

Performance Report – 2007-2008

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

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

Background

The Registrar is a statutory office holder appointed under the *Statutory and Other Offices Remuneration Act 1975*.

While the Registrar is administratively linked to the Department of Aboriginal Affairs (DAA), 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 Registrar’s Office is located within Tranby Aboriginal College at Glebe. The Minister administering the ALRA supervises the Registrar in relation to these statutory functions.

The Registrar is a separate legal entity from the Aboriginal Land Council network constituted under the ALRA.

Summary of statutory functions

The functions of the Registrar are listed in section 165 of the amended ALRA:

- to register land claims made under the ALRA by the New South Wales Aboriginal Land Council (NSWALC) or any Local Aboriginal Land Council (LALC);
- 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 LALCs 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 Regions;
- 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, misbehaviour by councillors, Board members, members of staff and consultants to Aboriginal Land Councils and breaches of the ALRA and the regulations; and
- at the request of the Minister, to provide to the Minister information as to the operation of an Aboriginal Land Council;
- 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 statutory functions of the Registrar. The principal ancillary functions of the Registrar are:

- to compile and maintain LALC consolidated rolls;
- to act as ‘returning officer’ for LALC Board elections;
- 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 and regulations; and
- to provide information, education and training about the ALRA and regulations.

The work of the Registrar in 2007-2008

Over the last 23 years, land rights in New South Wales have delivered a solid economic and capital base to Aboriginal people. Currently, the cumulative area for land granted to Aboriginal Land Councils is 81,824 ha with an estimated value of \$2,239,515,991 (CPI Adj.).

The Government and the NSWALC recognised the ALRA was deficient in enabling Aboriginal Land Councils to effectively manage and utilise these assets, promote economic independence and ensure appropriate governance of Aboriginal Land Councils. On 22 November 2006, the Aboriginal Land Rights Amendment Act 2006 was passed by Parliament. Its aim is to improve the structure, representation and governance of Aboriginal Land Council network 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 2007- 2008. They are currently being worked on by the Registrar, DAA and NSWALC and it is anticipated that an Exposure Draft Bill will be circulated later in 2008.



**Aboriginal rock art
at Mount Grenfell
Historic Site.**

Picture by Adam Black.

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 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 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

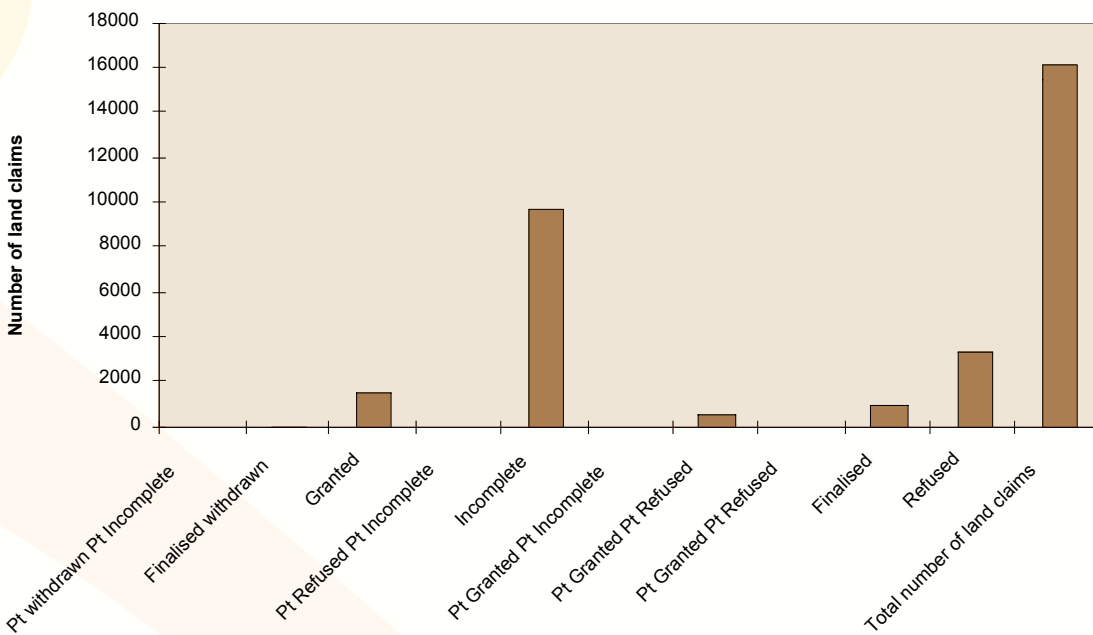
land within their area. Such a land claim must clearly identify the land claimed, and if so, the Registrar is bound to register the claim. If one or more LALCs make a land claim outside their area(s) the Registrar must approve the claim before it can be registered.

