

Statutory Review of the Crown Land Management Act 2016



Above: Dharriwaa Elders Group River Ranger team (funded by National Indigenous Australians Agency to work for restoring river health in the northern Murray Darling Basin) relies greatly on the shrinking mosaic of TSRs and Crown reserves along the rivers near Walgett in order to access the rivers and undertake water quality monitoring, turtle, bird and frog conservation activities. This and other programs of Dharriwaa Elders Group would greatly benefit from increasing the Crown estate around Walgett, so that Aboriginal community members can obtain increased access to Country and the wellbeing provided by that increased access.

Submission from Dharriwaa Elders Group Walgett 2 April 2024.

Dharriwaa Elders Group (“DEG”) thanks the Department for encouraging its contribution to this Review so that we can provide our perspective and experience as a long-standing Aboriginal Community Controlled Organisation (“ACCO”) in Walgett, NSW.

DEG offers in this submission case studies and perspectives for policymakers to interpret and develop into better law and processes for the management of NSW’s Crown estate.

Introduction to Dharriwaa Elders Group (“DEG”)

The DEG is an Aboriginal cultural organisation which works to support Elders wellbeing, protect Aboriginal cultural heritage and knowledge and promote Aboriginal cultural values. The organisation works for community development, promoting relationships between Aboriginal Elders and other generations of the Walgett Aboriginal community.

DEG works closely with the Walgett Aboriginal Medical Service (“WAMS”) and other organisations in Walgett to improve wellbeing and outcomes for Aboriginal people in Walgett.

Walgett is a remote town in a large Northern Murray-Darling Basin floodplain where the Namoi meets the Barwon River. It is surrounded by other ground and surface waters – including three wetlands recognised by the Ramsar convention. DEG’s Members’ area of interest extend across water and Country that in some places still retain old growth native vegetation communities growing in floodplain and red ridge soils, and supporting populations of wildlife precious to our community and to all communities in NSW and Australia. DEG’s area of interest comes from the lived experience and aural knowledge of past and current members who lived and worked on those lands, either in the towns, Aboriginal Reserves, as drovers on TSRs and on properties working to support the pastoral industry.

Walgett has a large, mostly young, Aboriginal population with three Aboriginal language groups. It is where Aboriginal people, who once lived across the surrounding Country, now live. The DEG has a close knowledge of the Walgett Aboriginal community; it is in touch via its directors, members and staff with community in Walgett and the nearby Gingie and Namoi Villages. This connection means that it can identify what works and what doesn’t work for the community in terms of policy and programs.

Since 2016, DEG has been working in a community-led partnership with the University of NSW. The goals of this Yuwaya Ngarra-li partnership are:

1. Greater Aboriginal community control and capacity
2. Increased numbers of Aboriginal young people in education, training, and employment
3. Reduced numbers of Aboriginal people in contact with the criminal justice system
4. Improved social determinants of health and wellbeing amongst Aboriginal people
5. Increased sustainable management of water and Country
6. Redirection of funding towards strengths-based, holistic, community-led initiatives

We refer you to our publications that are of relevance to this submission:

<https://www.dharriwaaeldersgroup.org.au/index.php/reports>.

Case-study – the cropping of lakebeds of high environmental and Aboriginal Cultural value

Cooceran Lake until recently was privately managed under western lands leases, and is now managed by a Crown reserve manager. In our research to understand how NSW Crown Lands could permit this important part of the larger Narran Lakes wetland to be cropped, DEG found that the NSW Crown Lands Rangelands Manager responsible for protecting Crown lands, permitted the lake to be cropped “because its environmental values have been wrecked by past cropping”. This irresponsible attitude was formed from no evidence base – but rather the dominant paradigm that lakebeds, land and Country exist for agricultural or mining industries. Furthermore, no controls over the cropping were made so the crops were managed in ways most harmful to the ecological values of the lake possible. This is not acceptable to the DEG.

Case study – the blocking of public access along a Crown Road leading to the Baawan (Barwon River) at Walgett

Since 2003 DEG has been working with its legal advisors to ensure that the Walgett community and its visitors have the right of access to a road leading to the Baawan. The road was blocked by locked gates erected by the adjoining landholder.

When we first started asking for the locked gates to be opened, we found out that it was a Crown Public Road and had been since the early days of Walgett white settlement. Locked gates on Crown Roads were unlawful, but the NSW Govt would not ensure they were kept open. It is our opinion that its public servants were instead acting in the interests of landholders who did not want our community to access the river. We learnt this from the exchange of legal letters back and forth, and regularly photographing the locked gates.

