

7 February 2023

By email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au) and [msland@icac.nsw.gov.au](mailto:msland@icac.nsw.gov.au)

Mr Lewis Rangott  
Executive Director, Corruption Prevention  
Independent Commission Against Corruption  
GPO Box 500  
SYDNEY NSW 2000

Dear Lewis

***Investigation into dealings involving Awabakal LALC land  
Plan of action re corruption prevention recommendations***

I refer to your letter dated 21 October 2022 to Ms Elizabeth Tsistikronis (the now former Interim Registrar) in relation to the above matter.

As requested, please find **enclosed** the Office of the Registrar's response and *Plan of Action* in relation to recommendations 3 and 13.

I note that I have discussed our responses with both Aboriginal Affairs (as representative of the Minister for Aboriginal Affairs) and the New South Wales Aboriginal Land Council.

Should you wish to discuss our response, please contact me on 0418 859 159 or our Legal Officer, Rochelle Coggan, on 0447 718 301 or at [rochelle.coggan@aboriginalaffairs.nsw.gov.au](mailto:rochelle.coggan@aboriginalaffairs.nsw.gov.au).

Yours sincerely



Nicole Courtman  
**Interim Registrar**  
*Aboriginal Land Rights Act 1983*

# Registrar of the Aboriginal Land Rights Act's plan of action in response to recommendations made in *Investigation into dealings involving Awabakal Local Aboriginal Land Council land*

## PART A: Registrar of the Aboriginal Land Rights Act's (the registrar of the ALR Act) response to corruption prevention recommendations

Firstly please indicate the response to be taken for each recommendation made.

### Recommendation 3

- That the Minister for Aboriginal Affairs, NSWALC [NSW Aboriginal Land Council] and the registrar of the ALR Act discuss and implement legislative or policy measures that protect chief executive officers (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.

Please indicate the response the public authority will take in its plan of action:

- ☐ Implement the recommendation as described in the report
- ☐ Implement the intent of the recommendation in an alternative way
- ☐ Partially implement the recommendation
- ☒ Not implement the recommendation

If the action of the Registrar of the ALR Act intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

The Registrar has considered the recommendation and is of the view that further legislative or policy protections for CEOs of LALC are not required. The Registrar does not consider that any alternative action is required to be taken in relation to this matter (see explanation below).

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

The vast majority of LALC CEOs already have protections against arbitrary dismissal under the *Fair Work Act 2009* (Cth). The majority of LALC CEOs are *not* above the current salary threshold of \$162,000 pa (as at 1 July 2022), so are not precluded from making an unfair dismissal application.

DLM

The Registrar notes that CEOs of LALCs are very different from General Managers of Local Shire Councils. If a Board has lost confidence in the CEO, the Board should be able to lawfully dismiss the CEO.

### Recommendation 13

That the NSWALC and the registrar consider whether the corruption prevention recommendations made in this report should be applied to other LALCs and whether the NSWALC and registrar should collaborate to develop an education program that addresses the findings and recommendations in this report.

Please indicate the response the public authority will take in its plan of action:

- ☐ Implement the recommendation as described in the report
- ☒ Implement the intent of the recommendation in an alternative way
- ☐ Partially implement the recommendation
- ☐ Not implement the recommendation

If the action the registrar of the ALR Act intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

The Registrar has considered whether the corruption prevention recommendations made in the ICAC report should be applied to other LALCs. The Registrar's comments on each of the 15 recommendations are detailed in the table at **Attachment A** to this Plan of Action.

The Registrar understands that NSWALC is working with ICAC to develop a corruption prevention program for LALCs. The Registrar supports the development of such a program and notes that the Office of the Registrar is willing to support the development and delivery of this program.

Please explain why the above action is proposed rather than the ICAC's published recommendation.

NSWALC is best placed (through its capacity development team and the Zone offices) to co-ordinate the delivery a corruption prevention program to the New South Wales LALC network.

### PART B: Registrar of the ALR Act's plan of action

In this section, please provide details of the registrar of the ALR Act's plan of action in relation to the recommendations and/or proposed actions described above.

