



fact sheet



The Crown Lands Review

The NSW Government White Paper and the NSW Aboriginal Land Council position

The NSW Government has released the Crown Lands Legislation White Paper (the 'White Paper'). The White Paper is the NSW Government's response to recommendations made by an interagency steering committee about the overall management of Crown land including legislation, financial management, governance and business structure. The interagency steering committee report and recommendations are available [here](#). The NSW Government has agreed in principle to the majority of recommendations made by the interagency steering committee. The White Paper (available [here](#)) makes a series of proposals regarding changes to the management of Crown land and the consolidation of legislation including the *Crown Lands Act 1989*, the *Continued Tenures Act* and the *Western Lands Act*.

Note: NSWALC's understanding is that existing land claims will not be affected by proposed changes to the way Crown land is managed and owned. However, there remain issues with how proposals within the White Paper will support the claiming of land into the future by Aboriginal Land Councils.

NSW Trade & Investment is currently inviting comments on the proposals in the White Paper. Submissions are due by 5pm on 20 June 2014 (see 'how to have your say' section of this factsheet for further details).

Proposed new objects:

The White Paper proposes new objects to new Crown land legislation including:

- to provide that the disposal of Crown land be for the benefit of the people of NSW,

- to encourage public use, enjoyment and where appropriate, multiple uses of Crown land,
- to provide for the management of Crown land by local government, other entities and the community as well as by the NSW Government,
- to preserve cultural heritage (Aboriginal and non Aboriginal) on Crown land, and
- to encourage Aboriginal use, and where appropriate co-management, of Crown land.

NSW Aboriginal Land Council position:

- As the original owners of all Crown land, and as claimants of Crown land that is unused and not needed (which is the only form of compensation afforded to Aboriginal peoples for dispossession), Aboriginal Land Councils are more than merely stakeholders in the management of Crown land.
- New objects for Crown land legislation must recognise Aboriginal Land Council's preminent interests in Crown land which includes, but is not limited to, the use and management of land for culture and heritage purposes as well as providing economic development opportunities and must include a clear object that recognises the dispossession experienced by Aboriginal peoples.
- NSWALC recommends that the object to 'encourage Aboriginal use, and where appropriate co-management, of Crown land' should be strengthened to include, as the principal mechanism, the transfer of Crown land to Aboriginal Land Councils through the *Aboriginal Land Rights Act 1983* (ALRA).

- The proposed new objects that seek to ‘preserve cultural heritage on Crown land’ must appropriately recognise and preserve Aboriginal culture and heritage, and must not be solely reliant on the State Heritage Register to identify heritage of significance.

Rationalisation of land ownership and changes to land disposal provisions:

The White Paper proposes new arrangements regarding land ownership, tenures and the sale and disposal of land.

The White Paper states that new legislation will ‘retain existing provisions for the sale or other disposal of Crown land where it is in the public interest, including more transparent and streamlined requirements for notification and advertising of proposed sales, leases and other disposals’ and notes that there may be the potential for Crown land to be sold under Local Government legislation.

NSW Aboriginal Land Council position:

- NSWALC is concerned that the Government is preferencing the disposal of Crown land rather than transfer of land under the ALRA.
- In any processes regarding the disposal of Crown land, there must be provisions to ensure that when land becomes surplus to the Government’s needs, that the land is first brought to the attention of Aboriginal Land Councils so that a claim can be made to support the objects and intent of the ALRA.
- NSWALC opposes any changes to land ownership that removes land from being claimable under the ALRA and opposes the sale of Crown land under local government legislation.

Stocktake of Crown land:

The Government plans to undertake a ‘whole of government’ stocktake of Crown land. This includes categorising land as being ‘state’ or ‘local’ land. State land is land required for NSW Government purposes, while local land management and ownership could be transferred to local councils.

The Government will develop some form of ‘criteria’ and ‘tests’ to determine which land should continue to be held by the NSW Government, and which land could be divested.

The White Paper proposes conducting a pilot program to test ‘local land criteria’ and to develop an implementation plan for the transfer of land to local government.

NSW Aboriginal Land Council position:

- NSWALC is concerned to ensure that the categorisation of land (state and local) must not undermine the objects of the ALRA.
- NSWALC recommends that the Government, when assessing land, seeks to not simply investigate the transfer of ‘local’ land to local government, but as a priority negotiates with the Aboriginal Land Council network regarding the transfer of land to Aboriginal Land Councils.
- Criteria must not be limited to the criteria proposed in the interagency steering committee report and must include Aboriginal Land Council’s interests in Crown land.
- Pilot programs must actively engage with the Aboriginal Land Council network.

Crown reserves:

The White Paper proposes revising the reserves framework to facilitate multiple use of land. Examples of multiple uses include caravan parks, camping grounds, walking tracks, tourism facilities, grazing and agriculture on Crown reserves.

The White Paper also proposes allowing Local Government to manage reserves under local government legislation.

