

Standing Committee on State Development

# **Economic development in Aboriginal communities**

## **Discussion paper**

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\* The Hon Ernest Wong MLC replaced the Hon Sophie Cotsis MLC as a committee member on 7 March 2016.

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## Purpose of the discussion paper

**The purpose of the discussion paper is to seek stakeholder views on how to effectively drive reform in the area of Aboriginal economic development.**

The Minister for Aboriginal Affairs, the Hon Leslie Williams MP, has asked the Standing Committee on State Development to inquire into and report on strategies to support economic development in Aboriginal communities in New South Wales, including:

- options for sustainability and capacity building of New South Wales Aboriginal communities into the future, utilising existing community networks and structures
- leveraging economic development support, including provided by the Commonwealth Government and the private sector
- the establishment and sustainability of Aboriginal owned enterprises.

Since the establishment of the inquiry in August 2015, the committee has been actively seeking evidence to inform the recommendations it will be making to government. It has received 36 submissions, conducted four public hearings across the state and met with a number of Aboriginal corporations and local Aboriginal land councils to discuss the paths and barriers to success.<sup>1</sup>

The committee is now issuing this discussion paper, which provides an overview of the key issues identified, based on the evidence received to date, to seek stakeholder views on various questions that have been developed in response to key issues.

This is an opportunity for individuals and organisations with an interest in the inquiry to provide specific feedback on what they would like to see the committee recommend to the NSW Government. A number of questions have been included to help you write your submission.

The committee will review all responses to the discussion paper and will then prepare its final report, for tabling in Parliament. All committee reports recommending action require a response from the NSW Government within six months of the report being tabled.

## Making a submission to the discussion paper

The committee hopes to hear from a wide range of people including Aboriginal people, individuals and organisations working with Aboriginal communities, whether they be from the government, non-government, academic or private and corporate sector. There is no special format for a submission and it does not need to address all of the questions posed in this discussion paper. Your name, address and telephone number is required for administrative purposes.

Submissions should be lodged via the committee website or sent to the Director of the committee by mail or email (see page iii). The closing date for submissions is **5 August 2016**. Please indicate clearly if you wish for all or part of your submission to remain confidential.

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<sup>1</sup> Transcripts of public hearings, submissions and site visit reports are available on the committee's website: [www.parliament.nsw.gov.au/statedevelopment](http://www.parliament.nsw.gov.au/statedevelopment).

## Table of contents

	<b>Chair's foreword</b>	<b>viii</b>
	<b>Summary of questions</b>	<b>x</b>
<b>Chapter 1</b>	<b>The need to drive reform</b>	<b>1</b>
	<b>Drivers of reform in New South Wales</b>	<b>3</b>
	OCHRE	3
	Asset rich and cash poor – unlocking land value	5
	<b>The key to Aboriginal economic prosperity</b>	<b>5</b>
<b>Chapter 2</b>	<b>The importance of culture in realising Aboriginal economic prosperity</b>	<b>7</b>
	<b>Aboriginal culture as a unique asset and strength</b>	<b>7</b>
	Culture as key to economic empowerment	8
<b>Chapter 3</b>	<b>The NSW Government's approach to Aboriginal affairs and economic development</b>	<b>11</b>
	<b>What is OCHRE?</b>	<b>11</b>
	Aboriginal Economic Development Framework	12
	Public sector employment and procurement	15
	Other initiatives under OCHRE	15
	Implementing a place-based approach	20
	Accountability, transparency and evaluating efficacy	22
<b>Chapter 4</b>	<b>Building the capacity of individuals</b>	<b>23</b>
	<b>Capacity building of individuals</b>	<b>23</b>
	Education statistics	23
	Education programs	24
	Vocational education and training and employment statistics	31
	Vocational education and training and employment programs	33
	Commonwealth Government initiatives	37
	<b>Private sector</b>	<b>38</b>
<b>Chapter 5</b>	<b>Building the capacity of Aboriginal organisations</b>	<b>41</b>
	<b>Business ownership statistics</b>	<b>41</b>
	<b>Capacity building for Aboriginal organisations</b>	<b>41</b>
	The local Aboriginal land council network	42
	Government funding and policy delivery models	43
	Compliance requirements	45
	Governance	46
	Staff and training	48

	Supportive environment	50
	Entrepreneurship	54
<b>Chapter 6</b>	<b>Land and water</b>	<b>65</b>
	<b>Recognising the value of land as an economic opportunity</b>	<b>65</b>
	Land claims under the <i>Aboriginal Land Rights Act 1983</i> (ALRA)	65
	Native title	66
	Concerns about land claims under ALRA	67
	Economic opportunities in land and water	75
<b>Appendix 1</b>	<b>Terms of reference</b>	<b>81</b>

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## Cases

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Case study: Tamworth Local Aboriginal Land Council Opportunity Hub	27
Case study: The Clontarf Foundation	29
Case study: Merriman Shearing School	35
Case study: Whitehaven Coal – Maules Creek Mine	40
Case study: Eden Local Aboriginal Land Council – Bundian Way project	49
Case study: Wonnarua Nation Aboriginal Corporation	56
Case study: Banbai Enterprises Development Aboriginal Corporation	57
Case study: Murdi Paaki Regional Enterprise Corporation Ltd	59
Case study: NSW Indigenous Chamber of Commerce	60
Case study: Darkinjung Local Aboriginal Land Council	71
Case study: Worimi Local Aboriginal Land Council	77

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## Chair's foreword

This inquiry was established to consider strategies to support economic development in Aboriginal communities in New South Wales as a means of addressing disadvantage and creating sustainable communities. Sadly, despite decades of investment and goodwill by successive governments, there continues to be an unacceptable level of disadvantage. The NSW Government has taken some positive steps through its OCHRE strategy, however, there continues to be a lack of urgency and accountability, and siloed responses. Part of this inquiry's focus is to consider options for the sustainability and capacity building of Aboriginal communities and enterprises, including by leveraging existing networks and structures, and maximising economic development support.

The committee has heard from key stakeholders and has held public hearings and conducted site visits across the state, including in Sydney, the Central Coast, Dubbo, Brewarrina, Tamworth, Guyra and the Far South Coast.

The evidence received by the committee to date demonstrates that there are some shining examples of Aboriginal enterprise that have been producing positive outcomes for local communities. However, it is also clear that more needs to be done to address structural issues that are having a constraining effect on the capacity of Aboriginal communities and individuals to become more prosperous and economically sustainable.

With the highest number of Aboriginal people in the country residing in New South Wales, we have an opportunity to take significant steps to address the systemic disadvantage and provide greater opportunities for Aboriginal people to reach their full potential. What is required is a holistic approach that supports Aboriginal people, throughout the course of their lives: from early childhood all the way through the education system, into training and job-ready courses, to meaningful employment and enterprise, to become active players in modern society and overcome the disadvantage across nearly all social and economic measures while upholding and celebrating Aboriginal culture and pride.

There are two significant advantages in the New South Wales context: a strong land council network and a system of land ownership both of which provide considerable opportunities to enhance Aboriginal prosperity, which will in turn result in savings in the state budget. While some land councils have effectively leveraged opportunities, there is a demonstrated need to address at a systemic level, issues relating to governance and accountability, financial management and capacity to deliver to local communities. It is important that rather than creating 'new' programs, existing effective programs are supported, developed and expanded. The establishment of new programs should focus on identified gaps, and should ensure that there are mechanisms to enhance connection to culture, country and community.

This discussion paper has focussed on several key themes that were highlighted by inquiry participants as being fundamental to developing strong Aboriginal communities that are self-sustainable and prosperous. They include the need for a strong coordinating agency to drive economic reform in a way that harmonises Aboriginal economic development with the state's broader economic policy; the need to develop and harness capacity building opportunities at an individual level, as well as within Aboriginal land councils, enterprises and the private sector; and the need to ensure that the economic prosperity and development opportunities envisaged by the returning of land to Aboriginal communities under the *Aboriginal Land Rights Act 1983* are able to be realised.



In focusing on these themes, this discussion paper asks a number of questions which are designed to elicit responses about what specific actions can be taken to address issues that have long been identified as impediments to the economic prosperity of Aboriginal communities in New South Wales.

On behalf of the committee, I thank those that have already contributed to our work and I invite interested parties to consider the issues identified in this discussion paper and encourage them to make a submission.

A handwritten signature in blue ink, appearing to read 'Greg Pearce', with a stylized flourish at the end.

The Hon Greg Pearce MLC  
**Committee Chair**

## Summary of questions

The committee is seeking your views on how to effectively drive reform for economic development in Aboriginal communities. This is an opportunity for individuals and organisations with an interest in this area to provide specific feedback on what they would like to see the committee recommend to the NSW Government. Below are questions, based on the evidence received to date, to help you write your submission.

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### Chapter 1: The need to drive reform

- Question 1** **3**  
Is there an urgent need for the NSW Government to adopt a whole of government approach to ensure a coordinated and targeted response to address the critical issues within Aboriginal communities?
- Question 2** **4**  
What are the options for the governance of Aboriginal affairs in New South Wales given the complexities, history, stakeholders, the need for accountability and transparency, and the need to engage the private sector?
- Question 3** **6**  
What can the NSW Government do to improve coordination in the area of economic development in Aboriginal communities?
- 

### Chapter 3: The NSW Government's approach to Aboriginal affairs and economic development

- Question 4** **19**  
What specific actions should the NSW Government take to further strengthen Industry Based Agreements (IBAs), encourage private sector participation in improving economic development within Aboriginal communities, and how should it evaluate the efficacy of these responses?
- Question 5** **22**  
What actions or decisions should the NSW Government take to ensure that place-based approaches are embedded as a key component of the development and implementation of initiatives to drive Aboriginal economic development?
- 

### Chapter 4: Building the capacity of individuals

- Question 6** **28**  
Should the NSW Government continue to facilitate Opportunity Hubs or is it preferable for the government to support existing organisations that specialise in this space? Why?
-

What specific actions or decisions should the NSW Government take to increase the number of Aboriginal people engaged in vocational education and training?

What actions can be taken to better incorporate community-specific culture into the education curriculum?

**Question 7** **31**

What actions can the NSW Government take to deliver programs that target Aboriginal girls and young women in schools and in vocational education and training?

Is there a role for the mentoring of young Aboriginal women by female Aboriginal elders, and if so, how could the government develop and support these relationships?

**Question 8** **38**

What actions should the NSW Government take to develop stronger pathways between vocational education and training and meaningful employment opportunities for Aboriginal people?

## Chapter 5: Building the capacity of Aboriginal organisations

**Question 9** **45**

Should there be targeted, centralised investment to stabilise and enhance capacity building and development for Aboriginal organisations? If so, what would this entail?

**Question 10** **46**

What is your view on whether the compliance requirements in *Aboriginal Land Rights Act 1983* are unduly burdensome on local Aboriginal land councils?

Would the compliance requirements applicable to corporations under the *Corporations Act 2001* be more appropriate for local Aboriginal land councils?

**Question 11** **48**

What training or other services could be provided to enhance the governance capacity of Aboriginal organisations? Who should provide the training and other services?

**Question 12** **48**

What can be done about the potential conflicts of interest when local Aboriginal land council board members are both the managers and the tenants of housing on land council property?

**Question 13** **54**

What action can the NSW Government take to improve the business and financial capacity of local Aboriginal land councils and other Aboriginal corporations?

**Question 14** **63**

What action can the NSW Government take to incorporate more 'wrap around services' to support the establishment of Aboriginal enterprises such as initial feasibility assessments, business planning, mentoring and access to capital, marketing, training and infrastructure?

**Question 15** **63**

Should enterprise assistance centres for Aboriginal-owned businesses be established?

