

COMPREHENSIVE REVIEW OF NSW CROWN LANDS MANAGEMENT

Meaningful involvement for Aboriginal communities in Crown land

APRIL 2017

To deliver modern, streamlined and transparent management of the state's vast Crown land, the NSW Parliament passed the Crown Land Management Act 2016 (CLM Act). It is anticipated the majority of the CLM Act will commence in early 2018, implementing reforms identified in the white paper and comprehensive review of Crown land management. This fact sheet describes some of the issues found and how the CLM Act addresses them.

Recognising and supporting Aboriginal people's involvement in Crown land

The existing Crown land legislation has always allowed Aboriginal people to use and co-manage Crown land. However, the legislation has not explicitly referenced Aboriginal involvement or acknowledged their traditional connection to the land and their rights under land claim and native title legislation.

A number of submissions to the Crown land legislation white paper suggested that the objects of the bill should make strong and clear statements about the protection of Aboriginal interests. Feedback from stakeholders also identified the importance of recognising Aboriginal use of Crown land in the new legislation.

How the CLM Act deals with this issue

- For the first time, Crown land legislation explicitly recognises and supports Aboriginal land rights, native title rights and interests and Aboriginal people's involvement in the management of Crown land.
- The CLM Act includes an object to facilitate the use of Crown land by Aboriginal people and where appropriate, enable the co-management of reserved Crown land. The objects also acknowledge the spiritual, social, cultural and economic importance of Crown land to Aboriginal people.
- The CLM Act explicitly recognises Local Aboriginal Land Councils and Native Title Prescribed Body Corporates as appropriate Crown land managers.
- There are also provisions to ensure reserve managers recognise the role of Aboriginal people in the management of a reserve and the special significance of land to Aboriginal people.



Figure 1. The Aboriginal Land Rights Act 1983 establishes a process for Aboriginal Land Councils to claim certain Crown land in NSW.

Protecting Aboriginal land rights and interests in Crown land

There were strong representations from Local Aboriginal Land Councils to the white paper that any new Crown land framework should support the ongoing exercise of Aboriginal land rights.

There was also feedback that Aboriginal groups should be closely involved in the proposed program to divest locally-significant Crown land to local councils. This is because (as is currently the case) Crown land that is sold or vested in another entity is no longer Crown land, and a land claim cannot be lodged over that land under the *Aboriginal Land Rights Act 1983* (ALR Act).

How the CLM Act deals with this issue

- The CLM Act recognises for the first time the ALR Act and the role of Aboriginal Land Councils. It does not amend the ALR Act and existing land claims will not be affected.
- Importantly, the CLM Act includes a prohibition on vesting land in councils that is subject to a land claim without the consent of the relevant Local Aboriginal Land Council.
- The Government has committed to divest locally-significant Crown land to local councils through a voluntary negotiation process involving both local councils and Aboriginal Land Councils, to ensure Aboriginal rights and interests are properly represented in the process.
- Aboriginal groups will be at the table when decisions are taken to divest land away from the Crown estate and the CLM Act explicitly prohibits the vesting of land in councils that is subject to a land claim without the consent of the relevant Local Aboriginal Land Council.

Ensuring councils and other Crown land managers comply with native title legislation

The review identified the need for the new legislation to integrate with existing commonwealth and state native title legislation, particularly where local councils are managing Crown land reserves.

How the CLM Act will deal with this issue

- The CLM Act will help ensure dealings relating to former Crown reserves vested in local councils and current Crown reserves managed by local councils comply with the requirements of the *Native Title Act 1993* (NT Act).
- Ensuring compliance also means that registered native title claimants and native title holders are afforded their procedural rights under the NT Act.
- The CLM Act requires each local council in NSW to have a native title manager to oversee and approve specific dealings and actions that may affect native title. The Minister for Lands will be able to determine the relevant training and/or qualification for the native title manager. This will help ensure that local councils managing Crown land under the LGA comply with native title legislation.
- Native title managers will be required for some Crown land managers who will be able to lease or licence without Ministerial oversight. This builds on the current position where all Crown land managers (reserve trusts) are required under the Reserve Trust Handbook to ensure all their actions and dealings comply with native title legislation. The arrangements in the CLM Act are an important tool that will assist councils and other Crown land managers to meet this existing obligation. To demonstrate Government's commitment to this initiative, the Government will pay for initial training for all local councils state-wide.
- Land vested in local councils in the future as part of the negotiation process referred to above will be subject to any native title rights and interests existing in relation to the land. There will be exceptions where native title has been extinguished.

More information

For more information contact the Department of Industry–Lands on 1300 886 235 or legislation@crowmland.nsw.gov.au

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