



New South Wales

Crown Land Legislation Amendment Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Crown Land Management Act 2016* (the **principal Act**) consolidates in one Act the statutory provisions dealing with the ownership, use and management of the Crown land of New South Wales. The Bill for that Act was described in its explanatory note as being the first stage of the process of creating a new legislative regime for Crown land, with a second Bill to be introduced in 2017 to make consequential amendments to legislation and further repeals if required.

The objects of this Bill are:

- (a) to amend the principal Act:
 - (i) to abolish the Public Reserves Management Fund and establish instead a Crown Reserves Improvement Fund under the principal Act and provide for its use, and
 - (ii) to provide for the consequential repeal of the *Public Reserves Management Fund Act 1987*, and
 - (iii) to make further provision with respect to matters of a savings or transitional nature and amendments in the nature of statute law revision, and
- (b) to amend the *Roads Act 1993* to make further provision with respect to Crown roads and public roads, and
- (c) to make amendments to certain legislation that are consequential on the enactment of the principal Act and the proposed Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Crown Land Management Act 2016 No 58

Public Reserves Management Fund and Crown Reserves Improvement Fund

The *Public Reserves Management Fund Act 1987* provided for a Public Reserves Management Fund to be established in the Special Deposits Account in the Treasury.

The principal purpose of the Fund is to fund the acquisition, maintenance, improvement or development of public reserves. A **public reserve** is defined to mean:

- (a) a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*, and
- (b) any other land set apart, dedicated, reserved, granted or held for any public purpose under any Act administered by the Minister for Lands and Forestry, or for a showground, and
- (c) land vested in or held by the Zoological Parks Board.

The proposed Act amends the principal Act:

- (a) to abolish the Public Reserves Management Fund established by the *Public Reserves Management Fund Act 1987* and repeal that Act (see **Schedule 1 [48] and [54]**), and
- (b) to provide for a Crown Reserves Improvement Fund to be established as a dedicated Fund under the principal Act and transfer any money in the abolished Fund into it (see **Schedule 1 [26] and [48]**), and
- (c) to provide for what money must be paid into the Crown Reserves Improvement Fund and what money can be paid out of the Fund (see **Schedule 1 [26]**), and
- (d) to make other consequential amendments (see **Schedule 1 [1], [4], [6], [8], [25], [27] and [28]**).

Statute law revision amendments

1 Crown managed land

Schedule 1 [3] introduces the concept of **Crown managed land** to replace certain references in legislation to reserves under Part 5 of the *Crown Lands Act 1989*. It is defined to mean:

- (a) dedicated or reserved Crown land, and
- (b) any other land that is required or permitted to be managed under Part 3 of the principal Act as if it were dedicated or reserved Crown land.

An example of land that is managed as dedicated or reserved Crown land under Part 3 of the principal Act even though it is not Crown land is land of the kind referred to in clause 7 (4) of Schedule 7 to the principal Act.

2 Change of name to State

Schedule 1 [7] makes it clear that land does not cease to be Crown land just because of the creation in respect of it of a folio of the Register kept under the *Real Property Act 1900* in the name of the State. This mirrors section 3 (2) of the *Crown Lands Act 1989*.

3 End of appointment of Crown land manager

Schedule 1 [12] enables the Minister to transfer certain rights, assets and liabilities of a Crown land manager when the manager's appointment ends (including because of the revocation of the appointment). **Schedule 1 [11]** makes a consequential amendment.

4 Duties of members of boards or governing bodies of Crown land managers

Section 3.13 (3) of the principal Act provides that the members of the board or other governing body of a Crown land manager that is not a statutory land manager must, when participating in decision-making concerning the exercise of the manager's functions, comply with the duties imposed on board members of statutory land managers by Division 4 (Conduct of board members) of Part 4 of Schedule 5.

Schedule 1 [13] makes it clear that section 3.13 (3) has effect subject to the constitution of, and any other governance provisions applicable to, the Crown land manager under a Commonwealth Act that the manager is required to comply with.

5 Special powers of Minister cannot be exercised by Crown land manager

Schedule 1 [15] makes it clear that a Crown land manager cannot exercise any of the Minister's functions under section 2.18 (Special provisions relating to Minister's powers over dedicated or reserved Crown land) of the principal Act.

6 Indemnification for changes to leases, licences and easements

Schedule 1 [17] requires certain Crown land managers to indemnify the State against liabilities incurred because of changes they make to certain leases, licences and easements unless they have obtained the Minister's consent for the change.

7 Acquisition of land by Crown land managers

Schedule 1 [18] enables Crown land managers, with the Minister's consent, to purchase, lease and acquire easements over land if it is required for use in connection with the dedicated or reserved Crown land under management. It also enables Crown land managers, with the Minister's consent, to purchase land so as to make it available for one or more proposed uses in the future as dedicated or reserved Crown land.

Section 101 of the *Crown Lands Act 1989* currently makes similar provision for the acquisition of land by reserve trusts.