- Question 16** **63**  
How can the NSW Government encourage Indigenous Business Australia, the NSW Indigenous Chamber of Commerce and the Indigenous Land Corporation to facilitate capacity development for Aboriginal organisations and better support Aboriginal economic enterprise?
- 

## Chapter 6: Land and Water

- Question 17** **72**  
What actions should the NSW Government take to address the backlog of land claims yet to be assessed?
- Question 18** **72**  
What actions should the NSW Government take to address the backlog of land claims that have been assessed but where the land has not yet transferred to local Aboriginal land councils?
- Question 19** **72**  
What actions could the NSW Government (or others) take to provide the necessary support to local Aboriginal land councils holding 'limited title' land to realise its economic potential?
- Question 20** **75**  
Do the issues raised with respect to zoning of land transferred to Aboriginal land councils warrant a change to current planning processes?  
If so, what options are available to address the issue(s) identified?  
Should the NSW Government consider the introduction of a State Environment Planning Policy (SEPP) that would apply to land owned by Aboriginal land councils, and if so what considerations and provisions should it include?
- Question 21** **79**  
What are the potential benefits and disadvantages of the proposal that local Aboriginal land councils partner with local government to identify and realise economic growth from land owned by land councils?
- Question 22** **79**  
What should the NSW Government do to support partnerships between local Aboriginal land councils and other organisations, whether they are local government or private enterprises, to realise economic growth from land owned by land councils?  
How can Aboriginal communities leverage economic opportunities from their cultural connection to water? What actions can the NSW Government take to facilitate this?

## Chapter 1      The need to drive reform

Increasing the economic prosperity of Aboriginal people is critical to improving social outcomes in other areas, including health, education, child protection and community safety. As the Empowered Communities design report notes, economic development is also fundamental to sustaining and renewing Aboriginal cultural and linguistic heritages for future generations. The broader economy also profits, through tax payable, reduced government expenditure and increased consumption.<sup>2</sup>

- 1.1 New South Wales has the highest percentage of Aboriginal and Torres Strait Island people of any Australian state or territory, with 31 per cent of the Indigenous population residing in the state.<sup>3</sup>
- 1.2 Statistics on Aboriginal and Torres Strait Islander education, skills and training, labour force participation and other economic prosperity indicators demonstrate a clear divide, and resultant disadvantage, when compared to the non-Indigenous population. For example, 44 per cent of Aboriginal young adults aged 17-24 in New South Wales were fully engaged in post-school education, training, or employment, compared with 74 per cent of non-Aboriginal young adults.<sup>4</sup>
- 1.3 Aboriginal people are also significantly more likely than non-Aboriginal Australians to be incarcerated, comprising 24 per cent of the New South Wales adult prison population, and about 50 per cent of the juvenile detention population over the past five years.<sup>5</sup> The Ombudsman describes this over-representation as a ‘particularly insidious barrier to economic enfranchisement’.<sup>6</sup>
- 1.4 The effects of suicide have also been noted as disproportionately impacting on Aboriginal people and communities. Australian Bureau of Statistics data suggests that the overall suicide rates for Aboriginal people in the ten year period 2001-2010 were about double that of non-Aboriginal people.<sup>7</sup> Likewise, family violence has been identified as a critical issue within Aboriginal communities for many years, with data from the 2008 National Aboriginal and Torres Strait Islander Survey indicating that nearly one in five adult Indigenous Australians reported having been a victim of physical or threatened violence in past year. Compared to their non-Indigenous counterparts, Aboriginal men and women were 1.6 times and 2.5 times more likely to report being a victim of physical or threatened violence respectively.<sup>8</sup>

<sup>2</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW, Special report to Parliament*, 2016, p 3.

<sup>3</sup> NSW Government, *Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE), NSW Government Plan for Aboriginal affairs: education, employment & accountability*, 2013, p 10.

<sup>4</sup> Submission 19, NSW Ombudsman, p 5 quoting NSW Ombudsman, *Annual Report 2014-2015*, 2015, p 110.

<sup>5</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 13.

<sup>6</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 13.

<sup>7</sup> Australian Bureau of Statistics, 2012, Catalogue 3309.0 *Suicides Australia*, 2010 quoted in Australian Government, Department of Health, 2013, *Aboriginal and Torres Strait Islander suicide: origins, trends and incidence*, <http://www.health.gov.au/internet/publications/publishing.nsf/Content/mental-natsisps-strat-toc~mental-natsisps-strat-1~mental-natsisps-strat-1-ab>.

<sup>8</sup> Australian Bureau of Statistics, National Aboriginal and Torres Strait Islander Social Survey, 2008, cat. no. 4714.0, ABS, Canberra, 2010, viewed 21 July 2010,

1.5 In 2007, the Commonwealth Government, in an attempt to respond to these issues in the Northern Territory, introduced a \$587 million package of legislative reforms including restrictions on alcohol, changes to welfare payments, acquisition of parcels of land, education, employment and health initiatives, restrictions on pornography and other measures.<sup>9</sup> The Intervention has been the subject of various changes under successive Coalition and Labor governments, with the current legislation not due to expire until 2022.<sup>10</sup>

1.6 The *Closing the Gap* report of 2016 indicated that while there have been some gains in closing the gap between Aboriginal and non-Aboriginal people ‘progress against targets has been variable, and ... a more concerted effort is needed’.<sup>11</sup>

1.7 Despite sobering statistics and other inhibiting factors, including difficulties in accessing financial and human capital,<sup>12</sup> Aboriginal enterprise in Australia has tripled over the last two decades. In 2011 there were 12,500 Aboriginal-owned businesses nationwide, compared to 4,600 in 1991.<sup>13</sup>

1.8 The *Closing the Gap* report highlighted that:

Indigenous economic development is at the heart of the national agenda, recognising that economic participation, underpinned by cultural participation, leads to vastly improved social outcomes. This requires a cooperative effort with Indigenous leaders and a greater emphasis on place-based solutions, while creating the right conditions for people to feel they can participate.<sup>14</sup>

1.9 The lack of coordination across policy and service delivery has been acknowledged in other jurisdictions, including in the Northern Territory, where the government has taken steps to establish a stand-alone Office of Aboriginal Affairs ‘to guide policy development and drive economic reform.’<sup>15</sup> Describing the purpose of the reform, Northern Territory Chief Minister Adam Giles said:

... I took on the new portfolio of Aboriginal Affairs because I wanted to see better coordination of Indigenous policy across the Territory ... the new Office of Aboriginal Affairs will lead this effort ... [and will have] a particular focus on

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<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4714.0/> quoted in Parliament of Australia, Parliamentary Library (2011) *Domestic violence in Australia—an overview of the issues*, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2011-2012/DVAustralia#\\_ftn60](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/DVAustralia#_ftn60).

<sup>9</sup> Monash University, Faculty of Law, *What is the Northern Territory Intervention?*, 6 February 2016, <https://www.monash.edu/law/centres/castancentre/our-research-areas/indigenous-research/the-northern-territory-intervention/the-northern-territory-intervention-an-evaluation/what-is-the-northern-territory-intervention>.

<sup>10</sup> As above.

<sup>11</sup> Department of Prime Minister and Cabinet, *Closing the Gap Prime Minister’s Report 2016*, 2016, p 3.

<sup>12</sup> Cape York Partnerships, 2014, *Tribal Wealth: An inclusive prosperity agenda*, G20 Cairns, p 13, quoted in Submission 19, NSW Ombudsman, p 24.

<sup>13</sup> Submission 19, NSW Ombudsman, p 24.

<sup>14</sup> Department of Prime Minister and Cabinet, *Closing the Gap Prime Minister’s Report 2016*, 2016, p 3.

<sup>15</sup> Media release, Mr Adam Giles, Chief Minister of the Northern Territory, *Unlocking the potential of Aboriginal Territorians*, 28 April 2015.

economic development and job creation in remote and regional areas. We want to build the capacity of Aboriginal communities to help deliver frontline services locally, taking full advantage of business and job opportunities along the way.<sup>16</sup>

- 1.10** In New South Wales, however, after decades of initiatives and financial investment across all levels of government, efforts remain siloed and high rates of violence, suicide, incarceration and low rates of social and economic participation remain blights on our community. There is a need to deliver support at each stage of life to address intergenerational disadvantage, ensure better education and employment prospects, and to develop skills in business and enterprise.
- 1.11** It is within this context that this inquiry into economic development in Aboriginal communities strives to shape a reform agenda that responds to both the challenges and significant opportunities that exist in this area, encourage improved government coordination and identify drivers for reform.

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### Question 1

Is there an urgent need for the NSW Government to adopt a whole of government approach to ensure a coordinated and targeted response to address the critical issues within Aboriginal communities?

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## Drivers of reform in New South Wales

### OCHRE

- 1.12** The committee recognises that the NSW Government has the OCHRE plan in place that has the primary aim to ‘support strong Aboriginal communities in which Aboriginal people actively influence and fully participate in social, economic and cultural life.’<sup>17</sup> Aboriginal Affairs, which is situated within the Department of Education, is the lead agency responsible for ‘developing and establishing economic opportunities for Aboriginal people’<sup>18</sup> under OCHRE.
- 1.13** OCHRE, released in April 2013, states that the government will develop an Aboriginal Economic Development Framework. The committee has received evidence that it is under development and that it is anticipated to be released in the next 12 months.<sup>19</sup> OCHRE is discussed in detail in chapter 3.
- 1.14** However, evidence presented to this committee highlights the need for improved government coordination in the area of economic development in Aboriginal communities to finalise the Framework and drive the reform. Mr Jason Ardler, Head of Aboriginal Affairs, commented on the need for coordination in this area:

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<sup>16</sup> Media release, Mr Adam Giles, *Unlocking the potential of Aboriginal Territorians*, 28 April 2015.

<sup>17</sup> NSW Government, *OCHRE*, 2013, p 5.

<sup>18</sup> Answers to questions on notice, NSW Government, 13 April 2016, p 1.

<sup>19</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 1.

... in terms of the specific example of economic development Aboriginal Affairs now has a kind of lead agency role in terms of the coordination of policy response in this area. That is quite a new role ... The review that we did at the time indicated that a big part of the problem was the lack of coordination in this space. We found that we had a number of agencies operating a range of programs that were trying to address in one way or another economic and employment outcomes for Aboriginal people but what was missing was that overarching coordinated approach. That led directly then to Aboriginal Affairs being assigned that responsibility. We are trying to make improvements in that space.<sup>20</sup>

- 1.15** It is evident to the committee that a major push from government is needed to generate momentum, and to sustain it, in the area of economic development in Aboriginal communities.
- 1.16** The NSW Ombudsman's special report to Parliament highlighted the need for a 'strong entity' to drive reform in this space.<sup>21</sup> In an earlier report, the agency identified the need for the agency with responsibility for implementation of economic reform to have the 'necessary skills, expertise and clout for it to be able to deliver outcomes through solid partnerships with Aboriginal leaders and private sector agents.'<sup>22</sup>
- 1.17** It is noted that OCHRE, and the development of the Aboriginal Economic Development Framework, is the responsibility of Aboriginal Affairs. Aboriginal Affairs currently sits within the Department of Education. The committee acknowledges that the department is working with the Department of Industry on the development of the Framework, and that education and training continues to be a key component of any program that aims to drive economic development and prosperity.<sup>23</sup>
- 1.18** In noting these considerations, the committee invites submissions on the question of whether the Department of Education remains the appropriate government agency to house Aboriginal Affairs and support the implementation of OCHRE, the Framework and drive economic reform in Aboriginal communities. The committee also invites submissions on whether any other agency might be better placed to coordinate this task, particularly noting the complexities, history, stakeholders, the need for accountability and transparency, and the need to engage the private sector.

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## Question 2

What are the options for the governance of Aboriginal affairs in New South Wales given the complexities, history, stakeholders, the need for accountability and transparency, and the need to engage the private sector?

