

NEW SOUTH WALES STATE ELECTION 2011

OUR LAND, OUR RIGHTS

NEW SOUTH WALES ABORIGINAL LAND COUNCIL
POLICY DOCUMENT

February, 2011



NEW SOUTH WALES
ABORIGINAL LAND COUNCIL

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About NSWALC and Land Rights

The New South Wales Aboriginal Land Council is the State's peak Aboriginal representative body. It was first established in the late 1970's to assist in the fight for land rights.

The organisation was formally constituted as a self-funded statutory corporation with the passage of the Aboriginal Land Rights Act 1983.

It is now the largest self-funded Aboriginal representative organisation in Australia

NSWALC supports a network of 119 Local Aboriginal Land Councils across New South Wales.

Those Councils have a combined membership of more than 23,000 Aboriginal people.

Together, NSWALC and Local Aboriginal Land Councils form a self-funding and, largely, self-regulated, land rights network which incorporates its own governance regimes.

All work to protect and advance the economic, social, and cultural rights and interests of the Aboriginal people of New South Wales.

They seek to redress dispossession and disadvantage through the land claims process and to improve the health and well-being of Aboriginal people through advocacy and a range of, largely, self-funded community benefit schemes.

In addition to its rights advocacy work the New South Wales Aboriginal Land Council also has a duty to ensure Local Aboriginal Land Councils comply with the statutory provisions of the Aboriginal Land Rights Act.

The New South Wales Aboriginal Land Council is governed by a nine-member Council which is elected every four years by members of Local Aboriginal Land Councils.

NSWALC's financial base is dependent on:

- Movements in global monetary markets,
- Its ability to successfully add to the Aboriginal land bank.
- The call on recurrent expenditure to support the land rights network and
- The transactional costs incurred in ensuring NSWALC and LALC compliance with the machinery provisions of the ALRA.

Local Aboriginal Land Councils, which are autonomous bodies, are governed by Boards elected by local Aboriginal community members every two years.

NSWALC and the land rights network provide a significant employment, and evolving participation base, for Aboriginal people in New South Wales.

More than 1,000 Aboriginal people currently serve in a voluntary capacity on these boards. All Aboriginal adults in NSW are eligible to join a Local Aboriginal Land Council and to vote in Land Council elections.

Introduction

This policy document has been prepared by the New South Wales Aboriginal Land Council (NSWALC) ahead of the NSW State Election to be held on March 26, 2011.

It seeks to ensure the incoming State Government will honour the ongoing statutory recognition of our rights to land, our culture and heritage, and provide clear and unequivocal support for our rights to real and meaningful self-determination and to the ongoing representation by Aboriginal people for Aboriginal people.

The adoption of the measures outlined in this document would further cement the rightful place of the State's First Nations peoples, and their duly elected representative organisations, within the political, economic and social fabric of New South Wales.

NSWALC calls on an incoming State Government, and all current and aspiring politicians, to agree to actively support the measures outlined and to work with the New South Wales Aboriginal Land Council, the land rights network, and other peak Aboriginal organisations to implement them during the next term of the NSW Parliament.

The policy positions outlined in this document seek to build upon the support and commitment publicly expressed by all major and minor political parties during sessions of the 54th NSW Parliament for the recognition of the spiritual, social, cultural and economic significance of land to the first nations of New South Wales.

That support was best expressed on all sides of the NSW Parliament during debate on the passage of the Constitution Amendment (Recognition of Aboriginal People) Bill.

The bipartisan support for this bill ensured its passage through the parliament, and subsequent assent, with minimal public controversy.

The Bill has introduced the following section into the preamble of the Constitution Act 1902:

1. Parliament on behalf of the People of New South Wales, acknowledges and honours the Aboriginal people as the State's first people and nations.
2. Parliament, on behalf of the People of New South Wales, recognises that Aboriginal people as the traditional custodians and occupants of land in New South Wales:
 - (a) have a spiritual, social, cultural and economic relationship with their traditional land and waters, and
 - (b) have made, and continue to make, a unique and lasting contribution to the identity of the State.

Importantly, this has now extended the Parliament's recognition of the preamble contained in the landmark Aboriginal Land Rights Act (1983) to the introduction to the Constitution, the State's founding document.

NSWALC acknowledges that Aboriginal people, and their representative organisations, have gained limited rights through the passage and proclamation of the Aboriginal Land Rights Act 1983.

That legislation has now operated for more than a quarter of a century with minimal public controversy.

Ironically, as a result, many in the wider community in NSW have little awareness or understanding of the legislation, and what flows from it, including the powers and functions of the New South Wales Aboriginal Land Council and the network of 119 Local Aboriginal Land Councils across the State.

OUR LAND, OUR RIGHTS

We consider it important, therefore, to outline the preamble to the legislation, the purpose of land rights, and the statutory objects and functions of the New South Wales Aboriginal Land Council, and Local Aboriginal Land Councils at the outset of this document.

We do so in the hope the public release of this document may assist in stimulating a better appreciation in all sections of the community about what land rights is designed to achieve, what it can achieve, and, just as importantly, what it is not designed to achieve.

It may also assist all members of the NSW Parliament, particularly members of the incoming Government, to gain a much clearer understanding of the land rights system and the demonstrated will of NSWALC, and Local Aboriginal Land Councils, to work with all tiers of government in the past, and the future, to improve the health and well being of Aboriginal people in NSW, mindful of the current political, statutory, and financial constraints placed upon us.

It also sets out the changes NSWALC believes are necessary to be achieved by an incoming Government in the new Parliament, with the bipartisan support of all Parliamentarians, to build on the gains already made in recognising our rights.

Before we do so, however, it is crucial, in NSWALC's view, that the recognition contained in both the preamble to the Constitution, and the preamble to the Aboriginal Land Rights Act, are joined by a Statement of First Principles for our First Nations.

We commend this document to all candidates in the forthcoming State Election campaign and look forward to working with all members in the new Parliament to improve the well being of the Aboriginal peoples of New South Wales and to further recognise their right to self determination.

We earnestly hope all will take the time to read it.

And, more importantly, if elected, to act upon it.



Bev Manton
Chairperson



Tom Briggs
Deputy Chairperson



Roy Ah-See



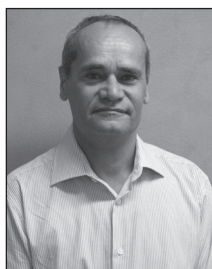
Craig Cromelin



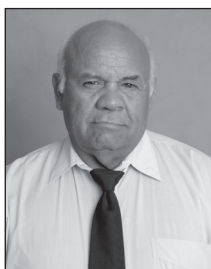
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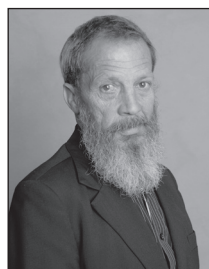
Neville "Jack" Hampton



Dallas Donnelly



William Murray



Stephen Ryan

A Statement of First Principles for First Nations

The cross party support for the Constitution Amendment Bill, and the principles enshrined in the Aboriginal Land Rights Act, built on an agreement in the last Parliament between the Labor Government and the Liberal-National Coalition to work together, and with non-government organisations and the community, in a bi-partisan spirit to close the gap in Aboriginal disadvantage in areas such as health, welfare and education.

This included a commitment to advance the rights and aspirations of Aboriginal people in New South Wales.

NSWALC believes it is crucial this approach be carried into the new Parliament.

We propose the leaders of all parties, particularly those of the incoming Government, join with NSWALC in signing a Statement of First Principles for First Nations.

The support of all parties for such a Statement would re-assert the will of the Parliament to work to advance the rights of Aboriginal people.

NSWALC's constituents are conscious of the fact that the land rights they now enjoy are a creation of the Parliament and, as such, exist at the will of the Parliament.

The New South Wales Aboriginal Land Council is now looking at what community benefits land rights might deliver by 2025 and beyond.

We understand and support the need to keep the machinery provisions of the Act under constant review. Legislation can always be improved.

However, it would assist all parties, particularly the Aboriginal people of this state, if we can attain a position which allows us to move forward and plan for the future in the knowledge the core intentions and purposes of the Aboriginal Land Rights Act, and the new recognition in the amended preamble to the Constitution, are set in stone.

We propose a short statement of First Principles would include a written commitment to:

- The purposes of the Aboriginal Land Rights Act 1983 and its core intention as compensation for the dispossession of Aboriginal land.
- Retention of the capital compensation fund, the NSWALC Account, or Statutory Investment Fund, in the care and control of duly elected Aboriginal people subject to normal statutory audit procedures.
- Retention of the New South Wales Aboriginal Land as the State's peak duly elected Aboriginal representative organisation and a network of Local Aboriginal Land Council under their current mandates.
- To work in the next term of Parliament for the establishment of an Aboriginal Heritage Commission as promised during the introduction of the ALRA in 1983.

