THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC/RIC/PLC/EPD:GUak1186758

10 August 2016

The Hon Paul Green MLC
Chair
NSW Legislative Council General Purpose Standing Committee No. 6
NSW Parliament
Macquarie Street
SYDNEY NSW 2000

By email: gpsc6@parliament.nsw.gov.au

Dear Mr Green,

Inquiry into Crown Land

Thank you for the opportunity to provide comments to the NSW Legislative Council Inquiry into Crown Land ("Inquiry").

The Law Society of NSW notes that the NSW Government has recently undertaken a review of Crown Land ("Crown Land Management Review"), which examined how to improve the management of existing Crown land assets.[1] During this review process, NSW Trade and Investment (now the NSW Department of Industry) invited comments from stakeholders on the proposed changes to the Crown lands legislation through a White Paper released in early 2014.[2]

The Law Society provided a submission to the White Paper, which is equally relevant to the Terms of Reference of this Inquiry. [3] A copy of this submission is attached.

The Law Society submission noted that Crown lands should be held and used for the benefit of the people of NSW. The submission also emphasised that Crown lands can be subject to other legislative rights and interests such as those arising or recognised under the *Native Title Act* (1993) (Cth), the *Aboriginal Land Rights Act 1979* (NSW) ("ALRA") and the *Environmental Planning and Assessment Act 1979* (NSW) ("EPAA"), and that any proposal to rationalise and consolidate Crown land legislation must take account of these wider interests.[4]

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[1] NSW Government, *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response* (October 2015), 2.
[2] NSW Government, *Crown Lands Legislation White Paper* (February 2014) <http://www.crownland.nsw.gov.au/__data/assets/pdf_file/0011/652493/Crown_Lands_White_paper_accessible.pdf>.
[3] Law Society of NSW, *Submission to the Crown Lands Legislation White Paper*, (June 2014).
[4] Law Society of NSW, *Submission to the Crown Lands Legislation White Paper*, (June 2014),1.

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The Law Society submitted to the White Paper that all lands of the Crown should be treated as "Crown land" as defined in the *Crown Lands Act 1989* (NSW) ("CLA") and that title should remain with the State of NSW.[5] The Law Society has consistently stated that there should be no amendments which undermine the land that is available to claim under the ALRA.

Although the White Paper asserted that changes to the ALRA and the land claims regime were outside the scope of the Crown Land Management Review, the Law Society remained concerned that the NSW Government's proposed changes to the CLA will, in any case, impact on the ability to make land claims under the ALRA.

Since the Law Society's submission to the White Paper, we have had the benefit of reviewing the *NSW Government Response to Crown Lands Legislation White Paper* ("NSW Government Response").[6] The NSW Government Response clearly contemplates the transfer of title of Crown land to local councils.[7] The Law Society submits that the proposed transfer of title of Crown land to local councils directly impacts on the ability to make Aboriginal land claims as it is only land vested in Her Majesty that is available for claim under the ALRA.[8] Land vested in a local government body would not be claimable.

Parliament's intention, in enacting the ALRA, was that surplus Crown land could be transferred to local Aboriginal Land Councils in order to further the objects of the ALRA.[9] The Law Society reiterates its position that any legislative amendments to the CLA should not undermine the current availability of land that can be claimed under the ALRA.

The Law Society makes further comments below, in response to the specific terms of reference for this Inquiry, in light of our review of the NSW Government Response.

1. The extent of Crown land and the benefits of active use and management of that land to New South Wales

We note that a stocktake of Crown land is underway to define and review the current state of Crown land.[10] This is an important step in the review process given that Crown land covers approximately 42 per cent of land in NSW.

We note that there is community concern over the perceived conflict between the commercial use of Crown lands and other factors in determining how to use and conserve them. The NSW Legislative Council General Purpose Standing Committee ("Committee") Chair's media release of 27 June 2016 states:

> In recent years the NSW Government has foreshadowed wide-ranging reforms to the management of Crown land, including new proposed legislation. These proposals have been met with resistance by some communities as they consider Crown land to be under pressure from privatisation and private development.[11]

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[5] Law Society of NSW, *Submission to the Crown Lands Legislation White Paper*, (June 2014), 3.
[6] NSW Government, *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response* (October 2015).
[7] NSW Government, *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response* (October 2015), 7, 16 and 21.
[8] See Section 36(1) ALRA.
[9] Sections 3 and 36 ALRA, and New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 March 1983, 5088-5089.
[10] NSW Government, Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response (October 2015), 6,7,17 and 23.
[11] NSW Legislative Council General Purpose Standing Committee, 'Have your say on the use and management of Crown land in NSW' (Media Release, 27 June 2016).

The framing of the first question for the Committee's deliberations appears to recommend "active use and management", which has raised concerns for some stakeholders as implying support for private development and the greater use of Crown lands.

In this context, the Law Society reiterates its concerns that if the effective management and protection of Crown land is to be continued, then the objects section in any new legislation should retain the emphasis placed on environmental protection. Specifically, the environmental protection and sustainability provisions contained in s 11 CLA should be retained in any new legislation. Section 11 of the CLA sets out wide ranging objectives:

> 11 Principles of Crown land management
>
> For the purposes of this Act, the principles of Crown land management are:
>
> (a) that environmental protection principles be observed in relation to the management and administration of Crown land,
> (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,
> (c) that public use and enjoyment of appropriate Crown land be encouraged,
> (d) that, where appropriate, multiple use of Crown land be encouraged,
> (e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and
> (f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

We welcome the Government's proposed expansion of the objects of the CLA to provide for Aboriginal use and co-management of Crown reserves.[12] However, the Law Society considers that the objects should also specifically include the need to mandate ecologically sustainable development as a key factor. In so doing, the Law Society would support the incorporation of the definition of "ecologically sustainable development" contained in the EPAA.

We suggest that if this definition is adopted as a guiding principle in any new legislation, much community concern about future proposed uses of Crown land under any new legislation will be assuaged.

3. Effective measures for protecting Crown land to ensure it is preserved and enhanced for future generations

Many of the concerns raised in the Law Society's submission to the White Paper related to the future management of Crown land and the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations. The Law Society reiterates these comments and makes the following additional comments following our review of the NSW Government Response.

3.1. Increased role for Local Councils

It is clear from the NSW Government Response that the Government will seek to transfer more of the day-to-day management of Crown lands to local councils. Subject to the concerns outlined below, the Law Society does not oppose the transfer of management of Crown land to local councils. Rather, the Law Society is opposed to the transfer of title of Crown land, which would undermine the current availability of land that can be claimed under the ALRA.

