



**New South Wales
Aboriginal Land Council**

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**Re: NSWALC Submission – Submission to the Environment and Communications Legislation Committee
Nature Repair Market (NRM) Bill 2023 and Nature Repair Market (NRM - Consequential Amendments) Bill
2023 [Provisions]**

Thank you for the opportunity to provide this Submission. The NSW Aboriginal Land Council (NSWALC) is the largest member based Aboriginal organisation in Australia, with a network of 121 Local Aboriginal Land Councils (LALCs) and over 28,000 members. We are the peak elected Aboriginal community controlled representative body for the 230,000 Aboriginal people in NSW, Australia's largest Aboriginal population. Our network of LALCs has a vital role to play in relation to the management and mitigation of the impacts on biodiversity in NSW. Aboriginal peoples possess inherent and pre-eminent rights, values and interests in our lands and waters due to our status as Australia's First Peoples. We are not just another stakeholder and government must engage in meaningful consultation and partnership with us. It is imperative that Aboriginal people have a say in Commonwealth policies and plans relating to biodiversity conservation and ecologically sustainable development.

Introduction

NSWALC is committed to pursuing cultural, social and economic independence for Aboriginal peoples. As a self-funded statutory corporation established under the *Aboriginal Land Rights Act 1983 (ALRA)*, NSWALC has a legislated objective to improve, protect and foster the best interests of Aboriginal peoples and communities across the state.

LALCs are autonomous, elected bodies. The core business of each LALC is to protect Aboriginal culture and heritage, acquire and manage lands for cultural and economic purposes, and as compensation for dispossession. Maintaining spiritual and cultural relationships with land, water and Country are intertwined for Aboriginal people. The right to economically develop natural resources, consistent with cultural obligations, is also of significant importance.

NSWALC, LALCs and Aboriginal people have long called for improved land and water management practices, involvement of Aboriginal people in governance and decision-making, increased access to and ownership of lands and water for Aboriginal people for cultural and economic purposes, and improved accountability, transparency, and compliance.

Our recommendations in this submission seek to address the following key concerns:

- The need to align "Closing the Gap" Priorities and Partnership Principles under the National Agreement on Closing the Gap

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- Lack of consultation with Aboriginal peoples and communities and the need for a targeted Aboriginal engagement
- Ensuring the NRM Bill does not contradict the *Aboriginal Land Rights Act 1983* (the ALRA)
- Including safeguards to protect against harm and destruction to Aboriginal culture and heritage
- The need for better recognition and promotion of the role of Aboriginal people in biodiversity conservation, including supporting the use of Traditional Ecological Knowledge in biodiversity conservation programs
- Overall concern around government decision making, transparency and accountability and whether the NRM is ensuring biodiversity gains and land management outcomes.

NSWALC's Recommendations:

1. The Commonwealth must commit to a genuine partnership approach with NSWALC, LALCs and Aboriginal communities in line with the National Agreement on Closing the Gap.
2. Genuine social, cultural and economic opportunities for LALCs and Aboriginal landholders should be further explored, developed and supported in partnership with NSWALC and peak Aboriginal organisations.
3. The Commonwealth should develop an Aboriginal Engagement Strategy and dedicated engagement team to inform and support Aboriginal landholders to maximise opportunities under the NRM.
4. The Commonwealth must consider and embed Aboriginal Traditional Ecological Knowledge, perspectives and cultural practices in work to manage biodiversity, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.
5. Provisions of the NRM must be in accordance with international instruments, including the *United Nations Declaration on the Rights of Indigenous Peoples*, the *Nagoya Protocol* and the *Kunming-Mantreal Global Biodiversity Framework*.
6. The NRM policy and frameworks must not work in contradiction with objects and operations of the *Aboriginal Land Rights Act 1983*.
7. All references to Native Title holders in the Nature Repair Market Bill should also be extended to include Aboriginal Land Councils.
8. Further work should be undertaken to include provisions that integrate the aspirations of Aboriginal people in biodiversity particularly in relation to Aboriginal landowners.
9. Aboriginal Land Councils as land managers should be supported to protect and restore biodiversity.
10. The Government and the NRM must implement safeguards to protect against harm and destruction to Aboriginal culture and heritage, particularly in relation to clearing native vegetation and offsets proposals.

NSW ABORIGINAL LAND COUNCIL SUBMISSION

NSWALC Submission – Submission to the Environment and Communications Legislation Committee Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]

Working in genuine partnership

As a ready-made system of democratic Aboriginal governance, there is great scope for the network of LALCs to play an important part in the management of biodiversity and mitigation of climate change. Given that LALCs are the elected voice for Aboriginal people in NSW with legislative responsibilities to advocate for the interests of local Aboriginal communities in their respective jurisdictions, it is imperative that LALCs be consulted and invited to participate in all land, marine and climate-related matters that concern them.

