

**Submission
No 158**

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: NSW Council of Freshwater Anglers

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By email to email to gpsc6@parliament.nsw.gov.au

Submissions to
GENERAL PURPOSE STANDING COMMITTEE NO. 6
Inquiry into Crown land

These submissions are made on behalf of the NSW Council of freshwater Anglers (“CFA”) in relation to certain issues relating to Crown Lands.

(a) the extent of Crown land and the benefits of active use and management of that land to New South Wales

We need not comment on the precise extent of Crown Land in NSW, save to observe that it accounts for a very large part of NSW.

Our interest in Crown Land lies in respect of the importance of a lot of Crown Land in the form of unformed but gazetted roads (so-called “Crown roads” or “paper roads”), Travelling Stock Reserves (“TSRs”) and Crown Reserves that provide public access to waterways (most of which flow along reserved lands) and water impoundments.

The NSW Government’s present Crown road disposal programme is resulting in the loss of a lot of valuable access (see paragraph (b), below and attached attached Issues paper and the Appendix thereto).

Some reserves are unavailable for access purposes simply because of red tape.

Many Crown reserves and roads are unavailable for access purposes, quite possibly the majority, simply because they are concealed from ready public knowledge, and the public utility of these lands is effectively reduced to naught as a result.

(i) Economic value of the freshwater fishery, including waters accessed via Crown reserves and roads

Freshwater recreational fishing represents a significant recreational activity in NSW and apart from the value of the **immediate recreational benefits**, involves and attracts significant economic value. According to one study, *An Economic Survey of the Snowy Mountains Recreational Trout Fishery*, (Dominion Consulting Pty Ltd., February 2001), trout fishing in the Snowy Mountains area alone attracted an expenditure *per annum* of at least

- \$46.5 million spent within the area by visiting anglers during trout fishing trips (Translating to between 450 and 700 jobs associated with trout fishing expenditure in the area) and

- A total expenditure by local anglers and visitors, within and outside the area of up to \$70 million.

According to another study *Economic Contribution of Recreational Fishing in the Murray-Darling Basin* (August 2011, Ernst & Young) recreational fishing in the MDB in 2010-2011 involved an economic value estimated as comprising direct expenditure of \$1,352 million, direct value added expenditure of \$375 million, contribution to GDP of \$403 million, and contribution to employment of 10,950 jobs.

While much of the expenditure would have occurred outside NSW, in other States sharing the MDB, NSW would obviously benefit from a major part of the expenditure and the jobs generated by that expenditure.

However, lack of access to fishing spots seriously compromises the economic and recreational potential of NSW's freshwater fishery. If one walks into almost any inland or freshwater oriented tackle shop, one will shortly discover that lack of access opportunities is perceived as a major impediment to the growth of freshwater fishing. (It should be noted, incidentally, that with the increasing popularity of catch and release fishing, the resource is potentially unlimited, but in any event a lot of work and money is directed to enhancing fish populations through habitat improvements and re-stocking periodically with hatchery bred fish fry.)

With iconic fish such as the Murray Cod, NSW has the potential to attract a lot of international interest in its freshwater fishery, but only if there is reasonable, uncrowded access.

(ii) Reserves unavailable for access purposes simply because of red tape

For example, although it has been observed by NSW DPI Fisheries staff that the linear water frontage in the Western Division exceeds the linear water frontage on the coast of NSW, there is very little legal access permitted by the public to fishable waters in the West. Yet Part 5 Division 3 Clause 62 of the Local Land Services Regulation 2014, which sets out authorised activities on TSRs generally, specifically excludes all such activities, including fishing, as authorised uses of a TSR in the Western Division of NSW, and thereby excludes a great many points of potential access to the rivers and streams of western NSW:

62 Authorised use of travelling stock reserves for recreational activities

(1) *For the purposes of section 74 of the Act, the following are prescribed as recreational activities for which a person is authorised (subject to the Act and subclause (2)) to use a travelling stock reserve (or part of a travelling stock reserve) other than an excluded reserve:*

- (a) walking, running and other kinds of individual physical exercise,
- (b) horse riding,
- (c) camel riding,
- (d) picnicking,
- (e) fishing,
- (f) swimming,
- (g) pedal cycling.

(2) *Subclause (1) does not apply to use of a travelling stock reserve (or part of a travelling stock reserve) for a purpose referred to in that subclause if Local Land Services has made a closure order in respect of the reserve or part of any such reserve under section 70 (1) (b) of the Act.*

(3) *In this clause:*

excluded reserve means a travelling stock reserve (or part of a travelling stock reserve) in the Western Division or a stock watering place.

(emphasis added)

Simple amendment of the Regulation would increase public access to waters in the west of NSW very significantly.

(iii) Concealment of Crown reserves and roads – making them unavailable for access purposes

Please refer to attached Appendix to the Issues paper, page (vii), paragraph C (Fish River access) and page (ix) paragraph 4 (re Frenchmans Reserve on the Macquarie River) and to attached submission by Chris Robertson (13 August 2012), paragraph 15, with illustrations of such abuses.

Crown lands has made some endeavours to address these abuses, having established a reporting system, for example. However, Lands' responses in our experience have been handicapped by the general disregard amongst some landholders for any significant consequences of illegally concealing a road. The experience of the local angling group in respect of access to Frenchmans Reserve, for example, has been quite unbelievable, with the owner of the adjacent land to the road corridor leading to the reserve making every effort to exclude the public from using the road and thereby the reserve.

Lands did order removal of a lock on the gate across the road, but that took many months to achieve and there seemed to be no penalty attached to illegal enclosure. No penalty was imposed for denying the public the use of the road, and therefore the reserve, for many years.

