

The consultation process

Seeking views

The Department wrote to each common in NSW for which it had contact details in January 2017, enclosing a copy of the factsheet outlining the NSW Government's revised proposal for commons (**Appendix 2**) and inviting submissions on the proposal.

The Department specifically sought views on whether the proposal:

- sufficiently recognises the significance of commons
- sufficiently retains an ongoing role for commons trusts
- sufficiently protects the environmental, social, cultural and economic values of commons
- benefits the people of NSW by allowing them to experience the environmental, social, cultural and economic values of commons?

In addition, five key stakeholder groups with an interest in Crown land were invited to provide submissions: Local Government NSW, Environmental Defenders Office NSW, Nature Conservation Council, New South Wales Aboriginal Land Council and NSW Farmers Association.

The factsheet and invitation for comment was also posted on the Department's website to enable individuals and representatives from any other groups to provide their views.

Departmental staff met and corresponded with a group of commons stakeholders during the consultation period to better understand their concerns and to articulate the aims of the legislative proposal. Commons that had previously provided submissions in the 2014 Crown Land Legislation White Paper were contacted directly and offered the opportunity to talk about the proposal. The Department also visited St Albans Common on two occasions.

The consultation period commenced on 27 January 2017 and finished at 5 pm on 21 February 2017.

Submissions

All submissions—other than one that requested not to be published—are available on the Department's website at www.crownland.nsw.gov.au.

Appendix 1 identifies the individuals or bodies who made submissions, excluding the one submission that requested not to be published.

Review of submissions

The Department has reviewed all submissions received.

Methodology

The submissions have undergone a comprehensive and methodological review, with each submission assessed against a matrix of criteria.

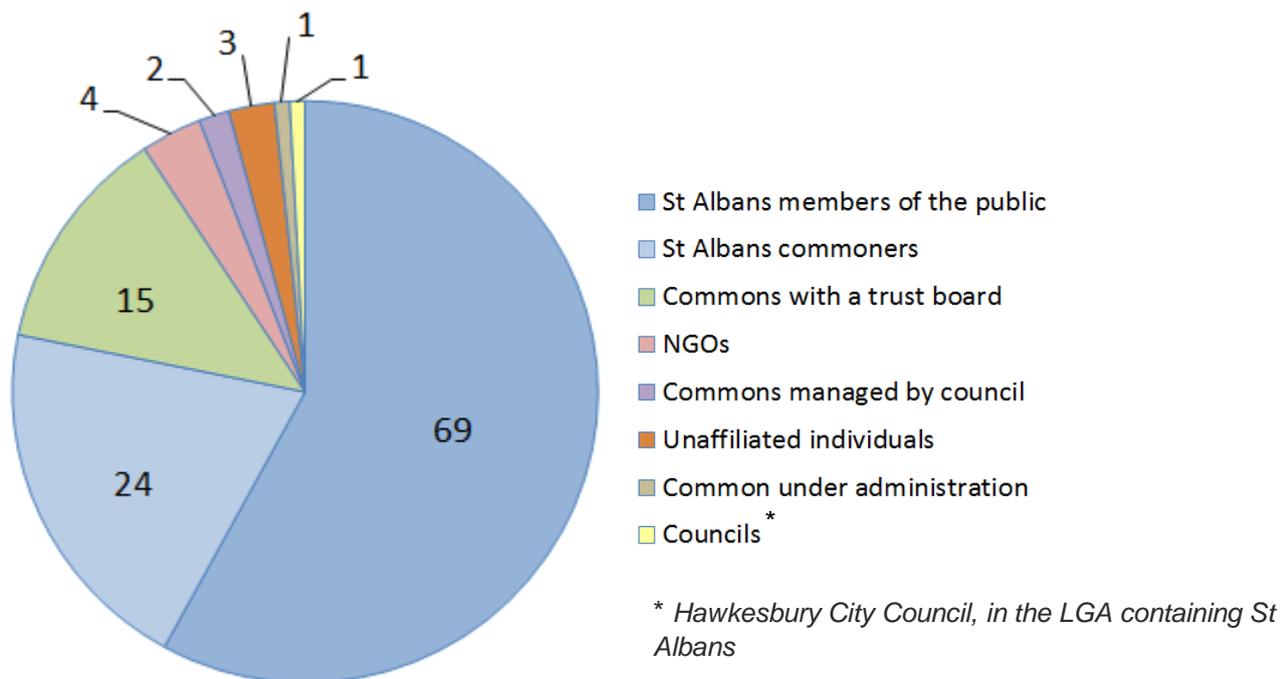
To quantify whether stakeholders supported the proposal or not, it was a condition that a submission should be explicit. Where a submission was not explicit, it was categorized as 'Not clear' – rather than any preference being implied by the Department.

