



OFFICE OF THE REGISTRAR Aboriginal Land Rights Act 1983

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PERFORMANCE REPORT

The Office of the Registrar, Aboriginal Land Rights Act (ALRA) is a statutory office created under the ALRA. The Registrar is a statutory officer appointed pursuant to the ALRA and reporting to the Minister administering the ALRA. The person appointed as the Registrar is employed under Part 2 of the Public Sector Management Act 1988.

The Registrar and staff are administratively linked to the NSW Department of Aboriginal Affairs, however the independence of the Office of the Registrar is important. The independence of the office is recognised by the NSW Government and the Registrar is able to carry out all statutory functions without actual or perceived influence. The Registrar reports to the Minister administering the ALRA in relation to statutory functions.

The Office of the Registrar is a separate legal entity from Aboriginal Land Councils constituted under the ALRA.

Three highlights for the Registrar in the 2000/01 reporting year were:

1. The commencement of major research projects to assist Aboriginal people who wish to be registered as Aboriginal Owners for the Mt Grenfell Historic Site and the Biamanga and Gulaga National Parks. The research projects followed the development of a priority work plan for the Register of Aboriginal Owners and the employment of additional staff during the previous year.
2. A continuation of the successful Aboriginal Land Council workshop program that is delivered by the Registrar's staff, in partnership with the New South Wales Aboriginal Land Council. The workshop program is designed to inform Aboriginal Land Council members about the operation of the ALRA and the Aboriginal Land Rights Regulation 1996 (ALRR). The workshop focuses on the rules of Local Aboriginal Land Councils. During the year 2000/01, 21 workshops were delivered to members of Aboriginal Land Councils.
3. The review of the ALRA continued in 2000/01. Significant amendments have been proposed that will enhance the functions of the Registrar and provide better service to Aboriginal Land Councils. Importantly the Registrar will be given a function to issue compliance directions for breaches of the ALRA. Also the Registrar will be given enhanced dispute resolution functions to ensure Aboriginal Land Council disputes may be resolved efficiently and effectively. Improvements will also be made to the Register of Aboriginal Land Claims lodged pursuant to section 36 of the ALRA. It is envisaged that the amendments will be presented to the NSW Parliament in the 2001/02 year.

Summary of Statutory Functions

- Process management, advice to the Minister administering the ALRA and (if required) referral to the Land and Environment Court (hereinafter 'the Court') of matters in relation to the constitution of Aboriginal Land Council areas and Councils, the alteration of Aboriginal Land Council boundaries and the changing of the name of Aboriginal Land Councils.
- Process management and (if required) referral to the Court of disputes in relation to the membership of Local Aboriginal Land Councils.
- The approval of the amendment, repeal or replacement of Aboriginal Land Council rules.
- The registration of claims to Crown land made by Local Aboriginal Land Councils (LALCs) or the New South Wales Aboriginal Land Council (NSWALC) in accordance with the ALRA.
- Process management and (if required) referral to the Court of applications by LALCs for Aboriginal people to have access to land for the purposes of hunting, fishing or gathering.
- The registration of persons as 'Aboriginal Owners' in accordance with the ALRA. Registration as an Aboriginal Owner recognises that an Aboriginal person has a 'cultural association' with a particular area of land in NSW. If the area of land includes an area of NSW national park estate, designated as Aboriginal owned land, the registered Aboriginal person has certain rights in relation to the management of that national park land.
- The establishment and maintenance of a Register of Aboriginal Owners.
- The referral of certain disputes or matters in relation to Local or Regional Aboriginal Land Councils to the Court.

A number of ancillary functions arise from the explicit statutory functions. The principal ancillary functions are to:

- Provide advice on the meaning and operation of the ALRA, ALRR and the rules of Aboriginal Land Councils.
- Provide advice about the Aboriginal Land Claims process.
- Provide advice on the evidence required to establish descent and cultural association for the purposes of the Register of Aboriginal Owners.
- Provide general advice on the Aboriginal Ownership of National Park Estate in NSW.
- Provide conciliation and mediation services for Aboriginal Land Councils and other relevant parties.
- Provide information, education and training on the ALRA and ALRR.

