



***Submission to the 'Aboriginal and Torres Strait Islander Act 2005' Consultation
Discussion Paper
September 2017***

SUMMARY OF RECOMMENDATIONS

Recommendation 1: That the development of legislation, policy and programs must involve the communities directly impacted at every stage and should meet the international standard of free, prior and informed consent (FPIC).

Recommendation 2: That operational expenditure return to 2010 as a baseline, and reinvesting profits back into the Land Account is a reasonable starting point.

Recommendation 3: That a stronger link between the performance of the fund and future investment monies available for ILC asset acquisition be established.

Recommendation 4: That mechanisms are established to ensure Aboriginal and Torres Strait Islander people and communities are informed and can participate in decisions regarding the investment and distribution of funds from the Land Account.

Recommendation 5: That the development of models and strategies related to water related activities be in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and in genuine partnership with Aboriginal and Torres Strait Islander people, communities and their chosen representative organisations.

Recommendation 6: That a specific strategy for land and water related activities be developed with NSWALC, as the largest private land holder and non-government investor, for the Aboriginal Land Rights Network which promotes community aspirations for social, cultural and economic development opportunities.

Recommendation 7: That specific, best practice engagement strategies be developed to engage with Aboriginal communities in NSW.

Recommendation 8: That the ILC engage with NSWALC and NTSCORP to develop targeted opportunities for investment in NSW.

OVERVIEW

The NSW Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member based organisation in Australia. NSWALC is committed to ensuring a better future for all Aboriginal people by working for the return of culturally significant and economically viable land and pursuing cultural, social and economic independence for Aboriginal peoples in NSW.

NSWALC is a self-funded statutory corporation under the *Aboriginal Land Rights Act 1983 (NSW)* (**ALRA**), with legislated objectives to improve, protect and foster the best interests of all Aboriginal peoples in NSW. NSWALC also provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) across the state which have similar statutory objectives to NSWALC in regards to their *local* communities.

LALCs are community organisations that undertake a diverse range of community, land management, business and cultural activities in line with their functions under the ALRA and in accordance with their Community Land and Business Plan (**CLBP**) for the economic, social and cultural benefit of all Aboriginal people living within their boundaries.

The NSW Parliament, through the passing of the ALRA, established this network of Aboriginal Land Councils to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and recognition of the ongoing disadvantage suffered by Aboriginal communities. Land rights for Aboriginal peoples in NSW is the most fundamental initiative to be taken for the regeneration of Aboriginal culture and dignity, and at the same time provides the basis for a self-reliant and more secure economic future for Aboriginal peoples¹.

SUSTAINABILITY OF THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND ACCOUNT

The Land Account, established under the *Aboriginal Torres Strait Islander Act (ATSI Act)*, sets out that the purpose of the Land Account is the making of payments to the ILC in perpetuity. Long term growth and sustainability of the Land Account must be the primary goal to achieve intergenerational social, cultural and economic outcomes for Aboriginal and Torres Strait Islander Peoples.

Noting the advice provided by the 'Land Account Expert Advisory Panel' (the **Advisory Panel**) engaged in 2016 that, based on current expenses and the low return on investment, annual payments from the Land Account to the ILC will start to reduce the capital value and that the current restrictive parameters of the Land Account further compounding this issue, the changes required are supported in principle by NSWALC.

Firstly, the NSWALC Statutory Investment Fund established under the ALRA, is owned and managed by the Council for the benefit of the Aboriginal Land Rights network and Aboriginal people of NSW. Investments are managed in-house by the Chief Investments Officer, with a number of mechanisms such as an investment committee and risk management policies, in place to identify and analyse the

¹ Preamble of the Aboriginal Land Rights Act 1983 statement by Minister Walker 24 March 1983: Office of the Registrar of the ALRA <http://www.oralra.nsw.gov.au/alrareviewpreamble.html> accessed on 30/09/2015

risk faced by our Council as the decision makers. Constraints are also placed on the projected draw down from the NSWALC Investment Fund to ensure the activities of NSWALC can be funded in perpetuity.

In comparison, the draw down for operations and activities of the ILC do not appear to be linked to the performance of the Land Account and is administered by the Department of Families, Housing, Community Services and Indigenous Affairs, under delegation from the Minister for Finance and Deregulation. Decisions, and more importantly the input Aboriginal and Torres Strait Islander people have in the decision-making process regarding the management and investment is unclear.