Overview of submissions

Figure 1. (below), shows a breakdown of the 119 individual submissions received.

The 'St Albans members of the public' constitute the largest stakeholder group, followed by the 'St Albans commoners'.

Figure 1. Respondents by group



Proforma submissions

A large number of stakeholders associated with St Albans provided very similar—in many cases identical 'pro forma'—submissions. For this reason, the report that follows includes pie charts which aggregate St Albans commoners and members of the public (for instance, *Figure 2a.*) and which disaggregate St Albans commoners and members of the public (for instance, *Figure 2b.*). The St Albans Common trust submission is represented independently from the aggregated group. This provides transparency in terms of the numbers of submissions, but also allows conclusions to be drawn on an equitable basis that provides equal significance to all commons trusts that provided their views and comments.

Overview of high-level comments on the process

There was a broad range of sentiments conveyed in submissions regarding the letter, factsheet and legislative proposal for commons. Without reference to any elements of the proposal in particular, submissions included the following high level sentiments, that:

- the revised proposal was a very good idea and would produce better outcomes
- it was frustrating to find the government pursuing its original intention
- the revised proposal seems to be an improvement on the previous White Paper proposals.

Details of submissions

Support for the proposal and repeal of the Act

The Department reviewed each submission to see if there was a clear indication of whether the stakeholder was in favour of the proposal or not. Support for versus opposition to the proposal is illustrated in *Figure 2a.* and *2b.* (below).

Figure 2a. Support and opposition for the proposal

(St Albans stakeholders aggregated)

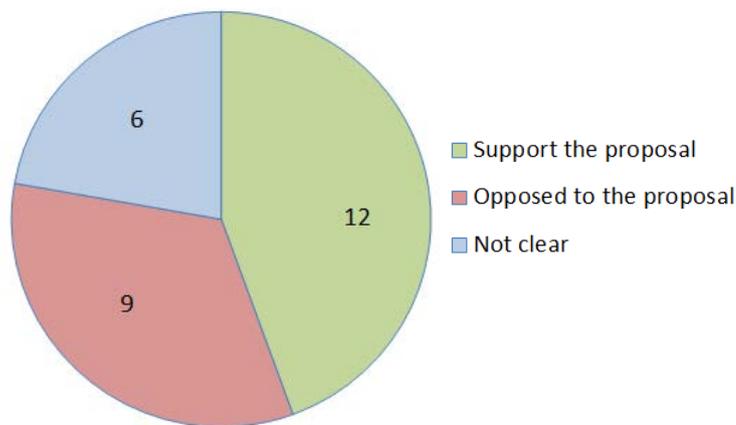


Figure 2b.

(St Albans stakeholders disaggregated)

