



New South Wales

Crown Lands Amendment (Multiple Land Use) Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crown Lands Act 1989* as follows:

- (a) to provide that a secondary interest (a lease, licence, permit, easement or right-of-way) can be granted in respect of Crown land that is reserved for a public purpose (a **Crown reserve**) so long as use and occupation of the land under the secondary interest would not be likely to materially harm the use and occupation of the land for the public purpose for which it is reserved,
- (b) to authorise the Minister or a reserve trust to validate the grant of a secondary interest over a Crown reserve by making such changes to the secondary interest as may be necessary to ensure that it was validly granted,
- (c) to require notice to be given to the Minister or a reserve trust before the validity of a secondary interest over a Crown reserve can be challenged in court proceedings.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Crown Lands Act 1989 No 6

Schedule 1 [2] provides that the existing power of the Minister to grant a secondary interest in respect of a Crown reserve is not limited by the reservation if the Minister is of the opinion that

use or occupation of the land under the secondary interest would not be likely to materially harm its use or occupation for the reserved purpose. The amendment also authorises the Minister to validate a secondary interest that would otherwise be invalid by making any necessary changes to the purpose or the terms and conditions of the secondary interest. Any such validation is backdated to the date on which the secondary interest was originally granted. **Schedule 1 [1] and [3]** make consequential amendments to definitions.

Schedule 1 [4] prevents a challenge to the validity of a secondary interest in a Crown reserve until the Minister has been given notice of the alleged invalidity.

Schedule 1 [5] extends the amendments made by the Bill to secondary interests granted by a reserve trust, with the functions of the Minister to be exercised by the reserve trust.

Schedule 1 [6] inserts a savings and transitional regulation-making power.

Schedule 1 [7] extends the amendments made by the Bill to existing secondary interests but not so as to affect previous court decisions and not so as to affect any Aboriginal land rights claim made before the Court of Appeal decision on the Goomallee Claim. The amendments that require prior notice of a challenge to the validity of a secondary interest do not extend to pending proceedings.



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Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Crown Lands Act 1989 No 6	3



