

Parliamentary Inquiry into Crown Land

New Crown Land Legislation - Overview

1. Brief History

- 1989 – Crown Lands Act 1989
- 2012 – Crown Land Management Review commenced.
- 2013 – Recommendations considered and accepted by Government
- 2014 – Release of Crown Land Management Review and Crown Land Legislation White Paper
- 2015 – Release of Government Response to Crown Land Legislation White Paper
- 2016 – drafting of new Bill commences by Parliamentary Counsel Office (PCO)
- 2016 – Parliamentary Inquiry into Crown Land commences

2. The Crown Land Management Review Process

- The Crown Land Management Review recommended:
 - Develop new, consolidated new Crown legislation to replace the eight existing Acts governing Crown land and to update the management of Crown land to ensure that the legislation is fit for purpose
- The Crown Land Legislation White Paper (2014) set out the proposal for new legislation
 - More than 600 submissions were received and considered
- The Government Response (2015) outlined the approach to ensure that the use and management of Crown land continues to meet community expectations across NSW, including the development of new legislation

3. The Current Acts

- Crown land is currently managed under eight Acts:
 - *Crown Lands Act 1989*
 - *Crown Lands (Continued Tenures) Act 1989*
 - *Western Lands Act 1901*
 - *Commons Management Act 1989*
 - *Trustees of Schools of Arts Enabling Act 1902,*
 - *Public Reserves Management Fund Act 1987,*
 - *Wentworth Irrigation Act 1890*
 - *Hay Irrigation Act 1902)*

4. Why a new Crown Land Bill

- The existing legislative framework which underpins Crown land management:
 - is unnecessary complex as requirements are duplicated in more than one Act
 - contains some Acts which date back to the late 19th century
 - does not reflect contemporary approaches to land administration
- There is substantial duplication of legislation, overlapping administrative responsibilities and inconsistencies in management.
- This results in:
 - delays and backlogs due to multiple layers of decision-making and consent requirements which do not add value

- lack of clarity for the community about which agency controls particular land
- confusion in the community about inconsistent provisions in different legislation for similar land and activities

5. A New Crown Land Management Bill:

- Will:
 - provide a single, modern legislative framework
 - consolidate and replace the eight existing Acts
 - reduce complexity and remove duplication
 - reflect contemporary approaches to land administration
 - retain protections not provided for in other legislation or through other processes
 - include provisions in relation to objects, powers, land ownership, tenures, sale and disposal of land, Crown reserves, compliance and enforcement, administrative and miscellaneous measures.
- Will not:
 - change the *Aboriginal Land Rights Act 1983*
 - change the *Native Title Act 1993 (Cwlth)*
 - change existing Crown reserves
 - change existing reserve purposes
 - change existing reserve managers
 - provide for a Public Trading Enterprise (PTE)
 - automatically transfer any Crown land to Councils
 - automatically transfer any Crown land to Government agencies

6. Summary Table

A summary table is attached outlining key features of the current Crown Lands Act 1989 and the proposed new Act, including summary comments from the White Paper consultation process regarding those key features.

Please note: The new legislation is currently being drafted and will not be finalised until significant further drafting and review work is complete.