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<sup>20</sup> Evidence, Mr Jason Ardler, Head, Aboriginal Affairs, 26 February 2016, p 3.

<sup>21</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 8.

<sup>22</sup> NSW Ombudsman, *Addressing Aboriginal disadvantage: the need to do things differently*, 2011.

<sup>23</sup> Education is discussed in chapter 4.



### Asset rich and cash poor – unlocking land value

- 1.19** There is no doubt that ownership of land offers many opportunities for economic development. This inquiry has raised various issues relating to land title, land claims and ownership of land granted under the *Aboriginal Land Rights Act 1983* (hereafter ‘ALRA’). Local Aboriginal land councils, the organisations in which land under ALRA is vested, have expressed frustration with a number of aspects of the ALRA process, and have described substantial processing delays, and struggles to unlock the economic potential of land. The estimated value of land held by land councils exceeds \$2 billion.<sup>24</sup>
- 1.20** The committee has seen successful examples of where economic opportunities have been able to be leveraged from the ownership of land by local Aboriginal land councils and also heard about the delay in accessing these opportunities caused by a backlog in processing land claims.
- 1.21** Many local Aboriginal land councils see themselves as asset rich, as they have valuable land as an asset, but cash poor, as they struggle to tap into that value due to the challenges of the land claim system:
- There is growing recognition that Indigenous people are ‘land rich but dirt poor’ and the latest Social Justice and Native Title report recommends identifying options for leveraging Indigenous property rights for economic development purposes.<sup>25</sup>
- 1.22** Issues relating to the capacity of local Aboriginal land councils are considered in chapter 5, and issues relating to land claims under ALRA are discussed in detail in chapter 6.

### The key to Aboriginal economic prosperity

- 1.23** This discussion paper focuses on several key themes that were highlighted by inquiry participants as being fundamental to developing strong Aboriginal communities that are self-sustainable and prosperous. They include the need for a strong coordinating agency to drive economic reform in a way that harmonises Aboriginal economic development with the state’s broader economic policy; the need to develop and harness capacity building opportunities at an individual level, as well as within Aboriginal land councils and enterprises, and the private sector; and the need to ensure that the economic prosperity and development opportunities envisaged by the returning of land to Aboriginal communities under the *Aboriginal Land Rights Act 1983* are able to be realised.
- 1.24** Aboriginal development is socially responsible and a key function of government. Importantly, it achieves results in delivering better lifestyle outcomes, including those related to health and wellbeing, as well as community engagement. However, it also promises significant savings to the state budget and unlocks Aboriginal community economic activity. The committee considers that there is a unique opportunity that exists in New South Wales as

<sup>24</sup> Submission 11, Darkinjung Local Aboriginal Land Council, Attachment, *Economic Development Framework for NSW Local Aboriginal Land Councils*, p 5.

<sup>25</sup> Submission 18, Centre for Independent Studies, p 4. See also, Site visit report: Singleton, Williamtown and Watanobbi, p 3; Submission 4, Nambucca Shire Council, p 2; Evidence, Mr Darren Toomey, Chief Executive Officer, Dubbo Local Aboriginal Land Council, 5 April 2015, p 2.

a result of the statutory land claims system, which holds the key to potentially unlocking an estimated \$2 billion in value.

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**Question 3**

What can the NSW Government do to improve coordination in the area of economic development in Aboriginal communities?

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## Chapter 2      The importance of culture in realising Aboriginal economic prosperity

Aboriginal people in New South Wales come from strong, vibrant cultures – some of the oldest living cultures in the world. They are proud of their rich history, their identity and the deep spiritual connection they have with Country. Aboriginal people draw strength from that identity, knowing who they are and where they come from.<sup>26</sup>

This chapter acknowledges culture as a fundamental part of any reform agenda that is designed to improve Aboriginal wellbeing, including in the area of economic development and empowerment. The committee considers it appropriate to highlight culture as a separate chapter, and notes that issues relating to culture are woven throughout this discussion paper.

### Aboriginal culture as a unique asset and strength

**2.1**      ‘Culture’ has been defined as ‘a universal, shared understanding of what is important to a collective group, that provides a framework for beliefs, attitudes, actions, etc.’<sup>27</sup>

**2.2**      As the world’s oldest surviving culture,<sup>28</sup> Aboriginal culture and its importance to Aboriginal people and communities has long been recognised as being ‘fundamental to Indigenous health and emotional wellbeing.’<sup>29</sup> Beyond this, however, culture has been described as having the capacity to act as a ‘protective force’.<sup>30</sup>

For many Aboriginal families and communities, engaging in traditional cultural practices and reclaiming a sense of cultural identity is the key to alleviating Aboriginal disadvantage and regaining their rightful place in broader Australian society.<sup>31</sup>

**2.3**      The Australian Government has noted that research is ‘catching up’ with what has been said by Aboriginal people for many years about the importance of culture:

The evidence base lags behind community voices and experiences as the effect of culture is difficult to measure. However, there is a growing body of research supporting the community view that positive outcomes stem from keeping culture strong.<sup>32</sup>

<sup>26</sup> NSW Government, *Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE), NSW Government Plan for Aboriginal affairs: education, employment & accountability*, 2013, p 3.

<sup>27</sup> Lohoar, S, Butera, N, & Kennedy, E, *Strengths of Australian Aboriginal cultural practices in family life and child rearing*, Australian Institute of Family Studies, 2014, p 193.

<sup>28</sup> Submission 19, NSW Ombudsman, p 21.

<sup>29</sup> Department of Regional Australia, Local Government, Arts and Sport, *Culture and closing the gap*, p 1.

<sup>30</sup> Lohoar, S, Butera, N, & Kennedy, E, *Strengths of Australian Aboriginal cultural practices in family life and child rearing*, 2014; Secretariat of National Aboriginal and Islander Child Care (SNAICC) & Innovative Resources, 2009; Victorian Aboriginal Child Care Agency, 2013.

<sup>31</sup> Lohoar, S, Butera, N, & Kennedy, E., *Strengths of Australian Aboriginal cultural practices in family life and child rearing*, Australian Institute of Family Studies, 2014.

<sup>32</sup> Department of Regional Australia, Local Government, Arts and Sport, *Culture and closing the gap*, p 2.

- 2.4 The NSW Government's plan for Aboriginal Affairs, OCHRE, has a focus on culture as a pillar of the framework, and sets its firmly at the heart of development and empowerment of Aboriginal communities:

This plan is less about Government and more about Aboriginal people. It focuses on revitalising and promoting language and culture, creating opportunities, increasing people's capacity, providing choice and empowering people to exercise that choice, as well as giving them the tools to take responsibility for their own future.<sup>33</sup>

- 2.5 OCHRE includes a number of initiatives, including Language and Culture Nests which 'create learning pathways for Aboriginal students, teachers and community members'<sup>34</sup> with the aim of motivating Aboriginal people to learn traditional languages which is intended to build pride and identity.<sup>35</sup>

### **Culture as key to economic empowerment**

- 2.6 Instilling empowerment and economic development among Aboriginal communities is the key to addressing systemic social disadvantage in those communities. The 'Empowered Communities, Empowered Peoples' report centred the concept of 'culture' over policy to deliver reform to Aboriginal communities. 'Empowered Communities' is a reform proposal for Indigenous empowerment,<sup>36</sup> and represents a long term plan driven by Aboriginal leaders from across the country.<sup>37</sup> The report sets out a number of 'first priorities for reform', and recognises that:

... these First Priorities for reform are firstly advocated by the leaders of the Empowered Communities, and secondly supported by governments. It is about governments recognising and respecting the goal of rebuilding Indigenous social and cultural values, rather than imposing policy priorities. It is, at its core, about Aboriginal Culture, not government policy.<sup>38</sup>

- 2.7 The NSW Ombudsman identified culture as a 'key asset and comparative advantage' of Aboriginal communities, stating:

Maintaining the world's oldest living culture ... may be leveraged, where desired, through commercial opportunities in art, food and cultural tourism (noting that the protection of collective and individual intellectual property is central to such endeavours).<sup>39</sup>

- 2.8 Dr Janet Hunt, Associate Professor at the Centre for Aboriginal Economic Research at the Australian National University, made a similar submission, and emphasised that by integrating

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<sup>33</sup> NSW Government, *OCHRE*, 2013, p 4.

<sup>34</sup> NSW Government, *OCHRE*, 2013, p 4.

<sup>35</sup> NSW Government, *OCHRE*, 2013, p 4.

<sup>36</sup> Wunan Foundation Inc., *Empowered Communities, About*, 2016, <http://empoweredcommunities.org.au/about.aspx>.

<sup>37</sup> Wunan Foundation Inc., *Empowered Communities, Our Leaders*, 2016, <http://empoweredcommunities.org.au/leaders.aspx>.

<sup>38</sup> Wunan Foundation Inc., *Empowered Communities: Empowered Peoples Design Report*, 2015, p 99.

<sup>39</sup> Submission 19, NSW Ombudsman, p 21.

and viewing ‘culture’ as a potential opportunity, it can assist in changing negative perceptions of Aboriginal communities:

Many communities are trying to generate economic development based on the unique assets they bring – their culture, their land, and their skills and knowledge in cultural and natural resource management. Such asset-based approaches to Aboriginal development seem to work, overcoming as they do the deficit view of Aboriginal people and building on their strengths. This helps with a change of mindset on the part of Aboriginal people themselves and this is an important factor in achieving economic development.<sup>40</sup>

- 2.9** Strong Aboriginal leadership has been emphasised as being critical to ensuring that culture is embedded in reforms designed to improve Aboriginal wellbeing and prosperity. The Empowered Communities report describes the challenge of Aboriginal leaders to connect with the most disadvantaged within their communities, and assist them to engage with the broader society while retaining their cultural connection:

... to create the conditions necessary to encourage the welfare-embedded group, wherever they are, to join the open society cohort, but without losing their cultures, languages and identities. Our work as leaders in each of the Empowered Communities regions has been focused on doing just that.<sup>41</sup>

- 2.10** Inquiry participants emphasised that the need to maintain connection to culture for Aboriginal people was critical to keeping them engaged in activities that are shown to lead to economic reform and better individual outcomes, including education, training and employment.
- 2.11** Evidence from successful local Aboriginal land councils<sup>42</sup> and Aboriginal enterprises and organisations<sup>43</sup> emphasised the importance of protecting culture by investing back into local communities. The committee was told that these organisations were focused on delivering back to community in ways that would make them sustainable and prosperous, as opposed to working to achieve financial benefits that were purely to benefit the company or organisation. This ‘sharing’ of benefits among the community is reflective of broader Aboriginal cultural norms that relate to sharing and reciprocity.<sup>44</sup>
- 2.12** While visiting the Dubbo South Clontarf Academy, the committee heard that strong Aboriginal leadership was a significant factor in its success, and assisted the team to engage with students and keep them in school.<sup>45</sup>
- 2.13** During its visit to the Whitehaven Coal Mine at Maules Creek, the committee heard that employing Aboriginal people from the local area was a priority for the company, having had less successful experiences with employees drawn from further afield:

<sup>40</sup> Submission 3, Dr Janet Hunt, Associate Professor, Centre for Aboriginal Economic Research, Australian National University, p 2.

<sup>41</sup> Wunan Foundation Inc., *Empowered Communities: Empowered Peoples Design Report*, 2015, p 9.

<sup>42</sup> See, for example, Submission 11, Darkinjung Local Aboriginal Land Council, p 4.

<sup>43</sup> See for example, Site visit report: Singleton, Williamtown and Watanobbi, pp 1-2.

<sup>44</sup> See for example, Schwab, R.G., *The Calculus of Reciprocity: Principles and Implications of Aboriginal Sharing*, Discussion paper No. 100/1995, Australian National University, 2006.

