

Via email: commissioner@crowland.nsw.gov.au



To the Crown Lands Commissioner,

RE: Evaluation of the *Crown Land Management Act 2016*

**New South Wales
Aboriginal Land Council**
ABN 82 726 507 500
alc.org.au

Thank you for the opportunity to comment on the discussion paper 'Evaluation of the *Crown Land Management Act 2016 (CLM Act)*.

The NSW Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples across NSW and with over 23,000 members, is the largest Aboriginal member-based organisation in Australia. NSWALC, and the network of 120 Local Aboriginal Land Councils (**LALCs**) across NSW, work to improve, protect and foster the best interests of all Aboriginal peoples in NSW. We are focused on building a better future for Aboriginal people by unlocking the full potential of our three greatest assets; the land we reacquire, our culture and heritage, and our people.

The Land Rights Network is the key vehicle to deliver social, cultural and economic outcomes to Aboriginal communities and is the framework for achieving self-determination in NSW.

Overall, there are important opportunities to improve the *Crown Land Management Act* and its operation to ensure better alignment with, and facilitation of, the objectives of the *Aboriginal Land Rights Act 1983 (ALRA)*.

In line with the NSW Government's commitments under the National Agreement on Closing the Gap, including in relation to shared decision makes, we look forward to governments working in partnership with the Land Rights network to deliver social, cultural and economic outcomes for Aboriginal people, and the broader community.

Responses to key areas of the discussion paper are outlined below. We also refer to our previous submission in response to the draft Crown Land Strategic Plan which makes a number of recommendations relevant to this review (**enclosed** for reference).

'Innovation and the State Strategic Plan for Crown Land'

Aboriginal Land Rights must be seen as a public outcome itself, and a way to deliver Aboriginal cultural heritage protections, broader community benefits, jobs growth, sustainable economic opportunities, stronger community connections and climate change resilience.

The NSW Government must recognise and support the important contributions the Land Rights Network is making, and has the potential to make, to the NSW community, economy and environment. Stronger commitments to support Aboriginal Land Rights to achieve social, cultural, economic and environmental objectives of the *Crown Land Management Act 2016* are needed, as are commitments to making land transfers to Aboriginal Land Councils a priority and seeing them as an opportunity.

We have provided detailed comments on the draft State Strategic Plan for Crown Land, including opportunities to support better land rights outcomes, and land activation. We look forward to further engagement prior to the Plan's finalisation. We look forward to robust accountability mechanisms to monitor the Plan's rollout and we seek to ensure involvement in these mechanisms.

ALWAYS WAS ALWAYS WILL BE ABORIGINAL LAND

Head office	Western Zone	Northern Zone	Northern Zone (Tamworth)	Eastern Zone	Southern Zone	Far Western Zone
Level 5, 33 Argyle Street Parramatta NSW 2150 PO Box 1125 Parramatta NSW 2124 Ph: 02 9689 4444 Fax: 02 9687 1234	2/36 Darling Street Dubbo NSW 2830 PO Box 1196 Dubbo NSW 2830 Ph: 02 6885 7000 Fax: 02 6881 6268	Suite 5, Level 1 66-90 Harbour Drive Coffs Harbour NSW 2450 PO Box 1912 Coffs Harbour NSW 2450 Ph: 02 6659 1200 Fax: 02 6650 0420	2/158 Marius Street Tamworth NSW 2340 PO Box 890 Tamworth NSW 2340 Ph: 02 6766 4468 Fax: 02 6766 4469	Suite 23, 207 Albany Street North Gosford NSW 2250 PO Box 670 Gosford NSW 2250 Ph: 02 4337 4700 Fax: 02 4337 4710	Unit 22, 2 Yallourn Street Fyshwick ACT 2609 PO Box 619 Queanbeyan NSW 2620 Ph: 02 6124 3555 Fax: 02 6280 5650	Ground Floor Suite 49 Oxide Street Broken Hill NSW 2880 Ph: 08 8087 7909 Fax: 08 8087 3851

Recommendations

- The *Crown Land Management Act* and its operation should be improved to facilitate the objectives of the *Aboriginal Land Rights Act 1983*.
- In line with Closing the Gap commitments, and the United Nations *Declaration on the Rights of Indigenous Peoples*, the NSW government must work with Aboriginal Land Councils on the basis of partnership, shared decision making and free, prior and informed consent in relation to Crown lands.

'Aboriginal connections'

Achieving better outcomes for Aboriginal people

In 2009, Australia endorsed the United Nations *Declaration on the Rights of Indigenous Peoples*, which recognises Aboriginal peoples' rights to lands. The *Aboriginal Land Rights Act 1983 (NSW) (ALRA)* is key to achieving this by facilitating the return of lands to Aboriginal peoples in NSW.

Sadly successive audits and reviews¹ have highlighted the ongoing lack of progress by governments in delivering land outcomes to Aboriginal people. They have signalled the need for significant improvements and for governments to work with Aboriginal peoples to deliver Aboriginal land rights outcomes.

One of the objects of the CLM Act includes:

"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."

These objects make no mention of land rights or compensation of Aboriginal people for historic dispossession and should be improved to ensure consistency the ALRA. As a priority, government should negotiate with the Aboriginal Land Council network regarding the transfer land to Aboriginal Land Councils, including locally significant lands.

The CLM Act should be strengthened to enable improved recognition and facilitation of Aboriginal people's rights and interests in Crown land.

