



New South Wales
Aboriginal Land Council

Guide for Local Aboriginal Land Councils

Aboriginal Land Rights Amendment Act 2022

Overview of changes made to the *Aboriginal Land Rights Act 1983*
by the *Aboriginal Land Rights Amendment Act 2022*





Acknowledgement of Country

The NSW Aboriginal Land Council acknowledges the Traditional Owners of the land where we work and live. We pay respect to Elders past, present and emerging and extend that respect to all Aboriginal people.

Disclaimer

This information has been compiled by the New South Wales Aboriginal Land Council (NSWALC). It is intended to provide a brief overview of key changes relevant to Local Aboriginal Land Councils (LALCs) and does not include details of every amendment made by the Aboriginal Land Rights Amendment Act 2022.

The information contained in this document is general information only, does not constitute legal advice, is not a substitute for individual consideration of the issues, and is current as of 8 December 2022.

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Key links

[Aboriginal Land Rights Amendment Bill 2022](#)

[Aboriginal Land Rights Act 1983 \(NSW\)](#)

Includes changes in the Aboriginal Land Rights Amendment Bill 2022

Abbreviations

ACH – Aboriginal Culture and Heritage

ALA – Aboriginal Land Agreement

ALC – Aboriginal Land Council

ALRA - Aboriginal Land Rights Act 1983 (NSW)

ALRR – Aboriginal Land Rights Regulation 2020

CATSI – Corporations (Aboriginal and Torres Strait Islander) Act 2006

CBS – Community Benefit Scheme

CLBP – Community Land and Business Plan

ICAC – Independent Commission Against Corruption

LALC – Local Aboriginal Land Council

NCAT – NSW Civil and Administrative Tribunal

NSWALC – New South Wales Aboriginal Land Council

ORALRA – Office of the Registrar, Aboriginal Land Rights Act 1983

Registrar – Registrar, Aboriginal Land Rights Act 1983



1 Overview of Amendments

This document outlines key changes to the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)* made by the *Aboriginal Land Rights Amendment Bill 2022 (Bill)*. The Bill passed NSW Parliament on 16 November 2022 and came into force on 25 November 2022.¹

The Bill is the first stage of reforms outlined in the 2021 Statutory Review of the ALRA, undertaken in accordance with section 252A of the ALRA, and in line with the guiding principles of consistency, efficiency and empowerment.²

NSWALC undertook engagements with Local Aboriginal Land Councils (LALCs) in 2021 on possible reform proposals and welcomed the overarching findings of the ALRA review report.³

The Bill includes various administrative and operational amendments outlined in the ALRA review report.

Key amendments are outlined below - please note this is not an exhaustive list. LALCs are encouraged to review the Bill and explanatory note⁴ for a full list of changes.

Overall, the Bill is an initial set of reforms intended to improve the operation of the ALRA. NSWALC is keen to

see work progress on broader reforms⁵ in accordance with the next stages outlined in the ALRA review report:

- Stage 2 - improving options to allow Aboriginal Land Councils to utilise land holdings for social, cultural and economic purposes, subject to native title, and
- Stage 3 - consideration and consultation on ideas for broader aspirational reforms including Aboriginal culture and heritage, strategic land use improvements, compensatory mechanisms, compliance and regulatory roles, and housing.

The updated ALRA, incorporating changes as a result of the Aboriginal Land Rights Amendment Bill 2022, is available online at:

<https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1983-042>

¹ Most Aboriginal Land Rights Amendments Bill 2022 provisions came into force on 25 November 2022, except for provisions relating to the administration of NSWALC elections, which will be commenced by proclamation

² 2021 ALRA review report available: https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/land-rights/the-aboriginal-land-rights-act-1983-alra/legislative-review/Aboriginal-Land-Rights-Act-1983-2021-Statutory-Review-Report.pdf

³ See NSWALC network message, 24 November 2021: <https://alc.org.au/newsroom/network-messages/review-of-the-aboriginal-land-rights-act-1983-nsw/>

⁴ Aboriginal Land Rights Amendment Bill 2022 explanatory note available at: <https://www.parliament.nsw.gov.au/bill/files/4039/XN%20E2%80%94Aboriginal%20Land%20Rights%20Amendment%20Bill.pdf>

⁵ NSWALC's submission to the 2021 ALRA review is available: <https://alc.org.au/wp-content/uploads/2021/11/NSWALC-submission-ALRA-review.pdf>

2

Land Claims and Land Dealings

A number of administrative and operational changes have been made to land claim and land dealing provisions, including land dealing approvals, purchase of lands, and refund of the Community Development Levy for cancelled transactions. These changes largely aim to clarify administrative provisions and reduce burdens on LALCs.