THE OPERATION OF THE REGISTRAR IN 2000/2001

Aboriginal Land Claims

The Aboriginal Land Rights Act 1983 (ALRA) provides that LALCs or the NSWALC may make claims to Crown Lands that:

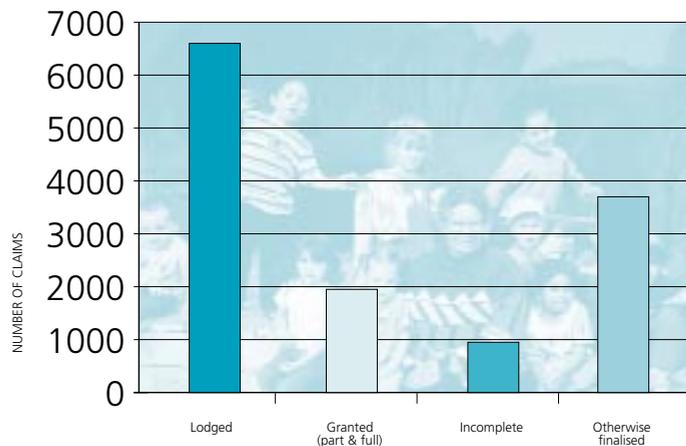
- are able to be lawfully sold or leased, or are otherwise reserved or dedicated for any purpose, under the Crown Lands Act 1989;
- are not lawfully used or occupied;
- do not compromise lands which, in the opinion of the Crown Lands Minister, are not needed or likely to be needed as residential lands;
- are not needed or likely to be needed for an essential public purpose;
- do not comprise lands that are subject to an application for a determination of Native Title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the Commonwealth Native Title Act 1993 or the Native Title Act 1994 (NSW); and.
- do not comprise lands that are the subject of an approved determination of Native Title (within the meaning of the Commonwealth Native Title Act 1993), other than an approved determination that no Native Title exists in the lands.

Individual land claims must be lodged with the Registrar before they can be forwarded to the Minister administering Crown Lands for determination. The Registrar must decide whether the land claim is in a proper form and, in certain circumstances, if the claim can be approved. LALCs may lodge a land claim for land within their area without the approval of the Registrar. Such a land claim must clearly identify the land claimed, and if so, the Registrar is bound to register the claim. If a LALC or LALCs make a land claim outside their area(s) the Registrar must approve the claim before it can be registered.

Once a land claim is registered it is referred to the Department of Land and Water Conservation for investigation to determine if it is 'claimable Crown Land'. The Minister responsible for the determination of Land Claims is the Minister administering the Crown Lands Act 1989.

Table 1 provides a summary of all land claims since the commencement of the ALRA in 1984. During the period 1 July 2000 to 30 June 2001, 128 land claims were registered.

Table 1: **Aboriginal Land Claims as at 30 June 2001**



The Register of Aboriginal Owners

An allocation of funding for the purpose of the Register of Aboriginal Owners enabled the Office to begin actively working on the registration of Aboriginal Owners during the 2000/2001 period. Under Part 8A of the Aboriginal Land Rights Act 1983 the Office of the Registrar has a responsibility to prioritise the registration of Aboriginal Owners, for areas listed in Schedule 14 to the National Parks and Wildlife Act 1974 (Schedule 14 areas).

Areas listed in Schedule 14 are lands that are reserved or dedicated (eg. as a National Park or Historic Site) under the National Parks and Wildlife Act 1974, and have been identified as being of cultural significance to Aboriginal people.

There are currently seven Schedule 14 areas:

- Mutawintji National Park, Mutawintji Historic Site and Coturaundee Nature Reserve (leased-back in September 1998);
- Mt Grenfell Historic Site;
- Jervis Bay National Park;
- Mungo National Park;
- Mount Yarrowyck Nature Reserve;
- Biamanga National Park; and
- Gulaga National Park.

Schedule 14 Areas



The Office of the Registrar developed and implemented research projects to assist and support the registration of Aboriginal owners for three Schedule 14 areas: Biamanga National Park, Gulaga National Park and the Mt Grenfell Historic Site.