8 years passed. In October 2011 DEG presented to Council and wrote to the General Manager requesting that Council take over management of the Crown Road in order to keep it a Public Road. We knew that Council had been funded to raise the weir and install a fishway so would probably need to use the road for the work.

From 2013 - 2017 the NSW Government tried to close the Public Road and DEG kept objecting formally in writing. In January 2018 DEG was advised by NSW Dept Industry – Lands and Forestry that while nearby Crown Roads to the river were closed (despite DEG’s written objections) this particular road was given to Council to remain a Public Road. The gate on the road remained locked.

In July 2021 DEG wrote to the General Manager of Walgett Shire Council to ask if it was still a Public Road and requested a community event to celebrate the re-opening of the road and public access to the river. DEG received a hostile reply threatening trespassing charges. We then went to Water NSW and NSW Fisheries to find out when the weir and fishladder would be working. We explained DEG’s desire to have the road opened so all could enjoy the weir and that it become a public place just like similar weirs are in other western river towns. After the intervention by Water NSW and NSW Fisheries, Walgett Council opened the road over Christmas 2022 and DEG held a community celebration with Water NSW and NSW Fisheries in November 2023.

The years spent by Walgett Elders and their staff pursuing this outcome could have been reduced if NSW Crown Lands had been better resourced to implement NSW laws and the principles of Crown land management. The trauma endured could have been avoided and an easy win in community relations found, if NSW Crown Lands had enforced NSW laws in

response to DEG's many requests. We still do not understand why this couldn't occur as we followed respectfully every means and process available to us.

Case study - DEG's experience of the management of one of NSW's largest Crown reserves

DEG has an ex-officio role on the board of the Lightning Ridge Area Opal Reserve Manager which manages a Crown Reserve responsible for approx. 20,000 hectares. It is resourced from landholder compensation payments from opal mining claims, NSW crown land infrastructure funds for which it has to apply annually and other small government grants.

The resources available to the Reserve must increase so that it can:

- obtain independent scientific advice to survey the environmental and Aboriginal Cultural Heritage values of the Reserve so that they can be managed responsibly
- maintain its roads
- manage its villages
- manage biosecurity and other risks
- obtain legal advice e.g. from the Crown Solicitor for the lease management and other serious matters it must negotiate.
- Responsibly manage the purposes it has been gazetted for which include: Opal Mining and Exploration and Village purposes, also public access, public recreation, heritage, future public requirements, accommodation, rural services, government purposes, cultivation, dams, grazing, residence, sporting event, environmental protection, scientific, tourism and other purposes.

The Reserve Manager must be constituted to include experts and voices for all the Reserve purposes. This means that it should be required to include environmental and planning advocates and experts on the Management Board – knowledge which it currently lacks.

Very little scientific effort has been devoted to understanding the floodplain system and series of lakes and creeks that the rivers, warrambools, and Ramsar-listed wetlands are a part of. Just because this knowledge has not been included in the western science evidence base is no reason to ignore the warnings of the Dharriwaa Elders Group of the values of this rich environmental system. This knowledge is becoming better understood by the Commonwealth Department of Climate Change, Energy, Environment and Water, and the Commonwealth Environmental Water Holder. This will lead to better protection of the Lower Balonne floodplains. The Precautionary Principle must be relied upon to guide decisions that will harm future generations.

The NSW Government will fail in its duties if it continues to increase the pressure on the Reserve to obtain income by exploiting the environmental values of the Reserve for the financial gain of a handful of croppers. Market pressures are damaging some of the Reserve's assets, and longer term public benefits for the short term financial gain of a few.

The NSW Government's paradigm of Crown lands must change

The Aboriginal community has not benefitted from land purchases or Aboriginal Land Claims outside the town of Walgett, and so suffers by exclusion from enjoyment of Country and waters and access to places of significance. This is because most private landholders – whether they control a Western Lands Lease or Freehold land, choose to prevent Aboriginal people from travelling across their lands. NSW Crown lands including travelling stock routes are therefore

extremely important in providing access to waterways and Country that is otherwise not available to Aboriginal people.

NSW Crown lands including travelling stock routes are extremely important as they contain a network of old growth native vegetation and their seedbanks, wildlife corridors and Aboriginal Cultural Heritage.

We have witnessed a wealth transfer of the Crown lands around Walgett by transfer from public ownership and benefit to private ownership and benefit. Travelling stock routes and Crown reserves are often leased to private landholders, and western lands leases are being converted to freehold title. This process must be paused, evaluated and the CLMA Act amended to ensure that Crown lands and their resources are maintained in perpetuity, for public benefit.

