New South Wales
Aboriginal Land Council

Sustainability of the Aboriginal Land Council network

Discussion Paper

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33 Argyle St, Parramatta NSW 2154
PO Box 1125, Parramatta NSW 2124

Ph: 02 9689 4444
Fax: 02 9687 1234
Email: policy@alc.org.au
www.alc.org.au

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Contents

Introduction

The future financial and operational sustainability of the self-funded land rights network in NSW has been the subject of considerable discussion and debate in recent years. A number of factors have been driving this debate, including increasing cost burdens transferred to the self-funded land rights system, and the overarching need for the New South Wales Aboriginal Land Council (NSWALC) Account[i] to be maintained for future generations.

Other drivers, such as the volatility of financial markets, and the need to address the costs of maintaining Local Aboriginal Land Councils (LALCs) who are consistently underperforming or under administration have also been highlighted, including in reports by the Auditor-General,[ii] Public Accounts Committee,[iii] and in the 2004-2005 Review of the Aboriginal Land Rights Act 1983 (ALRA).[iv]

With these issues in mind, NSWALC has identified that improvements in the overall operation of the land rights network are needed in order for the network to be more financially sustainable and effective in the longer term.

What is sustainability?

The term 'sustainability' can encompass a wide range of meanings. In the context of sustainability of the Aboriginal Land Rights network NSWALC acknowledges that a range of issues are related to the longer term strength and vibrancy of the Network including environmental, social, political, cultural and economic issues.

In releasing this discussion paper NSWALC acknowledges that the proposals canvassed here only address parts of the sustainability debate. This discussion paper uses the term 'sustainability' primarily in the context of the future ***financial sustainability*** of the NSW Aboriginal Land Rights Network and in particular its ability to continue operating into the future for the purposes for which it was established. Thus, the term 'sustainability of the Network' used here ***focuses on the costs of operating the Network over the long term, and what can be done to improve the overall performance of the Network.***

Purpose of network consultations

NSWALC wants to find out from the network what the key priorities are in terms of pursuing financial sustainability with the goal to developing a policy approach to achieve this. This paper has been produced to stimulate discussion and debate among LALC members on the sustainability issues faced by the Network, and what issues must be addressed in order to ensure NSWALC and LALCs continue to transform our hard won land rights into social and economic benefits for Aboriginal people.

This discussion paper builds on documents distributed to the network in recent years, specifically:

- A discussion paper titled 'The Sustainability of the NSW Aboriginal Land Rights Network' released in January 2011, and
- A research report prepared by SGS Economics and Planning titled 'Detailed Modelling of Funding Options for LALCs: Update', released in 2012. This report considers various approaches to funding LALCs, and recommends a hybrid model, that takes into account a number of measures, for allocating available funding from the Statutory Investment fund.[v]

There is no 'one size fits all' approach to sustainability, and there are many issues to be considered. As such, the issues and questions outlined in this paper are designed to seek feedback on:

I. Issues that are currently placing demand on the financial and operational sustainability of the Aboriginal land council network,

II. Potential solutions to achieving sustainability of the network, and

III. Specific proposals relating to how NSWALC funds LALCs and related options to improve LALC performance.

It is important to note that the specific proposals outlined in this paper are **NOT** current NSWALC policy. ***Instead, the proposals have been put forward to stimulate discussion and debate*** about what models/options to address issues of sustainability are best suited to the needs of the network.

Subsequent to network consultations, Council will consider the recommendations and outcomes. Depending on the feedback received, NSWALC may seek to pursue a formal policy on sustainability with a focus on a new funding model and related capacity development and performance based initiatives.

NSWALC seeks feedback from the network on the content of this discussion paper and in particular the discussion questions. Please send feedback by 30 October 2013 to

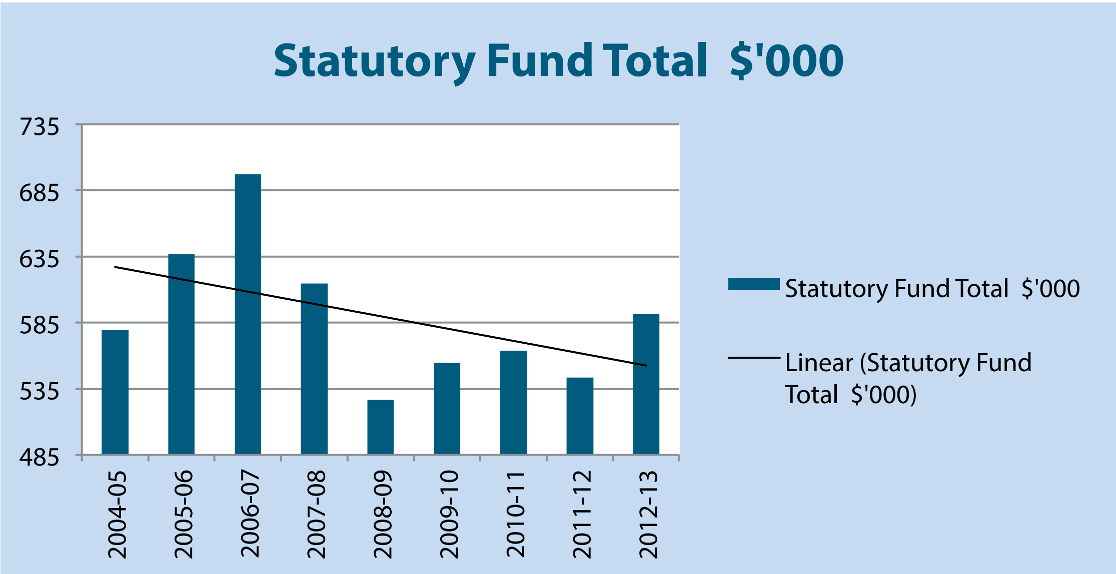
Post: Policy and Research Unit, NSWALC, PO Box 1125, Parramatta, 2125
Email: responses@alc.org.au
Phone: Contact the Policy and Research Unit on (02) 9689 4444

Why is sustainability important?

The NSW Aboriginal Land Rights system is currently largely funded by drawdowns from the NSWALC Account established under the Aboriginal Land Rights Act 1983 (NSW) (ALRA). For the first 15 years the ALRA was in operation the State of NSW paid an amount equivalent to 7.5 per cent of NSW Land Tax (on non-residential land) into the Account as compensation for land taken from the Aboriginal peoples of NSW. This annual payment ceased in December 1998 and since then NSWALC and the Aboriginal Land Council network have been self-sufficient.

The Account is to provide compensation for future generations, and as such the ALRA sets a minimum limit at which the NSWALC Account must be maintained. This limit is currently set at $485,340,000. There is a strict regulatory and compliance regime in place governing how NSWALC administers the NSW Aboriginal Land Council Account.

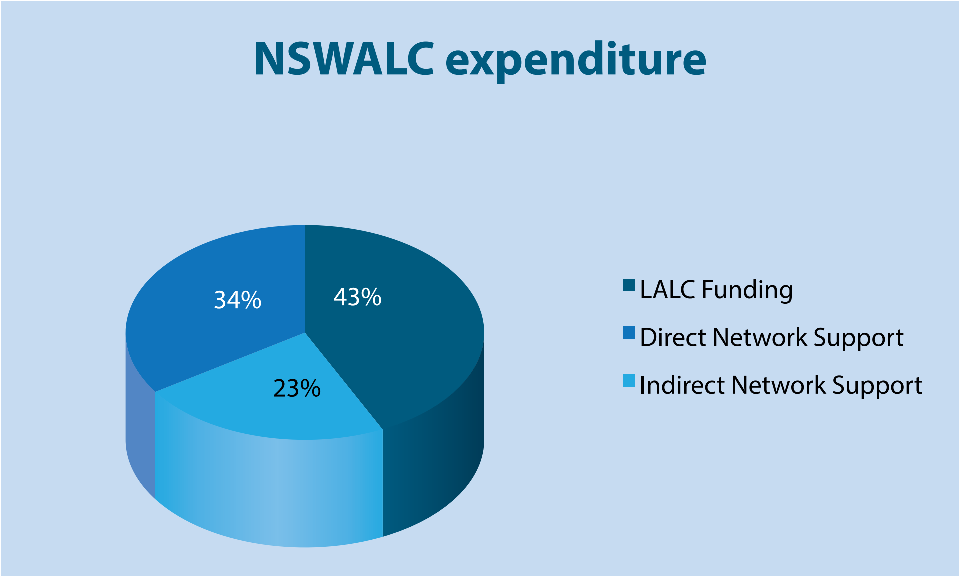
In order to maintain and grow the Account for future generations NSWALC has established a set of Investment Objectives and Investment Beliefs[vi] and has implemented a range of prudent financial management strategies. These strategies include, the establishment of an Investment Committee, and the adoption of the 'Drawdown Rule' by Council. In brief, the Drawdown Rule sets an amount which can be expended each year by Council which is calculated based on the previous drawdown, average asset value and long term spending rate. More information about NSWALC's investment strategy and performance can be found in NSWALC's Annual Reports available on our website.[vii]



