

3.6 REGISTRAR ABORIGINAL LAND RIGHTS

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.

Performance Report

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

The Registrar is administratively linked to the Department of Aboriginal Affairs, however the independence of the Office of the Registrar is recognised by the NSW Government. This means 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 his 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 *Aboriginal Land Rights Amendment Act 2001*¹ added new statutory functions and amended existing functions of the Registrar. The Registrar's functions are listed in s.165 of the amended ALRA. The following list highlights the Registrar's new or amended functions:

- to register land claims made under the ALRA by the New South Wales 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 New South Wales 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. These principal ancillary functions 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
- 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.

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*.

Aboriginal Land Council Operations

The Registrar continued to provide advice and assistance to Aboriginal Land Councils during 2004-2005.

Particular emphasis was given to implementing 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. The Registrar has assisted in the resolution of a number of disputes within Local Aboriginal Land Councils (LALCs).

Aboriginal Land Claims

The ALRA provides that LALCs or the New South Wales Aboriginal Land Council (NSWALC) may make a claim for Crown Land that:

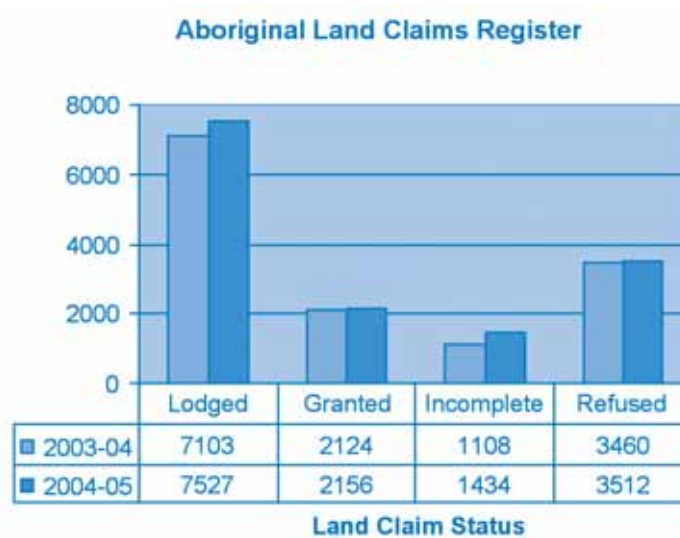
- Are able to be lawfully sold or leased, or are otherwise reserved or dedicated for any purpose, under the *Crown Lands Act 1989*
- Are not lawfully used or occupied
- Do not compromise lands which, in the opinion of the Crown Lands Minister, are not needed or likely to be needed as residential lands
- 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)*
- 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 who administers Crown Lands for determination. The Registrar must decide whether the land claim is in a proper form and in certain circumstances if it can be approved.

Local Aboriginal Land Councils may lodge a 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, who administers the *Crown Lands Act 1989*, is responsible for determining land claims.

Table below provides a summary of all land claims since the ALRA started in 1983.



Aboriginal Land Council areas and boundary matters

A map of NSW showing the boundaries of Local Aboriginal Land Councils and Regional Aboriginal Land Councils, including the location of National Parks listed for joint management, is available from the Registrar's Office. Copies of these maps are distributed to Aboriginal organisations, government agencies and interested parties across NSW.

The Register of Aboriginal Owners

There is a legal process called joint management in NSW. 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.'²

Both houses of the NSW Parliament unanimously passed laws to enable joint management of certain lands in NSW in 1996 (see map on page 45). This is in line with recommendation 315 of the Royal Commission into Aboriginal Deaths in Custody. It 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'.³

²D. Lawrence, *Kakadu, The Making of a National Park*, Melbourne University Press, Carlton South, 2000, p. 8.

³Second Reading Speech, 20 November 1996, NSW Legislative Assembly, Hansard, p.6276

Joint management involves titles to lands being vested in an Aboriginal Land Council and leased to the Minister for the Environment. The Aboriginal owners and the Department of Environment and Conservation then jointly manage the land.

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 landholder 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.

The Registrar, in keeping the Register of Aboriginal Owners, 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; and
 - is directly descended from the original Aboriginal inhabitants of the cultural area in which the land is situated; and
 - has a cultural association with the land derived from the traditions, observances, beliefs, customs or history of the original Aboriginal inhabitants of the land.



Ngjyampaa Aboriginal owners from Mt. Grenfell



Schedule 14 Lands as prescribed by the National Parks and Wildlife Act 1974 (NSW) (C. Kistan. 2004)

- 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 has been claimed by Aboriginal Land Councils under 36A of the ALRA (36A lands).

Lands listed in Schedule 14 are reserved or dedicated (for example as a National Park or Historic Site) under the *National Parks and Wildlife Act 1974*. They 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 commenced 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 (joint management to commence in late 2005)
- Gulaga National Park (joint management to commence in late 2005).

Aboriginal Land Councils can claim certain Crown land under the *Aboriginal Land Rights Act 1983*. 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 this type of land, 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.



View of Gulaga National Park from Wallaga Lake