The scope and scale of recommendations made in investigation reports varies considerably, and the Commission recognises a single template may not suit every agency or investigation. In view of this, registrar of the ALR Act is invited to develop a format that is appropriate for the proposed plan of action and subsequent report(s).

The Commission asks that the plan of action and subsequent proposed report formats are developed in consultation with the ICAC's corruption prevention representative named in the cover letter. The ICAC corruption prevention representative will advise if the plan or report format has the Commission's endorsement.

However if registrar of the ALR Act prefers to adhere to an established format, the following may be used as a guide.

**DLM**

## Plan of action

### Recommendation 3

The Registrar does not intend to implement Recommendation 3. As a result, no plan of action is provided in relation to this recommendation

### Recommendation 13

| Recommendation   | Action  |
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| NSWALC and the Registrar should consider whether the corruption prevention recommendations made in this report should be applied to other LALCs.                         | The Registrar has completed this action and has provided comments in relation to all 15 recommendations which are contained in <b>Attachment A</b> to this Plan of Action.  |
| NSWALC and the Registrar should consider whether they should collaborate to develop an education program that addresses the findings and recommendations in this report. | The Registrar will provide support to NSWALC and the ICAC in relation to the development and delivery of a corruption prevention program as is appropriate and as required. |

## ATTACHMENT A

**ICAC Investigation into dealings involving Awabakal Local Aboriginal Land Council October 2022**  
**Office of the Registrar, Aboriginal Land Rights Act 1983 – comments on recommendations**

| Recommendation:  | Office of the Registrar's comments:  |
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| <p>1. <i>That the Awabakal Local Aboriginal Land Council (ALALC) includes the following provisions about board meetings in its Model Rules:</i></p> <ul style="list-style-type: none"> <li>• <i>The ALALC provides reasonable notice for all board meetings. This requires at least seven (7) days clear notice to all board members in the method approved by the board.</i></li> <li>• <i>If the board wishes to call an extraordinary meeting at shorter notice, a two thirds majority of board members must agree to the proposed date and time for the meeting, and the ALALC must maintain a record of how and when it contacted, or attempted to contact, board members.</i></li> </ul> | <p>Whilst LALCs can develop their own rules and submit them to the Registrar for approval pursuant to section 52F of the ALRA, not many LALCs have access to legal support to draft their own rules.</p> <p>The Registrar would instead support an amendment to the Model Rules in Schedule 1 of the ALRR to provide that at least 7 days' notice should be provided for LALC Board meetings. A clause could also be drafted to provide a process for calling of extraordinary meeting at shorter notice.</p> <p>This could prevent factions on boards attempting to exclude certain board members by providing inadequate notice for meetings.</p> <p>This Registrar would support this amendment being considered as part of a more comprehensive review of the Model Rules.</p> |
| <p>2. <i>That the Minister for Aboriginal Affairs reviews the funding of the Office of the Registrar of the ALR Act to ensure:</i></p> <ul style="list-style-type: none"> <li>• <i>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</i></li> <li>• <i>that the registrar has sufficient resources to fulfil its role in building capacity in LALCs.</i></li> </ul>   | <p>The Registrar would welcome an independent review of the funding of the Office of the Registrar, particularly in light of recent changes to the powers of the Registrar under Part 10 of the ALRA.</p>  |
| <p>3. <i>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</i></p>  | <p>The Registrar has considered this recommendation and is of the view that further legislative or policy protections for CEOs of LALCs are not required.</p>  |

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Office of the Registrar, Aboriginal Land Rights Act 1983 – comments on recommendations**