As highlighted above, there are a number of pressures on the fund, including the volatility of markets, which had a significant impact on the Account during the Global Financial Crisis (GFC) in 2008. In addition there have been significant amendments made to the Aboriginal Land Rights Act 1983 (NSW) (ALRA) since its inception. While many amendments were aimed at improving the structure and operations of the network overall it is considered that there has been an increase in the overall cost burden through structural, operational and governance changes, that have had little regard to the increasing transactional costs (both financial and administrative).

In addition, each year funds are 'drawn down' from the NSWALC Account to set the NSWALC budget. During the 2011-12 financial year a drawdown of $35.5 million was made. There are concerns regarding the amounts being drawn down every year, and the pressures on the ability of the network to fund itself into the future. The majority of these funds are used to provide a direct grant allocation of approximately $130,000[viii] to each of the 120 LALCs in NSW to assist with administrative costs. This amounts to approximately $15 million distributed each year directly to LALCs. It is important to note that many LALCs also receive funds from other sources including commercial ventures, investments, and government grants.

Furthermore, amounts are also directed to appoint administrators to underperforming LALCs, at a significant financial and administrative cost. As NSWALC is the both the main 'regulator' and advocate of the network, funds are also directly and indirectly expended on LALCs for these purposes.



In recent years the Auditor-General has made recommendations to NSWALC specifically in relation to the investment and utilisations of funds, and the dissolution of underperforming LALCs, including:

> *"NSWALC must continue to actively manage its investment strategies and closely monitor its spending to maintain its capital in the longer term."*[ix]

> *"I again recommend that Council consider dissolving the remaining Local Aboriginal Land Councils that are underperforming, particularly those that are under administration."*[x]

Such recommendations highlight the external pressures facing the Network. Where areas of concern or underperformance are highlighted by external agencies it is important for the Network to be proactive in order to enhance our ability to continue to be a self-determining Network.

In the past, in order to address some of these pressures, suggestions have been made to review the number of LALCs and how LALCs are funded. The statutory review of the ALRA in 2005 specifically recommended that voluntary amalgamations be considered to ensure the financial sustainability of the Network.

In 2005 the NSW Aboriginal Land Rights Act Review Task Force stated the following:

> "…the number of LALCs must be reduced to ensure that:
> - The resources available in the land council system are used most efficiently;
> - LALCs have sufficient capacity and the resources to function more effectively.
>
> The Task Force considered that the optimal number of LALCs should be approximately 60."[xi]

While recommendations made by the 2005 Task Force relating to LALC amalgamations have not been implemented it is useful to consider these proposals to inform how these issues might be dealt with in the future.

What has been undertaken to date?

NSWALC has been taking a number of steps aimed at becoming a more sustainable network. As noted in this paper, this includes prudent management of the Statutory Investment fund, implementation of the drawdown rule, management of the NSWALC budget, and undergoing a restructure. However, there are other avenues that can be pursued in order to achieve a more sustainable Network.

NSWALC has been researching a number of options that were outlined in a discussion paper released in early 2011 titled *'The Sustainability of the NSW Aboriginal Land Rights Network'*.[xii] The discussion paper was intended to prompt debate within the network on the future financial and political sustainability of the network. The discussion paper noted a number of relevant issues to discuss when considering sustainability:

- The need for improvement in the overall operations of the land rights system,
- Costs of operating the network,
- Can the network meet all the demands being placed on it?
- How can performance and governance be improved?
- How can resources be better distributed?
- What issues need to be addressed in order to achieve political and financial sustainability?
- Is the architecture of the of the land rights system about right?

Furthermore, the discussion paper noted that:

> *"the term 'sustainability of the network' takes a focus on the costs of operating the Network and signals that the NSWALC is aware of a number of threats to the viability of the Network, and, consistent with a precautionary approach, wants to address the issues in ways that will not harm the Network".*[xiii]

Seven options were put forward for improving the sustainability of the Network, without incurring significant political risk. The seven options were:

1. Review funding allocations to LALCs and consider new funding formula that takes account of need and rewards better performance by LALCs.
2. Dispose of non-performing NSWALC assets to raise funds.
3. Make government aware of and pay for costs of extra demands it places on the Network.
4. Encourage the sharing of resources between LALCs.
5. Provide incentives for voluntary amalgamations between LALCs.
6. Only approve benefit schemes that have been business planned/feasibility tested.
7. Link benefits to membership.

Since the discussion paper was released in 2011 NSWALC has investigated a number of the above seven options. In 2012 a paper prepared by consultants SGS Economics and Planning titled *'Detailed Modelling of Funding Options for LALCs'* was released for the Network's consideration. This paper looks at how funding for LALCs can be more fairly distributed based on genuine need and performance. The paper considered and undertook financial modelling on possible factors for determining LALC funding allocations, including income, profit/loss, geographic regions, population and membership, and performance, before recommending a hybrid model incorporating many of these factors. The Hybrid Funding Formula has been developed as a possible mechanism for determining funding allocations for LALCs and is discussed further in this paper.

Additional research and financial modelling has been undertaken regarding other options identified for the long-term sustainability of the Network, as well as associated options to support the implementation of the Hybrid approach; including resource sharing, service agreements between LALCs, voluntary amalgamations, and capacity reinvestment.

The overall aim of these options is to increase the effectiveness of the Network, through capacity building and a balance of initiatives aimed at rewarding LALCs who are performing well, and better targeting funds to LALCs that are not performing well. These are discussed further in this paper.

At the same time as the Network has been discussing sustainability, the five-yearly review of the ALRA has been underway. As discussed further below, the issue of sustainability is a key consideration underpinning the ALRA Review. In 2012 NSWALC conducted consultations with the Network primarily to ascertain views of members on key issues the ALRA Review should address. As part of this, issues relating to financial sustainability were also discussed. NSWALC specifically posed the following questions during the 2012 network consultations on the ALRA:

> "Having considered the recommendation of the 2005 review of the ALRA, to reduce the number of LALCs in the network, and the issue of the financial sustainability of the network:
>
> - What are your views on the number of LALCs in the network? (recommendation 32)
> - What are your views on the possible amalgamation of LALCs?"[xiv] (recommendation 33)

A clear message from LALCs was that "Any amalgamations must be voluntary."[xv] Other comments relevant to issues of sustainability included:

a) LALCs in Western NSW require additional support,
b) Incentives should be offered for voluntary amalgamations,
c) Particularly in smaller communities, it is important to recognise that sometimes the LALC is the only organisation in town, and
d) Concerns about whether amalgamations would work in practice.

Feedback was also received in relation to the assistance that could be provided to LALCs before administrators or investigators are appointed to underperforming LALCs. The outcomes paper from the 2012 ALRA consultations noted that:

- LALCs wanted increased opportunities to be provided with assistance before being placed under administration,
- That NSWALC should have greater oversight in respect to this,
- The cost effectiveness and appropriateness of administrators was questioned, and
- Encouraging better LALC performance before a LALC gets to a point of being considered for administration would be a better approach.