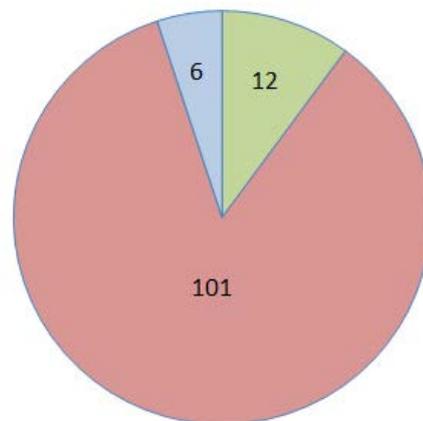
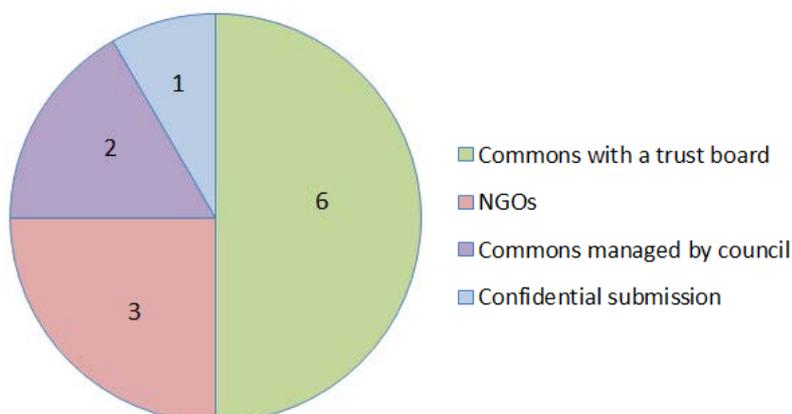


Figure 3. (below) looks at only those stakeholders who wrote in favour of the proposal. It shows that the largest group in support of the proposal was commons with a trust board. All non-government organisations (NGOs) who provided submissions were in support of the proposal. The two commons that were managed by councils were also in support of the proposal.

Figure 3. Support for the proposal



The following stakeholders were in favour of the proposal:

Coolah Common	Howlong Town Common	NSW Aboriginal Land Council
Coonamble Common	Torrington Common	Yetman Common
Local Government NSW	Whitton Common	Nature Conservation Council
Hill End and Tambaroora Common	Woomargama Common	Confidential submission

Figures 4a. and 4b. (below) look at only those stakeholders who wrote submissions opposing the proposal. It shows that the largest stakeholder group opposed to the proposal is the members of the public who support St Albans, followed by the St Albans commoners.

Figure 4a. Opposition to the proposal and repeal

(St Albans stakeholders aggregated)

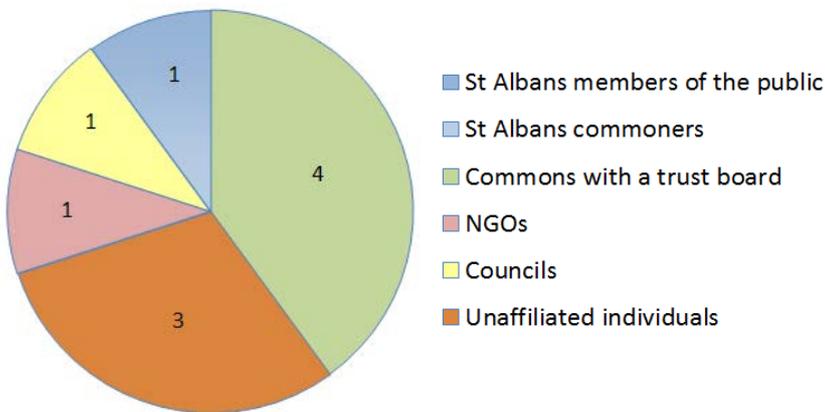
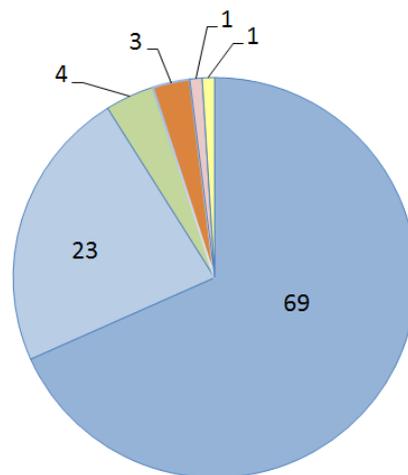


Figure 4b.

