

# Commons Management Act 1989 No 13

[1989-13]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Responsible Minister

- Minister for Lands and Property

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Commons Management Act 1989 No 13



New South Wales

An Act to provide for the establishment of trusts in relation to commons and the election of trust boards, and in certain cases the appointment of local authorities or administrators, to manage the affairs of those trusts; to provide for the care, control and management of commons; to provide for related matters; and to repeal the [Commons Regulation Act 1898](#) and certain other enactments.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [Commons Management Act 1989](#).

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Section 9 and clause 2 of Schedule 5 commence on the date of assent to this Act, but no by-law made under section 9 has effect before the commencement of section 4.

### 3 Definitions

- (1) In this Act:

**affairs** includes activities.

**alienate**, in relation to land, includes sell or exchange land, but does not include mortgage, charge or encumber, or grant a lease or licence over, land.

**common** means:

- (a) a parcel of land which, on or before 1 February 1909, had, by any instrument made by the Governor, been set aside as a common for the use of the inhabitants of any specified locality or the cultivators or farmers of any locality in which the parcel of land is situated, or
- (b) any parcel of land which, after that date, has been set aside by the Governor or the Minister, by notice published in the Gazette, as a common or for pasturage for

the use of the inhabitants of a specified locality,

but does not include such a parcel where the setting aside of the common has been revoked or otherwise terminated.

**commoner**, in relation to a common, means a person whose name is entered on the commoners' roll kept in respect of the common.

**commoners' roll**, in relation to a common, means the roll kept in respect of the common in accordance with section 10.

**Crown Land Acts** has the same meaning as in the [Crown Land Management Act 2016](#).

**Eastern and Central Division** means that part of the State that is the Eastern and Central Division within the meaning of the [Crown Land Management Act 2016](#).

**financial year**, in relation to a trust, means the financial year of the trust as fixed by or in accordance with section 40.

**former Act** means the [Commons Regulation Act 1898](#).

**land district**—see section 3A.

**local authority** means a council within the meaning of the [Local Government Act 1993](#).

**local government area** has the same meaning as **area** has in the [Local Government Act 1993](#).

**management plan** means a draft management plan adopted in accordance with section 27.

**office bearers**, in relation to a trust board, means the president, secretary and treasurer of the board.

**record** includes a commoners' roll, book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

**Secretary** means the Secretary of the Department of Industry, Skills and Regional Development.

**set aside** includes allotted, granted, notified, set apart, devoted, reserved, appropriated and dedicated.

**temporary licence** means a licence granted under section 22.

**this Act** includes the regulations.

**transaction**, in relation to land, means any transaction which creates, transfers, charges, encumbers, varies or extinguishes an estate or interest in land, and includes a transfer, a conveyance, a lease, a mortgage, a covenant and a grant of a licence, and also includes a grant or reservation of an easement or other incorporeal hereditament.

**trust** means a trust established in respect of a common under section 4 (1) or by section 4 (3).

**trust board**, in relation to a trust, means the trust board elected or taken to be elected under this Act to manage the affairs of the trust.

**Western Division** means that part of the State that is the Western Division within the meaning of the [Crown Land Management Act 2016](#).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act, a reference to the commoners in relation to a trust, a trust board or a local authority that is, or an administrator who is, managing the affairs of a trust is a reference to the commoners whose names appear on the roll of commoners kept in respect of the common for which the trust is established.

(4) (Repealed)

(5) In this Act, a reference to the premises of a trust includes a reference to the trust's principal place of administration, whether that place is vested in or occupied by the trust or not.

(6) Notes included in this Act do not form part of this Act.

### **3A Meaning of "land district"**

(1) In this Act, **land district** means (subject to subsection (2)):

- (a) in relation to land in the Eastern and Central Division—a land district established under section 8 of the [Crown Lands Act 1989](#) in existence immediately before the repeal of that Act, and
- (b) in relation to land in the Western Division—an administrative district established under section 9 of the [Western Lands Act 1901](#) in existence immediately before the repeal of that Act.

(2) The Minister may, by order published in the Gazette, specify land districts for the purposes of this Act.



- (3) Without limiting subsection (2), the order may alter or abolish existing land districts (including those referred to in subsection (1)) or specify new land districts.

## **Part 2 Commons trusts**

### **Division 1 Constitution and management**

#### **4 A trust to be established in respect of each common**

- (1) Whenever a parcel of land is set aside as a common after the commencement of this section, the Minister must, by notice published in the Gazette:
- (a) establish a trust in respect of the common, and
  - (b) assign a corporate name to the trust.
- (2) A trust established under subsection (1) is constituted by this Act as a corporation with the corporate name assigned in the notice establishing the trust.
- (3) A body corporate constituted in respect of a common by section 4 of the former Act and in existence immediately before the commencement of this section continues in existence under this Act and is established as a trust in respect of the common for the purposes of this Act.
- (4) The Minister may, by notice published in the Gazette, alter the corporate name of a trust.
- (5) A trust established in respect of a common has the functions conferred or imposed on it by or under this or any other Act.
- (6) The affairs of a trust shall be managed:
- (a) by a trust board, or
  - (b) by a local authority appointed under section 7, or
  - (c) where an administrator is appointed under section 5 or 48—by the administrator.
- (7) Section 50 of the [Interpretation Act 1987](#) applies to a trust, but subsection (1) (d) of that section is, in its application to a trust, subject to the provisions of Division 4.

#### **5 Appointment of an initial administrator**

- (1) When establishing a trust under section 4 (1), the Minister must, by notice published in the Gazette:
- (a) appoint an administrator to manage the affairs of the trust, pending the election of members of a trust board to manage those affairs, and
  - (b) by notice published in the Gazette, fix the number of members, being not fewer

than 3 nor more than 7, who are to constitute the board, and

- (c) fix a period within which the administrator must convene and hold a general meeting of commoners for the purpose of holding elections to elect the members and office bearers of the trust board.
- (2) As soon as practicable within the period fixed in accordance with subsection (1) (c), or within such extended period as the Minister allows, the administrator must:
- (a) establish a commoners' roll for the trust and enter on the roll the names, addresses and other prescribed particulars (if any) of those persons who, having the prescribed qualification, apply to have their names entered on the roll, and
  - (b) then convene a general meeting of commoners in accordance with subsection (3) for the purpose of holding the elections referred to in subsection (1) (c).
- (3) The administrator must, at least 14 days before the date fixed for the holding of a general meeting referred to in subsection (2) (b), send by pre-paid post to each commoner at the commoner's address appearing on the commoners' roll a notice:
- (a) specifying the place, date and time of the meeting, and
  - (b) stating that elections to elect the members and office bearers of a trust board will be held at the meeting.
- (4) The accidental omission to give notice of a general meeting convened under subsection (2) (b) to, or the non-receipt of a notice of such a meeting by, any person does not invalidate proceedings at the meeting.
- (5) At a general meeting convened under subsection (2) (b), the person presiding must conduct:
- (a) a general election to elect the first members of the trust board from among the commoners eligible for election, and
  - (b) an election to elect the office bearers of the board from among the members so elected.
- (6) If the office of an administrator appointed under this section becomes vacant before the holding of the elections referred to in subsection (5), the Minister must, by notice published in the Gazette, appoint another person to fill the vacancy.
- (7) If, at a general meeting convened under subsection (2) (b), the requisite number of members of the trust board are elected to constitute the board, then, at the conclusion of the meeting:
- (a) the appointment of the administrator ends, and
  - (b) the persons elected at the meeting assume the offices to which they were elected.

(8) Schedule 1 has effect with respect to an administrator appointed under this section.

## **6 Constitution of trust boards**

(1) A trust board is not properly constituted for the purposes of this Act unless:

(a) except as provided by paragraph (b):

(i) in the case of a trust established under section 4 (1)—it consists of the number of members fixed by the Minister when establishing the trust, or

(ii) in the case of a trust established by section 4 (3)—it consists of the number of members that it had when the trust was established, or

(b) if the Minister has made a determination in accordance with subsection (3) varying the number of members of the board and that determination has taken effect—it consists of the number of members fixed by the determination.

(2) If trustees of a common were holding office under section 6 of the former Act immediately before the commencement of this section, those trustees shall, for the purposes of this Act, be taken to have been elected as the members of the trust board that is responsible for managing the affairs of the trust established in respect of the common by section 4 (3).

(3) The Minister may, by notice published in the Gazette, make a determination varying the number of members required to constitute a particular trust board by increasing it to a number not greater than 7 or reducing it to a number not less than 3.

(4) A determination under subsection (3) does not take effect until:

(a) the terms of office of the existing members of the trust board have expired, or

(b) where the trust's affairs are being managed by a local authority or an administrator, the term of office of the local authority or administrator has expired,

except for the purpose of electing the successors to those members or that local authority or administrator.

(5) Unless for any reason the members of a trust board elected at a general election vacate their offices earlier, those members hold office until the end of the third annual general meeting of commoners after the general meeting of commoners at which they were elected.

(6) A member of a trust board is eligible for re-election at the general meeting of commoners at the conclusion of which he or she would, if not re-elected, have ceased to hold office.

(7) Nothing in this Act affects the operation of section 52 of the [Interpretation Act 1987](#).

(8) Schedule 2 has effect with respect to the members of a trust board.

(9) Schedule 3 has effect with respect to the meetings of a trust board.

**7 Power of the Minister to appoint a local authority to manage the affairs of a trust**

(1) The Minister may, by notice published in the Gazette, appoint a local authority to manage the affairs of a trust:

(a) instead of appointing an administrator as provided by section 5, or

(b) whenever there is no trust board elected to manage those affairs.

(2) A local authority may accept an appointment under subsection (1) whatever any other enactment or rule of law may provide, but may be appointed under that subsection only with its consent.

(3) Except in the case of a common located in the Western Division, a local authority may be appointed to manage the affairs of a trust only if the common concerned is located within the local government area for which the local authority is constituted.

(4) A local authority may be appointed under subsection (1) for a term, specified in the instrument of appointment, not exceeding 3 years.

(5) If a local authority was holding office as trustees of a common under section 11 of the former Act immediately before the commencement of this section, that local authority shall, for the purposes of this Act, be taken to have been appointed to manage the affairs of the trust established in respect of the common for a term of 3 years from the commencement of this section.

(6) With the consent of the local authority, the Minister may, from time to time by notice published in the Gazette, reappoint a local authority to manage the affairs of a trust for a term, specified in the instrument of reappointment, not exceeding 3 years.

(7) A local authority which is managing the affairs of a trust may affix its own seal to a document that is required or permitted to be executed under seal by the trust concerned or may affix the trust's seal.

(8) A local authority which is managing the affairs of a trust may give to the Minister in writing a notice that, at the end of a period specified in the notice (being not less than 6 months), the authority intends to withdraw from the management of those affairs.

