

c2016-108B  
OPP--OPPOSITION

## LEGISLATIVE COUNCIL

### Crown Land Management Bill 2016

#### First print

#### Proposed amendments

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- No. 1      **Ecologically sustainable development**  
Page 2, clause 1.3 (c), line 22. Insert "in accordance with the principles of ecologically sustainable development" after "Crown land".
- No. 2      **Retention of commons**  
Page 3, clause 1.4 (1), line 29. Omit all words on that line.
- No. 3      **Crown land can be referred to as State land**  
Page 9, Division 1.3. Insert after line 4:  
**1.10    Crown land may be referred to as State land**  
(1)    Crown land may be referred to as State land.  
(2)    Accordingly, any reference in this Act (or another Act or any statutory instrument or document) to Crown land as defined in this Act is taken to include a reference to State land.
- No. 4      **Land claims made before Goomallee case**  
Page 15, clause 2.19. Insert after line 27:  
(7)    This section does not affect any land claim (within the meaning of the *Aboriginal Land Rights Act 1983*) made before 9 November 2012 (the date of the decision in *Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (Goomallee Claim)* [2012] NSWCA 358).
- No. 5      **Principles of Crown land management**  
Page 20, Division 3.1. Insert after line 48:  
**3.2    Principles of Crown land management**  
(1)    Subject to any other requirements of this Act, Crown land is to be managed in accordance with the principles of Crown land management.  
(2)    The *principles of Crown land management* are:  
(a)    that the use of Crown land and its natural resources be managed in an environmentally sustainable manner for the benefit of the public, and

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- (b) that public use, enjoyment and amenity of appropriate Crown land is facilitated and its multiple use encouraged where possible, and
  - (c) that the use of Crown land by the Aboriginal people of New South Wales be encouraged where appropriate, and
  - (d) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in any other way in the best interests of the State consistent with the above principles.

No. 6      **Application of GIPA to Crown land managers**

Page 21, clause 3.3. Insert after line 36:

- (7) A Crown land manager is taken to be an agency for the purposes of the *Government Information (Public Access) Act 2009*, but only in relation to information in records it holds in its capacity as a Crown land manager.

No. 7      **Local councils subject to community engagement strategies**

Page 24, clause 3.13 (2) (e), line 20. Omit “for managers except local councils—”.

No. 8      **Functions of local councils managing dedicated or reserved Crown land**

Pages 27–30, Division 3.4, line 8 on page 27 to line 14 on page 30. Omit all words on those lines. Insert instead:

**Division 3.4      Crown land managed by councils**

**Note.** Part 8 includes provisions that are applicable to council managers concerning the management of land over which there may be native title rights and interests.

**3.20      Application of Division**

- (1) This Division applies in relation to any local council that is a Crown land manager of dedicated or reserved Crown land (a *council manager*).  
**Note.** See Division 4.2 in relation to the powers and other functions of councils in which Crown land is vested under that Division.
- (2) This Division applies despite anything in the *Local Government Act 1993*.
- (3) A council manager of dedicated or reserved Crown land has the authority to exercise functions of the Minister in relation to the land only in the way permitted by this Division for the category of manager to which the council manager has been assigned.
- (4) Any authority to exercise a function of the Minister in relation to dedicated or reserved Crown land conferred on its council manager by this Division does not authorise the manager:
  - (a) to purchase or take a lease of, or acquire the benefit of an easement in respect of, any land (whether or not adjoining the dedicated or reserved Crown land) unless it is required by the manager for use in connection with the dedicated or reserved Crown land, or
  - (b) to do anything that contravenes:
    - (i) any limitations or other restrictions specified by the provisions of the manager’s appointment instrument, or
    - (ii) the regulations, or
    - (iii) any applicable Crown land management rules, or
    - (iv) any applicable plan of management under Division 3.6.
- (5) The exercise of a function of the Minister in relation to dedicated or reserved Crown land by its council manager authorised by this Division has the same effect as if it had been duly done by the Minister under this Act.