There were also discussions regarding certain LALC initiatives, such as holding lands for cultural purposes, or operating social housing schemes, that are not necessarily designed to make money but fulfill a cultural or community need. The importance of such schemes was highlighted, however it was also noted that such ventures should be sustainable or 'offset' by other income/assets.

The 2012 ALRA Review Roundtable made up of delegates from each of the nine Land Council regions made the following recommendations relevant to sustainability:

> *7. The triggers for the appointment of an administrator to a LALC, relating specifically to Community Land and Business Plans, in section 86 of the ALRA, should be removed in favour of a funding policy response to such circumstances.*
>
> *13. The cessation of funding by NSWALC, pursuant to section 163 of the ALRA, should be at the discretion of NSWALC.*
>
> *14. Section 225(d) of the ALRA should be removed from the legislation, to allow for the appointment of NSWALC staff as administrators of LALCs.*[xvi]

A number of proposals that address the above concerns are being canvassed in the current review of the ALRA.[xvii] The ALRA discussion paper on regulatory reform prepared by Aboriginal Affairs NSW and

NSWALC[xviii] considers a number of issues impacting on sustainability and suggests the following legislative proposals:

> ***Proposal 24:*** *That the Aboriginal Land Rights Act be amended to make clear that Local Aboriginal Land Councils may share Chief Executive Offices and members of staff.*
>
> ***Proposals 25:*** *That section 234 of the Aboriginal Land Rights Act be amended to allow the Registrar of the Aboriginal Land Rights Act, to appoint an advisor to the Board of a Local Aboriginal Land Council, where the Registrar of Aboriginal Land Rights Act is of the opinion that the "Board and the Council require expert assistance in the exercise of their functions".*
>
> ***Proposals 26:*** *That section 225(d) of the Aboriginal Land Rights Act be removed to allow the New South Wales Aboriginal Land Council's staff to exercise the function of an administrator for Local Aboriginal Land Councils.*

While current proposed amendments to the ALRA relate to some of the issues discussed here, there are a range of other proposals outlined below that may require legislative changes to implement.

How can the network achieve sustainability?

As outlined in this paper, NSWALC is seeking feedback on what a sustainable network could look like and the steps that could be taken in order to achieve this. It is acknowledged that there are a number of factors to take into consideration when discussing these issues including the practical limitations in terms of financial capacity, in addition to the impacts of any reforms on social cohesion, cultural connections and intergenerational equity.

It is also recognised that the size, location, functions and needs of LALCs vary across the Network. The basic functions of LALCs are set out in the ALRA. However, the Network as a whole is involved in a range of social, cultural, and economic pursuits ranging from:

- Cultural activities and programs,
- Community based projects, including youth and mentoring projects,
- Training and education,
- Community benefit and social housing schemes,
- Small business enterprises,
- Projects funded by government grants,
- Partnerships with government including local councils,
- Partnerships with the private sector, and
- Larger scale business enterprises.

It is important for NSWALC as both an advocate and regulator for the Network to better target its operations and limited resources to both assist LALCs most in need and encourage better performing LALCs to build strong foundations for the future.

Discussion questions

1. What do you think are the features of a sustainable Land Rights system?
2. What are the key issues placing demand on the financial and operational sustainability of the Network?
3. What are the strengths and assets of the Network that can be built on to assist in achieving sustainability?
4. How should the Network's resources be better distributed?
5. Are there too many LALCs?
6. How can the performance of LALCs be improved?
7. What can NSWALC do to achieve a sustainable Network and build capacity?

Current approach to funding LALCs

Each year NSWALC provides grants to LALCs to cover basic operational expenses. In the 2012-2013 financial year most LALCs in NSW received $130,000 each.[xix] Under the current approach to funding each LALC is eligible for the same allocation regardless of their circumstances or performance.

Currently under the ALRA and NSWALC policy, there are a number of potential consequences for LALCs who are not performing well. This includes requiring more frequent financial reporting, the appointment of an investigator or administrator, and as a last resort the Minister administering the ALRA may dissolve a LALC.[xxi]

In order to improve the application of funding procedures, in 2009, the NSWALC introduced a new LALC funding policy. The new funding policy also included a LALC Management Support System **(LMSS)** to assess and establish the risk level of each LALC in the management of their functions. Under the LMSS, a LALC's operational performance is measured against the following five criteria:

1. Governance
2. Human Resources
3. Property Management
4. Financial Management
5. Administration.

These criteria measure the total operational performance of each LALC with each of the five key areas providing potentially 20% of an overall score out of 100. The operational performance score achieved by each LALC is then used by NSWALC to determine the terms and conditions to be included in any subsequent Funding Agreement with the LALC. However, these terms do not affect the determination of the amount of funding to be allocated, other than where a LALC becomes unfunded as a result of its operational performance score.

The result of the performance of each LALC determines its place within one of three risk assessment levels, as follows:

- **Low Risk** — if a LALC achieves 90 plus percent in their performance ratings. These LALCs receive their allocation on a quarterly basis and report on a half-yearly basis.
- **Medium Risk** — if a LALC achieves between 70 and 89 percent in their performance ratings. These LALCs receive their allocation on a quarterly basis and report on a quarterly basis.
- **High Risk** — if a LALC achieves between 50 and 69 percent in their performance ratings. These LALCs recieve their allocation on a monthly basis and report on a monthly basis.

If a LALC is below 50 per cent, even if that LALC may be in regulatory compliance, the LALC will become **unfunded.** These LALCs are entitled to receive essential payments for their core business under an Assistance Agreement if executed by them for the necessary assistance.

LALCs under **administration** are not subjected to the LMSS assessment until the completion of the administration period. However, these LALCs receive a funding allocation on a quarterly basis and report in accordance with the term of the administrator's appointment.

A number of important questions have been identified with approaches to funding LALCs, including:

- Whether or not all LALCs should be funded equally, regardless of genuine need or financial performance,
- Whether or not LALCs should be provided with incentives to achieve better performance,
- Whether or not funds/resources should be targeted at LALCs who are not performing well, and
- What should NSWALC do to assist LALCs to achieve better financial and operational performance and therefore become more sustainable?

The above issues and questions have shaped the development of the below proposals with the aim of achieving a more sustainable Network.

Discussion questions

1. Do you agree or disagree that the current approach to funding LALCs should change?
2. Do you think LALCs should be funded on the basis of genuine need or performance (or both)? What do you think constitutes genuine need?
3. How should the funding of LALCs be determined?
4. How flexible do you think any approach to funding should be?

Summary of proposed funding reforms

A number of proposals are outlined below aimed at addressing issues of funding LALCs based on need and performance, and options to assist underperforming LALCs to improve. The proposals relate to:

- ► A new approach to funding LALCs, known as the ***'Hybrid Funding Formula'*** that takes into account a number of measures to determine the level of base allocation fairly and transparently, based on genuine need and performance; and
- ► Options to improve LALC performance, specifically ***service agreements, resource sharing***, and ***voluntary amalgamations.***

The Hybrid Funding Formula is designed to deliver a fairer and more equitable distribution of LALC funding based on the need and performance of LALCs. The relative need of LALCs is established by considering averaged annual income, return on investments in the last financial year, and how remotely a LALC is situated. Performance is considered principally in terms of financial performance and management. However, operational performance is also factored into the formula through interactions with the LMSS.

The formula uses a series of questions in a flow chart to determine what the base funding allocation will be for any given LALC.

It is important to note that the proposed options outlined below are not intended to change the LMSS, but are aimed at achieving better management of the drawdown of funds from the Statutory Investment Fund each year, and better targeting these limited funds.