Land Claims

Section 36(4A)(b) and (4E)(b)

Previously, the Registrar was able to refuse to refer a land claim on the basis that the claim, or part of the claim, was made in contravention of an undertaking by an Aboriginal Land Council in an Aboriginal Land Agreement, for example, if the relevant Land Council has agreed not to lodge future claims over that land.

Updates have been made to these provisions to clarify that the power of the Registrar to refuse to refer a claim for land made in contravention of an undertaking given in an Aboriginal Land Agreement applies **only if the agreement is recorded in the register of Aboriginal Land Agreements**.

The ALRA continues to provide safeguards for Aboriginal Land Councils in relation to the operation of the Registrar's power to refuse claims, such as providing notice in writing of reasons for refusing to refer a claim (s.36(4B)), and the right to appeal a refusal (s.36(4D)).

Purchasing lands

Section 38(1A)

Previously, a LALC could only purchase land if:

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

Updates have been made to:

- change the threshold from "5% above market value" to "15%", and
- clarify that LALCs can purchase land for nominal consideration (eg. \$1) without requiring a valuation or NSWALC approval

These provisions are intended to provide LALCs with increased options when seeking to purchase lands.



Land Dealings

New Section 42IA

Amendment of Land Dealing approvals

New provisions will enable NSWALC to amend an approval of a land dealing on the application of the relevant LALC if the land dealing has not been completed and certain instruments giving effect to or forming part of the land dealing have not been registered under the *Real Property Act 1900* or the *Conveyancing Act 1919*.

This provision is intended to provide additional options for LALCs.

Section 42UA

Refund of community development levy for cancelled transactions

New provisions clarify that the amount of the community development levy paid to the Community Fund is to be refunded to the relevant LALC if the transaction is subsequently cancelled by a LALC. The amendment also provides that NSWALC may obtain a refund of the amount contributed to the Community Fund by NSWALC for the transaction.





3 Local Aboriginal Land Councils

Various administrative and operational changes have been made to enhance good governance, align some provisions with similar provisions in the *Local Government Act 1993 (NSW)*, provide greater self-determination and ease some administrative requirements.

Objects and functions of LALCs

Section 51

Objects of LALCs

The objects of LALCs have been updated to align with similar objects to NSWALC. The intent of the change is to assist LALCs to register as charities and does not affect LALC functions.

Section 52G

Functions of LALCs exercised by resolution

Section 52G, ALRA sets out various functions to be exercised by resolution of the voting members of LALCs.

Additional functions have now been added to s.52G(1):

- Approval of travelling and other allowances of Board members under s.63(3) – previously the Minister for Aboriginal Affairs was required to approve travel and other allowances for Board members
- Approval of a policy, employment or consultancy for the purposes of 66A – This is a new provision that will allow voting members to approve work for LALC Board members in certain circumstances – see further below.

Boards of LALCs

Section 63A & 63B

Term of office of Board members and effect of appointment of administrator

Inserts provisions about the election and term of office of Board members of an LALC for which an administrator has been appointed. The term of office of a Board member appointed to fill a vacancy as a result of the appointment of an administrator ends on the election of the next Board. The timing of the election of the next Board is subject to whether the elections to fill the vacancies were held before, or during, the period of 12 months before the next Board election would have been held had the administrator not been appointed.

Section 65(5)

Training for LALC Board members

Section 65, ALRA requires LALC Board members to undergo certain training.

This provision has been updated to remove the power of NSWALC to exempt a LALC Board member from training requirements if the member has previously undergone the training. The previous exemption on the ground of expertise, skills and experience has been retained.

Section 66

Grounds for disqualification from office – LALC Board members

Section 66, ALRA sets out various ground that disqualify a person from holding office as a Board member of a LALC.

Some new grounds for disqualification have been added where:

- The Independent Commission Against Corruption (ICAC) has made a finding of serious corrupt conduct in the last 5 years, and
- A person is or was concerned in the management of a body corporate that is the subject of a winding up order or for which a controller or administrator, other than a special administrator, has been appointed under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth within the last 3 years

Additionally, some existing grounds for disqualification have been updated where a person:

- Has been convicted of an offence punishable by imprisonment for 5 years or more. Previously, disqualification applied to offences punishable by imprisonment for 12 months or more. This change aligns with similar provisions in the *Local Government Act 1993*. The existing discretion of the Registrar to ignore offences in certain circumstances has been retained.
- Who was a Board member of a LALC at a time that was both:
 - a. within the last 5 years, and
 - b. within 2 years before an administrator was appointed for that LALC – the previous provision was ‘immediately before’, rather than 2 years.