<sup>45</sup> Site visit report: Dubbo/Brewarrina, pp 1-2.

If their connections are elsewhere, whether it's [an] Aboriginal person or non-Aboriginal person, then they don't necessarily want to be here.<sup>46</sup>

**2.14** The company described having implemented a Reconciliation Action Plan, and had developed strategies to assist new employees, particularly Aboriginal employees, to manage various challenges they faced after gaining employment, including managing time away from family, pressure from family when they go home (including expectations for money), and managing income.<sup>47</sup>

**2.15** Empowered Communities emphasises the need for Aboriginal leaders to assist with the moulding of cultural norms in ways that also maximise the potential for Aboriginal communities to have greater opportunities and to improve social and economic engagement with the broader community:

It will fall to Indigenous peoples to make adjustments so their cultural traditions can coexist with success in the modern day. This is a challenge that faces many other traditional societies, including peoples from different cultures who maintain their heritage and participate successfully in modern life in Australia. For example, the timetabling of ceremonial business requiring travel may need to be adjusted to ensure that children can always attend school and acquire an education.<sup>48</sup>

**2.16** Certainly, government has a vital role to play in supporting Aboriginal communities to drive this work. As stated in the Empowered Communities report, Aboriginal leaders hold the key to empowering their communities, while also ensuring that culture and modern life are able to be appropriately and delicately balanced:

This kind of reform must be negotiated among the Indigenous leadership across domains, and ultimately such decisions must be made and supported by the cultural leaders ... Empowerment is about enabling Indigenous people to take ownership of the changes needed to succeed in contemporary Australia.<sup>49</sup>

**2.17** The committee recognises that culture must be at the centre of any reforms designed to progress and drive economic development in Aboriginal communities, and acknowledges that Aboriginal leaders have a key role in driving reforms that are culturally appropriate and embraced by Aboriginal communities.

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<sup>46</sup> Site visit report: Guyra/Tamworth, p 4.

<sup>47</sup> Site visit report: Guyra/Tamworth, pp 3-4.

<sup>48</sup> Wunan Foundation Inc., *Empowered Communities: Empowered Peoples Design Report*, 2015, p 38.

<sup>49</sup> Wunan Foundation Inc., *Empowered Communities: Empowered Peoples Design Report*, 2015, p 38.

## Chapter 3 The NSW Government's approach to Aboriginal affairs and economic development

The committee acknowledges that the NSW Government is working on the economic development of Aboriginal communities. This chapter discusses the NSW Government's plan to support Aboriginal economic development. It includes discussion of the NSW Government's plan for Aboriginal Affairs, entitled Opportunity, Choice, Healing, Responsibility, Empowerment or OCHRE, which provides for the establishment of an Aboriginal Economic Development Framework to guide economic development in Aboriginal communities in New South Wales.

### What is OCHRE?

- 3.1** In April 2013, the NSW Government released its plan for Aboriginal Affairs entitled OCHRE, following the recommendations of the Ministerial Taskforce on Aboriginal Affairs. The Taskforce was established in the wake of a number of key reports.<sup>50</sup>
- 3.2** The reports highlighted a number of issues affecting Aboriginal communities, and confirmed concerns raised by Aboriginal communities over:
- ...the absence of genuinely shared decision-making, the duplication of services, lack of coordination, unclear accountability pathways and – despite significant investment over time – limited demonstrable improvement in the lives of Aboriginal people in NSW.<sup>51</sup>
- 3.3** OCHRE's primary aim is to 'support strong Aboriginal communities in which Aboriginal people actively influence and fully participate in social, economic and cultural life.'<sup>52</sup>
- 3.4** Aboriginal Affairs, which is situated within the Department of Education, is the lead agency responsible for 'developing and establishing economic opportunities for Aboriginal people'<sup>53</sup> under OCHRE.
- 3.5** There are three foci in OCHRE: education and employment, language and culture, and governance and accountability. The first of these, education and employment, forms the basis for increased economic participation by Aboriginal people, however, the other two are also vital components to ensuring prosperity within Aboriginal communities, in particular 'culture' which has been recognised as a factor which encourages Aboriginal entrepreneurship:

<sup>50</sup> NSW Auditor-General's Office, *Two Ways Together – NSW Aboriginal Affairs Plan*, 2011; NSW Ombudsman, *Addressing Aboriginal disadvantage: the need to do things differently – A Special Report to Parliament under s 31 of the Ombudsman Act 1974*, 2011; Allen Consulting Group, *NSW Government's Employment and Economic Development Programs for Aboriginal People – Review of programs and broader considerations*, 2011.

<sup>51</sup> NSW Government, *Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE), NSW Government Plan for Aboriginal affairs: education, employment & accountability*, 2013, p 7.

<sup>52</sup> NSW Government, *OCHRE*, 2013, p 5.

<sup>53</sup> Answers to questions on notice, NSW Government, 13 April 2016, p 1.

... while mainstream entrepreneurship focuses on the ‘commercialisation’ of innovation, the primary motives for Indigenous entrepreneurship are self-determination and the preservation of culture.<sup>54</sup>

### **Aboriginal Economic Development Framework**

**3.6** OCHRE states that the NSW Government will develop an ‘Aboriginal Economic Development Framework [hereafter ‘the Framework’] that sets the strategic direction for NSW.’<sup>55</sup> Mr Jason Ardler, Head of Aboriginal Affairs, said described the Framework as the ‘key vehicle’ for this:

The key vehicle for providing economic opportunities will be a NSW Aboriginal Economic Prosperity Framework, which is a commitment under OCHRE that aims to: Set the strategic direction for NSW; and [c]oordinate the activities across government to improve alignment, address duplication issues and identify gaps for further investment.<sup>56</sup>

**3.7** However, the Framework has not yet been released and is still being developed. Aboriginal Affairs, the lead agency responsible for preparing the Framework, stated on its website:

When finalised, the Framework will be a state-wide, multi-stakeholder plan to support Aboriginal people to realise their economic aspirations by developing sustainable employment and by building Aboriginal communities’ economic and entrepreneurial capacity.<sup>57</sup>

**3.8** The implementation of OCHRE is overseen by the NSW Ombudsman, which reported for the first time on progress in its annual report 2014-2015. It noted that it had provided Aboriginal Affairs with ‘detailed feedback’ on an early draft of the Framework, suggesting that:

- A single agency be given responsibility for identifying and facilitating partnerships between the private sector, government and Aboriginal entities to create successful commercial enterprises and, in partnership with AA [Aboriginal Affairs], deliver on the framework’s commitments.
- The [Framework] be aligned with key federal and NSW Government economic frameworks, particularly the NSW Economic Development Framework – the NSW Government’s current roadmap for driving growth in key industries and the state economy to 2021.
- The governance arrangements for the [Framework] include more representatives from the private sector.

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<sup>54</sup> Urbis, *Enabling Prosperity: Success factors for Indigenous economic development*, 2014, p 19 quoting Hindle, K and Lansdowne, M, *Brave Spirits on New Paths, Toward a globally relevant paradigm of Indigenous entrepreneurship research*, Journal of Small Business and Entrepreneurship, 2005, Vol 18, Issue 2, Spring, pp131-141.

<sup>55</sup> NSW Government, *OCHRE*, 2013, p 8.

<sup>56</sup> Answers to questions on notice, NSW Government, p 1.

<sup>57</sup> Aboriginal Affairs, *Aboriginal Economic Development Framework*, <http://www.aboriginalaffairs.nsw.gov.au/nsw-aboriginal-economic-development-framework/>, accessed 10 May 2016.



- The [Framework] incorporate a focus on capacity building for Aboriginal businesses to achieve efficiency, innovation and growth, as well as commitments on Aboriginal home ownership.<sup>58</sup>

**3.9** Mr Ardler reported that although the Framework has been a focus for the government, a change of direction after the 2015 election has resulted in some delay in its finalisation and release:

In 2014 the draft NSW Aboriginal Economic Development Framework was developed. Following the 2015 election, a new direction was taken, that emphasised stakeholder involvement, a focus on economic prosperity and an intention to embed Aboriginal economic development policy within the mainstream economic reform agenda being driven through the NSW Government's State Priorities.<sup>59</sup>

**3.10** A roundtable bringing together key stakeholder representatives from government, business and the community was convened in September 2015 to discuss Aboriginal economic development. In a communique released after the event, the group acknowledged a number of challenges faced by Aboriginal communities, and also acknowledged the 'collective role' they played in 'achieving a vision for economic development.'<sup>60</sup>

**3.11** The communique also set out a range of potential collaborative actions to enhance Aboriginal economic prosperity, including:

- Affirmative Action integrated into policy settings, including a focus on the economic participation and leadership of women and young people
- establishing accountability measures for government and industry
- establishing enduring partnerships between the government, private and not-for-profit sectors, and the community, in support of programs and services directed to improving Aboriginal economic participation and development
- improved coordination of policy and service delivery, especially through the principles of co-design
- supporting and enabling the sustainable growth of Aboriginal business and enterprise through investment in building business capacity and capability
- options to increase the transfer of lands to Aboriginal people as envisaged by the Aboriginal Land Rights Act
- the formulation of strong and good governance arrangements supporting future endeavours to realise intergenerational Aboriginal economic prosperity.<sup>61</sup>

**3.12** In response to a question about when the Framework would be released, Ms Louisa Mamouney, Acting Executive Director, Industry Policy at the NSW Department of Industry, told the committee that her department was 'working with Aboriginal Affairs to develop it at the moment.'<sup>62</sup>

<sup>58</sup> NSW Ombudsman, *2014-2015 Annual Report*, p 115.

<sup>59</sup> Answers to questions on notice, NSW Government, p 1.

<sup>60</sup> Aboriginal Affairs, *Statement from the Roundtable on Aboriginal Economic Development, 23 September 2015*, p 3

<sup>61</sup> Aboriginal Affairs, *Statement from the Roundtable on Aboriginal Economic Development, 2015*, p 3.

<sup>62</sup> Evidence, Ms Louisa Mamouney, Acting Executive Director, Industry Policy, Economic and Regional Development, NSW Department of Industry, 26 February 2016, p 15.

- 3.13** The recently released NSW Ombudsman report, 'Fostering economic development for Aboriginal people in NSW', notes that the Framework is 'currently being developed by Aboriginal Affairs and will be considered by Government shortly and is expected to be released during the next 12 months.'<sup>63</sup> It indicates that it has received advice that the 'Department of Industry is working with Aboriginal Affairs to develop the AEPF [Framework] and the commitment by Aboriginal Affairs to align the framework with the 30 State Priorities.'<sup>64</sup>
- 3.14** The committee echoes the comments of the Ombudsman that the Framework must be integrated into the broader economic plan for New South Wales. As stated in the report:
- ... it will be essential that in a very practical way, the AEPF is closely aligned with these broader state priorities and strategies to realise them; and that the objectives of other Aboriginal and mainstream economic policies/strategies are well integrated with the AEPF's governance structure.<sup>65</sup>
- 3.15** The committee acknowledges that a change of direction in the wake of the 2015 election has resulted in delay in developing and releasing the Framework, and there is a need to ensure that the Framework adequately reflects an approach that is directed and supported by the Aboriginal communities it will affect, as well as ensuring key government and private sector stakeholders are engaged. The committee acknowledges the broad range of private, non-government organisations and government agencies that have signed up to the vision outlined in the September 2015 roundtable, including Aboriginal Affairs NSW, Australian Industry Group, Business Council of Australia, Department of Premier and Cabinet, Indigenous Business Australia, Master Builders Association NSW, NSW Aboriginal Land Council, Murdi Paaki Regional Assembly, and the University of Sydney.<sup>66</sup>
- 3.16** The committee considers that it is important to develop a Framework that is able to achieve bipartisan support, is structured in a manner that ensures long term beneficial outcomes, and is designed to have strong links to the government's broader economic plan. However, the committee is concerned that, as a key priority under the government's OCHRE plan, it is still under development some three years on from the plan's release. The committee urges government to roll out projects and initiatives, including the Framework, quickly and efficiently, particularly given the high levels of economic and social need in Aboriginal communities.
- 3.17** The NSW Ombudsman's special report to Parliament highlighted the need for a 'strong entity' to drive reform in this space.<sup>67</sup> In an earlier report, the agency identified the need for the agency with responsibility for implementation of economic reform to have the 'necessary skills, expertise and clout for it to be able to deliver outcomes through solid partnerships with Aboriginal leaders and private sector agents.'<sup>68</sup>

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<sup>63</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 1.

