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Network Message

NETWORK MESSAGE – CROWN LANDS AMENDMENT BILL

Wednesday, September 16, 2013

As Local Aboriginal Land Councils may be aware, the *Crown Lands Amendment (Multiple Land Use) Bill 2013* was introduced into Parliament on Thursday last week. It is due to be debated this afternoon (Wednesday 18 September 2013).

The Bill is the NSW Government's response to decisions made by the Courts about a land claim known as 'Goomallee'. In 2010 the Minister had refused this land claim on the basis that the land was lawfully used and occupied pursuant to a licence for grazing.

NSWALC appealed to the Land and Environment Court arguing that, because the land had been reserved for 'public recreation', the grazing licence over the land was invalid.

The Land and Environment Court and subsequently the NSW Court of Appeal both agreed with NSWALC's argument and granted the land claim.

The judgment can be accessed online at:

http://www.caselaw.nsw.gov.au/action/PJUDG?s=1000,jgmtid=161676

As a result of these cases, there are likely to be many tenures (such as leases and licenses for grazing) that have been invalidly issued over Crown reserves. The Bill is the Government's attempt to validate those invalid tenures.

The Bill provides for the validation of licences that are invalid as a result of the inadequate practices of Crown lands (as exposed by the Goomallee decision).

Importantly, the Bill also provides the Minister with the ability to grant a broader range of tenures over reserved Crown land. This means that a broader range of activities may be allowed on Crown reserves.

While this has significant implications for the scope of land that will be considered to be lawfully used and occupied (and therefore not claimable), it does not directly change the test for claimable crown land under the ALRA, and does not of itself mean that LALCs will never be able to win future land claims cases on the basis that the claimed land was being

lawfully used or occupied as at the date of the claim.

Importantly, the Bill does **NOT** affect any Aboriginal land claims that were lodged prior to the Goomallee decision (being 9 November 2012).

Therefore, the vast majority of outstanding land claims are protected from any adverse impacts of the proposed Bill. It is only those claims lodged AFTER 9 November 2012 that could be affected by the Minister's retrospective validating powers contained in the Bill.

The NSWALC was not formally consulted on the proposed Bill or given notice of its introduction. However, the NSW Government had informally stated their intention to amend the Crown Land legislation in light of the Goomallee case and that a Bill in response to that decision was going to be proposed.

NSWALC does not support the Bill in its current form, and has made it clear to Government that it does not support the retrospective validation of licences which will impact on land claims lodged over licenced land after 9 November 2012.

NSWALC has a number of other concerns with the Bill including that the Bill will not promote the principles of good management of Crown land. Furthermore, the Bill allows the Minister to issue new licences over Crown reserves provided the Minister holds the opinion that the licence does not cause 'material harm' to the Crown reserve.

We are concerned with the phrase 'material harm' – it is not clear what this means or how it is to be interpreted and the Bill gives no guidance in this regard. However it is clearly a much broader discretion to grant licences over Crown reserves than is currently provided by the Crown Lands Act.

A copy of the Bill and Second Reading Speech can be access on the NSW Parliament website at:

http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/D5E4BBF26BD28C66CA257BE2001CB42B

Please contact the legal services unit on **(02) 9689 4444** if you would like to discuss further or want to know how your LALC can be involved.

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