(9) At the end of the period of notice given under subsection (8), the local authority ceases to manage the affairs of the trust concerned.

(10) The Minister may, by notice published in the Gazette, terminate the appointment of a local authority under this section on any ground that the Minister considers appropriate.

- (11) If a local authority is appointed to manage the affairs of a trust, such of the provisions of the [Local Government Act 1993](#) as are prescribed apply to the authority in its capacity as manager of the affairs of the trust, with such modifications as are prescribed.
- (12) When a local authority is managing the affairs of a trust, a decision relating to those affairs supported by a majority of the votes cast at a meeting of the authority at which a quorum is present is the decision of the trust.
- (13) If:
  - (a) in accordance with subsection (8), a local authority has given notice that it intends to withdraw from the management of the affairs of a trust, or
  - (b) the Minister proposes in accordance with subsection (10) to terminate the appointment of a local authority as manager of the affairs of a trust, or
  - (c) a local authority has ceased to manage the affairs of a trust and no commoners have since been elected as members of the board,the Minister may appoint an administrator to manage the affairs of the trust in accordance with section 5 as if the trust were being established under section 4 (1).

## **Division 2 Functions of trusts**

### **8 Functions of a trust**

- (1) A trust:
  - (a) is responsible for the care, control and management of the common for which the trust is established, and
  - (b) subject to this Act, holds the common as trustee for the commoners on the trusts and for the uses declared in the instrument by which the common was dedicated, reserved or otherwise set aside.
- (2) A trust may invest any funds not immediately required for the exercise of its functions provided that it does so as authorised by the [Trustee Act 1925](#).
- (3) A trust may employ such staff as it considers necessary to enable it to exercise its functions.

### **9 Power of a trust to make by-law**

- (1) A trust may, in relation to the common for which it is established, make a by-law, not inconsistent with this Act, for or with respect to the following:
  - (a) the care, control and management of the common,

- (b) the rights of the commoners with respect to the use of the common and, in particular, securing equitable access to the common for all commoners and their invitees,
- (c) giving effect to a management plan that has been adopted in relation to the common,
- (d) regulating the conduct of commoners and others when using the common,
- (e) regulating the bringing of animals onto the common, securing the removal from the common of domestic animals that are brought onto or enter the common without lawful authority and controlling the activities of animals that are authorised to be on that common,
- (f) protecting all fauna (other than feral animals) which use the common as their habitat or which are allowed to be taken or kept there by commoners,
- (g) protecting trees, shrubs and other vegetation (other than weeds) which are growing on the common and preventing such trees, shrubs and vegetation from being damaged or destroyed,
- (h) controlling or eradicating feral animals that use the common as their habitat,
- (i) controlling weeds that grow on the common,
- (j) protecting facilities on the common that are provided for the use of commoners,
- (k) prohibiting or regulating the removal from the common of dead timber, logs and tree stumps, whether they are still in the ground or not,
- (l) prohibiting or regulating the removal from the common of sand, soil, rocks or any other mineral matter,
- (m) prescribing annual fees to be paid by commoners,
- (n) imposing charges to be paid by or in respect of commoners or other persons or groups of persons as a condition of their being allowed to use the common, a part of the common or specified facilities located on the common for a specified purpose,
- (o) prohibiting or regulating the use and parking of motor vehicles on the common and, where the use of motor vehicles on the common is permitted, prescribing charges for that use or for the parking of such vehicles on the common,
- (p) prohibiting or regulating the use of the common or any part of the common as a dwelling or camping place and, where that use is permitted, prescribing charges for that use,

- (q) prohibiting or regulating the erection of buildings and other structures on the common,
  - (r) providing for the collection and disposal of the fees and charges (if any) prescribed under paragraph (m), (n), (o) or (p).
- (2) The trustees holding office in respect of a common when this Act is enacted may make a by-law in accordance with subsection (1) so as to have effect in respect of the common on and from the commencement of section 4.
- (3) A by-law made under subsection (1) or (2) is required to be approved by the Governor and does not have effect until it is so approved.
- (4) If no by-law has been made in accordance with subsection (2) in respect of a common in existence immediately before the commencement of section 4, then the trust established for the common by subsection (3) of that section shall be taken to have made the prescribed model by-law so as to have effect in respect of the common on and from that commencement.
- (5) For the purposes of subsection (4), the regulations may prescribe a model by-law that provides for all or any of the matters specified in subsection (1).
- (6) A trust may amend its by-law or may repeal its by-law and make another by-law in substitution of that by-law, but such an amendment or such a repeal and substitution is required to be approved by the Governor and does not have effect until it is so approved.
- (7) In subsection (6):
- amend*** means:
- (a) omit a provision or matter, or
  - (b) substitute a provision or matter for an existing provision or existing matter, or
  - (c) insert or add a new provision or new matter.
- (8) Subsection (6) has effect irrespective of whether the trust's by-law is, or includes any of the provisions of, the prescribed model by-law.
- (9) Any charge properly imposed by a trust under a by-law in force under this section that was not paid when it was due is recoverable in a court of competent jurisdiction as a debt due to the trust.
- (10) Where a by-law made or taken to be made under this section is in force in respect of a common, the trust board concerned must exhibit a copy of the by-law at one or more conspicuous places on the common.

(11) A by-law may create an offence punishable by a maximum penalty not exceeding 5 penalty units.

(12) If:

(a) any person is convicted of an offence created under a by-law made or taken to be made under this section, and

(b) the court imposes a penalty in respect of the offence,

the amount of the penalty is payable to the trust concerned.

## **Division 3 Commoners' rights etc**

### **10 Duty of a trust to keep a commoners' roll**

(1) A trust must keep a commoners' roll for the common for which the trust is established.

(2) Any person who has the qualification prescribed by the regulations for enrolment as a commoner is entitled to be enrolled on the commoners' roll for which the person is qualified.

(3) A trust must maintain, publish and otherwise deal with its commoners' roll as provided by the regulations.

(4) If:

(a) a person has applied to be enrolled on the commoners' roll kept by a trust, and

(b) the trust has refused the application,

the trust must immediately notify the person in writing of the refusal and the reasons for it.

### **11 Appeals against refusal of a trust to enter a person's name on the commoners' roll**

(1) If a trust has notified a person in accordance with section 10 (4) of its refusal of the person's application for enrolment, the person may, within the period of 28 days following the date on which the person receives written notice of the trust's refusal of the application, appeal against the refusal to the Civil and Administrative Tribunal.

#### **Note—**

An appeal under this section is an external appeal to the Tribunal for the purposes of the [Civil and Administrative Tribunal Act 2013](#).

(2) (Repealed)

(3) The trust concerned is entitled to be heard at the hearing of an appeal under subsection (1).



- (4) On the hearing of an appeal under subsection (1), the Civil and Administrative Tribunal may:
  - (a) confirm the decision of the trust concerned, or
  - (b) if satisfied that the appellant is entitled to be enrolled as a commoner on the commoners' roll kept by that trust, order that trust to enter the appellant's name on that roll.
- (5) (Repealed)

**12 Rights of commoners may be exercised only by persons whose names are entered on the commoners' roll**

- (1) A person is entitled to exercise the rights of a commoner in respect of a common only if the person's name is entered on the commoners' roll for that common.
- (2) The rights that a commoner is entitled to exercise in respect of a common are those conferred by:
  - (a) this Act, and
  - (b) the by-law relating to that common.

**Division 4 Trust property**

**13 Operation of the Division**

- (1) This Division does not affect the provisions of any other Act relating to a particular trust or the common for which the trust is established.
- (2) The functions of a trust established in respect of a common or the Minister under this Division are not affected by anything contained in any grant issued for the common.

**14 Trust to have a fee simple estate in the common for which it is established**

- (1) For the purposes of this Act, a trust has, by virtue of this subsection, an estate in fee simple in the common for which it is established, unless it already has such an estate by virtue of some other enactment or instrument.
- (2) If the setting aside of a common is revoked or otherwise terminated as to part of the common, the trust ceases to have an estate in fee simple in that part.
- (3) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

**15 Trust may acquire other land etc in certain cases**

- (1) A trust may, with the approval of the Minister, do any of the following in relation to the common for which it is established:

- (a) purchase, or take a lease of or otherwise acquire any land that the trust requires for use in connection with the common (whether the land adjoins the common or not),
  - (b) with the consent of the owner of the land, spend trust money for the improvement of land if the trust considers that the improvement will provide or improve access to the common or will provide or improve facilities for the use of the commoners,
  - (c) make donations out of trust money to a group or organisation for any purpose which, in the opinion of the Minister, will be of benefit to the common or the commoners in general.
- (2) If a trust has acquired land, whether by purchase, lease or otherwise, the trust may spend money on improving the land or for the purpose of enabling the land to be used by the commoners concerned.
- (3) If a trust acquires land, whether by purchase, lease or otherwise, any by-law that applies to the common for which the trust is established also applies to that land.

**16 Trust not to enter into land transactions without the consent or authority of the Minister**

- (1) A trust may not enter into any transaction with respect to the land vested in it, except as provided by this Division.
- (2) Subject to section 19 (4), if a trust purports to enter into a land transaction that it is not empowered to enter into, the transaction is void.
- (3) A trust established for a common located in the Western Division is not empowered to enter into any transaction involving the alienation of the land vested in the trust.
- (4) Subject to subsection (3), a trust may enter into a transaction in respect of land vested in it but only if:
- (a) the Minister has, on the application of the trust, consented to the transaction, or
  - (b) the trust has a general authority from the Minister to enter into transactions of that kind,
- and in either case:
- (c) the transaction and the instrument that gives effect to it comply with any requirements that the Minister may have imposed in giving that consent or when granting that authority, and
  - (d) where appropriate, the trust has complied with subsections (6) and (7).
- (5) An application referred to in subsection (4) (a) must specify full particulars of the proposed transaction.

- (6) If a trust established for a common located in the Eastern and Central Division proposes to sell any of the land vested in it, it must publish a notice specifying:
  - (a) the date of the decision to sell that land and the terms of the proposed sale, and
  - (b) the location of that land, and
  - (c) such other particulars (if any) as are prescribed.
- (6A) The notice must be published in:
  - (a) a newspaper that circulates in the area in which the land concerned is located, or
  - (b) a manner approved in writing by the Minister having regard to the object of bringing notices of that kind to the attention of members of the public in the areas in which the relevant land is located.
- (7) Unless the trust has a general authority from the Minister authorising it to sell land that is vested in it, a trust must publish a notice under subsection (6) not less than 14 days before the trust makes its application to the Minister for consent to the sale.
- (8) On receiving an application referred to in subsection (4) (a), the Minister:
  - (a) may consent to the proposed transaction to which the application relates as to the whole or any part of the land concerned, or
  - (b) may refuse the application altogether.
- (9) In consenting to a proposed transaction in accordance with subsection (8) (a), the Minister may require:
  - (a) the terms and conditions of the proposed transaction to be varied in such manner, and the proposed transaction to be subject to such additional terms and conditions, as the Minister considers appropriate, and
  - (b) the proposed transaction to be conducted in such manner and within such period as the Minister specifies in the consent.
- (10) Subject to subsection (11), the Minister:
  - (a) may, on the application of a trust, grant to the trust a general authority in writing authorising it to enter into transactions of a specified kind with respect to the land vested in it, and
  - (b) may, as a condition of granting such an authority, require any such transactions:
    - (i) to be subject to such conditions, restrictions, reservations and covenants, and
    - (ii) to be carried out in such manner and within such periods,

as the Minister specifies in the authority.