(St Albans stakeholders disaggregated)



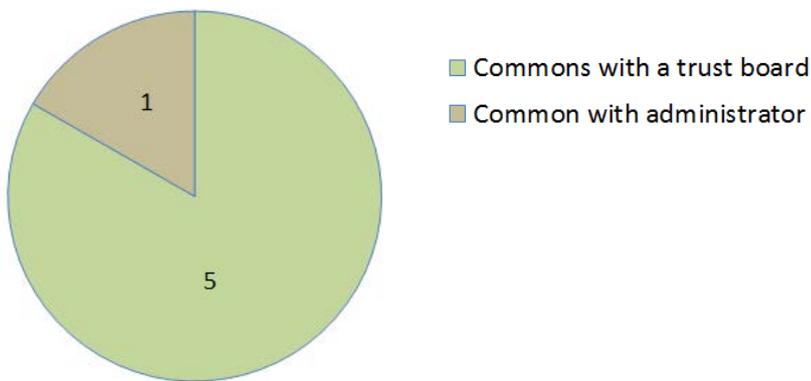
The stakeholders opposed to the proposal include:

St Albans Common	Environmentally Concerned Citizens of Orange	Hawkesbury City Council
Ulamambri Common	Bruce Baskerville*	Hall Greenland*
St Albans Commoners	St Albans members of the public	

* these individuals are included as 'unaffiliated individuals' in Figure 4a. and 4b., above.

A total of six respondents are categorized as 'Not clear'. This is because they did not explicitly state whether they were opposed or in favour of the proposal.

Figure 5. Submissions unclear on opposition or support for proposal and repeal



Acknowledged case for change

Numerous submissions acknowledged a case for change.

Figure 6a. Submissions that acknowledged the case for change

(St Albans stakeholders aggregated)

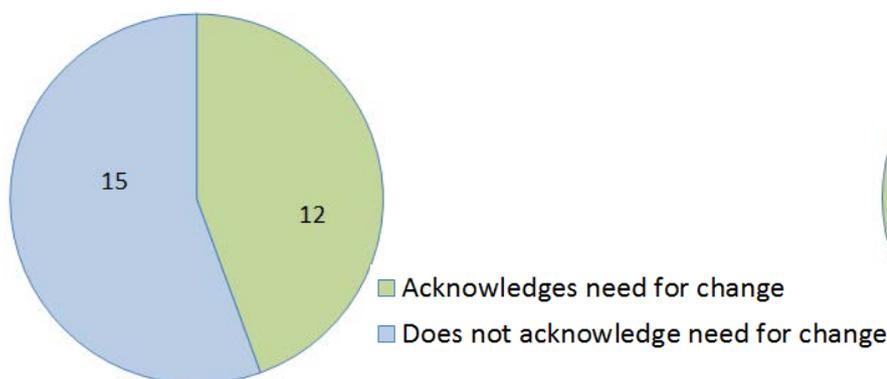
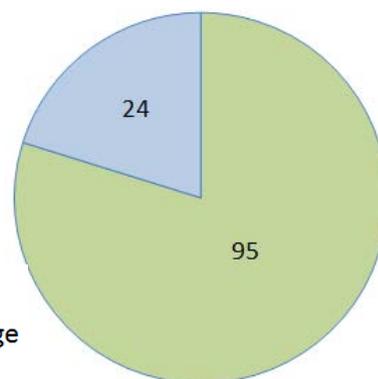


Figure 6b.

(St Albans stakeholders disaggregated)



The Nature Conservation Council (NCC), Local Government NSW (LGNSW) and NSW Aboriginal Land Council (NSWALC) all supported the proposal and acknowledged a case for change.

Responses to key questions

Few submissions directly referred to, or sought to answer, the questions posed in the letter sent out inviting submissions.

1. Does the proposal sufficiently recognise the significance of commons?

In those cases where this question was clearly answered, the majority of submissions agreed that the proposal sufficiently recognises the significance of commons.

One submission from a common trust saw the proposal as an ‘improvement on the previous White Paper proposals insofar as it retains the historical name of commons, and provides for usage as a common to be retained as one of the three possible purposes of the land’¹.

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- Key concept of the commoner, traditional uses of commons, traditional agistment rights of commoners should be retained.

Hill End and Tambaroora Common

- Overall in favour of the proposal.
- Imperative that the control of commons be held by local people.

Hillston Common

- Important that the current Plan of Management remains a usable document.

Howlong Town Common

- Proposal sufficiently recognizes the significance of commons.
- There is an ongoing role for common trusts.
- Proposal protects the values of commons.

