

CHALK & BEHRENDT
LAWYERS & CONSULTANTS

CHALK & BEHRENDT PTY LTD
ACN 615 350 055
LEVEL 9
CURRENCY HOUSE
23 HUNTER STREET
SYDNEY NSW 2000
TEL: +61 2 9231 4544
FAX: +61 2 9231 4244

Our ref: 21330

20 July 2017

By Email: admin@knightsbridgenorthlawyers.com

Ms Despina Bakis
Solicitor
Knightsbridge North Lawyers Pty Ltd
Level 15, 9-13 Castlereagh Street
Sydney NSW 2000

Dear Ms Bakis,

Requests Pursuant to s 227 of the Aboriginal Land Rights Act 1983 (NSW)

We refer to the requests for information made by Mr Lawler to Richard Green, Debbie Dates and yourself (**the s 227 requests**) and your response dated 30 June 2017.

We do not propose to respond to all the numerous allegations and statements contained in your letter, many of which are irrelevant.

1. Documents already provided

At the outset it would appear from paragraph 26.2 of your response that you or your firm are or may be in possession or control of documents falling within the s 227 requests which have not been previously provided to the administrator. We refer specifically to your response in relation to:

- Items 1, 2 and 3, paras (b), (c) and (d);
- Items 4 and 5, paras (b) and (c); and
- Item 7.

This would appear to be contrary to your statements in paragraph 18.2.3 of your letter. Please confirm the position. It should be an easy matter for you to confirm if Mr Lawler has already been provided in the various Supreme Court Proceedings with all the documents falling within the scope of the requests.

2. Scope of section 227 requests

It appears from paragraph 18.2.3 of your response that you contend that the draft agreements and correspondence sought in items 1 to 3 of the s 227 requests, and items 6 and 7, are not within the scope of s 227.

00496687

This is incorrect. In this respect, we draw your attention to the following:

- (a) Clauses 3.1, 3.2(c), 3.2(e), 3.2(f), 3.2(h) and 3.2(i) of Mr Lawler's Instrument of Appointment confer a number of functions upon Mr Lawler which encompass investigating all of the matters identified in items 1 to 7 of the s 227 requests.
- (b) The definition of "records" in s 4(1) of the *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**) includes any "documents relating to arrangements to which an Aboriginal Land Council is a party". This broad language covers the draft agreements and correspondence sought in items 1 to 3, and the documents sought in item 6.
- (c) Section 227(1)(b), among other things, permits an administrator to require the provision of information in relation to the administrator's functions from the Chairperson or other person with possession or control of records of the council. This covers item 7 of the s 227 requests.

We reject your contention at paragraph 18.2.2 that because Ms Dates and Mr Green apparently provided documents to your firm that they no longer have possession or control of those documents. We note that you act for Ms Dates and Mr Green. Documents provided by a person to his or her solicitor for the purpose of litigation remain within the person's control.

In any event, your firm is in now in possession of those documents and, to the extent they are covered by the s 227 requests, is obliged to provide them to the administrator.

Finally, we reject the suggestion at paragraph 18.2.4 of your response that your firm's files are not "records" within s 227. We refer you to the definition of "records" in s 4(1) of the ALRA.

3. Validity of s 227 requests

We reject your various contentions that the s 227 requests are invalid.

Specifically, we reject your contention at paragraph 19 that s 227 does not override any lien asserted by your firm. We also reject your contention that the s 227 requests are in contempt of court (paragraphs 20 and 21), are unreasonable (paragraph 22) or involve "an extraneous use of power" (paragraph 23).

Finally, your suggestion that the Minister's appointment of Mr Lawler's as administrator was invalid (paragraph 24) is without foundation.

4. Request for reasons in relation to s 227 requests

Contrary to paragraph 27.4 of your response, Mr Lawler is not required to provide reasons for making the s 227 requests. There is no right to reasons at common law and neither r 59.9(1) of the *Uniform Civil Procedure Rules 2005* (NSW) nor s 62 of the *Civil and Administrative Tribunal Act 2013* (NSW) have any application.

Notwithstanding, Mr Lawler advises that the s 227 requests were made principally because it appeared to Mr Lawler that he was not in possession of all agreements apparently made between Awabakal LALC and the various parties identified in items 1 and 2 of the requests. The land council is entitled to have records relating to those agreements.

5. Trust Account

We again request that you provide a trust account statement for all money paid into trust on behalf of Awabakal LALC and for all disbursements out of the trust account, including a copy of all authorisations and documents attached to those authorisations for any payment or disbursement out of your trust account.

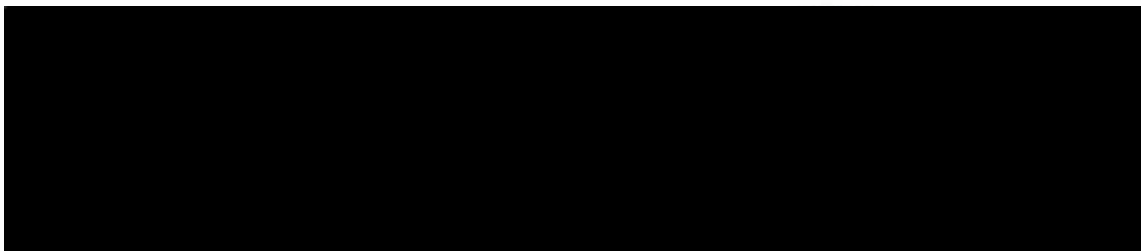
6. Conflict of interest

We also advise that Mr Lawler rejects the suggestion of a conflict of interest at paragraph 25 of your letter.

However, as you have raised the issue of conflict, we request you consider your position arising from the fact that:

- (a) On your verified pleadings, your firm acted as solicitor for the Awabakal LALC in relation to alleged transactions (i) between the land council and Gows Heat Pty Ltd and (ii) between the land council and various parties including Advantage Property Expert Syndications Limited and Able Consulting Pty Limited; and
- (b) Your firm now acts as solicitor for all three of the companies in litigation directly involving those transactions.

Mr Lawler does not consent, and has not acquiesced, to you acting in matters involving a real possibility of conflict between your duties to your new clients and the continuing duty of confidentiality you owe Awabakal LALC.

6. Clarification of settlement offer

Yours faithfully,
CHALK & BEHRENDT

Jason Behrendt
Director