



# Registrar, *Aboriginal Land Rights Act 1983* report

## Priorities of the Registrar, *Aboriginal Land Rights Act 1983*

- The effective and efficient performance of the statutory and ancillary functions of the Registrar in accordance with the *Aboriginal Land Rights Act 1983* (ALRA).
- The provision of timely and accurate advice and assistance to Aboriginal land councils in accordance with the ALRA.
- The provision of timely and accurate advice and assistance to persons seeking to be registered as Aboriginal owners pursuant to the ALRA.
- The provision of timely and accurate advice to the Minister administering the ALRA.
- The provision of information and the promotion of the ALRA to all relevant persons.
- The effective performance and development of the resources of the Registrar's office.



Staff of the Office of the Registrar: back row (left to right), Adam Black (research officer), Melusine Peter (German law intern), Rachel Lenehan (research officer). Front row, Kylie McLeod (assistant research officer/admin officer), Stephen Wright (Registrar), Cheryl Kistan (policy officer), absent, Kathryn Gregson (admin officer, part time).

## Performance report

The Office of the Registrar, *Aboriginal Land Rights Act 1983* (ALRA) is a statutory office created under the ALRA. The Registrar is a statutory office holder and is appointed under the *Statutory and Other Offices Remuneration Act 1975*.

The Registrar and staff are administratively linked to the Department of Aboriginal Affairs, however, the independence of the Office of the Registrar 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 the Aboriginal land councils constituted under the ALRA.

## Summary of statutory functions

The ALRA added new statutory functions and amended existing functions of the Registrar. The functions of the Registrar are listed in s. 165 of the amended ALRA. The following list of functions highlights the new or amended functions of the Registrar:

- to register land claims made under the ALRA by the NSW Aboriginal land councils or local Aboriginal land councils
- to maintain the Register of Aboriginal Land Claims and the Register of Aboriginal Owners
- to approve the rules of the NSW Aboriginal land council and local and regional Aboriginal land councils
- to make recommendations to the Minister and carry out such other prescribed functions in relation to the constitution of local Aboriginal land council areas and the constitution of local Aboriginal land councils, the alteration of area boundaries of local Aboriginal land council areas and the changing of names of local Aboriginal land councils
- to make recommendations to the Minister and carry out such other prescribed functions in relation to, the alteration of area boundaries of

regional Aboriginal land council areas and the changing of names of regional Aboriginal land councils

- to issue compliance directions to Aboriginal land councils, officers of Aboriginal land councils and councillors relating to the administration of the ALRA and the regulations and to refer failures to comply with such directions to the court
- to mediate, conciliate or arbitrate disputes relating to the administration of Aboriginal land councils or to refer such disputes to independent mediators, conciliators or arbitrators
- to investigate complaints regarding the non-disclosure of pecuniary interests and breaches of the ALRA and the regulations
- such other functions conferred or imposed on the Registrar by or under the ALRA or any other Act.

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

- to provide advice about the meaning and operation of the ALRA, Aboriginal Land Rights Regulation 2002 (ALRR) and the rules of Aboriginal land councils
- to provide advice about the Aboriginal land claims process
- provide advice about the information required for a person to establish their descent and cultural association with land to enable them to be registered as an Aboriginal owner pursuant to the ALRA
- to provide information, education and training about the ALRA and ALRR.

## The operation of the Office of the Registrar in 2003–04

### Aboriginal land claims

The ALRA provides that local Aboriginal land councils (LALCs) or the NSW Aboriginal Land Council (NSWALC) may make claims to crown land 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 comprise lands which, in the opinion of the Crown Lands Minister, are needed or likely to be needed as residential lands

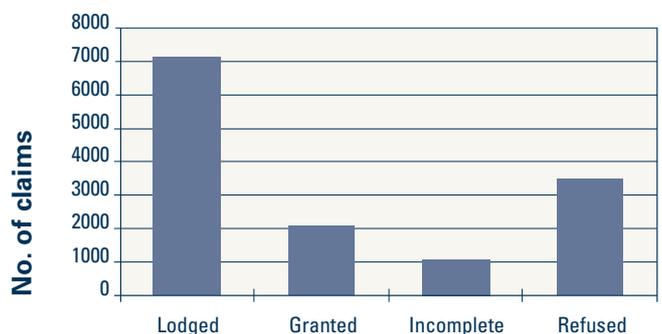
- are not needed or likely to be needed for an essential public purpose
- do not comprise lands that are subject to an application for a determination of native title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the *Commonwealth Native Title Act 1993* or the *Native Title Act 1994* (NSW)
- 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 Lands 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 1983. During the period 1 July 2003 to 30 June 2004, 117 land claims were registered, 60 land claims were granted and 173 land claims were refused.

Table 1. Land claim status



### Aboriginal land council areas and boundary matters

A new map of NSW showing the boundaries of LALCs and RALCs, including the location of national parks to be bought under joint management (see under Register of Aboriginal Owners) was produced in partnership with the NSW Aboriginal Land Council and the Department of Lands Mapping Services at Bathurst. A laminated copy of these maps was provided to all LALCs and RALCs and to Aboriginal organisations, government agencies and interested parties across NSW with more than 1000 maps being distributed.

### Aboriginal land council operations

The Registrar continued to provide advice and assistance to Aboriginal land councils during the 2003–04 year.

Particular emphasis has been given to the implementation of a revised Register of Aboriginal Land Claims, the procedures for dispute resolution (mediation, conciliation and arbitration), the procedures for the practise of issuing compliance directions and investigations of failures to disclose pecuniary interests or other breaches of the ALRA. This work will continue in the following year and an evaluation process will be undertaken.

The Registrar has assisted in the resolution of a number of disputes within local Aboriginal land councils.