In short, NSWALC believes all members of the new Parliament, particularly those occupying the Treasury benches, should, at very least, frame all policies affecting Aboriginal people in NSW in concert with the original intent, spirit, and letter of the Aboriginal Land Rights Act 1983 (as amended) and the amended Preamble to the Constitution Act.

The Importance of Land Rights

From at least 60,000 B.C. the area that was to become New South Wales was inhabited entirely by Aboriginal people with traditional social, legal organisation and land rights.

The population was at least 100,000 people with many tribal, clan and language groups.

However, once European settlement began, Aboriginal rights to traditional lands were disregarded and the Aboriginal people of the Sydney region were almost obliterated by introduced diseases and, to a lesser extent, by armed force.

First contacts were relatively peaceful but Aboriginal people and their culture were as unfamiliar to Europeans, initially, as the landscape, flora and fauna of the new land.

This is the brief description of Aboriginal life and land before European “settlement,” from the time line of democracy in NSW which is contained in the education section of the official website of the New South Wales Parliament.

Those few paragraphs should be sufficient for all current and aspiring members of the Parliament to appreciate the crucial importance of land rights, and the law under which they operate, to the Aboriginal people of NSW.

As most current Members would be aware it was, as then Aboriginal Affairs Minister Frank Walker pointed out when he introduced the legislation in 1983, a crucial “first step” towards redressing “the injustice and neglect of real Aboriginal needs since Captain Phillip stepped upon the shores of Port Jackson in 1788.”

Land Rights for Aborigines, he told the Parliament, was the most “fundamental initiative to be taken for the regeneration of Aboriginal culture and dignity, and at the same time laying the basis for a self-reliant and more secure economic future for our continents Aboriginal custodians.”

Twenty-eight years on, the compensatory regime enshrined in the Act remains.

It has become a vehicle for the expression by Aboriginal people of self-determination and self-governance.

It has returned, and continues to return, significant and valuable land assets to Aboriginal people.

It has provided them with a limited degree of economic, social and political influence and autonomy through the elected representative organisations formally constituted under the terms of the Act.

A clear understanding of the objects, functions and funding of the New South Wales Aboriginal Land Council, and the land rights network, are essential to a full understanding of how the land rights system operates in New South Wales, the socio-economic opportunities it has, and can generate, and the political and financial constraints on the system.

This is particularly so in relation to the ability of land rights to act as an effective and sustainable springboard for better service delivery to improve the lives of Aboriginal men, women and children.

These are expressed in the Preamble to the legislation, the Purpose of the Act, and its Objects, Functions and Funding.

Today, the Aboriginal Land Rights Act 1983 (as amended) is the sole remaining form of compensation available to Aboriginal people for the dispossession of their land.

But two fundamental points need to be fully understood and appreciated about land rights.

Firstly, the Aboriginal Land Rights Act was never introduced as a panacea for all of the social, economic, political and cultural ills of our people.

It is not, and was never intended to be, a magic bullet in this regard.

Secondly, the land rights system has delivered a degree of self-reliance.

It is self-funded.

The network is not, as is widely believed, funded by the taxpayers of NSW.

It makes no call on the public purse to fund its operations, or those of Local Aboriginal Land Councils.

Both of these points are often lost in public debate.

Preamble to the Aboriginal Land Rights Act

- 1) Land in the State of New South Wales was traditionally owned and occupied by Aborigines:
- 2) Land is of spiritual, social, cultural and economic importance to Aborigines:
- 3) It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land:
- 4) It is accepted that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation,

Purposes of the Act

Part 1, 3 sets out the Purposes of the Act.

They are:

- 1) To provide land rights for Aboriginal persons in New South Wales,
- 2) To provide for representative Aboriginal Land Councils in New South Wales,
- 3) To vest land in those Councils
- 4) To provide for the acquisition of land, and the management of land and other assets and investments, by or for those Councils, and the allocation of funds to and by those Councils
- 5) To provide community benefits schemes by or on behalf those Councils

Objects, Functions and Funding

The objects of the New South Wales Aboriginal Land Council are to be found in Section 105 of the ALRA.

They are:

- (a) To improve, protect and foster the best interests of Aboriginal persons within New South Wales, and
- (b) To relieve poverty, sickness, suffering, distress, misfortune, destitution and helplessness of Aboriginal persons within New South Wales.

A thorough understanding is also required of the financial climate in which we operate and the cost constraints upon us.

How Land Rights is Funded

A NSWALC Statutory Investment Fund was established under the NSW Aboriginal Land Rights Act (1983).

For fifteen years—from 1 January 1984 to 31 December 1998—the Act provided for guaranteed funding through the payment of an amount equivalent to 7.5 per cent of NSW Land Tax (on non-residential land) to NSWALC, as compensation for land lost by the Aboriginal people of NSW.

During this period, half of the funds were available for land acquisition and administration.

The remainder was deposited into a statutory account to build a capital fund to provide ongoing funding in the future.

The total funds allocated were \$537 million.

Of this amount \$268.5m was deposited in the Statutory Account.

The capital, or compensation, accumulated over the first 15 years of the Council's existence stood at \$281 million at December 1998 when the land tax payments stopped.

Since then, the NSW Aboriginal Land Council and the land council network have been self sufficient.

The Statutory Investment Fund has been managed since it was established by the duly elected members of NSWALC's Governing Council, its Chief Executive Officer and a range of internal and external advisors.

The value of the Statutory Investment Fund was \$554 million as at 30 June 2010.

This was an increase of \$26.6 million in the value of the Fund during the financial year following substantial losses in local and international equities due to the global financial crisis.

Funding the Network

A major impact on NSWALC's annual budget is the direct funding to Local Aboriginal Land Councils.

This is delivered, as noted above, in a direct grant allocation of \$130,000 to each funded Local Aboriginal Land Council to assist with its administrative costs.

A drawdown of \$37.8 million was made during the 2009-10 financial year to fund the operational expenditure of the land rights network, including the administrative costs of both NSWALC and Local Aboriginal Land Councils.

The required draw down for the 2010-11 financial year is expected to be \$34.8 million.

It should be noted that many Local Aboriginal Land Councils have difficulty meeting their financial and reporting obligations.

NSWALC must support those that are under-performing and supervise them more closely.

This places additional burdens on NSWALC and the land council system through the increased costs which need to be allocated to investigators, administrators, legal expenses, intensive assistance projects and the cost of meeting LALC liabilities.

This means indirect funding to the land rights network accounts for a considerable amount of the balance of the yearly operational budget.

The recent dissolution of the Koombahtoo Local Aboriginal Land Council is a case in point. This generated an enormous amount of legal and administrative work and cost for NSWALC in seeking to protect land council assets.

The handling of this complex case demonstrated the land rights system does work,

The transactional costs of the most recent amendments to the Act have also had a major impact on NSWALC's bottom line but, again, it has absorbed these costs and has worked with Local Aboriginal Land Councils to implement the changes, particularly the new land dealings regime and governance training.

Growth of the Fund

There is a view often expressed that NSWALC should loosen the purse strings on the Statutory Fund to bolster the administrative funds it provides to the network of Local Aboriginal Land Councils, particularly as they shoulder more service delivery functions and inflationary pressures place added burden on their bottom line.

It is also suggested a more aggressive investment strategy be adopted to gain a better return on its investments.

This ignores two fundamental points.

The fund is to provide compensation for future generations. Prudent financial management is essential to maintain growth.

A less risk-averse strategy could increase returns but could clearly increase the risk of losses.

It is important to understand that while NSWALC has a great deal of money invested it is not able to spend more than the realised income and interest from investment--less the allowance for inflation.

To do so would be a breach of the current provisions of the Aboriginal Land Rights Act.

The Investment Mission

The Investment Mission for the Fund is:

- To at least maintain the purchasing power of the Fund over the long term, having regard to the specific nature of the underlying funding responsibilities of NSWALC ;
- To provide a stable and growing level of distributions for funding NSWALC's ongoing activities;
- To at least preserve the indexed book value of the assets.

The Council has transferred this Investment Mission into a set of measurable investment objectives.

These are:

- To achieve an investment return of 5% per annum plus an allowance for CPI (inflation) as measured over a rolling five (5) year period
- To minimise the risk of negative returns.

There is a view expressed within some quarters of the land rights network that the State Government should again "turn on the tap," by re-introducing the payment of a percentage of land tax on non-residential properties into the NSWALC Account.