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### 3.21 Categories of council managers

- (1) The authority of a council manager to exercise functions of the Minister in connection with dedicated or reserved Crown land depends on whether the manager has been assigned as a category 1 or category 2 manager.
- (2) A council manager may be assigned (or reassigned) to a particular category of manager by:
  - (a) the manager's appointment instrument, or
  - (b) a notice published in the Gazette, or
  - (c) the regulations.
- (3) Any notice or regulation for the purposes of subsection (2) may assign a council manager specifically or by class.
- (4) If a council manager's appointment instrument and the regulations (or a notice published in the Gazette) assign the manager to different categories, the assignment made by the appointment instrument is to prevail unless the regulations (or notice) exclude the operation of this subsection.
- (5) A council manager is taken to be assigned as a category 2 manager if the manager has not been assigned to a particular category of manager under subsection (2).

### 3.22 Exercise of functions by category 1 council managers

- (1) A council manager of dedicated or reserved Crown land assigned to category 1 may, with the written consent of the Minister, exercise any of the functions of the Minister over the land.
- (2) Despite subsection (1), the council manager is not required to obtain the Minister's consent for the exercise of any of the following functions of the Minister:
  - (a) granting a lease or licence or an easement in connection with any such lease or licence (a *related easement*) if:
    - (i) the manager has been authorised by the Minister, by written notice, to grant the lease, licence or related easement without the Minister's consent, and
    - (ii) the lease, licence or related easement is granted in accordance with the Minister's authorisation, and
    - (iii) the manager complies with the requirements of the Minister's authorisation and the provisions of this section,
  - (b) making minor changes to leases or licences under section 3.24,
  - (c) any other kind of functions authorised by the manager's appointment instrument, the regulations or an applicable plan of management under Division 3.6.
- (3) The Minister's authorisation:
  - (a) may relate to any specified dedicated or reserved Crown land (or class of dedicated or reserved Crown land) for which the council manager is the manager or generally to all dedicated or reserved Crown land for which it has been appointed as the Crown land manager, and
  - (b) may specify the circumstances in which a lease, licence or related easement may be granted by the council manager without the Minister's consent, and
  - (c) may apply generally in relation to the council manager or may be limited in its application by reference to specified exceptions or factors, and
  - (d) is subject to any terms and conditions that the Minister considers appropriate.

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- (4) Without limiting subsection (3), the Minister may, in authorising a council manager to grant leases, licences or related easements without the Minister's consent:
- (a) specify the purposes, and the terms and conditions, of any such lease, licence or easement, and
  - (b) limit the term of any such lease, licence or easement, and
  - (c) require the manager to follow certain procedures in relation to the granting of any such lease, licence or easement, including procedures for public notice and consultation, procedures for tendering and procedures for dealing with objections to the proposed lease, licence or easement, and
  - (d) require the manager to provide the Minister with such information as may be required by the Minister before or after any such lease, licence or easement is granted, and
  - (e) require the manager to submit any proposal for such a lease, licence or easement to the Minister before it is granted, and
  - (f) require the reserve trust to indemnify the Crown against any liability or claim for compensation that may arise as a result of the granting of any such lease, licence or easement.
- (5) A council manager must, within 14 days of granting a lease, licence or related easement in accordance with the Minister's authorisation under this section, notify the Minister of the grant and the terms of the lease, licence or easement.
- (6) The Minister may, in making any decision in relation to an authorisation under this section, take into account such matters as the Minister thinks appropriate, including the performance of the local council concerned in managing:
- (a) the affairs of the council or any other Crown land that the council is managing or has previously managed, or
  - (b) any public land within the meaning of the *Local Government Act 1993*.
- (7) The Minister may, for the purposes of this section, request any information about a council, including information about a council's performance, from the Minister administering the *Local Government Act 1993* and that Minister is authorised to provide any such information.
- (8) Nothing in this section authorises a council manager to sell or mortgage land, or to grant a lease, licence or related easement for a term exceeding 21 years, without the consent of the Minister.
- (9) An authorisation by the Minister under this section may be varied or revoked by the Minister at any time by written notice given to the local council concerned.
- (10) Any lease, licence or easement granted by a council:
- (a) without the Minister's consent, or
  - (b) otherwise than in accordance with the Minister's authorisation or this section,
- has no effect except in such cases as the Minister may determine.
- (11) For the purposes of the *Residential (Land Lease) Communities Act 2013*, a lease or licence granted by a council manager as provided by this section is taken to be a lease or licence to which the Minister has given consent.

