Overview

Aboriginal peoples' interests in Crown land and Aboriginal land rights cannot be separated from Crown land management. Crown land has significant Aboriginal culture and heritage values and retains cultural and spiritual significance as well as providing important opportunities to lay the basis for a self-reliant and more secure economic future for Aboriginal peoples.

The compensatory and remedial mechanisms of the *Aboriginal Land Rights Act 1983* (**ALRA**) are intertwined with the *Crown Lands Management Act 2016* (**CLMA**)*,* the Crown Lands Management Regulations, the draft Community Engagement Strategy (**CES**) and the draft Community Engagement Guidance and Resources document (**CEGR**). Changes to the way Crown land is owned and managed, including changes to consultation and notification provisions, have the potential to significantly affect Aboriginal land rights and the compensatory intent of the ALRA.

The draft CES is a significant departure from the current public notification requirements under the *Crown Lands Act 1989*. It represents a fundamental change in approach and pays limited regard to the objects of the ALRA and the inter-connectedness of Crown Lands Management and Aboriginal Land Rights.

Below are some key issues that NSWALC will be raising in our submission.

Community Engagement Strategy (CES)	**NSWALC's concerns**
Compatibility with the *Aboriginal Land Rights Act* (ALRA): While the CES acknowledges Aboriginal interests in Crown land, it does not adequately acknowledge the interconnection between Crown Lands Management and the objects of the ALRA.	• The CES should have the objectives of the ALRA at the forefront which would provide a process by which Aboriginal Land Councils could be informed and consulted about Crown Land that is no longer lawfully used and occupied or needed for an essential public purpose • Additionally, to achieve the objects of the CLMA in relation to co-management, targeted consultation with Aboriginal people for any proposed sale, change of use, management, opportunities etc relating to Crown land should occur. • Since the sale of Crown land diminishes the claimable Crown land estate for Aboriginal peoples under the ALRA, there should be public consultation about proposed sales of Crown land in

	all instances, such that the CLMA is not inconsistent with the ALRA.
Trigger for Community Engagement: Under the proposed CES, community engagement will not take place in relation to all Crown land dealings and activities. Rather, the CES proposes that engagement only be triggered "*where there is a potentially detrimental impact on current community use and enjoyment*" (p. 22).	• This approach means that no engagement is required for land that is not currently being used by the community (for example land reserved for future public requirements and land the subject of licences). A change in reservation purpose has significant implications for Aboriginal people, both in terms of the ability to claim that land as compensation for dispossession under the ALRA, and also to identify opportunities to achieve the objects of the CLMA - 'to facilitate the use of Crown land by the Aboriginal people of New South Wales because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land.' • This approach is reactive and inconsistent with principles of transparency and open government. • What constitutes "*detrimental impact"* is not clearly defined.
Mandatory minimum engagement requirements and self-assessable criteria: The CEGR is a supplement to the CES and is intended to serve as a reference guide for Government staff and Non-Council Crown Land Managers when fulfilling the requirements of the CES on the ground. The CEGR provides instructions to Crown land managers on: a) how to assess whether or not community engagement is required for a given Crown land activity or dealing; and b) if engagement is indeed triggered, how to assess whether the negative impacts of the proposed activity or dealing will likely be low, moderate or high. This in turn determines what type of community engagement is required.	• Any system reliant on self-assessable codes is open to potential misuse. • NSWALC is concerned that there will be inconsistencies in decision making. • It is doubtful that the likely level of detrimental impact (Low, Moderate or High) can be accurately predicted for the purposes of determining whether community engagement should be triggered and what level of engagement should apply. • There is little recourse available in cases where a proposed activity or dealing assessed as low impact, but turns to be high impact.
Provisions for Aboriginal engagement: The CEGR has a section on 'Engaging with Aboriginal Communities' (pp. 250-251).	• No mention is made of Local Aboriginal Land Councils in the 'Engaging with Aboriginal Communities' section of the CEGR. • Aboriginal peoples and communities seem to be treated in the CES and CEGR

	as a 'stakeholder group' among others, alongside 'business and commerce', 'environment and conservation', etc. This is inappropriate given that Aboriginal peoples possess inherent rights as Australia's First Peoples.
Exemptions of whole categories of dealings from community engagement: In Table 1 of the CES (pp. 28-31) whole categories of Crown land dealings and activities are proposed to be exempted from community engagement requirements, even when they would otherwise be within scope.	NSWALC has concerns with the following: • That unauthorised occupation licenses are proposed to be granted without public consultation or prior notice. • That short term licenses are not proposed to be assessed on the same grounds as long term licenses (due to the fact that a license is short-term does not in and of itself mean that the license will not have a "*potentially detrimental impact on current community use and enjoyment*"). • NSWALC recommends that revocations of reserves or dedications to facilitate sale, commercial development or other profit-driven purposes or any divesting of an interest in Crown land under the CLMA should always require public notification and engagement. • NSWALC recommends that sales to a tenure holder of land used for residential purposes should not be exempt from the requirement for public engagement.
Powers of the Minister to waive requirements for public engagement: Page 32 of the CES allows the Minister to waive the requirement for community engagement in a wide range of circumstances; for example, "*where the Minister is satisfied that a waiver is in the public interest"* or "*to enable the undertaking of approved NSW Government priorities...*" either in advance of the proposed dealing or retrospectively up to a month afterwards.	• NSWALC does not support powers for the Minister to waive public consultation requirements. • NSWALC has significant concerns regarding the circumstances in which the Minister is proposed to be able to exercise this power. These circumstances are extremely vague and broad such that it could be used to justify waiving the requirement for public engagement for almost any reason, even where it would not be in "*the public interest*".