



New South Wales

Commons Management Regulation 2001

under the

Commons Management Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Commons Management Act 1989*.

RICHARD AMERY, M.P.,

Minister for Land and Water Conservation

Explanatory note

This Regulation replaces the *Commons Management Regulation 1996* which is repealed on 1 September 2001 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation provides for the following matters:

- (a) the model by-law to apply to certain commons in existence in 1991 for which the relevant trust has not made a by-law (clause 5), and
- (b) the imposition of fees (clauses 8, 12, 31, 34 and 36), and
- (c) the procedures for enrolling persons on a commoners' roll for a trust established under the Act (Part 2), and
- (d) the procedures for the conduct of elections of the members of a trust board under the Act and for the conduct of meetings held by trust boards (Part 3), and
- (e) various matters concerning the conduct of the affairs of a trust, including the accounts to be kept in relation to a trust (Part 4), and
- (f) other minor, consequential and ancillary matters (Parts 1 and 5).

This Regulation is made under the *Commons Management Act 1989*, including section 62 (the general regulation-making power) and various other provisions referred to in the Regulation.

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Clause 1 Commons Management Regulation 2001

Part 1 Preliminary

Commons Management Regulation 2001

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Commons Management Regulation 2001*.

2 Commencement

This Regulation commences on 1 September 2001.

Note. This Regulation replaces the *Commons Management Regulation 1996* which is repealed on 1 September 2001 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation:

approved means approved for the time being by the Minister.

relevant trust officer, in relation to a trust, means:

- (a) the treasurer (in respect of all matters relating to the trust accounts) and the secretary to the trust board (in respect of all other matters), or
- (b) the administrator, or
- (c) the general manager of the local authority,

by which or by whom the affairs of the trust are managed.

secretary, in relation to a trust board, means the person holding office as secretary of the trust board.

the Act means the *Commons Management Act 1989*.

treasurer, in relation to a trust board, means the person holding office as treasurer of the trust board.

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

5 Model by-law

For the purposes of section 9 (4) of the Act, the model by-law set out in Schedule 1 is the prescribed model by-law.

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Clause 6 Commons Management Regulation 2001

Part 2 Commoners' rolls

Part 2 Commoners' rolls

6 Commoners' rolls

- (1) For the purposes of section 5 (2) of the Act, a person has the prescribed qualification for enrolment as a commoner if:
 - (a) the person resides in the land district in which the common is located and does not hold more than 20 hectares of land in that land district, or
 - (b) the person has such qualifications as may be specified for those purposes by the notice establishing the trust in respect of the common,and is not enrolled on another commoners' roll.
- (2) For the purposes of section 10 (2) of the Act, a person has the prescribed qualification for enrolment as a commoner if:
 - (a) in the case of an existing common to which clause 5 (1) of Schedule 5 to the Act applies—the person is:
 - (i) a commoner in respect of the common under that clause, or
 - (ii) a person who is entitled to use the common by virtue of the grant or instrument by which the common was created,and is not enrolled on another commoners' roll, or
 - (b) in the case of any other common—the person has a qualification specified in subclause (1) in respect of the common.

7 Roll open for inspection

A copy of a commoners' roll must be kept at the office of the relevant trust officer for inspection by any person during normal business hours.

8 Applications for enrolment as a commoner

An application for enrolment as a commoner is to be made in the approved form accompanied by the fee determined by the trust (being an amount not exceeding the relevant amount specified in Schedule 2) and lodged with the relevant trust officer.

9 Exhibition of applications

The relevant trust officer must ensure that an application for enrolment as a commoner is exhibited at 2 or more conspicuous places on the common, and at some other suitable public place approved by the trust, until the application has been dealt with.

10 Lodgment of objections

A commoner may object to the proposed enrolment of a person as a commoner by lodging with the relevant trust officer a notice in writing of the grounds of the objection.

11 Hearing of applications

- (1) An application must not be dealt with until at least 3 days after the date on which notice of the application was first exhibited.
- (2) Both the applicant for enrolment and any objector to the applicant's enrolment are entitled to be heard at the proceedings at which the application is considered.
- (3) The trust, after having considered an application and any objections to it, must determine the application by causing the applicant's name to be entered on the commoners' roll or by refusing the application.
- (4) An application must be dealt with as soon as possible but in no case later than 2 months after its receipt.

12 Appeal to local land board against refusal of application

- (1) For the purposes of section 11 (1) of the Act:
 - (a) the prescribed period within which an appeal may be made under that subsection is the period of 28 days following the date on which the applicant receives written notice of the trust's refusal of the application, and
 - (b) the prescribed manner in which such an appeal may be made is by lodging a notice of appeal, in the approved form and accompanied by the relevant fee specified in Schedule 2, with the registrar of the local land board to which the appeal is made.

