

COMMONS MANAGEMENT ACT 1989—REGULATION

(Commons Management Regulation 1991)

NEW SOUTH WALES



[Published in Gazette No. 121 of 30 August 1991]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Commons Management Act 1989, has been pleased to make the Regulation set forth hereunder.

GARRY WEST

Minister for Conservation and Land Management.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Commons Management Regulation 1991.

Commencement

2. This Regulation commences on 1 September 1991.

Definitions

3. In this Regulation:

“**approved**” means approved for the time being by the Minister;

“**ordinary member**”, in relation to a trust board, means a member of the trust board who is not an office bearer;

“**pack animal**” means any animal that is used for the carriage of goods or persons or for the haulage of vehicles;

“**ranger**”, in relation to a trust, means the person holding office as ranger of the trust:

“**relevant trust officer**”, in relation to a trust, means:

(a) the secretary to the trust board; or

- (b) the administrator; or
- (c) the clerk of the local authority,

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

“secretary”, in relation to a trust board, means the person holding office as secretary to the trust board;

“small farmer” means a person who has an agricultural holding that has an area of 20 hectares or less;

“the Act” means the Commons Management Act 1989.

Model by-law

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

Fees

5. The fees specified in Schedule 2 are payable in respect of the matters referred to in that Schedule.

PART 2—COMMONERS’ ROLLS

Commoners’ roll

6. (1) For the purposes of sections 5 (2) and 10 (2) of the Act, and of clause 5 (3) of Schedule 5 to the Act, a person has the prescribed qualification for enrolment as a commoner if:

- (a) the person is an inhabitant of the city, town or village, or a small farmer in the land district, in which the common is located; or
- (b) the person has such qualifications as may be specified for those purposes by the notice establishing the trust in respect of the common.

(2) A copy of a trust’s commoners’ roll must be kept, at the office of the relevant trust officer, for inspection by any person during normal business hours.

Applications for enrolment as a commoner

7. An application for enrolment as a commoner is to be made in the approved form and lodged with the relevant trust officer for the trust established in respect of the common.

Exhibition of applications

8. The relevant trust officer must ensure that an application for enrolment as a commoner is exhibited at the nearest police station and nearest post office to the common, and in 2 or more conspicuous places on the common, until the application has been dealt with.

Lodgment of objections

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

Hearing of applications

10. (1) An application may not be dealt with until at least 3 days have elapsed from the date on which notice of the application was first exhibited under clause 8.

(2) Both the applicant for enrolment as a commoner and any objector to the applicant's enrolment as a commoner are entitled to be heard at the proceedings at which the application is considered.

(3) The trust, after having considered an application and any objections to it, must determine the application by causing the applicant's name to be entered on the commoners' roll or by refusing the application.

Appeal to local land board against refusal of application

11. (1) For the purposes of section 11 (1) of the Act:

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

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

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

Periodic revision of commoners' roll

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

PART 3—TRUST BOARDS**Division 1—Elections****Elections generally**

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

(2) An election of members of a trust board referred to in section 5 or 49 of the Act is to be conducted in such manner as the administrator of the trust may determine.

Nominations for election

14. (1) Nominations of candidates for election under section 32 or 33 of the Act:

- (a) must be made in writing, signed by 2 commoners and accompanied by the written consent of the candidate; and
- (b) must be delivered to the relevant trust officer not less than 7 days before the date fixed for the holding of the meeting at which the election is to take place.

(2) Nominations of candidates for election under section 5 or 49 of the Act are to be called at the meeting at which the election is to take place.

Qualifications for membership of trust board

15. (1) A person is qualified to be a member of a trust board if, and only if, the person has been enrolled on the commoners' roll for the whole of the period of 6 months immediately prior to the calling of the election or, if the commoners' roll has been established for less than 6 months, for the whole of the period since the roll was established.

(2) A nomination of a candidate for election to a position of office bearer is not valid if the candidate has been nominated for election or another such position at the same election.

Division 2—Procedure of trust boards**Ordinary meetings**

16. (1) Ordinary meetings of the members of a trust board must be held at least 6 times a year.

(2) Each member of a trust board must be given at least 3 days' notice of an ordinary meeting of the trust board.

Special meetings

17. (1) Special meetings of the members of a trust board may be convened by the secretary, or by any member of the trust board, on 24 hours' notice of the time and place of meeting being given to each member of the trust board.

(2) No business may be transacted at a special meeting other than the business specified in the notice.

