

OUR STORY.. OUR RIGHTS.. OUR FUTURE







'The whole country' regardless
of who has the legal title,
is Aboriginal land'.¹

NSW Parliament Select Committee
of the Legislative Assembly upon Aborigines, 1980

¹ Select Committee of the Legislative Assembly upon Aborigines, 1980a p.227)

OUR STORY... THE STRUGGLE

The Aboriginal peoples of Australia maintain the oldest continuous living culture in the world. For thousands of years we protected our cultural and spiritual landscape and sustainably managed our lands for the social and economic benefit of our people.

After Europeans arrived Aboriginal peoples were subjected to disease, pastoral expansion, conflict, and became increasingly restricted in their access to land and freedom of movement. By **1825** the first Aboriginal mission was created and by **1883**, with the establishment of the Aborigines Protection Board (the Board) in NSW, there were 25 reserves in existence which aimed to set up reserves for the containment of all Aboriginal people.

Between **1885** and **1894** a further 85 reserves were established. Despite the policies of the Board, many of the reserves were not under the management of the Board and were independently farmed by the residents. Aboriginal people regarded these lands as their own as more than half the reserves created during this period were the result of the beginnings of Aboriginal people becoming politically organised lobbying government to secure permanent tenure of land by way of grants.¹

With the enactment of the *Aborigines Protection Act 1909* (NSW) all Aboriginal reserves were vested in the Board and by **1936** the New South Wales Government empowered the Aborigines Protection Board to forcibly contain Aboriginal people on reserves. In response to the escalating pressures for the land occupied by Aboriginal people, there was a shift in policy of the Board. Now with the aim to 'disperse' Aboriginal people, a number of reserves were closed and so began the second wave of dispossession².

This led to an increase in Aboriginal political activism for the rights of our people. On 26 January **1938**, a landmark meeting of Aboriginal people known as '*The Day of Mourning*', was held in Sydney to bring attention to the plight and imposed conditions of Aboriginal people under the Aborigines Protection Board and campaign for full citizenship and land rights. This was the first national Aboriginal civil rights gathering and represents the identifiable beginning of the contemporary Aboriginal political movement.³

1 Review of the Aboriginal Land Rights Act 1983 (NSW) Background Paper

2 Review of the Aboriginal Land Rights Act 1983 (NSW) Background Paper

3 Dictionary of Sydney: Day of Mourning 1938 http://dictionaryofsydney.org/entry/day_of_mourning_1938



TOWARDS LAND RIGHTS

In **1973** the *Aborigines Act 1969 (NSW)* was amended and the Aboriginal Lands Trust was established. It consisted of nine Aboriginal people, elected by the Aboriginal community from regional electorates. The aim of the Aboriginal Lands Trust was to place Aboriginal reserves 'under control of an all-Aboriginal authority in a scheme of collective ownership'.⁴ The Trust received freehold title to the 56 remaining reserves and could lease land to Aboriginal people. However it did not provide for ownership of land by the local Aboriginal communities themselves.

The Northern Territory enacted land rights legislation in **1976**. The *Aboriginal Land Rights (Northern Territory) Act 1976* was the first attempt by an Australian government to legally recognise the Aboriginal system of land ownership and put into law the concept of inalienable freehold title. It is a fundamental part of social reform.⁵

Building on a long history of resistance and protest, the concerted campaign by Aboriginal peoples for the recognition of land rights in the 1970s and early 1980s, resulted in some momentous developments. Firstly, the non-statutory NSW Aboriginal Land Council (NSWALC) was established in **1977** as an independent advocate for the recognition of Aboriginal land rights. It called for the full scale recognition of Land Rights, abolition of Land Trust & began to lodge land claims. Secondly, the establishment of the '*NSW Select Committee of the Legislative Assembly upon Aborigines*', also known as the Keane Committee, which led directly to the enactment of the landmark Aboriginal Land Rights Act 1983 (ALRA) by the NSW Parliament.