NSWALC understands the genesis of this view.

It largely arises from a belief that the compensation proposed in the original legislation was insufficient.

That view is now compounded by the increasing cost pressures on the land rights system.

NSWALC does not support a return to any primary form of taxpayer funding for the operational aspects of land rights.

We believe our current self-funding arrangements provide a degree of financial independence from Government, albeit limited, and proposals to "turn on the tap," in a second wave of monetary compensation run contrary to the principles of self-determination.

The compensatory regime is just now beginning to deliver real socio-economic benefits from the land base which has been accrued over the past quarter century and from the wealth generated by the Aboriginal-managed capital fund established in 1983.

NSWALC's Governing Council has demonstrated a preparedness to use the compensation monies from land rights to assist the State and Commonwealth Government's finance major infrastructure projects to assist in "closing the gap" and improving the health and well being of Aboriginal people in New South Wales.

It has done so in good faith.

The \$200m 25 year joint venture with the State Government to deliver decent water and sewerage services to more than 60 discrete Aboriginal communities around the state is a prime example. This program is detailed later in this document.

It should be noted, however, that a series of eight major rounds of amendments to the legislation (from 1986 through to 2010) has shifted more and more of the transactional cost of land rights, and some aspects of service delivery, from State and Federal Governments, onto the self-funded land council system.

The limited socio-economic benefits now being gained, and to be further gained, from the wealth generated through land rights should not be used by State or Federal Governments as a reason to shirk their responsibilities to provide long term funding for basic infrastructure and essential services to our people.

It must also be acknowledged that:

- None of the amendments to the legislation over the past 28 years have appreciably increased the accountability of government to Aboriginal people in New South Wales.
- The return of land into Aboriginal ownership has been the sole form of compensation available under the Act since 1998 but the return of validly claimed Crown land has been too slow.
- This robs Aboriginal people, and their representative organisations, of the ability to use that land to deliver real socio-economic benefits back to our people and to further assist Governments in their efforts to “close the gap.”

Ongoing claims for land are also often the subject of protracted, costly, and unnecessary legal dispute.

The ability to claim land is also constantly frustrated by the current State Government.

All of the above run contrary to the spirit, if not the letter, of the Aboriginal Land Rights Act.

At face value the objects of the Act would also appear to provide NSWALC a wide ambit of responsibility to improve the health and well being of our people

This obscures a number of facts.

NSWALC, and the land council network, has no statutory power to keep Governments (State or Federal) accountable for programs designed and delivered with the aim of improving the health and well being of our people

No specific statutory mechanism exists for us to do so.

No funding was provided for the socio-economic roles that were originally assumed in the legislation, and by those who framed it.

Twenty eight years on, no substantial specific social benefits funding has been provided.

Inevitably, the land council system has been subjected over this time to increasing demands for non-land related services.

It has borne the brunt of cost and responsibility shifting from all tiers of Government.

Just as inevitably, the NSWALC, Local Aboriginal Land Councils, and, to a lesser extent, the legislation, are all unjustifiably blamed for the lack of progress in improving the socio-economic outcomes for Aboriginal people in New South Wales.

This point cannot be over-emphasised, particularly given the cloud of ignorance which constantly hangs over the land rights system.

Another problem is the Act's assumption that at the local level, Aboriginal communities will act in a way that fits a Western model of community interest.

Apart from failing to acknowledge the general lack of capacity at the community level this assumption also denies the existence of internal social and political systems that differentiate small Aboriginal communities from their non-Aboriginal counterparts.

The Act thus came into existence against a background of:

- Well-intentioned but poorly defined motives.
- A confused and conflated set of unrealistic expectations of what limited land rights could achieve.
- Structural shortcomings and a poor understanding of the dynamics of small Aboriginal communities.

This situation largely prevails today.

The New South Wales Aboriginal Land Rights Act 1983 (as amended) provides the New South Wales Aboriginal Land Council (NSWALC) a mandate to provide for the development of Land Rights for Aboriginal people in NSW.

We can do so through:

- Land acquisition either by land claim or purchase
- To facilitate business enterprises to create a sustainable economic base for Aboriginal communities and to, ultimately, act as a steward on community, land and business plans to be adopted by Local Aboriginal Land Councils.

In addition, NSWALC acts as an advisor to the Minister for Aboriginal Affairs on matters relating to Aboriginal land rights.

However, our "advice" is largely external to the internal workings of Government, both State and Federal.

NSWALC and the land council network is accorded no meaningful and overarching place at the decision table in assisting to devise or implement government policy or programs in Aboriginal Affairs.

For example, we are accorded:

- No opportunity to provide the normal co-ordination comments routinely sought from each government department on Cabinet submissions on Aboriginal Affairs.
- No input to working papers in the NSW Government's collaborative approaches with the Commonwealth through the Council of Australian Governments (e.g. the Ministerial Council of Aboriginal and Torres Strait Islander Affairs).
- No access to the Chief Executives Committee which drives the implementation of policy and service delivery priorities within the New South Wales State Plan.

We can play a pivotal role in vastly improved delivery of services to our people.

NSWALC has the potential to be a “critical insider,” in a new relationship with Government, both State and Federal, based on mutual trust, respect and, above all, accountability.

The Governing Council has already demonstrated its ability to be taken into the confidence of Government, and to respect that confidence, particularly in relation to those matters which require the observance of Cabinet or Commercial-in confidence.

We have demonstrated our ability to respond to that situation.

We have demonstrated we are, and can continue to be, part of the solution.

This is best evidenced by the negotiating process which led to the current partnership agreement entered into between NSWALC and the State Government to provide joint long term recurrent funding for the maintenance and monitoring of water and sewerage infrastructure in more than 60 discrete Aboriginal communities across the State.

NSWALC was provided a range of Government documents to inform its Governing Council of the state of water and sewerage facilities in these communities.

These informed its deliberations on how it could assist Government address these issues while respecting the confidential nature of the material at hand.

Those deliberations led to an historic commitment by NSWALC’s Governing Council of more than \$100million of Aboriginal compensation monies to assist in closing one gap in the struggle to improve the health and well being of our people.

NSWALC’s commitment triggered an immediate commitment from the current State Government to match these funds on a dollar for dollar basis.

More than \$200 million dollars has been committed over 25 years to bring the water and sewerage services to the men, women and children in these communities up to the standard enjoyed by most of their fellow Australians.

Two years into this major environmental health program, more than 2,700 people in 27 discrete communities are now enjoying improved services.

The program is also running within budget.

This partnership has set a precedent for long term funding commitments to tackle seemingly intractable problems to improve the health and well being of Aboriginal people in New South Wales and has increased strategic engagement between Local Aboriginal Land Councils and local service providers in delivering these services.

No services are provided without the prior and informed consent of Local Aboriginal Land Councils.

The program is also providing a valuable insight into just how much work, commitment and co-ordination will be required to “close the gap,” in other vital areas of much needed infrastructure in discrete Aboriginal communities in NSW.

NSW Health has designed a complementary health outcomes evaluation for the program.

Its aim is to study the association between health outcomes and improvements in the operation, maintenance and monitoring of water and sewerage systems in communities.

The findings will close a gap in available data and are likely to be used to influence future policy work on the provision of services to Aboriginal communities, particularly in relation to environmental health.

Above all this program has shown NSWALC's ability to receive internal Government information, and advise Government accordingly, without compromising the integrity and sensitivity of that information.

Relegating the work of the NSWALC to an advisory capacity, and the use of the organisation by Government for consultation only (i.e. Two Ways Together), frankly, is of little use to us.

NSWALC seeks a commitment from an incoming NSW Government to ensure budget constraints do not adversely impact on the continued roll out of the vital Water and Sewerage initiative under the agreed terms and conditions of the current agreement.

We also seek a new political and financial partnership with an incoming State Government based on a genuine partnership rather than simply an advisor.

Before outlining this we believe it important to address another pressing issue which could place further undue pressure on the land rights system early in the term of a new government.

In addressing this issue we will also touch on a core issue—the financial and operational sustainability of the land rights system and, hopefully further increase awareness of how the land rights system actually operates.

Review of the Aboriginal Land Rights Act

The Aboriginal Land Rights Act has been under constant review since it was enacted.

A further review is scheduled early in the life of the next NSW Parliament.

Part 14, Section 252A of the Act sets out the procedure.

It states the Minister for Aboriginal Affairs is to review this Act to determine whether the policy objectives of the Act remain appropriate and whether the terms of the Act remain appropriate for securing those objectives.