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[12] NSW Government, *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response* (October 2015), 6.

A key concept appears to be whether a particular Crown land reserve is of State or local significance. The Law Society is concerned about the criteria that would be applied to determine whether a particular parcel is State significant or of local significance. It is also not difficult to envisage that many parcels will have both State and local significance. In such cases management ought to be retained by the State. There is a danger that the local tangible economic utility of the land may be given much higher priority over less tangible benefits, such as environmental, heritage or cultural value.

Related to this question of division between State and local significance is the precise manner in which a particular parcel of Crown land may be transferred to local government for management. The NSW Government Response states that a particular parcel will not be handed over to local councils for management if the local council does not wish this to occur.[13] The manner in which this issue will be dealt with has not been clearly set out.

The Law Society is concerned that, with the realignment of management to local councils, lower value parcels of less community value may not be adequately managed. It appears that, if a local council does not wish to take on the management of a certain parcel, the NSW Government will retain the management of the parcel. Provision needs to be made to ensure that appropriate State management (including funding) is available for parcels which are assessed as not being State significant and which do not end up under the control of local government.

The Law Society notes that a pilot scheme was conducted with Corowa Shire, Tamworth Regional, Tweed Shire and Warringah Shire Councils in 2015. We understand that a report was provided to Government and we would encourage this Inquiry to review that Report, if it is available.

Subject to the matters noted above, local council management of Crown lands could potentially provide an opportunity to address community concerns about future Crown land use. The emphasis on management plans for Crown land, which are overseen or supervised by local councils, can enhance community consultation if combined with provisions in the *Local Government Act 1993* ("LG Act") to allow for the appropriate supervision of Crown lands.

Crown land under the proposed new Act could be managed utilising the existing regime for the use, management and planning for community land under the LG Act. The LG Act's requirements for public consultation and community input are exhaustive and have been in place for almost a quarter of a century, and are therefore well understood by councils and the community. Proposals for development, including change of use, require final Ministerial oversight of decisions, and there is the ability to limit transfers, leases and licences for such land. Division 2 of Part 2 of Chapter 6 of the LG Act contains thorough and robust provisions for the administration of community land with regard to threatened habitat, Indigenous cultural recognition, biodiversity and ecological sustainability.

If the Government proceeds with the proposals in the White Paper, legislative provisions to the effect that Crown land can be automatically classed as community land for the purposes of the LG Act will allow access to the existing regime for management purposes. However, the title of the land should not be subject to transfer.

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[13] NSW Government, Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response (October 2015), 16.

The Law Society notes the concerns expressed in many community submissions in response to the White Paper, that the transfer of responsibility for Crown lands to local government should not be a *de facto* attempt to force Crown lands to be made into profit centres.

Wherever the State transfers responsibility for Crown lands to councils, the plans of management proposed should identify costs. Where these are not currently met, or cannot be met in the short term by the councils themselves, the State should ensure that the councils are financed to the extent necessary to keep plans of management in place.

3.2. Impact of Local Council amalgamations

A further issue that has arisen since the Law Society's submission to the White Paper is how the amalgamation of some local councils will impact upon this proposal. For example, with the degree of flux and uncertainty that currently exists in some local councils due to possible amalgamation, it may be difficult to simultaneously give these councils significant new responsibilities for Crown land parcels in their area.

Another possible impact of council amalgamations is that a larger and more centralised council (particularly in outlying rural areas) may be less aware of the historical community use and the local community's financial contribution to the improvements built upon Crown lands. One of the advantages of increased management responsibility for local councils is the ability to obtain local community input into the ongoing management of the land. With the formation of larger amalgamated councils it will be important to ensure that this benefit is not lost and replaced with a more commercial and perhaps even arbitrary approach, due to insufficient local knowledge.

3.3. Public Reserves Management Fund

It appears that the Government is likely to retain the Public Reserves Management Fund ("PRMF") as part of the future management and funding of Crown lands.[14] However, if the PRMF is given a greater role to play in the management of Crown lands by local councils, the sustainability and source of funds for the PRMF must be closely examined. If the PRMF is given a greater role to play in the funding of Crown land management, without a corresponding increase in funds received by the PRMF, this will not be an effective measure for protecting Crown land.

3.4. Racecourses

The Law Society understands that the Government is considering a proposal for Racing NSW to be a Crown land manager or even the outright owner of Crown land racecourses.[15] The Law Society has concerns about both of these proposals, given the wide use of these lands for activities other than as racecourses, such as local fairs and other community activities. The Law Society is concerned that Racing NSW may give too much focus to racecourse activities and, where these become unsustainable, it may make the lands unavailable for other community uses.

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[14] NSW Government, Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response (October 2015), 9.

[15] NSW Government, *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response* (October 2015), 10.

3.5 Western Lands Leases and Travelling Stock Reserves

Although not specifically raised by the terms of reference, the Government's proposal to convert Western lands leases to freehold was a matter that the Law Society made detailed comments on in its submission, as attached. In terms of the most appropriate and effective measures for protecting Western land leases, a subset of Crown land, we draw your attention to the comments made on pages 11, 12 and 13 of the attached submission.

In relation to travelling stock reserves, we note that some separate work is on foot.[16] In the Law Society's view, travelling stock reserves should not be broken up and their management should continue to be the responsibility of Local Land Services.

3.6. Administration

The Law Society reiterates the broad concern raised above, and in its earlier submission, that a greater role for local councils can only proceed if local councils are sufficiently resourced, both in relation to funds and trained personnel, to take on this extra responsibility. The Law Society is concerned that those councils likely to bear the heaviest burden under any proposals to transfer management responsibility, may have the least resources to enable them to do so. We note that the current scheme for rebates, waivers and concessions is likely to continue and suggest that streamlining these processes may be possible. This should be considered further to improve community usage of land.

It is critical for the ongoing future of the management of Crown lands that the various bodies charged with management are adequately staffed. In our members' experience, staffing levels are already quite low and the delay in having routine matters dealt with, is quite long.

3.7 Register of Crown Land

The Law Society notes that the Government proposes to develop a publicly accessible register of Crown land.[17] Any proposal for such a register must balance the need for concise classification of Crown lands, with the rights of holders of licenses and enclosure permits over that land. Additionally, a register will only serve its purpose if it is sufficiently resourced and well managed, both in terms of being adequately resourced and having sufficient trained staff to appropriately maintain the register and educate the public about its existence.

