



Dr Anna Dacre  
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House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs  
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Parliament House  
Canberra ACT 2600

By email: [atsia.reps@aph.gov.au](mailto:atsia.reps@aph.gov.au)

Dear Dr Dacre,

**RE: Inquiry into the *Native Title Amendment Bill 2012***

Thank you for your invitation to provide a submission to the Inquiry into the *Native Title Amendment Bill 2012 (Amendment Bill)*. The NSW Aboriginal Land Council (**NSWALC**) is pleased to provide comments to the Standing Committee in relation to this Inquiry.

Our primary concern in relation to the Amendment Bill is to ensure that Aboriginal Land Councils in NSW as owners of lands including National Parks and other forms of nature reserves are recognised as such and afforded rights as land owners to be party to agreement making processes.

**The Aboriginal Land Rights system in NSW**

NSWALC is the peak body representing Aboriginal peoples in NSW and with over 20,000 members, is the largest Aboriginal member based organisation in Australia. Established under the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*, NSWALC is an independent, self-funded non-government organisation that has an elected governing council and the objective of fostering the aspirations and improving the lives of the Aboriginal peoples of NSW.

Pursuant to the ALRA, NSWALC has the following functions amongst others:

- The acquisition, control, and management of (and other dealings in) lands in accordance with the ALRA; including the claiming of unused Crown land;
- The protection and promotion of Aboriginal culture and heritage in NSW;
- The facilitation of business enterprises; and
- The provision of advice to the NSW Government of matters related to Aboriginal land rights.

NSWALC provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) that exist in NSW. As elected bodies, Aboriginal land councils represent not only the interests of their members, but of the wider Aboriginal community. The preamble of the ALRA recognises that '*Land is of spiritual, social, cultural, and economic importance to Aboriginal peoples*'. The 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. When introducing the *Aboriginal Land Rights Bill 1983* into the NSW Parliament, the then Minister for Aboriginal Affairs, the Hon. Frank Walker identified that '*...land rights has a dual purpose – cultural and economic*'<sup>1</sup>.

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Under the ALRA Aboriginal Land Councils are able to claim certain Crown Land<sup>ii</sup> that is not lawfully used or occupied, not needed or likely to be needed for an essential public purposes or residential purposes and is not the subject of a registered native title claim or determination. Land that is privately owned cannot be claimed.

A successful determination of an Aboriginal land claim generally delivers **freehold title to land** which includes rights to certain minerals in the freehold land. This freehold can be dealt with via sale, lease, etc 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. Aboriginal Land Councils are also entitled to make agreements with other land owners or persons in control of land to **access land for hunting, fishing and gathering**, and have rights to apply for access permits.<sup>iii</sup> Aboriginal Land Councils also have **consultation rights** in relation to Aboriginal culture and heritage, and have functions to protect and promote Aboriginal culture heritage.<sup>iv</sup>

### **Aboriginal ownership of park areas**

Existing laws in NSW provide for Aboriginal people to own lands that can be managed as parks or other form of nature reserve. Part 4A of the *National Parks and Wildlife Act 1974 (NSW)* provides for certain types of lands to be vested in Aboriginal Land Councils on behalf of Aboriginal Owners<sup>v</sup> and then leased back to the NSW Government as jointly-managed national parks or other form of nature reserve.

There are two ways that lands can become 'jointly managed' in NSW. The first is if the NSW Parliament recognises that land is of 'cultural significance' to Aboriginal people, and agrees to list that land on Schedule 14 of the *National Parks and Wildlife Act*.<sup>vi</sup> Schedule 14 lands may already be national parks or nature reserves. A 'Part 4A lease' can be negotiated, and the land can be handed back to Aboriginal people be jointly managed as a national park.

The second way is for a Local Aboriginal Land Council to lodge an Aboriginal land claim over Crown Land under the ALRA. If the Minister administering the *Crown Lands Act 1989 (NSW)* is satisfied that the land would be claimable except for the fact that the lands are needed for the 'essential public purpose of nature conservation', under section 36A of the ALRA, the parties can enter into Part 4A negotiations with the LALC to jointly manage the land. If successful, the Minister can hand the land back on the condition that it is run as a jointly managed park or nature reserve. The land is then managed by a Board of Management as with Schedule 14 lands.