The review is to be undertaken as soon as possible after the period of five years from the date of assent to the Aboriginal Land Rights Amendment Act 2006 and as soon as possible after the end of every period of five years thereafter.

A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of five years.

The date of assent for the Aboriginal Land Rights Amendment Act was February 7, 2007.

This would trigger the next review of the Act, under the current terms of the ALRA, post February, 2012.

The act is silent on how the review should be conducted and who should conduct it.

The last Government-initiated review of the Act was called by the then Minister for Aboriginal Affairs, Dr. Andrew Refshauge.

He appointed a three member Review Task Force comprising: the Registrar of the ALRA, Mr. Stephen Wright (Chairperson), the then Director General, Department of Aboriginal Affairs, Ms. Jody Broun, and then Administrator, NSWALC, Mr. Murray Chapman.

The Task Force recommended regular reviews of the Act every four years to ensure that emerging issues could be monitored and dealt with in a timely way, and allow for ongoing opportunities to improve the Act as circumstances change.

It proposed those reviews be conducted by a committee made up of appointees of the Minister, the Registrar and NSWALC.

NSWALC believes the timetable for the next review of the Act should be in line with the current terms of the Act.

There are a number of sound political and operational reasons for this.

Chief among them is the fact that the legislative changes flowing from the last review resulted in major changes to the structure, representation, governance and benefits provisions of the Act.

They also saw the introduction of a new land dealings regime.

The implementation of these amendments has stretched the capacity of NSWALC and the land rights network.

They are still being bedded down.

A further package of miscellaneous amendments flowing from that Review has been developed but has yet to be presented to the NSW Parliament and debated.

The new Parliament is not due to resume until mid-April 2011.

The result of the State Election, in both the Legislative Assembly and the Legislative Council, may well have a significant bearing on the legislative future of those amendments, and/or the timetable for its introduction and its success, or otherwise, on the floor of the Parliament.

NSWALC has been pivotal in the drafting of these amendments and those which have seen the major changes now being bedded down. This has been acknowledged on all sides of the Parliament.

The process began in late 2007 when the Minister for Aboriginal Affairs approved the formation of a small group to advise him about an amendment Bill to the Aboriginal Land Rights Act that would deliver the recommendations of the ALRA Review Task Force in relation to Aboriginal Land Councils and land dealings.

It involved the formation of a confidential working party made up of representatives of the Minister (officers of the then Department of Aboriginal Affairs) and the NSWALC.

The working party was chaired by the Registrar of the Aboriginal Land Rights Act.

The goal and the challenge of the working party was to produce a draft Bill that would properly integrate the Aboriginal Land Rights Act and the Real Property Act.

The NSWALC was directly involved in the policy development, drafting instructions and Bill management until the Bill was presented to the Minister.

The Bill passed both houses of the NSW Parliament unanimously in June 2009.

Because of the success of the process and the Minister's recognition of the NSWALC's commitment and bona fides' the process was continued and the working group named (for better or worse) the "Miscellaneous Amendments Group".

The group acquired this name because its next task after land dealings was to prepare a Bill for the Minister attending to a range of miscellaneous matters in the Aboriginal Land Rights Act that would improve its functionality and operation.

As mentioned earlier, at the date of the 2011 NSW election a draft Bill has been prepared and awaits consideration by the incoming government.

The NSWALC views the Miscellaneous Amendment Group process as a proper recognition of the NSWALC's role in the administration of the Aboriginal Land Rights Act.

Importantly, it is a key example of the NSW government facilitating the proper administration and governance of the Act.

NSWALC considers it imperative an incoming Government continue this process and that it also be given a place on the next review Taskforce.

As the peak representative Aboriginal body in NSW, and the one largely responsible for the implementation of legislative changes and ensuring operational compliance with the Act, it is, arguably, best placed to determine whether the policy objectives of the Act remain appropriate and whether the terms of the Act remain appropriate for securing its objectives.

It is also best placed to conduct the necessary consultative processes with Local Aboriginal Land Council Boards and members.

It should be noted, in this context, that an election for NSWALC's nine member Governing Council is scheduled to be held in August this year.

There are a number of statutory governance and training obligations that will occupy the incoming Governing Council in addition to its normal policy, planning, operational and advocacy duties.

The current Governing Council, and an incoming Council and the entire land rights network will also be fully engaged in a major internal debate on the future financial sustainability of the land rights network.

This has been a core issue in previous reviews of the Act.

It is certain to be again in a future review of the Act.

NSWALC takes the view this is an internal debate the land rights network must have.

It would be far better, in NSWALC's view, for LALC Office holders and members to work through these matters and be ahead of a government-initiated review of the Act in taking positive steps toward addressing the sustainability challenges we currently face.

NSWALC commissioned a detailed discussion paper on the complex issues involved.

The document is now being widely circulated within the Network to communicate the outcomes of the analysis to date, and to give LALCs, an opportunity to work through the issues, options and consequences with all LALC members.

A full report will be prepared for NSWALC's Governing Council following debate and discussion at LALC level.

Given the history of this matter an exhaustive debate and consultation process is anticipated before positions are formulated on the best way forward.

A copy of the Discussion Paper on the Sustainability of the Land Rights Network is available on NSWALC's website at www.alc.org.au. It is suggested it be read as a companion document to Our Land, Our Rights.

It contains seven key options. They are:

- 1) That a comprehensive review of funding allocations to LALCs be undertaken, including that a new funding formula takes account of need and rewards better performance by LALCs.
- 2) That NSWALC dispose of non-performing NSWALC assets to raise funds.
- 3) That the Network makes government aware of, and pays for, the costs of extra demands it places on the Network.
- 4) That NSWALC encourages the sharing of resources between LALCs and explores a range of incentives that could be offered.
- 5) That NSWALC provides incentives for voluntary amalgamations between LALCs.
- 6) That NSWALC only approves benefit schemes that are supported by professionally prepared business plans and /or feasibility tested.
- 7) That NSWALC links benefits to membership such that it encourages eligible people to join their LALC and become active members.

This is a highly complex issue but NSWALC is mindful a new Government may wish to initiate a review of the Act before February, 2012.

Given all of the above, NSWALC calls on an incoming Government to observe the current timeline set out in the ALRA for the next review of the Act, continue the Miscellaneous Amendments Group process, and ensure NSWALC is represented on any Review Taskforce.

The Importance of Sustainability

To understand the importance of this sustainability debate it is crucial to come to an understanding of the importance of Local Aboriginal Land Councils to their home communities and to the current and future benefits which can be provided to their members and the wider Aboriginal community at the local level.

The core business of LALCs is land management but many have expanded to include non-core areas.

These include:

- Social Housing.
- Social Support
- Economic Development
- Cultural and Heritage work
- Political representation

Many play a positive role in advocating for local constituents.

It should be noted that many are the only independent Aboriginal organisations in town.

It is conceded, however, that a large number have performed poorly in some areas over the years due to lack of appropriate skills, inequitable and unjust responsibility allocation and cost shifting.

These divert resources away from core business and lead to operational difficulties which reflect poorly but unfairly on the entire land council system.

The new governance provisions have left 119 Local Aboriginal Land Councils to elect more than 1,000 elected Board members every two years and employ a minimum staff complement of 200 people.

All must undergo governance training, placing enormous operational pressure upon NSWALC.

There have been two rounds of elections for LALC Boards since these provisions came into effect.

Each land council has separate reporting requirements.

These include a requirement to develop individual Community Land and Business Plans and Community Benefit Schemes, incorporating Social Housing Schemes.

All of these requirements flow from the amendments to the ALRA which came into force in July 2007 following the Government initiated review which flagged the need for the Act to provide legitimate ways in which Aboriginal people in New South Wales could draw benefits from land rights.

At the time of the review Section 52 (1) (n) required LALCs to “ensure that no part of the income or property of the Council is transferred directly or indirectly,” to members.

The only material benefit that members could legitimately draw from land rights was subsidised housing if their LALC operated a community housing scheme.

The Taskforce reported that although members at community consultations recognised there had been important benefits from land rights, the lack of direct economic benefit to communities and individuals was seen as a major disadvantage and as a reason for declining membership.

It was proposed the restriction to prevent the direct transfer of income or property to members should remain but the Act be amended to allow members to gain benefits through approved community benefits schemes.

These provisions are now captured within the ALRA but must be established in accordance with an approval from NSWALC.

Social Housing

The LALC network collectively “owns” and manages social housing stock of more than 2,500 houses located on 60 reserves across NSW, which came with the missions and reserves transferred from Aboriginal Land Trusts---away from Government---into the control of LALCs in the original ALRA.

They were typically run down housing estates with dilapidated and overcrowded housing....to a point where the housing stock rapidly deteriorates.

