



The Hon. Ben Franklin MLC

Minister for Aboriginal Affairs
Minister for the Arts
Minister for Regional Youth
Minister for Tourism

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20 FEB 2023

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Ref: A5649036

The Hon John Hatzistergos AM
Chief Commissioner
Independent Commission Against Corruption
Level 7, 255 Elizabeth Street
SYDNEY NSW 2000

Dear Chief Commissioner Hatzistergos

I am writing to you regarding your correspondence dated 21 October 2022, in which you anticipate receiving a Government response to two corruption prevention recommendations made to me in my capacity as Minister for Aboriginal Affairs, and one recommendation made to NSW Parliament, by the Independent Commission Against Corruption (ICAC) in its investigation report (the 'report') on dealings involving Awabakal Local Aboriginal Land Council (LALC) land.

There were 15 recommendations made in the report for the purpose of preventing corrupt conduct. In my correspondence to you dated 10 January 2023, I advised I would work in conjunction with the NSW Aboriginal Land Council (NSWALC), and the Registrar of the *Aboriginal Land Rights Act 1983* (the 'Registrar') to address the recommendations identified in your correspondence and provide a response to you by 20 February 2023. Please see responses to each of the three recommendations below.

Overall, the prevention of corrupt conduct is critical to realising the potential of the Aboriginal Land Rights network in NSW and the Aboriginal communities' aspirations they represent. The *Aboriginal Land Rights Act Amendment Act 2022* made administrative and operational changes to better existing structures and provisions to improve the administration of the *Aboriginal Land Rights Act 1983* (ALRA) and Aboriginal Land Councils. Many of these amendments address and promote good governance for LALCs and in turn provide safeguards against corrupt conduct.

The Stage 2 Aboriginal Land Rights Statutory Review measures will involve further consultation to consider ways for LALCs to undertake land dealings subject to native title. The final stage will enable consideration of major policy matters, aspirational reform for the ALRA, and the intersection of legislative frameworks and administrative processes.

As part of this process, the 15 recommendations made in the report will be considered as I work with the NSWALC and the Registrar to see these measures progress as a matter of priority. I have requested Aboriginal Affairs NSW have frequent and ongoing communication with the NSWALC and the Office of the Registrar to monitor and progress any changes resulting from the report.

Recommendation 2

That the Minister for Aboriginal Affairs reviews the funding of the Office of the Registrar of the ALR Act to ensure:

- **that the registrar has the capacity to undertake the full range of investigative and enforcement options available in relation to misconduct by board members and LALC staff**
- **that the registrar has sufficient resources to fulfil its role in building capacity in LALCs.**

The Registrar has a broad range of functions under section 165 of the ALRA, including to mediate disputes, investigate complaints and issue compliance directions to LALCs. These functions, along with the compliance, regulation and financial stewardship of the Aboriginal land council network by the NSWALC, act as early intervention measures to address issues within LALCs before they escalate, including any evidence of corrupt conduct.

The *Aboriginal Land Rights Act Amendment Act 2022* commenced, with some exceptions, on 25 November 2022 and contains many amendments to the ALRA which address and promote good governance for LALCs and in turn provide additional safeguards against corrupt conduct.

Specifically, Part 10 of the ALRA has been rewritten and reordered to clarify the processes and steps by which the Registrar or Aboriginal Land Councils (ALC) may take disciplinary action against elected officials or members of staff, including former officials and staff. Part 10 now gives the Registrar power to suspend an officer on an interim basis pending the outcome of the Registrar's investigation into allegations of serious misconduct against the person, remove an officer from office for misconduct and disqualify an officer from holding office in an ALC for up to two years.

In the past five financial years, the funding of the Office of the Registrar has doubled, and the number of full-time equivalent (FTE) staff budgeted for has increased from five to 15. I will continue to work with the Registrar in relation to reviewing the funding of the Office of the Registrar, to ensure the Registrar has sufficient capacity and resources to fulfil the functions of the role.