<sup>64</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 21.

<sup>65</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 7.

<sup>66</sup> Aboriginal Affairs, *Statement from the Roundtable on Aboriginal Economic Development*, 2015, p 3.

<sup>67</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 8.

<sup>68</sup> NSW Ombudsman, *Addressing Aboriginal disadvantage: the need to do things differently*, 2011, p 55.

- 3.18** The committee has posed questions in relation to the appropriate agency to house Aboriginal Affairs and drive the reform agenda for economic development in chapter 1.

### **Public sector employment and procurement**

- 3.19** OCHRE also provides for increased Aboriginal employment in the New South Wales public service through the Aboriginal Employment Strategy, led by the Public Service Commission and for the public service to become more proficient in cultural competence and understanding of Aboriginal communities.<sup>69</sup>
- 3.20** This is complemented by changes to NSW Government procurement policy, which ‘aim to increase the government spend with Aboriginal owned businesses.’<sup>70</sup> OCHRE emphasises the rationale behind ‘social procurement’ as:

... purchasing that accounts for the social outcomes of buying goods and services from a given supplier. Social procurement acknowledges the public value of positive social outcomes that are generated or supported through procurement processes.<sup>71</sup>

### **Other initiatives under OCHRE**

- 3.21** While the Framework is yet to be released, a number of other initiatives have commenced. In its submission to the inquiry, the NSW Government outlined a range of programs designed to directly support economic development within the OCHRE framework, including Industry Based Agreements (IBAs), Local Decision Making (LDM), Connected Communities, Opportunity Hubs and Solution Brokerage:

IBAs, which are agreements between peak industry bodies and the NSW Government to forge long term partnerships to increase Aboriginal employment and business opportunities in specific industries.

LDM supports local leadership and governance by setting out a pathway for Aboriginal communities to have more control in the delivery and coordination of government services.

Connected Communities aims to address the educational and social aspirations of Aboriginal students and all students living in a number of complex and diverse communities in NSW.

Opportunity Hubs aim to improve employment, job retention and enterprise outcomes for Aboriginal students in Years 5-12.

Solution Brokerage under OCHRE establishes a new cross-government function for the Head of Aboriginal Affairs to bring together NSW Government agencies to work

<sup>69</sup> NSW Government, *OCHRE*, 2013, p 17.

<sup>70</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 6. See also, Aboriginal Affairs, *Statement from the Roundtable on Aboriginal Economic Development*, 2015, p 18.

<sup>71</sup> NSW Government, *OCHRE*, 2013, p 18. Public sector employment and procurement is discussed further in chapter 5.

together with non-government organisations to find solutions to identified issues. This is underpinned by Premier's Memorandum *M2015-02-Solution Brokerage*.<sup>72</sup>

- 3.22** Together, these initiatives which focus on education and skill development, as well as employment and business and enterprise, are intended to create strong pathways that lead to increased economic participation by Aboriginal people:

... meaningful economic participation cannot be achieved in isolation. To generate real opportunities for satisfying careers and work, new pathways must be forged to link strengthened school communities to further education and training, 'job ready' programs and entrepreneurial capacity building. This must in turn be linked to employers and business opportunities.<sup>73</sup>

- 3.23** Aboriginal Affairs have also adopted a framework to monitor and evaluate the implementation of OCHRE, which has been the subject of feedback from the NSW Ombudsman. The Ombudsman praised the 'participatory' approach to developing the evaluation framework, but expressed concern with the delay in its development:

We commend AA for their commitment to ensuring that high quality participatory practice is the centrepiece of the OCHRE evaluation framework, and appreciate that genuine community involvement in its development takes time. However, we are concerned that it took almost two and a half years after the release of OCHRE for the Monitoring Evaluation Reporting and Improvement (MERI) framework to be completed.<sup>74</sup>

- 3.24** As part of its oversight role in 2014-2015, the Ombudsman visited a number of locations that have been the focus of the implementation of OCHRE initiatives.<sup>75</sup> Its annual report provides an overview of the progress to date on Connected Communities, Economic Development (including IBAs) Opportunity Hubs, Aboriginal Language and Culture Nests, and Local Decision Making.<sup>76</sup>

- 3.25** The Ombudsman notes that there is room for continued progress and development, but acknowledges a number of projects under each of the initiatives that are promising. These are discussed below.

### ***Connected Communities***

- 3.26** Connected Communities is achieving 'promising progress' in many cases, where the schools involved are the 'heart and soul' of their communities – providing a safe and positive place for students, many of whom are highly vulnerable'. This is achieved through the building of strong partnerships between schools and their local Aboriginal communities, and giving

<sup>72</sup> Submission 28, NSW Government, p 6.

<sup>73</sup> NSW Government, *OCHRE*, 2013, p 13.

<sup>74</sup> NSW Ombudsman, *2014-2015 Annual Report*, pp 110-111.

<sup>75</sup> These were: Brewarrina, Boggabilla, Bourke, Campbelltown, Cobar, Coffs Harbour, Condobolin, Coonamble, Dubbo, Lightning Ridge, Lismore, Moree, Tamworth, Toomelah, the Upper Hunter and Walgett. Refer to NSW Ombudsman, *2014-2015 Annual Report*, p 111.

<sup>76</sup> NSW Ombudsman, *2014-2015 Annual Report*, pp 112-118.

principals the authority to ‘tailor’ education responses. Participating schools become ‘service hubs’ which operate to identify and support the most vulnerable Aboriginal families.<sup>77</sup>

- 3.27** However, there are ongoing challenges for some schools where Connected Communities is implemented. The Ombudsman acknowledged the valuable work of place-based initiatives, but noted that individual schools, regardless of their level of commitment, could not ‘effectively function as ‘service hubs’ as intended by the strategy without a:

... broader commitment from government agencies to substantially reform the way services are planned, funded and delivered to vulnerable communities and to implement robust governance arrangements to facilitate this.<sup>78</sup>

- 3.28** The Ombudsman stressed that without such reform, it would be ‘difficult for Connected Communities to demonstrate the sustainable, systemic gains envisaged at the outset of the strategy’ and that ‘its effectiveness would be undermined unless considerable progress occurs in other key areas.’<sup>79</sup>

- 3.29** The Connected Communities strategy is discussed further in chapter 3.

### ***Industry Based Agreements***

- 3.30** Industry Based Agreements, or IBAs, are described by the Local Decision Making Regional Chairpersons Group (hereafter ‘LDMRCG’) as ‘agreements between peak industry bodies and the NSW Government to develop long term partnerships to increase Aboriginal employment and business opportunities in specific industries.’<sup>80</sup>

- 3.31** The NSW Ombudsman acknowledged the potential of IBAs in its submission to the inquiry, commenting that government could harness the opportunities available through the private sector:

There is also scope for the state government to further influence the private sector by raising awareness among, and increasing the capacity of, industry representative bodies and their members to target Aboriginal candidates for available jobs, including through the Industry Based Agreements (IBAs) initiative under OCHRE.<sup>81</sup>

- 3.32** A number of stakeholders referred to one or more of the three IBAs currently operating, which involve agreements with the NSW Minerals Council, Master Builders Association of NSW and the Civil Contractors Federation of NSW.<sup>82</sup> The NSW Ombudsman said:

Three IBAs are currently in operation and the first cohort of 16 Aboriginal apprentices and trainees were engaged with the support of the Master Builders

<sup>77</sup> NSW Ombudsman, *2014-2015 Annual Report*, p 112.

<sup>78</sup> NSW Ombudsman, *2014-2015 Annual Report*, pp 113-114.

<sup>79</sup> NSW Ombudsman, *2014-2015 Annual Report*, p 114.

<sup>80</sup> Submission 17, Local Decision Making Regional Chairpersons Group, p 6.

<sup>81</sup> Submission 19, NSW Ombudsman, p 18.

<sup>82</sup> Submission 19, NSW Ombudsman, p 18; Submission 25, NTSCorp, p 19; Submission 27, Paradigm Resources, p 2.

Association of NSW under the MBA IBA. We believe there is merit in extending IBAs to other industries and we commend the efforts of AA in taking this forward.<sup>83</sup>

- 3.33** NTSCorp said that it supported the concept of IBAs in principle, and encouraged the government to springboard off the IBA experience to further develop and implement economic development opportunities with private enterprise:

NTSCORP cannot comment on the success of these individual measures. However, we support in principle efforts to initiate widespread industry awareness and reform in relation to native title and attitudes towards Aboriginal people. The State Government should draw upon its success and experience in these areas to establish as part of its new policy on economic development a broad brush best practice approach for proponents seeking projects in Aboriginal communities.<sup>84</sup>

- 3.34** The NSW Government accepted that the IBAs offered an opportunity to leverage economic opportunities.<sup>85</sup>

- 3.35** As noted above, the NSW Minerals Council has signed an IBA with the NSW Government which commits them to ‘work together and with Aboriginal stakeholders to create sustainable economic development and employment opportunities that will contribute to building and supporting strong Aboriginal communities in New South Wales mining regions.’<sup>86</sup>

- 3.36** In its submission to the inquiry, the NSW Minerals Council commented that ‘support for the IBA from Government has been inconsistent,’<sup>87</sup> citing irregular meeting attendance, and variance in engagement levels, as well as a tendency to rely on the industry partner to drive outcomes.<sup>88</sup> In addition, it cites a lack of funding support, which it says will impede the capacity of the IBA to deliver as promised.<sup>89</sup> The council ‘strongly recommends’ the government commit to ‘modest’ additional funding of \$200,000 over three years, as well as commissioning an independent review of the IBA.<sup>90</sup>

- 3.37** The LDMRC suggests that the efficacy of IBAs could be enhanced by linking them to local or regional priorities:

The LDMRC sees a need for greater government support in identifying economic development opportunities and to attract investment particularly from corporates and private sector. Industry Based Agreements (IBAs) currently being implemented under OCHRE may provide opportunities for this to occur. IBAs are currently limited by their lack of a regional focus, this could be addressed by linking them to economic development priorities identified by regional alliances in their LDM accords at a regional level.<sup>91</sup>

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<sup>83</sup> Submission 19, NSW Ombudsman, p 18.

<sup>84</sup> Submission 25, NTSCorp, p 19.

<sup>85</sup> Submission 28, NSW Government, p 5.

<sup>86</sup> Submission 29, NSW Minerals Council, p 1.

<sup>87</sup> Submission 29, NSW Minerals Council, p 4.

<sup>88</sup> Submission 29, NSW Minerals Council, p 4.

<sup>89</sup> Submission 29, NSW Minerals Council, p 4.

<sup>90</sup> Submission 29, NSW Minerals Council, p 5.

<sup>91</sup> Submission 17, Local Decision Making Regional Chairpersons Group, p 10.

