

Land Rights in the Western Division

December 2015

The opportunity for Aboriginal people to claim title to land has been made available by the introduction of both state and commonwealth legislation. However some confusion exists in the type and manner in which claims are made and how they are determined. Specifically two types of claims exist, Aboriginal land claims and native title claims.

Aboriginal Land Claims

The *Aboriginal Land Rights Act 1983* came into force in New South Wales on 10 June 1983. The Act is predominantly administered by the Minister for Aboriginal Affairs however the Minister does have responsibility for deciding the outcome of lands claims.

The Act recognises the special attachment Aboriginal people have with land and puts in place opportunities for Aboriginals to receive some compensation for their loss of that land.

The Act provides for the establishment of Aboriginal Lands Councils to pursue this compensation with, amongst other opportunities, the right to make claims to claimable Crown land which is a defined term in the Act.

While the land claim provisions of the Act are the most important part of the legislation for the Aboriginal community other sections of the Act provide for the acquisition/resumption of Crown lands by the Minister for Aboriginal Affairs and the Minister for Housing and the allocation of funds to Aboriginal Land Councils to purchase the land.

Claims under the *Aboriginal Land Rights Act 1983* are initially lodged with the Aboriginal Land Rights Registrar in the Office of Aboriginal Affairs.

The date of lodgement of claims with the Aboriginal Land Rights Registrar is the key relevant date for all subsequent investigations. In this regard only evidence/factors known to affect the land at this date can be used to determine whether the claim should be granted or otherwise.

Following lodgement, claims are sent to the Minister who has the sole responsibility for deciding the outcome of those claims.

In the Western Region, the Department of Primary Industries – Lands investigates the land status and the other criteria for assessment of the claims in terms of the definition of claimable Crown lands contained in the *Aboriginal Lands Rights Act 1983* and reports and makes recommendations to the Minister on determination.

For claims to be successful the claimed land must, when the claim was made, be Crown land that is:

1. Able to be lawfully sold or leased, or are reserved or dedicated for any purpose, under the *Crown Lands Consolidation Act 1913* or the *Western lands Act 1901*
2. Not lawfully used or occupied (Note: Western lands leases are considered lawfully occupied)
3. Not needed, or likely to be needed, as residential lands
4. Not needed, or likely to be needed, for an essential public purpose
5. Not the subject of a registered native title application apart from an unopposed non-claimant application
6. Not the subject of an approved determination of native title.

Where the Minister is satisfied that land is claimable Crown land, the Minister must grant the claim by transferring the land to the claimant Aboriginal Land Council. Land is generally transferred for an estate in fee simple (freehold) but in the Western Region transfer is affected by the granting of a lease in perpetuity

unless, the Minister has determined that the Crown land is within the urban area of a city, town or village in which case freehold title will issue.

More information

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