



fact sheet

NEW SOUTH WALES ABORIGINAL LAND COUNCIL

Removal of Commonwealth caveated property

Background

The former Aboriginal and Torres Strait Islander Commission (**ATSIC**)¹ and its predecessor organisations previously provided grants to Indigenous organisations for the purchase of property on freehold land (**grant-funded property**)². These grant-funded properties were often protected by the Commonwealth through registration of a caveat on the land title and through terms and conditions imposed on the grant (usually in the form of a Purposes Agreement or Deed).

The former legislation³ required the Commonwealth to retain its rights and interests in perpetuity until the asset was disposed through sale, transfer or mortgage. Following consultation with key stakeholders, legislation was introduced⁴ in 2018 to allow the Commonwealth to give notice to Indigenous organisations that its consent is no longer required for the disposal of grant-funded property. This means that Indigenous organisations can now apply to have a caveat on their property removed.

Eligibility for caveat removal

Any Indigenous organisation can apply for the removal of caveats if it currently owns grant-funded property.

The following criteria must be satisfied before caveats can be removed:

- Board resolution to request removal of caveat in line with the organisation's Constitution;
- Support from the relevant consenting authority (Indigenous Business Australia or the Indigenous Land & Sea Corporation)⁵; and
- The organisation is assessed as low risk.

An organisation is automatically assessed as low risk if it is a State or Territory statutory body under additional legislative protection.

¹ ATSIC was abolished in 2005 pursuant to the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*.

² Grant-funded property includes subsequent property purchased using the proceeds from sale of the original grant-funded property.

³ *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*.

⁴ *Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Act 2018*.

⁵ From 2005, management of ATSIC's rights and interests in grant-funded property devolved to the Commonwealth, Indigenous Business Australia, and the Indigenous Land & Sea Corporation as the relevant consenting authorities.

As Local Aboriginal Land Councils (**LALC**) are State statutory bodies under additional statutory protection⁶, LALCs are automatically assessed as low risk and are eligible to apply for removal of caveats registered on their grant-funded properties.

How will removal of Commonwealth caveated property affect LALC?

A significant number of LALCs own grant-funded properties that have Commonwealth caveats registered on titles. A LALC may apply to have the Commonwealth caveats registered on their titles removed.

Upon receipt of application for the removal of the caveats, a consenting authority can choose to have its rights and interests over the grant-funded property waived and the caveat lifted perpetually, or it can agree to remove the caveat subject to conditions.

The consenting authority may consider the following factors in assessing the application for the removal of caveat:

- the need for service continuity;
- potential impacts on the local community;
- evidence that the terms of the original grant and other funding agreements have been fulfilled.

Requests for the removal of caveats on grant-funded property will be assessed on a case by case basis, and decisions are discretionary.

The cost of removal of the caveats from grant-funded properties will be borne by the Commonwealth.

Application for removal of caveats from grant-funded properties

A LALC can apply for the removal of caveats from its granted-funded properties by [filling in the Application form available here](#).

Send the completed form and **a copy of the Board decision** resolving to request caveat removal for the properties listed on the form to the Commonwealth Rights and Interests mailbox: CthRightsandInterests@pmc.gov.au.

Applications can also be made using the paper form and sent to:

CRIP Project - Remote Strategies Branch
Housing, Land and Culture Division
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

⁶ LALCs are constituted under the *Aboriginal Land Rights Act 1983* (ALRA) and are protected by the provisions of ALRA.