Outline of Existing vs Proposed Legislation - Summary

FEATURE	CURRENT ACT	PROPOSED NEW ACT	WHITE PAPER CONSULTATION / COMMENT
1. Title of Act	Crown Lands Act 1989	Crown Land Management Bill 2016	Majority of submissions supported new consolidated legislation and repealing existing Acts. Some submissions proposed retaining existing Commons and Schools of Arts Acts – appropriate existing protections / provisions can be incorporated Very few submissions re Western Lands or Wentworth / Hay Acts.
2. Other Acts	Crown Lands (Continued Tenures) Act 1989, Western Lands Act 1901, Commons Management Act 1989, Trustees of Schools of Arts Enabling Act 1902, Public Reserves Management Fund Act 1987, Wentworth Irrigation Act 1890, Hay Irrigation Act 1902)	One, consolidated, fit-for-purpose Act. Required provisions from other Acts to be continued in the new legislation	
3. Reducing red tape	Substantial duplication of existing legislation, overlapping administrative responsibilities and inconsistencies in management	One consolidated, fit-for-purpose Act. Duplications, inconsistencies and overlaps to be removed. Protections not provided for in other legislation or through other processes retained	Submissions supported removing red tape and reducing transaction costs. Some concerns that protections for Crown land will be removed.
4. Focus	Concerned with the allocation and management of Crown land, including the administration of tenures and Crown reserves, and also deals with the acquisition and sale of Crown land.	Same focus as existing Act.	See below for discussion of key issues and White Paper feedback. No change proposed – content to be modernised and consolidated reflecting focus of existing Acts
5. Scope	8 Existing Acts cover Crown land, Western Land etc.	New Act will apply to all land currently administered under the Crown Lands Act, Crown Lands (Continued Tenures) Act, Western Lands Act, Commons Management Act, Trustees of Schools of Arts Enabling Act, Wentworth Irrigation Act and Hay Irrigation Act 1902 other than privately owned land under the Trustees of Schools of Arts Enabling Act.	See below for discussion of key issues and White Paper feedback. No change proposed – content to be modernised and consolidated reflecting scope of existing Acts
6. Content	Existing Act includes provisions in relation to objects, principles, powers, land ownership, tenures, sale and disposal of land, Crown reserves, compliance and enforcement, administrative and miscellaneous measures	New Act will include provisions in relation to objects, powers, land ownership, tenures, sale and disposal of land, Crown reserves, compliance and enforcement, administrative and miscellaneous measures	See below for discussion of key issues and White Paper feedback. No significant change proposed – content to be modernised and consolidated reflecting content of existing Acts
7. Objects	To ensure that Crown land is managed for the benefit of the people of New South Wales and in particular to provide for: (a) a proper assessment of Crown land, (b) the management of Crown land having regard to the principles of Crown land management contained in this Act, (c) the proper development and conservation of Crown land having regard to those principles, (d) the regulation of the conditions under which Crown land is permitted to be occupied, used, sold, leased, licensed or otherwise dealt with, (e) the reservation or dedication of Crown land for public purposes and the management and use of the reserved or dedicated land, and (f) the collection, recording and dissemination of information in relation to Crown land	To provide for the ownership, use and management of Crown land in NSW so as: (a) To provide greater clarity concerning the law applicable to Crown land, and (b) To require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land, and (c) To provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of NSW, and (d) To facilitate the use of Crown land by the Aboriginal people of NSW and, where appropriate, to enable the co-management of dedicated or reserved Crown land.	Overwhelming support for objects to include protection of environmental, cultural heritage and social values. A number of submissions suggested the objects should make stronger statements about the protection of Aboriginal interests.
8. Principles of Crown land management	Existing Act specifies principles of Crown land management.	New Act will consolidate principles into the objects of the Act. Key principles retained and incorporated into clearer, more rationalised objects. New operative provisions to facilitate environmental considerations.	Overwhelming support for objects to include protection of environmental, cultural heritage and social values. A number of submissions suggested the objects should make stronger statements about the protection of Aboriginal interests.
9. Powers	Existing Act provides for the Minister to have certain powers, including the power to deal with land, grant leases and licences, create easements, and grant any interest over a Crown reserve provided that this is in the public interest	New Act will continue to provide for the Minister to have certain powers, including the power to deal with land, grant leases and licences, create easements, and grant any interest over a Crown reserve provided that this is in the public interest	See below for discussion of key issues and White Paper feedback. No significant change proposed – content to be modernised and consolidated reflecting content of existing Acts
10. Land ownership	Existing Acts provide different ways of owning or holding land, some of which were created for specific purposes eg: Crown land vested in Her Majesty Dedicated land held by trustees Reserved land deemed to be held by Trustees Land held in the name of another Minister or public authority and dealt with as if it were Crown land.	New Act will rationalise the options for how land can be owned and provide that the management arrangements for Crown reserves will be the same regardless of the type of ownership.	See below for discussion of key issues and White Paper feedback No significant change proposed – content to be modernised and consolidated reflecting content of existing Acts