Tenterfield Common

- In favour of proposal in that it sufficiently covers and recognizes the use of the lands and role of trusts.

Torrington Common

- Agree overall with proposal but have some concerns.
- Fear that control of the common could be taken over by unsuitable groups.

Ulamambri Common

- Not in favour of any changes.

Whitton Common

- Proposed changes seem to be a very good idea and could be workable.
- Challenge would be resolving potential disparate views about the competing objectives for the common as 'public' land as opposed to land being used by a small cohort with vested interests.
- Councils should be invited to freely take over the ownership and management of the land as public community council asset.

Womboota Common

- Would like to see a process or mechanism that ensures that representatives of traditional users can continue to have a role
- Existing management plan already addresses many of the multiple values of commons
- There should be strong safeguards to ensure the option for using the land as a common remains available to those who wish to continue traditional uses such as grazing.

Woodenbong Common

- In favour of the common being able to be used for other activities apart from grazing etc.

Woomargama Common

- Proposal supported by the trust and commoners.

Yetman Common

- Agrees proposal sufficiently recognizes the significance of commons.
- Generally in favour of the proposal.

Local Government NSW (Submitted one day after submission deadline)

- In favour of the proposal.

NCC

- Generally support the proposal and support improved management of Crown land.
- The proposed streamlined management should not facilitate any future alienation, sale or diminishment of the core values of commons.
- A robust assessment of the environmental values of commons should be undertaken.

NSWALC

- Welcomes the proposal, agrees that a new approach to commons is needed.
- Recommend the use and management (i.e. decision making) of commons are more open and accessible to the wider community.
- Believe common trusts should be required to consult with broader community, including members of the local Aboriginal community, when determining management plans.

What's next?

Issues for further consideration

The Department thanks everyone who has taken time to share views and provide submissions. The diversity of viewpoints provides valuable insight to inform the future management of commons in NSW.

The next step is to consider the management framework for commons going forward.

Some issues for further consideration include:

- Most stakeholders agree that local management is best.
- Many stakeholders are concerned that the Minister for Lands will not appoint local people.
- Many are concerned that if non-local people are appointed to the board, commons might not be managed effectively, or that they could facilitate unwelcome interests in future.
- Many stakeholders acknowledge a case for change regarding the way commons are managed.
- Many would like to see commons become more open and inclusive.
- There remains a strong difference of opinion between stakeholders that wish to preserve the status quo and stakeholders that would like to see greater inclusivity.

For information

If you would like more information about commons or to discuss this report, please contact the Department of Industry, Lands by email: community.engagement@crowland.nsw.gov.au or call us on 1300 886 235.

Appendix 1. Submission respondents

The total of 119 submissions were received. One of the respondents requested that their submission remained confidential and is not included in this list.

Submission respondent	Submission respondent
Alan Clarkson	Lyn Latella
Alice Nagy	Macdonald Valley Association
Alison Punton	Malcolm Davis, New South Wales
Amber Cerny	Aboriginal Land Council
Bev Atkinson	Mark & Jane Fulton
Bob Bolin, St Albans Common Trust	Mark and Catherine Watson
Bodil Conroy	Martin Liver
Bruce Baskerville	Maxwell Green
Campbell Kerr	Michael Stone
Carol Philpott	Michele Mitchell
Carol Gill, Ferry Artists Inc.	Michelle Ker
Carole Allen	Nick King, Environmentally Concerned
Carolyn Teo	Citizens of Orange
Catherine du Peloux Menagé	Nikki Wysman
Catherine Hamber	Nina Butler
Cerin Loane, Nature Conservation Council	Peter Bathurst Wyburd
Charles Pauka	Peter Hughes
Clare O'Loughlin	Peter Inman
Colin Rath & Carolyn Gregory	Peter Jessup
Colleen Navin	Peter Manning, Coolah Common Trust
Darren Butler	Petrice Beckett
David Rawlinson	Philippa Gemmell-Smith
David Shoebridge, Green MP	Pierre Stokx
Deborah Hill, Yetman Common Trust	Pieter Van Straalen
Edward Brooke	Raven Spirit
Elizabeth Ker	Ray McLaughlin, Howlong Town Common Trust
Emily Streckfuss	Robin Mitchell
Freya Masee, Womboota Common Trust	Reginald Spencer, Woodenbong Common Trust
Gill Jones	Rene Breuls
Glynn Jacobs, The Convict Trail Project	Rick Warren, Coonamble Common Trust
Guy Cox	Robin Woods, Hawkesbury Environmental
Hall Greenland	Network
Helen Carey	Rod Tuckwell
Helen Crotty, Tenterfield Common Trust	Ros Runciman
Ian Curtis	Ruth Green

