Aboriginal Land Grant (Jervis Bay Territory)
Legislation Amendment Bill 1995

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Date Introduced: 29 June 1995
House: Senate
Portfolio: Aboriginal Affairs
Commencement: Royal Assent

Purpose

The main amendments provide for:
• land in the Jervis Bay National Park and Jervis Bay Botanic Gardens to be granted to the Wreck Bay Aboriginal Community Council;
• such land to be leased to the Director of National Parks and Wildlife; and.
• Aboriginal Land within the Jervis Bay National Park and Jervis Bay Botanic Gardens to be subject to the provisions of the *National Parks and Wildlife Conservation Act 1975*.

Background

Origin of Bill

The Bill gives effect to a Government announcement of 28 October 1994 by the Minister for Aboriginal and Torres Strait Islander Affairs and the Minister for the Environment, Sport and Territories.

The Government announced that:

• it was preparing legislative amendments to enable title to the Jervis Bay National Park and Botanic Gardens to be granted to the Wreck Bay Aboriginal Community Council;
• the Wreck Bay community would lease the land back to the Commonwealth to continue as a national park;
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- existing legal rights of landholders in the Jervis Bay Territory and public rights for use and enjoyment of the park would be preserved;
- a management plan would be prepared for the park in accordance with the National Parks and Wildlife Conservation Act 1975.

Jervis Bay Territory

The Commonwealth's Jervis Bay Territory is situated on the southern New South Wales coast 126 km east of Canberra. The Jervis Bay Territory comprises Bherwerre Peninsula, Bowen Island and its marine waters, and the Wreck Bay Aboriginal settlement.

The Jervis Bay Territory was acquired by the Commonwealth from New South Wales in 1915 under the Jervis Bay Territory Acceptance Act 1915 in accordance with the Seat of Government Act 1908.

Jervis Bay National Park

The Jervis Bay National Park was established on 4 March 1992. The mainland component of Jervis Bay National Park comprises an area of approximately 7360 ha while Bowen Island, which is approximately 300 m offshore comprises an area of approximately 51 ha.

Jervis Bay Botanic Gardens

The Jervis Bay Botanic Gardens were opened in 1974, is an annexe to the Australian National Botanic Gardens in Canberra, and comprises an area of approximately 80 ha. The collection objectives of the Jervis Bay Botanic Gardens emphasise collections from coastal south-eastern Australia.

Wreck Bay Aboriginal Community

Available evidence indicates that Jervis Bay has had Aboriginal settlements for at least 20,000 years.

Wreck Bay has been a focal point of Aboriginal settlement, with fishing being the most important source of self-generated income. For much of the century an informal 'reserve' or 'station' status attached to the Wreck Bay Aboriginal Community (the Community). In the 1950s and area of land was formally gazetted as a reserve. In 1965 control of Wreck Bay was transferred from the New South Wales Aboriginal Protection Board to the Commonwealth Department of the Interior. In 1971, the Jervis Bay Nature Reserve was proclaimed over the majority of the Jervis Bay Territory. In 1986 freehold title to some 405 ha was granted to the Community under the Aboriginal Land Grant
Wreck Bay Aboriginal Community Council

The Wreck Bay Aboriginal Community Council (the Council) was established under the Aboriginal Land Grant (Jervis Bay Territory) Act 1986 (the Jervis Bay Territory Act). The functions of the Council are to hold title to Aboriginal land, exercise powers as owners of Aboriginal land for the benefit of the members of the community and make representations to the Minister in relation to the land that the Council considers would become Aboriginal land and other matters relevant to the Act. The Council has specific powers to enter into contracts and employ staff.

The Jervis Bay Territory Act accords the Minister power to declare vacant Commonwealth land adjoining the grant provided by the Act, as Aboriginal land. Land declared to be Aboriginal land vests in the Council. Any part of land or buildings being used by the Commonwealth at the time land and buildings vest in the Council.

