



# Circular

Division: Land and Property Information  
No: 2010/02  
Date: March 2010

## **Land Dealings by Aboriginal Land Councils – Amendments to the *Aboriginal Land Rights Act 1983***

The Land and Property Management Authority is officially registered in the Australian Business Register and also registered for GST. Its ABN is 33 537 762 019.

Amendments to the *Aboriginal Land Rights Act 1983* will commence on 31 March 2010. The amendments are substantial and establish a new regime for land dealings by Aboriginal Land Councils. They are set out in the *Aboriginal Land Rights Amendment Act 2009*.

The amendments should be read carefully. All dealings with land by Aboriginal Land Councils must now be approved by the New South Wales Aboriginal Land Council (NSWALC) which can give two kinds of approval certificate:

1. a dealing approval certificate (DAC) which will be required before an Aboriginal Land Council can deal with land, or lodge a development with the local council;
2. a registration approval certificate (RAC) which will be required before an Aboriginal Land Council can lodge an instrument for registration with LPI.

The provisions in the Act set out the procedures which must be followed to obtain the required approvals for land dealings.

Further information about the changes is available from the Department of Aboriginal Affairs website [www.daa.nsw.gov.au](http://www.daa.nsw.gov.au) and from the New South Wales Aboriginal Land Council website [www.alc.org.au](http://www.alc.org.au).

### **Which Aboriginal Land Councils are affected by the amendments?**

The amendments apply to all Local Aboriginal Land Councils and to the NSWALC.

### **What are the changes as they affect the recording and registration of instruments lodged with LPI?**

The most important changes as they relate to dealings with land are set out in the new Division 4 of Part 2 of the Act which replaces the previous Division 4.

All “registrable instruments” lodged with LPI giving effect to a “land dealing” must be accompanied by either a RAC or a written statement from the Chief Executive Officer of the New South Wales Aboriginal Land Council that a RAC is not required.

It is important to note the specific definitions of the terms “registrable instrument”, “land dealing” and “deal with land” as set out in the Act. They are attached to this Circular.

There will be two forms of RAC – one that will be used for land vested in a Local Aboriginal Land Council and one that will be used for land vested in the NSWALC. Both forms of the RAC are prescribed forms which will be set out in the regulations to the Act.

#### **Are there any exceptions?**

There are some transactions which can be registered without the need for a RAC or a written statement from the Chief Executive Officer of the New South Wales Aboriginal Land Council that a RAC is not required. These are specified below.

- Caveats where the caveator is an Aboriginal Land Council, or where a caveat is lodged affecting land vested in an Aboriginal Land Council
- Withdrawals of caveats and applications for lapsing of caveats
- Orders of Court
- A Transfer where the Aboriginal Land Council is the purchaser (transferee) of land. In this circumstance, the Transfer must be accompanied by a valuation to establish that the purchase price for the land was not more than 5% above the assessed market value, or alternatively, written approval by the NSWALC to the purchase
- A dealing by an Aboriginal Land Council as mortgagee or lessee (and the Aboriginal Land Council is not the registered proprietor of the land)
- Applications for a replacement certificate of title by an Aboriginal Land Council
- A discharge of mortgage where the Aboriginal Land Council is the registered proprietor of the land
- A surrender of lease or determination of lease where the Aboriginal Land Council is the registered proprietor of the land
- A change of name of an Aboriginal Land Council
- A release of restriction on the use of land where the land burdened is vested in an Aboriginal Land Council
- A release of an obsolete restrictive covenant where the land burdened is vested in an Aboriginal Land Council
- The cancellation of an easement where the land burdened is vested in an Aboriginal Land Council
- A discharge of a charge affecting land where an Aboriginal Land Council is the registered proprietor.

#### **Can a Dealing Approval Certificate (DAC) accompany a registrable instrument rather than a Registration Approval Certificate (RAC)?**

No, for the purposes of registration or recording of a registrable instrument, only a RAC can satisfy LPI's requirements. The purpose of a DAC is unrelated to registration processes undertaken by LPI.