This involved commissioning two research teams to gather information to assist individuals with fulfilling the requirements to register as Aboriginal owners, and gather particular information about Aboriginal cultural heritage specific to the people and land of the Schedule 14 areas.

In acknowledging the need to undertake culturally appropriate research, the projects were designed in accordance with the AIATSIS (Australian Institute of Aboriginal & Torres Strait Islander Studies) Guidelines for Ethical Research in Indigenous Studies, and provided protection for individuals' intellectual property rights.

The completion of the research projects is planned for September 2001, with the registration of Aboriginal owners for the Biamanga National Park, Gulaga National Park and the Mt Grenfell Historic Site expected by December 2001.

The Office of the Registrar has taken an active role in the implementation of the Aboriginal National Parks Steering Committee (ANPSC). Since March 2001, representatives from government agencies and the peak Aboriginal organisations in NSW involved in the Aboriginal ownership process have met monthly to share information in an attempt to coordinate activities concerning the Aboriginal ownership process.

The committee includes representatives from the Department of Aboriginal Affairs, NSW National Parks and Wildlife Service, Office of the Registrar, Aboriginal Land Rights Act 1983 and the NSW Aboriginal Land Council.

Aboriginal Land Council areas and boundary matters

During 2000/01, nine matters were proceeding in relation to Aboriginal Land Council areas. The ALRA and ALRR provide procedures for the constitution of new Local or Regional Aboriginal Land Council areas or the alteration of existing Local or Regional Aboriginal Land Council (LALC or RALC) areas.

1. An application to alter the boundary of the area of the Wellington LALC

On 11 January 1999 the Wellington LALC made an application to the Registrar to alter the boundary of its area to include an area that was not constituted as a LALC around Mudgee in the central west of NSW. The application was published on 15 January 1999 in the NSW Government Gazette.

On 15 February 1999 the Registrar received a competent objection to the Wellington LALC application from Aboriginal people living in the Mudgee area. On 6 July 1999 the Registrar referred the Wellington LALC application and the objection to the Land and Environment Court (LEC). This followed unsuccessful conciliation of the matter.

Further conciliation of the matter after it was referred to the LEC resulted in an agreement between the Wellington LALC and the objectors. The agreement provided for an amended application by the Wellington LALC. On 14 March 2001 the LEC made consent orders approving of the amended Wellington LALC application.

On 29 June 2001 the Minister administering the ALRA caused an order to be published in the NSW Government Gazette giving notice of the constitution of the amended Wellington LALC area. The order was published in accordance with the orders of the LEC.



Office of the Registrar staff: (left to right) Adam Black, Rachel Lenehan, Cheryl Kistan, Larry Tolney and Steve Wright (Registrar).

2. An application to constitute a Local Aboriginal Land Council area around Mudgee in central western NSW

On 15 February 1999 the Registrar received an application to constitute a new LALC in an area around Mudgee in the central west of NSW that was not constituted within any other LALC area. The application to constitute a new LALC area around Mudgee was for the same area that was the subject of the application by the Wellington LALC to alter the boundary of its area.

The application to constitute a new LALC was received from the same group of Aboriginal people who had objected to the Wellington LALC application.

Following the resolution of the Wellington LALC application and the publication of a notice constituting the amended Wellington LALC area on 29 June 2001, the application for a new LALC around Mudgee has been amended to exclude the new area of the Wellington LALC.

The application for a new LALC around the Mudgee area will proceed in the 2001/02 year.

3. An application to alter the boundary of the area of the Metropolitan LALC

On 21 January 2000 the Metropolitan LALC made an application to the Registrar to alter the boundary of its area. The application was to increase the area of the Metropolitan LALC to include an area generally to the north west of the existing area that was not constituted within any LALC area.

A competent objection to the Metropolitan LALC application was received from the Darkinjung LALC on 10 March 2000.

