Submission to
Crown Land Legislation White Paper
About Charles Sturt University
Charles Sturt University (CSU) is Australia’s largest regional university, with more than 35,000 students and approximately 2100 staff. Established in 1989, the University traces its roots back to the formation of the Bathurst Experimental Farm and Wagga Wagga Experimental Farm in the 1890s. In one form or another, education and research has been integral to the University’s character and mission for more than a century.

CSU is a unique multi-campus institution with Australian campuses at Albury-Wodonga, Bathurst, Canberra, Dubbo, Goulburn, Orange, Port Macquarie and Wagga Wagga. The University’s commitment to the development and sustainability of rural and regional Australia is informed by the partnerships it has formed with each of its campus town communities, and local industry, and with the broader rural and regional communities it serves.

CSU offers a comprehensive suite of academic programs that focus on addressing rural and regional labour market needs. As Australia’s largest online and distance education provider, it has been able to leverage its course profile and special expertise in professional education to deliver programs of study nationally that support labour market skills development regardless of location.

The success of the University is demonstrated by its sector leading performance on work-integrated learning, graduate employment and graduate incomes.

Underpinning this success is the close links that the University has forged with industry, both regionally and nationally. For example, the University is internationally recognised as a leader in work-integrated learning with students spending extended periods in employment with our industry partners as part of the degree learning and applying their knowledge in practice. The University also operates two nationally regarded research centres in agriculture and wine science as collaborative ventures with government and industry – the Graham Centre for Agricultural Innovation and the National Wine and Grape Industry Centre.

The University has built its reputation, from its earliest incarnation as agricultural education and research farm in the 1890s, around responding to industry needs by ensuring that our programs of study are relevant to what industry wants, and our research is guided by the challenges and opportunities that industry face.

This in turn ensures that our students receive a practical and industry informed education, and that they are able to achieve high rates of employment after graduating.

Today, CSU continues a 100 year tradition of engagement and leadership with industry, the professions and our communities.
SUMMARY OF RECOMMENDATIONS

Recommendation 1
Consistent with the principles underpinning the review, it is recommended that the University is delegated authority on comparable terms to local government to manage Crown Reserves in accordance with its enabling Act.

Recommendation 2
It is recommended that that the new legislative regime (and any new guidelines or handbook) provide universities with flexibility to negotiate long-term lease arrangements that take into account:

1. The longer timelines to achieve investment returns in regional markets; and

2. The delivery of ‘public good’ benefits, and regional economic and employment development, as legitimate components of an assessment in determining leasing terms.

Recommendation 3
We recommend that the new legislation vest in the trust manager the power to determine the appropriate application and value of rental discounts, where the trust manager is a University, and that the range of factors that must be considered are expanded in the case of universities to include the value of any benefit that accrues to the University in meeting its statutory objects and functions, or in the case of regional universities to regional economic and employment development.

Recommendation 4
It is recommended that the new legislation either:

1. allows for compensation by the State government where a lease or licence is terminated under section 109; or

2. authorises the trust manager to enter into some form of ancillary agreement with the tenant/licensee which contemplates purchase of improvements by the manager on an agreed basis from the tenant/licensee where their tenure is terminated for any reason other than default of the tenant or licensee.

Recommendation 5
It is recommended that the legislation require that a trust manager be granted a reasonable opportunity to rectify any instance of non-compliance which may be detected (either through an internal audit or one conducted under the legislation) before any penalties are imposed.

Recommendation 6
It is recommended that the legislation clarify, if required, that a statutory corporation may act through its ordinary governance processes as trust manager including its powers of delegation.
Introduction
Thank you for the opportunity provided to Charles Sturt University (CSU) to comment on the recommendations and proposals contained in the White Paper issued by NSW Trade & Investment (NSW T&I).

As a general proposition, CSU welcomes the proposed streamlining of the regulation and management of Crown land in NSW. CSU also supports the proposed five year transition phase to facilitate compliance with the rental provisions of the new legislative regime.

