



Prescribed activities on Crown Land

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Overview

The way in which Crown land is managed in New South Wales has recently undergone assessment and review by the NSW government. As a result of this review, the *Crown Land Management Act 2016* (NSW) was passed in 2016. The *Crown Land Management Act* came into effect when the *Crown Land Management Regulations 2018* commenced on 1 July 2018.

The *Crown Land Management Act* repeals a number of Acts, including the:

- (i) *Crown Lands Act 1989* (NSW);
- (ii) *Crown Lands (Continued Tenures) Act 1989* (NSW); and
- (iii) *Western Lands Act 1901* (NSW).

The new legislative provisions contained in both the *Crown Land Management Act* and *Crown Land Management Regulations* broaden the NSW Governments' power to prohibit any public gathering or meeting on Crown land.

Previous provisions in Crown Lands Act and Regulations

Under the now-repealed *Crown Lands Act*, the Minister had the power to serve a notice on a person prohibiting that person from carrying on "any prescribed activity" on Crown land, without lawful authority.²

The now repealed *Crown Lands Regulation 2000* (NSW) prescribes a number of unauthorised activities whereby the Minister could serve a notice prohibiting the activity, including carrying on particular activities for commercial purposes, camping,

¹ http://www.edonsw.org.au/legal_advice

lighting fires, driving a vehicle, carrying or using firearms, discharging firearms or drinking or selling alcohol.³

Under these previous provisions, an authorised person had the power to file and serve upon a person an application notice in the Local Court alleging the person has been unlawfully using Crown land and requiring the person to appear before the Local Court.⁴ The Local Court had the power to issue a warrant to the authorised person requiring and authorising the person to remove the person unlawfully using the land.⁵

Notably, the previous provisions did not prescribe gathering or meeting on Crown land as an unauthorised use.

New provisions in Crown Land Management Act and Regulations

The *Crown Land Management Act* has very similar provisions to the previous provisions in that an authorised officer has the power to direct a person to stop carrying on an activity on Crown land that is a prescribed activity under the *Crown Land Management Regulation*.⁶ It is an offence to contravene a direction made under this provision.⁷

The Minister also has the power to put up a notice on or near Crown land that prohibits a person from carrying out an activity that is a prescribed activity under the *Crown Land Management Regulation*.⁸ A Crown land manager has the same power to put up a notice on the Crown reserve they manage.⁹ It is an offence to carrying on an activity if a notice under this provision prohibits them from doing so.¹⁰

The *Crown Land Management Regulation* prescribes a number of activities for the purpose of these provisions, including:

- (i) Entering Crown land at a time it is not open to the public;
- (ii) Taking part in any gathering, meeting or assembly (except, in the case of a cemetery, for the purpose of a religious or other ceremony of burial or commemoration);
- (iii) Distributing any circular, advertisement, paper or other printed, drawn, written or photographic matter;
- (iv) Camping; and
- (v) Climbing any tree, building, fence, seat, table, enclosure or other structure.¹¹

An authorised officer may apply to the Local Court for a trespasser order. The Local Court may make a trespasser order against a person if the Court is satisfied that the

² *Crown Lands Act* 1989 (NSW), s 156(1).

³ *Crown Lands Regulation* 2000 (NSW), cl 47.

⁴ *Crown Lands Act* 1989, s 159(1).

⁵ *Crown Lands Act* 1989, s 159(4).

⁶ *Crown Land Management Act* 2016, s 9.4(1)(b).

⁷ *Crown Land Management Act* 2016, s 9.4(2).

⁸ *Crown Land Management Act* 2016, s 9.5(1).

⁹ *Crown Land Management Act* 2016, s 9.5(2).

¹⁰ *Crown Land Management Act* 2016, s 9.5(3).

¹¹ *Crown Land Management Regulation* 2018 (NSW), cl 13.

person is unlawfully occupying or using the Crown land.¹² A trespasser order authorises the authorised officer to enter the Crown land for the purposes of removing the person named in the trespasser order from the Crown land, removing any structures or goods from the land that were erected or brought on to the land by the person and take possession of the land on behalf of the Crown.¹³ The authorised officer may be assisted by other authorised officers or police officers if considered necessary and reasonable force may be used.¹⁴

An authorised employee of a Crown Reserve land manager has the same powers of removal if they are satisfied, on reasonable grounds, that the person's disorderly conduct is causing inconvenience to persons on the land or entering or leaving it.¹⁵ The authorised employee may be assisted by a police officer.¹⁶

What do the new provisions mean for future gatherings or meetings on Crown land?

The current provisions in the *Crown Land Management Act* and *Crown Land Management Regulations* allow the Minister, an authorised person and/or a Crown reserve land manager to use their discretion to prohibit a person from taking part in any gathering, meeting or assembly on Crown land (unless it is a cemetery and the purpose of the gathering is for religious reasons).

An authorised person, employee or police officer has the power to remove people from Crown land if they are unlawfully occupying Crown land or causing inconvenience to persons by their disorderly conduct.

It is important to note that it is not an offence to carry out a prescribed activity listed in the Regulation. The offence provisions only apply to prescribed activities if a person contravenes a direction or notice given under the Act.

How much is the fine for failing to comply with a notice or direction?

A person may be fined up to 100 penalty units for contravening a direction under s 9.4 of the *Crown Land Management Act*, and 10 penalty units for each day the offence continues.¹⁷ The maximum penalty for corporations is 200 penalty units, and a further 20 penalty units for each day the offence continues.

A person may be fined up to 100 penalty units for carrying out an activity on Crown land, if the person is prohibited from doing so by a notice under s 9.5 of the *Crown Land Management Act*, and 10 penalty units for each day the offence continues.¹⁸ The maximum penalty for corporations is 200 penalty units, and a further 20 penalty units for each day the offence continues.

¹² *Crown Land Management Act* 2016(NSW), s 9.11.

¹³ *Crown Land Management Act* 2016(NSW), s 9.11(4).

¹⁴ *Crown Land Management Act* 2016(NSW), s 9.11(5).

¹⁵ *Crown Land Management Act* 2016(NSW), s 9.12(2)(b).

¹⁶ *Crown Land Management Act* 2016(NSW), s 9.11(3).

¹⁷ *Crown Land Management Act* 2016, s 9.4(3).

¹⁸ *Crown Land Management Act* 2016, s 9.5(3).