The majority have never attracted recurrent funding from Government, unlike community housing or public housing which receives significant financial subsidy.

In many cases tenants, justifiably, were reluctant to pay the level of rent required for sub-standard housing, leaving LALCs to fulfill their responsibilities with limited rental income.

It is not well understood that those LALCs which manage former reserves are burdened with not only the normal costs associated with all other housing owners but the additional costs of providing essential infrastructure and service such as:

- Water and sewerage
- Roads
- Street lighting
- Garbage collection
- Upkeep of large common areas that adjoin these lands.

None of the Reserves has a formal town plan or easily accessible records in terms of the layout of essential services infrastructure.

These houses represents a third of all Aboriginal housing stock in New South Wales.

LALC social housing accommodates well over 12,000 Aboriginal people—representing 8.5 per cent of the Aboriginal population in New South Wales.

The ALRA Review Taskforce noted social housing programs had proven an unsustainable burden for many LALCs. The provision of community housing (or social housing) is one of the most important issues confronting the Aboriginal land council network in New South Wales.

The Taskforce noted that social housing, of its nature, is not financially viable and must be subsidised on a recurrent basis.

It noted that an independent appraisal of the NSW Land Council system prepared for NSWALC by SGS Economic and Planning during the ALRA Review had estimated that the reasonable cost of social housing provided through the LALC network should be approximately \$8-10 million per year.

Importantly, this figure did not include subsidies for maintenance or other infrastructure

The Taskforce pointed out that approximately 90 LALCs of a total 120 are registered with the Aboriginal Housing Office but only about 20 received funding from the Aboriginal Housing Office in 2005.

The main barrier is the inability of most LALCs to meet the AHO's Key Performance Indicators, in particular, requirements that rates and insurances are paid up to date, and the liquidity of the organisation.

Many LALCs are not in a financial position to repair their houses to an adequate standard and so have had difficulty collecting rents and paying rates and insurance charges.

This situation is now rapidly changing.

Despite the lack of any government subsidy many LALCs are doing a good job managing what, for all intents and purposes, was a social housing responsibility the State Government walked away from 25 years ago under the guise of land rights.

The sector still does not generate the income required to cover all of the expenses that come with providing social housing....and certainly not enough to cover the long term maintenance and increasing demands from population growth.

Many LALC members expressed concern during the community consultations on the ALRA Review about the housing issue and the burden it places on LALCs.

Many expressed the view that management of housing should be outsourced to professional housing providers.

The Taskforce reported that the situation was not sustainable and inequities in the provision of housing had to be addressed.

It proposed LALCs continue to be allowed to continue managing social housing programs only if they could demonstrate they are financially viable.

Many of the options proposed by the ALRA Review Taskforce are now reflected in the new social housing provisions of the amended Act.

In summary the Act now prohibits LALCs from providing 'social housing' (defined widely as any residential accommodation to Aboriginal persons) without them first obtaining NSWALC's approval.

There is a separate regime for approving existing and new social housing schemes but the requirements for both are onerous.

The Act prescribes that NSWALC must not approve a social housing scheme unless it is satisfied that, amongst other matters, the income (including any subsidies or grants) from the existing social housing scheme is, or will be, sufficient to meet all the expenses of the scheme, including long term maintenance requirements.

The ability of NSWALC to approve any scheme is likely to depend on the extent of any subsidies or grants a LALC is able to attract as few of the current schemes are self-sustaining.

This will be particularly difficult for LALCs which manage housing on ex-Reserves given the additional infrastructure and services costs they face.

The water and sewerage initiative outlined in this submission should partially assist them in this regard.

NSWALC must also determine that a Social Housing Scheme (as with all proposed community benefit schemes) must be fair and equitable and administered in a responsible and transparent way.

This will clearly require LALCs to develop, and have endorsed, a set of policies and procedures on eligibility and allocation of housing which have been the cause of contention in some communities.

LALCs can obtain the assistance of external bodies or agencies in the provision social housing schemes but the approval requirements remain the same.

Where a LALC fails to obtain NSWALC's approval to operate an existing social housing scheme it may, with NSWALC's approval, transfer the operation of the social housing scheme to another body or agency.

The amended Act also confers a social housing function upon NSWALC.

NSWALC has not previously had an express housing function.

NSWALC, the land council network, and other stakeholders such as the Aboriginal Housing Office, have been working their way through the implications of these changes on the ability of all stakeholders to seek to provide affordable, appropriate and healthy housing.

We do so in the knowledge of the current economic circumstances of the New South Wales Government and the retreat of the Commonwealth Government from its responsibilities following the replacement of the Community Housing and Infrastructure Programme.

NSWALC has developed a Social Housing Policy in response to the legislative changes. This policy was approved by the Minister for Aboriginal Affairs and gazetted on January 28, 2011.

The NSWALC will continue to work with LALCs and the Aboriginal Housing Office to implement the reforms in this sector but we strongly believe there needs to be a much sharper focus in the new Parliament, and at the Commonwealth level, on fixing the infrastructure problems on former reserves and missions without tying any support to the question of land tenure.

NSWALC also believes an incoming Government should retain the Aboriginal Housing Office.

All of above provides yet another reason not to impose a further review of the ALRA on NSWALC and LALCS soon after an election.

We argue that few sectors could cope with the amount of reform required of the land rights network in recent years.

The network is robust and has coped well, considering the financial and operational constraints, but another major review would run the risk of reform fatigue.

It's time to allow NSWALC and the land rights network to catch its collective breath and map out an economic development strategy through to 2025.

The Importance of Education

All current and aspiring NSW Parliamentarians would, or should, be aware of the large body of research and evidence on the beneficial impact of a good education on life expectancy and opportunities.

Low literacy and numeracy skills result in fewer opportunities and an increase in risk factors such as poor health and well being, low employment levels, inadequate housing and high levels of incarceration.

The most recent reports to the NSW Government show there has been no significant improvement in the proportion of Aboriginal students reaching the current literacy and numeracy benchmarks .

There remains a considerable gap in the achievement of Aboriginal students.

Education Endowment Fund

NSWALC's Governing Council made a unanimous decision at its 216th meeting on October 24, 2007 to segregate \$30 million from within the Statutory Investment Fund to fund the NSWALC Education Endowment Fund.

The scholarship fund is financed each year from the interest generated from those funds.

The Council anticipated this would provide up to two million dollars in scholarship monies each year in perpetuity, allowing up to 200 scholarships to be offered each year.

NSWALC acknowledged at the time that education was the primary responsibility of the New South Wales Government with the Commonwealth Government providing a strategic and funding role with specific Aboriginal education initiatives.

Without detracting from those responsibilities, NSWALC has taken the view it should make a long term investment in the education of Aboriginal people.

We do not believe this support should replace existing benefits available to Aboriginal people in NSW but should supplement the available resources through special initiatives and by generating greater community involvement in assisting those who wish to pursue their education.

Our way of doing this is to provide scholarships and other financial support for our people in need and for those who show additional promise.

The endowment fund is aimed at providing on-going support and benefits for Aboriginal people across the entire spectrum of educational opportunities, including mature age students.

Awards under the scheme are open to all Aboriginal people in NSW and provide opportunities for study at primary and secondary schools, higher learning institutions, colleges and universities.

Scholarship monies provided vary with the circumstances of the individual.

The eligibility criteria cover financial need, academic performance, connection with the Aboriginal community, commitment to the field of study and leadership potential.

A supplementary focus of the scheme, in conjunction with educational institutions and business, is to connect Aboriginal people with job and career opportunities in key areas of Aboriginal development.

The scheme also has a strong community focus by encouraging communities to get behind students. It also allows students to attend boarding schools, where appropriate, and give them a greater chance to stay at school and qualify for tertiary study.

The Education scholarships are the first major community benefits scheme to be offered by NSWALC under the most recently amended provisions of the Aboriginal Land Rights Act.

Fund Administration

The Fund has been administered by Charities Aid Foundation, the not-for-profit organisation which also administers NSWALC's Freddie Fricke Scholarship.

NSWALC's Freddie Fricke Scholarship, which has been targeted at tertiary students since its launch in 2002, has been continued.

This is also managed by CAF on behalf of NSWALC.

CAF has been responsible for the full administration of both funds, the application process, financial management of the income from the fund, and all associated due diligence and legal compliance.

A NSWALC Scholarship Management Committee oversees the implementation of the Scholarship funds.

Scholarships

The inaugural round of scholarships saw nearly \$400,000 in financial assistance distributed to some 119 recipients across the State.

The second round, announced in June 2009, saw 124 scholarships awarded.