CSU has considered the White Paper in detail and has a number of comments as set out below:

a) Part A sets out some general observations and comments on the way the proposals may impact on CSU as a regional public university; and

b) Part B sets out our responses to a number of the issues which were specifically identified by NSW T&I for comment.

A. IMPACT OF PROPOSED LEGISLATION ON CSU

Background – CSU and Crown land
CSU is a public university established under the Charles Sturt University Act 1989 NSW (CSU Act). The history and geographical diversity of CSU has placed it in a unique position when it comes to land management and the issues being considered by the White Paper. In particular please note:

a) CSU currently owns, occupies or manages a vast area of land across the State (as illustrated in the graphical portfolio in the attachments);

b) the land portfolio is hugely varied and includes Old System Title, Torrens Title, Crown land, Crown Reserve, freehold, leasehold and occupancy permits;

b) some of the Old System Titles are particularly complex to manage due to deficiencies in title and boundary information; and

d) a number of the Crown Reserves still refer to predecessor institutions in the descriptions of their purpose, which need to be updated and unified to assist with a consistent plan of management across the CSU campuses.

These issues are managed by CSU as part of its normal land and asset management. However, the volume and complexities in our land portfolio will impact on the way in which CSU can respond to the proposed new legislation, particularly the amount of time that may be required to ensure that we can fully comply with any new regime.

Background – nature of CSU

As stated above, CSU was established under the CSU Act, and is governed by that legislation. Like other public universities operating in NSW, the object of CSU is very much in the public interest, being the promotion of “scholarship, research, free inquiry, the interaction of research and teaching and academic excellence” (section 7(1)).
However, the reason why CSU now occupies so much land across rural and regional NSW is because of the additional function conferred upon it under the CSU Act, being “the provision of facilities for education and research of university standard, having particular regard to the needs and aspirations of the residents of western and south-western New South Wales” (section 7(2)(a)).

We note that the White Paper has recommended that local councils be given the ability to manage Crown Reserves under local government legislation rather than the Crown Lands Act to promote streamlining, avoid inconsistencies between the two pieces of legislation and to reduce “complexity and red tape”.

CSU believes that the same principles should apply to the management of Crown Reserves by CSU. Although CSU is not a local council or government agency, it is established by NSW legislation and is subject to many of the Acts regulating government bodies such as the Privacy and Personal Information Protection Act 1998 NSW and the Public Finance and Audit Act 1983 NSW.

Given this level or regulation and protection, and the volume of Crown land under the management of CSU in rural and regional NSW, it is very much in keeping with the principle of streamlining the administration of Crown land to delegate management of Crown Reserves to CSU on the same terms as other NSW statutory bodies.

In addition, like local councils, there are two pieces of legislation that apply to the management of land by CSU, being the Crown Lands Act and the CSU Act. The Acts are not consistent, and this can create confusion, and complexities for dealings with land.

For example, sections 21 and 22 of the CSU Act give the CSU Council certain powers over land and property vested in the Crown. Both these sections allow the Council to lease land for a term of up to 21 years. However, the Crown Lands Act would require the consent of the Minister for Crown Lands to provide consent, and the current Trust Handbook guidelines generally limit leases and licences of Crown Reserves to 20 years.

It is also noted that under proposed reforms set out in the Universities Legislation Amendment (Regulatory Reforms) Bill 2014 NSW, sections 21 and 22 of the CSU Act will be amended that will create further inconsistencies between the Crown Lands Act and University legislation:

a) permit the sale, encumbrance or lease of any “lands of the University” provided that the consent of the Minister for Education is still required where the land was “acquired … from the State at nominal or less than market value” or, in the case of a proposed lease of such land, if the lease exceeds 21 years; and

b) permit the University Council to grant leases of Crown land for more than 21 years with the approval of the Minister for Education.

