

"Land in the State of New South Wales was traditionally owned and occupied by Aborigines. Land is of spiritual, social, cultural and economic importance to Aborigines. It is fitting to acknowledge the importance which land has to Aborigines and the need of Aborigines for land. The Government has accepted that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation."

fact sheet



New South Wales
Aboriginal Land Council
www.alc.org.au

Land Claims

Introduction

The New South Wales *Aboriginal Land Rights Act (1983)* gives the New South Wales Aboriginal Land Council (NSWALC) the mandate to provide for the development of Land Rights for Aboriginal people in NSW.

A self funding Statutory Authority, NSWALC is committed to the ongoing provision of high quality support and advice to the Local Aboriginal Land Council network and empowerment of Aboriginal communities.

One of the principal functions of NSWALC under Legislation is to make claims for Crown land in NSW, either on its own behalf or on behalf of Local Aboriginal Land Councils.

This legislation, and this process, has enjoyed bi-partisan support in the State Parliament ever since the ALRA was first enacted.

The making of a claim, and the granting of land, is now the sole remaining form of compensation for dispossession available under the ALRA.

As at 30 June 2008, there has been a total of 81,637 hectares of land granted since the enactment of the ALRA in 1983, which is less than one per cent of the total land mass in NSW.

What land can be claimed?

In NSW, land claims can only be granted over Crown land. Section 36 of the *Aboriginal Land Rights Act 1983* (ALRA) provides that any Aboriginal Land Council in NSW constituted under the Act can make claims for Crown land in NSW.

Section 36 (1) provides that Crown land is claimable land if the land is:

- able to be lawfully sold or leased, or is reserved or dedicated for any purpose, under the Crown Lands Consolidation Act 1913 or the Western Lands Act 1901;
- are not lawfully used or occupied;
- do not comprise lands, in the opinion of a Crown Lands Minister, are needed or are likely to be needed as residential lands;
- are not needed, or likely to be needed, for an essential public purpose;
- do not comprise lands that are the subject of an application for a determination of native title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the Commonwealth Native Title Act, and
- do not comprise lands that are subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act) (other than an approved determination that no native title exists in the lands).

Who can make a land claim?

Land claims can only be lodged by Aboriginal Land Councils in NSW that have been established under the ALRA and cannot be made by individuals or groups.

What is land that cannot be claimed?

Although the Act provides an outline of what is 'claimable' Crown land, there is Crown land that specifically cannot be claimed.

For example:

- Native title claims - Land that is subject to a registered Native title claim is not able to be lawfully claimed until the native title claim has been determined, as provided by section 36 of the ALRA.
- National Parks or State Forests;
- freehold title, held by individual owners, companies or local councils.

Land Claims after Land Council Lodgment.

Land Claims are lodged with the Office of the Registrar of the ALRA. The date of claim is important when determining both whether the land is "lawfully used or occupied" and whether it can be "lawfully sold or leased" from the point at which it is lodged with the Registrar.

The Registrar reviews the land claim with reference to the description and information provided by the Land Council to determine whether or not there is enough information to lodge the registered claim with the Department of Lands.

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Department of Lands.

The Aboriginal Land Claims Unit at the NSW Department of Lands accepts the claim from the Registrar. The claim is then forwarded to the respective Department of Lands office where the claim is assessed.

The regional Department of Lands office responsible for the claim is to then undertake its own investigation into the particular parcel of land and provide a report to Aboriginal Land Claims Unit of the Department of Lands. The report provides the basis for a recommendation to the Minister.

Minister's Determination

The Minister for Lands determines whether land is claimable Crown land under the ALRA. If the Minister determines that the whole or part of the claimed land is not claimable, an Aboriginal Land Council has a legal right to appeal to the Land and Environment Court and the Court will then determine afresh whether the land is claimable.

If the land is found to be claimable the land will be surveyed and transferred in fee simple to the Aboriginal Land Council in which the land is geographically situated.

Land that has been granted and vested in an Aboriginal Land Council cannot be resumed or compulsorily acquired except by a special Act of Parliament.

Number of Land Claims.

As at 30 June 2008, there have been 16,083 Land Claims lodged since the enactment of the ALRA with only a total of 2,304 (14%) land claims granted with 4,276 land claims having been refused (27%).

There has been a total of 81,637 hectares of land granted since the enactment of the ALRA in 1983, which is less than one per cent of the total land mass in New South Wales.

9,107 land claims await a determination from the Minister for Lands. 358 of these claims were lodged before the year 2000.