4. The extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land

Please see the comments made on pages 1 and 2 of this submission.

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[16] NSW Government, Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response (October 2015), 18.

[17] NSW Government, Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response (October 2015), 20.

Thank you for the opportunity to provide comments. Any questions can be directed to Anastasia Krivenkova, Principal Policy Lawyer, on 02 9926 0354 or by email at anastasia.krivenkova@lawsociety.com.au.

Yours sincerely,

Gary Ulman
President

THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: REvk:872587/873843

23 June 2014

Ms Alison Stone
Executive General Manager
c/ Crown Lands Management Review
NSW Trade & Investment
PO Box 2185
DANGAR NSW 2309

By email: Crownlands.whitepaper@trade.nsw.gov.au

Dear Ms Stone,

Crown Lands Legislation – White Paper

Thank you for your letter of 28 March 2014 inviting comments from the Law Society of NSW.

I write to you on behalf of the Property Law Committee ("PLC"), Indigenous Issues Committee ("IIC"), Rural Issues Committee ("RIC") and Environmental, Planning and Development Committee ("EPDC") of the Law Society of New South Wales (together referred to as the "Committees") in relation to the *Crown Lands Legislation – White Paper* (the "White Paper").

The PLC represents the Society in relation to property law and conveyancing practice in NSW. The IIC represents the Society on Indigenous issues as they relate to the legal needs of people in NSW. The RIC represents the Law Society on rural issues, as they relate to the legal needs of people in rural and remote NSW. The EPDC represents the Society on environmental and planning law matters. The Committees include experts drawn from the ranks of the Law Society's membership.

As a starting point, the Committees agree that Crown lands should be held and used "for the benefit of the people of NSW" (White Paper p 5). The Committees note also that Crown lands can be subject to other legislative rights and interests such as those arising under the *Native Title Act 1993* (Cth), the *Aboriginal Land Rights Act 1983* (NSW) or the *Environmental Planning and Assessment Act 1979* (NSW). Any proposal to rationalise and consolidate Crown land legislation must take account of these wider interests.

The Committees agree also that there is a need for rationalisation of Crown lands legislation, and that the management of Crown land could be improved. However, the Committees have some concerns about the proposals set out in the White Paper. These concerns are set out in the attached submissions. The IIC's comments are set out in Attachment A, and the comments of the PLC and RIC are set out in Attachment B.

The EPDC supports the attached submissions. It considers that if the effective management and protection of Crown land is to be continued that the objects section in any new legislation should retain the emphasis placed on environmental protection. It notes that the objects section of the current legislation has a much broader approach to environmental protections than the objects proposed in the current paper. The EPDC considers that the environmental protection and sustainability provisions contained in s 11 of the *Crown Lands Act 1989* should be retained in any new legislation. The EPDC also notes the broader reference to "ecologically sustainable development" contained in the *Environmental Planning and Assessment Act 1979* (NSW) for consideration.

Thank you once again for the opportunity to comment. If your office has any questions, please contact Gabrielle Lea, policy lawyer for the PLC, or 9926 0375 or gabrielle.lea@lawsociety.com.au.

Yours sincerely,

Ros Everett
President

ATTACHMENT A

Submission of the Indigenous Issues Committee ("IIC")

1. General Observations

As the White Paper notes, there is currently a range of legislation relating to Crown lands. The last significant consolidation of Crown lands legislation was the *Crown Lands Act 1989* (NSW) ("CLA"). Since its enactment, this legislation has itself been amended numerous times and not always in a coherent way. The IIC agrees that rationalisation of the Crown lands legislation is long overdue.

A particularly significant event that occurred since the enactment of the CLA is the confirmation that the common law recognises the traditional rights and interests in relation to land in *Mabo v State of Queensland (No 2)* (1992) 175 CLR 1 ("*Mabo (No 2)*"). The CLA was enacted at a time when Aboriginal rights and interests were ignored on the basis of now discredited concepts that the State was *terra nullius.* The rejection of those concepts and the recognition of native title in *Mabo (No 2)* necessitates a reconsideration of the nature of Crown lands and how they are managed. It requires that Crown lands legislation be managed in a way that respects Aboriginal interests in Crown land and involves Aboriginal people in the management of Crown land.

Crown lands are not the waste lands of the Crown to be managed and disposed of without regard to Aboriginal interests. Where native title rights and interests in Crown lands exist and those rights are not extinguished, they are lands in which Aboriginal people have pre-existing proprietary rights.

The IIC is also of the view that Crown lands must be managed consistently with, and in a way that facilitates and furthers, the objects and purposes of the *Aboriginal Land Rights Act 1983* (NSW) ("ALRA").

The ALRA is remedial and beneficial legislation designed to address past dispossession of, and injustice to, Aboriginal people.[1] It was enacted to recognise that in many parts of NSW, Aboriginal people were dispossessed of their land without compensation; which in turn has caused much of the contemporary social, economic and health problems that greatly disempower Aboriginal people. The Report of the Select Committee on Aborigines which led to the enactment of the ALRA noted that:

> The loss of Aboriginal land has precipitated the breakdown of traditional Aboriginal social organizations and has been the root cause of the present acute problems in the areas of housing, health and education, forcing Aboriginal people to become a grossly disadvantaged minority group whilst white Australians have prospered on the lands they occupied.
>
> The implementation of social welfare solutions has not only failed to compensate the Aboriginal people for their loss, but has failed to alleviate their appalling social and material conditions. Indeed, in so far as the dispossession of land can be seen as fundamental to the present position of Aboriginal socio-economic deprivation, the provision of specific adequate compensation in company with land rights, should be seen as fundamental to the alleviation of those conditions.[2]

[1] *Minister for Natural Resources v NSW Aboriginal Land Council* (1987) 9 NSWLR 154 per Kirby P at 157; *Gandangara Local Aboriginal Land Council v Minister Administering the Crown Lands Act* [2011] NSWLEC 95 per Pain J at [6].

[2] Select Committee upon Aborigines, Parliament of New South Wales, M F Keane, *First Report from the Select Committee of the Legislative Assembly upon Aborigines: Report and Minutes of Proceedings* (1980), [4.20]-[4.21], p.66.

