



New South Wales  
Aboriginal Land Council

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The Hon. Sarah Mitchell MLC  
Minister for Early Childhood Education  
Minister for Aboriginal Affairs  
Assistant Minister for Education  
GPO Box 5341  
SYDNEY NSW 2001

24 October 2017

Dear Minister,

### **Review of the *Aboriginal Land Rights Act 1983***

Thank you for the opportunity to provide this statement on the Review of the *Aboriginal Land Rights Act 1983 (ALRA)* to you and the New South Wales Parliament.

The New South Wales Aboriginal Land Council (**NSWALC**) appreciates the important work you have undertaken in partnership with NSWALC to review the ALRA. It is this continued commitment from the Government and all sides of the Parliament to both Aboriginal Land Rights and to working in partnership with Aboriginal peoples that will deliver the much needed cultural, social and economic outcomes of the ALRA.

### **Community Consultations**

NSWALC and Local Aboriginal Land Council (**LALC**) representatives participated in the nine consultation forums held across New South Wales to:

1. Inquire into and make recommendations as to whether the policy objectives of the ALRA remain valid, and whether the terms of the Act remain appropriate for securing those objectives, today and into the future.
2. Inquire into and make recommendations as to whether the governance, structural, regulatory and administrative arrangements of the ALRA support the aspirations of the NSW Aboriginal community.
3. Ensure that recommendations of the review take into account any current and emerging reforms which might impact on the operations of the ALRA, in particular the Aboriginal Cultural Heritage reforms

The feedback from the consultations has been encouraging and we welcome the constructive discussions that have taken place.

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Based on the feedback received we provide the following comments and proposals for continuing to work with you, the Office of the Registrar of the ALRA and others to continue to enhance and build on the strengths of the ALRA.

### **Overview**

The community consultation discussions have again highlighted the significance of Aboriginal Land Rights to our communities. While not without their challenges, LALCs are the most significant vehicles for self-determination in our communities and provide democratically inclusive infrastructure for community planning, decision making and development.

The discussions have also confirmed our belief that facilitating opportunities for LALCs and our communities, and addressing challenges we face, does not require significant legislative reform of the ALRA at this time. What is clear, is that there needs to be an increase in the coordination and collaboration of efforts from across Government, the Office of the Registrar, ALRA and NSWALC to maximise the opportunities LALCs present.

While that is the case, Aboriginal Land Rights and the delivery of its full potential to Aboriginal communities faces many challenges outside of the drafting of the ALRA itself, including:

- The resourcing of capacity, community and economic development programs;
- Planning law impediments to unlocking the economic and social potential of Aboriginal Land Council lands; and
- Ongoing difficulties protecting and promoting Aboriginal culture and heritage.

### **Treaty**

These are just some of the reasons why NSWALC is calling for a treaty process to codify, and provide certainty about, the relationship between the Government and Aboriginal peoples in New South Wales. The democratically inclusive framework of the ALRA and the many achievements it has delivered to date, provide a good basis for codifying this relationship. However, it is incumbent on us all to reimagine and then reshape this relationship; to deliver the social, cultural and economic outcomes for Aboriginal peoples that will enrich New South Wales.

NSWALC strongly believes that the ALRA provides us with the opportunities and foundations for delivering these outcomes and addressing the challenges we face; with 34 years of community governance and Local Aboriginal Land Councils associated with every community across the state. However, it will also require the Government to support the centrality and capacity of the ALRA to deliver for our peoples.

### **Community Consultation – Key Themes**

NSWALC also provides the following brief commentary on the key themes highlighted in the Dr Aden Ridgeway authored: *2017 Statutory Review of the Aboriginal Land Rights Act – Report of regional community consultations*.

#### **Accountability standards**

Striking the right balance between regulatory accountability and business flexibility is a challenge in any system. In the Aboriginal Land Rights system, the accountability of LALCs to our members is a paramount organising principle. However, so too is the ability of our LALCs to deliver for our members and our communities.

The community consultation discussions did not raise issues that require significant legislative reforms. However, discussions have revealed areas where additional support and guidance could assist in improving the implementation and practice of Aboriginal Land Rights as it relates to good governance; areas such as the provisions and practices relating to members participation and inactive members for example.

NSWALC is committed to supporting and fostering a culture and system of good governance and continual improvement, and to a compliance and regulatory framework which actively recognises and responds to performance as well as risk. To this aim, NSWALC seeks to work collectively and collaboratively with the Government and the Office of the Registrar, ALRA, to improve the support, guidance and capacity building available to LALCs.

