

The work of the Registrar in 2006-2007

Aboriginal Land Rights Amendment Act 2006 and the Aboriginal Land Rights Further Amendment Regulation 2007

Over the last 23 years, land rights in New South Wales have delivered a solid economic and capital base to Aboriginal people. However, the Government and the NSW Aboriginal Land Council recognised the ALRA was deficient in enabling Aboriginal Land Councils to effectively manage and utilise their assets, promote economic independence and ensure appropriate governance of Aboriginal Land Councils.

Given these considerations, in May 2004, the then Minister for Aboriginal Affairs, Dr Andrew Refshauge, announced a review of the ALRA and appointed a Task Force to do the work. The Task Force members were Department of Aboriginal Affairs Director-General, Jody Broun; the Administrator of NSWALC, the late Murray Chapman; and the Registrar of the Aboriginal Land Rights Act 1983, Stephen Wright (Chair of the Task Force).

The Task Force worked on the ALRA review throughout 2004 and 2005 and completed two substantial issues papers:

- (i) *Review of the Land Dealings provisions of the ALRA*; and
- (ii) *Structure, Representation, Governance and Benefits*.

Both issues papers are available on the Department's website: www.nsw.daa.gov.au

Following delivery of the Task Force issues papers and a series of consultation meetings, the Minister considered the perspectives of both Government and Aboriginal Land Councils. Seventy-six recommendations made by the Task Force resulted in the *Aboriginal Land Rights Amendment Act 2006* and the *Aboriginal Land Rights Act Further Amendment Regulation 2007*.

On 22 November 2006, NSW Parliament passed the Aboriginal Land Rights Amendment Act 2006. Its aim is to improve the structure, representation and governance of Aboriginal Land Councils and enhance the range of benefits available to Aboriginal people through the New South Wales land rights system.

Due to time constraints and the complexity of the proposed land dealings amendment provisions, these were postponed to the 2007-08 financial year.

Aboriginal land claims

The ALRA provides that Aboriginal Land Councils or NSWALC 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 compromise 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 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 LALCs 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 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 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.