In the second reading speech for the ALRA, the Minister for Aboriginal Affairs, Frank Walker explained:

> ...[the] Government has made a clear, unequivocal decision that land rights for Aborigines is the most fundamental initiative to be taken for the regeneration of Aboriginal culture and dignity, and at the same time it lays the basis for a self-reliant and more secure economic future for our continent's Aboriginal custodians...[3]

He further stated that:

> [i]n this sense land rights has a dual purpose -- cultural and economic. Some lands, with traditional significance to Aborigines, will retain a cultural and a spiritual significance. Other lands will be developed as commercial ventures designed to improve living standards.[4]

As the ALRA is a compensatory scheme in recognition of Aboriginal dispossession, it includes the establishment of a system of Aboriginal land councils and an ability to claim a limited class of Crown land. As noted in *NSW Aboriginal Land Council v Minister Administering the Crown Lands Act* (2007) 157 LGERA 18 per Mason P (with whom Tobias JA agreed) at [20], the land claim process is the "primary mechanism" for giving effect to the purposes set out in s 3 of the ALRA. Section 36 of the ALRA defines "claimable Crown land" as lands that are vested in Her Majesty, that when claims are made, are reserved or are able to be lawfully sold or leased under the CLA; are not lawfully used and occupied; are not in the opinion of a Crown Lands Minister needed or likely to be needed as residential land; and, are not needed or likely to be needed for an essential public purpose. Lands that fall within the definition of "claimable Crown land" are required to be transferred to the claimant Aboriginal land council.

In spite of s 36 of the ALRA, only a modest amount of land has been transferred. Furthermore, in recent years rather than view the transfer of land under the ALRA as a beneficial outcome, the State has sought to refuse Aboriginal claims despite the land being surplus and in the process of being sold.[5] In the IIC's view, this has undermined the purpose and objectives of the legislation.

The IIC is of the view that it is imperative that amendments to the Crown lands legislation do not undermine the ALRA by reducing the lands available for claim under the ALRA.

2. Objectives of Crown Lands Management

The White Paper proposes a number of new objectives for new Crown lands legislation. The objectives include "To preserve cultural heritage (Aboriginal and non-Aboriginal) on Crown land" and "To encourage Aboriginal use, and where appropriate co-management, of Crown land."[6] These proposed objectives are not in the current Crown lands legislation and the IIC notes that the inclusion of the proposed objectives is an improvement. However, while these objectives have been identified, the White Paper does not elaborate on how they are to be implemented. In the IIC's view, there should be specific measures to implement these.

Further, to the extent that the White Paper proposes management of Crown land under the *Local Government Act 1993* (NSW) ("LG Act"), the objective to encourage Aboriginal use and

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[3] Hansard, Legislative Assembly, 24 March 1983, p.5088.
[4] Hansard, Legislative Assembly, 24 March 1983, p 5089.
[5] See for example Behrendt, J, "Some Emerging Issues in relation to Claims to Land under the Aboriginal Land Rights Act 1983 (NSW)" (2011) 34(3) *UNSW Law Journal* 811 at pp.824-825. See also for example *Minister Administering the Crown Lands Act v NSW Aboriginal Land Council* (2008) 237 CLR 285 (*Wagga HCt*) and *Minister Administering The Crown Lands Act v La Perouse Local Aboriginal Land Council* (2012) 193 LGERA 276.
[6] *Crown Lands Legislation – White Paper*, 2014, p.10

appropriate co-management of Crown land is potentially undermined because there is currently no equivalent objective for the management of land in the LG Act.

3. Sale of Crown Land

The White Paper states:

> The new legislation will retain existing provisions for the sale or other disposal of Crown land where it is in the public interest, including more transparent and streamlined requirements for notification and advertising of proposed sales, leases and other disposals.[7]

While the IIC supports the avoidance of duplicated procedures, it is important that there are appropriate public notifications **prior** to making land available for a sale. This would ensure that the public has an opportunity to make representations as to whether a sale should proceed. Further, where land is surplus Crown land, the procedures should provide that land is not made available for sale without regard to the need to make land available for the objects and purposes of the ALRA. One option could be a specific procedure that requires that the New South Wales Aboriginal Land Council ("NSWALC") and the relevant Local Aboriginal Land Council are notified prior to land being made available for sale so that the potential for claimable land can be considered.

4. Title to Land

The White Paper notes that land is held in a variety of ways including Crown land vested in Her Majesty with the "State of New South Wales" recorded on the land title; dedicated land held by trustees including councils; land in the name of the Minister; and, land held in the name of another Minister or public authority and dealt with as if it were Crown land.[8]

The White Paper then states:

> The aim is to bring all land to be managed under the new legislation into a single, simplified framework. The new legislation will rationalise the options for land ownership and provide that the management arrangements for Crown reserves will be the same regardless of the type of ownership.

No other details of what is intended are described in the White Paper, nor are there any details provided in relation to the intention of the these proposed arrangements. The IIC is of the view that, if there is a need for consistency then all lands of the Crown should be treated as "Crown land" as defined in the CLA. Pursuant to s 13H of the *Real Property Act* 1900 (NSW) the "State of New South Wales" should be recorded as the registered proprietor.

As previously stated, the IIC is of the view that there should be no amendments which undermine the land which is available to claim under the ALRA.

The IIC notes that the *Crown Lands Management Review* (the "Review") and the *Crown Lands Management Review Summary and Government Response* (the "Government Response") clearly contemplated that ownership of the lands managed by council will be vested in the councils themselves. The White Paper does not however expressly propose such a measure. The IIC agrees with that approach. The IIC does not believe that Crown land should be vested in local government bodies. Not only would it be impractical, and give rise to compensation liabilities where native title rights and interests are affected, it would also undermine the claim process under the ALRA.

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[7] White Paper, p.12
[8] White Paper, p.17.

5. Claims Settlement and Joint Management Options

The IIC understands that there are currently approximately 25,811 outstanding land claims under the ALRA. There are also numerous areas the subject of undetermined claims under the *Native Title Act 1993* (Cth). Both schemes, to a certain extent, lend themselves to negotiated outcomes.

In the IIC's view, the White Paper is deficient, to the extent that it does not appear to have considered how amendments to Crown lands legislation could facilitate the resolution of these outstanding claims. In order to facilitate the settlement of the various claims, the IIC is of the view that the Crown lands legislation must provide the Minister with sufficient flexibility by which Crown land that is part of the settlement of a native title claim or claim under the ALRA can be dealt with.

Further, it is now the case that Aboriginal people have a direct interest in Crown land, either because of undetermined land claims or native title claims, or determined native title claims where native title rights and interests are found to exist on the land concerned. In some cases Aboriginal land councils may own adjoining land and may be interested in jointly managing the land with the Crown under a joint management agreement.