Another issue is the fact that the Crown Lands Act is currently administered by the Minister for Primary Industries, whereas the CSU Act is administered by the Minister for Education. This can increase time and red tape where consent is potentially required under both Acts.
Given that the CSU Act is the foundation legislation for the university, it is suggested that priority should be given to that legislation for any dealings with land by CSU. The proposed reform of the Crown Lands legislation provides an opportunity for NSW to avoid any future inconsistency or conflict by allowing public universities to manage Crown Reserves under their incorporating legislation rather than the Crown Lands Act. We respectfully request that these provisions be included in the new legislation in the same way that local councils will be given the ability to manage Crown Reserves under the local government legislation.

**Recommendation 1**

*Consistent with the principles underpinning the review, it is recommended that the University is delegated authority on comparable terms to local government to manage Crown Reserves in accordance with its enabling Act.*

**Understanding Different Markets when dealing with Land**

CSU acknowledges that one of the principles behind the proposed changes is to unlock the potential of Crown land by implementing a more competitive, market-based approach to the use of that land including the capacity to grant leases on commercial terms.

We believe that some consideration needs to be given to the circumstances and abilities of the various managers of Crown land throughout the different regions of NSW to secure a full market return for Crown land that they manage.

As a regional public university, CSU is less able to realise a commercial return in the same time frame from the use of land under its management compared to developments in major cities. There is generally both a smaller pool of commercial investors and often a lower rate of return. Additionally, the cost of developing land and capital are often comparable, and in some cases greater, than metropolitan developments and therefore it can take a much longer period for a development to recoup the value of any investment and deliver a return.

However, the flow-on value of developments in regional areas can have a proportionately larger impact on economic activity and employment growth compared to major cities, because of the relative sizes of the economies and labour markets. For example, a development that creates 200 new jobs in a regional city of 35,000 people has a proportionately greater impact that the same activity in a city of 6 million.

In addition, the types of projects that CSU as a University is typically interested in developing are sometimes longer term than those of many other Crown land managers due to our investment in higher education and research. By way of example, CSU is committed to developing research and development initiatives that complement, and extend the economic and social value, of the activities of our faculties and schools on our regional campuses. For example, the University currently leases a facility to a major GP and medical training provider in regional NSW because co-location delivers expanded capacity for both organisations and allows for the development of joint academic initiatives.

The University is also interested in the development of R&D parks as a way to draw into rural and regional communities new businesses that are allied to existing capabilities
within the University to promote regional economic activity and employment, as well as strengthen our industry partnerships in areas of mutual benefit for the region and the State. R&D parks require significant investment by both the university and its partners, particularly where it involves fields such as agricultural science, pharmacology, engineering and medicine. CSU is confident of the public benefits that can be provided by these projects, but it will take many years to realise a return in dollar terms.

While the White Paper does not specifically address the recommended length of term for a lease, the current Trust Handbook issued by NSW T&I advises that “terms of more than 20 years will not normally be approved by the Department” and “options for renewal... will also not normally be approved”.

Given the length of time that it can take to realise a commercial return in regional Australia where many Crown reserves are located, we recommend that the new legislative regime (and any new guidelines or handbook) allow some flexibility for longer term tenures for projects such as those described above.

**Recommendation 2**

*It is recommended that that the new legislative regime (and any new guidelines or handbook) provide universities with flexibility to negotiate long-term lease arrangements that take into account:

1. The longer timelines to achieve investment returns in regional markets; and
2. The delivery of ‘public good’ benefits, and regional economic and employment development, as legitimate components of an assessment in determining leasing terms.

**Appropriate rent rebates and waivers**

From time to time CSU may identify potential tenants or licensees who can offer real benefits to our students and higher education in Australia generally (consistent with the purpose of the land), but may not necessarily be in a position to pay commercial market rent. These entities can include bodies such as art and cultural societies, regional sporting organisations or student support services. This can also include organisations that can supply services such as clinical placements for health students as a ‘value-add’ through the operation of commercial services on Crown land managed by the University.

