



fact sheet



Aboriginal Land Rights Amendment Act 2014

This document has been prepared by the New South Wales Aboriginal Land Council (NSWALC) for Local Aboriginal Land Councils (LALCs) and Aboriginal communities across NSW.

Please Note: While all care has been taken in the preparation of this document, the advice it contains should not be seen as a substitute for independent consideration of the issues and/or legal advice on this subject. This document is current as of January 2015.

In November 2014 the *Aboriginal Land Rights Amendment Bill 2014* passed the NSW Parliament. The amendments are a result of a statutory review of the *Aboriginal Land Rights Act 1983 (NSW)*.

This Fact Sheet outlines the key amendments, and implications for the Aboriginal Land Rights Network.

The amendments, while having passed NSW Parliament, are not yet in force, and are expected to commence on 1 July 2015.

The *Aboriginal Land Rights Act 1983 (NSW)*

The *Aboriginal Land Rights Act 1983 (NSW)* (ALRA) was established principally to return certain Crown lands to Aboriginal peoples in NSW, as compensation for dispossession and the ongoing disadvantage suffered by Aboriginal communities as a result.

The ALRA also establishes a network of democratically representative Aboriginal Land Councils across the state, to acquire and manage land as an economic base for Aboriginal communities, and a statutory account of compensatory monies to fund their operations, among other functions.

Background to the reforms

On 5 December 2011 the Minister for Aboriginal Affairs, the Hon Victor Dominello MP, established a Working Group to review the ALRA, in accordance with the regular five yearly review provisions of the Act.ⁱ

The Working Group delivered its Report on the Review on 11 October 2012. The report made recommendations for reforming the ALRA primarily in relation to land claims, housing and regulatory frameworks.

NSWALC worked with the NSW Government to develop the proposals in the Report. Consultations with the Aboriginal Land Rights Network took place in August and September 2013.

Aboriginal Land Rights Amendment Act 2014

During 2014 NSWALC worked with the NSW Government to further develop proposals and amendments to the ALRA. This resulted in the *Aboriginal Land Rights Amendment Bill 2014 (the Bill)*. The Bill passed NSW Parliament on 12 November 2014.

Summary of key reforms

Land claims and Aboriginal Land Agreements

The ALRA establishes a process where certain Crown land can be claimed by Aboriginal Land Councils. In practice the land claims determination process can take time. The reforms aim to address this by:

- Establishing a mechanism for Aboriginal Land Councils to negotiate with the Crown Land Minister about land claims and other Crown lands amongst other things, to make ***Aboriginal land agreements*** as an alternative to the land claim process. Aboriginal land agreements may provide for the transfer or

lease of lands to an Aboriginal Land Council, monetary consideration, and may include an undertaking that an Aboriginal Land Council will not lodge a claim, or will withdraw a claim, in relation to specified land.

- Ensuring that land claims are not registered over privately owned lands.
- Clarifying the role of the Registrar of the ARLA and providing that the Crown Lands Minister is not to grant a land claim if the land claim was made in contravention of an Aboriginal Land Agreement.
- Providing that while a land claim appeal is on foot, Aboriginal Land Councils may not lodge repeat claims over that land and the Minister must not do anything, without the consent of the claimant Aboriginal Land Council, that would cause a new land claim, if lodged, to be unsuccessful.

Planning, Reporting and Compliance

A number of amendments have been made that aim to reduce the reporting and compliance obligations on LALCs.

In relation to Community Land and Business Plans, the reforms:

- Simplify matters that are required to be included in a Community Land and Business Plan (CLBP).
- Remove NSWALC approval for LALC CLBPs.
- Require a LALC to either approve or amend the CLBP within 9 months after the election of a new Board.

Other reforms:

- Remove NSWALC approval of LALC budgets.
- Tailor LALC reporting requirements and outlining Annual Reports must be prepared in accordance with NSWALC Policy.
- Exempt LALCs from requirements to proactively publish information under the *Government Information (Public Access) Act 2009*.
- Remove the requirement for NSWALC to supervise Community Benefit Schemes.