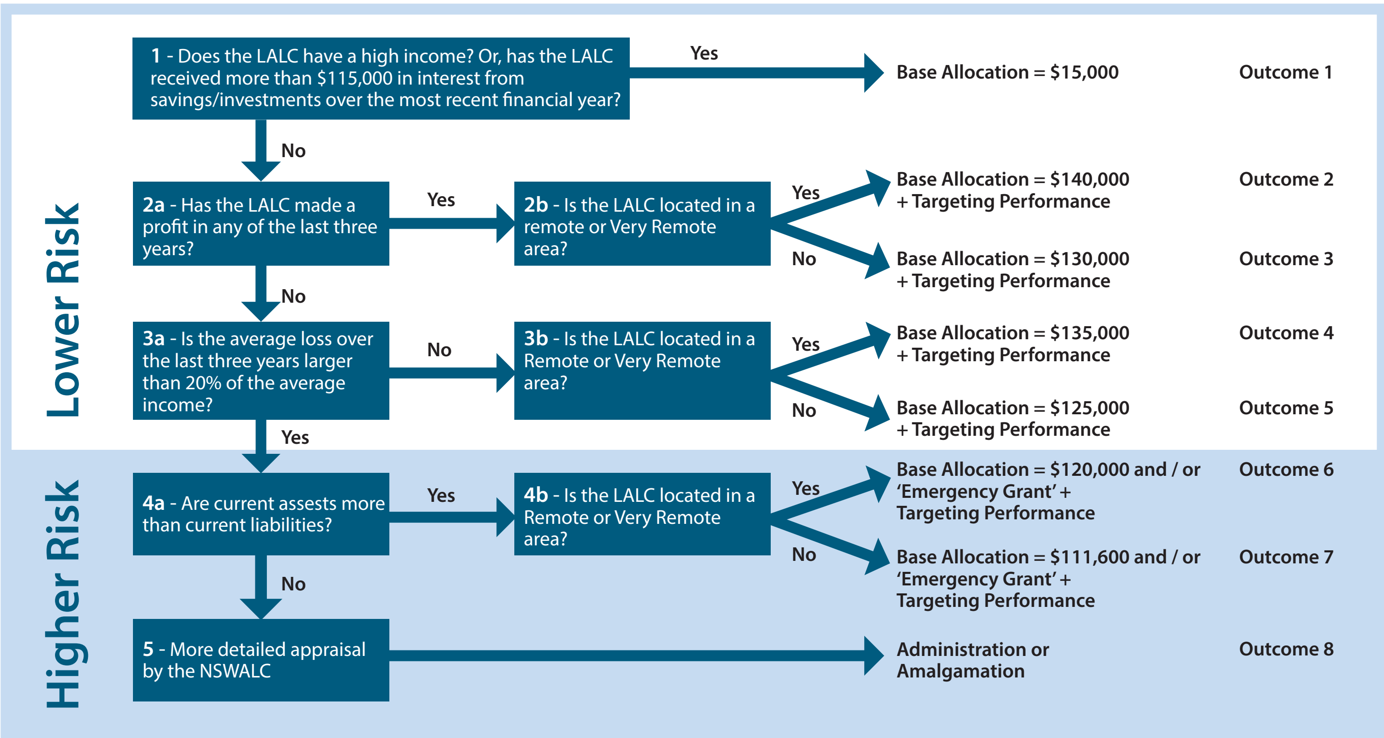
It is proposed that any 'savings' achieved through the application of the new hybrid funding formula could be re-directed into capacity building programs focused on underperforming LALCs.

1. *Proposed Hybrid funding formula*

NSWALC has considered a number of measures which could be used to determine base allocations for LALCs, as listed below. A research paper prepared by SGS Economics and Planning titled *'Detailed Modelling of Funding Options for LALCs: Update'* released in 2012 modelled the following measures to assess how they might work in practice to determine LALC funding allocations.

The following objectives underpinned considerations about suitable measures that could be utilised to determine LALC funding allocations:

- achieving a fairer distribution of the base allocations to LALCs based on genuine need;
- ensuring LALCs remain viable and are able to perform their statutory functions;
- encouraging LALCs to improve their performance and continue to perform well; and
- not penalising average to well performing LALCs.



***Above diagram:** proposed hybrid funding model*

A range of data was utilised to undertake the modelling including financial statements of 115 LALCs over four financial years, statements of comprehensive income, accessibility/remoteness index utilised by the ABS, Aboriginal Land Council Regional boundaries, membership data, and LMSS data. A number of issues were identified with utilising each measure on its own to determine LALC funding.

- **Income:** The amount of income a LALC earns is considered a relevant measure to help determine the level of base allocation a LALC should receive. Potential issues with utilising this measure on its own include complexities with calculating 'income', what is considered 'high income', and that this measure doesn't necessarily target performance. This measure could be a valid approach if combined with other measures.
- **Profit/Loss:** Similar to income, this measure initially proposed that LALCs who report a high level of profit do not 'need' the full base allocation. This measure was subsequently amended to look at whether or not a LALC has made a profit in any of the last three financial years. This measure could be applicable if combined with other measures.

- **Remoteness:** This measure utilises existing standards developed by the Federal Government to measure how 'remote' a LALC is based on road distances and distances from location centres. Modelling on this measure found that there is a correlation between financial performance and remoteness of LALC, and as such may be useful to apply as it utilises an objective measure and recognizes that generally LALCs in remote and very remote areas face a number of challenges. However, it is considered that utilising this measure on its own would not be fair as not all LALCs in major cities have better financial performance and not all LALCs in remote area are underperforming. This measure could be useful if combined with other measures.
- **Assets/liabilities:** This measure aimed to look at whether an entity has enough resources to pay its debts in the short term. In brief, if a LALC's current assets are less than current liabilities, then a LALC may have problems meeting its short term financial obligations. However, this may not always be the case. This measure could be applicable in conjunction with other measures, but not on its' own.
- **Geographical Regions:** One option considered was to determine LALC funding allocations based on which of the nine NSWALC regions a LALC is situated, and the average income for LALCs in that region. Similar to the remoteness measure, it was considered that utilising this measure on its own would not result in a fair distribution of LALC allocations. This is largely because some low income LALCs may be situated in generally 'wealthy' regions and some high income LALCs may be situated in generally lower income regions. This measure is not considered a useful measure.
- **Population and Membership:** While linking funding allocations to adult Aboriginal population and membership levels was originally considered, it was determined that this measure presents a number of challenges and so was not analysed in detail. Some of the issues included that LALCs who may have a high adult Aboriginal population do not necessarily have higher levels of membership than LALCs with smaller adult Aboriginal populations, and as such is not considered a useful measure.
- **Overall Performance:** This measure looked at utilising the LMSS, the operation of which is discussed above. This measure could work well combined with the above.

After considering the potential benefits and issues in applying each of the above measures, a **'hybrid'** approach, utilising a combination of most of the above measures to determine LALC funding allocations was considered to be more suitable. The hybrid formula was proposed as it was considered that it would better target the limited resources of the network to LALCs who were most in need, while also offering an opportunity to support LALCs by targeting performance and providing incentives.

The proposed hybrid funding model is based on applying a combination of the following measures:

I. Income

This measure is based on identifying LALCs who have a significant or 'high' income to work out which LALCs are eligible for the full base allocation. The 'income' measure aims to distinguish LALCs who are performing well and have high incomes from those who do not have high incomes. This measure proposes that high income earning LALCs are not in need of a significant monetary allocation from the NSWALC Account, and are able to function and perform well without a base allocation of $130,000 plus CPI.

For the purposes of the proposed hybrid model a LALC is regarded as having a 'high Income' if the LALC has an income higher than an annual income of $2 million per annum averaged over five years. LALC income is averaged over five years to spread the impact of one-off sources of high income, such as land sales, land grants or government grants.

If a LALC's interest earned from savings and/or investments over the most recent financial year is higher than $115,000; then it is classified as an 'interest earning' LALC. A LALC with an 'interest earning' income of $115,000 per annum or more has enough resources to cover their own core operating costs, and that by doing so they can make a valuable contribution toward the financial sustainability of the network.

If a LALC is classified as an 'interest earning' LALC or as a 'high income' LALC and their base allocation was significantly reduced, they should not be at risk of failing to perform or being unable to meet their commitments. For these LALCs therefore, it is proposed that the base allocation would be reduced to $15,000 per annum as a contribution toward covering the costs of annual reporting to NSWALC.

