

1 JULY 2007 - CHANGES TO THE NSW ABORIGINAL LAND RIGHTS ACT 1983

ELECTION OF A NEW BOARD

LALC members **must elect a new Board within three months** (by 30 Sept 2007). The Board will:

- direct and control the affairs of the LALC in accordance with the ALR Act, the ALR Regulation and the LALC's community, land and business plan;
- facilitate communication between the LALC and NSWALC;
- have **5-10 members** depending on the size of the LALC membership;
- elect a **Chair and Deputy Chair** at the first Board meeting;
- within six months of LALC Board elections, **receive training** on LALC operations provided by NSWALC covering topics such as:
 - governance principles;
 - rules of LALCs;
 - role and functions of Board members and the Chief Executive Officer (see below);
 - role and functions of NSWALC and its CEO;
 - provisions in the Act and Regulation relating to non-compliance.
- be elected at every second annual meeting.

Board elections will be conducted on a first past the post basis. Current elected officials will remain in place until such time that the new Board is elected, however failure to elect a Board within three months can result in a LALC being dissolved.

REFER TO:
ALRA Sections

- 61-72
- 91(1)(d)
- 176

Schedule 3

- Part 2

COMMUNITY, LAND AND BUSINESS PLANS

All LALCs must develop and implement **community, land and business plans**, which must be approved by NSWALC **within 18 months** (by 31 Dec 2008). Matters which must be included in these plans are set out in the Act and Regulation. In summary, plans must:

- be developed in a **consultative** manner;
- contain information on the LALC's strategy and objectives for the acquisition, management and development of land and other assets;
- cover a maximum period of five years;
- be **approved by LALC members**.

LALCs will be supported and guided by NSWALC through the development of policies relating to these plans and ongoing provision of advice.

Under the amendments, NSWALC must also develop and implement a community, land and business plan.

REFER TO:
ALRA Sections

- 52(5)
- 82-86
- 137A-137D

Schedule 4

- 47

COMMUNITY BENEFITS SCHEMES

LALCs may provide benefits to their community under **community benefits schemes**. Any scheme must:

- form part of the community, land and business plan;
- demonstrate that it is **fair and equitable** and **administered in a responsible and transparent** way;
- demonstrate that it will not prevent the Council from being able to meet its debts as and when they fall due;
- be **approved by LALC members** and **by NSWALC**.

Examples of community benefits schemes could include social housing (see following section); education, training and scholarships; funeral funds; cultural activities; child care; aged care.

**REFER TO:
ALRA Sections**

- 52A-C
- 83
- 108-109
- 111

Schedule 4

- 46

SOCIAL HOUSING SCHEMES

Social housing schemes are classified as community benefits schemes which relate to the **construction, upgrading and extension of accommodation**. The same conditions for approval as above therefore apply. As part of their community, land and business plans, LALCs must **gain approval to operate existing and new proposed housing schemes** within 36 months (by 31 Jun 2010)¹.

**REFER TO:
ALRA Sections**

- 52A-B
- 108-109

Schedule 4

- 45

NSWALC must not approve social housing schemes unless it is satisfied that:

- the income from the existing or proposed scheme will be sufficient to meet the expenses of the scheme, including maintenance requirements;
- it has considered the likely impact of the scheme on the financial situation of the LALC.

NSWALC may approve an existing social housing scheme on certain conditions e.g. provided that another party manages or assists in managing the scheme. If a LALC fails to obtain approval within 18 months NSWALC may transfer the management of operations to another body or agency.

Further information and guidance on social housing schemes can be obtained from NSWALC.

APPOINTMENT OF A CHIEF EXECUTIVE OFFICER (CEO)

Day to day management functions of the LALC will now be the responsibility of a **CEO** to be appointed by the new Board. CEOs must be appointed within **six months** (by 31 Dec 2007). Until such time that a CEO is formally appointed, the current Coordinator or another designated staff member will perform the duties of this new role.

**Refer to:
ALRA Sections**

- 78A-C

IMPORTANT NEW MEMBERSHIP ISSUES

A LALC member will **lose their right to vote** in Board elections if they have not attended at least two meetings of the LALC in the preceding 12 months. This means accurate records of meetings, including records of voting members' attendance, will need to be kept from 1 July.

**Refer to:
ALRA Sections**

- 55

¹ This date incorporates an amendment to Clause 45 of Schedule 4 which took effect on 1 July 2008.

NSWALC ASSISTANCE TO LALCS

NSWALC must arrange **training for LALC Board members** on issues related to the operation of LALCs, the Act and Regulation within six months of LALC Boards being elected.

