

1995

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ABORIGINAL LAND GRANT AND MANAGEMENT (JERVIS BAY
TERRITORY) LEGISLATION AMENDMENT BILL 1995**

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Aboriginal and Torres Strait Islander Affairs,
the Honourable Robert Tickner MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE
BY THE SENATE TO THE BILL AS INTRODUCED.

ABORIGINAL LAND GRANT AND MANAGEMENT (JERVIS BAY TERRITORY) LEGISLATION AMENDMENT BILL 1995

OUTLINE

The amendments arise as a result of negotiations between the Commonwealth and the Wreck Bay Aboriginal community as part of the implementation of recommendation 315 of the Royal Commission into Aboriginal Deaths in Custody.

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

The amendments enable title to the Jervis Bay National Park and the Jervis Bay Botanic Gardens to be granted to the Wreck Bay Aboriginal Community Council, upon the Minister for Aboriginal and Torres Strait Islander Affairs being satisfied of the significance of the area to the Aboriginal community and that it is appropriate to do so. The amendments provide that a grant of the Jervis Bay National Park and Botanic Gardens can only be made if an agreement has been entered into for the lease of that land to the Director of National Parks and Wildlife.

The amendments also increase the powers and functions of the Wreck Bay Aboriginal Community Council and provide the Council with a by-law making power.

Amendments to the *National Parks and Wildlife Conservation Act 1975*

The *National Parks and Wildlife Conservation Act 1975* (NPWC Act) provides for the establishment of Boards as a means to allow the joint management, with Aboriginal people, of areas of Aboriginal land that are situated wholly or partly in prescribed parks or reserves.

The amendments include an amendment to the definition of 'prescribed park or reserve' to include the Jervis Bay National Park and the Jervis Bay Botanic Gardens. That will enable the Minister for the Environment, Sport and

Territories to establish a Board for those areas, if they are declared to be Aboriginal land and if agreement is reached with the Wreck Bay Aboriginal Community Council.

Other amendments to the *National Parks and Wildlife Conservation Act 1975* will change the definition of 'traditional Aboriginal owners' to include the registered members of the Wreck Bay Aboriginal Community Council and give the Council (and Chairperson of the Council) the same status as have other Aboriginal councils in relation to relevant provisions of the that Act, such as those concerning preparation of plans of management and the establishment and operation of Boards.

Amendments to the *Commonwealth Grants Commission Act 1973*

The amendments to the *Commonwealth Grants Commission Act 1973* extend the application of that Act to all Australia's Territories.

This would 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.

FINANCIAL IMPACT STATEMENT

Financial impact of the amendment is expected to be minor.

NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides that the Act may be cited as the *Aboriginal Land Grant and Management (Jervis Bay Territory) Legislation Amendment Act 1995*.

Clause 2 - Commencement

2. This clause provides that the Act will commence on the day on which it receives the Royal Assent.

Clause 3 - Schedule

3. This clause provides that the Acts specified in the Schedules to the Act are amended as set out in the Schedules

Schedule 1 AMENDMENTS TO THE ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY) ACT 1986

Clause 1 - Objects

4. This clause sets out the objects of Schedule 1 as being to enable land within the Jervis Bay National Park and the Jervis Bay Botanic Gardens to be granted to the Wreck Bay Aboriginal Community Council and to provide for any such land to be leased back to the Director of National Parks and Wildlife.

Clause 2 - Definition of 'Australian National Botanic Gardens', 'Director', 'Jervis Bay Botanic Gardens', 'Jervis Bay National Park' and "land".

5. This clause defines "Australian National Botanic Gardens", "Director", 'Jervis Bay Botanic Gardens', "Jervis Bay National Park" and "land" in order to identify land which may be granted under the Act to the Wreck Bay Aboriginal Community Council and to identify the person to whom that land is to be leased back to if granted.

Clause 2A - Adds to the Functions of the Wreck Bay Aboriginal Community Council

6. These paragraphs increase the functions of the Wreck Bay Aboriginal Community Council to enable the Council to provide community services, to undertake conservation, to engage in land use planning and to manage and maintain Aboriginal land and to conduct business enterprises for the economic or social benefit of the Community.

Clause 2C - Increases Power of WBACC to Contract

7. This clause will enable the Wreck Bay Aboriginal Community Council to enter into contracts involving payments by the Council of up to \$100,000.00 without the approval of the Minister.