We note that market rent is proposed as the “default” position for the new legislation, but that rebates and waivers may be applied “where appropriate”. The current Trust Handbook refers to a policy that should be used by trust managers when considering applications for rental rebates, waivers and hardship relief. We also note that this policy is also used by NSW Crown lands when “considering any request for the Minister’s consent to any concessions proposed by a reserve trust in relation to a proposed tenure”.

This policy generally limits rebates and relief to groups such as pensioners, registered charitable bodies and non-profit organisations, and the rebates are limited to 50% of market rent. It does not contemplate that in some cases, the return provided by a tenant may be entirely consistent with the prescribed use of the land, but is provided in-kind rather than by way of monetary market rental returns.
Recommendation 3
We recommend that the new legislation vest in the trust manager the power to determine the appropriate application and value of rental discounts, where the trust manager is a University, and that the range of factors that must be considered are expanded in the case of universities to include the value of any benefit that accrues to the University in meeting its statutory objects and functions, or in the case of regional universities to regional economic and employment development.

This is for a number of reasons:

a) first, the managers are required to use the land in a manner which is consistent with its purpose and the Crown Lands Act 1989 NSW (Crown Lands Act) which will protect the use of the land;

b) second, a trust manager is more likely to have local experience and knowledge to help it assess market rent and the other factors relevant to determining whether the proposed rebate or discount is "appropriate"; and

c) third, it would appear to be much more efficient, economical and "streamlined" for a trust manager to make a determination as to what rebate or discount is appropriate rather than refer that component of the land management to a State government Minister or their delegate for review.

Rights to terminate
Section 109 of the current Crown Lands Act states that any lease or licence of a Crown Reserve will terminate if the Reserve or a relevant part of it is revoked. Furthermore, subsection 109(5) states that no compensation will be payable if a lease or licence is terminated under this section.

Both the template licence and template lease issued by NSW T&I for Crown Reserves confirm the operation of this section (see clause 22 of the lease and clause 10 of the licence).

This section could potentially undermine the ability of a trust manager to negotiate market rent or to attract investment in Crown land. This is because a third party’s tenure can be terminated for reasons beyond their control, even where they are not in breach, without any form of compensation. If there is no power to compensate a party for their improvements to land or premises, then the risk is fully attributed to the investor. This can make it very difficult for investors to obtain finance and for significant projects to develop.

It is acknowledged that it is not a common occurrence for a Reserve to be revoked and that the Minister and/or the Parliament would likely consider the impact of a proposed revocation on any existing licences or leases before doing so.

It is also acknowledged that a legislative power to revoke a Crown Reserve needs to be retained.
However, if the new legislation is intended to support a market outcome, then it needs to provide some form of security for expected returns.

**Recommendation 4**

*It is recommended that the new legislation either:*

1. *allows for compensation by the State government where a lease or licence is terminated under section 109; or*

2. *authorises the trust manager to enter into some form of ancillary agreement with the tenant/licensee which contemplates purchase of improvements by the manager on an agreed basis from the tenant/licensee where their tenure is terminated for any reason other than default of the tenant or licensee.]*

**Streamlined Process for Consent**

The White Paper proposes that streamlined processes will be introduced to enable landowner's consent to be given more quickly, particularly in relation to "low-impact" activities.

CSU strongly supports this approach, particularly for tenancies which are ancillary to the purpose of Crown Reserves.

For example, CSU operates a number of ATM machines across its campuses for staff and students under licence arrangements with banks and other financial institutions. These machines take up minimal space, are of great benefit to the students and staff, reduce the environmental impact of the students and staff and are ancillary to the business of the University.

However, the fact that they are generally proposed as long term arrangements (rather than temporary licences) means that CSU is required to enter into the long form templates provided by NSW T&I and obtain Ministerial consent. This process is further complicated by the fact that the financial institutions normally provide their own template agreements for the ATMs, which they have adopted and use nationally. CSU believes that it would be of benefit to all interested parties if these kinds of arrangements were caught by the streamlined consent processes proposed in the White Paper.