Schedule 1 [14], [16] and [19] make consequential amendments.

8 General powers of Minister in relation to Crown land

Section 34 of the *Crown Lands Act 1989* sets out the general powers of the Minister in relation to Crown land. The section provides that it does not authorise the sale of Crown land which is reserved for a public purpose.

Schedule 1 [20] amends section 5.3 of the principal Act (which is the corresponding provision to section 34) to make it clear that section 5.3 also does not authorise the Minister to sell Crown land that is dedicated or reserved for a public purpose.

9 Compliance with native title provisions

Schedule 1 [23] enables the regulations to provide for:

- (a) the obligations and liabilities of native title managers and responsible persons for relevant land in connection with the administration of Part 8 of the principal Act or the native title legislation, and
- (b) compliance with Part 8 of the principal Act or the native title legislation in connection with relevant land.

10 Service of penalty notices for offences involving vehicles

Schedule 1 [24] enables a penalty notice for an offence involving a vehicle to be served by leaving it on, or attaching it to, the vehicle. Section 162 (3) of the *Crown Lands Act 1989* currently makes similar provision for this.

11 Notice revoking dedication cannot be combined with other notices

Schedule 1 [29] makes it clear that a notice of the Minister revoking the dedication of Crown land cannot be combined with other kinds of notices of the Minister that are required to be published in the Gazette.

12 Regulations

Schedule 1 [30] enables the regulations to provide local councils to be provided information about holdings and enclosure permits over Crown land and their holders for use in connection with the exercise of functions under the *Local Government Act 1993*. This information may be relevant, for example, to the calculation of local government rates payable by these holders.

The amendment also enables the regulations to provide for the exemption of any person, matter or thing from the operation of this Act or any specified provision of this Act, either unconditionally or subject to conditions.

13 Functions and internal management of statutory land managers

Schedule 1 [32] makes it clear that the functions of statutory land managers include any functions that are conferred or imposed on them by or under Acts apart from the principal Act. In particular, some of the proposed amendments made to other Acts by Schedule 2 will operate to confer or impose functions on statutory land managers.

Schedule 1 [33] provides for the Minister to appoint the Chairperson of the board of a statutory land manager that is a category 1 non-council manager under Division 3.5 of the principal Act. The board for such a manager will be required to elect its Deputy Chairperson. For any other kind of statutory land manager, its board will be required to elect both its Chairperson and Deputy Chairperson. The Minister will be able to appoint a Chairperson or Deputy Chairperson if a board will not or cannot elect a person when required.

Schedule 1 [34] enables the Minister to appoint acting members of a board of a statutory land manager during the absence of a member.

14 Minor amendments

Schedule 1 [2], [5], [21], [22], [44], [45], [47] and [49] correct certain typographical errors and incorrect references and remove unnecessary cross-references.

Schedule 1 [9] clarifies the use of the word “storey”.

Schedule 1 [10] inserts a note to make it clear that section 3.1 (2) of the principal Act does not affect the responsibility of local councils over public reserves.

Schedule 1 [31] enables the regulations to prescribe fees (whether or not on an annual basis) for cultivation consents in the Western Division.

Schedule 1 [35]–[38] make amendments that are consequential on amendments made by the proposed Act.

Schedule 1 [46] makes it clear that the former trust land of a reserve trust includes land that it acquired or with which it was vested.

Savings and transitional matters

Schedule 1 [41] enables the Minister to declare that land that was acquired by a reserve trust for the purpose of becoming Crown land if certain conditions were first met does not become Crown land under the principal Act until those conditions are met. For example, a condition might be that appropriate planning consent or approval is granted for the proposed use of the land. Also, the Minister may require the land to be sold if satisfied that those conditions are unlikely to be met. **Schedule 1 [39] and [40]** make consequential amendments.

Schedule 1 [42] enables certain uncompleted exercises of functions under legislation repealed by the principal Act to be completed under the repealed legislation if there is no corresponding function under the principal Act.

Schedule 1 [43] provides for how land is to be managed if the savings and transitional provisions in Schedule 7 to the principal Act operate to appoint a statutory land manager as a Crown land manager of Crown land that is not dedicated or reserved Crown land. Usually, Crown land managers (which may include statutory land managers) are limited to managing dedicated or reserved Crown land under the principal Act.

Schedule 1 [50] and [51] make it clear that the Minister may declare the boundaries of any Crown land that is dedicated or reserved for the purpose of a park (whether or not the land is also dedicated or reserved for other purposes).

Schedule 1 [52] provides for existing plans of management for reserves under Part 5 of the *Crown Lands Act 1989* to continue in force as plans of management under the principal Act if the Crown land manager of land under the principal Act is a non-council manager.

Schedule 1 [53] transfers licences, permits, consents, entitlements, accreditations and other authorities held by or on behalf of certain bodies to be abolished by the principal Act to their successor bodies.