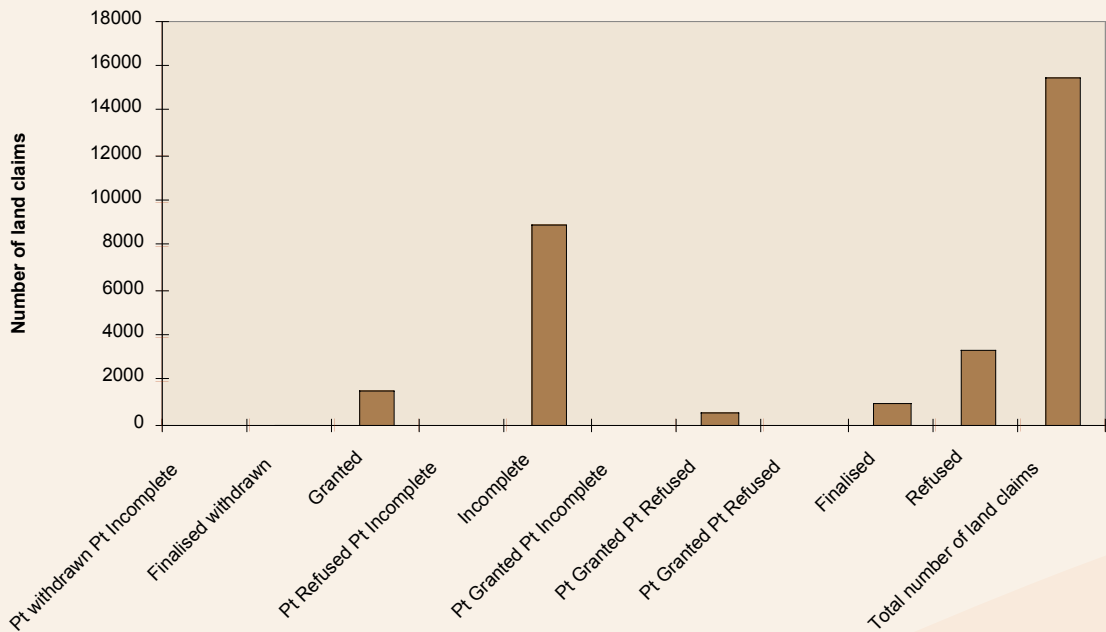




- The total number of land claims lodged with the Registrar since the commencement of the ALRA (1983) is 15,572.
- The total number of land claims that have not yet been determined by the Minister administering the *Crown Lands Act 1983* is 8,978.
- The total number of land claims that have been determined and appealed to the Land and Environment Court is 325.

The NSW Aboriginal Land Council's systematic identification of claimable Crown Land throughout New South Wales in the previous years resulted in a higher than normal number of claims lodged. This continues to place significant administrative pressure on the Registrar and the Department of Lands.

Register of Aboriginal Land Claims



The graph above indicates the current status of the Aboriginal Land Claims Register.



Phillip Sullivan (Mount Grenfell board of Management Chairperson) sings 'thou shall not steal' at Myall Shores Worimi Conservation Lands Aboriginal owner nomination meeting (Adam Black).



Aboriginal Land Council areas and boundary matters

Regional Aboriginal Land Councils were abolished with the commencement of the amended ALRA. The network now consists of nine regions and each has a representative on the NSWALC elected by voting members in that region. A map of these regions showing the boundaries of Aboriginal Land Councils is available from the Registrar. Copies of these maps continue to be distributed to Aboriginal organisations, Government agencies and interested parties across NSW. There were no changes to the boundaries of LALC areas in the current year.

Aboriginal Land Council operations

The Registrar continued to provide advice and assistance to Aboriginal Land Councils. Particular emphasis continues to be 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 ALRA. Throughout this past year, the Registrar has assisted in the resolution of many disputes within the Aboriginal Land Council network including major land dealing, management and governance-related disputes.

The current year has seen a sharp 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 within some Aboriginal Land Councils.

Effective dispute resolution mechanisms within the ALRA will be critical to the ongoing success of the amended legislation.

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.'¹

In 1996, both houses of the NSW Parliament unanimously passed laws to enable joint management of certain lands in NSW (see map on page 40). 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'.²

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 Aboriginal owners and the Department of Environment and Conservation (Department of Environment and Climate Change) 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 LALC, DECC, Shire Council, a neighbouring land holder and a person representing conservation interests.

The Registrar has a role in the joint management process by being legally required to keep a Register of Aboriginal Owners ("the Register"). 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, 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; 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.

- 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 lands that have been claimed by Aboriginal Land Councils under section 36A of the ALRA (“36A lands”).

Lands listed in Schedule 14 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.

Notes:

¹ D. Lawrence, *Kakadu, The Making of a National Park*, Melbourne University Press, Carlton South, 2000, p. 8.

² Second Reading Speech, 20 November 1996, NSW Legislative Assembly, Hansard.





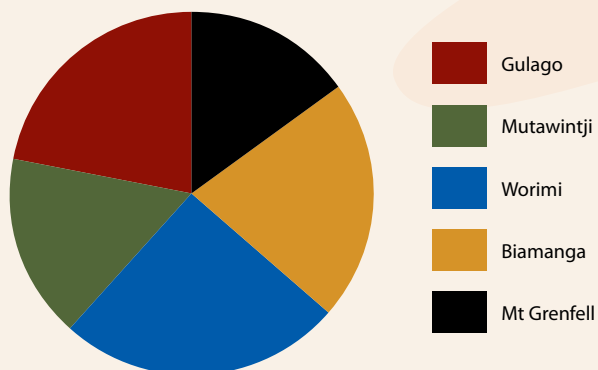
Schedule 14 areas currently jointly managed	Schedule 14 areas not yet jointly managed	Section 36A lands currently jointly managed	Section 36A lands not yet jointly managed
Mutawintji National Park (under joint management since 1998).	Mungo National Park (currently engaged with an informal co-management arrangement).	Worimi Conservation Lands (under joint management since February 2007).	South Beach near Nambucca Heads.
Mount Grenfell Historic Site (under joint management since July 2004).	Mount Yarrowyck Nature Reserve (research team engaged).		
Biamanga National Park (joint management commenced in May 2006).	Jervis Bay National Park (awaiting land claim determinations).		
Gulaga National Park (joint management commenced in May 2006).			