⁴ Second Reading speech, Aborigines (Amendment) Bill, 5 April 1973

⁵ Central Land Council Northern Territory Australia:

http://learnline.cdu.edu.au/tourism/uluru/downloads/CLC_Lands%20rights%20act.pdf

'The NSW Aboriginal Land Rights Act compensates Aboriginal people for the loss of our land...We must fight for all those rights that our community struggled so hard to achieve more than 30 years ago' – Josh Toomey, Chairperson

Darkinjung Local Aboriginal Land Council

THE NSW GOVERNMENT SELECT COMMITTEE

In **1978**, the Wran Labor Government established the Select Committee of the Legislative Assembly upon Aborigines. Chaired by Maurice Keane, MP, the terms of reference were to inquire into and make recommendations about:

- The causes of socio-economic disadvantages of Aboriginal people;
- The effectiveness of Commonwealth/State arrangements in Aboriginal Affairs; and
- Land Rights for Aboriginal people in NSW⁶

The Committee's findings and recommendations led to the development and enactment of the *Aboriginal Land Rights Act* in 1983.

Its final reports, known as the Keane Reports, handed down in 1980 and 1982 reflected the clear demands of Aboriginal peoples appearing before the committee including recognition of traditional rights of ownership, continuing Aboriginal sovereignty and a right, as a sovereign people, of self-determination.⁷

The reports emphasised that the granting of land rights was of paramount importance to Aboriginal people in NSW, and should be regarded as 'an act of elementary justice' for past actions designed to destroy Aboriginal societies and be accompanied by recompense for removal from their lands.⁸

On the issue of sacred and significant sites, the committees view was that the Government had no role to play in determining the continuing significance of Aboriginal sites for Aboriginal people. The Committee stated that identifying and protecting Aboriginal sites should be regarded solely as the responsibility of Aboriginal people.⁹

⁶ Keane Report, p19

⁷ M E Lynch, Macquarie University 'How Aboriginal Australians conceptualized land rights in the Keane Committee' Macquarie Matrix: vol.3.2, December 2013

⁸ Keane Report, p51

⁹ Keane Report, p112

'The Committee consulted 4,000 people over a two year period'¹ and represented a genuine attempt to consult with Aboriginal Australians.²



In **1981** the Ministry for Aboriginal Affairs was established and was responsible for overseeing the drafting of land rights legislation. The Ministry released a 'Green Paper' in **1982** with a draft Aboriginal Land Rights Bill.¹⁰The centrepiece of the Green Paper was the establishment, by legislation, of a three tiered system of elected Aboriginal Land Councils designed to maximise decision making at the local and regional levels, to make claims to Crown Lands.

The Aboriginal Land Rights Bill:

- Replaced the Aborigines Act 1969
- Dismantled the Aboriginal Land Trust
- Established a three tier system consisting of;
 - a network of Local Aboriginal Land Councils (LALCs), as bodies corporate, able to acquire, hold title to, manage and use lands, run enterprises and upgrade housing.
 - six Regional Aboriginal Land Councils (RALCs) whose primary role was to provide financial and other assistance to LALCs for community development, housing, running enterprises and to fund or assist with the claim or purchase of land.
 - The NSW Aboriginal Land Council at the State level to acquire land, provide advice to the Minister for Aboriginal Affairs, develop policies, protect and promote culture and heritage, and support the Aboriginal land council network.
 - Provided limited monetary compensation in the form of 7.5% land tax revenue for 15 years to fund the newly created three tiered system of governance.
 - Provided for Land Councils to make claims to certain Crown land.
 - Protection and Promotion of Aboriginal Culture & Heritage

Whilst Land Rights legislation was being developed, the NSW Government passed the *Crown Lands (Validation of Revocations) Act 1983*. This Act ensured that, where a past Government had revoked the status of an area of land set aside as a 'reserve for the use of Aborigines', this was deemed to have been done validly. This meant that upon commencement of the Act, many areas of reserve land affected were no longer available for transfer to Aboriginal Land Councils¹¹.

¹⁰ NSW Government 1982, Green Paper on Aboriginal Land Rights in New South Wales

¹¹ Review of the Aboriginal Land Rights Act 1983 (NSW) Background Paper

OUR RIGHTS... LAND RIGHTS

'Minister Walker asserted that the government had made a clear, unequivocal decision that land rights for Aborigines is 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 continent's Aboriginal custodians'¹²...