DEG argues that mining and agricultural industries have always been subsidised and favoured by the NSW statutory framework, to the detriment of the wellbeing of the Country and waters they degrade, and by disenfranchising local Aboriginal people. This is at odds with current NSW Government rhetoric to Close the Gap that refers in a recent letter to DEG to working together with Aboriginal people and groups in the implementation of policy and programs.¹

DEG believes that Crown land is not being managed consistently with the principles of the Crown Land Management Act. DEG believes that governments have not done the work required to understand fully the environmental and natural resource values of Crown lands and do not protect or manage them so that the land and its resources are sustained in perpetuity. Powerful agricultural and mining interests hold undue sway over public servants and governments.

The CLMA Act must ensure meaningful action is undertaken to repair the health of the Country and waters of the Crown lands.

DEG believes that the environmental and cultural values of the landscape offer long-term prospects to our community, and that these prospects should not be diminished by short-term gains to a few private interests. We believe the strength of these values of the landscape will also support the "Closing the Gap" Agreement.

Recommendations

- Place a moratorium on issuing any new licences on travelling stock routes and converting any Crown lands to freehold title that lead to Aboriginal people being excluded from access and enjoyment of the crown estate.
- Undertake an audit of all Crown lands converted to freehold or leased to agricultural or mining interests in order to demonstrate the area of Crown lands transferred to private interests
- Evaluate the implementation of the Crown Lands Management Act 2016 ("CLMA Act 2016") and how it has contributed to the six Objects of the Act. These are:
 - to provide for the ownership, use and management of the Crown land of New South Wales
 - to provide clarity concerning the law applicable to Crown land

¹ Minister Jackson to Ms Robinson re Northern Basin Toolkit program – Calmundi Weir 24/3/24

- to require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land
 - to provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of New South Wales
 - to facilitate the use of Crown land by the Aboriginal people of New South Wales because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land
 - to provide for the management of Crown land having regard to the principles of Crown land management.
- Evaluations of the implementation of the CLMA 2016 must also consider the opportunity-cost associated with the short-term benefits of private leasing or conversion to freehold title in contrast with the long-term benefits associated with prospects and aspirations of the Aboriginal Community, as well as long-term cost to the community in general. The information found should also be used to value the compensation that will be required by the Walgett Aboriginal community (and others that may be affected).
 - Aboriginal cultural heritage surveys and environmental surveys must be completed by reputable scientists²
 - More rangeland managers and other NSW Crown Lands staff are required on the ground.
 - Satisfactory³ rehabilitation of Crown lands after mining and agriculture must be undertaken.
 - Third party⁴ negotiators/ advocates must be present whenever Aboriginal representatives need to negotiate with NSW government departments, miners and farmers.
 - Biodiversity and ecological knowledges and management must be valued more by government agencies and applied throughout their applications of law.
 - Repair the health of the Country and waters of the Crown lands

Conclusion

Greater benefits will accrue to the Walgett Aboriginal community if NSW decision makers repair the health of the Country and waters of the Crown lands and:

1. Correct the failures of governance that have made the situation where Walgett Aboriginal people receive little benefits from the Crown lands that surround them
2. Ensure legislation and policy enables unimpeded and safe access to land and waterways – including Crown lands
3. Ensure legislation and policy protects, conserves and repairs the rich environmental and Aboriginal Cultural assets of Crown lands

² who recognise our organisation as a primary stakeholder so they can receive our knowledge and advice

³ that satisfies us and those that understand hydrology, the habitat requirements of native flora and fauna and other sciences

⁴ i.e. independent to regulators, miners and farmers

4. Fix the internal cultures and corruption risks within government
5. Seek to build trust with Aboriginal communities and ACCOs to enable more effective engagement
6. Understand ACCOs as valued stakeholders and not a minor interest group or customers
7. Respect ACCOs by understanding that it is not appropriate to expect them to participate in “consultations” or “engagement” processes that have no purpose other than to give agency representatives an experience meeting Aboriginal people or the appearance of engagement
8. Recognise and affirm the interests and rights of Aboriginal communities and nation groups in Crown lands governance
9. Reduce the amounts of water taken from surface and groundwaters to lawful limits and provide more water for the health of waterways and Crown lands
10. Conduct an audit of the statutory framework to see how it will best support Closing the Gap targets, and determine law reform priorities accordingly, using the degree to which they support the Closing the Gap targets as a high-level criteria for prioritising.