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11. Aboriginal Interests	Not reflected in objects, principals or operative provisions	Object of new Act will provide for facilitating the use and management of Crown land by Aboriginal people. Provisions will specifically contemplate Aboriginal management of Crown reserves. Provisions will include protections for Aboriginal interests under Aboriginal land rights and native title legislation.	Submissions concerned that changes must not jeopardise land claims. New Act does not change the Aboriginal Land Rights Act 1983. Land claims will continue to be determined. Land with land claims will not be transferred to local Councils without Aboriginal Land Council consent. Aboriginal Land Councils to be involved in voluntary negotiations with local Councils using Aboriginal Land Agreement mechanisms of ALRA.
12. State & Local Land	Current Act does not include State or Local land.	New Act will presume that all land in the Crown estate is State land. Will require the Minister to have regard to Local land criteria before vesting Crown land in Councils.	Support for local control and decision making but concerns about cost shifting. Where land is of predominantly local interest, transferring it to councils will allow decisions about that land to be made by local communities. Transfers will be on a voluntary basis – there will be no forced transfers Land of State significance to be retained by the State.
13. Tenures	Existing Act provides broad powers to lease and licence Crown land. The different Acts governing Crown land contain different, and in some cases contradictory, provisions in relation to leases, including term, conversion rights, transfer rights etc.	New Act will contain broad powers to lease and licence Crown land and to grant enclosure permits. Act will comprehensive provisions relating to tenures (ie leases and licences), including in relation to rents, forfeiture and surrender. Provisions relating to Western Lands leases will be included (see below).	No significant change proposed – content to be modernised, streamlined and consolidated reflecting content of existing Acts
14. Sale & Disposal	The Minister has broad powers to sell and dispose of land.	New Act will continue to provide for the sale or other disposal of Crown land. There will be more transparent and streamlined requirements for notification and advertising of proposed sales, leases and other disposals (see below).	No significant change proposed – content to be modernised and consolidated reflecting content of existing Acts. Outside the Western Division (see below) only lessees who currently have rights to purchase the freehold of their interests without going through a public tender process will continue to have those rights.
15. Crown Reserves	The Minister has broad powers to reserve land from sale, lease or licence or for future public requirements or other public purpose	New Act will continue to provide for the reservation and dedication of land and the management of reserves. It will clearly define the method of appointment of Crown reserve managers and their role, powers and governance arrangements. Provisions will continue the Public Reserves Management Fund to raise funds to provide loans and grants for maintenance and improvements to reserves.	No significant change proposed – content to be modernised and consolidated reflecting content of existing Acts. New Act will reduce three tier reserve management system to two (see below). Unanimous support for retention of the Public Reserves Management Fund.
16. Dedications	Existing Act provides for dedication of Crown land for a public purpose and for revocation of dedications by notice in the Gazette and before each House of Parliament.	Dedicated land will become Crown land but with the same protections as the existing Act, including requirement to table revocations in each House of Parliament.	Was not a focus of the White Paper.
17. Compliance and Enforcement	Existing Act includes provisions about the compliance and enforcement, creating certain offences and provide for the appointment and powers of authorised inspectors and persons.	New Act will include updated, comprehensive compliance and enforcement provisions. Compliance tools will suit different degrees of non-compliance. This will include provisions for auditing, remediation and removal orders, and stop work orders.	Strong general support for stronger compliance and enforcement provisions. Improved and up to date, effective and flexible compliance and enforcement provisions, consistent with other legislation regulating the management of public land.
18. Administrative and Miscellaneous Matters	Existing Act includes administrative and miscellaneous provisions such as the power to make regulations and provisions relating to the delegation of powers by the Minister and Secretary	New Act will include administrative and miscellaneous provisions such as the power to make regulations and provisions relating to the delegation of powers by the Minister and Secretary	No significant change proposed – content to be modernised and consolidated reflecting content of existing Acts
19. Community engagement	Existing Act contains advertising and/or gazettal requirements that must be complied with prior to a dealing with Crown land, or a change or revocation in the reserve purpose of Crown land. For example, a sale or a lease over 5 years (including options) requires newspaper advertising of the intent to sell/lease to have occurred at least 14 days prior to the sale/lease. Similar newspaper advertising requirements apply to revocations of reserves.	The legislation will not contain any requirement to advertise dealings in newspapers or in any other forum. Instead, the legislation will provide that the Minister will require the preparation of a community engagement strategy (“Strategy”) in relation to certain proposals for, and dealings with, Crown Land. The community engagement strategy will set out: <ul style="list-style-type: none"> • which dealings or other actions (eg change in reserve purpose, revocation of reserves) require community notification/engagement; and • the level of community notification/engagement that must be undertaken. While this may include advertising, it will not be limited to advertising. Department must comply with the Strategy and Crown land managers (current reserve trusts) other than councils will also have to comply.	Submissions highlighted importance of meaningful community consultation and that the notification in its current form is not active communication. Submissions supported new, flexible and tailored communication methods.