Procedure at meetings

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

Duties of secretary

19. It is the duty of the secretary to a trust:

- (a) to issue notices convening meetings of the trust board and to attend all such meetings; and
- (b) to keep minutes of all meetings of the trust board; and
- (c) to prepare monthly accounts for inspection by the trust board at the ordinary meetings of the trust board.

PART 4—TRUSTS GENERALLY**Custody and use of trust seal**

20. (1) A trust's seal is to be kept in the custody of the relevant trust officer.

- (2)** A trust's seal may be affixed to an instrument or document only:
- (a) in the presence of the relevant trust officer; and
 - (b) with an attestation by the signature of the relevant trust officer of the fact of the affixing of the seal.

Trust accounts

21. (1) For the purposes of section 42 (4) of the Act, a trust's accounts must include:

- (a) particulars of the purposes for which the common is used; and
- (b) particulars of any pecuniary interests recorded in the book referred to in clause 6 (3) of Schedule 2 to the Act.

(2) The accounts for a trust whose affairs are managed by a trust board or an administrator must also include:

- (a) receipts for all money received; and
- (b) documentation of all expenditure; and
- (c) cash books; and
- (d) bank deposit books; and
- (e) a plant and asset register.

(3) The accounts for a trust whose affairs are managed by a local authority must also include such records relating to those affairs as the local authority is required to keep under the Local Government Act 1919.

(4) Records of the kind referred to in subclause (3) must be kept in a manner that allows information concerning:

- (a) all financial matters regarding each common from which the local authority receives revenue of any nature; and
- (b) all improvements effected on each such common; and
- (c) all leases and licences granted or in force in respect of each such common,

to be readily extracted.

Cheques

22. All cheques drawn on a trust's bank account must be signed by a member of the trust board and by the secretary.

Livestock registers

23. (1) Each trust must keep a livestock register for the common (or, if the common is divided into several enclosed portions, for each enclosed portion of the common), being a register that contains:

- (a) the names and addresses of the commoners enrolled on the commoners' roll; and
- (b) a description of all stock depastured on the common, or enclosed portion of the common, that belongs to a commoner; and
- (c) a description of the brand or brands with which the stock is marked.

(2) The livestock register must be kept, at the office of the relevant trust officer, for inspection by any person during normal business hours.

Duties of relevant trust officer

24. It is the duty of the relevant trust officer:

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

PART 5—MISCELLANEOUS

Particulars to be included in notice of sale

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

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

Particulars to be included in application concerning certain land transactions

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

- (a) a description of the kind of transaction proposed to be entered into by the trust;

- (b) the purposes for which the trust proposes to enter into that kind of transaction;
- (c) the duration for which the trust proposes to exercise the authority;
- (d) the parties with whom the trust proposes to enter into that kind of transaction.

Temporary licences

27. (1) For the purposes of section 22 (1) of the Act, 3 months is prescribed as the longest period for which a temporary licence may be granted.

(2) For the purposes of section 22 (2) of the Act, any purpose which is consistent with the plan of management for the common is a prescribed purpose.

Draft management plans

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

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

Maximum charge for copy of minutes of trust meetings

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

Qualification for auditors

30. For the purposes of section 43 (10) of the Act, a person is a qualified auditor if the person is a registered company auditor within the meaning of the Corporations Law.

Inquiries into affairs of trust

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

Fee for inspection of book of pecuniary interests

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

Quorum for adjourned meetings of commoners

33. For the purposes of clause 1 (4) of Schedule 4 to the Act, 10 per cent of the number of commoners enrolled on the commoners' roll constitutes a quorum for the transaction of business at an adjourned meeting of commoners.

Fees for use of common by travelling stock etc.

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

SCHEDULE 1—MODEL BY-LAW

(Cl. 4)

Citation

1. This By-law may be cited as the Commons By-law 1991.

Application

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

Rights of commoners

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

Regulation of conduct within the common

4. Unless authorised by the trust, a person must not within the common:
- (a) carry or have in that person's possession any firearm (within the meaning of the Firearms Act 1989) or prohibited weapon (within the meaning of the Prohibited Weapons Act 1989), unless the person is a police officer acting in accordance with the person's duties as such;
 - (b) light a fire:
 - (i) at any time when the lighting of fires within a common is prohibited by the trust by signs erected within the common; or
 - (ii) at any other time, except in a fire-place provided by the trust; or
 - (c) carry, have in that person's possession or deploy any explosive, net, trap or hunting device; or
 - (d) destroy, capture, injure, annoy or interfere with any animal or animal's egg or interfere with the habitat of any animal; or
 - (e) damage, dismantle or remove any machinery, equipment or building or facility on the common which is provided for the use of commoners.