The existing discretion of the Registrar to determine that a person is not disqualified on this ground has been retained.

- A person who is a contractor to a LALC, in addition to the existing provisions that disqualify an employee of, or a consultant to the LALC

New Section 66A

Exception to disqualification for LALC Board members – certain approved short term work

Section 66(1)(j), ALRA disqualifies a person from holding office if they are an employee of, or a consultant or contractor to the LALC. New provisions have now been added that provide an exception to this disqualification in certain circumstances.

To ensure appropriate governance and oversight, the exception applies to:

- work of a kind specified in a policy prepared in accordance with the directions of NSWALC and approved by resolution of the voting members of the LALC, and
- the employment, consultancy or contract concerned must also be approved by resolution of the voting members of the LALC or, if required by the approved work policy, the Board, and
- The policy may not specify, as approved work, the functions of the Chief Executive Officer of the LALC or work performed on a permanent basis.

The intent of the new provision is to empower LALC members to make decisions about appropriate employment of LALC Board members. This could include, for example, circumstances where it may be appropriate for Board members who are recognised Elders to provide advice on cultural heritage matters or provide Welcome to Country ceremonies.

Section 67(b)

Vacancy in office

Section 67 outlines the circumstances in which a LALC Board member vacates office.

Section 67(b), ALRA states that a LALC Board member vacates office if the Board member is absent from 2 consecutive meetings of the Board or the Council of which reasonable notice has been given to the person personally or by post, except on leave granted by the Board or unless the person is excused by the Board for having been absent from those meetings.

The ALRA has now been updated to provide that a vacancy does not arise as a result of the member's absence from 2 consecutive meetings of the Board until the Board has:

- a. given the member reasonable notice of the Board's intention to consider at a meeting of the Board whether to excuse the member for the absences, and
- b. resolved at the meeting not to excuse the member for the absences.

Section 72(2)

Review of delegations by LALC Boards

Previously, a LALC Board was required to review all its delegations every year and immediately after an election of the Board.

This provision has been updated to require a LALC Board to review all its delegations within 12 months after an election of the Board.

Staff of LALCs

Section 79A

Advertising vacancies

Updated s.79A allows the Board of a LALC to advertise a vacancy for the position of Chief Executive Officer of the LALC in a way it decides to be sufficient to enable suitably qualified persons to apply for the position, rather than in the way prescribed by the regulations.

Updated s.79A(3) allows a vacancy in the staff of a LALC to be filled without advertisement with the approval of the Board, or in other circumstances prescribed by the regulations. Previously, a vacancy was only able to be filled without advertisement in the circumstances prescribed by the regulations.

These provisions are intended to remove unnecessarily prescriptive requirements from the ALRA.

Procedure of Boards of LALCs

Schedule 3, Part 2, Clause 6

Transaction of business outside meetings or electronic means

Previously, the ALRA provided for LALC Boards to transact business by telephone, closed-circuit television or other means. The ALRA has now been updated to make additional provisions for transacting business by electronic means.



4 NSW Aboriginal Land Council



Various administrative and operational changes have been made to enhance good governance, align some provisions with similar provisions in the *Local Government Act 1993 (NSW)*, provide greater self-determination and ease some administrative requirements.

Functions of NSWALC

Section 106

Functions of NSWALC

Under s.106, ALRA, NSWALC has functions to advise the Minister for Aboriginal Affairs on Aboriginal land rights. Section 106(4)(a) has been expanded to specify that NSWALC has functions to advise the Minister on matters relating the interests of Aboriginal persons, in addition to Aboriginal land rights.

Section 113 & 114

Policies relating to Aboriginal Land Council functions and procedures for making policies

Section 113 and 114, ALRA relate to policies relating to Aboriginal Land Council functions and procedures for making policies.

Previously, the Minister of Aboriginal Affairs was required to approve such policies. This requirement has now been removed. Instead, the NSWALC Council is empowered to adopt policies, subject to consultation with LALCs. NSWALC is now required to publish relevant policies on NSWALC's website, instead of these policies being published in the NSW Government Gazette.