No conciliation of the application and objection occurred and on 14 September 2000 the Registrar referred the application and objection to the LEC. On 2 April 2001 the LEC made orders approving of the Metropolitan LALC application. The LEC orders noted an agreement that had been made by the Metropolitan and Darkinjung LALCs in relation to the matter.

Following the orders of the LEC the Minister administering the ALRA will publish an order in the NSW Government Gazette giving notice of the constitution of the amended boundary of the Metropolitan LALC area.

4. An application to alter the boundary of the area of the Koopahtoo LALC

On 10 February 2000 the Koopahtoo LALC made an application to the Registrar to alter the boundary of its area to include an area generally to the south west of its existing area. The additional area was not constituted within any other LALC area, however it was the same area that was the subject of the earlier Metropolitan LALC application.

The Registrar advised the Koopahtoo LALC that its application was 'second in time' to the Metropolitan LALC application. No objection was received from the Koopahtoo LALC to the Metropolitan LALC application.

Following the orders of the LEC granting the Metropolitan LALC application and the publication of this order by the Minister administering the ALRA in the NSW Government Gazette, the Koopahtoo LALC application will be determined.

5. Applications for alteration of the boundary between the Worimi and Karuah LALCs

In February 2000 an anomaly was detected in the recorded boundary between the Worimi and Karuah LALC areas. Consultation was facilitated by the Registrar's Office between the Worimi and Karuah LALCs to discuss the matter.

The Worimi and Karuah LALCs agreed on an amended boundary between their areas on 28 November 2000. Applications giving notice of the amended boundaries of the Worimi and Karuah LALC areas were published on 16 March 2001.

The Minister administering the ALRA caused orders to be published in the NSW Government Gazette on 18 May 2001 giving notice of the constitution of the amended areas of the Worimi and Karuah LALC areas in accordance with the LALCs' agreement.

6. Applications to alter the boundary between the Baryulgil and Jana Ngalee LALCs

On 21 March 2000 the Baryulgil LALC made an application to the Registrar to alter the boundary of its area to exclude the Malabugilmah village and allow the village to be included in the area of the Jana Ngalee LALC.

On 23 March 2000 the Jana Ngalee LALC made an application to the Registrar to alter its boundary to include the Malabugilmah village within its area.

No substantial objections were received in relation to either application. On 1 September 2000 the Minister administering the ALRA caused orders to be published in the NSW Government Gazette giving notice of the constitution of the amended areas of the Baryulgil and Jana Ngalee LALCs on accordance with the LALCs' applications.

7. An application to constitute a Local Aboriginal Land Council area around Evans Head in north eastern NSW

On 20 April 2000 the Registrar received an application to constitute a new LALC around Evans Head in north eastern NSW. The area the subject of the application was not constituted within any LALC area.

Following publication of a notice of the application in the NSW Government Gazette competent objections were received from the Far North Coast RALC, the Birrigan Gargle LALC and the Jali LALC.

No conciliation of the matter occurred and the Registrar referred the application and the objections to the LEC on 27 July 2000.

Before the matter was heard the application to constitute a new LALC in the Evans Head area was discontinued in the LEC on 6 March 2001.

8. Applications to alter the boundary between the Awabakal and Bahtabah LALC areas

Following discussions between the Awabakal and Bahtabah LALCs, facilitated by the Registrar, notices were published in the NSW Government Gazette on 25 January 2001 for the applications by the Awabakal and Bahtabah LALCs to amend the boundary between their areas.

The proposed alteration to the boundary of the two areas was in accordance with an agreement reached between the Awabakal and Bahtabah LALCs a number of years earlier.

There being no competent objections to the applications, the Minister administering the ALRA caused orders to be published in the NSW Government Gazette on 18 May 2001, giving notice of the constitution of the amended areas of the Awabakal and Bahtabah LALCs, in accordance with the LALCs' agreement.

9. An application to alter the boundary of the area of the Northern Tablelands Regional Aboriginal Land Council

On 10 June 1997 the Northern Tablelands RALC made an application to the Registrar to alter the boundary of its area to include the proposed Dorrigo Nymboida LALC area.

The application to constitute the Dorrigo Nymboida LALC was the subject of objection and protracted litigation in the LEC.

