



3.6 Registrar, *Aboriginal Land Rights Act 1983 (NSW)*

The priorities of the Registrar, *Aboriginal Land Rights Act 1983 (NSW)* ("the Registrar") include:

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

Background

The Registrar is a statutory office holder and is appointed under the *Statutory and Other Offices Remuneration Act 1975*. The Registrar is administratively linked to the Department of Aboriginal Affairs. However, the independence of the Registrar is recognised by the Government, allowing the Registrar to carry out all statutory functions (as defined below) without actual or perceived influence. The Minister administering the *Aboriginal Land Rights Act 1983 (NSW)* supervises the Registrar in relation to these statutory functions.

The Registrar is a separate legal entity from the Aboriginal Land Councils constituted under the *Aboriginal Land Rights Act 1983 (NSW)*.

Summary of statutory functions

The functions of the Registrar are listed in section 165 of the amended *Aboriginal Land Rights Act 1983 (NSW)*:

- to register land claims made under the *Aboriginal Land Rights Act 1983 (NSW)* by the New South Wales Aboriginal Land Council or any Local Aboriginal Land Council;
- to maintain the Aboriginal Land Claims and Aboriginal Owners Registers;
- to approve the rules of the Land Councils in the New South Wales Aboriginal Land Council network;
- to make recommendations to the Minister and carry out such other prescribed functions in relation to the constitution of Local Aboriginal Land Councils and their areas including: any alteration to their areas, boundaries and the changing of their names;
- to make recommendations to the Minister and carry out such other prescribed functions in relation to the alteration of area boundaries 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 *Aboriginal Land Rights Act 1983 (NSW)* 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 *Aboriginal Land Rights Act 1983 (NSW)* and the regulations; and
- such other functions conferred or imposed on the Registrar by or under the *Aboriginal Land Rights Act 1983 (NSW)* or any other Act.

The ancillary functions arising from the statutory functions of the Registrar, *Aboriginal Land Rights Act 1983 (NSW)* are to provide:

- advice about the meaning and operation of the *Aboriginal Land Rights Act 1983 (NSW)*, *Aboriginal Land Rights (Regulation 2002)* and the rules of Aboriginal Land Councils;
- advice about the Aboriginal land claims process;

- 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 *Aboriginal Land Rights Act 1983 (NSW)*; and
- information, education and training about the *Aboriginal Land Rights Act 1983 (NSW)* and *Aboriginal Land Rights (Regulation 2002)*.

Aboriginal Land Rights Act 1983 (NSW) review

In May 2004, the former Minister for Aboriginal Affairs announced a review of the *Aboriginal Land Rights Act 1983 (NSW)*, and appointed a Task Force to conduct the review. The Task Force members were the Director-General of the Department of Aboriginal Affairs, the administrator of the New South Wales Aboriginal Land Council and the Registrar, *Aboriginal Land Rights Act 1983 (NSW)* (Chair of the Task Force).

The Task Force worked on the *Aboriginal Land Rights Act 1983 (NSW)* review throughout 2004 and 2005 and completed two substantial issues papers:

Review of the Land Dealings provisions of the *Aboriginal Land Rights Act 1983 (NSW)*; and

Structure, Representation, Governance and Benefits

In August 2005, the first issues paper was delivered to the Minister for Aboriginal Affairs, the Hon. Milton Orkopoulos MP, who administers the *Aboriginal Land Rights Act 1983 (NSW)*. In November 2005, the second issues paper was delivered to the Minister. Both issues papers were made available on the Department of Aboriginal Affairs website: www.nsw.daa.gov.au

The Task Force implemented law reform. By convening the Task Force, the Minister allowed for a unique level of engagement between the Government and the Aboriginal Land Council network. Because the Task Force could consider both the Government's and Aboriginal Land Council's perspectives in relation to the *Aboriginal Land Rights Act 1983 (NSW)*, the recommendations made by the Task Force represented a thorough analysis of the legislation and the operation of Aboriginal Land Councils. The Task Force made 76 specific recommendations.

Following delivery of the Task Force's issues papers and a series of consultation meetings in November and December 2005, the Minister will consider the recommendations and is working towards amendments to the *Aboriginal Land Rights Act 1983 (NSW)*.

Aboriginal land claims

The *Aboriginal Land Rights Act 1983 (NSW)* provides that Local Aboriginal Land Councils or the New South Wales Aboriginal Land Council may make a claim for Crown Land(s) 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)*; 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 land(s).

Individual land claims must be lodged with the Registrar, *Aboriginal Land Rights Act 1983 (NSW)* before they can be forwarded to the Minister administering the *Crown Lands Act 1989* for determination. The Registrar must decide whether the land claim is in a proper form for a determination to be made. One or more Local Aboriginal Land Councils may lodge a land claim for land within their area. Such a land claim must clearly identify the land claimed, and if so, the Registrar is bound to register the claim.

If one or more Local Aboriginal Land Councils 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 administering the *Crown Lands Act 1989* determines if the land is claimable Crown lands. If the Minister refuses a land claim, the claimant Aboriginal Land Council may appeal the decision to the Land and Environment Court.

In 2005-06, 5,240 land claims were lodged with the Registrar, *Aboriginal Land Rights Act 1983 (NSW)*. A total of 2,196 land claims were granted and 3,717 refused by the Minister for Lands. Since 1983, 12,766 land claims have been lodged with the Registrar by Aboriginal Land Councils.

