



Statutory Review of the Aboriginal Land Rights Act 1983

September 2014



Education &
Communities
Aboriginal Affairs

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1 PREFACE

I table this five year Statutory Review Report (the Report) of the *Aboriginal Land Rights Act 1983*, before the NSW Parliament. The *Aboriginal Land Rights Act* is a unique Act of Parliament that provides a vehicle for the Aboriginal people of NSW to pursue their social, economic and cultural aspirations. The Report sets out the outcomes of my review of the *Aboriginal Land Rights Act* (the Review) and includes aims to realise its full potential both in the coming years and well into the future.

In late 2011, I established an expert Working Group, Chaired by the Registrar of the *Aboriginal Land Rights Act* and comprising key stakeholders in the administration of the *Aboriginal Land Rights Act*, including the Chief Executive Officer of the NSW Aboriginal Land Council, two community members, the Director General of the Department of Primary Industries, and the Group Manager, Social Justice, Aboriginal Affairs.

The Working Group Report was tabled before the NSW Parliament on 22 November 2012. It contained a list of targeted amendments to the *Aboriginal Land Rights Act* and a set of proposals for public consultation on more significant reform of the *Aboriginal Land Rights Act*.

The key aim of the Review was to better enable the Aboriginal community, through the elected Aboriginal Land Council system, to contribute to and participate in the NSW economy while maintaining accountability.

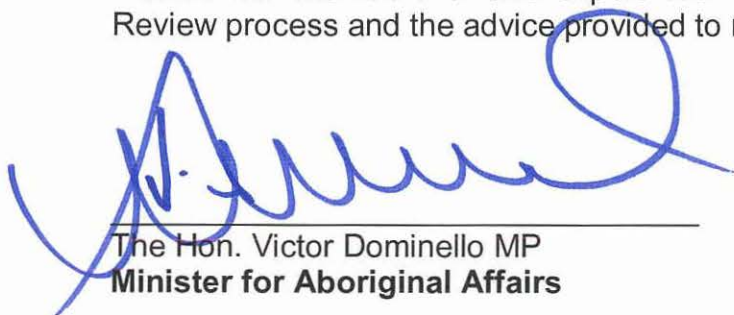
The Review achieved two major outcomes: first, a Bill of targeted legislative amendments to the *Aboriginal Land Rights Act* (the 'targeted amendments') was passed by NSW Parliament, unamended, on 11 September 2013. The resultant *Aboriginal Land Rights Amendment Act 2013* commenced operation on 18 September 2013, except for two items which commenced on 1 January 2014.

The targeted amendments have cut onerous 'red tape' and improved the efficiency and effectiveness of the operation of the *Aboriginal Land Rights Act*, particularly in relation to the day-to-day operation of Aboriginal Land Councils.

Secondly, the Review identified areas for further structural amendment to critical areas of the *Aboriginal Land Rights Act* which will be contained in a Bill of amendments based on the outcomes of public consultations held in August and September 2013.

Implementation of the further significant reform areas identified by the Review will be consistent with other significant initiatives of the NSW Government which impact on Aboriginal communities. These include *OCHRE* - the NSW Government's Plan for Aboriginal affairs, and proposals for reform of the statutory provisions for protection of Aboriginal cultural heritage.

I thank the members of this expert Working Group for their commitment in the Review process and the advice provided to me.



The Hon. Victor Dominello MP
Minister for Aboriginal Affairs

Date 21-10-14

2 REVIEW REQUIREMENTS

Section 252A of the *Aboriginal Land Rights Act* requires the Minister for Aboriginal Affairs (the **Minister**) to review the *Aboriginal Land Rights Act* every five years to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

A review of the *Aboriginal Land Rights Act* was due as soon as possible on or after 4 December 2011.

On 5 December 2011, the Minister announced a review of the *Aboriginal Land Rights Act* to be conducted in 2012.