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| <p><i>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></p>  | <p>The vast majority of LALC CEOs already have protections against arbitrary dismissal under the <i>Fair Work Act 2009</i> (Cth). The majority of LALC CEOs are <i>not</i> above the current salary threshold of \$162,000 pa (as at 1 July 2022), so are not precluded from making an unfair dismissal application.</p> <p>The Registrar notes that CEOs of LALCs are very different from General Managers of Local Shire Councils. If a Board has lost confidence in the CEO, the Board should be able to lawfully dismiss the CEO.</p> |
| <p>4. <i>That the ALALC devises an outline of the skill mix required of board members, including an ability to understand financial reports and contracts.</i></p>  | <p>Board members of LALCs are elected as <b>representatives</b> of the community and generally are unpaid or in low bono positions.</p> <p>The NSWALC provides skill-based training to Board members pursuant to sections 65 and 107 of the ALRA. This training includes financial literacy modules. NSWALC may wish to work with ICAC to review its governance training in light of this recommendation.</p>   |
| <p>5. <i>That persons interested in standing, or intending to stand, for a position on the board of the ALALC be required to attend an information meeting prior to board elections where:</i></p> <p><i>a. roles, legal duties and responsibilities of a board member are explained at the information meeting</i></p> <p><i>b. examples of matters that can arise, and the legislation, policies and procedures board members must follow when determining a course of action, are discussed.</i></p> | <p>The Registrar supports this recommendation.</p> <p>The NSWALC provides governance training to all Board members of LALCs pursuant to section 65 of the ALRA which includes details around the roles, legal duties and responsibilities of Board members. In some cases, this training is made available to all members prior to elections. NSWALC may wish to work with ICAC to review its governance training in light of this recommendation.</p>  |

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| <p>6. <i>That the ALALC prepares a checklist of legal duties and responsibilities which can guide board members during meetings. The checklist can be sourced from the ALR Act, the Regulation, the Mandatory Governance Training manuals, and ALALC internal policies and procedures.</i></p>                           | <p>The Registrar supports this recommendation.</p> <p>The NSWALC provides governance training to all Board members of LALC pursuant to section 65 of the ALRA which includes details around the roles, legal duties and responsibilities of Board members. NSWALC may wish to work with ICAC to review its governance training in light of this recommendation.</p>              |
| <p>7. <i>That the ALALC implements an electronic document and records management system with version and permission controls, allowing it to manage and monitor the creation, alteration and deletion of records.</i></p>  | <p>The Registrar supports this recommendation.</p> <p>The NSWALC may, pursuant to section 106(3) of the ALRA, wish to explore options for providing the LALC network with access to an online record management system which could include training materials and templates for key documents such as minutes, resolutions, delegations, CEO reports and contract registers.</p> |
| <p>8. <i>That the typed minutes of ALALC meetings:</i></p> <ul style="list-style-type: none"> <li>• <i>accurately reflect the discussions held, including board members' views for or against proposals and motions</i></li> <li>• <i>are saved to the electronic document and records management system.</i></li> </ul> | <p>The Registrar supports this recommendation.</p> <p>Based on recent access to LALC minutes, the Office of the Registrar recommends that NSWALC consider specific training and resources for LALCs in minute keeping in accordance with the requirements of clause 11 of the Model Rules.</p>   |
| <p>9. <i>That the ALALC audio-records all board meetings and saves the recordings into its electronic document and records management system.</i></p>  | <p>This is a matter for consideration by Awabakal LALC.</p> <p>Whilst the Office of the Registrar accepts that audio recording of board meetings may be appropriate when there are concerns around behaviour, recording ALL board meetings could inhibit open debate at Board meetings.</p>  |