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Part 2 Commoners' rolls

(2) For the purposes of section 11 (2) of the Act:

- (a) the prescribed period within which a copy of an appeal must be served on a trust under that subsection is the period of 28 days following the date on which the applicant receives written notice of the trust's refusal of the application, and
- (b) the prescribed manner in which a copy of such an appeal must be served is by serving it, personally or by post, on the relevant trust officer.

13 Periodic revision of commoners' rolls

A trust must, not later than 15 December in each year and at such other times as it may determine, convene a special meeting for the purpose of removing from the commoners' roll the names of any persons who are no longer entitled to be on the roll.

Part 3 Trust boards

Division 1 Elections

14 Elections generally

- (1) An election of members of a trust board under section 32 or 33 of the Act is to be conducted in such manner as the trust may, at a general meeting of commoners, determine.
- (2) An election of members of a trust board referred to in section 5 or 49 of the Act is to be conducted in such manner as the administrator of the trust may determine.

15 Nominations for election

- (1) Nominations of candidates for election under section 32 or 33 of the Act:
 - (a) must be made in writing, signed by 2 commoners and accompanied by the written consent of the candidate, and
 - (b) must be delivered to the relevant trust officer not less than 7 days before the date fixed for the holding of the meeting at which the election is to take place.
- (2) Nominations of candidates for election under section 5 or 49 of the Act are to be called at the meeting at which the election is to take place.

16 Qualifications for members and office bearers of a trust board

- (1) A person is qualified to be a member of a trust board if, and only if, the person has been enrolled on the commoners' roll for the whole of the period of 6 months immediately prior to the calling of the election or, if the commoners' roll has been established for less than 6 months, for the whole of the period since the roll was established.
- (2) A person must not hold 2 or more positions of office bearer of a trust board simultaneously.

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Clause 17 Commons Management Regulation 2001

Part 3 Trust boards

Division 2 Procedure of trust boards

Division 2 Procedure of trust boards

17 Ordinary meetings

- (1) Ordinary meetings of the members of a trust board must be held at least 6 times a year.
- (2) Each member of a trust board must be given at least 3 days' notice of an ordinary meeting of the trust board.

18 Special meetings

- (1) Special meetings of the members of a trust board may be convened by the secretary, or by any member of the trust board, on 24 hours' notice of the time and place of meeting being given to each member of the trust board.
- (2) No business may be transacted at a special meeting other than the business specified in the notice.

19 Procedure at meetings

All resolutions passed at a meeting of a trust board must be sealed with the common seal of the trust.

20 Duties of secretary

It is the duty of the secretary of a trust board:

- (a) to issue notices convening meetings of the trust board and to attend all such meetings, and
- (b) to keep minutes of all meetings of the trust board.

21 Duties of treasurer

It is the duty of the treasurer of a trust board:

- (a) to maintain all books and documents relating to the trust accounts, and
- (b) to receive and account for all money received by or on behalf of the trust, and
- (c) to deposit all money received by or on behalf of the trust with such authorised deposit-taking institution as the trust may from time to time appoint, and

- (d) to ensure that all payments authorised by the trust are duly made, and
- (e) to prepare monthly accounts for inspection by the trust board at the ordinary meetings of the trust board.

22 Cheques

In the case of a trust whose affairs are managed by a trust board, all cheques drawn on the trust's account with an authorised deposit-taking institution must be signed by a member of the trust board and by the treasurer of the trust board.

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Clause 23 Commons Management Regulation 2001

Part 4 Trusts generally

Part 4 Trusts generally

23 Custody and use of trust's common seal

- (1) A trust's common seal is to be kept in the custody of the relevant trust officer.
- (2) A trust's common seal may be affixed to an instrument or document only:
 - (a) following a resolution to do so passed at a meeting of the trust, and
 - (b) in the presence of the relevant trust officer, and
 - (c) with an attestation by the signature of the relevant trust officer of the fact of the affixing of the seal.
- (3) If an administrator of a trust has been appointed, the trust's common seal may be affixed and attested by the administrator alone.

24 Trust accounts

- (1) For the purposes of section 42 (4) of the Act, a trust's accounts must include:
 - (a) particulars of the purposes for which the common is used, and
 - (b) particulars of any disclosures recorded in the book referred to in clause 6 (3) of Schedule 2 to the Act.
- (2) The accounts for a trust whose affairs are managed by a trust board or an administrator must also include:
 - (a) receipts for all money received, and
 - (b) documentation of all expenditure, and
 - (c) cash books, and
 - (d) deposit books, and
 - (e) a plant and asset register.
- (3) The accounts for a trust whose affairs are managed by a local authority must also include such records relating to those affairs as the local authority is required to keep under the *Local Government Act 1993*.