- (11) Subsection (10) does not extend to mortgages, charges and other encumbrances.
- (12) An application referred to in subsection (10) (a) must include such particulars as may be prescribed.
- (13) Even if a trust has a general authority from the Minister granted in accordance with subsection (10), the trust must not enter into a transaction involving the alienation or leasing of, or the granting of a licence over, land vested in the trust unless the consideration for entering into the transaction has been approved by the Minister.
- (14) The Minister may, at any time, revoke a consent or authority given for the purposes of this section or vary its terms, but only if to do so would not prejudice the rights of third parties.
- (15) A reference in this section to a licence, or a reference in this section (subsections (1) and (2) excepted) to a transaction, does not include a reference to a temporary licence.

#### **17 Mortgage of common land may include a power of sale**

Except in the case of land comprised in a common located in the Western Division, a mortgage of land comprising or included in a common may contain a power of sale, and if such a mortgage does contain such a power, the Minister may not refuse to consent to a sale of the land by the mortgagee should the power become exercisable.

#### **18 Effect of transfer etc of land vested in a trust**

- (1) Land transferred or conveyed to a person by a trust in accordance with this Division vests in the person free from all trusts to which the land was subject immediately before the transfer or conveyance took effect.
- (2) Whenever land that forms part of a common vests in a person in accordance with subsection (1), that land ceases to be set aside as a common.

#### **19 Execution of instruments on behalf of a trust**

- (1) If a trust proposes to enter into a transaction with respect to land that is vested in it, the Minister may, by instrument in writing, authorise a person other than the trust board or the local authority that is managing the trust's affairs to act on the trust's behalf for the purpose of executing instruments and doing all other things that are necessary to effect the transaction.
- (2) The receipt of a person authorised under subsection (1) is a sufficient discharge to any purchaser, lessee, mortgagee, licensee or other person who pays money in good faith in relation to a land transaction entered into on behalf of a trust in accordance with this section.

(3) If:

(a) land that is the subject of a transaction under this Division is subject to the [Real Property Act 1900](#), and

(b) the instrument that gives effect to the transaction is signed by a person authorised under subsection (1),

the instrument has the same effect as it would have if executed under seal by the trust concerned.

(4) A purchaser, lessee, mortgagee, licensee or other person who deals in good faith with a person authorised under subsection (1) is not prejudiced or affected by any defect or irregularity arising from a contravention of this Division.

## **20 Proceeds of sale etc**

(1) A trust which has entered into any transaction with respect to the land vested in the trust (including the granting of a temporary licence) in accordance with this Division must apply any proceeds of the transaction:

(a) in accordance with any directions of the Minister, and

(b) subject to any such directions, in the exercise of its functions under this Act.

(2) For the purposes of subsection (1), the proceeds of a transaction relating to the land vested in the trust are the proceeds after meeting the costs of the transaction.

## **21 Power of the Minister to direct a trust to set aside funds for the payment of debts**

(1) The Minister may give directions to a trust:

(a) requiring it to set aside part of its revenue for the payment of interest on any specified debt of the trust or for the repayment of any such debt together with any interest payable on it, and

(b) if the Minister considers it appropriate, requiring the trust to invest that part in a specified manner.

(2) A trust must comply with directions given to it under subsection (1).

## **22 Trust to be empowered to grant temporary licences for grazing etc**

(1) For the purpose of this section, a temporary licence is a licence that is granted for a period not longer than that prescribed.

(2) A trust may, in respect of the land or any part of the land vested in it, grant temporary licences for grazing or for any other prescribed purpose.

(3) Such licences:

- (a) may be granted subject to conditions or restrictions determined by the trust concerned, and
- (b) if conditions or restrictions are prescribed for the purposes of this subsection, shall be taken to include those conditions or restrictions.

### **23 Lease or licence in respect of a common or part of a common to terminate in certain cases**

- (1) A lease or licence granted over a common is cancelled if the setting aside of the common, or the part of the common comprised in the lease or licence, is revoked or otherwise terminated.
- (2) If a common is subject to a lease or licence and the setting aside of a part of the common comprised in the lease or licence is to be revoked or otherwise terminated, the trust concerned and the lessee or licensee may, before the revocation or termination takes effect, enter into an agreement in writing to the effect that the lease or licence is to continue in force as if that part of the common had never been subject to the lease or licence.
- (3) If an agreement under subsection (2) is entered into, then, subject to any modifications contained in the agreement, the lease or licence to which the agreement relates continues in force as if the land which has ceased to form part of the common concerned had never been subject to the lease or licence.
- (4) Compensation is not payable for the cancellation of a lease or licence by the operation of subsection (1) or in respect of the revocation or termination of the setting aside of a part of a common that was subject to a lease or licence.

### **24 Dissolution of a trust—disposal of the trust property**

- (1) If the setting aside of a common is revoked or otherwise terminated, the trust established for that common is dissolved.
- (2) If a trust is dissolved, the Minister may dispose of any property of the trust in such manner as the Minister considers appropriate.
- (3) If any property which the Minister has power to dispose of under subsection (2) is real property, the Minister may deal with it as if it were Crown land subject to the Crown Land Acts and not otherwise.
- (4) The Minister has power to execute transfers, conveyances and other instruments and do any other things that are necessary to enable the Minister to exercise the powers conferred by subsections (2) and (3).
- (5) The Minister may give directions with respect to the proceeds of sale of any property sold under this section and, where any such directions are given, those proceeds must

be dealt with in accordance with those directions.

- (6) For the purpose of subsection (5), the proceeds of sale are the proceeds after meeting the costs of the sale.

## **Division 5 Management plans**

### **25 Preparation of management plans**

- (1) The Minister may:
- (a) cause a draft management plan to be prepared for a common, or
  - (b) direct a trust to prepare, within such period as is specified in the direction, a draft management plan in respect of the common for which it is established.
- (2) A trust may, on its own initiative, prepare a draft management plan for the common for which it is established and submit a copy of it to the Minister.
- (3) If the Minister has directed a trust to prepare a draft management plan, the trust must, within the period specified in the direction, prepare such a plan and submit a copy of it to the Minister.
- (4) A draft management plan must comply with such requirements (if any) as are specified in the regulations.

### **26 Reference of certain draft management plans to the trust concerned**

- (1) If a draft management plan has been prepared under section 25 (1) (a), the Minister:
- (a) may, where the plan relates to a trust established under section 4 (1), and
  - (b) must, where the plan relates to a trust established by section 4 (3),
- refer a copy of it to the trust for its consideration.
- (2) The Minister may refer a copy of a draft management plan prepared under section 25 (1) (a) or submitted to the Minister under section 25 (2) or (3) to such person as the Minister thinks fit for that person's consideration and comment (if any).
- (3) The Minister may, where a draft management plan relates to a trust established under section 4 (1), but must, where such a plan relates to a trust established by section 4 (3):
- (a) cause a copy of the plan to be placed on public display for such period (not less than 14 days) as the Minister thinks appropriate, and
  - (b) cause a copy of the plan, or a notice specifying the place at which the plan may be inspected, to be published in:

- (i) a newspaper that circulates in the land district where the common concerned is located, or
  - (ii) a manner that the Minister is satisfied is likely to bring the plan or notice to the attention of members of the public in the land district where the common concerned is located.
- (4) If, with respect to a draft management plan, the Minister is required to do the things referred to in subsection (3) or, not being required to do those things, has nevertheless done them, any person who wishes to do so is entitled to make written representations to the Minister concerning the plan at any time before the plan is dealt with in accordance with section 27.
- (5) As soon as practicable after doing the things referred to in subsection (3), the Minister must give the trust concerned a notice in writing requiring the trust to convene a public meeting to consider the relevant draft management plan.
- (6) On being given a notice in accordance with subsection (5), the trust concerned must convene a public meeting in accordance with the notice.
- (7) At a public meeting convened in accordance with subsection (6), the persons present may pass a resolution indicating their approval or disapproval of the draft management plan or proposing modifications to the plan.
- (8) As soon as practicable after the holding of the public meeting, the person presiding at the meeting must notify the Minister of each resolution passed at the meeting that is of a kind referred to in subsection (7).
- (9) If, with respect to a draft management plan, the Minister is required to do the things referred to in subsection (3) or, not being required to do those things, has nevertheless done them, the Minister must not adopt the plan:
  - (a) without giving persons who may wish to do so an opportunity to make written representations to the Minister concerning the plan, or
  - (b) without taking into account all relevant representations made in accordance with subsection (4) and all relevant resolutions passed in accordance with subsection (7), or
  - (c) unless:
    - (i) the Minister has given to the trust concerned the notice required by subsection (5), or
    - (ii) where such a notice has been given—the public meeting required to be convened in accordance with subsection (6) has been held to consider the plan.



## **27 Adoption of a draft management plan**

- (1) Subject to subsection (2), the Minister may adopt a draft management plan without alteration or with such alterations as the Minister considers appropriate or may reject the plan.
- (2) If:
  - (a) a draft management plan relates to a common that was in existence before the commencement of section 4, and
  - (b) the purposes for which it is proposed to use the common, as set out in that plan, are inconsistent with the purposes for which the common could have been lawfully used immediately before that commencement,the Minister may adopt the plan only if it has been approved by a resolution passed by not less than 75 per cent of the commoners present at a special general meeting of commoners convened for the purpose of considering the plan.
- (3) A draft management plan becomes operative as a management plan when the Minister:
  - (a) has signified his or her adoption of the plan, and
  - (b) has given to the trust concerned notice in writing of the adoption of the plan.
- (4) When a management plan has become operative with respect to a common:
  - (a) the trust concerned must, as soon as practicable afterwards, implement the plan, and
  - (b) no person shall carry out any activity or operation on or in relation to the common unless it is consistent with the plan.
- (5) A person who contravenes subsection (4) (b) is guilty of an offence.  
Maximum penalty: 10 penalty units.