The table above represents the current status of Schedule 14 areas and section 36A lands.

The following table and graph indicate the number of Aboriginal people who have applied to be registered as "Aboriginal Owners" under the ALRA:

Schedule 14 areas	Number of Aboriginal owner applications received:	Section 36A lands	Number of Aboriginal owners applications received:
Mutawintji NP	101	Worimi Cons. Lands	155
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		

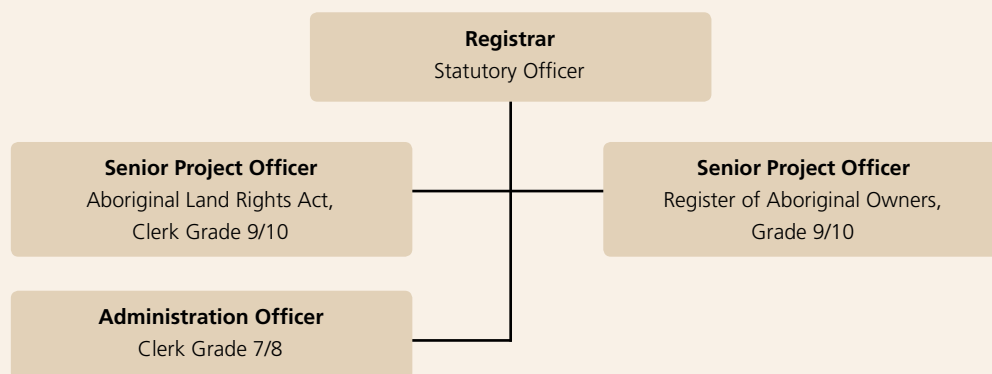
Number of Aboriginal owner applications for Schedule 14 and s.36A lands



The Registrar's administrative arrangements

In May 2006 the former Minister for Aboriginal Affairs directed that an independent administrative office be re-established to provide assistance to the Registrar. In the 2006-07 reporting year, the Department of Aboriginal Affairs and the Registrar worked towards re-establishing the Office of the Registrar in an independent office within Tranby Aboriginal College in Glebe.

The Registrar's current staff allocation is indicated in the table below:



There continues to be a high level of activity for the Registrar. The work carried out falls into four main categories:

- (i) the implementation of the amended ALRA;
- (ii) the registration of land claims;
- (iii) the registration of Aboriginal owners and convening meetings of Aboriginal owners;
- (iv) advice and dispute resolution services for Aboriginal Land Councils.

With the implementation of the amended ALRA taking place in July 2007, the level of work increased within the office. This increase is associated with certifying that Aboriginal Land Councils and the community are given the best possible advice about the new legislation to ensure a smooth transition to the new regime. The other categories of work remain at a consistent level with the overall activity of the Registrar's Office increasing.

The number of Aboriginal land claims lodged with the Registrar has declined throughout the current year. However, the current volume of claims lodged continues to require fine management to ensure that land claim information is satisfactorily dealt with.

The Register of Aboriginal Owners will continue to grow 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 the Registrar's 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 ALRA. 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 no different from other corporate entities: disputes arise within them and other parties; the key will be the Registrar's capacity to provide relevant assistance when disputes arise.

