

Greater powers to stop illegal activity on Crown land

To deliver modern, streamlined and transparent management of the state's vast Crown land, the NSW Parliament passed the Crown Land Management Act 2016 (the Act). The Act has commenced, implementing reforms identified in the Crown Lands Legislation White Paper released in 2014 and a comprehensive review of Crown land management. This fact sheet describes some of the issues found and how the Act addresses them.

Providing a more effective compliance and enforcement framework

During the review, there was broad support for a stronger compliance and enforcement regime to help protect Crown land against illegal activity that threatens environmental values and/or public use and enjoyment.

The White Paper identified significant impediments to effective compliance action, including:

- the six-month limitation period for commencing action
- not being able to issue remediation directions
- low penalty levels that do not act as deterrents
- the difficulty of identifying offenders
- problematic wording of offences
- not all situations being covered by existing offences.

How the Act deals with this issue

- The Act contains updated and expanded enforcement and compliance provisions for Crown land, providing powers to stop illegal activity on Crown land and to ensure it is appropriately used and managed.
- The Minister for Lands and Forestry now has the power to require the NSW Department of Industry (the department) to instigate audits of compliance with the legislation, tenures and reserves.
- Provision has been made for a broader pool of Authorised Officers with expanded powers similar to those under the existing Protection of the *Environment Operations Act 1997*.
- The Minister now has the power to appoint staff of the department as a Crown Land Manager (previously known as reserve trust managers) or employees of other government agencies as Authorised Officers.
- Authorised Officers can seek the help of a member of the NSW Police where needed to ensure compliance.
- Local council employees can be appointed as Authorised Officers.

Imposing stronger penalties for illegal activity

Under the Act, penalties have been increased to ensure they act as a deterrent, and corporations will be subject to higher penalties than individuals. Examples of the changes are shown in the following table.

Table 1. Increased penalties for offences

Example of offences on Crown land	Previous maximum penalty	Maximum penalty in new legislation
<ul style="list-style-type: none"> Residing on Crown Land Erecting a structure Grazing stock Driving stock Clearing, digging or cultivating Crown land Littering Enclosing Crown land 	20 penalty units	Where intentional offence causing or likely to cause harm, or for non-compliance with a stop-activity order for activities that threaten public safety or the environment: <ul style="list-style-type: none"> corporation: 2,000 penalty units + 200 penalty units for each day the offence continues individual: 1,000 penalty units + 100 for each day the offence continues (individual).
<ul style="list-style-type: none"> Polluting or contaminating Crown land or waters Failure to comply with a Stop-Activity Order 	Not applicable (new offence)	All other offences (in most cases): <ul style="list-style-type: none"> 200 penalty units + 20 penalty units for each day the offence continues (corporation) 100 penalty units + 10 for each day the offence continues (individual).
<ul style="list-style-type: none"> False or misleading conduct during an investigation Obstruction of an Authorised Officer (AO) Damaging an AO's equipment Impersonation of an AO 	10–100 penalty units	2,000 penalty units + 200 penalty units for each day the offence continues (corporation). 1,000 penalty units + 100 penalty units for each day the offence continues (individual).

Note: one penalty unit is currently equal to \$110

Introducing remediation, stop-work orders and other powers

The review found that in many cases, the most effective way of rectifying an offence would be to require remediation of a piece of Crown land. The new Act provides for remediation notices and stop-work orders, as well as giving Authorised Officers clear powers to order the removal of illegal structures and substances from Crown land.

How the Act deals with this issue

- The Act provides for a broad range of notices and orders to address compliance issues on Crown land.
- Where damage or contamination has occurred, Authorised Officers are able to issue rectification and remediation notices to ensure Crown land is restored to its former condition.
- Where the order is not complied with in the required period, the department may undertake the necessary work and recover its costs.
- Removal directions can be made to ensure people are required to remove materials or structures unlawfully placed on Crown land.
- Stop-activity orders are available to stop unlawful, unsafe, or dangerous activities being carried out on Crown land.
- The courts can require a person convicted of a relevant offence to undertake rectification and remediation action, to remove works or to pay compensation.

Ensuring effective court actions

Local courts are often not equipped to deal with the complexity of issues and the severity of some offences in relation to Crown land, nor can they impose penalties high enough to act as a deterrent. The White Paper also

raised the issue of time limitations for commencing legal proceedings being different under each of the current Acts.

The review also found that the six-month time limit for bringing proceedings was unrealistic.

In many cases, due to the size and scale of the Crown Estate, the government only becomes aware of an incident several weeks or even months after it has occurred. A number of breaches have run out of time before prosecutions could be started.

How the Act deals with this issue

Under the Act:

- prosecutions can be commenced in either the local court or in the Land and Environment Court
- the courts have broad powers to make orders in addition to the power to impose penalties
- the timeframe for commencement of proceedings for offences on Crown land has been increased from the previous six months to two years.

The department's approach to compliance

The department encourages tenure holders and the community to voluntarily comply with the provisions of the Act and other relevant legislation in relation to the use of Crown land. Where non-compliance is detected however, the department will use relevant powers and take appropriate action to ensure the use of Crown land is in accordance with the objects and principles of the Act.

Further information

Email: cl.compliance@crowmland.nsw.gov.au

Web: www.industry.nsw.gov.au/lands

Phone: 1300 886 235

© State of New South Wales through Department of Industry 2018. The information contained in this publication is based on knowledge and understanding at the time of writing (May 2018). However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Industry or the user's independent adviser.