The Aboriginal Land Rights Act and Crown land

The Aboriginal Land Rights Act 1983

The New South Wales Aboriginal Land Council (NSWALC) was originally established in 1977 as an independent Aboriginal organisation to advocate for the recognition of Aboriginal land rights. Following recommendations from the 1978-1981 'Inquiry of the NSW Select Committee of the Legislative Assembly upon Aborigines' the Aboriginal Land Rights Act (ALRA) was passed by the NSW Parliament in 1983.

The ALRA was established to return land in NSW to Aboriginal peoples through a process of lodging claims for certain Crown lands. For this reason the management and disposal of Crown land is linked with Aboriginal land rights in NSW.

The preamble to the ALRA acknowledges that:
1. Land in the State of New South Wales was traditionally owned and occupied by Aborigines.
2. Land is of spiritual, social, cultural and economic importance to Aborigines.
3. It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land.
4. It is accepted that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation.

Aboriginal Land Councils

NSWALC provides support to the network of 120 autonomous Local Aboriginal Land Councils (LALCs) that exists in NSW. The network of Aboriginal Land Councils was established to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities. As elected bodies, Aboriginal Land Councils represent not only the interests of their members, but of the wider Aboriginal community.

Pursuant to the ALRA, NSWALC has the following functions amongst others:
- The acquisition, control, and management of (and other dealings in) lands in accordance with the ALRA; including the claiming of unused Crown land;
- The protection and promotion of Aboriginal culture and heritage in NSW;
- The facilitation of business enterprises; and
- The provision of advice to Government of matters related to Aboriginal land rights.

LALCs have similar functions in relation to their boundaries.

Aboriginal Land Claims

A core function of NSWALC is the claiming of land for Aboriginal Land Councils under compensatory mechanisms of the ALRA for the dispossession of Aboriginal peoples from traditional lands.

Land claims made over Crown land that is not lawfully used or occupied, not needed or likely to be needed for residential purposes or an essential public purpose and is not the subject of a registered native title claim or
determination must be granted. Land that is privately owned cannot be granted.

A successful determination of a land claim generally delivers freehold title to land which includes rights to certain minerals in the freehold land. This freehold can be dealt with via sale, lease, etc and the owner of the freehold land (the Aboriginal Land Council) has the same rights as other freehold owners, subject to compliance with the ALRA.

LALCs can be granted lands that are to be managed as national parks or other form of reserve via a ‘lease back’ arrangement with the NSW Government, sometimes known as ‘joint management’.

Aboriginal Land Councils are also entitled to make agreements with other land owners or person in control of land to access land for hunting, fishing and gathering, and have rights to apply for access permits.

Aboriginal Land Councils also have consultation rights in relation to Aboriginal culture and heritage, and have functions to protect and promote Aboriginal culture heritage.

The NSW Minister administering Crown Lands Act, currently the Minister for Trade and Investment and Minister for Primary Industries, decides whether land is claimable Crown land under the ALRA – if the land is claimable Crown land, it must be granted to an Aboriginal Land Council.

Currently there are 25,789 land claims that are still pending Government determination; 212 of which were lodged in or before the year 2000; with 13 of these having been lodged over twenty years ago.

Crown land in NSW

The Crown Land Estate represents approximately 42% of the NSW land mass, with 580,000 individual parcels of land. Some of this land is allocated to public uses such as national parks, state forests, schools, hospitals, sporting, camping and recreation areas, as well as lands which are managed and protected for their environmental importance.

There are over 58,000 tenures (leases and licences) and 34,000 reserves. Of these reserves 700 are managed by community trusts and 7,800 are managed by Local Government.

It is important to note that, to date, less than 4% of the Crown Lands Estate has been transferred to the Aboriginal Land Council Network.

For more information contact the NSW Aboriginal Land Council, phone: 02 9689 4444, or email policy@alc.org.au.

Website: www.alc.org.au

Please Note: The information in this Fact Sheet is current as of May 2014.

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2 Section 36 of the Aboriginal Land Rights Act outlines the criteria for claimable Crown land.
4 Based on figures in Facilitation to Enable not Frustration to Disable, Aboriginal Land Rights Review 2012, Report of Findings and Recommendations of the Working Group, p.22