Prioritising Aboriginal ownership of Crown land, wherever possible, and partnering with Aboriginal Land Councils to achieve outcomes across all Crown land initiatives should be a key feature of the CLM Act.

The Act should include provisions to specifically engage with NSWALC and the relevant Local Aboriginal Land Council in advance of any proposed land transfers to ensure there are opportunities for the lands to be transferred to the relevant Aboriginal Land Council.

In addition to amending legislation, existing processes should be reviewed so that Aboriginal interests in land are the first priority when making decisions about divestment of Crown Land. Where lands may be needed for essential public purposes, government should support and resource Aboriginal Land Councils to deliver these outcomes directly.

It is also important to acknowledge that returning Crown land to Aboriginal peoples does not necessarily restrict public access to that land. Where certain lands may be needed for joint access and/or multiple use, governments can work with ALCs to ensure suitable arrangements can be accommodated.

¹ See for example, Auditor General reports since 2007, and the Land Negotiation Program review report

Furthermore, while land claims are a key mechanism for returning land to Aboriginal people for social, cultural and economic outcomes, government must work in partnership with NSWALC and LALCs to deliver on the beneficial intent of the ALRA, including through the Aboriginal Land Agreement (**ALA**) mechanism.

Aboriginal land claims

Overall, additional focus is needed to support the transfer of lands to Aboriginal Land Councils.

In terms of process improvements for Aboriginal land claims, it is positive that more recently the NSW Government has increased resourcing for Crown lands to progress claims. It would be beneficial for government to provide additional resourcing to NSWALC to make improvements the Land Rights Networks processing and management of Aboriginal land claims.

Improving the quality of information, including tenure information, and providing better access to information for NSWALC and LALCs would also greatly assist in the land claims process.

While the 'Priority 20' project is a positive step, we would like to see this further extended across the State, and become an ongoing initiative. The Government should also provide independent support, capability and resourcing to LALCs to assist in assessing and prioritising outstanding land claims in their boundary area.

We note the performance audit underway by the NSW Audit Office into land claims processes may be another useful information source to inform this review.

In relation to the sale / transfer / vesting of Crown land under claim, there are opportunities to further strengthen requirements to prohibit this without the express consent of the relevant Aboriginal Land Council. More broadly, Aboriginal Land Councils should be notified of, and have the opportunity to, have lands transferred, prior to proposed sales or transfers.

Co-management

The first preference is for Crown lands to be transferred to Aboriginal ownership. Where this is not possible, the CLM Act should further promote and better support Aboriginal Land Councils in Crown land management. Where co-management arrangements are proposed or exist, Aboriginal Land Councils should be adequately resourced so that they can participate as equal partners.

Currently opportunities for co-management arrangements vary considerably across the state depending upon different government staff and local governments' willingness to engage with Local Aboriginal Land Councils.

The joint management mechanism in Part 4A of the *National Parks and Wildlife Act* is one mechanism that could be further explored to transfer ownership to Aboriginal Land Councils, with joint-management and lease-back arrangements.

There are also opportunities for the Government to support increased access to Crown lands by Aboriginal people. Crown land managers should be encouraged to better engage with their Aboriginal Land Council and local Aboriginal communities and ensure their involvement in decisions about Crown land management.

Recommendations

- Prioritising ownership of Crown land by Aboriginal Land Councils and partnering with Aboriginal Land Councils to achieve outcomes across all Crown land initiatives should be a key feature of the CLM Act.
- Additional support should be provided to Aboriginal Land Councils to activate and manage land.

- The CLM Act should be strengthened to enable improved recognition and facilitation of Aboriginal people’s rights and interests in Crown land.
- Increased support and resources are needed to assist Aboriginal Land Council in co-management arrangements. Co-management must not be in lieu of the return of land to Aboriginal Land Councils.

Community engagement strategy

NSWALC has previously provided extensive comments on the community engagement strategy. Fundamentally, we seek assurances and legislative safeguards that Aboriginal Land Councils will be engaged directly about all proposed crown land dealings and initiatives.

Local Council managed lands

As outlined above, government should negotiate with the Aboriginal Land Council network regarding the transfer lands to Aboriginal Land Councils, including locally significant lands, and resource Aboriginal Land Councils to manage these lands.

Western Lands leases

Further work is needed to support Aboriginal land rights and Aboriginal culture and heritage in the freehold conversion processes of Western Lands leases.

Travelling Stock Reserves

The management, access and use of TSRs remains a significant outstanding concern. While LLS have made some general commitments to better engage with Aboriginal communities, further work and commitments are needed. This must extend to genuine partnership with Aboriginal Land Councils, and opportunities to transfer lands to Aboriginal Land Councils.

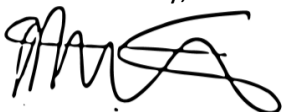
Compliance

Any proposals to reduce ‘red tape’ for entities managing Crown Land need to be balanced with land rights, and Aboriginal culture and heritage rights. It is important that any reforms do not reduce or undermine Aboriginal peoples’ land rights, or rights to protect Aboriginal cultural heritage and manage Country.

NSWALC is committed to working with the NSW Government, partners and Aboriginal communities to empower and advance land rights for all Aboriginal people.

We look forward to working in partnership with the NSW Government to further develop and implement actions to support this priority in line with Aboriginal people’s rights, interests and aspirations.

Yours sincerely,



James Christian PSM
Chief Executive Officer
NSW Aboriginal Land Council

Date: 20 April 2020