### **Capacity building and training**

The broad need for capacity building was a key theme of the community consultations discussions. It is recognised that the mandatory governance training provided by NSWALC to Board members pursuant to section 65 of the ALRA, constitutes only a mandatory minimum. It is also recognised that the further success of Aboriginal Land Rights will call for improved support, advice, guidance, training and capacity building for LALCs.

To date, efforts at providing enhanced training and capacity building have been challenged by the limited resources available to provide training to the Boards, staff and members of 120 LALCs while addressing the many needs of Aboriginal communities across the state. The voluntary nature of the already extensive commitment of most individuals supporting Aboriginal Land Rights also presents a challenge for the provision of enhanced training and capacity building.

In recognising both the need and these challenges, NSWALC has committed to reviewing the capacity development plan for LALCs. Given the limited resources available to meet these capacity needs, in undertaking this task NSWALC seeks to work collectively and collaboratively with the Registrar, ALRA, the Government and other potential partners to improve the support, guidance, capacity building provided to the LALCs.

### **Building capacity to engage with emerging issues**

The community consultation discussions highlighted that community expectations drive the work of LALCs well beyond what may be seen as their core functions under the ALRA. Community expectations allied with an ever changing operating and policy environment, mean that Aboriginal Land Councils need to be equipped to meet a wide array of emerging issues, opportunities and challenges. Trends in government service delivery have also seen an increasing role for community coordination and delivery of services.

LALCs provide foundational community infrastructure across the state, for our communities to meet emerging issues and challenges, and make the most of emerging opportunities.

There is a strong need to build on the investment into the ALRA and LALCs to date. LALCs are key local Aboriginal bodies providing a range of social, cultural and economic services and opportunities. Government investment must actively recognise the role and build the capacity of LALCs to engage with emerging issues and deliver on community expectations.

### **Emerging reforms and issues**

A key and consistent message from LALCs and Aboriginal communities is that improving coordination of Government processes and engagement with Aboriginal peoples when setting policy agendas will greatly assist in facilitating the objectives of the ALRA.

There needs to be recognition that Aboriginal Land Rights is multi-faceted and that LALCs provide state-wide infrastructure for community planning, decision making and development. Reforms must build on these community controlled institutions rather than establishing government appointed governance structures, such as the Local Decision Making bodies of OCHRE. This distracts efforts away from improving existing community governance and institutes division within our communities. LALCs must also be seen as a principle point for community consultation and coordination.

Crown lands management, planning and development issues, water management, national parks, culture and heritage, service delivery, land management and natural resource management all have significant impacts on Aboriginal peoples and LALCs. These should not be addressed in isolation or with the ongoing lack of coordination. Again, the democratically inclusive framework of the ALRA provides a good basis for codifying the relationship between Government and Aboriginal peoples in these and other areas.

This is particularly needed in relation to the impending Aboriginal Culture and Heritage reforms. These reforms were always intended to be the second stage of Aboriginal Land Rights. These reforms must place Aboriginal culture and heritage in Aboriginal hands and to do so, must build on and complement the Aboriginal Land Rights system.

### **Local government**

Local Government plays a significant role in the lives of all in the community. It also presents a significant opportunity to improve the lives of Aboriginal peoples through better service delivery to Aboriginal communities, greater engagement with LALCs and providing assistance in facilitating the outcomes of the ALRA.

Relationships between Local Governments and LALCs vary significantly across the state. NSWALC is committed to working with the Government, Local Government NSW (**LGNSW**) and the Local Government sector to achieve outcomes for the communities we both represent. NSWALC is keen to further discuss practical mechanisms and opportunities to work together and build relationships between the Aboriginal Land Rights Network and Local Councils across the state.

NSWALC believes that improved outcomes for both Aboriginal and non-Aboriginal communities can be achieved in a range of areas by working together including:

- Improved community engagement with both sectors;
- Opportunities to improve the governance of both sectors through increased engagement and exchange;
- Increased protection and promotion of local Aboriginal culture and heritage;
- Delivery of improved services and infrastructure to Aboriginal communities; and
- Facilitating economic development of Aboriginal lands.

### **Backlog of unresolved claims**

The return of land to Aboriginal peoples rightly remains at the core of Aboriginal Land Rights. The centrality of land to cultural, social and economic outcomes for Aboriginal peoples cannot be overstated. However, the return of land in accordance with the ALRA and the full realisation of the intended outcomes from the return of land remains unfulfilled.