For example in *Darkinjung Local Aboriginal Land Council v Minister Administering the Crown Lands Act*[9] there was an Aboriginal land claim over Crown land at Kincumber Mountain which adjoined Crown land that was reserved for recreation. The claim was settled on the basis that the land would vest in the Local Aboriginal Land Council but that the land would be managed under a joint management arrangement with the local government body. There may be many other instances where land claims can be resolved in this way.

In other instances, a public use or need for claimed lands may have arisen after the date of claim. The IIC notes that although the land is "claimable Crown land" and is required to be transferred to the claimant Aboriginal land council, that Aboriginal land council may be interested in a land swap so that the public use of the claimed land can proceed. The Crown lands legislation should ensure that the Minister has the power to transfer the land on that basis when appropriate.

Finally, in the area of native title, the State may be interested in determining native title interests in a particular region by settling those proceedings in conjunction with an Indigenous Land Use Agreement.[10] Where comprehensive settlements are proposed, the Minister needs to have the capacity to take action to either effect land transfers, or implement joint management arrangements and the Crown lands legislation should ensure that such powers are available.

6. Other Observations

The IIC makes the following additional observations in relation to matters raised in the White Paper:

(1) Use of Crown land without permission

The IIC does not support giving the Minister a power to issue a licence for the use of Crown land where the user of that land has not applied for one as this would empower

[9] No 30293 of 2010, NSWLEC, 9 Nov 2012, Moore AJ & Cmnr McAvoy

[10] One case where this occurred was *Trevor Close on behalf of the Githabul People v Minister for Lands* [2007] FCA 1847. That case notes that the settlement was complemented by an Indigenous Land Use Agreement signed on 15 August 2007.

the Minister to make an unlawful activity on Crown land lawful. The exercise of such a power would have the effect of turning potentially "claimable Crown land" under the ALRA into land which is not "claimable Crown land", which would further undermine the objects and purpose of the ALRA.

(2) Travelling stock reserves

The IIC notes that the White Paper is silent on the intention to review the travelling stock reserves ("TSR") network as recommended in the Review and supported in the Government Response. The IIC confirms the finding in the Review that many TSRs have significant Aboriginal cultural heritage values, and supports the recommendation in the Review that the assessment criteria for the proposed review of the TSR network includes input from Aboriginal land councils.

ATTACHMENT B

Submission of the Property Law Committee ("PLC") and Rural Issues Committee ("RIC"), referred to collectively as "the Committees" in this Attachment

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Section 3. An overview of the proposed legislation

1. How would developing one new piece of legislation to manage the Crown land estate benefit the community?

The Committees are of the view that there would be clear benefits if one new piece of legislation to manage the Crown land estate were to be developed. The development of a single statute would provide certainty and simplicity in the management of the Crown land estate and would also provide the benefits of reference, administration and compliance both for the wider public and legal practitioners.

2. Are the objects and provisions proposed for the new legislation appropriate to support Crown land management in the 21st Century?

The Committees agree that the objects and provisions proposed are broadly appropriate. However, the PLC cautions that in respect to objects "e" and "f" on page 11 of the White Paper, care will need to be given to the approach to the disposal of Crown land "for the benefit of the people of NSW" and "best use in the public interest".

Section 4. Improved management arrangements for Crown reserves

3. Do you have any comments on the proposal to allow local councils to manage Crown land under local government legislation rather than under the Crown Lands Act?

The PLC suggests that if local councils are to manage Crown land under local government legislation rather than under the *Crown Lands Act 1989* ("CLA"), sufficient safeguards will need to be put in place to ensure that a robust scheme of Crown land management continues. In particular, the fact that the land will be locally managed should not affect the wider objects and nature of management. For example, when considering the best use of the land, decisions must be made with regard to the interests of the people of NSW, not just the ratepayers in the particular local area.

The PLC notes that if management is to occur through local councils, practical matters such as adequate resources and training will need to be addressed in order for the proposal to be workable. Consideration will also need to be given as to whether the local council will be required to keep separate accounting records for the Crown land it manages, rather than including it as simply another local council asset.

The RIC notes that often Crown reserves have substantial assets which have been paid for by the local community, such as racecourses and showgrounds.

The RIC supports greater involvement of the local community in the use and enjoyment of Crown reserves and also supports any measures that provide the local community with simplicity, certainty and predictability in the management of Crown reserves.

4. What are your views about the proposed new management structure for Crown reserves?

The PLC notes that the concept of a reserve trust was introduced as a mechanism to provide some protection from liability for individuals administering Crown reserves. The proposal to move to a two tier structure, which includes the possibility of an incorporated Crown reserve manager, would appear to address the original concerns regarding liability and remove the need for the current three tiered approach.

The RIC suggests that any new management structure should provide for simplicity, certainty and predictability in the management of Crown reserves.

5. Do you have any further suggestions to improve the governance standards for Crown reserves?

The PLC notes that the "plan of management" regime under the *Local Government Act 1993* (NSW) ("LG Act") may need bolstering to address the specific needs and sensitivities of Crown land, and to foster the necessary principles of stewardship which underpin the management of Crown land.

The PLC suggests that strong governance standards will be assisted by clear legislative direction in relation to common questions of land management, such as maintenance of the land and how maintenance is to be funded.

Section 5. Other streamlining measures

6. Are there any additional activities that should be considered as 'low impact' activities in order to streamline landowner's consent?

The PLC notes that that one advantage of the current assessment system is that it enables the Crown Lands Division to identify in advance low impact activities that would be appropriate to be carried out on a particular parcel of Crown land, enabling speedy grant of owner's consent for a development application for such activity. Inclusion of Crown reserves in a local council's community land remit, including the obligation to prepare and keep current a plan of management, would likewise enable the advance identification of low impact activities appropriate for each reserve.

The PLC notes that to the extent that this question is intended to focus on owner's consent being granted by the Minister, where another body (such as a council) has not been vested with responsibility for the relevant Crown land (for example, tidal waterways such as Sydney Harbour and its tributaries) the maintenance of a plan of management analogous to that applying to community land, or an assessment made under the CLA, would assist in streamlining consideration of applications for consent.

The PLC notes that bearing in mind the widely varying range of Crown land and the myriad environmental and other factors applying to them, it is difficult to suggest a "one size fits all" list of low impact activities.