A LALC must hold the title of the land on behalf of Aboriginal Owners and the land is leased back to the NSW Government for conservation purposes. A Board of Management, consisting of a majority of Registered Aboriginal Owners, with government and other local interest group representatives, is set up to manage the park. There are six areas of land currently under joint management in NSW.<sup>vii</sup>

### **Disregarding extinguishment of native title in park areas**

The Amendment Bill proposes to allow parties to agree to disregard historical extinguishment of native title in areas set aside for the preservation of the natural environment, such as parks and reserves.

The Amendment Bill currently uses the term "*park area*" to capture land that is eligible for an agreement to disregard extinguishment. This is defined as follows:

(2) A ***park area*** means an area (such as a national, State or Territory park):

(a) that is set aside; or

(b) in which an interest is granted or vested;

*by or under a law of the Commonwealth, a State or a Territory for the purpose of, or purposes that include, preserving the natural environment of the area, whether that setting aside, granting or vesting resulted from a dedication, reservation, proclamation, condition, vesting in trustees or otherwise.*

This definition is quite broad and as such may capture lands that are reserved under the *Crown Lands Act 1989 (NSW)* for nature conservation, lands owned by LALCs and managed under Part 4A lease back arrangements, in addition to lands where LALCs are involved in nature conservation with the Government in other ways.

While the draft amendments appear to be silent in relation to who owns the land, NSWALC is concerned to ensure that a circumstance does not occur where the Government could agree to disregard extinguishment over ALRA land without the relevant LALC's involvement.

While proposed section 47C(5)(b) provides interested persons an opportunity to comment on proposed agreements, LALCs as owners of 'park areas' have not been recognised in the Amendment Bill. NSWALC seeks clarification on this matter and submits that LALCs must be party to agreements as non-Government landowners of park areas.

The unique nature of land rights in NSW must be recognised by the Amendment Bill and the Commonwealth must ensure that any amendments to the *Native Title Act 1993 (Cth)* do not undermine or conflict with the purposes and operation of the ALRA.

**Recommendation:** Local Aboriginal Land Councils must be recognised as owners of National Parks and other forms of "park areas" and recognised in as such in amending legislation.

Again, I thank you for the opportunity to provide comment to the Inquiry. I trust that genuine consideration will be given to our comments and that a response to the issues we have raised will be forthcoming. For your reference we have enclosed two fact sheets we have developed on native title and land rights in NSW that we hope you find useful.

If you have any questions regarding this letter, please do not hesitate to contact the Policy and Research Unit on [REDACTED]

Yours sincerely,

[REDACTED]

Clare McHugh  
Director, Policy and Research Unit  
NSW Aboriginal Land Council

Date: 31/1/13

<sup>i</sup> The Hon. Frank Walker, NSW Parliament Hansard, Legislative Assembly, 24 March 1983, at 5090, available at: [http://www.parliament.nsw.gov.au/Prod/parlment/hanstrans.nsf/V3ByKey/LA19830324/\\$file/473LA046.PDF](http://www.parliament.nsw.gov.au/Prod/parlment/hanstrans.nsf/V3ByKey/LA19830324/$file/473LA046.PDF)

<sup>ii</sup> Section 36 of the *Aboriginal Land Rights Act* outlines the criteria for claimable Crown lands in NSW

<sup>iii</sup> Sections 47 and 48, ALRA

<sup>iv</sup> Sections 52(4) and 106(7), ALRA

<sup>v</sup> The term **Aboriginal owners** of land is defined in the *Aboriginal Land Rights Act 1983* (NSW) to mean the Aboriginal persons named as having a cultural association with the land in the Register of Aboriginal Owners kept under Division 3 of Part 9 of the *Aboriginal Land Rights Act 1983*. Sections 170-172, ALRA

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<sup>vi</sup> Section 71D, *National Parks and Wildlife Act 1974*

<sup>vii</sup> Aboriginal owned parks and lease back in NSW are Mutawintji, Mt Grenfell, Gulaga, Biamanga, Worimi and Gaagal Wanggaan. More information about Aboriginal ownership and lease-back arrangements are available on the NSW Office of Environment and Heritage website:

<http://www.environment.nsw.gov.au/jointmanagement/leasebackagreement.htm>