It is important to keep in mind that these LALCs would have a superior level of financial performance, which may be due to their better management. If this is so and they also perform well in terms of their assessment through the LMSS, then it would be advantageous to draw on these LALCs to asssit other LALCs that are underperforming. The advice of LALCs who are performing well could be provided on a fee-for-service basis and could also work as compensation for the reduction in their NSWALC allocation. This is discussed further in this paper.

II. Profit/loss

This measure looks at the operating results (profit or loss) of LALCs to assess their financial performance. A LALC's operating result is calculated by subtracting the total expenditures from the total revenues. The net operating result can be positive (Profit), negative (Loss) or zero. The importance of profitability on the financial sustainability of the Network is obvious; in general where LALCs are operating at a loss, debts are being incurred.

The Hybrid Funding Formula utilises operating results in two ways:

- It preferences LALCs that have generated a positive operating result (profit) in any of the last three years; and
- For those that haven't generated a positive operating result (profit) in any of the last three years, it preferences those LALCs that have not generated consistent significant losses, being those that have average annual losses over three years do not exceed their average annual income by 20% over that same period.

III. Remoteness

The Accessibility/Remoteness Index of Australia (ARIA) has been developed by the Commonwealth Department of Health and Aged Care (DHAC) and the National Key Centre for Social Applications of GIS (GISCA). ARIA measures remoteness based on the physical road distance between a settlement and four classes of service centre. In 1999 a further revision of ARIA, called ARIA+, was developed that incorporated more information on the location of service centres. ARIA+ was used by the ABS to create the 2001 and 2006 Australian Standard Geographical Classification (ASGC) Remoteness Structure.

There are five levels of remoteness. The five levels, with their corresponding ARIA values, are listed below:

- Major Cities — ARIA values of between 0 and 0.2;
- Inner Regional — ARIA values greater than 0.2 but less than or equal to 2.4;
- Outer Regional — ARIA values greater than 2.4 but less than or equal to 5.92;
- Remote — ARIA values greater than or equal to 5.92 and less than or equal to 10.53; and
- Very Remote — ARIA values of greater than 10.53.

Remote Australia is therefore defined as 'Collection Districts (CDs), which are the smallest geographic areas defined in the Australian Standard Geographical Classification (ASGC), with an average ARIA+ index value greater than 5.92 and less than or equal to 10.53'. Anything with a value above 10.53 is regarded as Very Remote.

Number of LALCs by remoteness level

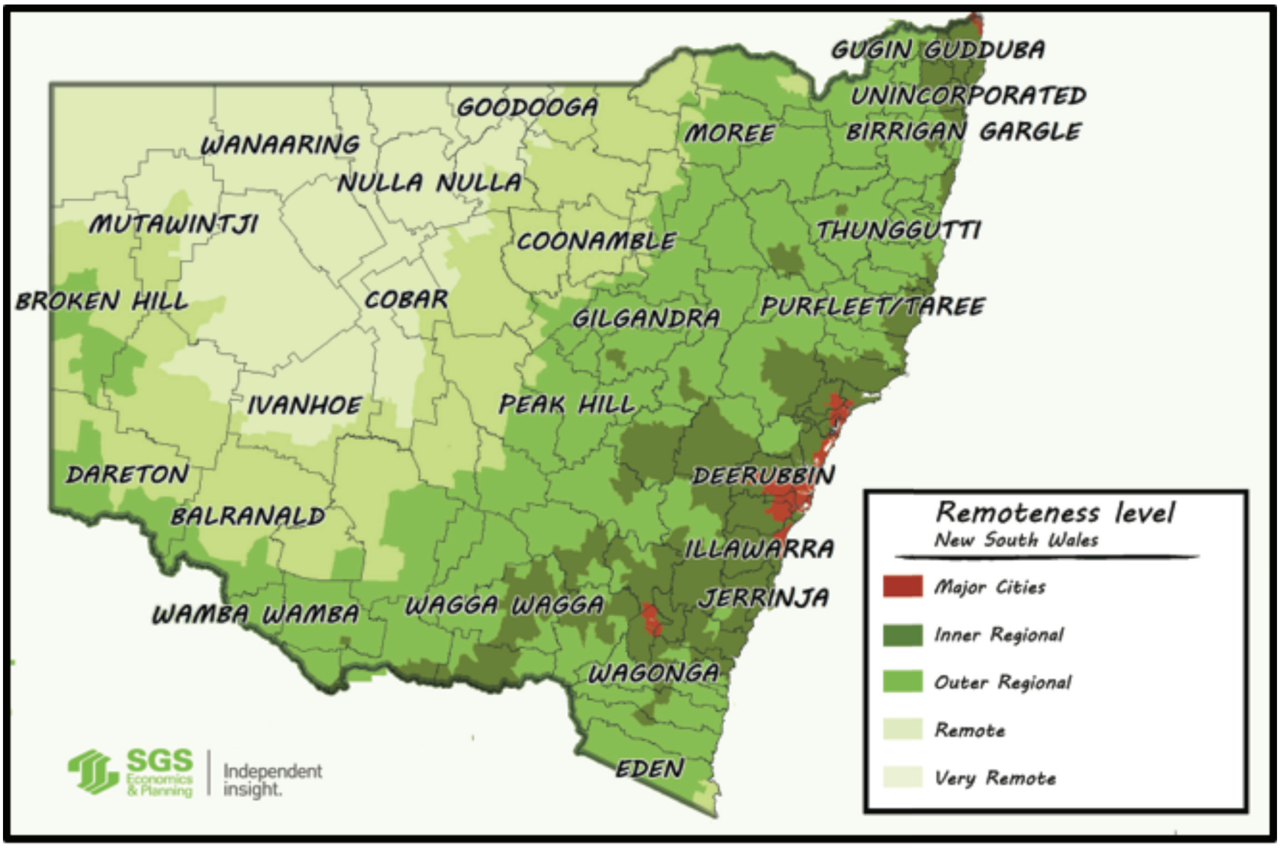
12 LALCS very remote

18 LALCs remote

48 LALCs outer regional

28 LALCs inner regional

15 LALCs Major



Above map: Remoteness areas, NSW. Source, SGS Ecenomics and planning, 2012.

IV. Assets and liabilities

This measure assesses the financial performance of LALCs based on a LALC's ability to pay its debts. Current assets (assets that can be readily converted to cash eg bank deposits etc) and current liabilities (debts that fall due within the next twelve months) are used to determine a LALCs ability to pay its debts; where a LALC's current liabilities exceed its current assets, the LALC is unable to pay its debts and is said to be insolvent.

The importance of this measure is obvious for the financial sustainability of the Network. However it should also be noted that under Australian corporation's law, including the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act 2006), as corporations that are unable to pay their debts must cease their trading. Under corporation's law, directors that allow their corporations to trade whilst insolvent can be subjected to civil and criminal actions.

While corporations law does not apply to LALCs, this benchmark remains legally significant as under section 91(1)(e) of the ALRA, the Minister for Aboriginal Affairs may dissolve a LALC on the basis that it is unable to pay its debts when they fall due. It is therefore important to be able to direct attention and efforts to those LALCs that may find themselves in such difficult financial circumstances.

To this aim, the Hybrid Funding Formula preferences LALCs that are able to pay their debts, but it also considers that emergency funding support may be needed for LALCs that find themselves in such a concerning financial position. The emergency grant considered in the Hybrid Funding Formula is for immediate response to short-term issues and is to be determined on a case by case basis and on merit. It is proposed that access to such grants would be conditional on performance measures and would be restricted so that receipt of a grant would render a LALC ineligible for another such grant for a number of years.