Clauses 3 and 4 - Amendment to provide for the declaration of land within the Jervis Bay National Park or the Jervis Bay Botanic Gardens as Aboriginal land

8. These clauses provide for a procedure for the Minister to declare land within the Jervis Bay National Park or the Jervis Bay Botanic Gardens to be Aboriginal land.

Clauses 4A, 4B and 4C - Amendment of Quorum Provision

9. This clause provides that where a quorum is not attained at an annual general meeting of the Wreck Bay Aboriginal Community Council, then the meeting stands adjourned for a week and at the adjourned meeting, the quorum is 40% of registered members. It also provides that if a quorum is not attained at the first adjourned meeting then that meeting is adjourned for one week and the quorum at the second adjourned meeting is 25% of registered members of the Council.

Clause 4D - Amendment to Term of Office of Executive Members

10. This clause enables an executive member to hold office for up to two years.

Clauses 5 - 7 - Restriction on power of Wreck Bay Aboriginal Community Council to grant leases or licences

11. These clauses exclude land within the Jervis Bay National Park and the Jervis Bay Botanic Gardens from the operation of section 38 which provides for the Wreck Bay Aboriginal Community Council to grant leases and licences over Aboriginal land.

Clause 8 - Lease of land within Jervis Bay National Park etc. to Director

12. This clause provides that the Wreck Bay Aboriginal Community Council and the Director must enter a lease over any land within the Jervis Bay National Park

and the Jervis Bay Botanic Gardens which is declared to be Aboriginal land, and provides for a procedure by which the terms and conditions of the lease are determined and for the execution of the lease.

Clause 8A - By-laws

13. This clause gives the Wreck Bay Aboriginal Community Council the power to make by-laws and provides for a procedure for the making of by-laws. The by-laws are disallowable instruments and are required to be notified in the *Gazette* and laid before each House of Parliament within 15 sitting days after receipt by the Minister.

The clause defines Aboriginal land for the purpose of the by-law making power to exclude land declared under s.9A so that by-laws will not apply to Jervis Bay National Park and the Jervis Bay Botanic Gardens, if those areas are declared under subsection 9A.

The matters that may be controlled by the by-laws are set out in subsection 52A(2). The by-laws may apply regulations under the *National Parks and Wildlife Conservation Act 1975* to Aboriginal land.

The by-laws must not be inconsistent with a law of the Commonwealth or a law in force in the Territory.

Regulations may be made under subsection 53 prescribing fines for offences against the by-laws not exceeding 5 penalty units (\$500.00) in the case of natural persons and 25 penalty units (\$2,500.00) in the case of corporations. The regulations may prescribe payments to the Commonwealth, as an alternative to prosecution of 1 penalty unit (\$100.00) in the case of natural persons and 5 penalty units (\$500.00) in the case of corporations.

SCHEDULE 2 AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE CONSERVATION ACT 1975

Clause 1 - Object

14. This clause sets out the object of the schedule, namely to enable the Wreck Bay Aboriginal Community Council to participate in management of the Jervis Bay National Park and Jervis Bay Botanic Gardens if they are declared as Aboriginal land.

Clause 2 - Amendment to definition of 'prescribed park or reserve'

15. This clause amends the definition of 'prescribed park and reserve' to include the Jervis Bay National Park and the Jervis Bay Botanic Gardens in order that the Minister responsible for the Act is able to establish a Board for these areas if agreement is reached with the relevant Aboriginal Council.

Clause 3 - Amendment to definition of 'Aboriginal land'

16. This clause amends the definition of 'Aboriginal land' to include the Jervis Bay National Park and the Jervis Bay Botanic Gardens if those areas have been declared Aboriginal land under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*. The amended definition allows the Jervis Bay National Park and the Jervis Bay Botanic Gardens to be considered as Aboriginal land for the purposes of the Act, particularly in relation to declaration of parks and reserves, preparation of plans of management and establishment and operation of Boards.

Clause 4 - Amendment to definition of 'traditional Aboriginal owners'

17. This clause amends the definition of 'traditional Aboriginal owners' to include registered members of the Wreck Bay Aboriginal Community Council in terms of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*. The amended definition allows the Council members to be considered as traditional Aboriginal owners for the purposes of the Act, particularly in relation to preparation of plans of management and establishment and operation of Boards.

Clause 5 - Definition of parks and reserves in the Jervis Bay Territory and of Wreck Bay Aboriginal Community Council

18. This clause defines the Australian National Botanic Gardens, the Jervis Bay Botanic Gardens (which form part of the Australian National Botanic gardens) and the Jervis Bay National Park in order to identify parks and reserves in the Jervis Bay Territory which can be the subject of joint management by a Board. It also defines the Wreck Bay Aboriginal Community Council by reference to the definition of 'Council' under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.