In presenting the proposed Aboriginal Land Rights Act to the NSW Parliament on March 24, 1983, Frank Walker, the then Minister for Aboriginal Affairs stated that, **Land rights means the recognition of the prior ownership of this State of New South Wales by Aboriginal peoples.**¹³

The **Aboriginal Land Rights Act 1983 (ALRA)** was passed by the NSW Parliament to facilitate the return of land in NSW to Aboriginal peoples through claim over Crown land. A 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. Aboriginal Land Councils represent not only the interests of their members, but of the wider Aboriginal community.

The **preamble** of the ALRA recognises that:

1. Land in the State of NSW was traditionally owned and occupied by Aboriginal people;
2. Land is of spiritual, social, cultural and economic importance to Aboriginal people;
3. It is fitting to acknowledge the importance which land has for Aboriginal people and the need of Aboriginal people for land;
4. It is accepted that as a result of past Government decisions the amount of land set aside for Aboriginal people has been progressively reduced without compensation.

¹² Preamble of the Aboriginal Land Rights Act 1983 statement by Minister Walker 24 March 1983: Office of the Registrar ALRA <http://www.oralra.nsw.gov.au/alrareviewpreamble.html> accessed on 14/05/2015

¹³ Preamble of the Aboriginal Land Rights Act 1983 statement by Minister Walker 24 March 1983: Office of the Registrar ALRA <http://www.oralra.nsw.gov.au/alrareviewpreamble.html> accessed on 14/05/2015



Purpose of the ALRA 1983

- To provide land rights for Aboriginal persons in New South Wales,
- To provide for representative Aboriginal Land Councils in New South Wales,
- To vest land in those Councils,
- 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,
- To provide for the provision of community benefits schemes by or on behalf of those Councils.

'When I look forward I see legislation which will form the foundation of Aboriginal social and economic self-sufficiency in NSW... Its achievements have been great and its potential into the future limitless!'

– Uncle Ossie Cruse, Chairperson, NSWALC 1998

AMENDMENTS TO THE ALRA

Proposals for reform to the ALRA by successive governments have shown a commitment by NSWALC, and demonstrated the determination by a unified land council network to continuously improve Land Rights for future generations

Important amendments to the ALRA have:

- Strengthened governance and accountability mechanisms bringing Aboriginal Land Councils into line with corporate entities
- Expansion of Aboriginal Land Councils ability to deal with their land and engage in commercial transactions for the economic and social benefit of their communities
- Built the capacity land councils to determine the priorities of their communities to see real and lasting benefits
- Aboriginal Land Agreements – from July 2015 Aboriginal Land Councils will be able to negotiate land claims with Government.
- Aboriginal Owners and the passing of the *NSW National Parks and Wildlife Amendments (Aboriginal Ownership) Act 1996* ('the Joint Management Act') facilitated an opportunity to work in partnership with Government for the benefit of all stakeholders.

NSWALC and the 120 strong Local Aboriginal Land Council network are committed to advocating for Aboriginal self-determination, land rights or the provision of compensation for dispossession.

*'Land Rights is not negotiable; It is our birthright;
We will only discuss amendments to make the Act better for Aborigines'* ¹⁴

¹⁴ New South Wales Aboriginal Land Council, Papers from the Statewide Conference, Dubbo, 16-17 May 1988, p2 – Motion addressed to the Minister for Aboriginal Affairs

THE PROMISE OF LAND RIGHTS

'In recognising prior ownership, the Government thereby recognises Aboriginal rights to obtain land. The Government believes the essential task is to ensure an equitable and viable amount of land is returned to Aborigines' (Minister for Aboriginal Affairs, the Hon. Frank Walker, MP)

Aboriginal people's interest in land is multifaceted and includes, but is not limited to, the use and management of land for culture and heritage purposes as well as providing economic development opportunities for Aboriginal peoples.

Under the ALRA, Aboriginal Land Councils can make claims over unused and unneeded Crown land as compensation for dispossession and as such the use and management of Crown land and Aboriginal land rights are intertwined.

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.

A successful determination of a land claim generally delivers freehold title to land which includes rights to certain minerals in the freehold land. This freehold can be dealt with for example via sale, lease and the owner of the freehold land (the Aboriginal Land Council) has the same rights as other freehold owners, subject to compliance with the ALRA.