V. Targeting overall performance

The Hybrid Funding Formula also factors operational performance into the determination of a LALC funding allocations through linkages with the LMSS. As outlined in this paper, the LMSS assesses a LALCs operational performance against the following five criteria:

1. Governance
2. Human Resources
3. Property Management
4. Financial Management
5. Administration.

These criteria measure the total operational performance of each LALC with each of the five key areas providing potentially 20% of an overall score out of 100. The result of the performance of each LALC determines its place within one of three risk assessment levels, as follows:

- Low Risk — if the LALC achieves 90%.
- Medium Risk — if the LALC's achievement is between 70 – 89%.
- High Risk — if the LALC's achievement is between 50- 69%.
- Unfunded — if the LALCs achievement is below 50%.

The application of incentives for good operational performance could be applied through agreement over achievable performance targets, such as maintaining or improving risk ratings as assessed by the LMSS, with failure to meet performance targets incurring a funding decrease.

Hybrid funding formula

The hybrid funding approach is based on the following key questions:

1. Does the LALC have a high income (ie. Having an average income of over $2 million per annum)? Or, has the LALC received more than $115,000 in interest from savings/investments over the most recent financial year?

2.a Has the LALC made a profit in any of the last three years?

2.b Is the LALC located in a Remote or Very Remote area?

3.a Is the average loss over the last three years larger than 20 per cent of the average income?

3.b is the LALC located in a Remote or Very Remote area?

4.a Are current assets less than current liabilities?

4.b Is the LALC located in a Remote or Very Remote area?

5. More detailed appraisal by the NSWALC.

Step 1: The first step in the proposed funding model is to assess LALCs on the basis of whether they have a high income, or whether they have received more than $115,000 in interest from savings/investments over the most recent financial year. A LALC is regarded as having a high income if it has an income higher than an annual income of $2m averaged over 5 years. This threshold has been determined to ensure that a fairer distribution of the base allocation is given to LALCs based on genuine need.

If a LALC is classified as an interest earning or high income LALC the base allocation they will receive will be $15,000. This model assumes that interest earning/high income LALCs have enough resources to cover their own operating costs. High income or interest earning LALCs will still be assessed through the LMSS, but the outcome will not affect the base level allocation.

Step 2: If LALCs answer no to step 1 then they move to step 2 of the assessment process. Step 2 assesses LALCs based on whether they have made a profit in any of the last 3 years. If LALCs answer yes then they qualify for a base allocation of $130,000 if the LALC is in a non remote area and $140,000 if the LALC is in a remote area.

Targeting performance aims to provide incentives for LALCs to improve performance while not reducing the base allocation. For example, a LALC who is classified as low risk in the LMSS could have as an incentive to keep their low risk rating for the remainder of the financial year. If the LALC achieves this then it would qualify for the base allocation of $140,000 in remote or $130,000 non remote. If it however moves into the medium risk LMSS rating then it would receive $135,000 remote or $125,000 non remote. If a LALC can't demonstrate that it has made a profit in the any of the last 3 years then it moves to step 3.

Step 3: Step 3 assesses LALCs based on whether they are incurring an average loss over the last 3 years of more than 20% of their average income in the same time. A formula is used for this step that ascertains what the LALCs 'relative loss' is. If a LALCs relative loss is less than 20 then the LALC will qualify for a base allocation of $135,000 remote or $125,000 non remote as well as targeting performance. If a LALCs relative loss is more than 20 then the LALC will move to step 4.

Step 4: This step assesses whether a LALCs assets are more than their current liabilities. If the answer is yes then it will be assessed whether the financial problem is short term or long term. If it is a short term problem then the LALC can receive a base level allocation of $120,000 remote or $111,600 non remote. In addition, depending on the circumstances, the LALC may be eligible for an emergency grant. An emergency grant would be decided by NSWALC based on a formal request from the LALC. The grant would be used to achieve sustainable improvement in financial circumstances. If a LALC responded no to step 4 then it moves to step 5.

Step 5: There are serious concerns regarding the LALCs liabilities and losses. Higher risk LALCs (outcome 6, 7 and 8 LALCs) would potentially be provided with capacity building support to assist.

Discussion questions

Income

1. Do you think that the high income/interest earning concepts are fair considerations in determining whether a LALC needs a funding allocation?
2. Do you agree with the definition of 'high income' – earning more than $2 million annual income averages over five years?
3. Do you agree with the definition of an 'interest earning' LALCs – earning more than $115,000 in interest on savings or investments in the last financial year?
4. Do you think high income and high interest earning LALCs should only receive a supplementary funding allocation to contribute to their costs of complying with the Aboriginal Land Rights Act 1983?

Profit and loss

5. Do you think that profitability should be considered in determining the funding allocation of LALCs?
6. IF profitability is to be considered, do you think that being profitable in any of the last three (3) financial years is an appropriate threshold for profitability?
7. Do you think that LALC that incur greater losses should not receive as much allocation as those incurring fewer losses?
8. Do you agree or disagree with the comparative benchmark set by the Hybrid funding model of averages annual losses at 20% average annual (total) income?

Assets and liabilities

9. If a LALC has a short term debt problem do you think it would be reasonable for NSWALC to consider a one off emergency grant to assist with a rapid and sustainable improvement in its financial circumstances?
10. If a LALC receives an emergency grant should there be any time period before it should be allowed to receive one again? If so, how long should that period be?

Discussion questions

Remoteness

11. Do you think that relative remoteness should be a consideration in determining the allocation of funding to LALCs?

12. Do you think that remote and very remote LALCs have a greater need for funding allocations?

13. Do you agree/disagree with the $10,000 loading for relative remoteness proposed by the hybrid funding model?

14. The proposal to increase the base allocation for remote and very remote LALCs from $130,000 to $140,000 per annum is based on the recognition of the disadvantages incurred by being classified as Remote or Very Remote. Is this a fair assumption?

Targeting performance

15. Do you think operational performance should be considered in determining the funding allocation to LALCs?

16. Do you think that the determination of funding allocations should be linked to LMSS assessments?

2. Proposed 'options' to improve LALC performance

Three **'options' to complement the proposed funding formula** have been proposed and are designed to improve LALC performance (particularly for outcome 6, 7 and 8 LALCs):

- Service Agreements
- Resource Sharing / Administrative Hubs
- Voluntary Amalgamations

Further consideration of how these options could be implemented is discussed on page 22 below.

We are seeking your feedback on how the below proposed options could work in practice, in addition to suggestions for other options that could be utilised to improve LALC performance.