## **28 Management plan may be cancelled or altered**

- (1) The Minister may cancel a management plan adopted under section 27, either with or without adopting another management plan in its place.
- (2) If the Minister cancels a management plan under subsection (1) and, immediately before that cancellation, any by-laws were in force in respect of the common to which the plan relates, then, on the cancellation of the plan, those by-laws cease to be in force in so far as they gave effect to provisions of that plan.
- (3) If a management plan is in force in respect of a common:

- (a) the Minister may:
  - (i) cause a draft alteration to the plan to be prepared, or
  - (ii) direct the trust concerned to prepare, within such period as is specified in the direction, a draft alteration to the plan, or
- (b) the trust concerned may, on its own initiative, prepare a draft alteration to the plan.
- (4) The provisions of this Division apply to a draft alteration to a management plan in the same way as they apply to a draft management plan.
- (5) When a draft alteration to a management plan relating to a common becomes operative, the plan as altered becomes the management plan in force in respect of the common.

## **Division 6 Administrative matters**

### **29 Principal place of administration of a trust**

- (1) Within 1 month:
  - (a) after the first members of a trust board are elected to office at an election held in accordance with section 5 (5), or
  - (b) after a local authority is appointed to manage the affairs of a trust in accordance with section 7 (1), or
  - (c) in the case of a trust established by section 4 (3)—after the commencement of section 4,

the trust must designate a place as its principal place of administration and notify the Minister in writing of the address of that place.
- (2) If a trust changes its principal place of administration, the trust must, within 14 days of making the change, notify the Minister in writing of the address of its new principal place of administration.
- (3) Except with the consent of the Minister, the principal place of administration of a trust must be within the land district where the common for which the trust is established is located.

### **30 Keeping of records by a trust**

- (1) A trust must keep its accounting and other records at its principal place of administration, unless the Minister approves some other place at which those records may be kept, in which case the trust may keep those records at that other place.

(2) A commoner is entitled at all reasonable times to inspect without charge the accounting and other records of the trust on whose commoners' roll the commoner's name appears.

(3) If:

(a) a member of a trust board, or of a local authority that is managing the trust's affairs, or

(b) an employee of the trust,

obstructs a commoner who is seeking to exercise the right conferred by subsection (2), the member or employee is guilty of an offence.

Maximum penalty: 10 penalty units.

### **31 Trust to hold an annual general meeting of commoners**

(1) Except as provided by subsection (2), a trust must, at least once in each calendar year and within the period of 3 months after the end of each financial year of the trust, convene an annual general meeting of commoners.

(2) In the case of a trust established after the commencement of section 4, the trust must hold its first annual general meeting of commoners:

(a) within 18 months after it is established, and

(b) within 3 months after the end of the trust's first financial year.

(3) On application made in writing by a trust, the Minister may, subject to such conditions as the Minister considers appropriate:

(a) extend the period of 3 months referred to in subsection (1) or (2) or the period of 18 months referred to in subsection (2), or

(b) authorise an annual general meeting to be held in a calendar year other than the calendar year in which it would otherwise be required to be held by subsection (1).

(4) A trust is not in default in holding an annual general meeting under subsection (1) or (2) if, in accordance with an extension or authority under subsection (3), an annual general meeting is not held within the period or in the calendar year in which it would otherwise be required by subsection (1) or (2) to be held, but is held within the extended period or in the calendar year in which under subsection (3) it is authorised to be held.

(5) An application by a trust for an extension of a period or for authorisation under subsection (3) must be made before the end of that period or of the calendar year in which the annual general meeting would otherwise be required to be held by subsection (1) or (2).

- (6) At an annual general meeting of commoners, the trust concerned must submit to the commoners accounts which provide a true and fair view of the following:
  - (a) the income and expenditure of the trust during its last preceding financial year,
  - (b) the assets and liabilities of the trust at the end of that financial year,
  - (c) any mortgages which, at the end of that financial year, affected the common for which the trust is established.
- (7) In addition to any other business which may be transacted at an annual general meeting of commoners, the business of such a meeting must include the business of:
  - (a) confirming (or otherwise) the minutes of the last preceding annual general meeting (if any) of the commoners, and
  - (b) receiving and considering the annual report of the trust, prepared in accordance with section 37, concerning the activities of the trust during the last preceding financial year of the trust (if any), and
  - (c) where appropriate, electing the members and office bearers of the trust board, and
  - (d) receiving and considering the accounts that are required to be submitted to the commoners in accordance with subsection (6).

### **32 General election of members of the trust board to be held at every third annual general meeting of commoners**

- (1) A trust board must, at every third annual general meeting of commoners after the last general meeting of commoners at which a general election was held to elect members of the trust board, cause a general election to be held for the purpose of:
  - (a) filling the vacancies that will arise in the membership of the board when the terms of office of the existing members end, and
  - (b) electing the office bearers of the board from among the persons elected to fill those vacancies.
- (2) If a general election is not held as required by subsection (1), the Minister may:
  - (a) convene a special general meeting of commoners for the purpose of holding such an election, and
  - (b) appoint a person to preside at the meeting.
- (3) In subsection (1), the reference to the last general meeting of commoners at which a general election was held to elect members of a trust board includes:
  - (a) in the case of a trust established under section 4 (1)—the general meeting of

commoners convened to elect members of that board in accordance with section 5 (2), and

- (b) in the case of a trust established by section 4 (3)—the last general meeting of commoners held before the commencement of section 4 at which new trustees for the common were elected in accordance with section 6 of the former Act.

### **33 Election to be held to fill a vacancy in the membership of a trust board**

- (1) Within 14 days after a vacancy arises in the membership of a trust board, the board must convene a special general meeting of commoners for the purpose of holding an election to fill the vacancy.
- (2) The trust board concerned must cause such a meeting to be held within 1 month after the vacancy arises.
- (3) However, if the vacancy arises less than 2 months before the vacating member's term of office was due to end, the trust board is not required to call such a meeting, unless the failure to fill the vacancy would result in there being an insufficient number of members to enable the board to have a quorum at its meetings.
- (4) If a vacancy or vacancies in the membership of a trust board result in there being an insufficient number of members to enable the board to have a quorum at its meetings, the remaining member or members of the board must exercise the functions imposed on the board by this section and section 34.
- (5) If a special general meeting of commoners is not convened or held as required by this section, the Minister may:
  - (a) convene such a meeting, and
  - (b) appoint a person to preside at the meeting.

### **34 General provisions applicable to elections of members of trust boards**

- (1) An election required by section 32 or 33 must be conducted in accordance with the procedure prescribed by the regulations.
- (2) Only a natural person is eligible to be elected as a member of a trust board.
- (3) At any general election held to elect the members and office bearers of a trust board and at any election held to fill a vacancy in the membership of the board, any person:
  - (a) whose name appears on the commoners' roll kept by the trust concerned, and
  - (b) who has reached 18 years of age and is not under any legal disability,is entitled to vote at the election.

- (4) Not less than 14 days after the declaration of the result of an election:
- (a) to elect the members and office bearers of a trust board, or
  - (b) to elect a member to fill a vacancy in the membership of the board,
- the president of the board must notify the Minister in writing of the result of the election.
- (5) A president of a trust board who fails to comply with subsection (4) is guilty of an offence.
- Maximum penalty: 2 penalty units.
- (6) If it appears to the Minister that:
- (a) an election of the members or office bearers of a trust board, or
  - (b) an election to fill a vacancy in the membership of a trust board,
- could be invalid because of some technical defect, or some irregularity not involving fraud, corruption or dishonesty, in the way in which the election was conducted, the Minister may, by notice published in the Gazette, declare the election to have been validly held, despite the technical defect or irregularity.

### **35 Special general meetings of commoners**

- (1) A trust may, whenever it thinks necessary, convene a special general meeting of commoners.
- (2) Subject to this section, a trust must convene a special general meeting of commoners:
- (a) on receiving a requisition from not less than 20 per cent of the total number of commoners whose names appear on the commoners' roll kept by the trust, or
  - (b) on receiving from the Minister a notice in writing directing the trust to hold such a meeting for a purpose specified in the notice, or
  - (c) where, in relation to a common that was set aside before the commencement of section 4, there is a proposal to adopt a draft management plan that would have the effect of changing, or adding to, the purposes for which the common may be used.
- (3) A requisition referred to in subsection (2) (a) is not valid unless it:
- (a) states the purpose or purposes of the proposed meeting, and
  - (b) is in writing purporting to be signed by the commoners who are making the requisition, and

- (c) is lodged with the president or secretary of the trust board concerned.
- (4) Such a requisition may, however, consist of several documents in similar form, each purporting to be signed by one or more of the commoners who are making the requisition.
- (5) A trust which is required by subsection (2) to convene a special general meeting must convene the meeting so that it will be held within 1 month after the occurrence of the event which gave rise to the requirement.
- (6) If a trust has failed to comply with subsection (5) or section 33 (1), any one or more of the commoners concerned may convene a special general meeting of commoners to be held not later than 1 month after the expiry of the period referred to in subsection (5) or section 33 (2), as the case requires.
- (7) A commoner or commoners who propose to convene a special general meeting of commoners under subsection (6) must convene the meeting in a manner that is as nearly as practicable the same as that which would be required if the meeting were convened by the trust concerned.
- (8) A commoner who has convened a meeting under this section is entitled to be reimbursed by the trust concerned for the expense directly incurred by the commoner in convening and holding the meeting.

### **36 Provisions preliminary to holding a general meeting of commoners**

- (1) A trust must, at least 14 days before the date fixed for the holding of a general meeting of commoners, send by pre-paid post to each commoner whose name appears on the commoners' roll kept by the trust:
  - (a) a notice specifying:
    - (i) the place, date and time of the meeting, and
    - (ii) the nature of the business to be transacted at the meeting, and
  - (b) where the meeting is the annual general meeting:
    - (i) a copy of the annual report prepared under section 37 concerning the activities of the trust during its last preceding financial year, and
    - (ii) a copy of the accounts required to be submitted to the commoners at the meeting in accordance with section 31 (6).
- (2) No business may be transacted at a general meeting of commoners except:
  - (a) the business specified in the notice sent to the commoners in accordance with subsection (1), and

(b) if, in the case of an annual general meeting, the business referred to in section 31 (7) is not specified in the notice—that business.

- (3) A commoner who wishes to bring any business before a general meeting of commoners may give notice in writing of that business to the trust concerned.
- (4) The trust concerned must include in the next notice calling a general meeting of commoners given after receipt of the notice referred to in subsection (3) particulars of the business specified in that notice.

### **37 Trust to prepare an annual report of its activities etc**

- (1) A trust must, within 2 months after the end of each financial year of the trust or within such extended period as the Minister may in a particular case allow:
- (a) prepare a report in writing concerning the trust's activities for that year, and
  - (b) submit a copy of the report to the Minister.
- (2) If the Minister so requests, a trust must submit to the Minister in writing, within such period as the Minister specifies in the request:
- (a) such information relating to the affairs of the trust as may be specified in the request, or
  - (b) such records or parts of records of the trust, or such copies of those records or parts, as may be so specified.