The Aboriginal Land Rights Act was meant to provide *"a simple, quick and inexpensive [mechanism through which] vast tracts of Crown land will be available for claim which will go some way to redress the injustices of dispossession"*.

The law provides for freehold title however governments have taken to transferring 'limited title' to lands. However, while NSWALC and LALCs have continued to make claims to unused and unneeded Crown Lands, of the 40-50% of Crown Land in the State of NSW approximately only 0.02% has been returned to Aboriginal peoples.

CLAIMS LODGED

38,779

GRANTED

2,655

REFUSED

7,852

APPEALED

389

INCOMPLETE

27,701

LAND RIGHTS NOW

The ALRA has created an important political and organisational structure for Aboriginal communities in NSW. It is the vehicle for which Aboriginal Land Councils are able to address the specific needs and aspirations of our communities and it is the framework for achieving self determination and self-sufficiency for our people as was the intention of the ALRA.

What we have is:

- An independently managed statutory fund managed, without government contribution since 1999. We are independently funded and manage the fund in perpetuity for the benefit of all Aboriginal people in NSW.
- The largest member based Aboriginal network in Australia of over 23,000 members and growing.
- Aboriginal people managing their own affairs:
 - To claim, acquire and manage land
 - To protect and promote culture & heritage
 - To do business
 - To provide community benefits
- Land granted building an economic base including the \$16m economic development project
- Economic opportunities and outcomes - Large, medium and small property developments, medical services, transport services, tourism ventures, farming businesses, early childhood centres.
- Culturally important lands being protected.
- The provision of housing for Aboriginal people.
- Ownership of culturally significant land.
- Significant employment opportunities for Aboriginal peoples in NSW.

Key Select Committee recommendations that weren't implemented:

- Establishment of the Aboriginal Land and Compensation Tribunal
- Establishment of the Aboriginal Heritage Commission

The link between Aboriginal land rights and the need for proper protection of Aboriginal culture and heritage was recognised when the *Aboriginal Land Rights Bill 1983* was introduced. The then Minister for Aboriginal Affairs indicated that Land Rights was to be only the first step in recognising and recompensing for past injustices suffered by Aboriginal peoples:

'It is my intention to seek the assistance of the new Aboriginal councils that will be formed under the proposed legislation [The Aboriginal Land Rights Act 1983] before introducing an Aboriginal heritage commission bill for the protection and ownership of sacred and significant sites'.¹⁵

Despite the commitments made since the introduction of the ALRA, and its reiteration in each of the subsequent review of the *National Parks and Wildlife Act 1974* an Aboriginal Heritage Commission is yet to be established, and the management and care of Aboriginal culture and heritage remains beyond the control of Aboriginal peoples in NSW.

The interconnectedness of Aboriginal culture and heritage, and land or 'Country' cannot be separated from the struggle for Aboriginal Land Rights.



¹⁵ The Hon. Frank Walker NSW Parliament Hansard; Legislative Assembly; 24 March, 1983; at 5090

OUR FUTURE...THE FUTURE OF LAND RIGHTS

'The Aboriginal Land Rights Act 1983 plays a key role in overcoming disadvantage by empowering Local Aboriginal Land Councils to continue to deliver the social, economic and cultural needs of our people. Since the Act was passed, successful land claims have allowed Aboriginal people to revitalise culture, manage our own wealth base and control our future'. – Craig Cromelin, Chairperson, NSWALC 2015

While there are challenges ahead, Aboriginal people's strength and resilience has built the foundations for a positive future.

The NSWALC acknowledges its role as the custodian of the long and continuing journey of land rights for the land rights network in NSW. Our strategic plan 2013-2017 is reflective of our long term vision for the future of Land Rights in NSW to thrive and become highly prosperous, self-sufficient, remain culturally strong, well governed and democratically accountable to our people.

We will foster a deep spirit of intergenerational custodianship for our land, develop the economic independence and social equality for our people and show leadership in the strengthening of our culture, identity and languages.

We will achieve this through working in unity as the First People of this land, through mutual respect and in genuine partnership with the Government of NSW for the benefit of our people and our communities.