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 16,083.**
- **A total of 2,304 land claims have been granted to Aboriginal Land Councils. This includes some land claims that were part granted, refused and remain incomplete. The total area granted land is 81,637 ha.**
- **A total number of 9,107 land claims are yet to be determined by the Minister administering the Crown Lands Act 1989. This includes some land claims that have been determined in part.**
- **The remainder of land claims have been refused are otherwise finalised or are the subject to appealed in the Land and Environment Court.**

Both the NSWALC and LALCs continue to consistently identify claimable Crown Land throughout New South Wales. 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.

Aboriginal Land Council areas, boundary and name change matters

Regional Aboriginal Land Councils were abolished with the recently commenced amended ALRA. The network now consists of nine regions. Each region has an elected representative on the NSWALC council elected by voting land council 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. Ngunnawal Local Aboriginal Land Council changed its name to Ngambri Local Aboriginal Land Council and this was gazetted on 11 July 2008.





Aboriginal Land Council operations

The Registrar continued to provide advice and assistance to Aboriginal Land Councils during 2007 – 2008. Particular emphasis continues to be given to the Land Claims Register, 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. 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.

There continues to be a steady increase in the number and complexity of disputes involving Aboriginal Land Councils, Boards and members. 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 continue to be critical to the on-going success of the legislation.

Consolidated roll of all members of Local Aboriginal Land Councils

Previously, the consolidated rolls of all members of Local Aboriginal Land Councils were held with NSWALC. On 1 July 2007, pursuant to section 59(3) ALRA the Registrar resumed this function. The Registrar is now responsible for the compilation and maintenance of the consolidated rolls of Local Aboriginal Land Councils. Currently, there are a total of 16,136 members, 13,836 voting members and 2,302 non-voting members.



Aboriginal hand stencils – Mount Grenfell Historic Site.

Picture by Adam Black.

Local Aboriginal Land Council Board elections

The ALRA prescribes that the Registrar shall be the 'returning officer' for LALC Board elections. The returning officer is a person vested with the functions and power to conduct an election in accordance with the relevant laws. Because there were 100+ LALC Board elections, the Registrar chose to delegate his function of returning officer for LALC Board elections to willing NSWALC and DAA staff appropriately skilled to do so.

The amended ALRA made significant changes to the structure and function of LALCs. It changed the governance structure of LALCs from: Members, Officers (Chairperson, Secretary, Treasurer) and Employees/Consultants to Members, Board, Officers (Chairperson, Deputy Chairperson), Chief Executive Officer and Employees/Consultants.

The new LALC Boards have the following functions:

- To direct and control the affairs of the Council in accordance with the ALRA and Regulations and consistently with the Community Land and Business Plan;
- To facilitate communication between the Councils members and the NSWALC;
- To review the performance of the Council in the relation to its functions and the achievements of its objectives; and
- Any other function conferred on the Board by or under the ALRA.

By the end of June 2007, only five out of 121 Local Aboriginal Land Councils who were able to conduct elections remained without a Board.

The remainder were under administration or investigation. Some of these land councils were expected to hold their annual meeting to elect Boards soon after the end of the financial year. Two LALCs (Stuart Island Tribal Elders Descendants and Winbar) will not hold elections due to no membership, plus two LALCs in the Western Zone are not currently functioning (Wanaaring and Quambone).