The RIC is of the view that there are no additional activities that should be considered as 'low impact' activities in order to streamline landowners' consent.

7. Are there any other ways to streamline arrangements between the State and local governments?

The PLC is of the view that any devolution to local government of day-to-day responsibility for Crown lands must not diminish the long term stewardship responsibilities the State government owes to the people of NSW for the maintenance and appropriate use of the whole of the Crown estate, particularly Crown reserves.

The PLC notes that to the extent that the management of Crown reserves is:

a) to be covered by a local planning instrument; and
b) in the case of Crown reserves, handed over to local government to be administered as community land under the LG Act (pursuant to a plan of management applying to that community land),

it is essential that appropriate requirements are built into both local planning instruments and community land plans of management under the LG Act. These requirements should address both the particular environmental characteristics and sensitivities of the Crown land in the local government area, and the long term stewardship responsibilities of the local council vested with responsibility for that Crown land.

The PLC stresses that the State government must retain an appropriate level of control over and involvement in the framing and implementation of local planning instruments and community land plans of management dealing with Crown land.

8. In addition to the suggestions provided, are there any other ways to ensure that the public is notified of the proposed use or disposal of Crown land – and their views taken into account – that would be appropriate to include in the new legislation?

The PLC notes that the White Paper makes reference to an online portal where the public can "find out" about proposals. Such a portal must not take the place of adequate publicity and community consultation about proposals. It must also not be assumed that interested persons will always have reliable internet access. This may be particularly the case in remote rural areas or indigenous communities.

The PLC is of the view that as Crown reserves are held on behalf of the whole of the people of NSW (not solely the ratepayers and residents of a particular local government area), input from the community should not be limited to the strategic planning phase (such as the framing of planning instruments or plans of management).

The PLC suggests that where significant construction on Crown reserves, proposed changes in use, the proposed grant of exclusive or near-exclusive use by lease, licence or otherwise or the disposal of Crown land is being considered appropriate rights for the public to be notified and to provide comments or objections should be included in any new legislative framework. Public hearings to discuss any changes to Crown reserves should also be provided for in the new legislation.

In relation to the disposal of Crown land, the RIC notes that many Crown leases and licences are over lands in remote areas or in close proximity to rural villages. In a number of instances, members of the RIC has observed that long term holders of licences granted pursuant to s 45 of the CLA have been denied the right to purchase Crown land on the basis that the sale will provide no financial benefit to the Crown. When implementing simplified land ownership options, consideration should be given to the Crown divesting itself of those

smaller parcels of land subject to a licence, where there is no detriment to the public interest to do so.

The RIC notes that Ministerial consent was required for Crown leases granted before 1910. After freehold title is granted for these lands, the requirement for Ministerial consent is removed. The Committee is of the view that the process of seeking Ministerial consent served an historical purpose that is no longer relevant. The requirement to obtain consent to transfer any of the perpetual leases which still require consent under the CLA should be removed as after these tenures are converted to freehold title the consent requirement is automatically removed.

The PLC notes that the new legislation will need to specifically address the issue of where the proceeds of any sale of Crown lands are to be remitted. It is clear that any funds generated could not be regarded as revenue for a local council as this would be contrary to the objects of the management of Crown land.

Section 6. Better provisions for tenures and rents

9. Do you support the concept of a consistent, market based approach to rents, with rebates and waivers for hardship and public benefits for certain uses of Crown land applied where appropriate?

The Committees support the concept of a consistent market based approach to rents, provided rebates and waivers are applied where appropriate.

The PLC notes the importance of retaining discretion to apply rebates and waivers having regard to variations in seasonal and economic conditions.

The PLC notes it would be unreasonable to always adopt the value of the adjacent freehold land as an appropriate basis for calculation of rent, given the conditions and limitations associated with the use of Crown land. This could only be achieved if each parcel was assessed, which is impractical for Enclosure Permits and most Permissive Occupancies and licences. The Committees suggest that a statutory minimum rent continue for these tenures.

The PLC recommends the allocation of human resources to the task of identifying true market value of Enclosure Permit, Permissive Occupancy, and licensed land, making that land a more attractive acquisition for adjoining owners and finalising transactions. This would minimise representations that a statutory minimum rent, sufficient to cover the cost of the administering of the land itself, should not apply.

The PLC recommends that, to facilitate conveyancing transactions, only one authority should be tasked with giving notice of outstanding rents and charges and any outstanding applications in respect of tenure.

The PLC supports the use of a dispute resolution mechanism to deal with objections to rent and appeals processes. These arrangements would be incorporated in commercial leases or be the subject of Ministerial Discretion.

In relation to the proposal for the new legislation to include a power for the Minister to issue a licence for the use of Crown Land where a user has not applied for such a licence, the PLC understands the desire of the Crown to obtain a reasonable income from the use of all its land. Except in cases where there have been flagrant abuses by an occupier, who is not a formal tenure holder, then that occupier would, presumably, have the first right of acquisition

of the rights and obligations of the appropriate tenure prior to it being advertised or otherwise allotted in accordance with the relevant legislation.

10. Is five years a reasonable amount of time to give tenure holders who currently pay below the statutory minimum rent to move to paying the minimum level of rent as required under the new legislation?

The Committees support the five year time period as proposed. The PLC also notes that this must be read subject to the other factors canvassed in the response to question 9.

The RIC is of the view that land holders should be encouraged to apply to convert their land holding to freehold.

The RIC also notes that current rents can be based on the historical value of the land, in some cases this may have been determined up to 100 years ago.

11. To avoid rent arrears issues for incoming tenure-holders, should the new legislation automatically transfer any rental debt to a new tenure-holder on settlement, or require any outstanding arrears to be paid prior to transfer or settlement?

The Committees support a requirement that any outstanding arrears be paid prior to transfer or settlement. Any new legislation should include provision for the payment of any rental arrears by an outgoing tenure holder, rather than passing the debt to the incoming tenure holder. The incoming tenure holder should be provided with a clear title.

The RIC notes that the proposed approach is already adopted in the *Western Land Act 1901*, where all outstanding rents must be paid prior to consent being granted.

The RIC notes the current position under s 144 of the CLA, where an incoming tenure holder may commence proceedings for the recovery of monies paid by it which were owed to the Crown by the outgoing tenure holder but unpaid at the time of transfer.

The PLC notes that the ease of administering this requirement will depend upon the accuracy of the Crown's financial records and the ability to supply a prompt and conclusive statement of liability, as part of the normal conveyancing process. The PLC notes that it can currently take up to six weeks to obtain a certificate to determine whether any amount is outstanding and transactions are often scheduled to complete within six weeks.