- 3.38** The NSW Ombudsman suggested that IBAs also offer a ‘logical platform’ that could be utilised to support industry peak bodies and others to ‘facilitate the provision of business development skills and mentoring by experienced Aboriginal enterprises to emerging businesses.’<sup>92</sup>
- 3.39** The Ombudsman went on to recommend that IBAs could be further strengthened by:
- committing to an ongoing program of identifying additional industries/entities to facilitate new partnerships
  - setting specific Aboriginal employment and business procurement outcomes as targets in new and renewed IBAs
  - ensuring IBAs are closely aligned with the objectives of relevant Local Decision Making (LDM) Regional Alliance Accords
  - ensuring that in practice, IBAs are linked to other relevant economic development initiatives such as Opportunity Hubs, Government procurement policies, the Jobs for NSW Fund, and Industry Action Plans.<sup>93</sup>
- 3.40** The committee agrees with the Ombudsman’s recommendations to strengthen IBAs set out in Recommendation 4 of the *Fostering economic development for Aboriginal people in NSW, Special report to Parliament*, and reproduced above. The committee invites suggestions on what specific actions or decisions the NSW Government could take to drive these reforms in the short to medium term. It is also interested in other ways to engage the private sector in creating opportunities for Aboriginal economic development.<sup>94</sup>

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#### Question 4

What specific actions should the NSW Government take to further strengthen Industry Based Agreements (IBAs), encourage private sector participation in improving economic development within Aboriginal communities, and how should it evaluate the efficacy of these responses?

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#### *Local Decision Making*

- 3.41** Local Decision Making (LDM) provides a ‘process for Aboriginal regional alliances and government agencies to work together.’<sup>95</sup> An OCHRE initiative, LDM establishes a conduit through which regional alliances can have more control over the delivery and coordination of government services, while also facilitating government offering appropriate support to locally identified priorities. These priorities include development of economic capacity.<sup>96</sup>

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<sup>92</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 31.

<sup>93</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 33.

<sup>94</sup> The role of the private sector in enhancing Aboriginal economic development is discussed further in chapter 4.

<sup>95</sup> Submission 17, Local Decision Making Regional Chairpersons Group, p 6.

<sup>96</sup> Submission 17, Local Decision Making Regional Chairpersons Group, p 6.

- 3.42** Priorities for investment and service coordination are negotiated and set by those involved, and committed to through formal agreements (accords).<sup>97</sup> The aim is to develop the capacity of Regional Alliances through accords and ‘progressively delegate powers’<sup>98</sup> to them once pre-conditions are met.
- 3.43** The LDMRCG, a group comprised of representatives from six Aboriginal Regional Alliances established under the LDM initiative, commented that economic development is intended to be a key focus of the work of alliances and accords:
- Preliminary discussions being undertaken by regional alliances under LDM indicate that while economic development and participation priorities will be different in each location, economic development will be a consistent priority for the majority of alliances as they commence the accord negotiation process.<sup>99</sup>
- 3.44** The Ombudsman noted that the LDM Regional Alliances initiative were a ‘significant vehicle for pursuing effective collaborations and partnerships.’<sup>100</sup>
- 3.45** The Murdi Paaki Accord, the first accord to be negotiated and implemented under the LDM initiative, has been evaluated and a number of strengths identified as well as some opportunities for improvement. In particular, a sense that the accord was practical and clear and implementable and contributed to stronger relationships was a key outcome of the evaluation, although some participants considered there were opportunities ‘the Accord did not include significant and strategic changes in the way NSW Government will do business.’<sup>101</sup>
- 3.46** The LDM initiative is an example of the implementation of ‘place-based approaches’, which has been identified as a key feature of an economic reform agenda to drive development of Aboriginal communities. This is discussed below.
- 3.47** In addition to these initiatives, OCHRE also provides for Opportunity Hubs and Aboriginal Language and Culture Nests, which are discussed in chapter 3.

### **Implementing a place-based approach**

- 3.48** As noted above, the LDM initiative focuses on the development, negotiation and implementation of strategies that are locally driven by people who are knowledgeable about their local communities, in partnership with NSW Government.
- 3.49** The committee has received evidence that such approaches, that is approaches that engage effectively and appropriately with local Aboriginal communities to address issues that affect them, are critical to those strategies being successful.<sup>102</sup>

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<sup>97</sup> Submission 17, Local Decision Making Regional Chairpersons Group, p 6.

<sup>98</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 25.

<sup>99</sup> Submission 17, Local Decision Making Regional Chairpersons Group, p 6.

<sup>100</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 25.

<sup>101</sup> Circa, *NSW Government, Murdi Paaki LDM Accord negotiation evaluation*, 3 June 2015, p iv.

<sup>102</sup> Wunan Foundation Inc., *Empowered Communities: Empowered Peoples Design Report*, 2015; Submission 11, Darkinjung Local Aboriginal Land Council; p 9; Submission 19, NSW Ombudsman, pp 8-9; Submission 21, Just Reinvest NSW, p 2; Submission 28, NSW Government, p 18.



**3.50** The Wunan Foundation, in its report ‘Empowered Communities: Empowered Peoples’ described how Aboriginal empowerment and autonomy can only be achieved when local communities are able to develop and lead their own strategies and that broader frameworks need to strongly support this:

... Indigenous Australians have a right to development, which includes our economic, social and cultural development as families, individuals and communities and as Indigenous peoples. [Our Framework] recognises the primacy of the local nature of peoples and places, and is aimed at the empowerment of the families and individuals connected to those peoples and places. We recommend national and regional institutions only to support an enabling framework for place-based development agendas.<sup>103</sup>

**3.51** The Empowered Communities report has a strong focus on place-based approaches. It indicates that a ‘radical shift’ will be required from key partners, including governments *and* Aboriginal leaders:

Indigenous reform leaders are expected to step up and assume the lead role in driving challenging reforms in their regions and collaborating across opt-in organisations. Government partners, on the other hand, need to take a step back and participate in support of Indigenous leaders and their place-based development agendas. This does not mean that government takes a passive role. Government is an active partner. Its representatives come with valuable knowledge, experience and responsibilities that the other partners do not have.<sup>104</sup>

**3.52** The Ombudsman identified a number of principles which it suggested might be considered as part of a place-based approach in Aboriginal communities, including:

- Identifying – with Aboriginal communities – the unique potential, capacities and assets, as well as constraints and risks, they and their physical location hold.
- Whole-of-community or regional planning between relevant government agencies ... Aboriginal representative bodies ... industry leaders and educational institutions to scope future growth industries and regions, forecast potential skills and supply shortages and prepare Aboriginal stakeholders to exploit these.
- Exploring other ways in which local economies can be grown so that Aboriginal people are central actors – for example, by fostering local Aboriginal businesses to provide the goods and services consumed by their community.<sup>105</sup>

**3.53** As noted above the committee has received significant evidence supporting place-based approaches. The committee invites submissions on how the NSW Government could best support these.

<sup>103</sup> Wunan Foundation Inc., *Empowered Communities: Empowered Peoples Design Report*, 2015, p iii.

<sup>104</sup> Wunan Foundation Inc., *Empowered Communities: Empowered Peoples Design Report*, 2015, p 41.

<sup>105</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, pp 7-8.

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**Question 5**

What actions or decisions should the NSW Government take to ensure that place-based approaches are embedded as a key component of the development and implementation of initiatives to drive Aboriginal economic development?

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**Accountability, transparency and evaluating efficacy**

- 3.54** It has been noted by a number of reputable organisations that the lack of independent and robust evaluations of programs designed to improve economic prosperity among Aboriginal people has impeded the capacity of policy makers to know how best to tackle the issue. The Ombudsman recently stated:

The paucity of evaluations of previous initiatives to improve economic outcomes for Aboriginal people in New South Wales presents a challenge to policy makers, which we have highlighted repeatedly over many years. Recently, the Productivity Commission has highlighted the limited information available on effective interventions for the Council of Australian Governments (COAG) *Closing the Gap* targets, and called for an increased investment in independent evaluations.<sup>106</sup>

- 3.55** The Ombudsman stresses the ongoing need ‘for rigorous accountability mechanisms for government-funded services to enable regular monitoring and assessment of progress and the outcomes being achieved.’<sup>107</sup> Other stakeholders, including the LDMRCG, the NSW Local Aboriginal Land Council and The Greens also noted that there is a critical need to engage in evaluation and monitoring of initiatives if real change is to be realised.<sup>108</sup>
- 3.56** The Department of Finance, Services and Innovation has recently established the NSW Data Analytics Centre, which ‘aims to be a world leader in the application of whole-of-government data analytics and insights to support strategic decision making and improved service delivery.’<sup>109</sup> The Ombudsman notes that this offers a way in which Aboriginal issues could be monitored and evaluated across sectors.
- 3.57** The committee notes the comments of the Ombudsman on the importance of ‘participatory practice’ in developing the evaluation framework for OCHRE, and will watch with interest as various OCHRE initiatives are evaluated. The committee encourages the ongoing engagement with Aboriginal communities about the intended outcomes of initiatives to ensure that review and monitoring of programs are able to identify strengths and weaknesses in ways that will lead to better practice.

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<sup>106</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 4.

<sup>107</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 4.

<sup>108</sup> Submission 17, Local Decision Making Regional Chairpersons Group, p 11; Submission 20, NSW Aboriginal Land Council, p 5, 10; Submission 30, The Greens, p 1. See also Submission 19, NSW Ombudsman, p 6.

<sup>109</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW*, 2016, p 4.

## Chapter 4 Building the capacity of individuals

There was consensus among inquiry participants about the importance of education and training for enhancing the economic development of Aboriginal communities. This chapter details efforts by the NSW Government and non-government organisations to enhance the individual capacity of Aboriginal people.

This chapter examines Aboriginal students' involvement in education including key statistics concerning participation and educational attainment, before detailing NSW Government and non-government programs to improve these results. The chapter also discusses Aboriginal individuals' participation in vocational education and training, and the programs designed to enhance their involvement in this sector. Finally, the chapter considers the work of the private sector to build the capacity of Aboriginal individuals.

The chapter also highlights case studies on the Tamworth Local Aboriginal Land Council Opportunity Hub, the Clontarf Foundation, the Merriman Shearing School and Whitehaven's Maules Creek Mine.

### Capacity building of individuals

- 4.1 Stakeholders observed that Aboriginal people are 'underrepresented'<sup>110</sup> across a number of measures of economic development and advocated supporting individuals across all life stages, starting at early education and continuing through school, vocational education and training, and finally employment including enterprise development.
- 4.2 Inquiry participants agreed that enhancing the capacity of Aboriginal individuals through education and training was vital and can significantly assist the economic development of Aboriginal communities. This section discusses key statistics and capacity building initiatives undertaken by the government and other organisations to support Aboriginal people to participate in these sectors.

#### Education statistics

- 4.3 Evidence presented during the inquiry suggested that Aboriginal students are not attending school at the same rate as their non-Aboriginal peers or performing as well in the National Assessment Program - Literacy and Numeracy (NAPLAN) tests. There have, however, been some improvements in these areas.
- 4.4 The NSW Ombudsman advised that in 2014, 90 per cent of Aboriginal children attended primary school compared to 94 per cent of non-Aboriginal children, and 79 per cent of Aboriginal children attended secondary school compared to 90 per cent of non-Aboriginal children.<sup>111</sup> The Ombudsman noted that the average state-wide attendance rate for Aboriginal students is significantly higher than the attendance rate for Aboriginal students within each

<sup>110</sup> Submission 28, NSW Government, p 4.