The process of the Review of the *Aboriginal Land Rights Act* has comprised four stages:

- 1) The establishment of an expert Working Group to make recommendations and assist the Minister in reviewing the aims and objectives of the *Aboriginal Land Rights Act*.
- 2) The enactment of a suite of targeted administrative amendments (the 'targeted amendments') to improve the efficiency and effectiveness of the *Aboriginal Land Rights Act*.
- 3) Statewide public consultations in August and September 2013 on more significant proposals to amend the *Aboriginal Land Rights Act*.
- 4) The tabling of the Statutory Review Report in both Houses of Parliament.

On 22 November 2012, the Minister tabled the report of the Working Group in the NSW Parliament, as the completion of the first phase of the Minister's Statutory Review of the Act. It should be noted that the Working Group's Report did not constitute the Minister's Statutory Review of the Act. This report constitutes the Minister's statutory report to the NSW Parliament.

3 POLICY OBJECTIVES OF THE ACT

The policy objectives of the *Aboriginal Land Rights Act* are captured in sections 3, 51 and 105 of the Act.

Section 3 of the *Aboriginal Land Rights Act* sets out the purpose of the Act as follows:

- a) to provide land rights for Aboriginal persons in New South Wales,
- b) to provide for representative Aboriginal Land Councils in New South Wales,
- c) to vest land in those Councils,
- d) to provide for the acquisition of land, and the management of land and other assets and investments, by or for those Councils and the allocation of funds to and by those Councils,
- e) to provide for the provision of community benefit schemes by or on behalf of those Councils.

Section 51 provides that the objects of Local Aboriginal Land Councils are to improve, protect and foster the best interests of Aboriginal persons within NSW.

Section 105 states that the objects of the NSW Aboriginal Land Council are to:

- a) to improve, protect and foster the best interests of Aboriginal persons within NSW; and
- b) to relieve poverty, sickness, suffering, distress, misfortune, destitution and helplessness of Aboriginal people within NSW.

Importantly the purpose and objectives of the *Aboriginal Land Rights Act* are underpinned by the preamble which reads as follows:

An Act to repeal the Aborigines Act 1969 and to make provisions with respect to the land rights of Aborigines, including provisions for or with respect to the constitution of Aboriginal Land Councils, the vesting of land in those Councils, the acquisition of land by or for those Councils and the allocations of funds to and by those Councils; to amend certain other Acts; and to make provisions for certain other purposes.

WHEREAS:

(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.

4 REVIEW PROCESS

4.1 Establishment of Working Group

On 5 December 2011, the Minister established an expert Working Group, comprising of key stakeholders in the administration of the *Aboriginal Land Rights Act* to provide advice and recommendations to better the operation of the *Aboriginal Land Rights Act*.

The members of the Working Group represented a diversity of views held by Aboriginal Land Councils and government. The Working Group included the Director-General of the Department of Primary Industries, the Department that is responsible for investigating land claims prior to their determination.

The formal Terms of Reference for the Working Group were to:

1. *Inquire into and make general recommendations as to whether the aims and objectives of the NSW Aboriginal Land Rights Act 1983 (the Aboriginal Land Rights Act) require expansion or change of the Act in light of developments since 1983.*
2. *Inquire into and make recommendations as to whether administrative and operational provisions within the Aboriginal Land Rights Act require any change to facilitate and improve the efficacy of the Act.*
3. *Report all findings and recommendations by 1 November 2012 incorporating public responses following a period of public consultation.*

The Working Group comprised of the following members:

- Mr Stephen Wright, Registrar of the *Aboriginal Land Rights Act* (the Registrar) (Chair)
- Mr Geoff Scott, CEO of the NSW Aboriginal Land Council
- Mr Sean Gordon, CEO of Darkinjung Aboriginal Land Council
- Ms Stacey Meredith, a prominent Aboriginal woman from Central Western NSW and member of the Griffith Local Aboriginal Land Council
- Dr Richard Shel Drake, Director General of the Department of Primary Industries
- Ms Kristy Masella, Group Manager, Social Justice, Aboriginal Affairs.

4.2 Work of the Working Group

The Working Group met approximately seven times for a period of two days each and was supported by a Technical Working Group comprising officers from Aboriginal Affairs, the Office of the Registrar, the Department of Primary Industries, and the NSW Aboriginal Land Council.