COMPARISON TABLE - SUGGESTED OPTIONS TO IMPROVE LALC PERFORMANCE

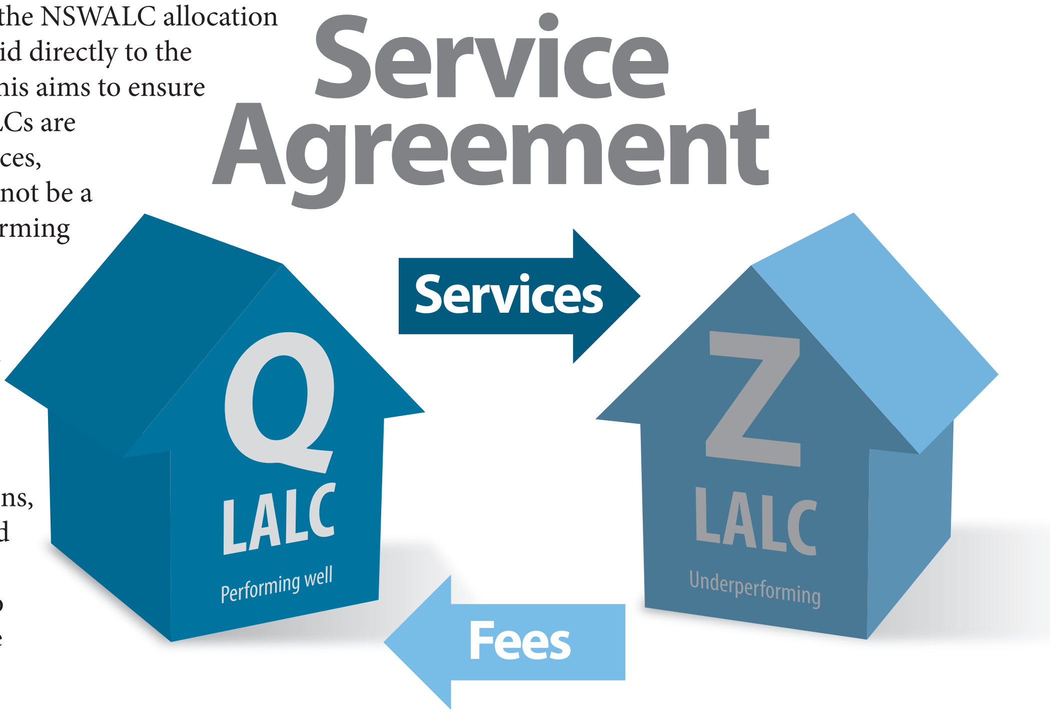
	Service Agreements	Resource Sharing / Administrative Hubs	Voluntary Amalgamations
Approach	Leverage areas of financial and administrative strength already within the Network to build capacity in LALCs who are under performing.	LALCs pool administrative and operational resources with the aim of improving performance.	Reduction in current number of LALCs to reduce pressure on the investment fund and create larger LALCs with increased capacity.
How will it work?	Well performing LALCs enter into 'Service Agreements' (formal written contracts) with underperforming LALCs. Service Agreements will specify the nature of administrative and operational functions that the well performing LALC will undertake for the underperforming LALC.	Two or more LALCs pool administrative and operational resources, but maintain separate boards. Options for pooling resources could be LALCs sharing one CEO, sharing staff and/ or sharing other resources such as equipment.	A group of individual LALCs would voluntarily pass their decision-making, executive and administration functions up to a single new LALC that represents the amalgamated geographic regions of each participating LALC.
Decision making	High performing LALCs would provide administrative functions for underperforming LALCs. Underperforming LALCs retain decision-making functions and separate boards.	Decision-making remains with each individual LALC. Execution of decisions and administration of affairs delivered by shared services entity or administrative hub.	The new LALC would be entirely responsible for deciding upon and implementing projects and other initiatives across the amalgamated geographic area. A ward structure could be implemented to recognise previous LALC boundaries and to provide for a certain number of board members to be elected from each ward.

A. Service agreements

Under the service agreement model, underperforming LALCs enter into a service agreement with a better performing LALC. Under these agreements, a better performing LALC would undertake certain administrative functions of the underperforming LALC. NSWALC may play a supervisory role in ensuring that the arrangement is mutually beneficial between the LALCs and that the desired outcomes will be achieved.

Underperforming LALCs would retain their own identity and their Boards, and would still make strategic decisions about their local area. Better performing LALCs would assist underperforming LALCs with decision-making, for example, by supplying information to Boards for consideration when making decisions, assisting them with the implementation of decisions, as well as looking after their compliance with other executive and administrative requirements such as regular financial reporting.

It is proposed that better performing LALCs would receive a ***service agreement fee***, which would in effect be the redirection of the NSWALC allocation that would otherwise be paid directly to the underperforming LALC. This aims to ensure that better performing LALCs are remunerated for their services, and that this option would not be a disincentive to better performing LALCs.



Should the performance of an underperforming LALC improve sufficiently to enable it to effectively and sustainably manage its own administrative functions, the service agreement could be dissolved by mutual agreement between the two LALCs and maybe with the endorsement of NSWALC.

B. Resource sharing / Administrative hub

Under the Administrative Hub model, a small number of LALCs could form a cluster to share their administration functions. The cluster could be based on:

- Economic performance (preferably the high-risk LALCs as identified by outcomes of the Hybrid Funding Formula)
- Geographical location;
- Socio-Political factors; and
- Population and membership base.

The selection of the location for the Administrative Hub could include the following criteria:

- Access to other government services;
- Amenity in terms of access to schools, medical services, hospital, recreational facilities and retail centre;
- Access to a regional airport; and
- Geography in terms of centrality and ease of access to the LALCs being serviced by the Administrative Hub.

The assumptions underpinning this model are that the Administrative Hub will employ one CEO to service the LALCs in the hub arrangement and that each LALC will employ an administrative officer who will report to the CEO. The CEO will retain the functions of the CEO outlined in s.78A (2) of the ALRA, and will be responsible for the:

- Financial operations of each LALC;
- Administrative compliance requirements;
- Management of the social housing scheme;
- Development implementation and monitoring of the Community Land and Business Plans;
- Provision of reports to each LALC Board and Members;
- Recruitment of LALC Administration Staff;
- Calling and conduct of meetings;
- Developing Interagency relations/partnerships; and
- Sourcing external funding.

Under the supervision and direction of the CEO, the LALC local administrative officer would be responsible for the:

- Daily financial operations (i.e., banking, receipting, bank reconciliation);
- Office administration (i.e., mail, filing, correspondence);
- Organising/advertising meetings; and
- Answering enquiries.

Options for pooling resources could be LALCs sharing one CEO, sharing staff and/ or sharing other resources such as equipment.

Shared services could be delivered through an administrative hub or shared services entity.

C. Voluntary amalgamations

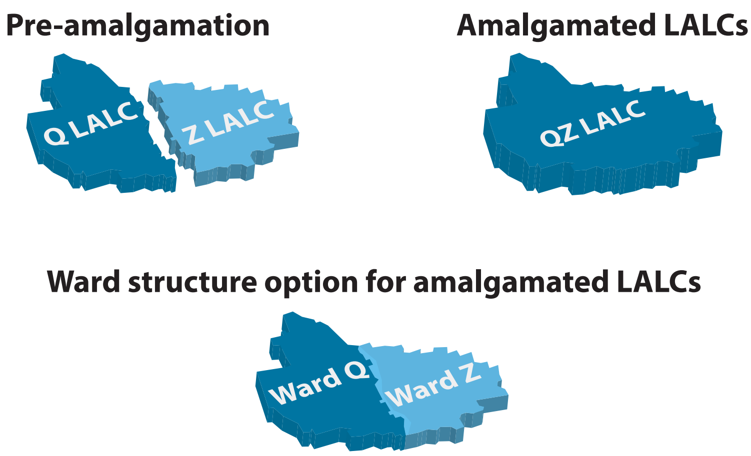
Under the Voluntary Amalgamation model, a number of LALCs would agree to amalgamate into a single larger LALC. The new LALC would acquire all decision-making, executive and administrative functions and the individual LALCs would no longer exist.

Options for representation on the Board of the new LALC to ensure a fair and equitable cross-section of the members of all of the amalgamated LALCs, could be to utilise a ward structure. This could be used to weight certain decisions about local Aboriginal land towards the appropriate cultural jurisdictions that existed before the Voluntary Amalgamation.

As noted above, the 2005 Review of the ALRA recommended that amalgamations be pursued. The 2005 Task Force proposed a process by which amalgamations could take place, which included a consultation period, and matters to be considered by the Registrar of the Aboriginal Land Rights Act before arriving at amalgamation recommendations, including:

- The wishes of members of each LALC,
- Geographic size of LALC areas,
- Size of the Aboriginal population in the LALC areas,
- Number nature and location of towns and community centres in each LALC area,
- Number and nature of Aboriginal communities in each area,
- Number of members of each LALC,
- Assets and income of each LALC,
- Operational performance and compliance with the ALRA of each LALC,
- Known cultural boundaries,
- Sustainability of the land council system, and
- Any other relevant matter. [xxii]

Voluntary Amalgamation



Discussion questions

Service agreements

1. Are there any issues associated with the service agreement proposal?
2. What would LALCs need to overcome these issues so that this option could successfully be implemented?
3. What resources or incentives are needed to support service agreements as an option?

Resource sharing

4. Are there any issues associated with the resource sharing proposal?
5. What would LALCs need to overcome these issues so that this option could successfully be implemented?
6. What resources or incentives are needed to support resource sharing as an option?

Voluntary amalgamations

7. Are there any issues associated with the voluntary amalgamation proposal?
8. What would LALCs need to overcome these issues so that this option could successfully be implemented?
9. What resources or incentives are needed to support voluntary amalgamation as an option?