Maximum penalty: 5 penalty units.

Trust may remove pests etc.

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

Removal of timber

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

Maximum penalty: 5 penalty units.

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

Annual fees

7. (1) The trust may levy such annual fees as the commoners have agreed to at the annual general meeting for any of the purposes set out in the management plan for the common.

(2) The trust must serve on each commoner written notice of any annual fee payable by the commoner.

(3) Annual fees must be paid quarterly in advance on or before the first day of January, April, July and October in each year.

1991—No. 446

(4) If an instalment of an annual fee is not paid by the due date, the trust may charge interest at a rate not exceeding the rate prescribed by clause 45 of the Crown Lands Regulation 1990.

(5) If a commoner has not paid the annual fee for more than 12 months, the trust may withdraw the commoner's right to use the common.

Charges

8. The trust may impose such charges as it considers appropriate with respect to:
- (a) the use of the common by commoners and other persons; and
 - (b) the use and parking of vehicles on the common; and
 - (c) the use of the common or any part of the common as a dwelling or camping place.

Disposal of fees and charges

9. The trust may use the fees and charges received by it:
- (a) for defraying the trust's administrative costs and expenses; and
 - (b) for maintaining and improving the common; and
 - (c) for any other purposes specified in the management plan for the common.

SCHEDULE 2—FEES

(Cl. 5)

For notice of appeal to local land board against refusal of application for enrolment (clause 11)	\$50.00
For copy of minutes of proceedings of meetings (clause 29)	
For minutes not exceeding 10 pages	\$20.00
For each additional page	\$1.00
For inspection of book recording disclosure of pecuniary interest (clause 32)	\$20.00
For pasturage of stock (clause 34)	
Working stock	
Horses	\$15.00 per head per day
Cattle	\$15.00 per head per day
Pack animals	\$20.00 per head per day
Travelling stock	
Horses	\$15.00 per head per day
Cattle	\$15.00 per head per day
Pack animals	\$20.00 per head per day
Sheep	\$0.25 per head per day

TABLE OF PROVISIONS**PART 1—PRELIMINARY**

1. Citation
2. Commencement
3. Definitions
4. Model by-law
5. Fees

PART 2—COMMONERS' ROLLS

6. Commoners' roll
7. Applications for enrolment as commoner
8. Exhibition of applications
9. Lodgment of objections
10. Hearing of applications
11. Appeal to local land board against refusal of application
12. Periodic revision of commoners' roll

PART 3—TRUST BOARDS

Division 1—Elections

13. Elections generally
14. Nominations for election
15. Qualifications for membership of trust board

Division 2—Procedure of trust boards

16. Ordinary meetings
17. Special meetings
18. Procedure at meetings
19. Duties of secretary

PART 4—TRUSTS GENERALLY

20. Custody and use of trust seal
21. Trust accounts
22. Cheques
23. Livestock registers
24. Duties of relevant trust officer

PART 5—MISCELLANEOUS

25. Particulars to be included in notice of sale
26. Particulars to be included in applications concerning certain land transactions
27. Temporary licences
28. Draft management plans
29. Maximum charge for copy of minutes of trust meetings
30. Qualification for auditors
31. Inquiries into affairs of trust

1991—No. 446

- 32. Fee for inspection of book of pecuniary interests
- 33. Quorum for adjourned meetings of commoners
- 34. Fees for use of common by travelling stock etc.

SCHEDULE 1—MODEL BY-LAW

SCHEDULE 2—FEES

EXPLANATORY NOTE

The object of this Regulation is to make provision with respect to certain matters arising under the Commons Management Act 1989. The Regulation deals with:

- (a) the model by-law to apply to a common for which the relevant trust has not made a by-law (clause 4); and
- (b) the imposition of fees (clauses 5, 11, 29, 32 and 34); and
- (c) the procedures for enrolling persons on a commoners' roll for a trust established under the Act (Part 2); and
- (d) the procedures for the conduct of elections of the members of a trust board under the Act and for the conduct of meetings held by trust boards (Part 3); and
- (e) various matters concerning the conduct of the affairs of a trust, including the accounts to be kept in relation to a trust (Part 4); and
- (f) other minor, consequential and ancillary matters (Parts 1 and 5).

This Regulation is made in connection with the commencement of the Commons Management Act 1989.