The determination of the Northern Tablelands RALC application was subject to the determination of the Dorrigo Nymboida LALC application.

The Dorrigo Nymboida LALC application was determined on 10 September 1999 with publication by the Minister administering the ALRA of an order giving notice of the constitution of the Dorrigo Plateau LALC area for the same area the subject of the Dorrigo Nymboida LALC application.

The Registrar caused a notice to be published in the NSW Government Gazette of 23 February 2001 advertising the Northern Tablelands RALC application. The application proposed the amendment of the Northern Tablelands RALC area to include the area constituted as the Dorrigo Plateau LALC.

There being no competent objections to the application, the Minister administering the ALRA caused an order to be published in the NSW Government Gazette of 18 May 2001 giving notice of the constitution of the amended Northern Tablelands RALC area including the Dorrigo Plateau LALC area.

Aboriginal Land Council Name changes

In the year 2000/01, one application was received to change the name of a Local Aboriginal Land Council. The ALRA and ALRR provide procedures for Local or Regional Aboriginal Land Councils to change their names.

1. Application to change the name of Ngunawal Local Aboriginal Land Council

On 11 April 2001 the Ngunawal LALC made an application to the Registrar to change its name to Ngunnawal LALC. Ngunawal LALC was asked to provide further information with regard to this application before the Registrar could make a recommendation to the Minister for Aboriginal Affairs.

The Far South Coast Regional Aboriginal Land Council (FSCRALC) and the NSWALC were informed of this application and asked to comment on the proposed change within 30 days of receipt of the notice. No objections were received from the FSCRALC or the NSWALC and the Registrar will forward a recommendation to the Minister for Aboriginal Affairs to approve the name change. The change of name will occur in the year 2001/2002.

Aboriginal Land Council operations

The Registrar continued to provide oral and written advice to Aboriginal Land Councils and other relevant parties during the 2000/2001 year. The provision of this advice is a principal ancillary function of the Registrar (see discussion above).

In appropriate circumstances the Registrar provides facilitation and/or mediation services to Aboriginal Land Councils that may be necessary to assist with the resolution of disputes in relation to the operation of Aboriginal Land Councils.

It is projected that the range and scope of services provided to Aboriginal Land Councils will increase with the proposed amendments to the ALRA. During the 2000/2001 year the Registrar has been planning for the changes to the services provided to Aboriginal Land Councils that will be a consequence of the proposed amendments.

The Aboriginal Land Council workshop program

This program was commenced by the Registrar in 1998 following the report by the Independent Commission Against Corruption (ICAC) entitled, Report on Investigation into Aboriginal Land Councils in New South Wales – Corruption Prevention and Research Volume (the Report).

The Report made 26 recommendations in relation to corruption prevention in Aboriginal Land Councils.

The first recommendation stated:

Recommendation 1: **Model Rules Project**

The NSW Aboriginal Land Council in conjunction with the Registrar and the ICAC develop a project to explore options for decision-making models which might be more appropriate for different local Aboriginal land councils. The project should incorporate a process for testing the different models and determining the effects of their use in relation to improved participation, equity in access to resources, and effectiveness of decision-making. The Aboriginal Land Rights Act should be amended as required to allow the project to be undertaken and the results implemented.

The Registrar concluded that before a meaningful project could be commenced to explore new models for Aboriginal Land Council decision-making, Aboriginal Land Councils needed detailed information about their current decision-making structure.

The Aboriginal Land Council workshop program was a response to this need. The program was developed and has been implemented in partnership with the NSWALC. The workshops are an intensive learning experience about the rules governing the operation of Aboriginal Land Councils.

During the year 2000/2001, the Assistant Registrar has delivered the workshops. A total of 21 workshops have been delivered across NSW.

It is projected that workshops will continue to be delivered in their present form in the first half of the year 2001/2002. During 2001/2002, the Model Rules Project as envisaged by the ICAC Report will be implemented.

Gayle Caldwell and Kristy Masella representing DAA at a community NAIDOC event in Sydney. DAA promotes and supports a number of NAIDOC community initiatives annually.