3. Proposed implementation of the hybrid approach

It is proposed that LALCs are assessed based on the above hybrid approach and will subsequently be eligible for differing funding levels. In addition underperforming LALCs may be targeted for further assistance depending on what 'outcome' is reached.

It is proposed that any two or more LALCs could decide independently and voluntarily to pursue any of the options, LALCs who are consistently not performing well (options 6, 7 and 8) would be the focus of options to improve performance. It is proposed that this would include underperforming LALCs being requested by NSWALC to specifically consider one or more of the service agreement, resource sharing or voluntary amalgamation options.

As outlined above, this could include:

a) LALCs who are not performing well could be partnered with a high performing LALC. A formal 'service agreement' or contract could be entered into that clearly outlines what services that high performing LALC could provide for a specified time period.

b) Two or more LALCs who are not performing well, and are in relative proximity to each other within a particular region could be requested by NSWALC to consider developing an administrative hub with other adjoining LALCs.

c) A LALC who is consistently underperforming could be requested by NSWALC to formally consider voluntary amalgamation with a neighboring LALC (ahead of administration).

It is further proposed that underperforming LALCs who are requested to consider the above options could then be given a timeframe to consider implementing the options and then report back to NSWALC demonstrating how their performance could be improved, and how they will achieve a better 'Outcome'.

As with the current funding model/system, it is proposed that the option of placing LALCs who are consistently not performing well under administration be retained, in addition to dissolution.

It is recognised that the implementation of any of the above proposed options would need to address a number of factors, including:

- Location of LALCs, transport routes and where people live, work, shop, conduct business, go to school.
- Future infrastructure needs and services,
- Understanding of the different community's needs and aspirations,
- Costs associated with implementing the options or transaction costs particularly for amalgamations, including changes in land titles, any existing contractual obligations, legal costs, financial reporting requirements,
- Time required to implement new systems, cultures and operating structures,
- Effects on LALC staff and staffing levels, and
- Level of assistance required to implement options.

Discussion questions

1. Do you agree with the proposal that LALCs who are not performing well should be encouraged to take up one or more of the above options – service agreement, resource sharing or voluntary amalgamation?
2. How flexible or strict should any proposal for LALCs to consider taking up options be?
3. What incentives, if any, do you think should or could be offered to encourage LALCs to take up one or more of the options?
4. What other options could assist LALCs to improve performance?

Next steps

After network consultations, Council will consider the outcomes from the consultations. Depending on the feedback received, NSWALC may seek to pursue a formal policy on sustainability with a focus on a new funding model and related capacity development and performance based initiatives.

NSWALC seeks feedback from the network on the content of this discussion paper and in particular the discussion questions. Please send feedback by 30 October 2013 to

Post: Policy and Research Unit, NSWALC, PO Box 1125, Parramatta, 2125

Email: responses@alc.org.au

Phone: Contact the Policy and Research Unit on (02) 9689 4444

Endnotes

[i] See Aboriginal Land Rights Act 1983, sections 149 and 150

[ii] New South Wales Auditor-General's Report, Financial Audit, Volume Eleven 2012, Focusing on Health, Auditor-General, Chapter on New South Wales Aboriginal Land Council, pages 62-71, extract available at: http://www.audit.nsw.gov.au/ArticleDocuments/259/06_Volume_Eleven_2012_New_South_Wales_Aboriginal_Land_Council.pdf.aspx?Embed=Y

[iii] Recommendations from the Public Accounts Committee in the past have also highlighted the need to take action to address sustainability of the Land Rights network. Public Accounts Committee 'Report on the follow-up of repeat recommendations from the Auditor-General's financial Audits 2010' available at: http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/fd104efb5a6946d9ca2579f900200d0f/$FILE/Financial%20Audit%20Report%20-%20final%20-%20May%202012.pdf

[iv] Documents relating to the 2004-2005 Review of the Aboriginal Land Rights Act are available on the Office of the Registrar, Aboriginal Land Rights Act website at http://www.oralra.nsw.gov.au/resourcesinformpub.html

[v] The two documents released by NSWALC on sustainability are available on the NSWALC website at: http://www.alc.org.au/about-nswalc/sustain-ability-of-the-network-discussion-paper.aspx

[vi] NSWALC Investment Beliefs, see page 101, NSWALC Annual Report 2011-12, http://www.alc.org.au/media/83099/nswalc%20annual%20re-port%202011-2012.pdf

[vii] NSWALC Annual Reports are available on the NSWALC website at: http://www.alc.org.au/publications/annual-reports.aspx

[viii] This amount has increased to $333,900 (Ex GST) for the 2013/14 financial year. See NSWALC Network Message available on the NSWALC website at: http://www.alc.org.au/newsroom/network-messages/provision_of_grants_to_lalcs_2013.aspx

[ix] See Auditor-General's Report available at: http://www.audit.nsw.gov.au/ArticleDocuments/259/06_Volume_Eleven_2012_New_South_Wales_Abo-riginal_Land_Council.pdf.aspx?Embed=Y

[x] NSW Auditor-General's Report, Financial Audit, Volume six, 2010, page 5 available at: http://www.audit.nsw.gov.au/ArticleDocuments/184/04_Vol_6_2010_NSW_Aboriginal.pdf.aspx?Embed=Y

[xi] NSW Aboriginal Land Rights Act Review Task Force, (2005), 'Review of the Aboriginal Land Rights Act 1983 - Summary of Issues Paper 2: Struc-ture, Representation, Governance and Benefits', page8, available at: http://www.oralra.nsw.gov.au/pdf/annualreports/CCO004%20Land%20Rights%20Issues%202.pdf

[xii] The Sustainability of the NSW Aboriginal Land Rights Network: A Discussion Paper, NSWALC, 2010 (distributed in January 2011), available on the NSWALC website: http://www.alc.org.au/media/62365/sustainability%20of%20the%20network.pdf

[xiii] The Sustainability of the NSW Aboriginal Land Rights Network: A Discussion Paper, NSWALC, 2010 (distributed in January 2011), available on the NSWALC website: http://www.alc.org.au/about-nswalc/sustainability-of-the-network-discussion-paper.aspx

[xiv] NSWALC, 2010, 'Getting into the Act: 2012 Review of the Aboriginal Land Rights Act (NSW): Network Consultations Discussion Paper, page 14

[xv] The Outcomes report from the NSWALC consultations on the ALRA held in 2012 is available on the NSWALC website at: http://www.alc.org.au/about-nswalc/getting-into-the-act,-alra-review-2012.aspx

[xvi] The Outcomes report from the NSWALC Roundtable on the ALRA held in 2012 is available on the NSWALC website at: http://www.alc.org.au/about-nswalc/getting-into-the-act,-alra-review-2012.aspx

[xvii] For more information about the current review of the Aboriginal Land Rights Act, visit the Office of the Registrar, Aboriginal Land Rights Act website at: http://www.oralra.nsw.gov.au/alrareview.html

[xviii] Papers outlining proposals for reform to the ALRA in 2013 are available on the Office of the Registrar, Aboriginal Land Rights Act at: http://www.oralra.nsw.gov.au/alrareview.html and the Aboriginal Affairs NSW website at: http://www.aboriginalaffairs.nsw.gov.au/alra/legislative-review/

[xix] See NSWALC Annual Reports for statistics on funding categories of LALCs

[xx] Aboriginal Land Rights Act 1983 (NSW), section 163 relates to circumstances in which NSWALC must cease funding LALCs

[xxi] ALRA, sections 87 and 88 outline the Ministers powers in relation to dissolution.

[xxii] NSW Aboriginal Land Rights Act Review Task Force, (2005), 'Review of the Aboriginal Land Rights Act 1983 - Summary of Issues Paper 2: Structure, Representation, Governance and Benefits', page48, available at: http://www.oralra.nsw.gov.au/pdf/annualreports/CCO004%20Land%20Rights%20Issues%202.pdf

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