



NEW SOUTH WALES ABORIGINAL LAND COUNCIL

ABN 82 726 507 500

The Director
General Purpose Standing Committee No. 5
Parliament House
Macquarie St
Sydney NSW 2000

Dear Director,

Re: Inquiry into the Management of Public Land in NSW

Thank you for providing the NSW Aboriginal Land Council (**NSWALC**) with an opportunity to make comment and provide input into the Management of Public Land in NSW Inquiry.

The Aboriginal Land Rights system in NSW

NSWALC is the peak body representing Aboriginal peoples in NSW and with over 20,000 members, is the largest Aboriginal member based organisation in Australia. Established under the *Aboriginal Land Rights Act 1983 (NSW)* (**ALRA**), NSWALC is an independent, self-funded non-government organisation that has an elected governing council and the objective of fostering the aspirations and improving the lives of the Aboriginal peoples of NSW.

Pursuant to the ALRA, NSWALC has the following functions amongst others:

- The acquisition, control, and management of (and other dealings in) lands in accordance with the ALRA; including the claiming of unused Crown land;
- The protection and promotion of Aboriginal culture and heritage in NSW;
- The facilitation of business enterprises; and
- The provision of advice to the NSW Government of matters related to Aboriginal land rights.

NSWALC provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) that exist in NSW. As elected bodies, Aboriginal land councils represent the not only the interests of their members, but of the wider Aboriginal community.

The preamble of the ALRA recognises that '*Land is of spiritual, social, cultural, and economic importance to Aboriginal peoples*'. The ALRA was established to facilitate the return of land in NSW to Aboriginal peoples through a process of lodging claims for unused Crown land.¹ The network of Aboriginal Land Councils was established to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities.

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When introducing the *Aboriginal Land Rights Bill 1983* into the NSW Parliament, the then Minister for Aboriginal Affairs, the Hon. Frank Walker identified that ‘...land rights has a dual purpose – cultural and economic’ⁱⁱ.

Recommendation 1: That the Inquiry into the Management of Public Land in NSW recognises the Aboriginal land rights system in NSW, which includes NSWALC as the peak representative body and a network of 120 autonomous LALCs across the state, as genuine stakeholders in decisions regarding the management of public land. Strategies should be developed to inform and engage the Aboriginal Land Rights network in any proposals related to such management.

Crown land and Aboriginal Land Councils

Aboriginal Land Councils can make a claim to Crown land in NSW under section 36 of the ALRA. Aboriginal land claims are the sole form of compensation available under the ALRA to compensate Aboriginal people for the past dispossession of their lands. At present, there are over 26,000 undetermined claims to Crown land, many of which are several years old. NSWALC is working with Government to address this backlog, however, pending resolution of the backlog NSWALC wishes to ensure the rights under those undetermined land claims are protected.

The ALRA is a compensatory regime that empowers Aboriginal Land Councils to acquire land (by claim over Crown land or by purchase), deal with land and maintain and enhance Aboriginal culture, identity and heritage. NSWALC is concerned to ensure that emphasis is not placed on converting Crown land into National Park estate or other types of conservation areas at the expense of Aboriginal people and land rights as this undermines the compensatory nature of the ALRA. Any proposals to convert Crown land to National Park estate must first take into consideration whether there are any undetermined land claims over that land, so that those claims can be determined first and Aboriginal third party rights are not affected by further dispossession. Further, any proposal to convert Crown land to National Park estate will mean that Aboriginal land claims will not be able to occur on such land and will severely limit the operation of the ALRA.

The management of public land in NSW must not undermine the ALRA and its purpose to provide land rights for Aboriginal persons in NSW, to vest lands in Aboriginal Land Councils as well as to provide a compensatory mechanism for dispossession while aiming to address issues of intergenerational equity.

NSWALC recommends that a priority of the Inquiry and any subsequent policy or legislative changes should be to adequately recognise NSW Aboriginal land rights mechanisms in the context of management of public lands and to avoid any conflict with the operative provisions of the ALRA.

Recommendation 2: Emphasis placed on the conversion of Crown land to National Park estate must not undermine the compensatory mechanisms of the ALRA. The ALRA is the only form of compensation given to Aboriginal peoples in NSW as a result of dispossession.

Travelling Stock Reserves

NSWALC recently provided a submission to the Review of the NSW Livestock Health and Pest Authority Model specifically on travelling stock reserves and their importance to the Aboriginal Land Council network and more broadly Aboriginal communities in NSW. The submission primarily noted that any changes to the way travelling stock reserves are managed must not undermine Aboriginal peoples and Aboriginal Land Councils rights to acquire, control and negotiate access arrangements to travelling stock reserves.