Following removal of the lock on the gate, the road was blocked by soil and rock being pushed onto the road at a critical pinch point. Lands did inspect the blockage but declined to take any action, as heavy rains since the movement of the soil had obliterated the tracks left by the earth moving equipment used to block the road. However, Lands made no attempt, as far as we know, to interview the member of the public who reported the obstruction, and who was able to give evidence of observations of the distinctive tracks left by the earth moving equipment.

Subsequently, a member of the fishing group who possessed a particularly well equipped four wheel drive was able to get past the obstruction, only to be abused and threatened by the land holder. Any uninformed member of the public would have given up at this point, but the angler was well briefed with information as to the status and location of the road, and the landholder eventually gave up trying to prevent him from getting to the reserve.

(b) the adequacy of community input and consultation regarding the commercial use and disposal of Crown land.

The NSW Government's present Crown road disposal programme – loss of public access to rivers, streams and impoundments

Please refer to the attached Issues paper and the Appendix thereto, prepared and tendered as an Aide memoir for a meeting which the CFA President had with the Minister for Primary Industries, Lands and Water on 16 February 2016 (as to which nothing further has been heard from the Minister or the Department).

Most of the examples in the Appendix were taken from experience in the Central Tablelands, but freshwater recreational fishing groups in the North and the South of NSW report similar frustrating experiences.

In opposing the frustration felt by freshwater anglers general with the Crown road disposal programme, the NSW Government may point to the work of NSW DPI Fisheries access officers, who are funded through recreational fishing fee trust moneys.

However, in our experience, Fisheries very seldom consult with local angling interests who have relevant local knowledge before reaching an official view of the access value of a road being considered for closure and communicating that view to Lands. In about 15% of cases of which we are aware, Fisheries advice to Lands has actually been in opposition to submissions made by local angling groups. Of course, Lands places more weight on the official view from Fisheries, and the result is a defeat for local anglers. Yet in several cases it was clear on the face of the correspondence that Fisheries' advice to Lands was based on an understanding of the topography derived from Google Earth or like resource, whereas local anglers' submissions were based on personal direct inspection of the subject road and surrounding terrain.

Advice from Fisheries has also displayed utter disregard for the interests of elderly or disable anglers, or those accompanied by small children. When angling interests attempted to draw to Lands' attention the deficiencies in Fisheries advice, Lands' response was dismissive, the road was closed and valuable public access to a major river was lost.

Fisheries' policy position as regards Crown roads closures appears to be that access should be minimised; how else is one to regard advice that to the effect that a Crown road should be closed because there is other public access will remain 750 metres upstream, when they should know full well that for the less mobile angler, having two access points more than 500 metres apart would allow two different parties to make use of two different points on the river or stream or impoundment bank at the same time. In other words, how else is one to regard Fisheries' position that the number of access points should be effectively halved? Such advice to Lands only makes sense if one accepts that the only bona fide anglers are those who are sufficiently fit and active as to fish while scrambling, wading or walking along a kilometre or more of rough river bed. Such a view is unacceptable.

(c) the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations.

- (i) More efficient attention must be given to dealing with illegal use and occupation of Crown Land, which renders the land unavailable for use by members of the public to access rivers, streams and impoundments, whether for recreational fishing or indeed any other legitimate use.

Giving the public knowledge to allow illegal actions to be reported is an obvious critical step.

At the moment, a member of the public who wishes to ascertain the status of any Crown land, including Crown roads, needs to pay a fee to have a search conducted. Often, members of the public can only establish the true position with respect to a Crown reserve or road by retaining a solicitor or surveyor to carry out the searches. This discourages the vast majority of the public from taking the issue any further.

Publication of information as to tenure of land on the SIX Maps website (<https://maps.six.nsw.gov.au>), for example, where colour coding Crown land or other such means could conveniently reveal which Crown land remains open to the public and which is subject to an exclusive lease, would alert the public to their right to use such lands, especially Crown roads, to access rivers, streams or impoundments via such corridors.

Such publication need not include anything to identify individuals who may hold leases.

We therefor recommend that such information be made readily available to the public.

- (ii) There is an obvious need for greater general deterrence aimed at the illegal enclosure of or other effective denial of a Public right to use Crown lands, whether for access or any other legitimate purpose.

We recommend that the policy of giving merely giving directions to remove obstructions should be supplemented by:

- **Specific times for compliance with directions (say 14 days maximum in which to remove minor obstructions such as locked gates and 28 days for removal of more elaborate structures such as sheds, cattle yards etc.)**
 - **Mandatory recovery of fixed fees per kilometre of Crown land access denied to the public, commensurate with effective recovery of the costs of compliance activities, the value of the access and the duration of the obstruction, and**
 - **Mandatory issue of penalty notices.**
- (iii) Establishing an independent authority to enforce compliance with the law pertaining to Crown reserves and roads and to publish access information pertaining to rivers, streams and impoundments would assist.

The Committee review such efforts overseas. Two examples are:

- The New Zealand Walking Access Commission (<https://www.walkingaccess.govt.nz>)
- The California Coastal Commission (<http://www.coastal.ca.gov/access/acndx.html>)

Obviously, however, we would like to see freshwater resources specifically identified as worthy objects of public access and, having regard to the scale of Australian landscapes and our aging population, acknowledge the importance of vehicular access besides exclusively pedestrian access.

We recommend that an independent public access commission be established, with powers to enforce public right of access via Crown lands, and to publish access information, including access relating to pertaining to rivers, streams and impoundments, with the Commission addressing both pedestrian and vehicular access issues.

(d) the extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land.

The CFA makes no comment on the issue.

Please advise if a signed copy of these submissions is required.

Don Barton

President

Annexures (in order)

Issues paper, aide memoir by Don Barton, CFA President 16 February 2016

Appendix to the Issues paper 16 February 2016