Further to the Terms of Reference the Minister set an agenda for attention that included:

- Housing management
- Land claims
- Regulatory framework and roles
- Incentive modelling
- Ways to improve general efficacy

On 12 October 2012, the Chair of the Working Group submitted a report to the Minister that provided a range of recommendations to improve the operation of the *Aboriginal Land Rights Act* for the benefit of the Aboriginal people of NSW. The duties of the Working Group concluded on 12 October 2012.

4.3 Targeted Amendments

A range of targeted administrative amendments recommended by the Working Group were passed by the NSW Parliament on 11 September 2013, and are the first outcomes of the Statutory Review. The amendments commenced operation on 18 September 2013, except for two amendments to section 63 and the repeal of sections 162 (3) and 163 of the *Aboriginal Land Rights Act* which will commence on 1 January 2014.

The amendments will greatly enhance the day-to-day operation of Aboriginal Land Councils through:

1. **Better Administrative Efficiency** - A range of changes to the operational and administrative functions of Aboriginal Land Councils that will augment the administrative efficiency of the land rights network, such as giving the NSW Aboriginal Land Council greater flexibility in the oversight and funding of Aboriginal Land Councils, and removing financially burdensome directives to Aboriginal Land Councils on how they must advertise vacancies.
2. **Improved Governance** - A range of changes which will facilitate better governance of land councils, such as streamlining delegation powers to ease the day to day management and operations of Aboriginal Land Councils.

The amendments also included a number of minor corrections to inconsistencies and inaccuracies that had been inadvertently created or not relevantly updated.

4.4 Consultation Process

The second phase of the Statutory Review included public consultation on a summarised version of the proposals included in the Working Group Report and further proposals developed by Aboriginal Affairs with the NSW Aboriginal Land Council at the request of the Minister for Aboriginal Affairs. The broader reforms to the *Aboriginal Land Rights Act* relate to land claims, housing management and the regulatory framework.

Nine public forums were held across NSW from 12 August 2013 to 5 September 2013. The consultations were conducted by the Registrar, on the Minister's behalf, and independently facilitated.

The consultation process included an invitation for written submissions. A total of 21 submissions were received, and are categorised in the table below:

Type	No.
LALC/s	8
Local Government	1
Government Department	3
Statutory Body/Authority	2
Business/Corporation	1
Aboriginal Individual	3
Other	3
TOTAL	21

4.5 2014 Amendments

The implementation of the Review outcomes involves the development of a Bill of further amendments to the *Aboriginal Land Rights Act*.

5 PRIORITY REFORM

5.1 Housing Management

The recommendations in relation to housing management were overwhelmingly supported by key stakeholders including Local Aboriginal Land Councils, the Aboriginal Housing Office (AHO) and the Tenants Union of NSW. The proposed changes to housing management will be incorporated into the Bill of amendments.

The proposed amendments will change the housing compliance schemes for Aboriginal Land Councils. Currently there are two separate compliance schemes for the provision of social housing – approval as a social housing scheme under the *Aboriginal Land Rights Act*, in accordance with NSWALC’s Social Housing Approval Provider Evaluation (**SHAPE**) guidelines, and approval as an Aboriginal Housing Provider under the *Aboriginal Housing Act 1998*, by meeting the requirements of the AHO via its performance assessment pathways.

The recommendation is to remove the separate requirement for approval under the *Aboriginal Land Rights Act* (SHAPE) so that approval under AHO’s performance assessment pathways will provide automatic approval for social housing management under the *Aboriginal Land Rights Act*. This will remove the need to comply with two separate schemes and enable streamlined access to the financial assistance for housing maintenance available under the AHO’s performance assessment pathways.

To ensure the sustainable management of Aboriginal Land Council social housing schemes, the recommendation includes that the failure to obtain registration with the AHO or to externalise housing management by head leasing to an approved provider within a certain time, could trigger the appointment of an administrator. This will ensure the implementation of one of these alternative measures for stable housing management. Under the recommendation, the inability of the administrator to do so within a certain time is also a ground for amalgamation or dissolution.

