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ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY) BILL 1986

Date introduced: 29 May 1986
House: House of Representatives
Presented by: Hon. Clyde Holding, M.P.,
Minister for Aboriginal Affairs

DIGEST OF BILL

Purpose

To grant the inalienable freehold title of a portion of the Jervis Bay Territory to the Wreck Bay Aboriginal Community and to make a consequential amendment to the Jervis Bay Territory Acceptance Act 1915.

Background

The Wreck Bay Aboriginal Community (the Community) is situated at Wreck Bay in the Jervis Bay Territory, on the southern New South Wales coast 126 kilometres east of Canberra. In 1915, this area was acquired under the Jervis Bay Territory Acceptance Act in accordance with the Seat of Government Act 1908. These Acts were designed in part to provide the new capital of the Commonwealth, Canberra, with a port. This plan remained unrealised due to the reallocation of Commonwealth resources during the First World War and later by the financial constraints of the Depression. In 1969 plans to build a nuclear power station at Jervis Bay were announced. This was not proceeded with.

The history of the Wreck Bay Community begins shortly before the First World War when the families of Aboriginal fishermen congregated in the area. In 1922 about 25 Aborigines lived along the shores of Mary and Summercloud Bays. In 1928 the New South Wales Board for Protection of Aborigines accepted the Commonwealth's request to administer the station under the provisions of the NSW Aborigines Protection Act 1909. Housing, schooling and various welfare measures were provided by the Board. Throughout its early history Wreck Bay was a self-sufficient fishing community.

The informal 'reserve' or 'station' status continued until a dispute arose over the boundaries of the reserve and in 1954 an area of land was gazetted as a reserve. At that time about 166 people were living at Wreck Bay.

In 1965 control of Wreck Bay was transferred from the New South Wales Aboriginal Protection Board to the Department of the Interior. The population of Wreck Bay remained static during the 1960s and 1970s at approximately 22 households. Houses were constructed and children started attending the integrated school at Jervis Bay.

In 1971 the Jervis Bay Nature Reserve was proclaimed over the majority of the Jervis Bay Territory including within its boundaries all 'non-residential' land which effectively isolated the community. Since that time the Wreck Bay Aboriginal Community has been negotiating with the Commonwealth Government over the proposed boundaries for a grant of land to the Community. The present Bill seeks to grant freehold title to the Wreck Bay Aboriginal Community over an area of land the boundaries of which are described in the Schedule to the Bill.

Main Provisions

The Wreck Bay Aboriginal Community Council (the Council) will be established by clause 4. The functions of the Council will be to hold the title to Aboriginal Land, to exercise powers as owners of Aboriginal Land for the benefit of the members of the Community and to make representations to the Minister in relation to the Land (clause 6). The Council will have specific power to deal in land and to enter into contracts and employ staff (sub-clause 7(2)). Ministerial approval will be required before the Council may enter into a contract for more than \$1000 (sub-clause 7(3)).

The land described in the Schedule to the Bill will be declared by the Minister to be Aboriginal Land as soon as possible after the first annual general meeting of the Council (clause 8). Clause 9 gives the Minister power to subsequently declare vacant Commonwealth land adjoining the original grant as Aboriginal Land. Land declared to be Aboriginal Land will vest in the Council (clause 10). Any part of land or buildings being used by the Commonwealth at the time the land and buildings vest in the Council, will continue to be used by the Commonwealth for as long as required (clause 13).

The Community will have to have a Registrar who will be appointed by the Minister from the Department of Aboriginal Affairs (clause 15). The Community will also have to have a Register of Members of the Wreck Bay Aboriginal Community Council (clause 17). The names of adult Aboriges living in Wreck Bay in May 1986 will be listed in the Register (sub-clause 17(2)) which will subsequently be maintained by the Secretary of the Council (sub-clause 17(4)).

As soon as practicable after the register is completed the Council will hold the first of its annual general meetings (clause 20). Executive members will be elected at the annual general meeting (clause 22). The Minister or Chairperson will be able to convene a special general meeting of the Council (clause 23).

There will be a Chairperson, Deputy Chairperson and Secretary of the Council (clause 27). Clause 28 will establish an Executive Committee of the Council. The Minister will be able to remove an executive member from office on the grounds of misbehaviour or physical or mental incapacity (clause 33).

Part V of the Bill is titled 'Dealings with Aboriginal Land' and contains clauses 37 to 42. The Council will only be able to deal with land granted to it under this Bill in accordance with this Part of the Bill (clause 38). The Council will be able to lease the land to registered members for domestic or business purposes, or, with Ministerial approval, lease land to people who are not registered members (sub-clause 38(2)). The total duration of the various types of leases is prescribed by sub-clause 38(3). The Council will be able to surrender any part of the land to the Crown (clause 39). Existing occupiers of the land must generally be granted leases by the Council (clause 40). Where a person who has been granted a lease and that person wishes to give a sub-lease, Ministerial approval must first be obtained if the sub-leasee is not a registered member or where the purpose of the sub-lease is not the same as the purpose of the original lease (clause 41). Registered members will be able to pass on their interest in a lease in their wills (clause 42).

A person will not be able to rely on State or Territory law in order to come onto the land for the purpose of mining (clause 43). An agreement will have to be reached between the Commonwealth, the Council and the mining company before any mining operation can commence. Council land will

be exempt from rates (clause 45). Territory laws not excluded by this Bill will be applicable in the area of Aboriginal Land (clause 46). Preservation of the environment will have to be considered by the Council in the carrying out of its functions (clause 47).

The Minister will be able to declare 'significant sites' on the Land (sub-clause 48(1)). The site will have to be sign-posted (sub-clause 48(2)) and trespass by a person other than a member of the Aboriginal Community may result in a \$1000 fine (sub-clause 48(3)). The penalty for damaging or disturbing a site will be a \$5000 fine or imprisonment for 2 years or both (sub-clause 48(4)).

Where someone feels they have been aggrieved by the operation of this Bill, and the grievance does not arise out of a decision by the Minister or a Court, the Registrar will have power to inquire into the grievance (clause 50).

The Council will have to keep proper accounts and records (clause 51) and prepare annual financial statements to be supplied to the Minister (clause 52).

Jervis Bay Territory Acceptance Act 1915

The prohibition against disposing of Crown land in Jervis Bay Territory in this Act will be expressed to the subject to the Aboriginal Land Grant (Jervis Bay Territory) Act 1986, when enacted (clause 55).

For further information, if required, contact the Education and Welfare Group.

2 July 1986

Bills Digest Service
LEGISLATIVE RESEARCH SERVICE

Reference

Nicholas Peterson (Editor), Aboriginal Land Rights A Handbook, Australian Institute of Aboriginal Studies, Canberra, 1981.

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