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.'

In 1996 both houses of the NSW Parliament unanimously passed laws to enable joint management of certain lands in NSW (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 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 Climate Change (DECC). 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 land 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.

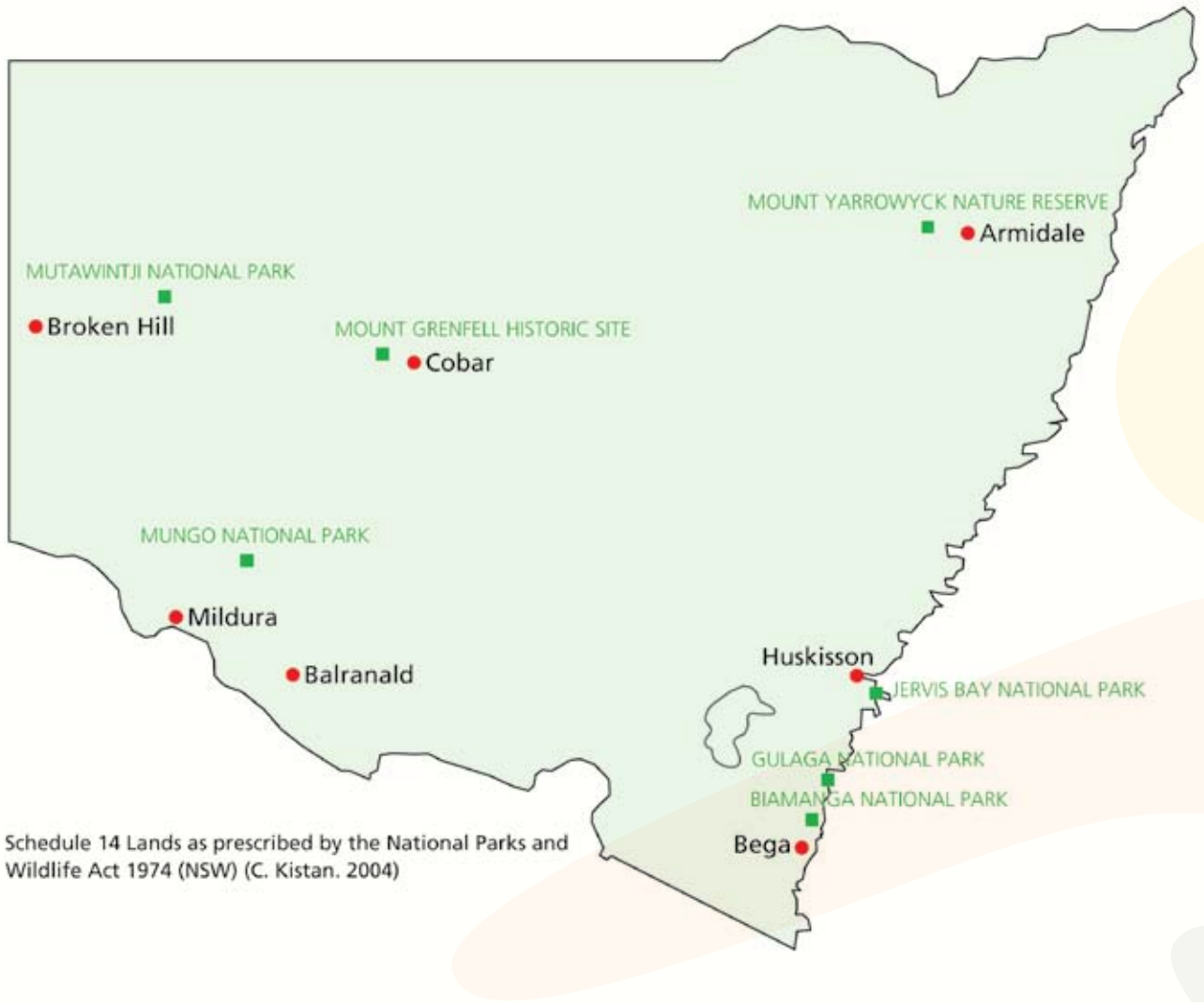
² Second Reading Speech, 20 November 1996, NSW Legislative Assembly, Hansard.