#### **Changes to notifications on Title**

Currently, pursuant to the Act, land held by an Aboriginal Land Council is subject to certain restrictions on dealings as well as provisions contained in a Memorandum recorded in the second schedule. These notifications will be updated to reflect the new provisions and the restrictions applying to land. When the Certificate of Title is next lodged in LPI, the new edition issued by LPI will record these modified notifications. In the interim, title searches can be conducted to check the notifications affecting titles from 31 March 2010.

### **Other important changes**

Section 42N of the Act provides for the registration of a **Land Dealing Approval Agreement**. These agreements impose obligations as to the use, development or management of, or dealings with, land vested in, or formerly vested in, an Aboriginal Land Council.

Agreements may be registered in the Register (by Request Form 11R) for land under the *Real Property Act 1900*, or for land not under the *Real Property Act*, in the General Register of Deeds.

Sections 42O and 42P of the Act relate to the lodgment of a **Registration Prohibition Notice**, which will have an effect similar to a caveat. The notice can be lodged by the NSWALC for land (or part of land) in respect of which a Land Dealing Approval Agreement has been entered into. The Registration Prohibition Notice prohibits the Registrar General, except with the written consent of the NSWALC, from registering or recording certain dealings affecting an estate or interest in that land.

### **Execution of dealings by Aboriginal Land Councils**

The amendments to the Act have not changed the manner in which Aboriginal Land Councils should execute dealings for registration by LPI.

### **Further information**

For further inquiries on related LPI procedures contact LPI Customer Services on T: 1300 052 637 or email [www.lpma.nsw.gov.au/lpi\\_enquiry](http://www.lpma.nsw.gov.au/lpi_enquiry).

The *Aboriginal Land Rights Amendment Act 2009* can be viewed on the NSW legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

Further information about the changes is available from the Department of Aboriginal Affairs website [www.daa.nsw.gov.au](http://www.daa.nsw.gov.au) and from the New South Wales Aboriginal Land Council website [www.alc.org.au](http://www.alc.org.au).

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## Definitions

**"registrable instrument"** means:

(a) an instrument (other than a caveat or registration prohibition notice) giving effect to or forming part of a land dealing (within the meaning of this Division) that is registrable or capable of being made registrable under the [Real Property Act 1900](#) or in respect of which a recording is required or permitted (under that or any other Act or Commonwealth Act) to be made in the Register maintained under that Act, or

(b) a plan that is required or permitted to be registered under Division 3 of Part 23 of the [Conveyancing Act 1919](#) and that is or gives effect to or forms part of a land dealing (within the meaning of this Division), or

(c) an instrument (other than a registration prohibition notice) giving effect to or forming part of a land dealing (within the meaning of this Division) that is registrable or in respect of which a recording is required or permitted to be made in the General Register of Deeds.

**"land dealing"** means an action in relation to land of a kind referred to in paragraphs (a) – (h) of the definition of **deal with land**

**"deal with land"** means:

(a) sell, exchange, lease, mortgage, dispose of, or otherwise create or pass a legal or equitable interest in, land, or

(b) grant an easement or covenant over land or release an easement or covenant benefiting land, or

(c) enter into a biobanking agreement relating to land under the [Threatened Species Conservation Act 1995](#) or a conservation agreement under the NPW Act, or

(d) enter into a wilderness protection agreement relating to land under the [Wilderness Act 1987](#), or

(e) enter into a property vegetation plan under the [Native Vegetation Act 2003](#), or

(f) subdivide or consolidate land so as to affect, or consent to a plan of subdivision or consolidation of land that affects, the interests of an Aboriginal Land Council in that land, or

(g) make a development application in relation to land, or

(h) any other action (including executing an instrument) relating to land that is prescribed by the regulations.

**Note:** In this Act, a reference to land includes any estate or interest in land, whether legal or equitable (see section 4 (1)).