Consultation and engagement with Aboriginal peoples must provide for adequate notice, incorporate the principles of 'free, prior and informed' consent, and actively seek Aboriginal people's views. Initiatives to engage and partner with Aboriginal peoples in the management of land, waters and climate must not be undertaken in isolation or on a 'one off' basis.

Aboriginal Land Rights must be seen as a public outcome in itself and as a way to deliver broader public benefits, including climate change resilience. There should be an increased focus by all levels of government to return land and waters to Aboriginal peoples, and to Aboriginal Land Councils NSW. Returning land to Aboriginal peoples will:

- provide environmental protection and climate change resilience
- contribute to sustainable land management and management of Sea Country, and improved quality of life
- support economic development and tourism initiatives, stimulating local and regional economies, and provide jobs and training opportunities

NSWALC seeks to ensure that the Government meets their commitments outlined in the National Agreement on Closing the Gap (the National Agreement). The National Agreement provides an important framework for governments to work in partnership with Aboriginal people to support us maintaining our distinctive cultural, spiritual, physical and economic relationships with Country, and advancing our rights and interests in lands and waters.

All governments have committed to increasing Aboriginal land and water rights through a specific target¹ relating to land and waters in the National Agreement. The National Agreement includes four priority reforms (and a fifth in NSW) which aim to change the way in which governments work with Aboriginal people, these are:

1. Shared decision making
2. Building the Aboriginal community-controlled sector
3. Transforming mainstream institutions
4. Data sharing
5. Employment, business growth and economic prosperity (NSW specific)²

In our view, there has been inadequate consultation with the Aboriginal Land Rights (ALR) network and Aboriginal communities with regard to the NRM. We hope that in future, the NRM actively promotes the involvement of Aboriginal peoples in biodiversity conservation and to understand our perspectives not only as biodiversity stewards, but key developers in the state of NSW.

¹ [People maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters | Closing the Gap](#)

² [Aboriginal Affairs NSW - Priority Reforms](#)

Key concerns include:

- While NSWALC was invited to attend the consultation, we are not aware of any of LALCs being invited to face to face consultations, workshops or webinars for our community, or targeted written materials regarding the NRM.
- The limited consultation period for written submissions is a barrier for many Aboriginal stakeholders, many LALCs are under resourced and require more time to present feedback.
- It is fair to say that biodiversity offset schemes generally, are incredibly complex schemes that are still in their infancy. The lack of a dedicated Aboriginal Engagement Strategy team and the limited targeted information materials for potential stewards or developers is highly concerning and impacts on the provision of feedback from our network and the potential uptake of the program long-term.
- Representatives of the NSWALC and ALR Network should be included at every stage, including at the initial stage to draft focus questions and a Terms of Reference. This level of involvement should be included in an Aboriginal Engagement Strategy.

Recommendation 1: The Commonwealth must commit to a genuine partnership approach with NSWALC, LALCs and Aboriginal communities, in line with the National Agreement on Closing the Gap.

Recommendation 2: Genuine social, cultural and economic opportunities for LALCs and Aboriginal landholders should be further explored, developed and supported in partnership with NSWALC and peak Aboriginal organisations.

Recommendation 3: The Commonwealth should develop an Aboriginal Engagement Strategy and dedicated engagement team to inform and support Aboriginal landholders to maximise opportunities under the NRM.

Aboriginal Traditional Ecological Knowledge and Benefit Sharing

Aboriginal peoples in NSW and the network of Aboriginal Land Councils that represent them (both LALCs and NSWALC) are key stakeholders in relation to biodiversity management. LALCs are significant landowners and managers of lands with high biodiversity value, and at a local level are holders of specific Traditional Ecological Knowledge (TEK) and land management expertise accumulated over millennia.

The lands, waters, seas and their resources have been sustainably and successfully managed by Aboriginal peoples for millennia, who, in fulfilling customary obligations to care for Country, obtain physical as well as spiritual nourishment in return.

Article 25 of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* states that “*Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard*”.

Involving Aboriginal landowners in managing biodiversity through effective partnerships, as well as acknowledging Aboriginal peoples’ connections to Country and the value of TEK in biodiversity management is critical. The final report of the NSW Independent Biodiversity Legislation Review Panel (**Independent Panel**) recognised that “*consideration [should] be given to better integrating the knowledge of Aboriginal people in the management of NSW native plants and animals.*”³

TEK can be defined as “*a cumulative body of knowledge, practice and being evolving by adaptive processes and handed down through generations by cultural transmission, about the relationship of living beings*

³ Independent Biodiversity Legislation Review Panel, ‘A review of biodiversity legislation in NSW – Final Report,’ 18 December 2014, page 75.