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.



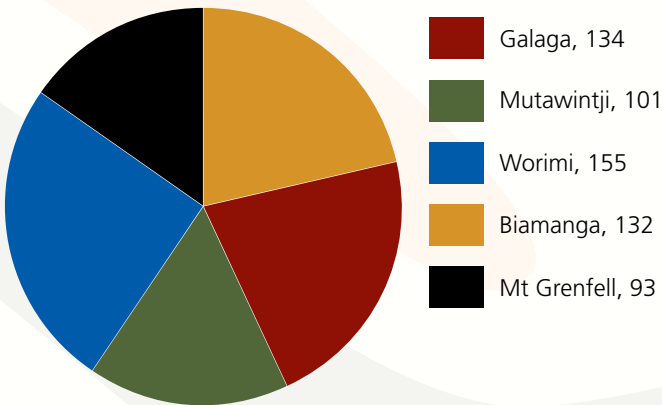
Schedule 14 areas currently jointly managed	Schedule 14 areas not yet jointly managed	Section 36A lands currently jointly managed	Section 36A lands not yet jointly managed
Mutawintji National Park (under joint management since 1998). 10 year anniversary in September 2008.	Mungo National Park (currently engaged with an informal co-management arrangement).	Worimi Conservation Lands (under joint management since February 2007).	Warrell Creek near Nambucca Heads continues to be negotiated.
Mount Grenfell Historic Site (under joint management since July 2004).	Mount Yarrowyck Nature Reserve (research team engaged).		
Mount Grenfell Historic Site (under joint management since July 2004).	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		

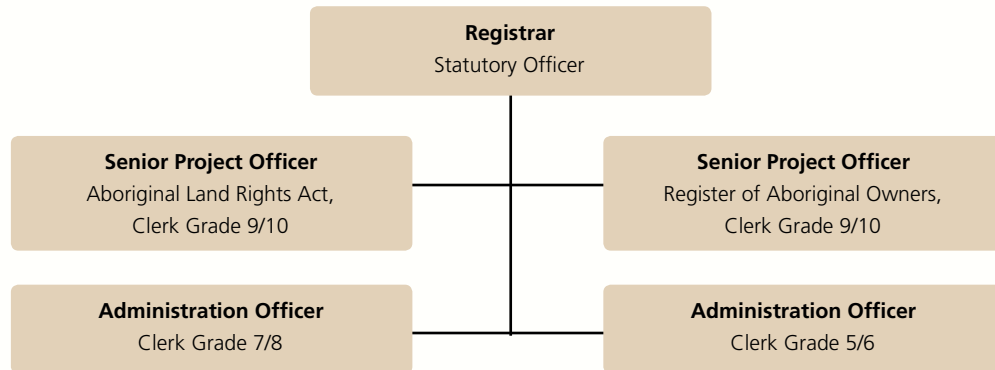
Number of Aboriginal owner applications for Schedule 14 and s.36A lands





The Registrar's administrative arrangements

During 2007-2008 the Registrar maintained an independent administrative office with the full support of the Minister for Aboriginal Affairs. The current establishment of the Registrar's office is co-located within Tranby Aboriginal College in Glebe. There is a current staff allocation of 5 people including the Registrar as indicated in the table below:



Looking Ahead

There continues to be a high level of activity for the Registrar. The work carried out falls into five 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) maintenance and compilation of LALC consolidated rolls; and
- (v) advice and dispute resolution services for Aboriginal Land Councils.

The administration of the ALRA continues to require high level work within the office. There has been a constant increase in the volume of work associated to certifying that Aboriginal Land Councils and the community are given the best possible advice about the new legislation to continue 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 remains consistent with the previous year; however, the current volume of claims lodged continues to require micro-management ensuring that land claim 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 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.

Registrar, Aboriginal Land Rights Act

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