Submission respondent

Ingrid Cullen
 Jacob Philpott
 Jan Hawkins
 Jane Bible
 Jane Gregory
 Jennifer Brand
 Joan Browning
 Joanna McNiven
 Joanne Jaworowski
 Jodie Cox
 John Micallef
 Jonathan Nolan
 Joshua Higgs, Hillston Common administrator
 Julie Adams, Woomargama Common Trust
 Kate Hughes
 Katy Brooke
 Keith Ker
 Keith Roser, Hill End & Tambaroora
 Common Trust
 Kelly Tyson, Whitton Common Trust
 Kirsten Schaefer, Emmaville Common Trust
 Larry Vincent
 Laurie Mifsud, Hawkesbury City Council
 Leanne Richards, Ulamambri Common Trust
 Lewis Adey
 Lindy Smith

Submission respondent

Rodney MacMahon, Adaminaby Common Trust
 Sahaj Dumbleton
 Sally Purcell
 Sam Durland
 St Albans Schools of Arts Hall Inc.
 Shane Gregory
 Shannon Levanos
 Shannon Toomey
 Sharon Hall
 Simone Butler
 Shelley Schreiner, Gundaroo Common Trust
 Sonya Manzalini
 Stephen Brown
 Sue Stelzer, Torrington Common Trust
 Suzie Cummins
 Suzie Startin
 Theresa Wagner
 Veerle Norbury
 Vera Zaccari
 Viki Winton , St Albans Weed-Wackers
 Warren Austron
 Wendy Mitchell
 William Hawkins
 Yvonne Fessler
 Yvonne Grimshaw
 Yvonne Hornsey, Corowa Common Trust

Appendix 2. Factsheet



COMPREHENSIVE REVIEW OF NSW CROWN LAND MANAGEMENT

Recognising and protecting the values of commons

JANUARY 2017

The NSW Government has passed the Crown Land Management Act 2016 to deliver modern, streamlined and transparent management of the state's vast Crown land. The Bill implements reforms identified in the white paper and comprehensive review of Crown land management. This fact sheet describes some of the issues and how the legislation addresses them.

The rich history of commons and commoners

Commons, which have their origins in medieval England, have been established in NSW since at least 1805. Commons are land in which a group of people, known as commoners, have traditional rights. In Australia commons were originally used by commoners for the purpose of small scale grazing and watering of livestock. The use of the common supplemented the small allotment holdings of ex-convicts living in or close to towns. After the 1850s, commons became regulated by elected boards of trustees, whose decisions were guided by regulations and rules.

The management of commons

Commons are currently regulated under the *Commons Management Act 1989* (the Commons Act). The Commons Act establishes a commons trust for each common, with most trusts managed by boards who are elected by commoners (although they can also be managed by local councils or administrators). The commons trust is responsible for the care, control and management of the common for which the trust is established on behalf of the commoners.

The ultimate control of commons is by the State, and, as with Crown land, the approval of the Minister for Lands is required for almost all dealings by commons trusts, including all leasing and sale. The Minister is also able to revoke a common, in which case the commons trust has no rights in the land and the land is treated as if it were ordinary Crown land.

The evolution of the common

Commons were traditionally established on the edge of small villages, with most of the residents entitled to use the commons. As these small villages have grown, the common has often become part of the village, with new residents often unaware of any rights to be entered into the roll of commoners.

This means that commons are often a key green space adjoining settlements. However, unlike ordinary Crown land reserves commons are held for the sole benefit of a particular group of people. The broader public does not have rights to benefit and use the common.