Governance

A number of reforms aim to make it easier for LALCs to operate more effectively and provide for members interests.

These include:

- Allowing LALC CEOs to declare members of a LALC who have not attended six (6) consecutive meetings 'inactive'. Inactive members will not be counted for the purposes of determining quorum required for a LALC meeting. Inactive members will merely need to attend a meeting to become active members once more.
- Increasing the term of office of LALC Boards from 2 years to 4 years.
- Providing a Code of Conduct for LALC members including clarity on the grounds of suspension of members.
- To require LALCs to provide their members with quarterly updates on activities.

Accountability

The reforms aim to provide appropriate accountability and enforcement powers. These amendments:

- Provide that the Registrar of the ALRA, instead of the Minister, can appoint administrators, investigators and advisors to LALCs.
- Allow the Registrar of the ALRA to apply for an injunction (Court order) to prevent a contravention of the ALRA.
- Increase maximum penalties for offences under the ALRA.
- Authorise the Register of the ALRA to apply for search warrants in relation to apparent contravention of the ALRA or failure of a person to provide records.
- Provide for disciplinary action to be taken in relation to officers of Aboriginal Land Council who engage in misconduct such as failing to comply with disclosure requirements under the ALRA.

Social Housing

Amendments will be made to remove special approval requirements for Social Housing schemes and bring such schemes within the general community benefit scheme provisions.

LALCs will no longer need to obtain approval from NSWALC in order to provide social housing schemes if LALCs have already registered as an Aboriginal housing organisation under the *Aboriginal Housing Act 1988 (NSW)* or as a community housing provider under the *Community Housing Providers National Law (NSW)*.

The amendments also provide that failure to obtain approval for social housing may be a ground for an administrator to be appointed, and failure by the administrator to obtain approval of the scheme after 6 months could result in dissolution of that Aboriginal Land Council.

Business Enterprises

The amendments confirm that Aboriginal Land Councils can form, acquire, operate and manage business enterprises.

The amendments also introduce certain requirements that must be met by Aboriginal Land Councils that use separate entities to carry out LALC functions, including:

- Requiring Aboriginal Land Councils to keep members informed about activities conducted through separate entities.
- Requiring Aboriginal Land Council to undertake risk assessments before transferring assets to separate entities when required by NSWALC Policy.
- Requiring members (80% of members present) to approve the transfer of assets to separate entities when required by NSWALC Policy.

The amendments will also require Local Aboriginal Land Councils to establish, acquire or operate corporations under the *Corporations (Aboriginal and Torres Strait Islander Act 2006 (Cth) (CATSI Act)*, or under the *Corporations Act 2001 (Cth)* if authorised by NSWALC policy.

NSWALC was not supportive of the amendment to require LALCs to undertake corporations only through the CATSI Act.

Next stages

The Act will commence by proclamation. This means that the Minister for Aboriginal Affairs will place a notice in the *Government Gazette* outlining the day or days the amendments will commence. The aim of this is to delay the operation of the amendments until administrative arrangements, delegated legislation and supporting policies are in place. NSWALC is currently developing supporting policies.

The amendments are expected to commence on **1 July 2015**.

More Information

A copy of the Act and the Minister's Second Reading Speech can be accessed on the NSW Parliament website at:

<https://www.parliament.nsw.gov.au/prod/parlment/nswActs.nsf/131a07fa4b8a041cca256e610012de17/b467ff838b214e36ca257d780016d1f5?OpenDocument>.

The Working Group Report, Statutory Review Report, Better Regulation Statement and consultation documents can be access on the Aboriginal Affairs NSW website at: <http://www.aboriginalaffairs.nsw.gov.au/alra/legislative-review/>.

A current version of the ALRA can be accessed on the NSW Legislation website at: <http://www.legislation.nsw.gov.au/maintop/view/jnforce/act+42+1983+cd+0+N>.

If you would like additional information about this document, please contact the NSWALC Policy and Programs Unit on 02 9689 4444 or policy@alc.org.au.

ⁱ ALRA, section 252A