New South Wales

Crown Lands Amendment (Multiple Land Use) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Crown Lands Act 1989* to make further provision for multiple uses of land reserved or dedicated under that Act for a public purpose.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Crown Lands Amendment (Multiple Land Use) Act 2013*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Crown Lands Act 1989 No 6	1
[1] Section 33A		2
	Insert before section 34 (in Division 1 of Part 4):	3
33A Definitions		4
	In this Part:	5
	<i>Crown reserve</i> means land that is, or is part of, a reserve within the meaning of Part 5, and includes:	6
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	(a) land within a travelling stock reserve, or	8
	(b) land within any other reserves for public purposes under the control of trustees or other authorities.	9
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	<i>reserved purpose</i> , in relation to land comprising a Crown reserve, means the public purpose for which the land has been dedicated or reserved under Part 5.	11
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[2] Section 34AA		13
	Insert after section 34:	14
34AA Secondary interests in Crown reserves		15
(1)	The power of the Minister under this Part to grant a lease, licence or permit in respect of, or an easement or right-of-way over, Crown land is not limited by the land being a Crown reserve or by the reserved purpose, except as provided by this section.	16
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(2)	A lease, licence, permit, easement or right-of-way (a <i>secondary interest</i>) cannot be granted unless the Minister is of the opinion that the use or occupation of the Crown reserve pursuant to the secondary interest would not be likely to materially harm its use or occupation for the reserved purpose.	20
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(3)	For the avoidance of doubt:	24
	(a) the purpose for which a secondary interest is granted need not be a public purpose and need not be ancillary or incidental to the reserved purpose, and	25
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	(b) the fact that the use and occupation of the Crown reserve pursuant to the secondary interest may be inconsistent or incompatible with the reserved purpose does not of itself mean that its use or occupation pursuant to the secondary interest will materially harm its use or occupation for the reserved purpose, and	28
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	(c) the fact that the Crown reserve may be used or occupied for the grazing of animals pursuant to the secondary interest does not of itself mean that that use or occupation will materially harm its use or occupation for the reserved purpose of public recreation or of future public requirements.	33
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(4)	If a secondary interest has not been validly granted because of this section, the Minister can validate the grant of the secondary interest by making such changes to the purpose for which the secondary interest was granted, or to the terms and conditions on which it was granted, as may be necessary to ensure that the secondary interest is valid.	37
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(5)	When a secondary interest is validated under this section:	42
	(a) the secondary interest is taken to have been validly granted from the date of original grant, and	43
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(b)	the use and occupation of Crown land in accordance with the secondary interest prior to its validation under this section is taken to be and always to have been valid.	1 2 3
(6)	In this section, <i>grant</i> includes purported grant. Note. This section applies also to a lease, licence or easement granted by a reserve trust under Part 5. See section 102B.	4 5 6
[3]	Section 34A Special provisions relating to Minister’s powers over Crown reserves Omit section 34A (7).	7 8
[4]	Section 35A Insert after section 35:	9 10
35A	Challenge to validity of interest in Crown reserve	11
(1)	The validity of a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve cannot be questioned in legal proceedings unless a party to the proceedings has given the Minister not less than the prescribed period of notice of the alleged invalidity. Notice can be given before proceedings are commenced (by a prospective party to proceedings).	12 13 14 15 16
(2)	The prescribed period of notice under this section is 6 months or such shorter period as may be prescribed by the regulations.	17 18
(3)	The notice of alleged invalidity required by this section must be given in the form approved by the Minister and must provide the information required by the approved form.	19 20 21
(4)	The court before which proceedings are pending may adjourn the proceedings to enable notice of alleged invalidity to be given as required by this section.	22 23
(5)	The Minister may in a particular case, by instrument in writing, waive the requirement for the giving of notice under this section or reduce the prescribed period of notice under this section. Note. This section applies also to a lease, licence or easement granted by a reserve trust under Part 5. See section 102B.	24 25 26 27 28
[5]	Section 102B Insert after section 102A:	29 30
102B	Validity of interests in Crown reserves Sections 34AA and 35A apply to and in respect of a lease, licence or easement granted in respect of a reserve by a reserve trust as if a reference in those sections to the Minister were a reference to the reserve trust.	31 32 33 34
[6]	Schedule 8 Savings, transitional and other provisions Insert at the end of clause 25 (1): any Act that amends this Act	35 36 37

[7] Schedule 8	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
Part Provisions consequent on Crown Lands Amendment (Multiple Land Use) Act 2013	3
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Validation of existing secondary interests	5
(1) Section 34AA extends to a secondary interest granted before the commencement of that section (an <i>existing secondary interest</i>), including any such secondary interest that is an existing interest under section 187 of the <i>National Parks and Wildlife Act 1974</i> .	6 7 8 9
(2) It is to be conclusively presumed that when an existing secondary interest was granted the Minister was of the opinion that use or occupation of the Crown reserve pursuant to the secondary interest would not be likely to materially harm its use or occupation for the reserved purpose.	10 11 12 13
(3) An existing secondary interest that would have been validly granted had section 34AA been in force at the time of the grant is taken to be and always to have been validly granted.	14 15 16
(4) The power of the Minister under section 34AA to validate a secondary interest as referred to in that section extends to an existing secondary interest.	17 18
(5) A reference in section 34AA to the use and occupation of Crown land in accordance with a secondary interest prior to its validation under that section extends to use and occupation before the commencement of that section.	19 20 21
(6) This clause does not affect any decision of a court made before the commencement of section 34AA.	22 23
(7) This clause does not affect any land claim (within the meaning of the <i>Aboriginal Land Rights Act 1983</i>) made before 9 November 2012 (the date of the decision in <i>Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (Goomallee Claim)</i> [2012] NSWCA 358).	24 25 26 27
(8) The validation of a secondary interest by operation of section 34AA and this clause is taken to be an act to which section 104A (Saving of native title rights and interests etc) of the <i>Native Title (New South Wales) Act 1994</i> applies.	28 29 30
(9) This clause extends to the operation of section 34AA pursuant to section 102B.	31
Application of amendments to existing secondary interests	32
Section 35A (including in its operation under section 102B) extends to a lease, licence, permit, easement or right-of-way granted before the commencement of that section but not to proceedings pending on the commencement of that section.	33 34 35 36