The third round, announced in June/July 2010, saw 312 scholarships awarded from 441 applications. Applications are now open for the latest round of scholarships.

These will allow the recipients to pursue their studies in a range of fields including medicine, teaching, science, health, community services and trade courses.

External Funding

NSWALC's Governing Council took the conscious decision to bed down the administrative operations of the scholarship programme and measure the level of demand before seeking external contributions.

We have now reached that stage.

It our considered view that a further increase in the level of specifically targeted funding is required to effectively build Indigenous capacity and effectively close the gap between Indigenous and non-Indigenous education attainment levels.

Current funding levels are often short term or provided through pilot projects with little consideration given to the recurrent funding of those “pilots,” which demonstrate effectiveness.

A generous financial contribution from the New South Wales and Federal Government’s, and philanthropic institutions, would increase the monies available for future scholarships.

NSWALC is seeking a commitment from an incoming State Government to match our scholarship monies on a dollar-for dollar basis.

We are also seeking a commitment that it will work with NSWALC to secure a similar level of financial support from the Commonwealth Government.

Culture and Heritage

NSWALC and Local Aboriginal Land Councils have a statutory function to protect and promote Aboriginal culture and heritage rights under the ALRA.

Those functions, as prescribed in the legislation, are the same.

They are to:

- Take action to protect the culture and heritage of Aboriginal person in New South Wales, subject to any other law.
- To promote awareness in the community of the culture and heritage of Aboriginal persons in New South Wales.

However, they have limited power to do so.

Executive power resides with Government.

NSWALC wants this sole power to reside with Aboriginal people.

When he introduced the original land rights legislation Frank Walker noted that it lacked an essential element----the protection and ownership of Aboriginal cultural heritage.

He flagged the introduction of an Aboriginal Heritage Commission bill.

It has never seen the light of day.

Twenty-eight years on, responsibility for this protection and management lies largely with the Department of Environment and Climate Change and Water (DECCW)

The Department does what it can to ensure a high level of Aboriginal involvement in the management and protection of Aboriginal objects and places.

Despite its efforts Aboriginal cultural heritage continues to be destroyed.

The National Parks and Wildlife Act 1974 (NSW) is the main law in NSW which protects Aboriginal cultural heritage sites.

The Act gives the Director General of DECCW responsibility for the proper care, preservation and protection of 'Aboriginal objects,' and 'Aboriginal places'

The Director General can give permission to developers, government agencies, and others to disturb, damage or destroy Aboriginal heritage through the issuing of a 'consent' or permit, called an Aboriginal Heritage Impact Permit.(AHIP)

These permits have also been referred to as section 87 and section 90 consents.

It is difficult to get a clear picture about the number of AHIPs issued as official data is not made available and DECCW has advised that it does not systematically record data on the issues of AHIP's.

NSWALC and other Aboriginal organisations have received consistent feedback from the Aboriginal community that there is a high level of approved destruction of Aboriginal cultural heritage through the issue of AHIPs and that the process is failing to protect important sites.

Responses to Questions on Notice in the NSW Parliament have revealed that approximately 958 permits to authorise destruction were issued between 1990 and July 2007.

In the first five months of 2009 more than 100 permits had been issued. This is a rate of five a week.

Around a quarter of the permits issued between 2007 and 2009 were issued to state government agencies.

The largest number were issued to the Roads and Traffic Authority with the second largest number to DECCW itself.

The Director General also has the power to prosecute people who unlawfully destroy or damage Aboriginal objects or places, and can take other action to protect cultural heritage such as issuing a stop work order.

Again an accurate picture of prosecutions is hard to gain.

However replies to Questions on Notice in the NSW Parliament reveal there were a meagre total of seven prosecutions for causing or permitting damage to Aboriginal cultural heritage between 2005 and 2008.

It was reported in October 2008 that no stop work orders or interim protection orders had been issued in the previous 12 months.

NSWALC has called for the urgent collection and release of comprehensive data on the approval of AHIP's, including how many are issued and who they are issued to.

In June 2010, the NSW Parliament passed the National Parks and Wildlife Amendment Bill 2010.

The Bill made significant changes to the Aboriginal heritage provisions of the National Parks and Wildlife Act, as well as general administrative changes to parks and the management of threatened species.

The Amendment Bill, which was accompanied by the National Parks and Wildlife Amendment (Aboriginal Objects and Aboriginal Places) Regulation 2010, came into effect on October 1, 2010.

The Bill created new offences and significantly increased penalties for harm to Aboriginal places and objects, the introduction of a wide range of new defences, new administrative processes for permits, regulations relating to consultation, and new codes of practice.

Based on the available evidence it is clear that the current system for the management of Aboriginal cultural heritage, while improved, has led to, and will continue to lead to, wide-scale destruction with little public scrutiny.

The power to protect Aboriginal culture and heritage remains with State Government bureaucrats.

This should reside with Aboriginal people.

NSWALC is currently represented on numerous state wide committees which provide advice to the NSW Government on land and culture and heritage matters, including the Aboriginal Culture and Heritage Advisory Council.

The obligation to consult with Local Aboriginal Land Councils on cultural heritage matters is recognised through a range of DECCW and other government agencies' policies.

LALC's culture and heritage activities vary across Councils, but include custodianship of culturally significant land, maintenance of Aboriginal sites, management of local site databases, heritage site assessments, management of cultural centres and Keeping Places, participation on advisory committees and a range of projects in the community to improve awareness and understanding of Aboriginal culture and heritage.

NSWALC also works to seek the recognition of water rights as well as land rights.

It is little understood that when our people were dispossessed of their land we also lost our access to our traditional water resources. This effectively locked us out from our traditional use of our waterways, both coastal and inland. It has since deprived us of the traditional and economic use of those resources.

Numerous land councils are also involved in the joint management of culturally significant National Parks.

Mutawinjtji National Park, Mount Grenfell historic site, Biamanga, Gulaga and Gaagal Wanggan National Parks and the Worimi Conservation lands have been returned to Aboriginal ownership.

Land councils hold title to the land on behalf of the Aboriginal owners and participate on Boards of Management responsible for the care, control and management of these lands.

NSWALC recognises and respects the role of traditional owner groups in relation to culture and heritage.

Consultation on these matters must include those organisations with statutory responsibility for culture and heritage.

These are:

- NSWALC and Local Aboriginal Land Councils.
- Native title claimants and holders; and the native title representative body, NTSCorp
- Aboriginal owners and the Registrar of the Aboriginal Land Rights Act.

NSWALC seeks the transfer of ownership of title to lands covering national parks before negotiating further joint management arrangements.

NSWALC has worked in partnership with these groups to negotiate a number of important concessions from government on the cultural fishing rights of Aboriginal people and in bolstering the punitive regime for those knowingly desecrating sacred or significant Aboriginal sites under the provisions of the National Parks and Wildlife Amendment Bill 2009 and a range of other legislation.

But it remains committed to further and urgent positive reform of the Aboriginal cultural heritage system.

The current NSW Government has also announced the establishment of a working party to consider independent Aboriginal heritage legislation for NSW. The current NSW Opposition also announced their support for separate heritage legislation.

NSWALC calls on an incoming Government, and all sides of the Parliament, to support wide ranging and urgent reform of the Aboriginal culture and heritage system through the development of an Aboriginal Cultural Heritage Bill and an Aboriginal Cultural Heritage Commission.

This should be based on recognition that the ownership of Aboriginal cultural heritage properly lies with Aboriginal people.

NSWALC also believes an incoming Government should also move to transfer the ownership of further national parks into Aboriginal hands ahead of further joint management opportunities of national parks with Aboriginal communities.

The Land Bank

The Aboriginal Land Rights Act was introduced into the NSW Parliament on March 24, 1983 amid considerable controversy.

So much so, the then Minister for Aboriginal Affairs, Mr. Walker, was moved to assure the Legislative Assembly that “nowhere within this bill are there any provisions for a massive handing over of land to Aborigines.”

He was correct.

More than a quarter of a century later, granted land claims have delivered an area of land which is less than one per cent of the total land mass of New South Wales into the care and control of Aboriginal people.

It is instructive, in this context, to consider how land claims can be lodged, what can be claimed, how many land claims have been lodged and how many have been granted and why, given the small size of the land accumulated, these processes are so important to Aboriginal people across New South Wales.

The Purpose and Process of Lodging Land Claims

The process involves NSWALC and Local Aboriginal Land Councils lodging land claims over NSW Crown Land with the Office of the Registrar of the ALRA.

This office registers the lodgment of the claims and then forwards them to the Land and Property Management Authority for determination.

The claims are determined by the Minister for Lands, or on appeal through the NSW legal system.