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|   | <p>Board members need to feel free to express views and to change their mind after debate without concerns that the recording will be replayed.</p> <p>The ALRA currently only requires that the LALCs record the outcome/decision rather than recording the debate. In our experience when the minutes have recorded the debate in detail there is often unnecessary conjecture about who said what at the meeting.</p> <p>The Registrar notes that by way of example audio recordings are not made of cabinet deliberations.</p> |
| <p>10. <i>That the ALALC keeps a register of contracts for all transactions, including commercial, rental and employment contracts, and the engagement of consultants. This register should:</i></p> <ul style="list-style-type: none"> <li><i>be saved into the ALALC's electronic records management system</i></li> <li><i>have version and permission controls to enable the ALALC to determine who has accessed or made changes to it</i></li> <li><i>be updated as new contracts are executed</i></li> <li><i>be maintained at the ALALC, and made available to the ALALC's legal advisor</i></li> <li><i>be viewed and verified by the Eastern Zone office periodically during the Risk Assessment System process</i></li> <li><i>archive contracts that are no longer operational.</i></li> </ul> | <p>The Registrar supports this recommendation.</p> <p>The NSWALC may, pursuant to section 106(3) of the ALRA, wish to explore options for providing LALCs with access to an online record management system which could include training materials and templates for key documents such as minutes, resolutions, delegations, CEO reports and contract registers.</p>  |
| <p>11. <i>That the ALALC, in conjunction with the NSWALC, develops a due diligence checklist and procedure that is followed when developers and other interested parties propose a land dealing. Among other</i></p>  | <p>The Registrar supports this recommendation.</p> <p>The NSWALC has oversight and provides support to LALCs in relation to due diligence for potential land dealings through its Zone staff and the Land &amp;</p>  |

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| <p><i>things, the checklist may require parties with an interest in ALALC land to:</i></p> <ul style="list-style-type: none"> <li>• <i>put a brief outline of their proposal in writing</i></li> <li>• <i>identify all relevant personnel</i></li> <li>• <i>include information such as:</i> <ul style="list-style-type: none"> <li>- <i>a company name</i></li> <li>- <i>an Australian Business Number or Australian Company Number</i></li> <li>- <i>licences and qualifications held by the proponents</i></li> <li>- <i>relevant industry experience</i></li> </ul> </li> <li>• <i>acquaint themselves with the land dealing provisions in the ALR Act.</i></li> </ul> | <p>Property Unit. NSWALC may wish to work with ICAC to review its current policy and guidelines and to develop a due diligence checklist (see for example <a href="#">Minimising corruption risks in land dealings - Guide for Local Aboriginal Land Council.pdf</a>).</p>  |
| <p><i>12. That the ALALC considers conducting open-source checks on websites including the Australian Business Register, Australian Securities and Investments Commission and NSW Office of Fair Trading to verify information provided by parties involved in land dealings.</i></p>  | <p>The Registrar supports this recommendation.</p> <p>These checks may be included in the above-mentioned check list.</p>   |
| <p><i>13. That the NSWALC and the registrar consider whether the corruption prevention recommendations made in this report should be applied to other LALCs and whether the NSWALC and the registrar should collaborate to develop an education program that addresses the findings and recommendations in this report.</i></p>  | <p>Please see comments above and below.</p> <p>The Registrar understands that NSWALC is working with the ICAC to develop a corruption prevention program for LALCs. The Registrar supports the development of such a program and notes that the Office of the Registrar is willing to support the development and delivery of this program.</p> |

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| <p>14. <i>That the NSWALC extends the questions concerning "Property" in the Risk Assessment System to include "Is the LALC in discussion(s) with any third parties about potential land dealings in which any agreement(s) would be conditional on the LALC obtaining necessary approval under the ALR Act?"</i></p>   | <p>The Registrar supports this recommendation in principle.</p> <p>The Registrar understands that NSWALC is planning to make significant changes to its Risk Assessment System model. NSWALC may wish to work with ICAC to develop its' new 'Network Delivery Model' model, particularly as it relates to corruption prevention and land dealings.</p>  |
| <p>15. <i>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.</i></p> | <p>The Registrar has considered this recommendation, but does not think legislative change is required.</p> <p>Requiring LALCs to report to NSWALC in these circumstances would place an additional administrative burden on LALCs, as LALC Boards routinely consider proposals that may (or may not) progress to land dealings requiring approval under section 42G of the ALRA.</p> <p>The Registrar also notes that the existing safeguards in the ALRA around land dealings are effective. This was demonstrated in the case of Awabakal LALC where, despite the serious corrupt conduct of the individuals concerned, no land dealings contrary to the LALC's interests were effected.</p> |