### **3.23 Exercise of functions by category 2 council managers**

- (1) A council manager of dedicated or reserved Crown land assigned to category 2 may, with the written consent of the Minister, exercise any of the functions of the Minister over the land.



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- (2) Despite subsection (1), the council manager is not required to obtain the Minister's consent for the exercise of any of the following functions of the Minister:
    - (a) granting leases or licences for a term of 10 years or less (including any option for the grant of a further term),
    - (b) granting easements in connection with these leases or licences,
    - (c) making minor changes to leases or licences under section 3.24,
    - (d) any other kind of functions authorised by the manager's appointment instrument, the regulations or an applicable plan of management under Division 3.6.
  - (3) A council manager that grants a lease or licence for a term of more than one year without the Minister's written consent must give the Minister written notice of the grant of the lease or licence within 14 days after it is granted. A failure to comply with this subsection does not, however, affect the validity of the lease or licence.
  - (4) A council manager must indemnify the State against any liability that the manager may incur as a result of the manager granting a lease or licence (including any easements granted in connection with them) unless the manager sought and obtained the written consent of the Minister before granting it.

#### **3.24 Minor changes to leases or licences do not require Ministerial consent**

- (1) A council manager may make minor changes to leases or licences that the manager (or a previous manager) has granted over dedicated or reserved Crown land under the manager's management.
- (2) A *minor change* to a lease or licence over dedicated or reserved Crown land is a change that does not result in a change to any of the following:
  - (a) the rent payable for the lease or licence,
  - (b) the term for which the lease or licence will be in force (including any option to renew),
  - (c) provisions relating to insurance,
  - (d) provisions relating to native title rights and interests or claims under the *Aboriginal Land Rights Act 1983*,
  - (e) provisions relating to the holder making good any damage to the land or structures on it,
  - (f) provisions relating to works undertaken by the holder for which consent is required,
  - (g) provisions relating to the termination or revocation of the lease or licence.

#### **3.25 Community advisory groups**

- (1) The Minister may direct some or all council managers to establish community advisory groups for dedicated or reserved Crown land under their management.
- (2) The regulations may make provision for or with respect to the following:
  - (a) the giving of directions to establish community advisory groups,
  - (b) the membership, procedures and functions of community advisory groups.

#### **3.26 Annual reports**

- (1) As soon as practicable after 30 June (but on or before 31 October) of each year, a council manager must provide the Minister with a report (an *annual report*)

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on the manager's management operations for the period ending on 30 June in that year.

- (2) The annual report must contain the information and other matters that may be prescribed by the regulations.
- (3) Without limiting subsection (2), the regulations may make provision for or with respect to the following:
  - (a) the form of annual reports,
  - (b) reviews to be conducted for inclusion in annual reports (including, for example, reviews of governance and financial management),
  - (c) financial auditing requirements,
  - (d) information for inclusion in annual reports about the financial position of council managers and their exercise of functions (for example, dealings with land under the management of council managers),
  - (e) the publication of annual reports to enable public access,
  - (f) directions by the Minister concerning any of these matters.
- (4) Without limiting section 42 of the *Interpretation Act 1987*, the regulations may impose different reporting obligations on council managers by reference to the category of council manager to which they are assigned under section 3.21.
- (5) The *Annual Reports (Departments) Act 1985* and *Annual Reports (Statutory Bodies) Act 1984* do not apply to annual reports by council managers concerning the exercise of their functions as Crown land managers.

### **3.27 Record keeping**

- (1) A council manager must:
  - (a) keep any records (including accounting records) in accordance with the regulations, and
  - (b) provide the Minister or an authorised officer with these records (or copies of or extracts from these records) for inspection and copying if directed to do so or as required by the regulations.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) the form in which records are to be kept,
  - (b) the inspection of records (including by members of the public),
  - (c) the retention of records by persons who have ceased to be council managers,
  - (d) exemptions from the requirement to keep records.