Schedule 2 Amendment of legislation referring to reserve trusts

Part 5 of the *Crown Lands Act 1989* provided for the establishment of corporate reserve trusts for reserves. The Part defines a **reserve** to mean land which is dedicated or reserved under the *Crown Lands Act 1989* or which immediately before the commencement of section 78 of that Act was a reserve within the meaning of Part 3B of the *Crown Lands Consolidation Act 1913*. However, it excludes:

- (a) a common within the meaning of the *Commons Management Act 1989*, and
- (b) land within the meaning of the *Trustees of Schools of Arts Enabling Act 1902*, and
- (c) land, or land of a class, in respect of which an order under section 79 of the *Crown Lands Act 1989* is in force.

Section 100 of the *Crown Lands Act 1989* also provides that a reserve trust for a reserve is taken to be vested with an estate in fee simple over the reserve, but only for the purposes of Part 5 of the *Crown Lands Act 1989* and the by-laws under that Part. This results in a reserve being vested in both the Crown and, for this limited purpose, the reserve trust. See *Townsend v Waverley Council* [2001] NSWSC 384 at [20] (Barrett J) and *New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act (Boggabri)* [2014] NSWLEC 58 at [31]–[35] (Craig J).

Reserve trusts for reserves will be abolished by the principal Act and the lands comprised in each reserve will cease to be vested in them. Instead, these lands will continue as dedicated or reserved Crown land that is wholly vested in the Crown. Crown land managers (including statutory land managers under the principal Act) will be appointed to manage the lands on behalf of the Crown.

Currently, a number of Acts operate either to constitute reserve trusts for specified Crown land or to require specified bodies to be treated as having the functions of a reserve trust in relation to specified Crown land. Also, certain other legislation refers to reserve trusts for the purposes of conferring or imposing functions on them.

Schedule 2 amends certain legislation that refers to reserve trusts as defined in the *Crown Lands Act 1989*. In particular, the Schedule provides for the following:

- (a) the reconstitution of the Luna Park Reserve Trust as a statutory land manager under the principal Act (with its current board members continuing in office as its board) and appoints it as the Crown land manager for Luna Park (see **Schedule 2.11**),
- (b) the reconstitution of the National Parks and Wildlife Reserve Trust as a statutory land manager under the principal Act (with its current board members continuing in office as its board) and appoints it as the Crown land manager for Crown land for which it is currently responsible (see **Schedule 2.13**),

- (c) the appointment of the Sydney Cricket and Sports Ground Trust as currently constituted under the *Sydney Cricket and Sports Ground Act 1978* as the Crown land manager for the Sydney Cricket and Sports Ground (see **Schedule 2.18**),
- (d) the replacement of Crown cemetery trusts with Crown land managers as the managers of Crown cemeteries under the *Cemeteries and Crematoria Act 2013* (see **Schedule 2.2**),
- (e) the continuation of the Hawkesbury and Wagga Wagga Racecourses as dedicated Crown land that will be managed by a statutory land manager under the principal Act with a board constituted with existing reserve trust members (see **Schedule 2.6 and 2.19**),
- (f) the continuation of the dedication or reservation of certain other Crown lands (see **Schedule 2.13–2.16**)
- (g) the updating of other references in legislation to reserves and reserve trusts.

The Schedule also makes all other amendments to the legislation concerned that are consequential on the enactment of the principal Act and the proposed Act.

Schedule 3 Amendment of legislation relating to Crown roads

Schedule 3 amends the *Roads Act 1993*:

- (a) to confirm that the Minister administering the *Crown Land Management Act 2016* (the **Crown land Minister**) is the roads authority for all Crown roads, and
- (b) to enable local councils who are roads authorities for public roads to close those roads instead of the Minister, and
- (c) to enable the Crown land Minister to sell or dispose of Crown roads without first closing them, and
- (d) to enable the Crown land Minister to allow the purchase price for Crown roads to be paid by instalments, and
- (e) to enable the Crown land Minister:
 - (i) to direct a person to take specified action to repair or maintain a Crown road if satisfied that the road is not generally used for access by the public and that the person is someone who benefits from the use of the road, and
 - (ii) if the person fails to comply with the direction, authorise government sector employees, contractors or other agents to enter land and carry out specified action and recover the cost of that action from the person, and
- (f) to enable the Crown land Minister to direct a person to pay a specified contribution for the repair or maintenance of a Crown road if satisfied that the road is not generally used for access by the public and that the person is someone who benefits from the use of the road, and
- (g) to enable the Crown land Minister to grant an easement, licence, permit or consent with respect to a Crown road if an alternative right of passage or access substantially as convenient as the existing right of passage or access is provided in an alternative location, and
- (h) to make other amendments that are consequential on the enactment of the principal Act and the proposed Act.

The Schedule also makes consequential amendments to the *Land and Environment Court Act 1979* and the *Roads Regulation 2008*.

Schedule 4 Amendment of other legislation

Schedule 4 makes amendments to certain other legislation that are consequential on the enactment of the principal Act and the proposed Act.