Under the ALRA, claimable Crown land is defined as:

- Land able to be lawfully sold or leased, or reserved or dedicated for any purpose, under the Crown Lands Consolidation Act 1913, or the Western Lands Act 1901;
- Land that is not lawfully used or occupied;
- Lands which are not, in the opinion of the Minister administering the Crown Lands Act (1913), needed, nor likely to be needed as residential lands;
- Lands which are not needed, nor likely to be needed, for an essential public purpose; and
- Lands that are not the subject of an application for a determination of Native Title, or the subject of an approved determination of Native Title.
- If land satisfies the above tests it is granted to the claimant land council.

NSWALC may make a claim for land on its own behalf, or on behalf of a Local Aboriginal Land Council.

Land Councils have a four month period in which to appeal Ministerial refusal of a land claim.

NSWALC assists many LALCs to lodge land claims given many do not have access to the expertise, resources or funding to do so.

This includes researching, lodging and appealing claims if their refusal is considered to have been unfair.

As outlined earlier the making of a claim, and the granting of land, is now the sole remaining form of compensation for dispossession available under the ALRA.

Successfully claimed land may be set aside for cultural purposes, used to generate further housing for the LALC members, developed in a joint venture arrangement to maximise returns, or utilised to provide a means for the LALC and its members to develop business enterprises.

Status of Land Claims

A total of 33,905 land claims had been lodged with the Department of Lands by January 2011 since the ALRA came into existence.

A total of 2,405 claims have been granted and 6,749 refused.

More than 24,000 have yet to be determined.

Of these outstanding land claims 296 were lodged before the 2000/2001 financial year.

The oldest outstanding land claim was lodged on 29 September 1984.

The time taken to determine land claims and issue of Certificates of Title to Land Councils is an ongoing concern for NSWALC and the LALCs.

These delays deprive LALCs of the use of the land claimed or granted for a lengthy period of time.

NSWALC has raised its concerns with the current NSW Government over the slow determination of land claims, and the surveying and issue of Certificates of Title.

Meanwhile, NSWALC and Local Aboriginal Land Councils continue to exercise their statutory right to claim available Crown land.

The land rights network is, however, becoming increasingly concerned about the litigious approach of the current NSW Government towards the land claims process.

Aboriginal claimants are being increasingly forced to resort to court action to test land claim refusals by the Minister for Lands.

While NSWALC is concerned about the cost to both the self-funded land rights network and NSW taxpayers, the organisation has now won 12 out of 15 appeals against land claims refused by the Minister for Lands since 2007.

These legal victories have occurred in the Land and Environment Court, the Supreme Court, Court of Appeal, and the High Court of Australia.

Legal costs being have been awarded in favour of NSWALC.

Importantly, all cases have established significant legal principles.

These principles relate to the Crown lands that can, or cannot, be validly claimed, whether Crown land is lawfully used or lawfully occupied, and the level and type of evidence required to properly establish that land is needed, or likely to be needed, as residential lands, or for an essential public purpose.

The profound concern of NSWALC and the Local Aboriginal Land Council network on the pace of land claim determinations and the cost of litigation to determine claims has been the subject of considerable correspondence between the Government and NSWALC in recent times.

NSWALC Chairwoman Bev Manton wrote to the Minister for Lands following a decision of the High Court in NSWALC's favour in October 2008 concerning a land claim lodged by the organisation on behalf of the Wagga Wagga Local Aboriginal Land Council.

She expressed the Governing Council's view that a large number of these matters could be settled by negotiation between NSWALC and the Government, resulting in significant savings to both the taxpayers of New South Wales and the self-funded land rights system.

Nothing came of the request to discuss a negotiated way forward.

The matter was taken up in a letter to the then Premier, Nathan Rees, in March, 2009.

NSWALC expressed the view that a resolution at Ministerial level would greatly assist Aboriginal people in NSW to continue to exercise their legitimate rights to lodge land claims, have them determined in a timely and effective manner and at a cost saving to taxpayers and the land rights system.

Expectations of a breakthrough were raised when Premier Rees announced at the NSW Labor Party conference in November 2009 he had directed that all claims lodged before 1993 be resolved by the end of that calendar year.

He told conference delegates the delay in these land claim determinations "offended me and should offend us all."

However, Mr. Rees was replaced as Premier within weeks for reasons unrelated to the land claim issues.

NSWALC promptly took up the issue, on behalf of Council and the network, in a letter to his successor, Premier Keneally.

No reply was received.

A further letter was sent in March 2010 seeking a meeting with Premier Keneally when it became clear the Government had effectively watered down the land title being offered to Aboriginal people to implement the pledge from Mr. Rees without prior consultation with NSWALC or the land rights network.

The Minister for Lands had begun issuing limited un-surveyed Certificates of Title to granted land.

This effectively transferred the cost of surveying granted land from the Government to cash strapped Local Aboriginal Land Councils.

In essence, limited title grants transferred a liability, not an asset.

NSWALC expressed the view that the issue of limited title grants undermined the letter and spirit of the Aboriginal Land Rights Act as a compensatory vehicle for the historical dispossession of Aboriginal land.

The Government was informed NSWALC's Governing Council was seeking to find a way to work together with the Government to resolve these issues without "surrendering our legitimate rights under the Aboriginal Land Rights Act."

Despite a series of meetings with Government, concerns expressed by the NSW Ombudsman and the NSW Audit Office about the logjam in determinations, and a number of constructive proposals put forward by NSWALC, these issues remain at an impasse.

NSWALC notes the policy on "Indigenous People and Reconciliation" adopted by the NSW Branch of the Australian Labor Party at its November 2009 State Conference commits it to "continue to support applications from Land Councils to claim Crown Land as prescribed under legislation and will ensure the efficient processing of these claims."

The current processing of claims is inefficient, particularly the current rate of determination.

The New South Wales Aboriginal Land Council calls on an incoming State Government, and all parties in the new Parliament, to work with the land rights network, to accelerate the land claim determination process through a negotiated framework to avoid the unnecessary cost of litigation to both the self-funded land rights system and the taxpayers of New South Wales and uphold the legal rights gained by Aboriginal people under the ALRA.

Land Rights Amendment Bill 2009

While the issues above remained at an impasse NSWALC continued to work with the current State Government to develop the land rights system as an economic springboard.

The result provided a stark illustration of the ability and preparedness of the NSWALC Governing Council, senior management and advisors to adopt the role of “critical insider,” and work closely with the State Government, and other stakeholders, to improve outcomes for Aboriginal people.

Council, management and advisors worked closely with Government to draft significant amendments to the Aboriginal Land Rights Act (NSW) to provide for a new land dealings regime.

Its role in this regard was acknowledged by Aboriginal Affairs Minister Paul Lynch when he introduced the Aboriginal Land Rights Amendment Bill into the NSW Legislative Assembly on June 26, 2009.

Mr. Lynch told Parliament he considered the key to success in Aboriginal Affairs was to “work in partnership with the Aboriginal people of New South Wales.”

“This bill and its preparation demonstrate the value of that partnership,” he added.

“The New South Wales Aboriginal Land Council has had a pivotal role in the development of this bill.

“The Council has provided insight and skill into assessing what measures will be serviceable and effective for Aboriginal land councils in a complex system of land dealing approval and implementation.”

Minister Lynch said the Bill reflected a coming together of both the Aboriginal rights agenda and the economic development agenda and re-emphasised the importance of the work of NSWALC and the land council network in NSW.

These observations were reflected in the tone and content of subsequent speeches from all sides of the two Chambers when debate on the Bill resumed in the Legislative Assembly on September 2 and in the Legislative Council on September 9, 2009.

While all speakers spoke on the substantive provisions of the Bill they also used the debate to restate their support for the principles underlying the Act and Aboriginal self-determination.

The Shadow Minister for Aboriginal Affairs and Nationals Member for Barwon, Mr. Kevin Humphries, told the Legislative Assembly he believed “that most people and successive governments have not really understood the issues in many communities created by dispossession of land and relocation.”

“Today there is dysfunction in many Aboriginal communities in this country, not only in New South Wales, because communities have not effectively dealt with what I call intergenerational trauma.”

Mr. Humphries told Parliament the progress to date in marrying land rights and the development agenda with the “overarching issue of self-determination has been slow and often contentious.”

Further mentoring to build business skills and corporate governance was the key to progress in this area.

Mr. Humphries also spoke of “complex problems arising from who actually speaks for Aboriginal people in our communities: working parties, a regional assembly or a land council. We now have the new community partnership groups.”

“I believe it has quite effectively divided people in Aboriginal communities and led to a deal of confusion,” he added.