No. 9

### **Community engagement for plans of management**

Page 34, clause 3.35, lines 24 and 25. Omit all words on those lines. Insert instead:

A draft plan of management cannot be adopted under this Division unless:

- (a) a community engagement strategy has been approved by the Minister that applies to the plan, and
- (b) the strategy includes provisions of the kind referred to in section 5.6 (1) (d), and
- (c) the applicable Crown land manager has undertaken the community engagement required by the strategy.

**Note.** Section 5.6 (1) (d) requires a community engagement strategy for draft plans of management to include provisions for a minimum period of 28 days for public exhibition of draft plans and a minimum period of 42 days for submissions to be made after that exhibition.



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- No. 10      **Community engagement for plans of management**  
Page 34, clause 3.36 (2), lines 29 and 30. Omit “If community engagement was required to be undertaken on the draft plan of management, the”. Insert instead “The”.
- No. 11      **Vesting of Crown land in other government agencies (Alternative A)**  
Page 38, Part 4, line 5. Omit “and certain other government agencies”.
- No. 12      **Vesting of Crown land only after assessment of certain values undertaken**  
Page 40, clause 4.6. Insert after line 18:  
  - (3) A council vesting notice cannot be published unless:
    - (a) the Minister has caused an assessment of the environmental, social and cultural values of the transferable Crown land concerned to be undertaken, and
    - (b) a report of the results of that assessment is published in the Gazette at least 14 days before the council vesting notice is published.
- No. 13      **Vesting of Crown land in local councils must be as community land**  
Page 40, clause 4.8, lines 29–40. Omit all words on those lines. Insert instead:  
Transferable Crown land vested in a local council under this Division is taken to have been acquired by the council as community land under the *Local Government Act 1993* on its vesting.
- No. 14      **Re-vesting of former Crown land if local council seeks to reclassify land as operational land**  
Page 42, Division 4.2. Insert after line 9:  
**4.10 Land vested under this Division to be re-vested in the Crown in certain circumstances**  
  - (1) The Minister must, by notice published in the Gazette, declare that any land previously vested in a local council under this Division ceases to be vested in the council if the Minister considers that:
    - (a) the local council has classified, or has commenced to take the steps required under the *Local Government Act 1993* to classify, the land as operational land, or
    - (b) the land is of State significance.
  - (2) Land that is declared under this section to cease to be vested in a local council becomes Crown land.  
**Note.** See section 1.9 (When land becomes Crown land because of this Act).
  - (3) Without limiting section 1.9 (10), no compensation is payable to the local council for any direct or indirect loss or damage to it resulting from a declaration under this section.
- No. 15      **Vesting of Crown land in other government agencies (Alternative A)**  
Pages 42 and 43, Division 4.3, line 17 on page 42 to line 43 on page 43. Omit all words on those lines.
- No. 16      **Vesting of Crown land in other government agencies (Alternative B)**  
Page 42, clause 4.12 (a) (i), line 35. Omit “or”. Insert instead “and”.
- No. 17      **Vesting of Crown land in other government agencies (Alternative B)**  
Page 42, clause 4.12. Insert after line 44:  
  - (2) A government agency vesting notice cannot be published unless:
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- (a) a community engagement strategy has been approved by the Minister that applies to the plan, and
  - (b) the strategy includes provisions of the kind referred to in section 5.6 (1) (d), and
  - (c) the Minister has undertaken the community engagement required by the strategy.

**Note.** Section 5.6 (1) (d) requires a community engagement strategy for vesting transferable Crown land under this Division to include provisions for a minimum period of 28 days for public exhibition of draft plans and a minimum period of 42 days for submissions to be made after that exhibition.

No. 18      **Vesting of Crown land only after assessment of certain values undertaken**

Page 42, clause 4.12. Insert after line 44:

- (2) A government agency vesting notice cannot be published unless:
  - (a) the Minister has caused an assessment of the environmental, social and cultural values of the transferable Crown land concerned to be undertaken, and
  - (b) a report of the results of that assessment is published in the Gazette at least 14 days before the government agency vesting notice is published.

