



fact sheet



Section 38(1A) ALRA and transfers of land under the Housing Aboriginal Communities Program (HACP)

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

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 at January 2018.

Transfers of land from the Aboriginal Housing Office (AHO) to LALCs under the HACP

Over 20 LALCs are managing social housing that is located on land that is owned by the AHO, but is subject to Housing Agreements issued by the AHO under the HACP. The AHO are in the process of transferring ownership of the land subject of the HACP Housing Agreements to LALCs, where eligible.

The parties have agreed that these properties will be transferred from the AHO to the relevant LALCs for \$1 consideration.

Does section 38(1A) ALRA apply to these transfers?

Section 38(1A) of the ALRA provides (relevantly):

(1) The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council may purchase, take on lease or hold any property or may acquire property by gift inter vivos, devise or bequest.

(1A) Despite subsection (1), a Local Aboriginal Land Council may purchase land only if:

(a) the purchase price for the land is not more than 5% above the market value of the land, as assessed by a qualified valuer who is appointed by the Local Aboriginal Land Council, or

(b) the New South Wales Aboriginal Land Council has given its written approval to that purchase.

NSW Land Registry Services (LRS) (formerly the Land and Property Information) has confirmed that Section 38(1A) ALRA does not apply to land being transferred from the AHO to LALCs under the HACP as these properties are **not** being purchased by a LALC.

Next steps

In order to ensure that LALCs will not be caught by section 38(1A) ALRA, LRS require a letter from the AHO confirming that the land was transferred to the LALC for \$1 consideration.

As required under the transfer agreement, the AHO will lodge the transfers at the LRS for registration and will provide the required letter when attending to lodgement. The AHO will also provide a copy of this correspondence to the relevant LALC, if requested.

For further information LALCs can contact:

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