Key priorities of the NSWALC are:

- To continue to secure and manage land for the benefit of **all Aboriginal people in NSW**;
- To continue to improve the governance of the land rights network, including its financial and political sustainability, to ensure its long term viability and legitimacy;
- To drive economic development across the land rights network to support the Aboriginal people of NSW to achieve greater economic independence;
- To continue to ensure the benefits derived from the land rights network continue to support the social needs of our people; and
- To protect and promote Aboriginal culture, heritage and the environment for the benefit of present and future generations.

ABORIGINAL POPULATION IN NSW:

It is estimated that there were **631,757** Aboriginal people in Australia at the most recent ABS Census. **202,674** Aboriginal peoples live in NSW, or **32.1** per cent of the total Aboriginal population. Only Queensland has a comparable population with an estimated **164,557** Aboriginal peoples living in that state. To put these results into perspective, there were more Aboriginal peoples living in NSW than the whole of South Australia, Western Australia and the Northern Territory combined (**190,871**).



'The NSW Parliament's passing of the Aboriginal Land Rights Act in 1983 provided recognition that land is at the heart of empowerment of our people both spiritually and economically'. – Roy Ah-See, Deputy Chairperson, NSWALC 2015



PROFILE

Jarred Menz

Jarred Menz is a Barkindji Wilyakali man from Broken Hill. He is Deputy Chair of the Broken Hill Local Aboriginal Land Council and proud team member of the Menindee Wedge-tail Eagles Rugby team.

I've always been taught to fight for what's right. I was reared up within the Land Council and Land Rights. Our family, we were at the Mutawintji blockade and the hand back and the recent anniversary.

I think people should become members of their Land Council because you're doing something for your community, you're doing something for your people. You can be part of making change happen.

Being on the Land Council board is a lot of work. You work many weekends and nights it takes a lot of commitment, but it's worth it.

The benefits of membership for me are that I can see the change in our Land Council work over time. You can see the growth happening, the community can see the growth happening, I can see that giving back to the community is rewarding.

It's not just for now it's for the future. It's for my children, your children, the children that will be affected by our decisions, fights and choices that we make today. You've just got to keep going with it all.

PROFILE

Tara Winters



Tara Winters is a Darkinjung and Wiradjuri woman and she is a member of the Board of the Ngambri Local Aboriginal Land Council.

I initially joined the Ngambri LALC for my grandparents, as they spoke so highly of the LALC and I wanted to spend more time with them, especially around something they felt strongly about.

I didn't understand what the LALC was prior to joining. However, after attending my first few members' meetings I got a greater understanding and appreciation of what they strive for and achieve. I wanted to learn more. I see Land Rights and Land Councils as the way we can protect and strengthen our cultural heritage and identity now.

Young people should become members of their local LALC, as it provides opportunities for involvement, learning, sharing, support, as well as enables you to be a part of the community and meet a range of lovely, passionate, knowledgeable and professional people.

The Ngambri LALC has moved forward in leaps and bounds even in the short time I have been a member. I can't wait to see what the future holds and hope to see more young passionate members!



PROFILE

Clark Webb

My name is Clark Webb, I'm a member of the Coffs Harbour and District Local Aboriginal Land Council and have been a member now for 5 years.

Basically, I just thought it was about time to become a member of the Land Council, obviously being the peak organization in the local area, especially in regards to local heritage and rights. I wanted to be a part of making those decisions. I think that's the power that we as members have, that ability to vote on different issues. I just wanted to be a part of that process.

To me Land Rights is the most important fundamental basis that we need to make sure that our communities go forward because it means we can have a better economic future and we can also ensure its sustainable in terms of ecology and the protection of cultural heritage values.

My advice to any young people would be to get involved and start to try and wrap your head around some of the legislation, which is very difficult to understand sometimes but if you start early, you'll get there.



Our Story..
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Our Future!



**NEW SOUTH WALES
ABORIGINAL LAND COUNCIL**

33 Argyle St
Parramatta NSW 2150

PO Box 1125
Parramatta NSW 2124

Ph: 02 9689 4444
Fax: 02 9687 1234

www.alc.org.au