Recommendation 3

That the Minister for Aboriginal Affairs, the NSWALC and the registrar of the ALR Act discuss and implement legislative or policy measures that protect CEOs from arbitrary dismissal or without due process. Among other things, this discussion should consider requiring councils to provide reasons for dismissing a CEO and creating powers for the registrar or other entity to, in certain circumstances, approve or otherwise intervene in the proposed dismissal of a CEO.

I have discussed this recommendation with the Registrar and with representatives of NSWALC and note employment and dismissal of LALC CEOs is subject to the *Fair Work Act 2009* (Cth), including provisions relating to unfair dismissal. I also acknowledge the principles of strong corporate governance and consider that if a Board of a LALC has lost confidence in the CEO, the Board should be able to lawfully dismiss its CEO.

Under section 165(g) of the ALRA, the Registrar has the function to mediate, conciliate or arbitrate disputes relating to the operation of the Act, or refer such disputes to independent mediators, conciliators or arbitrators. As such, the Registrar can mediate disputes that may arise between a CEO and Board of a LALC, prior to the Board's decision to dismiss a CEO.

Given these legislative protections, my view at this time is that additional measures to protect CEOs from arbitrary dismissal are not required.

Recommendation 15

That the ALR Act be amended to require LALCs to notify the NSWALC, in writing, when specific proposals of land dealings, that would require approvals under s 42G of the ALR Act, come before the board of the LALC for its consideration. The minutes of the meetings at which the land dealing proposal is discussed will record who is responsible for notifying the NSWALC of the proposal.

A central tenet of the ALRA is Aboriginal Land Councils in NSW can claim land as compensation for historic dispossession of land and to support Aboriginal communities' social and economic development.

Ensuring that Division 4 of the ALRA "Land Dealings by Aboriginal Land Councils" allows for a process whereby LALCs can deal with their land, with sufficient safeguards in place, is critical for LALCs to utilise their land for the social, cultural and financial prosperity of the Aboriginal communities they represent.

Under section 42G of the ALRA, the NSWALC must, on application for approval of a land dealing being made by a LALC, approve the land dealing if the NSWALC are satisfied that the application is in accordance with the ALRA and that the members of the LALC have passed a resolution in accordance with subsection (5) and that the dealing is in accordance with that resolution. Importantly, NSWALC may refuse to approve a land dealing if it is contrary to the interests of LALC members or other Aboriginal persons in the LALC area.

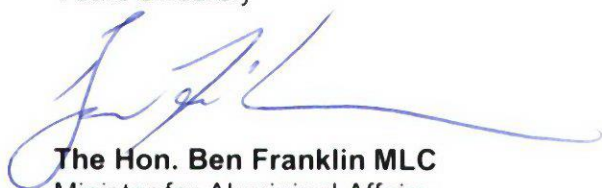
The recommendation by the ICAC to require LALCs to 'notify the NSWALC, in writing, when specific proposals of land dealings, that would require approvals under s 42G of the ALR Act, come before the board of the LALC for its consideration' would add an unnecessary administrative burden to LALCs. In addition, it would require additional resources from the NSWALC to monitor a LALC's consideration of land dealing proposals.

As per the approach to the 2021 statutory review of the ALRA, I have balanced the need for reform of the ALRA with the real need to reduce any unnecessary administrative burden on LALCs, who operate with a yearly grant of approximately \$155,140 from the NSWALC, and with widely differing resources available to them.

Both the NSWALC and the Registrar confirm that the existing legislative safeguards to the land dealing section of the ALRA are sufficient and working well. I will continue to review this matter with the Registrar and NSWALC as the stage 2 amendments to the ALRA are developed this year.

Please contact Mr Jonathon Captain-Webb, Director, Land and Economy at Aboriginal Affairs NSW on 02 9228 5795 or via email on Jonathon.Captain-Webb@aboriginalaffairs.nsw.gov.au for any further matters relating to this report.

Yours sincerely



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DATE:

14/2/23