No. 19      **Sale or lease of Crown land requires community engagement**

Page 45, clause 5.3. Insert after line 33:

- (4) However, the Minister cannot sell Crown land or lease it for a term of more than 5 years unless:
  - (a) a community engagement strategy has been approved by the Minister that applies to the sale or lease, and
  - (b) the strategy includes provisions of the kind referred to in section 5.6 (1) (d), and
  - (c) the Minister has undertaken the community engagement required by the strategy.

**Note.** Section 5.6 (1) (d) requires a community engagement strategy for selling or leasing Crown land to include provisions for a minimum period of 28 days for the public exhibition of a notice of the proposed sale or lease and a minimum period of 42 days for submissions to be made after that exhibition.

No. 20      **Local councils subject to community engagement strategies**

Page 46, clause 5.4, line 10. Omit "non-council manager". Insert instead "Crown land manager".

No. 21      **Public consultation for community engagement strategies**

Page 46, clause 5.5. Insert after line 21:

- (4) Before approving or amending a community engagement strategy, the Minister must:
  - (a) publicly exhibit a copy of the proposed strategy or amendment for a period of at least 28 days, and
  - (b) allow submissions to be made about the proposed strategy or amendment for a period of at least 42 days after the exhibition, and
  - (c) take into account any submissions that are duly made.

No. 22      **Sale or lease of Crown land requires community engagement**

Page 46, clause 5.6 (1). Insert after line 32:

- (d) for the sale of Crown land or its lease for a term of more than 5 years:
  - (i) a minimum period of 28 days for the public exhibition of a notice of the proposed sale or lease, and