**Right to Rectify Default**

We note that the new legislation will include an auditing framework and stronger enforcement provisions, including penalties for non-compliance.

CSU appreciates that an effective compliance framework is an important part of legislation. However, we suggest that trust managers should be given a reasonable opportunity to rectify any instances of non-compliance which may be detected (either through an internal audit or one conducted under the legislation) before any penalties are imposed. This is for the following reasons:

a) the new management structure proposed by the White Paper will involve the formation of new trust managers;
b) the proposed legislation involves significant changes to the current regime;

c) trust managers like CSU manage an extensive volume of Crown land and it will take some time to audit and review all of the arrangements currently in place against any new legislation (and in some cases it may not be possible to negotiate immediate changes to the existing tenancies, some of which may have up to 20 years tenancy); and

d) some tenancies for Crown land have been in place for a number of years, predating the staff and records of current trust managers.

Recommendation 5
It is recommended that the legislation require that a trust manager be granted a reasonable opportunity to rectify any instance of non-compliance which may be detected (either through an internal audit or one conducted under the legislation) before any penalties are imposed.

Composition of Trust Manager
Finally, we note the proposal in the White Paper to move from a three-tier management system to a two-tier structure. CSU supports this proposal.

Under section 19 (1A) of the CSU Act, it is the University Council which is given the power to act for and on behalf of CSU in the exercise of its functions, and has the “control and management of the affairs and concerns of the University”.

Therefore, as we understand it, the Council would be appointed as the trust manager of any Reserve under the control and management of CSU. That is, there would be no need for the Council to act in any separate capacity as a trustee, and it could conduct any business it has as trust manager in the normal course of its Council meetings and business. Would you please advise us if you disagree with that interpretation.

Also, under section 20 of the CSU Act, the Council may “delegate all or any of its functions...to any member or committee of the Council or to any authority or officer of the University...”. We assume that this would also apply to the functions of the Council as trust manager – i.e that the Council could also delegate any of the administrative, reporting or other responsibilities which are placed on trust managers under the proposed new legislation to appropriate staff or officers of CSU. Again, would you please advise us if you disagree with that interpretation.

Recommendation 6
It is recommended that the legislation clarify, if required, that a statutory corporation may act through its ordinary governance processes as trust manager including its powers of delegation.
B  ISSUES FOR COMMENT

Proposed legislation

1. *How would developing one new piece of legislation to manage the Crown land estate benefit the community?*

   CSU supports the concept of amalgamating legislation and replacing inconsistent provisions in the existing Acts. In addition, as discussed above, we wish to see consistency between the new Crown lands legislation and the legislation governing public universities in NSW, or clarification to the effect that in the event of any inconsistency priority should be given to the CSU Act.

2. *Are the objects and provisions proposed for the new legislation appropriate to support Crown land management in the 21st Century?*

   CSU acknowledges that the new legislation will aim to obtain a market return for Crown land in the state. However, we need to ensure that other in-kind or non-dollar benefits which can be derived from the use of Crown land are still taken into account. Likewise, changes which implement a more competitive, market-based approach to the use of Crown land and the granting of leases on commercial terms need to take into account the unique role and challenges of regional public institutions such as CSU, as described in this submission.

Improved management arrangements for Crown reserves

3. *Do you have any comments on the proposal to allow local councils to manage Crown land under local government legislation rather than under the Crown Lands Act?*

   As discussed above, CSU believes that it is appropriate to give university trust managers a similar level of control, and that their dealings with land should be governed by their constituent Acts, and that requests for consent where required be managed by the one Minister, ie the Minister for Education.