The Council comprises a Chairperson, Deputy Chairperson and Secretary of the Council. The Council is able to lease land to persons on the Register of Members of the Wreck Bay Aboriginal Community Council for domestic or business purposes, or, with Ministerial approval, to people who are not registered members. The total duration of the various types of leases is set out in section 38 of the Jervis Bay Territory Act. The Council is able to surrender any part of the land to the Crown. Existing occupiers of Aboriginal land must generally be granted leases by the Council. Registered members are able to pass on their interest in a lease in their wills.

The Council is required to keep proper accounts and records and prepare annual financial statements which have to be supplied to the Minister.

National Parks and Wildlife Conservation Act 1975

The National Parks and Wildlife Conservation Act 1975 (the NPWC Act) provides for the establishment and management of parks and reserves in the Territories, Australian coastal waters and the continental shelf. The NPWC Act is administered by the Director of National Parks and Wildlife (the Director). The functions of the Director cover the management of parks, reserves and conservation zones; the protection of wildlife in parks, reserves and conservation zones; certain training and research activities; and 'to do all things that are necessary or convenient to be done for or in connection with the performance of his functions.' Parks, reserves and conservation zones are proclaimed by the Governor-General after a report is made by the Director which has been considered by the Executive Council.
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Under the NPWC Act, as soon as practicable after a park or reserve has been declared, the Director must prepare a management plan. A management plan has to set out a description of the way in which it is proposed to manage the park or reserve. After a plan has been prepared the Director must invite interested persons to make representations and due consideration must be given to any representations made. A plan must be approved by the Minister and laid before the Parliament.

Aboriginal interests and Aboriginal participation in the management of parks and reserves are protected and advanced in several ways under the NPWC Act. The NPWC Act requires that where the Director is preparing a management plan, regard must be had to the interests of Aborigines in the land; the Chairperson of a Lands Council is entitled to be served a copy of the plan and make representations to the Director; and Aborigines may continue their traditional uses of land or water in parks, reserves and conservation areas, subject only to regulations relating to the conservation of wildlife.

The NPWC Act also provides for the establishment of Boards where Aboriginal land is situated within a prescribed park or reserve and the Minister and relevant Land Council agree to the establishment. Where a Board is established for a park or reserve consisting wholly of Aboriginal land, a majority of the members of the Board must be Aboriginals nominated by the traditional Aboriginal owners of that land. Where a Board is established for a park or reserve, the functions of the Board include to prepare, with the Director, plans of management; monitor, with the Director, the management of the park or reserve; and give advice, with the Director, to the Minister on all aspects of the future development of the park or reserve.

Presently, the National Parks and Wildlife Service manages parks at Uluru, Kakadu, Norfolk Island, Christmas Island and is responsible for the management of marine environments under Commonwealth control, other than the Great Barrier Reef, which is managed by the Great Barrier Reef Marine Park Authority.

Commonwealth Grants Commission

The Commonwealth Grants Commission is a statutory body established under the Commonwealth Grants Commission Act 1973. The Commonwealth Grants Commission is charged, by means of terms of reference specific to each inquiry, with advising the Commonwealth, States and Territories on Commonwealth grants of financial assistance.

The rationale given by the Government in the Explanatory Memorandum for the proposed amendments is:
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... to allow the Commonwealth Grants Commission to report on appropriate funding for works and services in Jervis Bay as well as enabling inquiries into the financial relationships between the Commonwealth and Norfolk Island.

Main Provisions

Amendments to the Aboriginal Land Grant (Jervis Bay Territory) Act 1986

The objects of the amendments to the Aboriginal Land Grant (Jervis Bay Territory) Act 1986 (the Jervis Bay Territory Act) are set out in item I of Schedule 1 of the Bill. The objects are:

- to enable land in the Jervis Bay National Park (the National Park) and Jervis Bay Botanic Gardens (the Botanic Gardens) to be granted to the Wreck Bay Aboriginal Community Council (the Council); and
- for such land to be leased to the Director of National Parks and Wildlife.