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20. Western Division	Some Western Land Leases granted for residential or business use can be converted to freehold. Pastoral leases in the Western Division cannot currently be converted.	New Act will include additional options to convert Western Lands Leases granted for pastoral purposes to be converted to freehold. Criteria will consider factors such as proximity to an urban area, whether the land is capable and suitable for agricultural production, or required for urban expansion or economic growth of a region. Certain low impact activities also to be allowed under Western Lands Leases without the need for approval (eg farm tourism).	Majority of Western Land lessees who made submissions believe current system disadvantages them. Right to apply to purchase to be introduced for the Western Division with appropriate safeguards to balance environmental considerations (eg soil capability) with the provision of economic opportunities. Majority of submissions supported additional low impact activities to be undertaken on Western Lands Leases without approval.
21. Vesting – Local Councils	Existing Act enables land to be vested in local councils, subject to certain number of conditions and limitations	New Act will enable land to be vested in local councils if the Minister has had regard to “local land” criteria. Transfers will be on a voluntary basis and by agreement. Vested land will be classified as community land unless land does not fit within Local Government Act (LGA) categories of community land. Community land is subject to a detailed management regime under the LGA and cannot be sold by councils. Land vests subject to native title (unless native title extinguished or certified to be extinguished) and the Registrar-General will be required to place appropriate restrictions on title in this case.	Some submissions supported local decision making. Some were concerned about cost shifting and levels of trust in councils. Where land is of predominantly local interest, transferring it to local councils will allow decisions about that land to be made by local communities. Transfers will be on a voluntary basis – there will be no forced transfers. Aboriginal Land Councils to be included in voluntary negotiations to ensure rights and interests under ALRA considered.
22. Market Rents	Existing Acts contain varying provisions about the principles for rent redeterminations, although market rent default position under Crown Lands Act	Market rent will be the default position for all holdings, other than Western Lands Leases (where the existing rent calculation formulae will continue to apply)	Market rents received significant support in submission, subject to the availability of rebates and waivers.
23. Statutory Minimum Rent	Current Acts provides for minimum rent (amount varies between different Acts).	There will be one consistent minimum rent applying across the State.	Rebates and waivers will apply to those who currently pay the lower statutory minimum rent.
24. Rebates and Waivers	Existing Act contains provisions about rebates of rent.	New Act will contain provisions to rebate rent, grant waivers of rent and/or defer payments of rent by tenure holders.	Many submissions noted that community groups etc may not be able to pay a market rental and therefore need for robust and transparent system of rebates and waivers.
25. Land Assessment	Existing Act provides for a programme for the assessment of Crown land. Minister has power to waive assessment.	New Act will not contain land assessment requirements.	Majority of submissions concerned about removal of land assessment requirements. Existing provisions not practical to implement – Minister has ability to waive requirement and generally does so. Land use better governed by a combination of the planning framework and the reserve purpose.
26. Landowners Consent	Landowners consent is required under planning legislation for all development applications on Crown land.	New Act will continue requirement for landowners consent, except for certain pre-approved low impact activities on reserves and Western Lands leases (eg installation of signage).	Councils supported simplifying landowners consent requirements. Support for concept of low impact activities.
27. Reserve management	Existing Act provides for three tiers – for each reserve (1), that a trust (2) is established and a third party (3) is appointed to manage the affairs of that trust.	Three tiers to be reduced to two. The trust system will be removed and the Minister will appoint a Crown Land Manager to manage the reserve. This will remove duplication and unnecessary complications while keeping in place the fundamental principle that Crown reserves are managed by groups appointed by the Minister who are charged with the care, control and management of those reserves. It will also make it more transparent as to who/what entity is actually responsible for managing a reserve. Existing reserve trust managers and boards will be automatically converted into a single Crown Land Manager, with board membership continuing unaffected	Overwhelming support for the proposals to replace Reserve Trusts and Reserve Managers with one Crown Land Manager.
28. Appointment of Reserve Managers	Appointment of reserve trusts and reserve trust managers is through notification in the Gazette	Appointment of Crown Land Managers will be by notification in the Gazette and through the Minister issuing an appointment instrument	Councils, community trusts and incorporated bodies will continue to be appointed as Crown Land Manager. Legislation will not transfer control of reserves to Councils or automatically vest Crown land in councils. If local land transferred to Councils through negotiated agreement, Councils can establish community advisory groups to ensure continuing