4. *What are your views about the proposed new management structure for Crown reserves?*

   CSU supports the proposed new model, on the understanding that the University Council as the governing board would be able to act as trust manager in the normal course of its operations without having to form a separate, artificial entity for the purpose of any dealings with Crown land.

5. *Do you have any further suggestions to improve the governance standards for Crown reserves?*

   CSU supports any mechanisms to streamline and simplify the reporting requirements for Crown reserves, particularly given the volume of Crown land that it manages, and the number of people that access that land on a daily basis.
Other streamlining measures

6. Are there any additional activities that should be considered as ‘low impact’ activities in order to streamline landowner’s consent?

See comments above regarding ancillary support functions such as ATMs.

7. Are there any other ways to streamline arrangements between the State and local governments?

No comment

8. In addition to the suggestions provided, are there any other ways to ensure that the public is notified of the proposed use or disposal of Crown land - and their views taken into account - that would be appropriate to include in the new legislation?

No comment

Better provisions for tenures and rents

9. Do you support the concept of a consistent, market based approach to rents, with rebates and waivers for hardship and public benefits for certain uses of Crown land applied where appropriate?

See comments above regarding in-kind benefits that can be provided through a lease or licence of Crown land which should be taken into account.

10. Is five years a reasonable amount of time to give tenure holders who currently pay below the statutory minimum rent to move to paying the minimum level of rent as required under the new legislation?

If a tenant or licensee has a binding contract under which they are currently required to pay below-minimum statutory rent, with no suitable mechanism for rent variation (e.g due to changes in law) then it could be unconscionable if not a breach of an essential term of that contract to demand that they commence paying the statutory minimum prior to expiry of the relevant term.

An alternative option would be to require that any lease or licence of Crown land which is entered into after the commencement of the new legislation (or preferably after a six month transition period following commencement of the new legislation) must be for at least the statutory minimum rent (subject to any approved rent rebate, waiver or discount). Any existing lease or licence which is set at a lower amount would be left to run their course (subject to any provision in the agreements allowing for a rent variation, or voluntary agreement by the tenant or licensee to increase their rent to the statutory minimum).
11. To avoid rent arrears issues for incoming tenure-holders, should the new legislation automatically transfer any rental debt to a new tenure-holder on settlement, or require any outstanding arrears to be paid prior to transfer or settlement?

The tenant in arrears should be pursued for any outstanding rent, either by debt recovery or as a condition of transfer. Transferring a rental debt to a new tenure-holder could act as a disincentive for any new party interested in occupying the land, which would be inconsistent with the underlying principles of encouraging competitive returns and demand for the land.

12. What kinds of lease conditions should be considered ‘essential’, for the purposes of providing for civil penalties?

No comment

13. Should Crown land be able to be used for all forms of carbon sequestration activities?

No comment

Greater flexibility for Western Lands leases

14. What additional activities do you think should be permitted on Western Lands leases without the need for approval?

No comment as CSU does not occupy or manage any Western lands.

15. Bearing in mind the fragile nature of much land in the Western Division, in what situations do you think it would be appropriate to allow Western Lands leases to be converted to freehold?

No comment

Stronger enforcement provisions

16. What are your views about the proposal to strengthen the compliance framework for Crown lands?

See below.

17. Do you have any suggestions or comments about proposals for the following:

- Auditing
- Officer powers
- Offences and penalties
- Other provisions?

As discussed above, trust managers should be given an opportunity to rectify any breaches identified during an audit before any penalties are imposed. The
time allowed to rectify a breach should reflect the circumstances such as the fact that CSU occupies or manages a huge volume of diverse land holdings,

There should also be some qualifying limits within the legislation to ensure that auditors and/or officers are not given powers which would over-ride the protections currently available under the Privacy Act, and that their operations are strictly limited to leases and licences of Crown land including Crown Reserves.

Minor legislation

18. *Do you support the repeal of the minor legislation listed?*

   Yes

19. *Do you see any disadvantages that would need to be addressed?*

   Not that we are aware of.
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