As the primary stakeholders and intergenerational beneficiaries of the Land Account, Aboriginal and Torres Strait Islander people have the right to participate in decision-making in matters which would affect their rights² and, at a minimum have visibility of how money from the Land Account is being invested and distributed. NSWALC recognises the different environments with which the ILC and NSWALC operate, however should the investment mandate and the agency which manages the Land Account which require a change to the ATSI Act be passed, mechanisms should also be implemented to ensure Aboriginal and Torres Strait Islander people are informed and have input to decisions which affect them.

NSWALC recommends:

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SUPPORTING WATER RELATED ACTIVITIES

The return of lands and waters to Aboriginal peoples for both cultural and economic purposes is an area of shared concern between NSWALC and the ILC. There is great potential for Aboriginal peoples to further economic development aspirations through water-related business activities, including fishing, wild harvesting, aquaculture and tourism. The development of models to support these aspirations must be in accordance with the *United Nations Declaration on the Rights of Indigenous*

² United Nations Declaration on the Rights of Indigenous Peoples, Article 18:
http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf

Peoples (UNDRIP), in particular Articles 25 and 32, and in genuine partnership with Aboriginal people and their representative organisations.

NSWALC and LALCs have a key role to play in facilitating and supporting economic opportunities for Aboriginal peoples in NSW. NSWALC has legislated objects and mechanisms to continue to create intergenerational wealth, develop sustainable benefits which contribute to the financial, social, and cultural needs of Aboriginal people in NSW, and is the most significant non-government investor in programs to strengthen governance and economic outcomes at a local community level in NSW.

NSWALC supports the extension of the ILC's functions to water-related activities to assist Aboriginal and Torres Strait people, communities and Aboriginal controlled organisations to manage, use and care for waters and is a strong advocate for practical measures to deliver sustainable socio-economic improvements to the circumstances of Aboriginal peoples. NSWALC has consistently stated that the fisheries sector provides an important mechanism for facilitating key objectives of the *Aboriginal Land Rights Act 1983 (NSW)* – *to provide both cultural and economic outcomes for Aboriginal peoples.*

NSWALC is committed to working with Government and other stakeholders to facilitate economic development for Aboriginal peoples in NSW. Providing increased avenues for economic development and participation of Aboriginal People in water related activities presents significant opportunities to deliver cultural, social and economic benefits for Aboriginal peoples and the whole community of NSW for generations to come.

NSWALC seeks to ensure that key parties are invited to participate in the development of strategies relating to the expansion of ILC's remit, including LALCs, NSWALC, NTSCORP and that any engagement and consultation processes are conducted in line with the principles set out in the UNDRIP. This includes that any decision making is based on free, prior and informed consent, self-determination, transparency, respect for representative and decision-making structures, and provision of all relevant information in an accessible way.

NSWALC recommends:

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COMMUNITY CONSULTATIONS

There were a number of issues raised during the Sydney consultation in relation to the sustainability of the ILC Land Account. These issues included the intent of the Land Account and the current draw down rules for the operations of the ILC, community awareness of the ILC and accessibility of programs and funding for Aboriginal people, communities and organisations in NSW.

As noted in the in the Preamble to the *Native Title Act 1993*, and in recognition that many Aboriginal and Torres Strait Islander peoples having been dispossessed of traditional lands and are not able to assert native title rights and interests, the Land Account was established to provide assistance in the acquisition of land. In this regard it is important to acknowledge that the effects of dispossession of land and the inability to assert native title rights are most concentrated in NSW.

It is evident that the apportioned investment of funds to acquire land holdings within NSW is not reflective of the unique experience of Aboriginal people in NSW, nor is it consistent with the intent of the Land Account. To date, programs such as the '*Our Land Our Future Program*', intended to assist Aboriginal and Torres Strait Islander people in urban, regional and remote areas to manage, use, care for, acquire and improve land, has had minimal investment in NSW.

Lack of awareness within Aboriginal communities of the work of ILC and funding programs available may be a contributing factor to the limited investment in NSW, however, specific strategies must be developed to engage with Aboriginal communities in NSW. There must also be a commitment to investment in NSW where Native Title rights and interests are not able to be asserted as opposed to the longstanding prioritisation of investment in States where native title still exists

NSWALC recommends:

Recommendation 7: That specific, best practice engagement strategies be developed to engage with Aboriginal communities in NSW.

Recommendation 8: That the ILC engage with NSWALC and NTSCORP to develop targeted opportunities for investment in NSW.