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# fact sheet

NEW SOUTH WALES ABORIGINAL LAND COUNCIL

## Amendments to the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*

Under amendments to the ALRA, a new system of certification has been introduced for the registration of land dealings made by Local Aboriginal Land Councils (**LALCs**). The system revolves around the use of two different certificates that the New South Wales Aboriginal Land Council (**NSWALC**) will issue to the LALC concerned, if the requirements under the ALRA have been complied with.

### The two certificate process

The new certification process is aimed at enhancing security and certainty surrounding land dealing transactions and preventing the registration of dealings that have not been approved by NSWALC.

#### Dealing approval certificates

Dealing approval certificates are certificates in the prescribed form signed by the CEO of NSWALC that certify the approval of the land dealing. For LALCs dealing in land, the certificate is evidence that the dealing has been approved by NSWALC. For NSWALC land dealings, the certificate is evidence that the dealing complies with section 42D of the ALRA.

Dealing approval certificates are issued within 14 days of approval of a land dealing application to the relevant LALC to enable them to enter into the dealing. For example a dealing approval certificate would be issued for an approved contract of sale that is subject to certain conditions. The dealing approval certificate must set out any conditions the approval is subject to. The dealing approval certificate can then be relied on as conclusive evidence of NSWALC's consent to that land dealing.

#### Registration approval certificates

Registration approval certificates are certificates in the prescribed form, signed by the CEO of NSWALC, issued for a registrable instrument relating to land held by an LALC that certify:

- the registration of the instrument, under the *Real Property Act 1900*, is authorised under the ALRA; or
- the registration of the instrument, under Division 3 of Part 23 of the *Conveyancing Act 1919*, is authorised under the ALRA; or
- the making of a recording in respect of the instrument in the Register or the General Register of Deeds is authorised under the ALRA.

*Note: the content of this fact sheet is intended for information purposes only. It is not intended as advice and should not be relied upon as advice. All parties should seek independent advice that is suited to their own specific circumstances.*

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For LALC land dealings the registration approval certificate is evidence that:

- the instrument is a registrable instrument that relates to a land dealing by a LALC that has been approved by NSWALC;
- any conditions placed on the approval by NSWALC have been met; and
- any community development levy payable in respect of the land dealing has been paid.

For NSWALC dealings the registration approval certificate is evidence the instrument is a registrable instrument relating to a land dealing by NSWALC that complies with Division 4 of the ALRA.

## **What is the effect of the two certificate system?**

### **Dealing approval certificates**

A LALC cannot enter into a valid land dealing without a dealing approval certificate. This is because the dealing approval certificate is conclusive evidence that NSWALC has given approval for the land dealing. Without this certificate, any land dealing entered into will be unenforceable against the LALC and the LALC will not be liable for any damages in respect to the unenforceable agreement.

### **Registration approval certificates**

The amendments specifically state that the Registrar cannot register a registrable instrument in relation to land owned by a LALC unless the registrable instrument is accompanied by a registration approval certificate. Without this certificate any registration or recording on the register has no effect, and does not create or pass any interest in land under the *Real Property Act 1900*. The effect of this amendment is that a new exception to indefeasibility of title is created. For more information on this see the indefeasibility Fact Sheet.

The cumulative effect of the two certificate process is that it will be very difficult for anyone to engage in unauthorised land dealings with regard to LALC land.