There are currently c.30,000 unresolved land claims and the administration of claims sadly remains under-resourced and slow. Improved relations with the Department of Industry, Lands and Forestry and the Aboriginal Land Agreement mechanism of s36AA of the ALRA are showing signs of delivering different outcomes for Aboriginal peoples. However, the shift to this outcomes focused processes takes time.

NSWALC is working to ensure that the Aboriginal Land Agreement mechanism delivers on the return of land and the social, cultural and economic outcomes envisaged by the ALRA. However, it is noted that the program is in its infancy and Government has only committed to four years of resourcing. Furthermore, improved support to LALCs is needed to fully realise the social, cultural and economic benefits from the return of land.

### **Native title**

NSWALC is committed to reforms that simplify interactions between Aboriginal Land Rights and Native Title, and better achieve outcomes for Aboriginal peoples in New South Wales. NSWALC supports working with NTSCORP, and both the NSW and Commonwealth Governments to achieve such reforms. In particular, NSWALC notes the agreed need for reforms to section 42 of the ALRA, which was also recognised in the 2012 Review of the ALRA.

NSWALC and NTSCORP have an existing Memorandum of Understanding which provides an important framework for progressing discussions to achieve social, cultural and economic outcomes for all Aboriginal peoples across the state. We welcome discussions on further options to facilitate better interactions and outcomes for both LALCs and Native Title groups.

### **Aboriginal Owners**

The Aboriginal Owners register of the ALRA provides a useful and inclusive mechanism for recognising Traditional Owners in the Aboriginal Land Rights regime. It also provides a less onerous definition and process for recognising traditional connection to Country. In conjunction with joint management arrangements for National Parks it provides opportunities in relation to cultural connections.

NSWALC strongly recommends that the Government supports and resources the Aboriginal Owners register for National Park management and more broadly to provide certainty in relation to future Aboriginal Culture and Heritage reforms.

### **Membership**

The membership provisions of the ALRA provide clear and appropriate mechanisms for openly democratic community self-determination. However, in practice they are not without their challenges, and the provisions can be complemented by improved guidance and support.

NSWALC supports:

- The continued guidance and oversight of the Officer of the Registrar, of the ALRA regarding compliance with membership processes. NSWALC is keen to work in partnership with the Office of the Registrar ALRA where appropriate in this regard,
- The joint development of guidance materials, systems, and advice by NSWALC, the Office of the Registrar and AANSW,
- More effectively activating the existing membership provisions of the ALRA,
- Measures to support LALC members to play their roles,
- Initiatives to encourage Aboriginal peoples to become active members of their LALC.

## **Aboriginality**

Issues of identity are inherently complex and emotive, particularly given the history of Government dispossession, displacement and assimilation of Aboriginal peoples. In recent years we have seen an increase in discussions and concerns raised about Aboriginality. It must be stated that it is important for our communities to have these discussions, and for such matters to remain firmly in our communities' hands.

While that is the case, the ALRA provides a framework for providing with the following legal definition of an Aboriginal person, the three elements of which are:

- *is a member of the Aboriginal race of Australia, and*
- *identifies as an Aboriginal person, and*
- *is accepted by the Aboriginal community as an Aboriginal person.*

The voting membership of LALCs provides local community infrastructure for the confirmation of the important third element. Robust and respectful processes around membership can provide both the needed certainty and safeguards. NSWALC supports guidance and support of LALCs through these processes through constructive and collaborative approaches with the Office of the Registrar, ALRA and the Government.

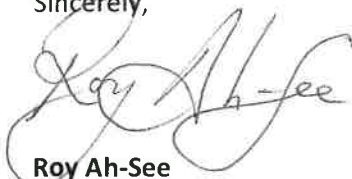
## **Next steps**

While this review has not identified the need for significant reforms, it is clear that there is a need for closer collaboration on improving the delivery of Aboriginal Land Rights. NSWALC is seeking a commitment from the Government to an ongoing mechanism for jointly developing policy and miscellaneous amendments to improve the operation of the ALRA.

Thank you for your time in considering our statement to the Aboriginal Land Rights Act Review. NSWALC remains committed to achieving social, cultural and economic independence for Aboriginal peoples in New South Wales and seeks to work in partnership with the NSW Government to achieve that outcome.

Should you require further information please contact Mr James Christian PSM, Chief Executive Officer at [james.christian@alc.org.au](mailto:james.christian@alc.org.au) or 02 9689 4444.

Sincerely,



**Roy Ah-See**

Chairman

New South Wales Aboriginal Land Council