NSWALC Councillors

Section 132

Grounds for disqualification from office – NSWALC Councillors

Section 132, ALRA sets out various ground that disqualify a person from holding office as a NSWALC Councillor.

Similar to the above provisions for LALC Boards, some new grounds for disqualification have been added where:

- The Independent Commission Against Corruption (ICAC) has made a finding of serious corrupt conduct in the last 5 years, and
- A person is or was concerned in the management of a body corporate that is the subject of a winding up order or for which a controller or administrator, other than a special administrator, has been appointed under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth within the last 3 years

Additionally, and similar to the above provisions for LALC Boards, some existing grounds for disqualification have been updated where a person:

- Has been convicted of an offence punishable by imprisonment for 5 years or more. Previously, disqualification applied to offences punishable



by imprisonment for 12 months or more. This change aligns with similar provisions in the *Local Government Act 1993*. The existing discretion of the Registrar to ignore offences in certain circumstances has been retained.

Section 132(1)(i)

Exception to disqualification for NSWALC Councillors in certain circumstances

Updated s.132(1)(i) now provides that NSWALC Councillors may engage in other paid work, subject to the approval of the NSWALC Council. The intent of this provision is to provide some flexibility to undertake paid work that does not interfere with NSWALC duties, while retaining safeguards and appropriate oversight. Section 116, ALRA has also been updated to stipulate that the approval of other paid work is a non-delegable function of the Council.

Section 133

Vacancy in office

Section 133 outlines the circumstances in which a NSWALC Councillor vacates office, similar to the provisions for LALC Boards (noted above).

Section 133(b), ALRA states that a NSWALC Councillor vacates office if they are absent from 2 consecutive meetings of the Council of which reasonable notice has been given to the person personally or by post, except on leave granted by the Council or unless the person is excused by the Council for having been absent from those meetings.

The ALRA has now been updated to provide that a vacancy does not arise as a result of the Councillor's absence from 2 consecutive meetings of the Council until the Council has:

- a. given the member reasonable notice of the Council's intention to consider at a meeting of the Council whether to excuse the member for the absences, and
- b. resolved at the meeting not to excuse the member for the absences.

NSWALC staff

Section 138A

Certain persons must not be employed as CEO

A new provision has been added requiring the NSWALC CEO to be an Aboriginal person.

Section 143A

Advertising vacancies

Similar to provisions for LALCs (noted above - s.79A), updates have been made to:

- Allow NSWALC to advertise a vacancy for the position of Chief Executive Officer of NSWALC in a way it decides to be sufficient to enable suitably qualified persons to apply for the position, rather than in the way prescribed by the regulations
- Allow a vacancy in the staff of NSWALC to be filled without advertisement with the approval of the Chairperson of NSWALC, or in other circumstances prescribed by the regulations. Previously, a vacancy could be filled without advertisement only in the circumstances prescribed by the regulations.

Section 144

Certain persons must not be employed

Section 144 prohibits persons from being employed as a NSWALC staff member in certain circumstances, including if the person has been convicted of certain offences. The Registrar, ALRA previously had powers to disregard offences in certain circumstances for LALC staff, NSWALC Councillors and LALC Board members, but not for NSWALC staff.

The ALRA has now been updated to provide the Registrar with discretion to disregard offences of persons who are to be employed as NSWALC staff in certain circumstances.

Financial reporting and management

Section 150

Preservation of NSWALC assets

Previously, s.150, ALRA required NSWALC to maintain the capital value New South Wales Aboriginal Land Council Account as at 31 December 1998.

Updates have been made to provides that the value of the assets of NSWALC, rather than the capital value of the New South Wales Aboriginal Land Council Account, must be maintained above the capital value of the account as at 31 December 1998.

Sections 152A – 152E

Financial report

Provisions relating to the financial reporting obligations of NSWALC have been removed from the *Government Sector Finance Act 2018* and the *Government Sector Finance Regulation 2018* and inserted directly into the ALRA. These provisions remove the requirement for the Minister for Aboriginal Affairs to approve NSWALC's budget.

Procedure of NSWALC Council

Schedule 3, Part 3

Transaction of business outside meetings or electronic means

Similar to the provisions for LALC Boards (above), updates have been made to provide for the transaction of Council business outside of meetings or by telephone or other electronic means.





5

Conduct and Disciplinary Matters

Part 10, ALRA deals with conduct and disciplinary matters. The provisions in this part have largely been re-written to increase clarity, however some more substantial amendments have also been made as noted below.

