



New South Wales

# Commons Management Regulation 2018

under the

Commons Management Act 1989

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

PAUL TOOLE, MP  
Minister for Lands and Forestry

## Explanatory note

The object of this Regulation is to remake the *Commons Management Regulation 2006*, without any substantial changes, which will be repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The 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,
- (b) the procedures for enrolling persons on, and for removing persons from, a commoners' roll for a trust established under the *Commons Management Act 1989 (the Act)*,
- (c) the procedures for the conduct of elections of the members and officers of a trust board under the Act, the conduct of meetings held by trust boards and other matters relating to trust boards,
- (d) various matters concerning the conduct of the affairs of a trust, including the accounts to be kept in relation to a trust,
- (e) other minor, consequential and ancillary matters, including the fees payable under the Act.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation is made under the *Commons Management Act 1989*, including sections 5 (2), 9 (4) and (5), 10 (2) and (3), 16 (6) (c) and (12), 22 (1) and (2), 25 (4), 34 (1), 39 (5) (a), 42 (4), 43, 48 (1) (c), 49 (5) and 62 (the general regulation-making power), clause 6 (3) (b) of Schedule 2, clause 1 of Schedule 3, clause 1 (4) of Schedule 4 and clause 9 (3) of Schedule 5.

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## Commons Management Regulation 2018

under the

Commons Management Act 1989

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Commons Management Regulation 2018*.

#### 2 Commencement

This Regulation commences on 1 September 2018 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Commons Management Regulation 2006*, which is repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) 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) or 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 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.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

#### 4 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.

## **Part 2 Commoners' rolls**

### **5 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 within the meaning of Schedule 5 to the Act—the person is taken under clause 5 of that Schedule to be a commoner in respect of the common 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.

### **6 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.

### **7 Applications for enrolment as 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.

### **8 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.

### **9 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.

### **10 Hearing of applications**

- (1) An application must not be dealt with until at least 5 days after the date on which the application was first exhibited under clause 8.
- (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 considering 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 practicable but in no case later than 2 months after its receipt.

**11 Periodic revision of commoners' rolls**

- (1) A trust must, at such time as it may determine (but not later than 15 December in each year), convene a special meeting for the purpose of determining whether there is any person whose name appears on the roll who is no longer entitled to be on the commoners' roll.
- (2) If the trust determines that there is any such person, the trust must give notice in writing of the determination, together with the grounds on which the determination has been made.
- (3) The person may object to the determination by lodging with the relevant trust officer, within 28 days after the date on which notice of the determination has been given, a notice in writing of the grounds of the objection.
- (4) If the person has objected to the determination under subclause (3), the person is entitled to be heard at a special meeting of the trust held not less than 7 days after notice of the objection has been lodged.
- (5) The trust, after considering any objections to the determination made in accordance with this clause, must:
  - (a) confirm its determination that the person is no longer eligible to be on the roll and cause the person's name to be removed from the roll, or
  - (b) determine that the person is eligible to be on the roll.
- (6) The trust must do so no later than 3 months after making a determination in relation to the person under subclause (2).

## Part 3 Trust boards

### Division 1 Elections

#### 12 Qualifications for members and office bearers of 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.

#### 13 Election of trust board

##### (1) Application of clause

This clause applies in relation to the election of members (but not office bearers) of a trust board required under section 5, 32, 33 or 49 of the Act.

##### (2) Nominations for election

Nominations of candidates for an election of members required under section 32 or 33 of the Act to which this clause applies:

- (a) must be made in writing, signed by 2 commoners who are entitled to vote 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 of commoners at which the election is to take place.

- (3) At the meeting at which that election is to take place, the person presiding at the meeting must announce the names of the candidates who are nominated.

- (4) Nominations of candidates for election required under section 5 or 49 of the Act to which this clause applies are to be called at the meeting at which the election is to take place.

- (5) If the number of candidates nominated under this clause is the same as, or fewer than the following number (*the relevant number*):

- (a) in the case of an election required under section 33 of the Act to which this clause applies—the number of vacancies in the membership of the trust board,
- (b) in the case of any other election to which this clause applies—the number of members of the trust board provided for in section 6 of the Act,

those candidates are to be declared by the person presiding at the meeting to be, and are taken to have been, elected as members of the trust board.

##### (6) Ballot for trust board

If the number of candidates nominated under this clause is greater than the relevant number, a ballot is to be held and the person presiding at the meeting must:

- (a) announce to the meeting the name of each candidate and the nominators of the candidate, and
- (b) provide each commoner present and entitled to vote at the meeting with a blank ballot-paper.

- (7) For a ballot-paper to be valid, the ballot-paper must be completed by the voter writing on it the names of the candidates (without repeating a name) for whom the voter desires to vote, the number of names written being no more than the relevant number.
- (8) The completed ballot-paper must be returned to the person presiding at the meeting.
- (9) The result of the ballot is to be ascertained by the person presiding at the meeting in accordance with the following provisions:
  - (a) the person is to count each vote that is received by each candidate in the ballot, but only if the vote has been cast by means of a valid ballot-paper,
  - (b) the person is to compile a list of the total number of votes received by each candidate in the ballot,
  - (c) the person is to declare elected successively the candidates with the greatest number of votes until all positions for membership in the trust board have been filled.
- (10) If the total number of votes received by 2 or more candidates for any position is equal and it is necessary to exclude 1 or more of them in respect of that position, the candidate to fill the position is to be decided:
  - (a) by a show of hands of commoners present and entitled to vote at the meeting, or
  - (b) if any such show of hands results in an equality of votes, by the casting vote of the person presiding at the meeting.