<sup>111</sup> Submission 19, NSW Ombudsman, p 11 quoting NSW Department of Education, *Aboriginal Students in NSW Public Schools Annual Report 2015*, p 15 and Data Appendix, p 8.

region, and can therefore conceal the true extent of non-attendance at school by Aboriginal children.<sup>112</sup>

- 4.5 In regards to academic results, the NSW Ombudsman advised that in 2014, while over 80 per cent of Aboriginal students in New South Wales performed at or above minimum national standards in NAPLAN for literacy and numeracy, they were out-performed by their non-Aboriginal counterparts in reading and numeracy in each tested year group.<sup>113</sup>
- 4.6 The NSW Ombudsman's analysis of the NAPLAN results indicated that '... educational disadvantage is strongly correlated to location, with Aboriginal students in remote and very remote areas less likely to achieve minimum standards in literacy and numeracy than students living in regional or urban settings.'<sup>114</sup>
- 4.7 Stakeholders noted that the high school retention rates for Aboriginal students had improved. The NSW Government advised that in 2015, the 'apparent retention' of Aboriginal students in New South Wales from Year 7 to Year 12 was 52.1 per cent.<sup>115</sup> Further, this rate had improved by 21.5 per cent from a low of 30.6 per cent in 2006.<sup>116</sup>
- 4.8 Additionally, the NSW Government informed the committee that in the period 2011-2013, 57 per cent of Aboriginal people in New South Wales aged 20-24 years had completed year 12 or higher, compared with 87 per cent of the non-Aboriginal population.<sup>117</sup>

### Education programs

- 4.9 There was consensus among inquiry participants about the importance of education for enhancing the economic development of Aboriginal communities.<sup>118</sup> For example, Mr Gary Barnes, Deputy Secretary of the NSW Department of Industry, remarked that school is fundamental to breaking the cycle of disadvantage that Aboriginal people face.<sup>119</sup> The NSW Ombudsman stated that Aboriginal students are likely to experience entrenched disadvantage if their educational disengagement is not addressed.<sup>120</sup>
- 4.10 Inquiry participants, including the Tamworth City Council, highlighted that education was vital to the development of Aboriginal culture and identity and encouraged the preservation of indigenous languages.<sup>121</sup> Similarly, Mr Jeremy Smith noted that teaching Indigenous languages

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<sup>112</sup> Submission 19, NSW Ombudsman, p 11.

<sup>113</sup> Submission 19, NSW Ombudsman, p 11 quoting Gotsis, T., *NSW School Education: NAPLAN. Measurement and Performance*, Briefing Paper No 1212015, 2015, p. 19.

<sup>114</sup> Submission 19, NSW Ombudsman, p 12.

<sup>115</sup> Answers to questions on notice, NSW Government, 13 April 2016, p 17.

<sup>116</sup> Answers to questions on notice, NSW Government, p 17.

<sup>117</sup> Submission 28, NSW Government, p 4.

<sup>118</sup> See for example, Submission 7, Mr Jeremy Smith, p 2; Submission 2, Tamworth Regional Council, p 22. Submission 11, Darkinjung Local Aboriginal Land Council, p 10.

<sup>119</sup> Evidence, Mr Gary Barnes, Deputy Secretary, NSW Department of Industry, 26 February 2016, p 18.

<sup>120</sup> Submission 19, NSW Ombudsman, p 12.

<sup>121</sup> Submission 2, Tamworth Regional Council, p 22.

at schools could have a twofold effect – creating meaningful employment opportunities for local Indigenous community members who could act as translators and/or traditional language teachers, and encouraging children to engage in school.<sup>122</sup>

- 4.11** The NSW Government informed the committee that it has developed and implemented two programs that target the education and training needs of Aboriginal students as part of the OCHRE framework – the Connected Communities Strategy and Opportunity Hubs.<sup>123</sup> The government’s Local Schools, Local Decisions reforms also include specific provisions for students with Aboriginal backgrounds.<sup>124</sup>
- 4.12** The NSW Government also noted that it has committed \$20 million to establish an Aboriginal Centre for Excellence in Western Sydney. A key objective of this project is to deliver programs and services that support Aboriginal young people to make the transition from school environment into further education and employment.<sup>125</sup>
- 4.13** Non-government organisations, such as the Clontarf Foundation and The Smith Family, also deliver education programs specifically to Aboriginal students. These programs are discussed later in this chapter.

### *Connected Communities Strategy*

- 4.14** The OCHRE Connected Communities Strategy commenced in 2012 and operates in 15 schools across regional and rural New South Wales. A key goal of the strategy is that students will make a successful transition from school to work or further training or study.
- 4.15** The NSW Government advised that features of the strategy include:
- seeking to position schools as central ‘hubs’ to facilitate a variety of services and to promote stronger partnerships within communities
  - recruiting a local Aboriginal person in each of the schools to act as a conduit between the school and the community
  - conducting cultural awareness training for all school staff
  - enhancing community capacity by sponsoring targeted training and development for Aboriginal people across rural and remote New South Wales in fields such as youth work, counselling and psychology.<sup>126</sup>
- 4.16** An additional component of the strategy is the teaching and learning of Aboriginal languages. Nine of the fifteen Connected Community schools offer students the opportunity to learn an Aboriginal language.<sup>127</sup>

<sup>122</sup> Submission 7, Mr Jeremy Smith, p 2.

<sup>123</sup> Submission 28, NSW Government, p 6.

<sup>124</sup> Submission 28, NSW Government, p 18.

<sup>125</sup> Submission 28, NSW Government, p 20.

<sup>126</sup> Submission 28, NSW Government, pp 18-19.

<sup>127</sup> Media Release, Hon Adrian Piccoli MP, Minister for Education, ‘Aboriginal languages in HSC 2016’, 30 November 2015.

- 4.17** As mentioned in chapter 2, the NSW Ombudsman has oversight of OCHRE. The Ombudsman's 'Annual Report 2014-2015' provided some positive feedback from its early observations of the Connected Communities Strategy, describing the schools it visited as the 'heart and soul' of their communities and noting the level of dedication of staff and local communities.<sup>128</sup> The NSW Ombudsman also said it was 'keen' to see Connected Communities schools provide a pathway to vocational education and training, and other tertiary education options.<sup>129</sup>
- 4.18** However, the Ombudsman's annual report acknowledged that there is 'significant' work to be done to embed a genuine place-based service delivery strategy in high need communities.<sup>130</sup> Walgett was presented as an example where more needs to be done to engage with the local community and implement strategies and dedicate resources that will contribute to improved school attendance and better outcomes.
- 4.19** Following on from this observation, concern about the broader efficacy of Connected Communities was noted by the Centre for Independent Studies in its submission. It noted that NAPLAN results in Connected Communities had not seen improvement despite the implementation of the program:

The failure of this program to improve student attendance rates and NAPLAN results highlights the importance of engaging effectively with Aboriginal communities, and properly researching what strategies need to be taken that best fit the social, cultural and economic demographics of different Aboriginal communities.<sup>131</sup>

### ***Opportunity Hubs***

- 4.20** Opportunity Hubs work with communities to encourage young Aboriginal people to remain in school and provide 'clear pathways and incentives' to stay at school and transition into employment, training or further education.<sup>132</sup> Aboriginal Affairs advised that Opportunity Hubs are operated by non-government providers who broker and co-ordinate links between schools, employers, training providers, support services and Aboriginal communities. There are currently four hubs in New South Wales.<sup>133</sup>

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<sup>128</sup> NSW Ombudsman, *2014-2015 Annual Report*, p 112.

<sup>129</sup> Submission 19, NSW Ombudsman, pp 12-13.

<sup>130</sup> NSW Ombudsman, *2014-2015 Annual Report*, pp 113-114.

<sup>131</sup> Submission 18, Centre for Independent Studies, p 4 quoting Woodburn, J and Glanville, B, *Connected Communities program failing to improve academic outcomes for Aboriginal students in NSW, report finds*, ABC News 10 February 2016.

<sup>132</sup> Submission 28, NSW Government, p 19.

<sup>133</sup> Aboriginal Affairs, Opportunity Hubs, <http://www.aboriginalaffairs.nsw.gov.au/opportunity-hubs/>.

**Case study: Tamworth Local Aboriginal Land Council Opportunity Hub<sup>134</sup>**

The Tamworth Local Aboriginal Land Council partnered with eight other organisations – Aboriginal Education Consultative Group, Tamworth Family Support, Careers Network, Joblink Plus, Centacare New England Northwest including Headspace, Aboriginal Employment Strategy Ltd and Tamworth Regional Council – to establish an Opportunity Hub in mid-2014. The hub is staffed by a project coordinator and two case workers who help guide students transition through school and employment.

Using the land council office as a base for the hub provides a level of comfort and ownership for Aboriginal people in the area who may be reluctant to engage with schools or other institutions.

**4.21** The NSW Ombudsman provided a brief evaluation of the operation of Opportunity Hubs. Early challenges identified include concerns about the effectiveness of one operator's Hub, and difficulties ensuring that local schools understand the initiative and the benefits of engaging with it.<sup>135</sup>

**4.22** The NSW Ombudsman explained how Opportunity Hubs could help provide pathways to further education, training and jobs for all Aboriginal students not just those who attend schools linked to the hubs:

We are also looking to Opportunity Hubs to demonstrate how all schools - not just those linked with a Hub - can develop and maintain clear routes to training and jobs for Aboriginal students via careers advisors and partnerships with local training providers, chambers of commerce, funded employment services, educational institutions and employers. More broadly, we are keen to see good support being provided to students during the critical school-to-tertiary study/work transition phase, and associated monitoring.<sup>136</sup>

**4.23** There was some criticism about Opportunity Hubs from the NSW Minerals Council, which suggested that the program duplicated services from other providers such as the Clontarf Foundation.<sup>137</sup> The NSW Minerals Council suggested that it would be preferable for the government to support existing organisations that specialise in this space rather than providing a similar service.<sup>138</sup>

**4.24** The committee invites submissions on the question of whether the Opportunity Hubs are the best way forward, and what actions can be taken to better incorporate community-specific culture into the education curriculum. It also invites comment on how the government could support more Aboriginal people to engage in vocational education and training, as well as how it could ensure that community-specific culture is incorporated into educational and vocational training programs.

<sup>134</sup> Evidence, Ms Fiona Snape, Chief Executive Officer, Tamworth Local Aboriginal Land Council, 27 April 2016, pp 2-3 and Submission 2, Tamworth Regional Council p 10 and p 11.

<sup>135</sup> NSW Ombudsman, *2014-2015 Annual Report*, p 116.

<sup>136</sup> Submission 19, NSW Ombudsman, p 13.

<sup>137</sup> Submission 29, NSW Minerals Council, p 3.

<sup>138</sup> Submission 29, NSW Minerals Council, p 3.

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**Question 6**

Should the NSW Government continue to facilitate Opportunity Hubs or is it preferable for the government to support existing organisations that specialise in this space? Why?

What specific actions or decisions should the NSW Government take to increase the number of Aboriginal people engaged in vocational education and training?

What actions can be taken to better incorporate community-specific culture into the education curriculum?

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***Other programs***

- 4.25** As previously mentioned, non-government organisations also provide education programs for Aboriginal students. The Clontarf Foundation was praised for its work in this area during the inquiry.<sup>139</sup> Clontarf encourages Aboriginal boys to stay in school, builds their self-esteem and expectations, and helps them find and maintain meaningful long-term employment.<sup>140</sup>
- 4.26** The NSW Minerals Council has directly supported the Clontarf Foundation since 2014 and promotes the work of the foundation to its members. The council supports Clontarf's aim to produce 'work ready' Aboriginal people.<sup>141</sup> The NSW Minerals Council proposed increasing Clontarf's funding.<sup>142</sup>
- 4.27** The Hon Adrian Piccoli MP, Minister for Education, advised that the NSW Government is currently in discussions with the Clontarf Foundation about the continued funding of 11 of its schools in New South Wales.<sup>143</sup> Minister Piccoli explained the funding formula used to determine the money allocated to Clontarf:

This funding allocation is based on Clontarf's formula of one-third from the participating State or Territory, one-third from the Commonwealth Government and one-third from philanthropic sources, totalling a combined figure of \$7,500.00 per student. The maximum Department contribution will be \$2,500 per student, with 50 per cent of the cost per student per year (\$1,250) being met directly by participating schools and the remaining amount funded through the Department's Aboriginal Education and Communities Directorate.<sup>144</sup>

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<sup>139</sup> See for example, Evidence, Mr Barnes, 26 February 2016, p 18; Submission 29, NSW Minerals Council, p 2; Evidence, Ms Snape, 27 April 2016, p 6.