A new section 9A, inserted in the Jervis Bay Territory Act by item 2 of Schedule 1 of the Bill, provides that the Minister may declare that land in the National Park and Botanic Gardens is Aboriginal Land. The Minister may only make a declaration:

- if satisfied that the land is significant to the Wreck Bay Aboriginal Community, and it would be appropriate to grant the land to the Council; and
- the Council and Director of National Parks and Wildlife have entered into an agreement under which the Council agrees to lease the Director all of the land. Lease terms and conditions are to set out in the agreement.

A Ministerial declaration must be Gazetted and is subject to disallowance by Parliament.

Subsections 38(1) and 38(2) of the Jervis Bay Territory Act set out the circumstances in which the Council may grant a lease or a licence of Aboriginal land. The effect of items 5 and 6 of Schedule 1 of the Bill is to prevent the lease and licence of land within the National Park and Botanic Gardens.

New sections 38A-38C, dealing with the lease of land within the National Park and Botanic Gardens, are inserted in the Jervis Bay Territory Act by item 8 of Schedule 1 of the Bill. The proposed sections:

- Require the Council, as soon as practicable after the Gazetted of a proposed section 9A declaration (see item 2 above), to enter into a lease agreement with the Director of National Parks and Wildlife to enable him/her to hold land under the National Parks and Wildlife Conservation Act 1975.
- Require the Council to grant the Director of National Parks and Wildlife a lease of proposed section 9A declared land.
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- The terms and conditions of the lease are as set out in the lease agreement and except with Ministerial consent, the term of a lease must not be more than 99 years.
- Where satisfied that the Council has refused, or is not willing, to grant the Director of National Parks and Wildlife a lease as required under a lease agreement, the Minister may, on behalf of the Council, grant the lease to the Director as set out in the agreement.

Amendments to the National Parks and Wildlife Conservation Act 1975

The object of the amendments to the National Parks and Wildlife Conservation Act 1975 (the NPWC Act) are set out in item I of Schedule 2 of the Bill. The object is:

- to enable the Wreck Bay Aboriginal Community Council to participate in the management of the Jervis Bay National Park and Jervis Bay Botanic Gardens.

The main effect of items 2-22 is to make Aboriginal Land within the Jervis Bay National Park and Jervis Bay Botanic Gardens subject to the provisions of the NPWC Act. The reader is referred to the 'Background' for an outline of the effect of the NPWC Act.

Amendments to the Commonwealth Grants Commission Act 1973

The objects of the amendments to the Commonwealth Grants Commission Act 1973 (the Grants Commission Act) are set out in item I of Schedule 3 of the Bill. The object is to:

- extend the functions of the Commonwealth Grants Commission (the Commission) to inquiring and reporting to the Minister on matters relating to Commonwealth financial assistance to Norfolk Island and the financing of works and services in respect of the Jervis Bay Territory and certain external Territories.

Item 4 of Schedule 3 of the Bill extends the scope of the Grants Commission Act to Heard Island, the McDonald Islands, Norfolk Island and other external Territories.

New sections 16B-16D, dealing with Commission inquiries relating to the Jervis Bay Territory, Norfolk Island and other external Territories, are inserted in the Grants Commission Act by item 5 of Schedule 3 of the Bill.

The proposed sections:

- Require the Commission to inquire into and report to the Minister on any matters relating to the financing of works and services by the Commonwealth
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or a Commonwealth authority in the Jervis Bay Territory referred to it by the Minister.

• Require the Commission to inquire into and report to the Minister on any application made by Norfolk Island to the Commission for a grant of special assistance, and any matter relating to a grant or the making of a grant of financial assistance by the Commonwealth to Norfolk Island referred to it by the Minister.

• Require the Commission to inquire into and report to the Minister on any matter relating to the financing of works and services provided by the Commonwealth or a Commonwealth authority to an external Territory (other than Norfolk Island) referred to it by the Minister.

References


Bills Digest No 86/86, Aboriginal Land Grant (Jervis Bay Territory) Bill 1986, Legislative Research Service, Department of the Parliamentary Library. pp. 1& 2.


Ian Ireland (06 2772438)
Bills Digest Service
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