

Information for Crown land tenants about Aboriginal land claims

The Aboriginal Land Rights Act 1983 (NSW) is important legislation that recognises the rights of Aboriginal people in New South Wales.

The preamble of the legislation recognises that land in NSW was traditionally owned and occupied by Aboriginal people, and is of spiritual, social, cultural and economic importance to them. It recognises the need of Aboriginal people for land and acknowledges that land for Aboriginal people in the past was progressively reduced without compensation.

The effect on a lease or licence

The lodgement of an Aboriginal land claim by a Land Council creates what is known as an inchoate (unformed) interest in the land. The full extent of this interest is not known until the claim is investigated and a determination is made by the relevant minister.

The NSW Government (through the Department of Planning, Industry and Environment) will generally not authorise any dealing in land subject to a claim that will:

- prevent the land being transferred to a claimant Land Council in the event it is found to be claimable
- impact on the physical condition of the land.

To ensure these conditions are met, the proponent must usually seek consent from the claimant Land Council for the proposed works or activity before any land owner's consent can be provided.

During the investigation of an Aboriginal land claim, the department identifies and gathers relevant information about the land at the date of lodgement. We will generally seek information from relevant agencies (including local government and infrastructure providers) and tenure (lease or licence) holders to understand if the land subject to claim is lawfully used or occupied, or is needed or likely to be needed for an essential public purpose. Over time, the courts have provided some guidance on the definition of these terms and an extract of this guidance is detailed in the fact sheet titled *Definition of terms relating to Aboriginal land claims* (go to industry.nsw.gov.au/lands and search for the title).

Once we have gathered and assessed the relevant information, we provide advice to the minister on whether the land can be claimed. There is very little discretion available to the minister, and if land is found to be claimable against the criteria, the claim must be granted.

The *Aboriginal Land Rights Act 1983* provides appeal rights to claimant Land Councils where Aboriginal land claims are refused. The appeal can be lodged in the NSW Land and Environment Court within a four-month period from the date of determination.

It is important to keep in mind during the investigation of an Aboriginal land claim that the *Aboriginal Land Rights Act 1983* is beneficial and remedial legislation.

Claimable Crown land

Section 36(1) of the *Aboriginal Land Rights Act 1983* states that:

'claimable Crown lands means lands vested in Her Majesty that, when a claim is made for the lands under this Division:

- (a) *are 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,*
- (b) *are not lawfully used or occupied,*
- (b1) *do not comprise lands which, in the opinion of a Crown Lands Minister, are needed or are likely to be needed as residential lands,*
- (c) *are not needed, nor likely to be needed, for an essential public purpose, and*
- (d) *do not comprise lands that are the subject of an application for a determination of native title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the Commonwealth Native Title Act, and*
- (e) *do not comprise lands that are the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act) (other than an approved determination that no native title exists in the lands).'*

Lodgement of Aboriginal land claims

The *Aboriginal Land Rights Act 1983* provides that the NSW Aboriginal Land Council and Local Aboriginal Land Councils may make claim(s) to claimable Crown land(s). The date an Aboriginal land claim is lodged is critical, and any investigation generally will only be able to consider information and activities relevant to that date.

Investigation and determination of Aboriginal land claims

The responsibility for determining Aboriginal land claims lies with the minister administering the *Crown Land Management Act 2016*. The Crown Lands team at Department of Planning, Industry and Environment investigates claims and provides the minister with relevant information to assist in determining whether or not land is claimable, with reference to the statutory criteria.

More information

You can get general information about the *Aboriginal Land Rights Act 1983* from:

- the Office of the Registrar of the Aboriginal Land Rights Act 1983 at www.oralra.nsw.gov.au
- Aboriginal Affairs NSW at www.aboriginalaffairs.nsw.gov.au/alra

The investigation of claims is done by the Crown Lands Aboriginal Land Claim Investigation Unit within Department of Planning, Industry and Environment. Contact the team on:

- E: alc@crownland.nsw.gov.au
- P: (02) 6883 3396