- (4) Records of the kind referred to in subclause (3) must be kept in a manner that allows the following information to be readily extracted:
- (a) information concerning all financial matters regarding each common from which the local authority receives revenue of any nature,
 - (b) information concerning all improvements effected on each such common,
 - (c) information concerning all leases and licences granted or in force in respect of each such common.

25 Livestock registers

- (1) Each trust must keep a livestock register for the common or, if the common is divided into several enclosed portions, for each enclosed portion of the common.
- (2) The register must contain:
- (a) the names and addresses of the commoners enrolled on the commoners' roll, and
 - (b) a description of all stock depastured on the common, or enclosed portion of the common, that belongs to a commoner, and
 - (c) a description of the brand or brands with which the stock is marked.
- (3) The register must be kept at the office of the relevant trust officer for inspection by any person during normal business hours.

26 Duties of relevant trust officer

- (1) It is the duty of the relevant trust officer:
- (a) to issue notices convening meetings of the trust and to attend all such meetings, and
 - (b) to keep minutes of all meetings of the trust, and
 - (c) to maintain the commoners' roll and all other books and documents necessary for the conduct of the affairs of the trust, and
 - (d) to inform the ranger of the trust of the names of the persons authorised by the trust to use the common.

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Clause 26 Commons Management Regulation 2001

Part 4 Trusts generally

- (2) In the case of a trust whose affairs are administered otherwise than by a trust board, it is also the duty of the relevant trust officer:
- (a) to receive and account for all money received by or on behalf of the trust, and
 - (b) to deposit all money received by or on behalf of the trust with such authorised deposit-taking institution as the trust may from time to time appoint, and
 - (c) to ensure that all payments authorised by the trust are duly made.

Part 5 Miscellaneous

27 Particulars to be included in notice of sale

For the purposes of section 16 (6) (c) of the Act, the prescribed particulars in relation to land proposed to be sold are:

- (a) such particulars (such as lot and deposited plan numbers) as are necessary to identify each parcel of land concerned, and
- (b) the aggregate area (in hectares) of the land, and
- (c) the name of the parish and county in which the land is situated, and
- (d) any other references (such as folio identifier numbers) relevant to the title to the land.

28 Particulars to be included in applications concerning certain land transactions

For the purposes of section 16 (12) of the Act, the prescribed particulars to be included in an application for an authority to enter into land transactions of a specified kind are such of the following particulars as are relevant to that kind of transaction:

- (a) a description of the kind of transaction proposed to be entered into by the trust,
- (b) the purposes for which the trust proposes to enter into that kind of transaction,
- (c) the parties with whom the trust proposes to enter into that kind of transaction,
- (d) the duration for which the trust proposes to exercise the authority.

29 Temporary licences

- (1) For the purposes of section 22 (1) of the Act, 3 months is prescribed as the longest period for which a temporary licence may be granted.
- (2) For the purposes of section 22 (2) of the Act, any purpose that is consistent with the plan of management for the common is a prescribed purpose.

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Part 5 Miscellaneous

30 Draft management plans

For the purposes of section 25 (4) of the Act, a draft management plan must comply with the following requirements:

- (a) it must specify the purposes for which the common may be used,
- (b) it must specify who is to be allowed to use the common for those purposes,
- (c) it must specify how and by whom the common is to be maintained,
- (d) it must specify how and by whom the expenses of maintaining the common are to be funded.

31 Maximum charge for copy of minutes of trust meetings

For the purposes of section 39 (5) (a) of the Act, the prescribed maximum amount that a trust may charge for providing a commoner with a copy of the minutes of its meetings is the relevant amount specified in Schedule 2.

32 Qualifications for auditors

For the purposes of section 43 of the Act, a person is a qualified auditor if the person is a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth or has other approved qualifications.

33 Inquiries into affairs of trust

For the purposes of section 48 (1) (c) of the Act, an inquiry into the affairs of a trust must be conducted, on request by the Minister, by the local land board constituted for the land district in which the common concerned is located.

34 Fees for inspection of book of pecuniary interests

For the purposes of clause 6 (3) (b) of Schedule 2 to the Act, the prescribed amount of the maximum fee payable to a trust for inspection of the book of pecuniary interests is the relevant amount specified in Schedule 2.

