Department of Primary Industries Lands

(Multiple Land Use) Act 2013

January 2015

Important Information

This fact sheet provides information to the public about recent amendments to the *Crown Lands Act 1989.*

What is the Act?

The Amendment *(Multiple Land Use) Act 2013* (the Act) amends the *Crown Lands Act 1989* to protect the multiple use principle and ensure the legal validity of interests such as leases, licenses and permits which have been granted over reserved Crown land.

The Bill was passed by Parliament on 20 November 2013 and assented to on 27 November 2013.

The Act is the NSW Government's response to a recent court case known as 'Goomallee', Minister administering the *Crown Lands Act 1989* v NSW Aboriginal Land Council (Goomallee Claim) [2012] NSWCA 358. The Court found that if Crown land is reserved for a public purpose and a lease, license or permit ("secondary tenure as described in the Act") is granted over that land for a different purpose, then, the tenure will be invalid.

Why was the act required?

In New South Wales, 40% of the land area is Crown land. It is part of everyday life for many people and supports the economy, community services, recreation and open space and contains environmental values.

Maximising the public value of Crown reserves through multiple use is a core principle of the *Crown Lands Act 1989* and has guided the management and use of Crown reserves for many years.

The Goomallee decision by the NSW Court of Appeal in November 2012 has cast doubt on the legal validity of secondary use tenures (leases and licences) and the principle of multiple use on Crown reserves.

There are many examples across the state where Crown reserves are being used and managed in a way that up until the Goomallee decision had been considered valid as either ancillary or complementary to the underlying reserve purpose.

There are many types of tenancies potentially affected as they are located on reserves for public recreation and other purposes.

For example:

- Country Women's Association halls,
- Meals on Wheels kitchens,
- Men's Sheds,
- Pre-schools, libraries,
- Council chambers,
- Community centres and tourist information centres,
- Emergency Services, Regional Fire Services and Marine Rescue facilities.

What is the Goomallee case?

Under the *Aboriginal Land Rights Act 1983*, an aboriginal land claim was made on 16 January 2006 over a parcel of Crown land that was licensed for grazing as part of a larger rural property called "Goomallee". On 26 August 2010, the Minister administering the *Crown Lands Act 1989* refused the claim on the basis the land was being lawfully used and occupied.

The NSW Aboriginal Land Council (NSWALC) appealed the Minister's decision in the Land and Environment Court. On 9 November 2012, the NSW Court of Appeal held that the licence was invalid and the Minister did not have grounds for refusing the land claim, because the land under claim had been reserved for 'public recreation', and the grazing licence issued over the land was not for, or in furtherance or ancillary to that reserve purpose.

Aboriginal Land Claims

The *Aboriginal Land Rights Act 1983* enables the NSW ALC and Local Aboriginal Land Councils (LALCs) to claim Crown land and have that land transferred to them in freehold title if, among other requirements, the land at the time of the claim is not lawfully used or occupied.

The legislation was introduced to compensate Aboriginal people in New South Wales for the past dispossession of their land.

Once a land claim is made by either the NSW ALC or a LALC over a parcel of Crown land the Minister is required to assess the application. Under the legislation the Minister can refuse the granting of the claim where land is currently being lawfully used and occupied. Appeal rights are available to the Aboriginal Land Councils. Where land is granted the land is transferred to a land council in freehold title.

Overview of changes

Consistent with the objectives of the Act, appropriate multiple uses of Crown reserves is desirable and has been encouraged over many years. The legislative changes affect the issue of tenures under *s.34* and *s.102* of the *Crown Lands Act 1989*, by providing:

- a retrospective validation of existing tenures issued by both the Minister and reserve trusts, but not so as to affect an aboriginal land claim made prior to 9 November 2012.
- the ability for both the Department of Primary Industries – Lands (the Department) and reserve trusts to issue a 'secondary interest' where it is in the public interest and will not result in material harm to the underlying reserve purpose.
- the requirement for the Minister to be served notice before legal proceedings can occur to dispute the validity of a tenure issued over a Crown reserve.

What tenures are affected by the Amending Act?

Tenures issued under *s.34* and *s.102* of the *Crown Lands Act 1989* where the occupation is not the same as the reserve purpose, ancillary to, or in furtherance of or incidental to the reserve purpose. These types of tenures are termed a secondary interest and must be in the public interest and not likely to materially harm the underlying reserve purpose to be validly issued.

The Bill also retrospectively validates secondary interest tenures that have been issued under *s.34* and *s.102* of the Act, but do not affect an ALC lodged prior to 9 November 2012.

What is a secondary interest?

Leases and licences issued under *s.34* and *s.102* of the *Crown Lands Act 1989* where the occupation is not the same as the reserve purpose, ancillary to, or in furtherance of or incidental to the reserve purpose are termed a secondary interest. For this type of occupation to validly occur on a Crown reserve it must be in the public interest and not likely to materially harm the underlying reserve purpose.

Validation of existing tenures

The Amendment Act provides a retrospective validation of existing tenures issued by both the Minister (under *s.34* of the *Crown Lands Act 1989*) and reserve trusts (under *s.102* of the *Crown Lands Act 1989*), but not so as to affect an existing aboriginal land claim over the Crown reserve made prior to 9 November 2012. The Amendment Act provides provision for aboriginal land claims lodged before the Goomallee decision to still be determined in line with the court's interpretation.

Where the Minister has given consent to the lease or licence the retrospective validation that has taken place means that a reserve trust does not need to do anything for current occupations considered to be a secondaryinterest.

What is material harm?

Material harm in the opinion of the Minister will be the assessment applied to secondary purpose tenures to ensure the integrity of the underlying reserve purpose.

If a notice is lodged by a party suggesting the tenancy is creating material harm. The Minister has 3 months to consider the situation (a six month notice period applies for existing tenures). In doing so the Minister must give regard to relevant factors including:

a) the proportion of the area of the Crown reserve the may be affected by the secondary interest;
b) if the activities to be conducted pursuant to the secondary interest will be intermittent, the frequency and duration of the impacts of those activities;
c) the degree of permanence of likely harm and in particular whether the harm is irreversible;
d) the current condition of the reserve; and
e) the geographical, environmental and social context of the Crown reserve;

Can a decision be challenged?

Whether a tenure has been issued lawfully by the Minister or a Reserve trust has always been able to be challenged in a court of law. The Amendment Bill establishes a requirement that should a party seek to challenge the validity of a tenure it must first serve notice to the Minister of the alleged invalidity before it can be questioned in legal proceedings. The notice must be given using the approved form.

The following notice periods apply:

- 6 months - for a lease, licence or permit in respect of, or an easement or right-of-way granted before 27 November 2013
- 3 months - for a lease, licence or permit in respect of, or an easement or right-of-way granted on or after 27 November 2013

If you would like to lodge a notice, please complete the following form:

Reserves: Notice of alleged invalidity of a secondary interest over a Crown Reserve

Please note - If the Department is unable to identify the reserve and/or secondary interest from the details you have provided, the Department will deem the notification as invalid. The Department will normally send notification to the applicant in writing within 5 business days of receipt of the notice should the notice be deemed to be invalid.

More information

For more information, please contact the Department:

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