The areas of these reserves are frequently of substantial historical and cultural importance to Aboriginal communities. This is partly a result of the relative lack of impacts from European land use (compared to surrounding farm and grazing lands) which allowed for greater survival of cultural landscape features and material cultural items. Many of these reserves are also of significance as a result of their use by Aboriginal people for work and residence purposes in the past.

The NSWALC submission has been attached for the convenience of the Inquiry and to further expand on issues specifically relating to travelling stock reserves and the Aboriginal Land Council network.

Protecting Aboriginal culture and heritage and cultural knowledge

The Inquiry should sufficiently explore the role of Aboriginal peoples and communities in biodiversity management and recognise the huge contribution that Aboriginal people and communities have made to biodiversity management over millennia.

Aboriginal peoples in NSW and particularly the network of Aboriginal Land Councils are key stakeholders in relation to biodiversity management, are significant landowners and managers of lands with high biodiversity value, and at a local level are holders of specific Traditional Ecological Knowledge accumulated over millennia.

NSWALC supports practical measures by government that seek to implement the United Nations *Declaration on the Rights of Indigenous Peoples*, which was endorsed by the Australian Government on 3 April 2009. This includes mechanisms to support Aboriginal peoples' management of lands, waters and natural resources. The following excerpts from the United Nations Declaration on the Rights of Indigenous Peoples identify the inherent rights of Aboriginal peoples in relation to lands, waters, natural resources and Traditional Ecological Knowledge. These excerpts have been provided to assist the Inquiry:

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 29

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation, protection, without discrimination.

It is essential that in any future legislative or policy development in relation to the use and management of public land, recognition is provided regarding the past and ongoing efforts of Aboriginal communities in biodiversity management and conservation activities.

Recommendation 3: The Inquiry is encouraged to acknowledge Aboriginal peoples as the Traditional Custodians of land and waters who possess valuable Traditional Ecological Knowledge and are key stakeholders in the management of Crown lands.

NSWALC recommends that all objectives and guiding principles of the management of public land be in accordance with principles embedded within Article 8 (j) of the Convention on Biological Diversity (CBD) and the Nagoya Protocol. The CBD already commits Australia to “*respect, preserve and maintain knowledge, innovations and practices of Indigenous ... communities ... for the conservation and sustainable use of biological diversity*”. The Nagoya Protocol creates a framework applying to Traditional Ecological Knowledge. The Protocol requires parties to recognise and protect the inherent rights and interests of Aboriginal peoples to their Traditional Ecological Knowledge and ensure that policies and the governmental use of such knowledge is based on principles of free, prior and informed consent.

It is also essential that the Inquiry recognise that the protection of environmental values does not always necessarily align with the protection of Aboriginal culture and heritage and associated practices. In accordance with principles of self determination, and as outlined above, Aboriginal peoples must be able to use their own processes and structures to determine and identify their own priorities. Government must move beyond the environment focused ambit of public land management in relation to Aboriginal culture and heritage. Any future management of public land must support Aboriginal people’s priorities in relation to culture and heritage protection and management and must not prioritise environmental values above culture and heritage values and practices as determined by Aboriginal peoples.

Recommendation 4: The Inquiry should recognise that the protection of environmental values does not necessarily align with the protection Aboriginal culture and heritage, and associated practices. The Inquiry should not prioritise environmental values above culture and heritage values and practices as determined by Aboriginal peoples.

Again, I thank you for the opportunity to provide comment to the Inquiry regarding the Management of Public Land. I trust that genuine consideration will be given to our comments and that a response to the issues we have raised will be forthcoming.

If you have any questions regarding this letter, please do not hesitate to contact the Policy and Research Unit on 02 9689 4444.

Yours sincerely,



Clare McHugh
Director, Policy and Research Unit
NSW Aboriginal Land Council

Date: 3/8/12

ⁱ Section 36 of the *Aboriginal Land Rights Act* further outlines claimable Crown lands in NSW

ⁱⁱ The Hon. Frank Walker, NSW Parliament Hansard, Legislative Assembly, 24 March 1983, at 5090, available at: [http://www.parliament.nsw.gov.au/Prod/parlment/hanstrans.nsf/V3ByKey/LA19830324/\\$file/473LA046.PDF](http://www.parliament.nsw.gov.au/Prod/parlment/hanstrans.nsf/V3ByKey/LA19830324/$file/473LA046.PDF)