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- (ii) a minimum period of 42 days for submissions to be made after that exhibition, and
    - (iii) a requirement that any submissions that were duly made during the submission period be taken into account before the sale or lease,
- No. 23      **Vesting of Crown land in other government agencies (Alternative B)**  
Page 46, clause 5.6 (1). Insert after line 32:
- (d) for vesting transferable Crown land under Division 4.3:
    - (i) a minimum period of 28 days for the public exhibition of a proposed government agency vesting notice, and
    - (ii) a minimum period of 42 days for submissions to be made after that exhibition, and
    - (iii) a requirement that any submissions that were duly made during the submission period be taken into account before the notice is published,
- No. 24      **Community engagement for plans of management**  
Page 46, clause 5.6 (1). Insert after line 32:
- (d) for draft plans of management for Crown land under Division 3.6:
    - (i) a minimum period of 28 days for the public exhibition of a draft plan, and
    - (ii) a minimum period of 42 days for submissions to be made after that exhibition, and
    - (iii) a requirement that any submissions that were duly made during the submission period be taken into account before the plan is adopted,
- No. 25      **Compliance with community engagement strategy mandatory**  
Page 46, clause 5.6 (1) (d), lines 33 and 34. Omit all words on those lines.
- No. 26      **Compliance with community engagement strategy mandatory**  
Page 47, clause 5.8 (2), lines 10–13. Omit all words on those lines.
- No. 27      **Compliance with community engagement strategy mandatory**  
Page 47, clause 5.8 (3), line 14. Omit “Despite subsection (2), non-compliance”. Insert instead “Non-compliance”.
- No. 28      **Sale or disposal of Crown land in Western Division**  
Page 47, clause 5.9 (1) (d), line 40. Omit “purposes, or”. Insert instead ”purposes.”.
- No. 29      **Sale or disposal of Crown land in Western Division**  
Pages 47 and 48, clause 5.9 (1) (e) and (f), line 41 on page 47 to line 5 on page 48. Omit all words on those lines.
- No. 30      **Sale or disposal of Crown land in Western Division**  
Page 48, clause 5.9 (2), lines 8–13. Omit all words on those lines. Insert instead:
- (2) The regulations may make provision for or with respect to the classification or identification of land for the purposes of subsection (1) (a), (b), (c) or (d).
- No. 31      **Sale or disposal of Crown land in Western Division**  
Page 48, clause 5.9 (3), lines 14–20. Omit all words on those lines.
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- No. 32      **Notification of Registrar-General concerning changes to Crown land**  
Page 113, clause 12.1. Insert after line 15:
- (3) The Minister must notify the Registrar-General of any changes of which the Minister becomes aware concerning interests, conditions, covenants or other restrictions affecting Crown land and, if appropriate, request that the Register be altered accordingly.
- No. 33      **Crown land commissioner**  
Page 113, clause 12.2, lines 17–20. Omit all words on those lines. Insert instead:
- (1) There is to be at least one Crown land commissioner.
  - (2) The Governor may, on the recommendation of the Minister, appoint an individual to be a Crown land commissioner on the terms and conditions that may be specified in the instrument of appointment.
  - (3) A Crown land commissioner:
    - (a) holds office for the period (not exceeding 5 years) specified in the person's instrument of appointment unless the office is vacated sooner, and
    - (b) is eligible for re-appointment.
- No. 34      **Crown land commissioner**  
Page 113, clause 12.2 (3) (b), line 25. Omit "Minister". Insert instead "Governor".
- No. 35      **Crown land commissioner**  
Page 113, clause 12.2 (3) (d), line 27. Omit "Minister". Insert instead "Governor".
- No. 36      **Crown land commissioner**  
Page 113, clause 12.2 (4), lines 28 and 29. Omit all words on those lines. Insert instead:
- (4) The Governor may remove a Crown land commissioner from office at any time for incapacity, incompetence or misbehaviour.
- No. 37      **Crown land commissioner**  
Page 113, clause 12.2 (6), lines 36–39. Omit all words on those lines. Insert instead:
- (6) A Crown land commissioner is entitled to be paid:
    - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
    - (b) any travelling and subsistence allowances as the Minister may from time to time determine in respect of the commissioner.
- No. 38      **State land board**  
Page 113, Division 12.1. Insert after line 39:
- 12.3 State land board**
- (1) A corporation with the corporate name of the State land board is constituted by this Act.
  - (2) There State land board is to be constituted by 3 (but no more than 7) members.
  - (3) The Minister is to appoint the members of the State land board from persons who have nominated to be appointed as members.
  - (4) The functions of the State land board are:
    - (a) to assist Crown land commissioners in the exercise of their functions, and
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- (b) to exercise any other functions that are conferred or imposed on it by or under this Act or another Act.
  - (5) Subject to this section, the regulations may make provision for or with respect to the following:
    - (a) the nomination of persons for appointment as members of the State land board (including qualifications for appointment),
    - (b) the constitution and procedure of the State land board, including:
      - (i) chairpersons, deputy chairpersons and alternates, and
      - (ii) terms and vacation of office of members, and
      - (iii) the remuneration and other entitlements of members, and
      - (iv) the disclosure and participation of members who have interests (whether pecuniary or otherwise) that could conflict with the proper performance of the functions of a member,
    - (c) the functions of the State land board.

No. 39      **Annual report on strategic plan for Crown land**

Page 119, Division 12.4. Insert after line 21:

**12.26      Annual report on implementation of State strategic plan for Crown land**

- (1) The Minister must, as soon as practicable after 30 June in each year, prepare a report (an *annual report*) on the implementation of a State strategic plan for Crown land for the 12 months before that date.
- (2) The Minister is to cause the annual report to be tabled in each House of Parliament as soon as practicable after it is prepared.
- (3) If a House of Parliament is not sitting when the Minister seeks to table an annual report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
- (4) An annual report presented under subsection (3):
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the copy of the report by the Clerk.

No. 40      **Retention of commons**

Page 190, Schedule 7, lines 34–36. Omit all words on those lines.

No. 41      **Retention of commons**

Page 192, Schedule 7, line 43. Omit all words on that line.

No. 42      **Retention of commons**

Pages 198 and 199, Schedule 7, line 5 on page 198 to line 2 on page 199. Omit all words on those lines.

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No. 43      **Retention of commons**

Page 200, Schedule 7, lines 1–36. Omit all words on those lines.

No. 44      **Retention of commons**

Page 205, Schedule 7, line 25. Omit “Council, and”. Insert instead “Council.”

No. 45      **Retention of commons**

Page 205, Schedule 7, lines 26 and 27. Omit all words on those lines.

No. 46      **Retention of commons**

Page 208, Schedule 8, line 3. Omit all words on that line.