(including humans) with one another and with their environment”⁴. The concept of TEK recognises the utility of traditional knowledge and methods of resource and environmental management, and it is increasingly being recognised that the inclusion of TEK is needed for more resilient and equitable natural resource management outcomes.

In addition to the UNDRIP, Australia is party to a number of international agreements regarding the protection of biodiversity, the rights of Indigenous peoples and TEK. The Nagoya Protocol, which Australia signed in 2012, and the recently signed Kunming-Montreal Global Biodiversity Framework, require parties to recognise and protect the inherent rights and interests of Indigenous peoples to their TEK and ensures policies and governmental use of such knowledge is principled and consensual.

We seek to advance the human rights of Aboriginal peoples, protect and create opportunities and/or processes for Aboriginal peoples to be active participants in the intergenerational protection and management of TEK.

Recommendation 4: The Commonwealth must consider and embed **Aboriginal Traditional Ecological Knowledge, perspectives and cultural practices** in work to manage biodiversity, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.

Recommendation 5: Provisions of the NRM must be in accordance with international instruments, including the *United Nations Declaration on the Rights of Indigenous Peoples*, the *Nagaya Protocol* and the *Kunming-Montreal Global Biodiversity Framework*.

The Aboriginal Land Rights Act 1983 (NSW)

The ALRA was passed by the NSW Parliament to facilitate the return of land in NSW to Aboriginal peoples through a process of lodging claims for unused Crown land, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities.

A key intention of the land rights system was to enable ‘Vast tracks of Crown land (to) be available for claim (to) go some way to redress the injustices of dispossession...’.⁵ Aboriginal Land Councils were established to acquire and manage land as an economic base for Aboriginal communities. When introducing the *Aboriginal Land Rights Bill 1983* into the NSW Parliament, the then Minister for Aboriginal Affairs, the Hon. Frank Walker, stated that ‘...land rights has a dual purpose – cultural and economic’ and that land rights ‘lay the basis for improving Aboriginal self-sufficiency and economic wellbeing’.⁶

Furthermore, the preamble of the ALRA highlights the multifaceted significance of land to Aboriginal peoples:

- (1) Land and waters in the State of New South Wales were traditionally owned and occupied by Aboriginal persons—
- (2) Land and waters are of spiritual, social, cultural and economic importance to Aboriginal persons—
- (3) It is fitting to acknowledge the importance land and waters have for Aboriginal persons and the need of Aboriginal persons for land and waters—
- (4) It is accepted that as a result of past Government decisions the amount of land and waters set aside for Aboriginal persons has been progressively reduced without compensation—⁷

⁴ Berkes, et al. 2000, ‘Rediscovery of Traditional Ecological Knowledge as adaptive management’ in *Ecological Adaptations*, Vol. 10, No. 5, pp. 1251-1262.

⁵ New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 March 1983, p.5095 (The Hon. Frank Walker) [Hansard & House Papers by Date \(nsw.gov.au\)](#)

⁶ *ibid* p.5089

⁷ [Aboriginal Land Rights Act 1983 No 42 - NSW Legislation](#)

Commonwealth Government must ensure environmental and planning legislation does not work in contradiction to the ALRA. Where the Nature Repair Bill 2023 refers to Native Title holders this should also be extended to include Aboriginal Land Councils. For example, the following clause should be amended to include the words in bold below:

“provide requirements to obtain consent from native title holders and **Aboriginal Land Councils** to carry out biodiversity projects under the Bill on such areas (land or waters). This would ensure that native title holders and **Aboriginal Land Councils** have the final say on whether, and what kind of, biodiversity projects are carried out on **their land** or in native title areas, and would promote the engagement and cooperation of Aboriginal and Torres Strait Islander persons in the enhancement or protection of biodiversity in native species in Australia.”

Recommendation 6: The NRM policy and frameworks must not work in contradiction with objects and operations of the *Aboriginal Land Rights Act 1983*.

Recommendation 7: All references to Native Title holders in the Nature Repair Market Bill should also be extended to include Aboriginal Land Councils.