The PLC also suggests the introduction of a process which will clarify what will occur if a proposed transferee of freehold land does not also want to take a transfer of adjacent or associated tenured land. For example, where an associated Enclosure Permit is not transferred, the responsibility for fencing off the Enclosure Permit land should be clarified.

12. What kinds of lease conditions should be considered 'essential', for the purposes of providing for civil penalties?

The RIC is of the view that essential lease terms should include the obligation on the part of the tenure holder to observe environmental protection principles when managing land and to conserve the natural resources of the Crown, in keeping with the underlying principles of Crown land management.

For commercial tenures, the PLC suggests that the types of terms which should be considered "essential" are those that would be regarded as such if a "private sector lease" applied, such as the payment of rent.

For non-commercial tenures, the PLC suggests that the types of terms which should be considered "essential" are those which cannot be addressed by forfeiture, a security deposit or other legislative penalties.

The PLC notes the advantages in the White Paper proposal and its commercial sense, particularly for caravan parks, marinas, and commercial buildings. Parties who deal with these types of tenure will prefer documentation which governs their rights and responsibilities more closely aligned to that with a "private sector" landlord, as opposed to the Crown.

The PLC also suggests that reducing the number and type of paper tenures like Enclosure Permits, Grazing Leases/Licences and Water Front Licences should give consistency to the manner in which they are "assigned", or revoked and reissued. The PLC suggests that this would facilitate rural conveyancing, and ease the administrative burden in dealing with residual tenures "left behind" when associated or adjacent freehold parcels are conveyed.

13. Should Crown land be able to be used for all forms of carbon sequestration activities?

The PLC suggests that this difficult area needs close scrutiny. Strict, clearly defined responsibilities in respect of each user's rights and a means for resolving disputes between competing interests are needed in instances where wholly separate licence or tenure holders have different rights in respect of one parcel of land.

The PLC also notes the difficulty of administering forestry rights on Crown lands. It is suggested that where Crown land is subject to forestry conditions, responsibility for keeping records and providing information in respect of tenures should be identified prior to introducing further co-existing rights.

Section 7. Greater flexibility for Western Lands leases

14. What additional activities do you think should be permitted on Western Lands leases without the need for approval?

In the PLC's view there are very few additional activities that should be permitted on Western Lands leases without the need for approval due to the variance in the types of land subject to Western Lands leases. Further, a particular proposed activity may have a significant impact on a parcel of land depending upon the nature and sensitivity of that parcel.

The RIC is of the view that the only activity that could be permitted without the need for approval would be temporary filming. This activity could be permitted on the basis that it is not of a permanent nature and would not have an adverse impact on the nature or sensitivity of the land.

15. Bearing in mind the fragile nature of much land in the Western Division, in what situations do you think it would be appropriate to allow Western Lands leases to be converted to freehold?

The PLC notes the size and nature of the Western Lands highlights the need for great care to be taken prior to introducing any change.

Depending upon the fragility of the land, the PLC supports conversion in two particular instances:

a) where cultivation already is permitted and is necessary that part of the leasehold be subdivided from the residue of the land in the lease; or
b) in some commercial tenures, where adequate constraints can be imposed by way of covenant.

The PLC notes the proposal allows conversion/acquisition of arable agricultural land in respect of which cultivation permits are available, and in the PLC's view this is a sensible approach so far as diminishing the area of land for which the Crown remains directly responsible as landlord.

The RIC supports the conversion to freehold of all Western Lands leases held in perpetuity. It is suggested that land holders should be given a period of 20 years to pay the purchase monies and any balance of the purchase monies should be paid upon sale of the property or within three months of the sale.

The RIC is of the view that given the fragile nature of the rangelands, environmental covenants similar to those under s 77A of the CLA should be imposed (that is, restrictions on clearing and cultivation). Covenants relating to native grasslands could also be included. It is suggested that stocking rates, cultivation conditions or permits and applications to have a covenant removed could be set and monitored by a Local Lands Service.

The RIC is of the view that the requirement for obtaining consent to transfer should be abolished. It has been observed that an application for consent has not been rejected since home maintenance standards were abolished many years ago. The application process and fee of $186 seems to be a mere formality.

If the requirement for consent is to be retained, the RIC suggests the following changes:

a) Application Form 14 should be completely reviewed to remove the requirements to state the values of buildings, stocking rates, details of rural experience and other lands held. This would be consistent with the consent application form required under the CLA;
b) Where the holding is to be transmitted or transferred to a beneficiary, production of the grant of probate should be sufficient evidence to obtain consent as the grant of probate is a court order;
c) Conditional consent requiring undertakings to be given as regards fencing standards required under s18A of the *Western Lands Act 1901* should be abolished; and
d) If the purchaser is a corporation, remove the requirement to make an application on Form 13 to alter lease conditions. The relevant conditions should be prescribed in the legislation.

The PLC presumes the Crown will continue to be the beneficiary of covenants to protect the land, and will be responsible to ensure the adherence to specific requirements in relation to other converted Crown lease tenures.

The PLC notes there is insufficient information to determine what is meant by "reviewing the requirement that the land use must be "economically sustainable" following conversion". Likewise, the reference to "certain activities" is unclear, in the context of allowing activities to occur without approval.

If the objective is to remove the need for oversight by officers, such as rangers, in respect of carrying out permitted activities, the PLC agrees that the proposal is sensible. This could

apply where the land is capable of conversion because it meets cultivation requirements, but the tenure holder chooses to lease rather than acquire it at market value.

While the reference to streamlining measures is promising, the PLC notes that in practice this would only work where the number of authorities that must be consulted before activity is permitted is reduced.

Conversion of Grazing Leases
The PLC notes that in the foreseeable future the type of infrastructure investment required by a tenure holder would not justify the concept of permitting conversion on the grounds that it is necessary to encourage people to carry out capital improvements, when the alternative is a perpetual lease title in any event.

The PLC acknowledges there could be an argument for conversion if:

a) lending institutions impose higher equity requirements or interest rates purely because tenure is leasehold rather than freehold, or
b) in terms of Grazing Leases, a real reduction in the cost burden to the public purse, or more efficient and effective administration and regulation of the interests of these tenure holders could be achieved.

The PLC suggests the initial conversion of cultivated land within the Western Division could indicate whether the conversion of the grazing leasehold land is achievable.