### **38 Procedure at general meetings of commoners**

Schedule 4 has effect with respect to the procedure to be followed at general meetings of commoners.

### **39 Minutes of proceedings of general meetings of commoners etc**

- (1) A trust must:
- (a) record the minutes of all proceedings of:
    - (i) general meetings of commoners, and
    - (ii) meetings of the trust board or, if the affairs of the trust are managed by a local authority, meetings of the local authority when acting in that capacity, and
  - (b) ensure that those minutes are signed by the person presiding at the meeting at which the proceedings took place or by the person presiding at the next succeeding general meeting of commoners or, as the case may be, the next succeeding meeting of the trust board or local authority.



- (2) Any minute that is recorded in accordance with subsection (1) (a) and purports to be signed as provided by subsection (1) (b) is evidence of the proceedings to which it relates.
- (3) When minutes have been recorded in accordance with subsection (1) (a) and purport to be signed in accordance with subsection (1) (b), then, unless the contrary is proved:
  - (a) the meeting shall be taken to have been duly held and convened, and
  - (b) all proceedings that are recorded in the minutes as having taken place at the meeting shall be taken to have duly taken place, and
  - (c) all the elections of members and office bearers of the trust board concerned and elections and appointments of auditors that are recorded in the minutes as having been held or made at the meeting shall be taken to have been validly held or made.
- (4) A commoner may request in writing the trust concerned to provide the commoner with a copy of any minutes recorded under subsection (1).
- (5) If a request is made under subsection (4), the trust must comply with the request:
  - (a) where the trust requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the trust or within such longer period as the Minister approves, or
  - (b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Minister approves.

## **Division 7 Financial provisions**

### **40 Financial year of a trust**

- (1) Subject to this section, the financial year of a trust is the period of 12 months beginning:
  - (a) in the case of a trust that has had a previous financial year—at the end of that year, and
  - (b) in the case of a trust that has not had a previous financial year—on the date on which the trust was established.
- (2) A general meeting of commoners may, by resolution, vary the financial year of the trust concerned by substituting:
  - (a) a period shorter than the existing period, or
  - (b) a period longer than the existing period, so long as the substituted period is not longer than 18 months.

- (3) A resolution under subsection (2) has no effect if it would prevent the trust from complying with section 31 with respect to the holding of annual general meetings of commoners.

#### **41 Trust to keep accounting records**

- (1) A trust must:
- (a) keep such accounting records as correctly record and explain the transactions of the trust and its financial position, and
  - (b) keep its accounting records in such a manner as will enable:
    - (i) the preparation from time to time of true and fair accounts of the trust, and
    - (ii) the accounts of the trust to be conveniently and properly audited in accordance with this Act.
- (2) A trust must retain the accounting records kept under this section for a period of 7 years after the completion of the transactions to which they relate.
- (3) A trust must keep its accounting records in writing in the English language or so as to enable those records to be readily accessible and readily convertible into writing in the English language.
- (4) If a trust fails to comply with a requirement of this section, every member of the trust board, or of the local authority that is managing the trust's affairs, who is in default is guilty of an offence.

Maximum penalty: 10 penalty units.

#### **42 Trust to prepare an income and expenditure account and balance sheet**

- (1) A trust must, not less than 14 days before an annual general meeting of the commoners concerned or, if no such annual general meeting is held within the period required by section 31, not less than 14 days before the end of that period, cause to be made out:
- (a) an income and expenditure account for the last financial year of the trust, being an income and expenditure account that gives a true and fair view of the income and expenditure of the trust for that financial year, and
  - (b) a balance sheet as at the end of that financial year, being a balance sheet that gives a true and fair view of the state of affairs of the trust as at the end of that financial year.
- (2) A trust must take all reasonable steps to ensure that its accounts are audited as required by section 45 not less than 14 days before the annual general meeting of the commoners concerned or, if no such annual general meeting is held within the period

required by section 31, not less than 14 days before the end of that period.

- (3) A trust must cause to be attached to, or endorsed on, its accounts the auditor's report relating to those accounts provided to the trust in accordance with section 46.
- (4) A trust must ensure that its accounts comply with such of the prescribed requirements as are relevant to those accounts, but, if accounts prepared in accordance with those requirements would not otherwise give a true and fair view of the matters required to be dealt with in the accounts, the trust must add such information and explanations as will give a true and fair view of those matters.
- (5) A trust must cause to be attached to any accounts required by section 31 to be laid before an annual general meeting of commoners, before the auditor reports on the accounts under this Division, a statement made in accordance with a resolution of the trust board, or of the local authority that is managing the trust's affairs, and signed by not less than two of its members stating whether, in the opinion of the board or the local authority:
  - (a) the income and expenditure account is drawn up so as to give a true and fair view of the income and expenditure of the trust for the financial year concerned, and
  - (b) the balance sheet is drawn to give a true and fair view of the state of affairs of the trust as at the end of that financial year, and
  - (c) there are reasonable grounds to believe that the trust will be able to pay its debts as and when they fall due.
- (6) If a trust fails to comply with a requirement of this section, every member of the trust board, or of the local authority that is managing the trust's affairs, who is in default is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **43 Appointment and election of auditors**

- (1) Within 1 month after the date on which a trust is established under section 4 (1), the administrator appointed to manage the affairs of the trust must appoint at least one qualified person to be the auditor of the trust.
- (2) In the case of a trust which is established by section 4 (3) and in respect of which there is no auditor at the time when section 4 commences, the trust must, within 1 month after the commencement of this section, appoint at least one qualified person to be the auditor of the trust.
- (3) A person appointed in respect of a trust under subsection (1) or (2) holds office, subject to this Division, only until the end of the first annual general meeting or, as the case may be, the next annual general meeting of the commoners concerned.

- (4) A trust must:
  - (a) at its first annual general meeting of commoners or, as the case may be, at the first annual general meeting after the commencement of this section, elect at least one qualified person to be the auditor of the trust, and
  - (b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the trust, elect a qualified person to fill the vacancy.
- (5) A person elected as auditor under subsection (4) holds office until death or until removal or resignation from office in accordance with section 44 or until ceasing to be capable of acting as auditor by virtue of being no longer qualified.
- (6) If:
  - (a) a vacancy, other than a vacancy caused by the removal of an auditor from office, occurs in the office of auditor of a trust, and
  - (b) there is no surviving or continuing auditor of the trust, and
  - (c) a general meeting of commoners has not elected a person to fill the vacancy,the trust must, within 1 month after the vacancy occurred, appoint a person to fill the vacancy.
- (7) If an auditor of a trust is not elected or appointed as required by this section, the Minister may, on the application in writing of a commoner, appoint one or more qualified persons to be the auditor of the trust.
- (8) A person appointed as auditor of a trust under subsection (6) or (7) holds office, subject to this section, only until the end of the next annual general meeting of commoners.
- (9) A person may not be elected or appointed as an auditor of a trust without his or her consent.
- (10) A person is not qualified to be elected or appointed or to continue to hold office as an auditor under this section unless the person holds the qualification prescribed by the regulations for the purposes of this section.

#### **44 Removal and resignation of auditors**

- (1) An auditor of a trust may be removed from office by resolution passed at a general meeting of commoners, but not otherwise.
- (2) An auditor of a trust may, by notice in writing given to the trust, resign as the auditor of the trust.

#### **45 Fees and expenses of auditors**

The reasonable fees and expenses of an auditor of a trust are payable by the trust.

#### **46 Powers and duties of auditors to report on accounts**

- (1) An auditor of a trust must report to the commoners on the accounts required to be laid before the annual general meeting of commoners and on the trust's accounting records and other records relating to those accounts.
- (2) An auditor of a trust must provide the report under subsection (1) in sufficient time to enable the trust board to comply with the requirements of section 36 (1) (b) in relation to that report.
- (3) An auditor of a trust must, in a report under this section:
  - (a) state whether the accounts are in the auditor's opinion properly drawn up:
    - (i) so as to give a true and fair view of the matters required by section 42 to be dealt with in the accounts, and
    - (ii) in accordance with the provisions of this Act, and
  - (b) state whether the accounting records and other records and the commoners' roll required by this Act to be kept by the trust have been, in the auditor's opinion, properly kept in accordance with the provisions of this Act, and
  - (c) specify any defect or irregularity in the accounts and any matter not set out in the accounts without regard to which a true and fair view of the matters dealt with by the accounts would not be obtained, and
  - (d) if the auditor is not satisfied as to any matter referred to in paragraph (a) or (b), state the auditor's reasons for not being so satisfied.
- (4) It is the duty of an auditor of a trust to form an opinion as to each of the following matters:
  - (a) whether the auditor has obtained all the information and explanations that the auditor has required,
  - (b) whether proper accounting records and other records have been kept by the trust as required by this Act.
- (5) An auditor of a trust must state in the auditor's report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in subsection (4).
- (6) An auditor of a trust has a right of access at all reasonable times to the accounting records and other records of the trust and is entitled to require from any employee of the trust such information and explanations as the auditor desires for the purposes of

audit.

- (7) The report of an auditor of a trust must:
- (a) be attached to or endorsed on the accounts, and
  - (b) if a commoner so requires, be read at the annual general meeting of commoners, and
  - (c) be kept available for inspection by a commoner at any reasonable time.
- (8) An auditor of a trust or the auditor's agent authorised by the auditor in writing for the purpose is entitled:
- (a) to attend any general meeting of the commoners, and
  - (b) to receive all notices of, and other communications relating to, any general meeting that a commoner is entitled to receive, and
  - (c) to be heard at any general meeting that he or she attends on any part of the business of the meeting that concerns the auditor in that capacity, and
  - (d) to be so heard even though the auditor is retiring at that meeting or a resolution to remove the auditor from office is passed at that meeting.
- (9) If an auditor of a trust becomes aware:
- (a) that the trust has failed to comply with section 31, or
  - (b) that the trust has failed to comply with the provisions of section 36 relating to the submitting of accounts to the annual general meeting of commoners,
- the auditor must:
- (c) immediately inform the Minister by notice in writing, and
  - (d) if accounts have been prepared and audited, send to the Minister a copy of the accounts and of the auditor's report on those accounts.
- (10) Except in a case to which subsection (9) applies, if an auditor, in the course of the performance of the auditor's duties as auditor of a trust, is satisfied that:
- (a) there has been a contravention of any of the provisions of this Act, and
  - (b) the circumstances are such that in the auditor's opinion the matter has not been or will not be adequately dealt with by comment in the auditor's report on the accounts or by bringing the matter to the notice of the trust board,
- the auditor must immediately report the matter to the Minister by notice in writing.