5.2 Ways to improve the determination of Aboriginal Land Claims

The Review identified the need to improve the process surrounding the making, processing and determination of land claims for all stakeholders. The Working Group made a number of administrative and legislative reform recommendations targeted at:

- Resolving issues in relation to partially determined claims
- Resolving matters regarding claims that are lodged over land that is not claimable
- Providing for the granting of land claims with conditions and agreements
- Resolving issues in regard to sequential land claims on previous determined lands

A number of the legislative reform recommendations will be included in the Bill of further amendments to the *Aboriginal Land Rights Act*.

The Review also identified the need to improve understanding of the land claims determination process among all stakeholders involved in the process. This will assist in reducing time delays that occur as a result of misunderstandings by the lodging parties and agencies and other stakeholders with potential interests in the land concerned.

5.3 Regulatory Framework and Roles

In August 2012, a roundtable of the key regulatory players in the administration of the *Aboriginal Land Rights Act* was held. The participants included:

- The Minister for Aboriginal Affairs (as represented by Aboriginal Affairs)
- The New South Wales Aboriginal Land Council (noting that it is both regulatory and regulated)
- The NSW Ombudsman
- The Independent Commission Against Corruption
- The NSW Audit Office
- The Registrar
- Aboriginal Land Council Pecuniary Interest and Disciplinary Tribunal (now incorporated into the NSW Civil and Administrative Tribunal)

The discussions were at high level and no conclusive recommendations were made. Consequently, in 2013 the Minister instructed Aboriginal Affairs to collaborate with NSWALC to build on the roundtable discussions and develop specific regulatory reform proposals to be put to public consultation. The proposals regarding the reform to the regulatory framework and roles aim to:

- Lessen onerous reporting requirements for Aboriginal Land Councils
- Increase local decision making
- Strengthen the powers to enforce compliance with the *Aboriginal Land Rights Act*
- Streamline procedural requirements while protecting members' rights
- Provide for alternative ways to help poorly performing Aboriginal Land Councils to meet their compliance obligations

The regulatory framework, including who should perform regulatory roles under the *Aboriginal Land Rights Act*, was widely discussed at the consultation forums and featured strongly in the submissions. There is a considered understanding of the need for regulation across the *Aboriginal Land Rights Act* network and its key stakeholders, however, the consultation participants expressed a desire for clearer and more consistent regulation.

5.4 Business Enterprises

The *Aboriginal Land Rights Act* is a unique Act of Parliament that provides a vehicle for the Aboriginal people of NSW to pursue their social, economic and cultural aspirations. In particular, the *Aboriginal Land Rights Act*, and the land asset base it has facilitated, provides immense potential for Aboriginal Land Councils and their communities to be key players in the NSW economy. Many Aboriginal Land Councils have amassed significant land assets that can be used to build their communities.

However, the *Aboriginal Land Rights Act* is presently unclear on how Aboriginal Land Councils may facilitate business enterprises. Facilitating the operation of business within the *Aboriginal Land Rights Act* is critical to strengthening the role of Aboriginal Land Councils as drivers of economic development. Proposals on a clearer regime to allow Aboriginal Land Councils to establish and operate business enterprises were put to the Aboriginal community and key stakeholders. There is overwhelming support for the ability for Aboriginal Land Councils to undertake business enterprises, equally underpinned by a need for caution so that Aboriginal land and assets are not lost. The development of provisions to clarify how Aboriginal Land Councils may undertake business enterprises will need to ensure that the assets of Councils are not put at undue risk, and that members' rights under the *Aboriginal Land Rights Act* are not compromised.

The development of new provisions in the *Aboriginal Land Rights Act* clarifying the investment powers of Aboriginal Land Councils, their power to establish and operate business enterprises, and other regulatory reforms including strengthened accountability and enforcement provisions has occurred in consultation with NSWALC and relevant NSW Government agencies.

6 CONCLUSION

The overarching aim of the Review has been to enhance the opportunity for Aboriginal Land Councils to achieve their cultural, social and economic aims and aspirations. The NSW Government will now consider a range of further significant amendments to improve the land claims process, housing management, and the regulatory framework of the *Aboriginal Land Rights Act*. It is expected that a Bill of these further reforms will be introduced in the second half of 2014.