**REFER TO:
ALRA Sections**

- 65
- 107
- 113-114

To assist LALCs to carry out their functions, NSWALC may develop **policies** around topics such as:

- community, land and business plans;
- land dealings;
- business enterprises;
- provision of training to staff, Board members and councillors;
- community benefits schemes;
- financial and reporting requirements;
- fees for assessments by LALCs.

NSWALC must refer policies relating to the above topics to **LALCs for comment**, consider any comments within 30 days of the referral, and then submit them to the Minister for approval. Once approved, policies must be made **publicly available** and cannot be changed without going through the same process. This will enhance transparency and consistency in dealings between LALCs and NSWALC.

INCREASED POWERS OF THE MINISTER FOR ABORIGINAL AFFAIRS

The Minister has increased powers under the amendments. These powers include measures for assisting LALCs which are functioning poorly or not complying with the requirements of the ALRA (e.g. by appointing advisors, see below). These powers of early intervention in the affairs of LALCs are important measures which can avoid the costly appointment of administrators.

The Minister's powers for dissolving a LALC are much clearer. They form part of the NSW Government's stated aim of increasing efficiency in the land council network. They are tools for ensuring that LALCs use their network funding efficiently and effectively and aren't, through poor administration, a drain on the resources of the wider land council network.

A summary of the Minister's increased powers under the amendments, including where to find more information on these, is below.

The Minister may make an order to **dissolve a LALC** if satisfied that the LALC:

- has less than 50 voting members;
- has less than 3% of the potential members who reside in its area;
- has a membership in significant decline;
- is unable to elect the required number of Board members for three months;
- cannot pay its debts as and when they fall due;
- has had qualified audits or has failed to provide complete financial statements for three out of the last five years;
- has had an administrator appointed for three out of the last five years; **or**
- has been found by an investigator or administrator to have ceased to function.

**REFER TO:
ALRA Sections**

- 87
- 91

The Minister may also change the name or boundaries of LALCs, or amalgamate LALCs, but only with the consent of the LALCs concerned.

**REFER TO:
ALRA Sections**

- 222
- 231

The Minister now has **power to appoint an administrator to a LALC at any time** if the Minister is of the opinion that funds or other property of a LALC “have not been properly applied or managed”. The Minister may now extend the term of office of an administrator on reduced functions. This would allow them to stay on and provide assistance to a newly elected Board for example, thereby enabling a smooth transition from administration.

The Minister can **appoint an advisor** to a LALC Board if the Minister is of the opinion that the LALC is “in danger of failing”. Advisors would be appointed for a specified term and would have the following functions:

- to **advise and assist** the LALC Board in carrying out its functions;
- to **report on operations** of the LALC to NSWALC and the Minister as requested.

This is to enable a more flexible and cost effective method of resolving problems and where possible to avoid the appointment of administrators.

**REFER TO:
ALRA Section**

- 234

CHANGES IN FUNCTIONS AND POWERS OF THE REGISTRAR

Under the amendments, the Registrar has responsibility for a number of functions relating to LALC **membership**, including the upkeep of the consolidated roll of all LALC members. LALCs should therefore notify the Registrar about any changes to membership rolls from now on.

**REFER TO:
ALRA Sections**

- 53-60

**REFER TO:
ALRA Sections**

- 165
- 181A-O

The Registrar now has increased powers to **investigate and report on complaints** relating to misbehaviour, and in this regard is responsible for collecting and presenting information to the newly constituted Pecuniary Interest and Disciplinary Tribunal. Investigations into “misbehaviour matters” may result in action being taken against an individual, including suspension.

Persons may appeal against suspension to the above Tribunal within 28 days. The Registrar is required to provide reasons in writing for any actions taken and provide this to all relevant parties.

**REFER TO:
ALRA Sections**

- 216
- 234

Under the amendments, the Registrar may, in addition to NSWALC, make a recommendation to the Minister to appoint an investigator to investigate the affairs of a LALC. The Registrar may also, in addition to NSWALC, make a recommendation to the Minister to appoint an advisor to the Board of a LALC.

The Registrar has power to determine that the grounds for disqualification from office of LALC Board members or CEO, or NSWALC councillors or CEO should not apply in certain cases.

**REFER TO:
ALRA Sections**

- 66, 78B
- 132, 138A

**REFER TO:
ALRA Sections**

- 165A

The Registrar now has broader powers to **delegate** the exercise of any of his functions to other persons.

The Registrar has increased power to **request information and records** from LALCs at any time, to which the Chairperson, or any other person who has possession or control over the LALC record, must comply.

**REFER TO:
ALRA Sections**

- 221A

In his capacity as returning officer, the Registrar will shortly be in contact with all LALCs regarding the election of LALC Boards.