In relation to the ecologically sustainable requirement, the PLC notes this suggestion appears to lower the landholder's "burden of proof" and concurs that if achievable, it is desirable.

In relation to flexibility and streamlining, the PLC is concerned about the reference to "diversification of uses" and notes that it may signal a Ministerial capacity to allow controversial or unwanted activities, such as "fracking" to occur.

The PLC welcomes the relaxation of transfer requirements, such as removal of the requirement to produce evidence of capacity to operate a grazing business. In the experience of the PLC's members it is rare for consent not to be granted.

The PLC welcomes simplification of the requirements for transferring a Western Lands lease to a company, provided sufficient information is required to determine the individual or individuals responsible for meeting the ongoing obligations in relation to the land.

The PLC has concerns with the proposal to remove requirements for fencing in the new legislation on the basis of duplication with the *Dividing Fences Act 1991*. The PLC envisages that from time to time there will be disputes between adjoining leaseholders where the fencing of the boundary is physically impossible and the subject of dispute as to competing grazing uses.

Section 8. Stronger enforcement provisions

16. What are your views about the proposal to strengthen the compliance framework for Crown lands?

The Committees agree with the proposal to strengthen the compliance framework for Crown lands. The RIC further notes that any proposal to strengthen the compliance framework will only be effective if there are staff available to administer and monitor compliance.

The PLC notes the underlying principles driving the approach to compliance and that the new legislation will include:

a) Audit processes;
b) Powers for departmental officers;
c) Offences clearly defined and penalties as deterrents;
d) Civil penalties; and
e) Powers to order remediation, removal and stop-work orders.

In the PLC's view, the White Paper does not define or identify issues and problems with the current compliance framework. Strengths should be identified and retained, weaknesses should be identified, removed and replaced with a new compliance framework and enforcement provisions. This will ensure that the proposed changes address real issues and problems and that the changes implemented adequately address those issues.

17. Do you have any suggestions or comments about proposals for the following:
- **Auditing**
- **Officer powers**
- **Offences and penalties**
- **Other provisions**

Auditing
The PLC supports a strong audit regime.

Having regard to the current audit regime, the PLC notes that the provisions for the auditing of affairs are found in s 123 of the CLA and s 48 of the *Commons Management Act 1989.* Despite the Trustees of School of Arts having powers to deal with real estate, there is no provision in the relevant Act for the Minister to appoint an Auditor or establish a process for the Trustees to provide a regular audit and return to the Minister of its financial affairs. There are also no audit provisions in the *Public Reserves Management Fund Act 1987.*

The PLC suggests that legislation should require the filing of annual audited financial statements in instances where public assets or funds are held on behalf of the State.

Officer Powers
The PLC notes that "authorised person" is defined in s 153 of the CLA as a member of the police force, a person holding such position of authority by office or authorised by the Minister. The powers of an authorised person are wide and include the ability to impound animals on vacant public land (s 166 CLA).

Pursuant to s 168B of the CLA, the Minister may appoint members of the staff of the Department or of any other government agency or of a local council as an "authorised inspector" for the purposes of Division 5A. The powers of an authorised inspector are wide and include powers of entry and inspection (s 168C CLA). The Director-General may also enter arrangements with any government agency or Council to exercise the powers of an authorised inspector and those persons exercising power in accordance with such an arrangement are taken to be authorised inspectors (s 168E CLA).

In the PLC's view the powers in ss 168B-E appear wide and are supported by the ability to appoint and co-opt the assistance of any government department or local council. If it is envisaged that these powers are to be broadened, this should be carefully considered as current arrangements appear broad and adequate.

By comparison the PLC further notes that:

a) the *Commons Management Act 1989* does not contain reference to an "authorised inspector" but does permit the Minister to appoint a "specified person";
b) under the *Crown Lands (Continued Tenures) Act 1989* and *the Western Lands Act 1901*, officers' powers are as determined by the Governor;
c) the *Wentworth Irrigation Act 1890*, provides that the Ministerial Corporation may delegate to a person the exercise of any of its functions; and
d) the remaining Crown related Acts do not contain provisions as to officer powers.

Clearly a variety of approaches to the role and function of officers in relation to Crown lands currently exists. Further examination is required as to what might be the appropriate approach to officer powers in any consolidated legislation.

Offences and Penalties
The RIC suggests that the Local Land Service should be responsible for enforcement.

The PLC notes that consistency is an important consideration. For example, there seems no reason why the breach of a term of a lease for one type of tenure could lead to criminal sanctions, and a similar breach for another type of tenure would not. The PLC recommends more consideration be given to offences, penalties and enforcement.

Consideration should also be given to reviewing the onus of proof in the PLC's view. For example, in s 155 of the CLA in relation to offences on public land, the defendant bears the onus of proof proving lawful authority in relation to an act or omission. Similarly in s 156 of the CLA in relation to unauthorised use of structures or land, the defendant bears the onus of proof proving lawful authority in relation to an act or omission.

The PLC notes that the CLA adopts penalty units in relation to some offences and penalty notices for others. It is unclear whether it is proposed to amend the regime to a system wholly based on penalty units rather than a mixture of both specified monetary fines and penalty units. Consideration should also be given to the appropriate court to deal with offences.

The PLC notes that specific penalties and offences are also set out in the *Commons Management Act 1989,* the *Hay Irrigation Act 1902,* the *Western Lands Act 1901* and the *Wentworth Irrigation Act 1890.* Consolidation of Crown lands legislation will require careful consideration of the existing offences and penalties, presumably with a view to simplifying the regime without losing any of the current protections or deterrents.

The RIC suggests that any cultivation in contravention of the prescribed use of land should continue to be penalised under land clearing legislation. Severe penalties should apply for contravention.

The RIC also suggests that where a land holder is five years in arrears with Crown rent, the Crown should be permitted to cancel the lease. This is similar to the powers under the LG Act where if a person is five years in arrears of rates then the property can be sold.

Section 9. What will happen to the minor legislation

18. Do you support the repeal of the minor legislation listed?

Generally, the repeal of minor legislation is supported by the Committees. The PLC supports the aims of simplicity, improved management and elimination of duplication.

The PLC suggests certain Trusts, such as the School of Arts should be preserved under the proposed revised consolidated legislation as they continue to have a useful and valued place in the community.

19. Do you see any disadvantages that would need to be addressed?

No, provided the repeal and consolidation is done carefully with attention to the diverse range of sensitivities and considerations that apply to Crown lands.