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			community involvement.
29. Appointment of Board members	Trust board consists of at least 3, but not more than 7 members, appointed by the Minister by notification in the Gazette	Arrangements will be similar to current arrangements, but with added flexibility	Majority of submissions supported local community representation and participation in reserve management and governance.
30. Governance of Reserve Trusts	Existing Act has few governance provisions that do not reflect modern expectations	Detailed governance provisions will be included, including obligations on board members and ability for Minister to issue a code of conduct	General support for high governance standards for reserve trusts.
31. Categorisation of Reserve Managers	Not provided for in existing Act	New Act will provide for two categories of Crown Land Manager, with different Ministerial approval requirements relating to each category (NB: does not apply to Councils – see below). Category 1 will be ‘professional’ managers- they will not to seek approvals for some activities and dealings (eg leases / licences of 10 years or less). Category 2 will need to seek approval for the same dealings as all reserve trusts currently do. Unless categorised, all managers will be deemed to be Category 2.	
32. Plans of Management		Minister will be able to require any Crown Land Manager to prepare a plan of management and make guidelines about draft plans.	Strong support for plans of management. Some suggestions they should be mandatory – may not always be appropriate for smaller reserves.
33. Council management of Reserves	Council manages Crown reserves in the same way as all other managers of Crown reserves. This means Councils have a difference management regime for land they own (governed by the Local Government Act) and for Crown land where they are the Reserve Trust Manager (governed by the Crown Lands Act).	Councils will generally manage Crown reserves under the Local Government Act 1993 (LGA), generally in the same manner as they manage “community land”. Councils required to prepare plans of management for each reserve they manage under LGA – phased in over three years. Councils will not be able to sell or reclassify reserves without the Minister’s approval. The Minister will be able to put conditions into the appointment instruments for the council and council will be required to comply with these conditions and with Ministerial rules. Councils will not generally be required to report to the Minister – existing reporting requirements under the LGA will apply	Local councils broadly supported being able to manage Crown reserves under the LGA. Some council concerns about costs of management. Funding support to be provided to Councils to assist with plan of management costs under LGA. Some concerns that Government should manage the Crown estate and oversight of councils was preferred.