#### **47 Obstruction of an auditor**

If a member of a trust board, or of a local authority that is managing the trust's affairs, or an employee of a trust:

- (a) refuses or fails without lawful excuse:
  - (i) to allow an auditor of the trust access, in accordance with the provisions of this Act, to any accounting or other records of the trust in the custody or control of the member or employee, or
  - (ii) to give any information or explanation as and when required under those provisions, or
- (b) otherwise hinders, obstructs or delays an auditor in the exercise of the auditor's functions,

that member or employee is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 12 months, or both.

### **Division 8 Power of Minister to appoint an administrator in certain circumstances**

#### **48 Appointment of an interim administrator**

- (1) The Minister may, by notice published in the Gazette, appoint an administrator to manage the affairs of a trust if:
  - (a) the trust's affairs are being managed by a trust board and a general election to elect members of the trust board has failed, or
  - (b) after being notified by the Minister of any contravention of a provision of this Act involving the trust, the trust:
    - (i) has failed to remedy that contravention to the extent that it is capable of being remedied, or
    - (ii) has committed a further contravention of the provision or the contravention has continued, or
  - (c) following an inquiry into the affairs of the trust held in accordance with the regulations, the Minister is of the opinion that, in the interests of the commoners concerned, an administrator ought to be appointed in respect of the trust, or
  - (d) where the trust's affairs are being administered by a trust board—the board has no members and it appears to the Minister that there is currently no prospect of suitably qualified persons being elected to fill the vacancies.

- (2) For the purposes of subsection (1) (a), an election shall be regarded as having failed if insufficient members are elected to enable the trust board concerned to be properly constituted.
- (3) On the appointment of an administrator under subsection (1) or, where subsection (4) applies, on the service in accordance with that subsection of a copy of the instrument by which the administrator was appointed:
  - (a) the affairs of the trust shall be managed by the administrator, and
  - (b) the administrator becomes responsible for the exercise of the functions, and the performance of the obligations, of the trust, and
  - (c) if the trust's affairs were, immediately before the appointment, being managed by a trust board or a local authority—the members of the board cease, or the local authority ceases, to hold office, and
  - (d) any delegation or authority made or conferred by the board ceases to have effect, and
  - (e) unless the administrator otherwise determines within 3 days after the service on the trust of the copy of the administrator's instrument of appointment, either generally or with respect to any particular contract or contracts, all current contracts of service and for the performance of services entered into by or on behalf of the trust terminate at the end of that period.
- (4) If an administrator is appointed under subsection (1) and the trust's affairs were, immediately before the appointment, being managed by a trust board or a local authority, the Minister must serve on the trust board or local authority a copy of the instrument by which the administrator was appointed.
- (5) An administrator appointed under this section:
  - (a) must, as soon as practicable after being appointed, take into custody or place under the administrator's control all the property of the trust concerned, and
  - (b) must, subject to and in accordance with any direction given by the Minister, conduct the trust's affairs in such manner as appears to the administrator to be in the best interests of the commoners concerned.
- (6) If the office of an administrator appointed under this section becomes vacant before the holding of the elections referred to in section 49 (4), the Minister, by notice published in the Gazette, must appoint another person to fill the vacancy.
- (7) Schedule 1 has effect with respect to an administrator appointed under this section.

**49 Administrator to convene meeting for the election of members of a trust board when**



**directed to do so**

- (1) The Minister may, at any time while an administrator of a trust's affairs is holding office under section 48, give to the administrator a direction requiring the administrator to convene a general meeting of commoners for the purpose of holding elections of members and office bearers of a new trust board.
- (2) If such a direction has been given to the administrator of a trust's affairs, the administrator must convene a general meeting of commoners by sending by pre-paid post to each commoner at the address appearing on the commoners' roll, not less than 14 days before the date fixed for holding the meeting, a notice:
  - (a) specifying the place, date and time of the meeting, and
  - (b) stating that elections to elect members and office bearers of the trust will be held at the meeting.
- (3) The accidental omission to give notice of a general meeting convened under subsection (2) to, or the non-receipt of notice of such a meeting by, any person does not invalidate proceedings at the meeting.
- (4) At a meeting convened under subsection (2), the person presiding must conduct:
  - (a) a general election to elect members of the trust board from among the commoners eligible for election, and
  - (b) an election to elect the office bearers of the board from among the members so elected.
- (5) An election required by subsection (4) must be conducted in accordance with the procedure prescribed by the regulations.
- (6) If, at a meeting convened under subsection (2), the requisite number of members of the trust board are elected to constitute the board, then, at the conclusion of the meeting:
  - (a) the appointment of the administrator ends, and
  - (b) the persons elected at the meeting assume the offices to which they were elected.

## **Division 9 Settlement of disputes involving trust boards and commoners**

### **50 Right of a commoner to complain to the Minister with respect to the management of the affairs of a trust**

- (1) If, in relation to a common for which a trust is established, a commoner alleges that the affairs of the trust are being managed in an improper manner, the commoner may lodge with the Minister a complaint in writing specifying the allegation.

- (2) Without limiting subsection (1), the affairs of the trust shall be regarded as being managed in an improper manner if the trust, or the trust board or the local authority that is managing the trust's affairs:
  - (a) is acting or has acted in a manner inconsistent with:
    - (i) this Act, or
    - (ii) a management plan that is in force in respect of the common concerned, or
    - (iii) a decision taken at a general meeting of the commoners, or
  - (b) is failing or has failed:
    - (i) to carry out a requirement of this Act or such a management plan, or
    - (ii) to give effect to such a decision.

#### **51 Powers of the Minister with respect to complaints lodged under s 50**

- (1) On receiving a complaint lodged under section 50, the Minister may either:
  - (a) hear and determine the complaint, or
  - (b) refer the complaint for inquiry and report to the Secretary.
- (2) The Minister may decline to deal with the complaint if of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.
- (3) (Repealed)

#### **52 Duty of Secretary to inquire into a complaint referred under s 51 (1) (b)**

- (1) As soon as practicable after a complaint is referred to the Secretary in accordance with section 51 (1) (b), the Secretary must inquire into the complaint.
- (2) When the inquiry is completed, the Secretary must report his or her findings in writing to the Minister.

#### **53 Determination of the Minister with respect to a complaint lodged under section 50**

- (1) If the Minister is, after hearing a complaint lodged under section 50 or after receiving a report of the findings of the Secretary in accordance with section 52, satisfied that the complaint is justified, the Minister must uphold the complaint, but if not so satisfied, the Minister must dismiss the complaint.
- (2) If a complaint relating to a trust, or the trust board or local authority that is managing the trust's affairs, is upheld, the Minister may:
  - (a) require the trust, board or authority to refrain from acting in a manner that is inconsistent with:

- (i) this Act, or
    - (ii) any management plan that is in force with respect to the common concerned, or
    - (iii) a decision taken at a general meeting of the commoners, or
  - (b) require the trust, board or authority:
    - (i) to carry out a requirement of this Act or of any such management plan, or
    - (ii) to give effect to a decision so taken, or
  - (c) quash any decision of the trust that is contrary to this Act, or any such management plan, or
  - (d) give directions as to the manner in which the affairs of the trust must be managed in future.
- (3) The determination of the Minister with respect to a complaint lodged under section 50 is final and binding on the complainant and on the trust, or the trust board or local authority, concerned in the complaint.
- (4) If a requirement has been made, or a direction has been given, under subsection (2), the trust, or the trust board or local authority, concerned in the complaint must comply with the requirement or direction within such period as the Minister notifies in writing to that trust, board or authority.
- (5) If a trust, trust board or local authority contravenes subsection (4), every member of the board or authority who is in default is guilty of an offence.

Maximum penalty: 10 penalty units.

## **Part 3 Supplementary matters**

### **54 Powers of inspection etc**

- (1) The Minister, or any person authorised by the Minister, may:
- (a) enter a common or the premises of a trust, and
  - (b) carry out an inspection of the common or those premises, and
  - (c) require any person on that common or on those premises whom the Minister or person so authorised reasonably believes to have custody or control of records of the trust to produce them for inspection.
- (2) If any part of the premises of a trust is occupied by a person for residential purposes, the power conferred by subsection (1) may be exercised in relation to that part only with the consent of its occupier.

**55 Power to conduct an investigation into the affairs of a trust**

- (1) The Minister may, if the circumstances so warrant, appoint a person as an inspector to investigate the conduct of the affairs of a trust.
- (2) For the purposes of investigation under subsection (1), an inspector has the following powers:
  - (a) the power at all reasonable times to enter any premises of the trust,
  - (b) the power to inspect all records kept on those premises and to require any person whom the inspector reasonably believes to have custody or control of those records to produce them for inspection,
  - (c) if any such records:
    - (i) are not in writing, or
    - (ii) are not in the English language, or
    - (iii) are not decipherable on sight,the power to require the person who has custody or control of those records to produce a statement in the English language and decipherable on sight setting out the contents of those records,
  - (d) the power to make and take away copies of the whole or any part of a record inspected or produced for inspection in accordance with paragraph (b) or a statement produced in accordance with paragraph (c),
  - (e) the power to require a member of the trust board or, if the trust's affairs are being managed by a local authority, a member of that authority, or an employee of the trust, or any person found on premises entered in accordance with paragraph (a) to answer any question relating to:
    - (i) any records inspected, produced or required to be produced in accordance with paragraph (b), or
    - (ii) any statement produced in accordance with paragraph (c), or
    - (iii) the affairs of the trust.
- (3) The power of an inspector to inspect the records of a trust under this section includes the power to inspect the records of a lessee or licensee which the trust has power to inspect under the lease or licence concerned.
- (4) Nothing in this section authorises an inspector to enter any part of premises being used for residential purposes without the consent of the occupier of that part of the premises.

**56 Power of a member of a trust board etc to remove persons from the common**

- (1) A member of a trust board or of a local authority that is managing a trust's affairs, or an employee of the trust or local authority authorised by the trust, may remove from the common for which the trust is established:
  - (a) any person on the common who is not authorised to be there, or
  - (b) any person who is apparently contravening a provision of this Act that is applicable to the common, or
  - (c) any person who is apparently contravening a by-law that is so applicable, or
  - (d) any person who, by disorderly conduct, is apparently annoying or causing inconvenience to commoners and persons lawfully using the common.
- (2) A member of the Police Force may assist in the removal of a person under subsection (1).