“We need to narrow this down.

“I believe the land councils are the legitimate body and vehicle to rebuild the system, not just as the economic driver for the community, but also as the main spokesperson for the community.

“They are the only democratically elected group in the communities.

“Part of the nature of Government is that they have bowed to self-appointed people within Aboriginal communities. I suspect for too long.

“We need to redefine their role and this legislation may help in part because it will lead to a more defined process in land dealings.”

Despite the slow pace of land claim determinations some Land Councils now have valuable land holdings and a number are, or are seeking to be involved in large-scale land development projects.

Many LALCs are also under financial pressure to sell or develop their land, due to the cost and resource burden ownership places upon them and the need to fund social benefits schemes.

The new land dealings regime, if well-constructed, should establish strong foundations for LALCs to acquire own and dispose of land in ways that will give Aboriginal people and their community’s long term prosperity and independence.

The new land dealings regime is now being put in place by NSWALC and the land rights network.

It is essential to the next major phase of land rights, the management and development of land for the benefit of all Aboriginal people in New South Wales.

Economic Development, Service Delivery and Community Governance

Those not acquainted with the land rights system may be excused for finding the statements by Mr. Humphries during debate on the land dealings bill to be oblique.

They relate to an ongoing issue of concern within the land rights system about the move by the State Government to establish regional working parties to engage with Aboriginal communities rather than Local Aboriginal Land Councils.

The NSWALC concedes that some LALCs do not have the skills to take on this role but many do and many are increasingly looking at forming partnerships to ensure they are the first and main point of contact for Government.

This is best evidenced by the recent signing of a partnership agreement between the state and federal governments and fourteen Local Aboriginal Land Councils from the Northern Region of New South Wales.

The Regional Partnership Agreement will govern how the state and federal governments engage with Aboriginal people in Northern NSW in crucial areas such as housing, culture and heritage and economic development.

The road to reaching this agreement contains valuable lessons for all. NSWALC can provide a separate briefing, upon request, to those interested given the complex negotiations and issues involved in striking this agreement.

Aboriginal Representation

The question of improving or enhancing the representation of Aboriginal people in mainstream politics at both the State and Federal levels has long been discussed, debated, and dissected.

Calls for dedicated seats for Aboriginal people, in both the State and Federal Parliament, have been made, and rejected, for almost a century.

The last time this issue was considered by the NSW Parliament was in the 1990's by the Legislative Council Social Issues Standing Committee.

That Inquiry was initiated on the floor of the Legislative Council in September 1995.

The Committee published a report in November, 1998 entitled: Enhancing Aboriginal Political Representation: Inquiry into Dedicated Seats in the New South Wales Parliament

At that time no Aboriginal person had ever been elected to either of the two Houses of the New South Wales Parliament.

This changed in 2003 with the election of Ms. Linda Burney as the Labor Member for Canterbury.

It should be noted that there have been over 2,000 members of parliament since the first NSW Legislative Council was constituted in 1924, with a total of 135 members elected to the 53rd NSW Parliament.

Ms. Burney remains the sole Aboriginal representative ever elected to the NSW Parliament.

She is expected to retain that status at the forthcoming election.

NSWALC would urge all parties to support a reference to the Committee to revisit the issues raised in the 1998 Report in the new parliament.

The previous Committee found that Aboriginal people were clearly under-represented at all levels of government and determined that a "just and equal society requires the representation of Indigenous people in the NSW Parliament."

In an attempt to facilitate public participation in the 1998 Inquiry, the Committee conducted a series of consultations across New South Wales.

More than 400 people attended meetings held in Redfern, Parramatta, Armidale, Moree, Wagga Wagga, Lismore, Bateman's Bay, Coffs Harbour and Dubbo.

At each meeting participants were asked to consider the arguments for and against dedicated seats, how dedicated seats could work in practice, and other options to improve Aboriginal representation.

The Committee reported that many Aboriginal people expressed a strong desire to play a more active role in the political process in NSW.

The Committee found significant support and enthusiasm for the concept of dedicated seats among the Aboriginal, and non-Aboriginal people, who attended the consultation meetings, and from key representatives of Aboriginal organisations, including NSWALC.

However, there was little agreement on the mechanics of dedicated seats, such as the appropriate number of seats, how candidates should be elected, and in which of the two Houses of the Parliament they should be located.

The lack of a clearly defined proposal for dedicated seats made it difficult for some people who participated to declare their support for the concept.

Some considered it a form of tokenism.

The Committee reported that the details of implementing dedicated seats---to quote the report---is not widely appreciated and the processes for election together with the political implications involve complex issues.

It went on to report that sufficient time could not be made available to fully explain and discuss these issues during the consultative meetings and the Committee recognised that consensus was unlikely to be reached in those circumstances.

It noted that Aboriginal people, on numerous occasions said that they should have been involved in formulating the proposals before consultations were undertaken.

The Committee made five major conclusions.

In its major conclusion the Committee considered that the following steps “must be taken,” before dedicated seats could be introduced:

- further consultation with Aboriginal people about how dedicated seats would operate;
- the conduct of an education campaign about dedicated Aboriginal seats, which involves individual Members of Parliament, political parties and the community;
- an assessment of the level of support for dedicated seats and its adoption by the people of NSW at a referendum.

The Committee pointed out that these steps posed formidable challenges to advocates of dedicated seats.

Its report said: The Committee is firmly convinced that Aboriginal people should formulate the initiatives to improve Aboriginal representation and believes that the establishment of an Aboriginal Assembly should be considered, as an interim measure, by the Aboriginal community.

Government members (ALP) of the Committee went a step further.

They stated their belief that an Aboriginal Assembly, to meet in the NSW Parliament, should be established as an interim measure to further Aboriginal representation at all levels of government.

The Assembly should be guided by a formal Charter, should be adequately resourced, and only be established if it had significant support from the Aboriginal community in NSW.

Other members of the Committee did not support the establishment of an Aboriginal Assembly “at this stage.”

NSWALC understands a referendum is not required to create an Aboriginal Assembly.

In June 1997 representatives of the New South Wales Aboriginal Land Council and ATSIC were invited to meet in the NSW Legislative Assembly in what was described as the first “Black Parliament.”

A second sitting was held in September, 1998.

Both were attended by the Premier of the day, the Leader of the Opposition and other dignitaries.

Those sittings of the Black Parliament have never been repeated.

The nine-member Governing Council of NSWALC also held a ceremonial meeting of Council in the Legislative Assembly on June 10, 2008 to mark the 25th Anniversary of the proclamation of the Aboriginal Land Rights Act in June, 1983.

This was well received within the land rights network and the wider Aboriginal community.

NSWALC recommends an incoming State Government, in partnership with all major parties, agree to schedule a meeting of an Aboriginal Assembly at least once a year in the NSW Parliament.

We further recommend the agenda for such a meeting be determined between the Government of the day, and the NSWALC, with particular emphasis being placed on a progress report from Government ministers and their senior bureaucrats on the success or failure of proposed outcomes designed to close the gap.

NSWALC considers the debate about dedicated seats should be seen as part of a longer term agenda given the complex political and constitutional questions inherent in such a proposition.

Consideration should be given to a public awareness campaign around the complex issues involved to be conducted as part of a new Legislative Council Social Issue Standing Committee reference.

International Advocacy

The New South Wales Aboriginal Land Council continues to hold special consultative status with the United Nations Economic and Social Council (ECOSOC).

This status allows the NSWALC to advocate on behalf of our people at the United Nations through its various bodies and activities.

The NSWALC’s ongoing participation in the work of the United Nations, and more particularly its Permanent Forum on Issues (UNPFII) is in line with Council’s strategic decision to adopt, and to maintain a strategy of active engagement in international advocacy.

The development of networks through international engagement also assists NSWALC in the management of its broader statutory functions and allows it to shine a spotlight on domestic issues in international forums.

The NSWALC seeks to take a practical and innovative approach to this work which seeks to have international human rights standards adopted and applied in Australia for the benefit of Aboriginal people.

In recent years the Council has sent delegations to the UNPFII to represent, and to advocate on behalf of Aboriginal people in Australia, with particular emphasis on New South Wales.

The NSWALC must actively participate and contribute to the work of the United Nations if it is to maintain its ECOSOC status.

The organisation has used its status in this regard in recent years to call upon the Australian Government ensure the compatibility of all government policies and practices with the human rights standards contained in the UN Declaration on the Rights of Indigenous Peoples' to effectively put its publicly expressed endorsement for the Declaration into meaningful action. NSWALC believes an incoming State Government could take the lead in this regard given the timidity of the Federal Government in this area.