Clauses 6 to 15 - Inclusion of reference to Wreck Bay Aboriginal Community Council in relation to preparation of plans of management

19. These clauses give the Wreck Bay Aboriginal Community Council and the Chairperson of that Council the same status as have other Aboriginal Councils in relation to the preparation of plans of management for prescribed parks and reserves.

Clause 16 - Inclusion of reference to Wreck Bay Aboriginal Community Council in relation to Director complying with plan of management

20. This clause gives the Wreck Bay Aboriginal Community Council and the Chairperson of that Council the same status as have other Aboriginal Councils in the circumstance where a difference of opinion arises between the Director and an Aboriginal Council in relation to whether the Director is performing his functions or exercising his powers in accordance with the plan of management.

Clauses 17 to 20 - Amendment to definition of 'relevant Land Council' to include the Wreck Bay Aboriginal Community Council

21. These clauses give the Wreck Bay Aboriginal Community Council the same status as other Aboriginal Councils for the purpose of establishment of a Board.

Clause 21 - Amendment to functions of the Director to include consultation with the Wreck Bay Aboriginal Community Council

22. This clause gives the Wreck Bay Aboriginal Community Council the same status as other Aboriginal Councils in relation to section 16 of the Act. Section 16 in part requires the Director to consult from time to time with the Chairperson of the relevant Aboriginal Council in relation to the performance of his functions or exercise of his powers with respect to a park or reserve established on Aboriginal land.

Clause 22 - Agreements with Wreck Bay Aboriginal Community Council

23. This clause gives the Wreck Bay Aboriginal Community Council the same status as other Aboriginal Councils in relation to section 36 of the Act. Section 36 in part requires that any arrangement made by the Commonwealth or Director, regarding the performance of functions under the Act by employees of another State or Commonwealth agency, shall not be inconsistent with an agreement made by the Commonwealth or the Director with an Aboriginal Council.

Clause 23 - Substitution of 'Chairperson' for 'Chairman'

24. This clause substitutes the term 'Chairperson' for 'Chairman' wherever the latter term occurs in the Act.

Schedule 3

**AMENDMENTS TO THE
COMMONWEALTH GRANTS COMMISSION ACT 1973**

Clause 1 - Objects

25. This clause sets out the objects of the Schedule, namely to enable the Commonwealth Grants Commission to inquire into grants of financial assistance to Norfolk Island and the financing of works and services in respect of Jervis Bay Territory and external Territories (other than Norfolk Island).

Clause 2 - Amendment to Definitions

26. This clause inserts a definition for the term "special assistance".

Clause 3 - Meaning of special assistance

27. This clause will bring the Territory of Norfolk Island into line with other autonomous Territories by adding a definition of "special assistance" in respect of Norfolk Island, analogous to the existing definitions for the Northern Territory and the Australian Capital Territory.

Clause 4 - Extension of Act to external Territories

28. This clause extends the operation of the Act to all of the external Territories of Australia. The Territories of Norfolk Island and Heard and McDonald Islands are specifically listed to comply with the provisions of existing legislation requiring any extension of Commonwealth legislation to those Territories to be in express terms.

Clause 5 - Inquiries relating to Jervis Bay Territory and Norfolk Island

29. This clause provides that, once a matter is referred to it by either the Minister or the Territory of Norfolk Island, the Commonwealth Grants Commission must inquire into and report to the Minister on applications for grants of special assistance and matters relating to grants of financial assistance to the Territory of Norfolk Island and on matters relating to the financing of works and services provided in respect of other external Territories. The clause also provides that the Commonwealth Grants Commission must inquire into and report to the Minister on the financing of works and services provided in respect of the Jervis Bay Territory.

Clause 6 & 7 - Reports to be laid before Parliament

30. These clauses amend subsections 25(1) and 25(2) of the Act, which provide for the tabling of Commonwealth Grants Commission reports in the Parliament, to extend the tabling requirements to any Commission reports in respect of Territories to which the Act did not previously extend.

Clause 8 - Title

31. This clause amends the long title of the Act reflecting the extension of the Act to all Territories.

Clause 9 - Substitution of 'Chairperson' for 'Chairman'

32. This clause replaces the term 'Chairman' with 'Chairperson' wherever the former term occurs in the Act.





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