The use of many commons has also changed. Today, commons can and are used for multiple purposes, including commercial and recreation purposes. Some examples of contemporary uses include golf, marathons, equine endurance competitions, fishing, fire service training, camping, and conservation. Traditional uses such as grazing do still continue in many cases – but in practice, many commons could facilitate community uses in ways that would bring significant benefits to the communities in which they are located.



Recognising and protecting the values of commons

The need for a new approach – ensuring protections for commons and their values

The comprehensive review of NSW Crown Land Management that began in 2012 recognised that the traditional rationale for commons has changed.

The increasing level and diversification of uses of commons and their central location in communities means there is a much greater interest in the future management arrangements for commons. There is also a recognition that public land should provide benefits to the broader community rather than primarily to small groups of people. It is increasingly less appropriate for a small number of people to benefit from how the land is managed and used.

There is also a great diversity in how commons are being managed on a day to day basis. While some commons trusts function professionally and provide excellent management, in a number of cases commons trusts are less functional. In some cases, trust board members have died or vacated their positions and replacements have not been elected meaning that there is no-one managing the common. This has affected public confidence in the management of all commons.

The fact that commons are now often key green spaces in more urbanised communities means that commons often have very significant environmental values. The Commons Act does not contain any provision for the protection of these values. Similarly, commons often have significant cultural values – some contain important Aboriginal artefacts, while others contain heritage items from the early days of the colony.

There needs to be a regime to recognise and protect these values. These attributes are valued by the broader public, and there is a risk that they may not be protected or effectively managed, which is at odds with community expectations. For example, many commons are overgrazed and contain unauthorised structures, while others have inadequate fencing. The enforcement and compliance provisions contained in the Commons Act are not adequate to efficiently address these matters.

Modern and fit for purpose legislation that protects commons and their values

As described above, commons are now used for multiple purposes and have values that are important to the community of NSW. These values need to be protected within a legislative framework that recognises the history of commons. The legislative framework also seeks to ensure that commons remain in the control of local communities and that the expertise of existing commons trusts and trust board members is retained.

Proposed framework to deal with this issue

The proposed legislative framework maintains a number of the key characteristics of the current regime under the Commons Management Act, with some changes to recognise the multiple uses of commons and their value to all the people of NSW.

- The proposed legislation will ensure that current managers of commons trusts (including existing commons trust boards) continue to be responsible for the care, control and management of the common. This will be done by providing that the commons trust becomes the Crown land manager of the common. Crown land managers have the same responsibilities for land that they manage as trusts do under the Commons Act.
- The appointment of the commons trust as Crown land manager will allow for the retention of the name of the common – commons will be able to continue to be known as “ABC common” and the commons trust will be known as the “ABC common land manager.”
- Existing trust board members appointed under the Commons Act will continue as board members of the new Crown land manager entity. This will ensure that the expertise of existing commons managers continues to be available to guide the management of the common.

Recognising and protecting the values of commons



- The common will be Crown land that is reserved for three purposes – a common, community use, and protection of cultural and environmental values. This recognises the multiple values that commons now have and bring to the communities that have grown up around them. The Crown land manager will be responsible for ensuring all uses of the land and dealings with the land are consistent with these purposes.
- The Minister will have the power to put a notation on the certificate of title to all commons that the land has historically been used as a common [and continues to be reserved for use as a common, in addition to other reserve purposes], to ensure that the traditional use is recognised.
- Crown land commons will be able to access grants and funding under the Public Reserves Management Fund that is established under the new legislation. All Crown land managers are able to apply to the Public Reserves Management Fund for funds to invest in the maintenance and improvement of reserves.

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ⁱ Freya Masee, Secretary, Womboota Common Trust Board

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^{iv} Kelly Tyson, Manager Planning & Environment, Leeton Shire Council (Whitton Common)

^v Keith Roser, Secretary, Hill End and Tamboorara Common

^{vi} Freya Masee, Secretary, Womboota Common Trust Board

^{vii} Kate Hughes, non-active commoner of St Albans

^{viii} Freya Masee, Secretary, Womboota Common Trust Board