**57 Offences relating to powers conferred by ss 54-56**

- (1) A person who:
  - (a) hinders or obstructs the Minister, an inspector or other person in the exercise of a power conferred by a provision of sections 54-56, or
  - (b) fails to comply with a requirement made under section 55 (2), or
  - (c) in purported compliance with a requirement made under section 55 (2) (e), gives an answer that is, to the person's knowledge, false or misleading in a material respect,is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) A person is not guilty of an offence under subsection (1):
  - (a) unless:
    - (i) the prosecution establishes that the person purporting to exercise the power concerned identified himself or herself at the relevant time as a person who had that power or that the defendant otherwise knew that that person was empowered to exercise that power, or
    - (ii) where the offence arises under subsection (1) (b) or (c)—the prosecution establishes that the person purporting to exercise the power warned the defendant that a failure or refusal to comply with the requirement was an offence, or

- (b) if, where the offence arises under subsection (1) (b), the defendant satisfies the court that he or she could not have reasonably complied with the requirement.

## **58 Minister's power of delegation**

- (1) The Minister may delegate to a specified person any of the Minister's functions under this Act.
- (2) With the approval of the Minister, a person to whom a function of the Minister has been delegated under subsection (1) may subdelegate that function to another person.
- (3) If the exercise of a function is delegated under this section, the delegation is not affected by the fact that the person who made the delegation is no longer the Minister.
- (4) If the exercise of a function is subdelegated under this section, the subdelegation is not affected by the fact that the person who made the original delegation is no longer the Minister.

## **59 Persons in default**

Where a provision of this Act provides that a member of a trust board or of a local authority who is in default is guilty of an offence, the reference to the member who is in default shall, with respect to the contravention to which that offence relates, be taken to be a reference to any member of the trust board or local authority (including a person who subsequently ceased to be a member of the board or authority) who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention.

## **60 Proceedings for offences**

Proceedings for an offence against this Act or a by-law shall be dealt with summarily before the Local Court.

## **61 Crown-timber lands located within a common**

Nothing in this Act limits the operation of section 38 of the [Forestry Act 2012](#) as regards any Crown-timber lands located within the common.

### **61A Revocation of a common**

- (1) The revocation of the setting aside of land as a common is to be effected by the Minister by notice published in the Gazette.
- (2) Any such revocation may relate to the whole or part of the land concerned.
- (3) If the revocation relates to part of the land only, the Minister may deal with that part as if it were Crown land subject to the Crown Land Acts and not otherwise.

**Note—**

Section 24 provides that on the revocation of the whole of a common, the trust established for the common is dissolved and that the Minister may deal with any real property of the trust as if it were Crown land subject to the Crown Land Acts and not otherwise.

## **62 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the qualifications required for persons to be commoners,
  - (b) the keeping of commoners' rolls, including the entry of names on, and the removal of names from, commoners' rolls,
  - (c) the preparation, public display, adoption and implementation of management plans,
  - (d) the purposes for which a trust may grant temporary licences and the conditions, restrictions and limitations which are required or permitted to be attached to such licences,
  - (e) the qualifications for election as a member of a trust board and the procedure for the conduct of an election of members of a trust board and an election of office bearers from among those members,
  - (f) the convening of meetings of a trust board and the conduct of business at those meetings,
  - (g) the convening of general meetings of commoners and the conduct of business at those meetings,
  - (h) the qualifications of persons for appointment or election as auditors of trusts,
  - (i) the nomination of persons for appointment or election as auditors,
  - (j) the calling of public meetings for the purposes of section 26 and the conduct of business at those meetings,
  - (k) the holding of inquiries for the purposes of section 48 or 51,
  - (l) the matters required to be included in the annual report of a trust,
  - (m) the custody and use of a trust's common seal,
  - (n) the dissolution of a trust and the disposal of its property.

- (3) A regulation may create an offence punishable by a maximum penalty not exceeding 5 penalty units.

### **63 Savings and transitional provisions**

Schedule 5 has effect.

### **64 Repeals**

The following are repealed:

- (a) the *Commons Regulation Act 1898 No 15*,
- (b) the *Commons Regulations 1928* and the amendments to those Regulations published in the Gazette on 20 July 1928, 15 August 1930, 5 August 1966, 4 February 1972, 24 January 1975, 16 December 1977, 3 March 1978, 29 June 1979, 28 March 1980, 15 August 1980, 28 August 1981 and 23 July 1982,
- (c) any rules or regulations made under section 15 of the *Commons Regulation Act 1898* that were in force immediately before the commencement of section 4.

## **Schedule 1 Provisions applicable to administrators**

(Sections 5, 48)

### **1 Administrators to whom this Schedule applies**

This Schedule applies to an administrator appointed under section 5 or 48 or this Schedule.

### **2 Acting administrator**

- (1) If, because of illness or absence, an administrator is unable to exercise the functions of his or her office, the Minister may, by notice published in the Gazette, appoint a person to act in that office during the administrator's illness or absence.
- (2) The Minister may, at any time, remove from office a person appointed under subclause (1).
- (3) A person appointed under this clause shall be taken to be an administrator appointed under section 5 or 48, as the case requires.

### **3 Vacation of office**

- (1) The office of administrator becomes vacant if the administrator:
  - (a) dies, or
  - (b) resigns the office by instrument in writing addressed to the Minister, or
  - (c) is removed from office by the Minister under subclause (2), or



- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

- (2) The Minister may at any time, by notice published in the Gazette, remove an administrator from office.

#### **4 Effect of certain other Acts**

- (1) The [Government Sector Employment Act 2013](#) does not apply to the appointment of an administrator and an administrator is not subject to that Act.
- (2) The office of administrator is not, for the purposes of any Act, an office or place of profit under the Crown.

#### **5 Administrator's duty to preside at meetings of commoners**

- (1) Unless unable to be present at a general meeting of commoners, the administrator must preside at the meeting.
- (2) If the administrator is absent from a general meeting of commoners, those commoners present who are eligible to vote may elect one of their number to preside at the meeting.

#### **6 Expenses of administrator**

- (1) An administrator is entitled to be paid such remuneration as the Minister directs.
- (2) If the affairs of a trust are managed by an administrator, the trust is liable to pay the expenses of the administrator in managing those affairs.
- (3) The remuneration of an administrator who is not a servant of the Crown is an expense referred to in subclause (2).
- (4) If an administrator appointed to manage a trust's affairs is a servant of the Crown:
  - (a) the expenses of the administrator referred to in subclause (2) include such amount as the Minister certifies to be the amount of remuneration payable to that servant in his or her capacity as administrator, and
  - (b) the amount so certified is recoverable from the trust in a court of competent jurisdiction as a debt due to the Crown.

## **7 Administrator not liable for losses incurred during administration**

- (1) An administrator appointed to manage a trust's affairs is not liable for any loss incurred by the trust during the administrator's term of office unless the loss is attributable to the administrator's intentional misconduct, gross negligence or failure to comply with any provision of this Act.
- (2) Neither the Crown nor the Minister is liable for any loss incurred by a trust during an administrator's term of office, whether or not the administrator is so liable.
- (3) If:
  - (a) the affairs of a trust are being managed by an administrator, and
  - (b) a provision of this Act provides that a member of a trust board or a local authority who is in default is guilty of an offence, and
  - (c) the administrator does or omits to do an act which would, had he or she been such a member, have been a contravention of a provision to which that offence relates,the administrator is similarly guilty of such an offence.

## **Schedule 2 Provisions relating to the members of a trust board**

(Section 6 (8))

### **1 Age of members of trust boards**

A person who is under 18 years of age is not eligible to be elected as a member of a trust board.

### **2 Maximum number of members**

A person may not be elected as a member of a trust board (whether to fill a vacancy or otherwise) if the election would result in the number of members for the time being of the board exceeding the number that is necessary to constitute the board.

### **3 Vacancy in office of member**

- (1) The office of a member of a trust board becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-elected for a further term, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is, except on leave granted by the board, absent from 4 consecutive meetings of the board of which reasonable notice has been given to the member personally or

in the ordinary course of post, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) ceases to have the qualifications prescribed by the regulations for enrolment as a commoner.
- (2) The Minister may, by notification published in the Gazette, remove the members or a member of a trust board from office at any time for incapacity, incompetence or misbehaviour.
- (3) Without affecting the generality of subclause (2), a reference to misbehaviour includes any of the following:
- (a) committing a contravention of section 33 (4), 47 or 57,
  - (b) being knowingly concerned in a failure by a trust to comply with a requirement of this Act (whether the failure to comply is an offence or not),
  - (c) being knowingly concerned in a failure of a trust to comply with:
    - (i) an order of a former local land board given under section 11 (4) before its amendment by the *Civil and Administrative Legislation (Repeal and Amendment) Act 2013*, or
    - (ii) an order of the Civil and Administrative Tribunal in an appeal under section 11, or
    - (iii) a direction given by the Minister under section 21,
  - (d) committing a contravention of clause 6 or 7.
- (4) A member of a trust board is entitled to be heard before a finding of incapacity, incompetence or misbehaviour is made in respect of the member for the purposes of subclause (2).
- (5) A finding of misbehaviour may be made in relation to a member of a trust board even though the conduct constituting the misbehaviour is or could be an offence against this Act and the member has not been charged with having committed such an

offence.

- (6) The Minister may, but is not obliged to, refer the hearing of an allegation of incapacity, incompetence or misbehaviour in respect of a member of a trust board to the Secretary.
- (7) As soon as practicable after an allegation of incapacity, incompetence or misbehaviour is referred to it in accordance with subclause (6), the Secretary must hear the allegation and then report his or her findings in writing to the Minister.

#### **4 Term of office of person appointed or elected to fill a vacancy**

Subject to clause 3, if a person is elected to fill a vacancy in the membership of a trust board, the person so elected holds office for the remainder of the term for which his or her predecessor in office was elected.

#### **5 Members of trust board etc not to be liable for certain acts or omissions**

- (1) No matter or thing done by a trust, or by any member of the trust board or by any person acting under the directions of that board, shall, if the matter or thing was done in good faith for the purposes of this or any other Act, subject a member of that board or a person so acting to any action, liability, claim or demand.
- (2) If a local authority is managing the affairs of a trust board, the local authority is jointly and severally liable with the trust for any liability of the trust.

#### **6 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member of a trust board has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.
- (2) A disclosure by a member of a trust board at a meeting of the board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter or thing relating to

that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) A trust must ensure that:

- (a) particulars of any disclosure made under this clause are recorded in a book kept for the purpose, and
- (b) that book is kept open at all reasonable hours to inspection by any person on payment of a fee (not exceeding the prescribed amount) determined by the board.

(3A) However, a commoner whose name appears on the trust's commoners' roll is not required to pay any such fee to inspect that book.

(4) After a member of a trust board has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the board otherwise determines:

- (a) be present during any deliberation of the board with respect to the matter, or
- (b) take part in any decision of the board with respect to that matter.

(5) For the purposes of the making of a determination by a trust board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the board for the purpose of making the determination, or
- (b) take part in the making by the board of the determination.

(6) A contravention of this clause does not invalidate any decision of the trust board concerned.