Section 188

Disciplinary proceedings to apply to former office holders and members of staff

Previously Part 10 only applied to current officers and members of staff. Section 188 has been updated to apply to former office holders and member of staff. this means Part 10 disciplinary proceedings will apply to persons who have ceased their term of office or employment.

Section 182 and Section 189

New procedural fairness steps in dismissal and censure provisions.

Previously the ALRA provided for dismissal and censure provisions. These provisions have been retained but include some new procedural fairness steps including notice requirements and providing the officer with an opportunity to make submissions.

Section 195

Suspension during investigation

A new provision has been added that allows the Registrar, ALRA to suspend officers while undertaking

investigations if the Registrar is satisfied the alleged misconduct is so serious as to threaten the proper operation of the Aboriginal Land Council.

Section 197

Disciplinary action against officers

Previously, the Registrar, ALRA had various powers to take disciplinary action if the Registrar was satisfied there were grounds to do so (former s.181F, ALRA).

The Registrar's powers to take disciplinary action have now been expanded, providing additional powers to the Registrar, including:

- directing the officer to cease engaging in the misconduct,
- directing the officer to undertake training,
- directing officers to participate in mediation,
- suspending the officer for up to 2 years,
- removing the officer from office,
- disqualifying the officer from holding office for up to 2 years.

Importantly, these provisions provide significant new powers for the Registrar to remove elected officials from office where the Registrar is satisfied that officer

has engaged in misconduct and disciplinary action is warranted (s.196, ALRA). The Registrar must also give written notice to the officer, including a statement of reasons, consider submissions made by the officer within 14 days after receiving the notice, and consult with the Aboriginal Land Council, before removing an officer from office.

Section 198

Disciplinary action against member of staff

Some updated provisions have been added regarding disciplinary action the Registrar may take against staff of an Aboriginal Land Council, including disqualifying a member of staff from holding office for up to 2 years, and directing CEOs to participate in training and mediation.

Section 235

Compliance directions

The existing power of the Registrar to issue a compliance direction has been extended to enable the Registrar to issue a direction to the Chief Executive Officer of an Aboriginal Land Council. Previously, the Registrar could only issue a compliance direction to an officer of an Aboriginal Land Council.





6 Administration of NSWALC Elections

Some updates have been made to provisions relating to NSWALC elections to align them with similar provisions in the *Local Government Act 1993*.

NOTE: The updates made to provisions relating to NSWALC elections are not yet in force and will be commenced by proclamation.

When commenced, the updates will:

- Allow NSWALC to choose an alternative electoral service provider to administer NSWALC elections – Currently the NSW Electoral Commission must administer NSWALC elections. Other organisations, such as Local Governments, are able to choose alternative service providers that may be more efficient and cost effective.
- Allow NSWALC to set a date for NSWALC elections, subject to meeting certain requirements including consultation with the NSW Electoral Commission if the NSW Electoral Commission is to administer the election. If NSWALC does not meet certain requirements or fails to set a date, the Minister for Aboriginal Affairs is able to set a date for the NSWALC election.

7 Aboriginal Owners

The Registrar, ALRA is required to maintain a Register of Aboriginal Owners – s.165(b), ALRA.

Sections 170 - 175

Register of Aboriginal Owners

Sections 170-175, ALRA specify how the Register is to be kept, contents of the Register, entering names in the Register among other things.

Various administrative updates have been made to these provisions, including:

- Clarifying that the obligation of the Registrar to enter names of Aboriginal persons in the Register of Aboriginal Owners is limited to entering the names of Aboriginal persons who have a cultural association with land in the State, determined on request under the ALRA
- Corrects an inconsistency in terminology used in reference to the original Aboriginal inhabitants of land in a provision specifying the eligibility requirements for entering the name of an Aboriginal person in the Register of Aboriginal Owners
- Enables the Registrar to amend information on, or remove information from, the Register of Aboriginal Owners if the Registrar considers the information is false, erroneous or misleading. The Registrar must first give the Aboriginal person to whom the information relates written notice and an opportunity to make submissions about the proposed change. An Aboriginal person who considers the amendment is incorrect may request the Registrar to rectify the Register and may appeal to the Land and Environment Court if the Registrar fails to rectify the Register within 6 months.

8 Miscellaneous

Preamble

The preamble of the ALRA has been updated to reference 'waters' as well as land to reflect the importance of water to Aboriginal people.

Section 245

Execution of documents

Section 245 has been updated to provide for executing a document without using a common seal.





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