Biodiversity Conservation for Aboriginal Land Councils

We are supportive of biodiversity conservation and stewardship arrangements that seek to provide economic as well as environmental, social and cultural outcomes for Aboriginal land holders. However, barriers that may impede Aboriginal participation include:

- The costs and requirements to establish and maintain land under any agreements are not clear or guaranteed (return on investment).
- The lack of clear, targeted and tailored communications and support strategies for Aboriginal communities around the NRM must be provided.
- If the market is to develop rapidly, as did the carbon market, it should not only be led by corporates and developers. Aboriginal peoples must be represented and included national policy and development forums.
- Land returned to LALCs is often damaged and in need of repair itself. Grants must be provided via the NRM to LALCs to repair the land and participate in this market if they choose.
- The ever-increasing risk of natural disasters on land that is under an agreement may have a negative impact on the value of the certificate. Is some form of insurance for land councils being considered?
- Competing biodiversity or carbon initiatives are already available in NSW and determining which is best for a LALC is difficult.
- The assessment of the value of land for the purpose of NRM particularly for LALCs in regional and remote areas of the state which may not meet the requirements of the NRM.

The importance of land acquisition for Aboriginal people is matched by the need to restore (where returned land is damaged), conserve (where land has significant natural biodiversity aspects), activate the land for economic and cultural purposes and protect our culture and heritage on the land. This needs to be reflected in the Draft Bill.

NSWALC believes that Aboriginal Land Councils as land managers should be supported to protect and restore nature. Many of our most threatened species and ecosystems occur on private land, so incentivising landholders to protect and restore habitat will help them recover. The government should lead the way with

public funding to support landholders to protect and restore biodiversity rather than relying on private investment through the NRM.

Recommendation 8: Further work should be undertaken to include provisions that integrate the aspirations of Aboriginal people in biodiversity particularly in relation to Aboriginal landowners.

Recommendation 9: Aboriginal Land Councils as land managers should be supported to protect and restore biodiversity.

Aboriginal Culture and Heritage

NSWALC has extensively highlighted deficiencies in both Commonwealth (including the *Aboriginal and Torres Strait Islander Heritage Protection Act*⁸, and *Environment Protection & Biodiversity Conservation Act*⁹) and NSW laws and has called for significant reforms since our inception more than 40 years ago.

In NSW, currently the key law relating to Aboriginal cultural heritage is the *National Parks and Wildlife Act 1974 (NPW Act)*, however the *Heritage Act 1977 (Heritage Act)*, *Environmental Planning and Assessment Act 1979 (EP&A Act)*, and related land use and water laws have important roles to play. Although it is an offence to *harm or desecrate a known Aboriginal object* under the NPW Act¹⁰ these laws all require reform to ensure they enshrine increased and appropriate protections and penalty regimes for any destruction of culture and heritage.

To highlight just some of the inadequacies in NSW, the NSW Government continues to approve the destruction of our heritage at alarmingly high rates. For the first half of the 2020 calendar year, approximately four Aboriginal Heritage Impact Permits (AHIPs) – or permits to destroy Aboriginal heritage - were being issued every week by the NSW Government. The high rates of destruction of Aboriginal culture and heritage, both ‘approved’ and illegal, continues to cause deep distress within our communities. The destruction of Aboriginal culture and heritage impacts on the ability of Aboriginal peoples to connect with a living culture and create healthy communities. Our culture and heritage must be protected to provide Aboriginal people with opportunities to strengthen and maintain culture, now and in the future.

We seek to ensure that the NRM reinforces existing safeguards that protect Aboriginal culture and heritage from being damaged or destroyed during land management activities, especially the clearing of native vegetation. Aboriginal culture and heritage is broadly comprised of both tangible objects and items such as middens, stone tools and scarred trees, along with intangible features such as ceremonies and songlines associated with broader cultural landscapes.

Recommendation 10: The Government and the NRM must implement safeguards to protect against harm and destruction to Aboriginal culture and heritage, particularly in relation to clearing native vegetation and offset proposals.

As Article 11 of the UNDRIP states: *“Indigenous peoples have the right to practice and revitalize their cultural traditions and customs”* including maintaining and protecting *“...archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature”* Government must also provide *“... redress through effective mechanisms, which may include restitution, developed in conjunction with*

⁸ See for example: [Beyond Keane \(alc.org.au\)](http://alc.org.au)

⁹ See for example: [ANON-K57V-XQ28-Z- NSW Aboriginal Land Council.pdf \(environment.gov.au\)](https://www.environment.gov.au/aboriginal-land-council)

¹⁰ Section 86, NPW Act.

indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.”

We hope that the recommendations made in this submission will be carefully considered. We look forward to further opportunities to comment on the Nature Repair Market Bill.

Should you require further information, please contact the NSWALC Strategy and Policy Unit [REDACTED]
[REDACTED]

Sincerely,

[REDACTED]
Yuseph Deen
Chief Executive Officer
NSW Aboriginal Land Council
Date: 29 May 2023