35 Quorum for adjourned meetings of commoners

For the purposes of clause 1 (4) of Schedule 4 to the Act, the following number or percentage of commoners enrolled on the commoners' roll constitutes a quorum for the transaction of business at an adjourned meeting of commoners:

- (a) if the number of commoners enrolled on the commoners' roll is 30 or fewer—3 commoners,
- (b) if the number of commoners enrolled on the commoners' roll is more than 30—10 per cent of the number of commoners (or, if 10 per cent is not a whole number, the next lowest whole number).

36 Fees for use of common

For the purposes of clause 9 (3) of Schedule 5 to the Act, the prescribed fees payable in respect of the uses of a common as referred to in that subclause are the relevant fees specified in Schedule 2.

37 Savings

Any act, matter or thing that, immediately before the repeal of the *Commons Management Regulation 1996* by the operation of section 10 (2) of the *Subordinate Legislation Act 1989*, had effect under that Regulation continues to have effect under this Regulation.

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Schedule 1

Model by-law

Schedule 1 Model By-law

(Clause 5)

1 Name of By-law

This By-law is the *Commons By-law 1991*.

2 Application

This By-law applies to all commons in existence on 1 September 1991 for which a by-law is not in force under section 9 (2) of the *Commons Management Act 1989*.

3 Rights of commoners

Subject to paying the appropriate fees and charges fixed by the trust from time to time, a commoner has the right to use the common for the purpose or purposes specified in the management plan for the common.

4 Regulation of conduct within common

Unless authorised by the trust, a person must not within the common:

- (a) carry or have in that person's possession any firearm (within the meaning of the *Firearms Act 1996*) or prohibited weapon (within the meaning of the *Weapons Prohibition Act 1998*) unless the person is a police officer acting in accordance with the person's duties as such, or
- (b) light a fire:
 - (i) at any time when the lighting of fires within a common is prohibited by the trust by signs erected within the common, or
 - (ii) at any other time, except in a fire-place provided by the trust, or
- (c) carry, have in that person's possession or deploy any explosive, net, trap or hunting device, or
- (d) destroy, capture, injure, annoy or interfere with any animal or animal's egg or interfere with the habitat of any animal, or

- (e) damage, dismantle or remove any machinery, equipment, building or facility on the common which is provided for the use of commoners.

Maximum penalty: 5 penalty units.

5 Trust may remove pests or weeds

The trust:

- (a) may destroy, control or remove feral animals that are on the common, and
- (b) may eradicate noxious weeds that grow on the common.

6 Removal of timber

- (1) A commoner must not, except with the written permission of the trust and on payment to the trust of such charge as the trust may determine, remove from the common dead timber, logs or tree stumps, whether they are in the ground or not.

Maximum penalty: 5 penalty units.

- (2) The trust must not permit a commoner to remove dead timber from any part of the common that is within Crown-timber lands within the meaning of the *Forestry Act 1916* unless the commoner has obtained the concurrence of the Forestry Commission.

7 Annual fees

- (1) The trust may levy such annual fees as the commoners have agreed to at the annual general meeting for any of the purposes set out in the management plan for the common.
- (2) The trust must serve on each commoner written notice of any annual fee payable by the commoner.
- (3) Annual fees must be paid quarterly in advance on or before the first day of January, April, July and October in each year.
- (4) If an instalment of an annual fee is not paid by the due date, the trust may charge interest at a rate not exceeding the rate prescribed by clause 43 of the *Crown Lands Regulation 2000*.
- (5) If a commoner has not paid the annual fee for more than 12 months, the trust may withdraw the commoner's right to use the common.

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Schedule 1

Model by-law

8 Charges

The trust may impose such charges as it considers appropriate with respect to:

- (a) the use of the common by commoners and other persons, and
- (b) the use and parking of vehicles on the common, and
- (c) the use of the common or any part of the common as a dwelling or camping place.

9 Disposal of fees and charges

The trust may use the fees and charges received by it under this By-law:

- (a) for defraying the trust's administrative costs and expenses, and
- (b) for maintaining and improving the common, and
- (c) for any other purposes specified in the management plan for the common.

Schedule 2 Fees

(Clauses 8, 12, 31, 34, 36)

For application for enrolment as a commoner (clause 8)	\$50.00
For notice of appeal to a local land board against refusal of application for enrolment (clause 12)	\$50.00
For copy of minutes of proceedings of meetings (clause 31):	
For minutes not exceeding 10 pages	\$20.00
For each additional page	\$1.00
For inspection of book recording disclosure of pecuniary interest (clause 34)	\$20.00
For pasturage of stock (clause 36):	
Sheep	\$0.25 per head per day
Other stock	\$1.50 per head per day