



fact sheet

NEW SOUTH WALES ABORIGINAL LAND COUNCIL

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

Under amendments to the land dealings provisions in the ALRA, a new approval process has been introduced that will apply to Local Aboriginal Land Councils (**LALCs**) wishing to engage in land dealings. In addition, a new system of certification has been introduced for the registration of land dealings made by Local Aboriginal Land Councils (**LALC**). 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, when it is satisfied the requirements in the ALRA have been met.

The effect of this new system of certification is that land dealings registered with the Registrar that do not comply with the ALRA will have no effect, despite their registration. This creates a new exception to the doctrine of indefeasibility of title.

What is indefeasibility of title?

Indefeasibility of title is a legal concept that applies to land registered under a Torrens Title system. New South Wales uses the Torrens system of registration. Under the *Real Property Act 1900*, any interest in land is required to be registered with the Land Titles Office. The legal recognition of an interest in land stems from that registration of title.

Under the Torrens system once an interest in land is registered on the Real Property register, the owner of that interest holds it free from all other interests (except those that are also registered on the register). This is referred to as indefeasibility of title, because the owner of the registered title cannot have their interest defeated by an unregistered interest even if that unregistered interest was created before the owner's interest, subject to a few legal exceptions,

Currently, land dealings that are registered with the Registrar obtain indefeasibility of title as soon as they are registered, even if the land dealing was in breach of the ALRA. This means the person who is the registered title holder will be able to maintain title to the land, and deal with it as they wish, regardless of whether or not the land was obtained in breach of the ALRA. The new provisions, which require NSWALC to issue two certificates (a dealing approval certificate and a registration approval certificate) to an LALC before a land dealing can be registered, will change the effect of this.

The new exception to indefeasibility

The amendments provide that a dealing that is registered without a valid registration approval certificate will have no effect. Generally, once an interest in land is registered, the owner takes it free from any other interest and the title is indefeasible. However, the provision that a dealing registered without a valid registration approval certificate has no effect creates an exception to the general rule. This is what is referred to as the new exception to indefeasibility of title.

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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