### The Register of Aboriginal Owners

In NSW there is a legal process called joint management. Joint management has been defined as, 'a negotiated and legally binding agreement, usually in the form of a lease, between indigenous owners of land and a national parks agency, for the formal establishment and management of a national park on land owned by Aboriginal people.'<sup>2</sup>

In 1996 both houses of the NSW Parliament unanimously passed laws to enable joint management of certain lands in NSW (see map next page). This is in line with recommendation 315 of the Royal Commission into Aboriginal Deaths in Custody that advocated for the establishment of joint management arrangements to, 'protect and preserve the rights and interests of Aboriginal people with cultural, historical and traditional association with national parks'.<sup>3</sup>

Joint management in NSW involves title to the lands being vested in an Aboriginal land council and leased to the Minister for the Environment. The land is then jointly managed by the Aboriginal owners and the Department of Environment and Conservation. A board of management is established for each area of land under joint management and consists of a majority of Aboriginal owners. The other board members are a representative from the local Aboriginal land council, Department of Environment and Conservation, shire council, a neighbouring land holder and a person representing conservation interests.

The Office of the Registrar has a role in the joint management process by being legally required to keep a Register of Aboriginal Owners. Aboriginal owners are central to the joint management process and receive a range of legal rights. One of these rights is to be considered for appointment to boards of management set up for lands that are to be jointly managed.

In keeping the Register of Aboriginal Owners the Registrar has the following responsibilities:

- to use his best endeavours to enter in the register the name of every Aboriginal person with a cultural association with land in NSW
- to only enter the name of an Aboriginal person in the register if the Registrar is satisfied that the Aboriginal person:
  - has consented to the entry of their name in the register
  - is directly descended from the original Aboriginal inhabitants of the cultural area in which the land is situated
  - has a cultural association with the land derived from the traditions, observances, beliefs, customs or history of the original Aboriginal inhabitants of the land.
- to give priority to the entry in the register of the names of Aboriginal people with a cultural association with land listed in Schedule 14 to the *National Parks and Wildlife Act 1974* (Schedule 14 areas) or land that have been claimed by Aboriginal land councils under 36A of the ALRA (36A lands).

Lands listed in Schedule 14 are reserved or dedicated (e.g. 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 (under joint management since 1998)
- Mount Grenfell Historic Site (joint management due to commence in July 2004)
- Mungo National Park (currently under an informal co-management arrangement with the Department of Environment and Conservation)
- Mount Yarrowyck Nature Reserve
- Jervis Bay National Park
- Biamanga National Park (negotiations to commence in late 2004)
- Gulaga National Park (negotiations to commence in late 2004).

Under the ALRA certain crown land is claimable by Aboriginal land councils. Land that is needed for essential public purpose of nature conservation is not considered under the legislation to be 'claimable crown land'. However, where an Aboriginal land council has claimed land of this nature provision is made in section 36A of the ALRA for the land to be granted to an Aboriginal land council for joint management subject to certain conditions.



Location of Schedule 14 areas listed under the *National Parks and Wildlife Act 1974*

During the reporting period the Office of the Registrar achieved the following:

- Continued work with Aboriginal people requesting the entry of their name in the Register of Aboriginal Owners. This included requests for the Mutawintji National Park, Gulaga National Park, Biamanga National Park and Mount Grenfell Historic Site. This is because the register does not close and as further requests for entry in the register are received, work continues.
- Organised a meeting of Aboriginal Owners for the Mutawintji National Park during October 2003 at Wilcannia. The meeting was attended by over 80 Barkindji people. The purpose was to assist in the selection of Aboriginal owner board members for the second term of the Mutawintji board of management. The board is responsible for the care, control and management of the Mutawintji National Park. The term of the board members is four years. The board generally meets four times per year.
- Organised a meeting of Aboriginal owners for the Mt Grenfell Historic Site during November 2003 at Willandra National Park. The meeting was attended by over 60 Ngilyampaa Wanygaypuwan people. The purpose was to assist in the selection of the Aboriginal owner board members for the first term of the Mount Grenfell board of management. At this meeting 19 people were selected. A further meeting scheduled during the 2004–05 financial year will select the final eight Aboriginal owner board members.
- Initiated talks on providing training to Aboriginal owners on boards of management. This would work towards raising the capacity of the Aboriginal owners to perform in all aspects of the board's functions contributing to an equitable partnership between the Aboriginal owners and the Department of Environment and Conservation.

## Registrar's office staffing

During the 2003–04 reporting year the re-structuring of the Registrar's staffing to account for the new and amended functions of the Registrar continued. The Registrar is currently supported by two Research Officers, a Policy Officer, and two Administration Officers (one part-time). Revised position descriptions and evaluations for the new positions as listed below are in the process of being finalised. Recruitment of permanent staff to all the relevant positions are to be completed in the 2004-05 year.

Senior Registration Officer (ALRA)  
Senior Registration Officer (Register of Aboriginal Owners)

Registration Officer (ALRA)  
Registration Officer (Register of Aboriginal Owners)  
Registration & Enquiries Officer  
Research Officer  
Indigenous Cadet

- 1 Please note: The *Aboriginal Land Rights Amendment Act 2001* commenced on 25 October 2002. This act amended the *Aboriginal Land Rights Act 1983* and so the principal Act remains the *Aboriginal Land Rights Act 1983*.
- 2 D. Lawrence, Kakadu, *The Making of a National Park*, Melbourne University Press, Carlton South, 2000, p. 8.
- 3 Second Reading Speech, 20 November 1996, NSW Legislative Assembly, Hansard, pp. 7



Registrar, Steve Wright at a meeting to discuss the handback of Mt Grenfell through the Register of Aboriginal Owners