The number of land claims lodged in 2005-06 is significant (5,240); this reflects a program commenced by the New South Wales Aboriginal Land Council to systematically identify claimable Crown Land throughout New South Wales. The high number of claims lodged in the current year will place significant administrative pressure on the Registrar, the Department of Aboriginal Affairs, and the Department of Lands in coming years.

Aboriginal Land Council areas and boundary matters

A map of New South Wales showing the boundaries of Land Councils, including the location of National Parks listed for joint management, is available from the Registrar, *Aboriginal Land Rights Act 1983 (NSW)*. Copies of these maps are distributed to Aboriginal organisations, Government agencies and interested parties across New South Wales. There were no changes to the boundaries of Aboriginal Land Council areas in the current year. A map showing Local Aboriginal Land Councils appears on page 46 of this report.

Aboriginal Land Council operations

During the financial year, the Registrar continued to help and advise Aboriginal Land Councils. Particular emphasis was given to the Land Claims Register; the procedures for dispute resolution (mediation, conciliation and arbitration); the procedures for the practice of issuing compliance directions; and investigations of failures to disclose pecuniary interests or other breaches of the *Aboriginal Land Rights Act 1983 (NSW)*. The Registrar helped resolve several disputes within Local Aboriginal Land Councils.

The year saw an increase in the number and complexity of disputes involving Aboriginal Land Councils. This is due to a number of reasons, the most prominent being the increasing wealth and complexity of operations of some Aboriginal Land Councils.

Effective dispute resolution mechanisms within the *Aboriginal Land Rights Act 1983 (NSW)* will be critical to the on-going success of the legislation.

The Register of Aboriginal Owners

In New South Wales the legal process called 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.'

In 1996, both houses of the New South Wales Parliament unanimously passed laws to enable joint management of certain lands in New South Wales (see map below). 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'.

Joint management in New South Wales 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 (DEC). 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 Registrar, *Aboriginal Land Rights Act 1983 (NSW)* 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, *Aboriginal Land Rights Act 1983 (NSW)* 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 New South Wales;
- 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; and
 - 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 section 36A of the *Aboriginal Land Rights Act 1983 (NSW)* ("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*, and have been identified as being of cultural significance to Aboriginal people. There are currently seven Schedule 14 areas:

Schedule 14 areas currently jointly managed	Schedule 14 areas not currently jointly managed
Mutawintji National Park (under joint management since 1998)	Mungo National Park (currently has an informal co-management arrangement)
Mount Grenfell Historic Site (under joint management since July 2004)	Mount Yarrowyck Nature Reserve (research team currently being engaged)
Biamanga National Park (joint management commenced in May 2006)	Jervis Bay National Park
Gulaga National Park (joint management commenced in May 2006)	





The following table indicates the numbers of Aboriginal people who have applied to be registered as "Aboriginal Owners" under the *Aboriginal Land Rights Act 1983 (NSW)*:

Schedule 14 areas	Number of Aboriginal owner applications received:	Section 36A lands	Number of Aboriginal owner applications received:
Mutawintji NP	101	Stockton Bight	126
Mount Grenfell HS	93	South Beach	Nil to date
Biamanga NP	132		
Gulaga NP	134		
Mungo NP	Nil to date		
Mount Yarrowyck NR	Nil to date		
Jervis Bay NP	Nil to date		

The Registrar's administrative arrangements

Although the Registrar, *Aboriginal Land Rights Act 1983 (NSW)* had operated an independent administrative office in previous years, this was not so in the 2005-06 financial year. Following a re-structuring of the Department of Aboriginal Affairs, the Registrar gained the services of departmental staff under the auspice of a Memorandum of Understanding with the Director-General of the Department of Aboriginal Affairs.

In May 2006, the Minister for Aboriginal Affairs directed that an independent administrative office be re-established to provide assistance to the Registrar. The Department of Aboriginal Affairs and the Registrar have been working towards this re-establishment.

Looking ahead

There was a high level of activity for the Registrar during the year. The work carried out fell into four main categories:

- i Task Force review of the *Aboriginal Land Rights Act 1983 (NSW)*;
- ii registration of land claims;
- iii registration of Aboriginal owners and convening meetings of Aboriginal owners; and
- iv advice and dispute resolution services for Aboriginal Land Councils.

It is envisaged that if amendments are made to the *Aboriginal Land Rights Act 1983 (NSW)* in the coming year and work levels in the other categories remain at current levels, the overall activity of the Registrar's Office will increase.

Amendments to the *Aboriginal Land Rights Act 1983 (NSW)* will bring issues of implementation and advice. It is important that the Registrar gives the Aboriginal Land Councils and the community the best possible advice about any new legislation to enable a smooth transition to a new regime.

While the number of Aboriginal land claims lodged with the Registrar, *Aboriginal Land Rights Act 1983 (NSW)* may decline in the coming year, the current volume of claims lodged will require continued management, ensuring the land claims information is satisfactorily dealt with.

The Register of Aboriginal Owners will continue to grow in the coming year as further lands are dedicated to joint management and more Aboriginal people become aware of their rights to registration as Aboriginal owners.

Advice and dispute resolution services for Aboriginal Land Councils will be the most dynamic part of work in the coming year. Some Aboriginal Land Councils are major business entities and they will require high level advice about their obligations under the Registrar, *Aboriginal Land Rights Act 1983 (NSW)*. Many Aboriginal Land Councils will be changing their corporate character and will require assistance with transitional issues. The frequency and magnitude of Aboriginal Land Council disputes will inevitably increase for the reasons already discussed. Aboriginal Land Councils are similar to other corporate entities: as disputes arise within them and between them and other parties, the key will be to provide relevant assistance when disputes arise.