NSW Aboriginal Land Council position:

- NSWALC recommends that the powers to sell or lease land remains in the *Crown Lands Act* rather than other legislation.
- If the Government pursues allowing the disposal of land through the *Local Government Act*, the NSWALC seeks to

negotiate with the Government regarding safeguards to ensure that land is not prevented from being claimable under the ALRA.

Travelling Stock Reserves:

The NSW Government proposes that starting in 2014 Local Land Services will develop criteria to review all TSRs and determine their future ownership and management to determine which parcels of land should be disposed of or retained by the Government.

NSW Aboriginal Land Council position:

- Due to the significant Aboriginal culture and heritage associated with travelling stock reserves any pilots or criteria that are designed to inform the future ownership or management of travelling stock reserves must be developed in partnership with the Aboriginal Land Council network.

Notifications:

The White Paper proposes new notification provisions that will be more streamlined and more flexible including that notification under Crown lands legislation might not be necessary where it might result in delay and red tape.

The White Paper is not clear regarding specifics of changing notice provisions.

NSW Aboriginal Land Council position:

- NSWALC urges the Government to ensure that notification processes prioritise effective community engagement and do not reduce community engagement at the expense of seeking more streamlined administrative processes.
- In any changes to notification provisions, the intention to revoke or alter the purpose of a reserve should require notification in the Government Gazette.

Removal of land assessments and reliance on 'new planning framework':

The White Paper proposes the removal of land assessments and suggests that Crown lands be assessed as part of the process of developing local plans under the new planning framework.

Note: New planning bills have not passed NSW Parliament and as such are not law.

NSW Aboriginal Land Council position:

- The NSW Government should pursue site specific assessments, rather than relying on any 'new planning framework' in determining the preferred use of land.
- The Government should seek a range of views in the process of determining whether land should be disposed of, including specifically, the view of the NSW Aboriginal Land Council and the Aboriginal Land Council network.

Use of Crown lands without permission:

Currently section 6 of the *Crown Lands Act* provides that it is unlawful to use or occupy Crown land without a lease, licence or other authority. The White Paper notes that Crown land is frequently used without permission, and in many cases these uses would be approved if a licence was sought. The White Paper proposes to give the Minister power to issue a licence for the use of land where the user has not applied for one.

NSW Aboriginal Land Council position:

- NSWALC seeks further information regarding issuing of licences and seeks a commitment from the Government that mechanisms that retrospectively authorises use of Crown land will not be pursued.

Business model:

The NSW Government proposes to establish the Crown Lands Division as a Public Trading Enterprise. As a part of this proposal the Crown land management entity would have the authority to lease/licence Crown land on behalf of the Crown without the approval of the Minister. It will have the authority to sell the land with approval from the Minister. It is unclear what is envisaged by this recommendation;

however it could involve a separate corporate entity holding Crown land.

NSW Aboriginal Land Council position:

- Any move to a Public Trading Enterprise, or a separate corporate entity, must not undermine Aboriginal Land Council's rights to claim Crown land under the ALRA.

Commons:

The White Paper proposes the abolition of commons. The White Paper notes that 'many commons have environmental or Aboriginal or other heritage values'.

The White Paper proposes a series of options for the future use of commons including converting commons to Crown land and managing them as reserves, converting commons to Crown land with commoners continuing to use the land through lease or licence arrangements or disposing of commons to commoners, adjoining landowners or otherwise.

NSW Aboriginal Land Council position:

- NSWALC supports the conversion of commons to Crown land and the management of commons under a single management regime.
- Commons that are no longer used or needed should be available for claim under the ALRA.

Enforcement provisions:

Part 7, Division 5 of the *Crown Lands Act* contains mechanisms for the protection of public land including penalties for offences on public land (such as grazing stock, cultivating public land, leaving rubbish etc). The White Paper notes that these enforcement provisions have not been enforced properly and recommends the issuing of stop work orders, remediation notices, removal notices and that the courts should be able to make restoration orders.

NSW Aboriginal Land Council position:

- NSWALC supports improved protection and enforcement provisions.
- NSWALC recommends that the Crown be able to seek a restoration order against a polluter even if the land has been transferred.

How to have your say:

Submissions to the White Paper are due by 5pm on **20 June 2014**.

Submissions can be sent to:

- crownlands.whitepaper@trade.nsw.gov.au
- Crown Lands Management Review
NSW Trade and Investment
PO Box 2185, Dangar, NSW, 2309

NSWALC encourages all LALCs and members of the Aboriginal community to have a say about the future management of Crown land.

NSWALC will be advocating for Aboriginal Land Council's interests in Crown land being genuinely incorporated into the considerations of the Government regarding the review of Crown lands and that new proposals to manage Crown land must support the objects and purpose of the *Aboriginal Land Rights Act*.

NSWALC will be providing a comprehensive submission to the White Paper, and will keep the Network informed about the review's progress.

More information:

The White Paper and other review information is available at:

http://www.lpma.nsw.gov.au/_data/assets/pdf_file/0009/196434/Crown_Lands_White_paper_accessible.pdf.

Please contact the Policy and Research Unit on 9689 4444 if you would like to discuss the Crown Lands Review.

Please Note: The information in this Fact Sheet is current as of May 2014.