholders to develop assessment criteria to review all Travelling Stock Routes and determine their future ownership and management. The Government response stated that “work will commence in 2014 on a pilot program with Local Land Services”; and that “community consultation will occur through the pilot process”.⁴⁵

Land valuation and rent rebates: The 2013 review report recommended benchmarking the return on Crown land assets against their “opportunity cost”.⁴⁶ The measure of opportunity cost would be the hypothetical fee simple value based on surrounding land use and zoning. The report stated:

Being able to measure opportunity cost would allow the NSW Government and the community to assess any financial trade-offs associated with existing use, and to consider whether and when to change use or realise value. Reporting on opportunity cost would also give the community confidence that the Crown estate’s management is optimised, so this should be a priority for Crown Lands Division.⁴⁷

The report also recommended being more transparent about the rebates provided to community-based organisations which use Crown land. It recommended expressing the shortfall between an organisation’s ability to pay and the market rent as a community service obligation payment; and it recommended reporting on the level of contribution made by the NSW Government for the use of Crown land for community purposes.

Business model: The 2013 report recommended establishing Crown Lands Division as a Public Trading Enterprise (PTE) through a staged transformation process.⁴⁸ The report noted that “the PTE model has a number of advantages, particularly in relation to providing autonomy and flexibility for management, the potential for improved commercial activity, and greater transparency and accountability of performance”. There were, however, “some potential challenges to the implementation of the PTE model, and...there could be significant implementation costs”.

8. Conclusion

The management of Crown land has a long and complex history, as does the relevant legislation. The latest reform proposals are substantial and will involve both policy and legislative action. A large number of stakeholders have made submissions on the proposals and it will be interesting to see the outcome of the consultation process. The Government is planning to publish a submissions report, likely in November or early December.⁴⁹

Crown land management

- 1 A Stoner, [Crown land reforms to slash red tape and preserve community assets](#), *Media Release*, 28 March 2014
- 2 M Foley, [Crown lands off the table until 2015](#), *The Land*, 29 August 2014
- 3 Indigenous land claims can be made under the *Native Title Act 1993* (Cth) or under the *Aboriginal Land Rights Act 1983* (NSW). For an earlier paper providing an overview of Indigenous land claims: See T Drabsch, [Indigenous Australians and Land in New South Wales](#), NSW Parliamentary Research Service, Briefing Paper 9/2004, July 2004
- 4 Legislative Council General Purpose Standing Committee No. 5, Management of public land in New South Wales, Report 36, May 2013, p7-10
- 5 M Carapiet, [Crown Lands Management Review](#), NSW Trade and Investment, 2014, p1
- 6 NSW Trade and Investment – Crown Lands Division, [Roads](#), [online]
- 7 M Carapiet, note 5, p2 and p54-55
- 8 This section is based on P Butt, *Land Law*, Sixth edition, Lawbook Co, 2010, Ch23, p917ff. For a more detailed history, see A Lang, *Crown Land in New South Wales*, Butterworths, 1973, Ch1
- 9 I Causley, [NSW Parliamentary Debates \(LA\)](#), 15 November 1988, p3311
- 10 G West, [NSW Parliamentary Debates \(LA\)](#), 25 May 2005, p16117
- 11 J Aquilina, [NSW Parliamentary Debates \(LA\)](#), 4 June 2002, p2481. A statutory [review](#) of the *Western Lands Act* in 2008 led to further amendments, which were enacted in the *Western Lands Amendment Act 2008*.
- 12 NSW Trade and Investment, [Crown Lands Legislation White Paper](#), February 2014, p9
- 13 NSW Trade and Investment, note 12, p9
- 14 [Crown Lands Amendment \(Public Ownership of Beaches and Coastal Lands\) Bill 2014](#)
- 15 NSW Trade and Investment – Crown Lands Division, [Leases](#), [online]
- 16 NSW Government, [Submission to Inquiry into Management of public land in New South Wales](#), August 2012, p63
- 17 NSW Trade and Investment – Crown Lands Division, [Licences](#), [online]
- 18 NSW Government, note 16, p63
- 19 NSW Trade and Investment – Crown Lands Division, [Enclosure permits](#), [online]
- 20 NSW Government, note 16, p63
- 21 NSW Trade and Investment, [Minimum Rent, Water Access Only and CPI Value](#), [online]
- 22 M Carapiet, note 5, p8
- 23 NSW Trade and Investment – Crown Lands Division, [Crown Reserves](#), [online]
- 24 M Carapiet, note 5, p5-6
- 25 NSW Trade and Investment - Crown Lands Division, [Funding](#), [online]. The funding program was set up under the *Public Reserves Management Fund Act 1987* (NSW)
- 26 Section 34AA was inserted in 2013 in response to a court decision: *Crown Lands Amendment (Multiple Land Use) Act 2013*. The Act also retrospectively validated existing interests granted over Crown reserves, so long as they were not causing, or likely to cause, material harm to the primary purpose of the reserve.
- 27 A Stoner, [NSW Parliamentary Debates \(LA\)](#), 12 September 2013, p23447
- 28 NSW Trade and Investment – Crown Lands Division, [Western Division](#), [online]
- 29 NSW Trade and Investment – Crown Lands Division, [Western Division](#), [online]
- 30 M Carapiet, note 5, p21
- 31 M Carapiet, note 5, p1
- 32 M Carapiet, note 5, pxi
- 33 NSW Trade and Investment, [Crown Lands for the Future: Crown Lands Management Review Summary and Government Response](#), 2014
- 34 NSW Trade and Investment, [Crown Lands Legislation White Paper](#), February 2014
- 35 M Foley, [Crown lands off the table until 2015](#), *The Land*, 29 August 2014
- 36 M Carapiet, note 5, Ch2
- 37 NSW Trade and Investment, note 33, p12
- 38 M Carapiet, note 5, p9
- 39 NSW Trade and Investment, note 34, p4 and Ch3; see also M Carapiet, note 5, Ch7
- 40 NSW Trade and Investment, note 34, Ch4; see also M Carapiet, note 5, Ch3
- 41 NSW Trade and Investment, note 34, p14
- 42 NSW Trade and Investment, note 34, Ch7; see also M Carapiet, note 5, Ch5
- 43 NSW Trade and Investment, note 34, Ch5; see also M Carapiet, note 5, Ch7
- 44 M Carapiet, note 5, Ch4

⁴⁵ NSW Trade and Investment, note 33, p12

⁴⁶ M Carapiet, note 5, Ch8; see also NSW Trade and Investment, note 33, p12

⁴⁷ M Carapiet, note 5, p38; see also NSW Trade and Investment, note 33, p12

⁴⁸ M Carapiet, note 5, Ch10; see also NSW Trade and Investment, note 33, p12

⁴⁹ Personal communication with NSW Trade and Investment – Crown Lands Division on 22 October 2014

Information about Research Publications can be found on the Internet at the:
[NSW Parliament's Website](#)

Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion.

© 2014

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this document may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior consent from the Manager, NSW Parliamentary Research Service, other than by Members of the New South Wales Parliament in the course of their official duties.

ISSN 1838-0204