**14 Election of office bearers required under section 5, 32 or 49 of Act**

- (1) This clause applies only in relation to the election of office bearers of a trust board required under section 5, 32 or 49 of the Act.
- (2) **Nominations for election**

Nominations of candidates for an election to which this clause applies are to be called immediately following the election of the members of a trust board under clause 13.
- (3) If no more than 1 candidate is nominated for an office bearer's position under this clause, that candidate is to be declared by the person presiding at the meeting to be, and is taken to have been, elected to that position.
- (4) **Ballot for position of office bearer**

If more than 1 candidate is nominated for an office bearer's position under this clause, a ballot is to be held and the person presiding at the meeting must:

  - (a) announce to the meeting the name of the position concerned, the name of each candidate and the nominator of the candidate, and
  - (b) provide each commoner present and entitled to vote at the meeting with a blank ballot-paper.
- (5) If a ballot for more than 1 office bearer's position is required, successive ballots are to be held (one for each office bearer's position).
- (6) For a ballot-paper to be valid, the ballot-paper must be completed by the voter writing on it the name of the candidate for whom the voter desires to vote.
- (7) The completed ballot-paper must be returned to the person presiding at the meeting.
- (8) The person presiding at the meeting is to declare elected to a position the candidate who has the greatest number of votes for the position cast by means of valid ballot-papers.



- (9) If the total number of votes received by 2 or more candidates for any position is equal and it is necessary to exclude 1 or more of them in respect of that position, the candidate to fill the position is to be decided:
- (a) by a show of hands of commoners present and entitled to vote at the meeting, or
  - (b) if any such show of hands results in an equality of votes, by the casting vote of the person presiding at the meeting.

#### **15 Vacancy in office bearer's position**

- (1) If an office bearer's position becomes vacant before the term of the office bearer ends (whether or not this also results in a vacancy in the membership of the trust board), an election for that position is to be conducted in such manner as the trust board may determine.
- (2) Clause 14 does not apply to an election to which this clause applies.

### **Division 2 Procedure of trust boards**

#### **16 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.

#### **17 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 a 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.

#### **18 Procedure at meetings**

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

#### **19 Duties of secretary**

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

- (a) to maintain the commoners' roll and all other books and documents necessary for the conduct of the affairs of the trust (other than books and documents relating to the trust accounts), and
- (b) to inform any ranger appointed by the trust of the names of the persons authorised by the trust to use the common, and
- (c) to issue notices convening meetings of the trust board and to attend all such meetings, and
- (d) to keep minutes of all meetings of the trust board.

#### **20 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.

## **21 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.

## Part 4 Trusts generally

### 22 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.

### 23 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, including an itemisation of that expenditure, and
  - (c) cash books, and
  - (d) bank, building society and credit union deposit books or statements, and
  - (e) records of any improvements made to the common concerned, and
  - (f) records of any assets and liabilities, including a plant and asset register, and
  - (g) insurance policies and certificates, and
  - (h) records (other than those referred to in paragraphs (a)–(g)) of financial instruments or investments.
- (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.

### 24 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 any 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.

**25 Duties of relevant trust officer where affairs of trust managed other than by trust board**

In the case of a trust whose affairs are administered other than by a trust board, it is the duty of the relevant trust officer:

- (a) to maintain the commoners' roll and all other books and documents necessary for the conduct of the affairs of the trust, and
- (b) to inform any ranger appointed by the trust of the names of the persons authorised by the trust to use the common, and
- (c) to issue notices convening meetings of the trust and to attend all such meetings, and
- (d) to keep minutes of all meetings of the trust, and
- (e) to receive and account for all money received by or on behalf of the trust, and
- (f) 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
- (g) to ensure that all payments authorised by the trust are duly made.

## **Part 5 Miscellaneous**

### **26 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.

### **27 Particulars to be included in applications concerning certain land transactions**

For the purposes of section 16 (12) of the Act, the particulars to be included in an application by a trust for an authority to enter into land transactions of a specified kind are any of the following particulars that 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.

### **28 Temporary licences**

- (1) For the purposes of section 22 (1) of the Act, 3 months is the longest prescribed 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 management plan for the common is a prescribed purpose.

### **29 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.

### **30 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.

### **31 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.

**32 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 Secretary.

**33 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.

**34 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).

**35 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.

**36 Saving**

Any act, matter or thing that, immediately before the repeal of the *Commons Management Regulation 2006*, had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Model by-law

(Clause 4)

### 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) or (6) 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 or imitation 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 a police officer, 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 fireplace 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 that 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 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 land within the meaning of the *Forestry Act 2012* unless the commoner has obtained the concurrence of the Forestry Corporation.

## **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 for the purposes of section 12.12 (2) of the *Crown Land Management Act 2016*.
- (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 until such time as payment has been made in full.

## **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 7, 30, 33 and 35)

<b>Column 1</b>	<b>Column 2</b>
For application for enrolment as a commoner (clause 7)	\$50.00
For copy of minutes of proceedings of meetings (clause 30):	
For minutes not exceeding 10 pages	\$20.00
For each additional page	\$1.00
For inspection of book recording disclosure of pecuniary interest (clause 33)	\$20.00
For pasturage of stock (clause 35):	
Sheep	\$0.25 per head per day
Other stock	\$1.50 per head per day

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