## **7 Invitations for tenders**

(1) If it is disclosed to the members of a trust board, or they have reason to believe, that a member has or may have a direct or indirect pecuniary interest in a proposed contract with the trust:

- (a) the board must, by notice that complies with the requirements in subclause (2), invite tenders for the proposed contract, and
- (b) must not enter into the proposed contract unless satisfied that, in all the circumstances of the case, none of the tenders submitted is more advantageous than the proposed contract.

(2) The notice inviting tenders must:

- (a1) be published in:

- (i) a newspaper circulating in the land district in which the common concerned is located, or
  - (ii) a manner approved in writing by the Minister having regard to the object of bringing notices of that kind to the attention of persons in the land districts in which the relevant commons are located who may be interested in submitting tenders for the relevant contracts, and
- (a) set out the nature of the work or services to be performed or the goods to be supplied under the contract, and
  - (b) invite persons willing to perform the work or services or supply the goods to submit tenders on or before a specified date at least 21 days after publication of the notice to the board.
- (3) This clause does not apply in the case of an emergency.

### **Schedule 3 Provisions relating to the procedure for calling and holding meetings of a trust board**

(Section 6 (9))

#### **1 General procedure**

The procedure for the calling of meetings of a trust board and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the board.

#### **2 Quorum**

The quorum for a meeting of a trust board is a bare majority of members of the board as properly constituted under this Act.

#### **3 Presiding member**

- (1) In the absence of the president from a meeting of the trust board, the members of the board present may elect one of their number to preside at the meeting.
- (2) The person presiding at a meeting of a trust board has a deliberative vote and, in the event of an equality of votes, has a casting vote.

#### **4 Voting**

A decision supported by a majority of the votes cast at a meeting of a trust board at which a quorum is present is the decision of the trust.

## **Schedule 4 Procedure at general meetings of commoners**

(Section 38)

### **1 Quorum**

- (1) An item of business may not be lawfully transacted at a general meeting of commoners unless a quorum of commoners is present during the time the meeting is considering that item.
- (2) For the purposes of this clause, 20 per cent of the commoners who are entitled to vote at a general meeting constitutes a quorum for the transaction of business at a general meeting of commoners.
- (3) If, within half an hour after the fixed time for the start of a general meeting of commoners a quorum is not present, the meeting:
  - (a) if convened on the requisition of commoners, must be dissolved, and
  - (b) in any other case, is adjourned to the same day in the following week at the time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to the commoners concerned given before the day to which the meeting is adjourned) at the same place.
- (4) If, at the adjourned meeting a quorum of commoners is not present within half an hour after the time fixed for starting the meeting, the commoners present (being not less than the number or percentage prescribed for this subclause) constitute a quorum.

### **2 President to preside over general meetings**

If the president of a trust board is absent from a general meeting of commoners or is unwilling to preside at the meeting, those commoners present who are entitled to vote may elect one of their number to preside at the meeting.

### **3 Adjournment**

- (1) The person presiding at a general meeting of commoners at which a quorum is present may, with the consent of the majority of commoners present at the meeting, adjourn the meeting from time to time and place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting of commoners is adjourned for 14 days or more, the trust concerned must give written or oral notice of the adjourned meeting to each of the commoners stating:
  - (a) the place, date and time of the meeting, and

(b) the nature of the business to be transacted at the meeting.

(3) Except as provided in subclause (2), notice of an adjournment of a general meeting of commoners or of the business to be transacted at an adjourned meeting is not required to be given.

#### **4 Voting**

(1) A question arising at a general meeting of commoners:

(a) shall be determined on a show of hands, and

(b) unless before or on the declaration of the show of hands a poll is demanded, a declaration by the person presiding at the meeting that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the trust, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

(2) At a general meeting of commoners, a poll may be demanded by the person presiding at the meeting or by not fewer than 3 commoners present in person.

(3) If a poll is demanded at a general meeting, the poll must be taken:

(a) immediately in the case of a poll which relates to the election of the person to preside at the meeting or to the question of an adjournment, or

(b) in any other case, in such manner and at such time before the close of the meeting as the person presiding at the meeting directs,

and the resolution of the poll on the matter shall be taken to be the resolution of the meeting on that matter.

(4) On any question arising at a general meeting of commoners, a commoner has 1 vote only.

(5) All votes must be given personally and no proxy votes may be counted.

(6) In the case of an equality of votes on a question at a general meeting, the person presiding at the meeting is entitled to exercise a casting vote.

#### **5 Decisions taken at general meetings**

A decision supported by a majority of the votes cast at a general meeting of commoners at which a quorum is present shall, for the purposes of this Act, be taken to be a decision of the trust concerned.



## Schedule 5 Savings and transitional provisions

(Section 63)

### 1 Definitions

In this Schedule:

**existing common** means a common that was set apart as such within the meaning of the former Act and has not ceased to be a common before the commencement of section 4.

**existing trustee**, in relation to an existing common, means a person who was holding office as a trustee of the common under section 6 of the former Act immediately before the commencement of section 6 of this Act.

### 2 Minister to assign new corporate name to existing bodies corporate

As soon as practicable after the passing of this Act, the Minister must, by notice published in the Gazette, assign a new corporate name to each body corporate that will, on the commencement of section 4, become a trust by virtue of section 4 (3).

### 3 Existing trustees to continue in office

- (1) Subject to Schedule 2, an existing trustee of a common who becomes a member of a trust board by virtue of section 6 (2) holds office for the remainder of the term for which the trustee was elected under the former Act.
- (2) Such a trustee is, if otherwise qualified, eligible for re-election under this Act as a member of the trust board concerned.

### 4 Commoners' rolls

The commoners' roll kept by the existing trustees of a common under section 5 of the former Act shall be taken to be the commoners' roll kept in respect of the common under section 10 of this Act.

### 5 Commoners of existing commons

- (1) Subject to subclause (2), the commoners in respect of an existing common shall be taken to be those persons who:
  - (a) reside within the commoners' boundaries that were, immediately before the repeal of the former Act, fixed under section 27 of that Act, or
  - (b) immediately before that repeal, were otherwise commoners by virtue of the grant or other instrument by which that common was created.
- (2) The Minister may, by order published in the Gazette:

- (a) declare that subclause (1) no longer applies to a common specified in the order, or
- (b) alter or extend the commoners' boundaries of a specified existing common.

(3) For the purpose of this clause, a reference to the commoners' boundaries of a common is a reference to the boundaries of the area notified in the Gazette in accordance with section 27 of the former Act within or in respect of which the persons entitled to use the common reside or hold the prescribed qualification or, as the case may be, the boundaries of that area as altered or extended under subclause (2).

## **6 Financial year of a trust established by section 4 (3)**

For the purposes of this Act, a trust established in respect of a common by section 4 (3) of this Act shall be taken to have had a previous financial year which:

- (a) if the body corporate constituted in respect of the common by section 4 of the former Act made provision for a financial year—ended on the last day of the last financial year of the body corporate before the commencement of section 4 of this Act, or
- (b) if the body corporate so constituted did not have a financial year—ended on the date on which that body last held a meeting of commoners under section 20 of the former Act before that commencement.

## **7 Provisions with respect to animals etc found on an existing common**

(1) If, before the repeal of section 17 of the former Act:

- (a) any cattle or other stock which belonged to a person who was not a commoner were found on an existing common as referred to in that section, and
- (b) a power conferred by that section had not been exercised in respect of those cattle or stock before that repeal,

the trust established for the common by section 4 (3) of this Act may exercise that power as if the first-mentioned section were still in force.

(2) If, before the repeal of the former Act, any infected animal had been found on an existing common but had not been disposed of in accordance with section 18 of that Act, the trust established for the common by section 4 (3) of this Act may exercise the powers conferred by the first-mentioned section after its repeal as if it were still in force.

## **8 Licences and permits granted to take soil etc from an existing common**

If, immediately before the repeal of the former Act, a person held a licence or had permission under that Act:

- (a) to take and remove from a common soil, stone or minerals, or

- (b) to cut timber located on a common and remove it, or
  - (c) to take fallen timber or underwood from a common,
- that licence or permission continues to subsist as if that Act had not been repealed.

## **9 Transitional management plans applicable to existing commons**

- (1) Until cancelled by the Minister under section 28, there shall be taken to be adopted under section 27 in respect of every existing common a management plan which contains the following provisions:
  - (a) the commoners may use the common only for the pasturage or watering of their cattle or other stock,
  - (b) with the permission of the trust concerned and subject to payment to that trust of any applicable charge fixed by the by-law in force in respect of the common, the commoners are entitled to take from the common fallen timber or underwood,
  - (c) a person who is a genuine carrier, teamster, traveller or drover has a right to use the common for pasturing animals that the person is using for carriage or riding or is actually driving.
- (2) The right conferred by subclause (1) (c) is for a period not exceeding 3 consecutive days or such extended period as may be necessitated by rain or flood on or in the vicinity of the common.
- (3) The trust concerned may, on payment of the prescribed fee:
  - (a) allow animals referred to in subclause (1) (c) to continue to use the common for pasturage for a period longer than that allowed by subclause (2) but not exceeding 7 days in any period of 6 months, or
  - (b) in the case of any travelling stock other than that referred to in subclause (1) (c), allow that stock to use the common for pasturage for a period not exceeding 7 days in any period of 6 months.
- (4) If any such stock or other animals remain on the common after the period prescribed by subclause (2) or allowed under subclause (3), the trust concerned or an employee or agent of that trust may impound those animals.
- (5) A drover of travelling stock is not entitled to exercise the right to depasture that stock on an existing common unless the drover has given to the trust established for the common, or to an employee or agent of the trust, a notice similar to that which a drover would be required to give to the owner or occupier of land through which the drover intends to drive stock.
- (6) The Minister:

- (a) may, by notice published in the Gazette, declare a specified part of an existing common to be closed for the pasturage of stock or other animals referred to in subclauses (1) (c) and (3), and
  - (b) may, by notice so published, vary the boundaries of the part of the common specified in a notice published in accordance with this subclause.
- (7) The Minister may exercise the powers conferred by subclause (6) only on the application of the trust concerned.
- (8) The Minister may, by notice published in the Gazette, revoke a notice published in accordance with subclause (6).
- (9) If:
  - (a) a notice has been published in the Gazette in accordance with subclause (6), and
  - (b) the boundaries of the part of the common specified in the notice have been adequately fenced,the right of a genuine carrier, teamster, traveller or drover to depasture animals on that common is terminated as regards that part.
- (10) A notification published in the Gazette under section 25 of the former Act and in force immediately before the repeal of that section by this Act continues to have effect:
  - (a) as if it were a notice published in the Gazette in accordance with subclause (6) (a), and
  - (b) where the boundaries of the part of the common have been varied under that section, as if those boundaries had been varied in accordance with subclause (6) (b).

## **10 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.