<sup>140</sup> Submission 26, Clontarf Foundation, p 4.

<sup>141</sup> Submission 29, NSW Minerals Council, p 2.

<sup>142</sup> Submission 29, NSW Minerals Council, p 2.

<sup>143</sup> Correspondence, from the Hon Adrian Piccoli MP, Minister for Education, to Chair, 26 May 2016, p 1.

<sup>144</sup> Correspondence from Minister Piccoli MP to Chair, 26 May 2016, p 1.



**Case study: The Clontarf Foundation<sup>145</sup>**

The Clontarf Foundation runs academy programs at various schools across Australia. The committee visited the Clontarf Academy at Dubbo College South Campus in New South Wales on Wednesday 5 April and met with a number of staff and students.

The program supports young Indigenous males to become ‘work ready’ by building self-esteem, leadership skills and discipline, and creating a compassionate and unified group which affords the young men with a sense of belonging. The Clontarf Academy also provides sporting and recreation activities and teaches general life skills such as cooking, cleaning and assistance in attaining a driver licence. Mr Chris McDonald, Regional Manager of the Clontarf Foundation, explained ‘we are trying to fill up their tool boxes as much as possible.’

The key to the program is effective engagement with young people. Clontarf use sport, particularly rugby league, and other incentives to connect with young people, while also offering incentives for good performance.

Mr Brendan Maher, Partnerships Manager (NSW & QLD) with the Clontarf Foundation, summarised the purpose and significance of the program as ‘... trying to make school more attractive for all the young fellas that they want to come and when they come, we can change their behaviours that we want them to display out in the community. And then hopefully get them through to year 12 and get them a job. It’s really that simple.’

Clontarf take responsibility for finding the boys’ employment post program, this is facilitated through strong links between Clontarf and local employers and organisations. For example, Dubbo College South Campus has contracts with local mining operations, fire-fighters, sporting clubs and electronic companies among many others designed to suit the individual student’s interests.

Another critical factor in Clontarf’s success is strong leadership, including Aboriginal leadership.

Clontarf currently has 843 participants in 12 schools in New South Wales. This year 88 ‘work ready’ students from academies across the state are expected to complete year 12. Clontarf has predicted that this number will substantially increase over the next five years.

The program’s success can also be measured through attendance statistics. At Dubbo South Clontarf Academy there are 90 Aboriginal males and their collective attendance sits at 89 per cent.

<sup>145</sup> Submission 26, Clontarf Foundation; and Site visit report: Dubbo/Brewarrina, pp 1-2.



*Members of the Standing Committee on State Development meeting with students from the Clontarf Academy at Dubbo College South Campus in April 2016.*

- 4.28** Inquiry participants, including the NSW Minerals Council and the staff at Dubbo College South Campus, identified that similar programs to educate and empower Aboriginal girls are not as widespread as programs for Aboriginal boys.<sup>146</sup>
- 4.29** The NSW Minerals Council noted the operation of the Girls Academy.<sup>147</sup> There are twelve Girls Academies operated by Role Models and Leaders Australia throughout Western Australia, the Northern Territory and New South Wales. The academies work within the school system to overcome barriers that prevent at-risk Indigenous girls from completing their education such as substance abuse, pregnancy and violence. The programs focus on sport, extra-curricular activities, intensive mentoring and counselling and have a structured reward system.<sup>148</sup> Minister Piccoli advised that the Girls Academy is in discussions with the Tamworth Opportunity Hub and Peel High School to develop a new academy in Tamworth.<sup>149</sup>

<sup>146</sup> Submission 29, NSW Minerals Council, p 2 and Site visit report: Dubbo/Brewarrina, p 2.

<sup>147</sup> Submission 29, NSW Minerals Council, p 2.

<sup>148</sup> Role Models and Leaders Australia, *Girls Academy*, 2016, <http://www.girlsacademy.com.au/>.

<sup>149</sup> Correspondence from Minister Piccoli MP to Chair, 26 May 2016, p 2.

- 4.30** The NSW Minerals Council encouraged the government to identify and support an organisation similar to the Clontarf Foundation for Aboriginal girls.<sup>150</sup>
- 4.31** The committee also received evidence about The Smith Family's Learning for Life program which aims to engage highly disadvantaged students, including Aboriginal students, in education. The program has operated for 30 years and has three integrated components:
- a modest biannual payment made to families to cover educational expenses
  - a program coordinator works with a student's family and school to support their long-term participation in school
  - delivery of short term programs to help students engage in education such as literacy and numeracy programs and mentoring.<sup>151</sup>
- 4.32** Minister Piccoli advised that The Smith Family also runs Girls at the Centre in the Northern Territory, and has commenced this program at Mt Austin High School in Wagga Wagga in 2016.<sup>152</sup>

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### Question 7

What actions can the NSW Government take to deliver programs that target Aboriginal girls and young women in schools and in vocational education and training?

Is there a role for the mentoring of young Aboriginal women by female Aboriginal elders, and if so how could the government develop and support these relationships?

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### Vocational education and training and employment statistics

- 4.33** Evidence presented by inquiry participants highlighted that Aboriginal people are not participating in post-school education, training, or employment at the same rates as non-Aboriginal people. For example, the NSW Ombudsman advised that in 2011, 44 per cent of Aboriginal young adults aged 17-24 across the state were fully engaged in post-school education, training, or employment compared with 74 per cent of their non-Aboriginal counterparts.<sup>153</sup> The NSW Government also reported that in 2011, 39 per cent of Aboriginal people and 61 per cent of non-Aboriginal people aged 20-64 had a post school qualification.<sup>154</sup>
- 4.34** Stakeholders noted that in recent years there have been improvements in Aboriginal participation in vocational education and training with increases in the number of Aboriginal enrolments at TAFE NSW particularly in higher-level qualifications. Ms Heather McGregor,

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<sup>150</sup> Submission 29, NSW Minerals Council, p 2.

<sup>151</sup> The Smith Family, *Improving the educational outcomes of disadvantaged Australians: The Learning for Life program*, 2016, p 6.

<sup>152</sup> Correspondence from Minister Piccoli MP to Chair, 26 May 2016, p 2.

<sup>153</sup> Submission 19, NSW Ombudsman, p 5 quoting Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014*, (2014), Productivity Commission, table 7A.4.7.

<sup>154</sup> Submission 28, NSW Government, p 4.

Director, Aboriginal Learning Circle, North Coast Institute, TAFE NSW, advised that Aboriginal student enrolments at TAFE have increased from 34,597 in 2010 to 37,505 in 2014, an increase of 8.4 per cent.<sup>155</sup>

**4.35** Further, TAFE NSW reported that there is a trend towards Aboriginal students enrolling in higher-level nationally recognised qualifications.<sup>156</sup> This trend was particularly evident in the 15 to 24 year student age group, with TAFE NSW observing that ‘... over the five-year period to 2014, TAFE NSW Aboriginal enrolments by students in the 15 to 24 year age group increased by 60.6 per cent in qualifications at Certificate III and above and 244.7 per cent in qualifications at Diploma and above.’<sup>157</sup>

**4.36** TAFE NSW noted that there had been a significant improvement in course completion rates for Aboriginal students between 2009 and 2013, highlighting that course completions by Aboriginal students increased by 47 per cent, and particularly in higher level qualifications: Certificate III and above increased by 59.9 per cent; and Diploma and above increased by 167.3 per cent.<sup>158</sup>

**4.37** In regards to university enrolments, the NSW Government advised that 2,200 Aboriginal people commenced university in 2013 compared with 1,000 Aboriginal students in 2004.<sup>159</sup>

**4.38** Inquiry participants highlighted the disparity in employment rates of Aboriginal and non-Aboriginal people.<sup>160</sup> The NSW Government advised that in 2012-2013 significantly less Aboriginal people than non-Aboriginal people were employed across the state:

In 2012-13, 45 per cent of Aboriginal people aged 15-64 years in New South Wales were employed, compared with 76 per cent of non-Aboriginal people. Nationally and in New South Wales Aboriginal people are about 50 per cent less likely to be employed.<sup>161</sup>

**4.39** Evidence presented by the NSW Government highlighted the significant disparity in the 2011-13 median weekly household income for Aboriginal and non-Aboriginal people in New South Wales with Aboriginal households surviving on an income of \$457/week, about half that of non-Aboriginal households, \$890/week.<sup>162</sup>

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<sup>155</sup> Evidence, Ms Heather McGregor, Director, Aboriginal Learning Circle, North Coast Institute, TAFE NSW, 26 February 2016, p 12.

<sup>156</sup> Answers to questions on notice, TAFE NSW, 1 April 2016, p 3.

<sup>157</sup> Answers to questions on notice, TAFE NSW, 1 April 2016, p 3.

<sup>158</sup> Answers to questions on notice, TAFE NSW, 1 April 2016, p 3.

<sup>159</sup> Submission 28, NSW Government, p 6.

<sup>160</sup> See for example, Submission 21, Clontarf Foundation, p 1; Submission 12, Eurobodalla Shire Council, p 3.

<sup>161</sup> Submission 28, NSW Government, p 4.

<sup>162</sup> Submission 28, NSW Government, p 4.

### Vocational education and training and employment programs

- 4.40** Stakeholders argued that increasing Aboriginal students' participation in vocational education and training was vital to promoting economic development in Aboriginal communities. Vocational education and training was seen as an opportunity to increase employment prospects and to encourage Aboriginal students to progress to higher qualifications.<sup>163</sup>
- 4.41** The NSW Ombudsman advocated for stronger partnerships and collaborative planning between Training Services NSW, the vocational education and training sector, industry and Aboriginal representatives – such as Local Decision Making Regional Alliances and local Aboriginal land councils – to ensure training targets areas of future need and results in Aboriginal graduates being competitive for meaningful employment.<sup>164</sup>
- 4.42** The Aboriginal Services unit in State Training Services NSW manages a number of programs designed to improve the vocational outcomes and wellbeing of Aboriginal and Torres Strait Islander people.<sup>165</sup> The following section outlines programs the unit oversees including Smart and Skilled, The Way Ahead for Aboriginal People, the Aboriginal Employment Advisory Support Service and the Elsa Dixon Aboriginal Employment Program.

#### *Smart and Skilled*

- 4.43** Smart and Skilled is a reform of the New South Wales vocational education and training system.<sup>166</sup> As part of this reform, eligible Aboriginal students have been offered additional support, such as mentoring and fee exemptions to participate in vocational education and training with approved providers. Approved providers can also receive additional funding for Aboriginal students and for participants in regional and remote areas.<sup>167</sup>
- 4.44** Mr Barnes informed the committee that since January 2015 approximately 10,000 Aboriginal people have commenced training through Smart and Skilled.<sup>168</sup>

#### *New Careers for Aboriginal People*

- 4.45** New Careers for Aboriginal People is a free program for Aboriginal people seeking employment and training advisory support services. This program encourages Aboriginal people to participate in the labour market by identifying, creating and supporting opportunities for sustainable education, training and employment.<sup>169</sup>

<sup>163</sup> Submission 19, NSW Ombudsman, p 13; Evidence, Ms McGregor, 26 February 2016, p 17.

<sup>164</sup> NSW Ombudsman, *Fostering economic development for Aboriginal people in NSW, A Special Report to Parliament*, 2016, p 12.

<sup>165</sup> Aboriginal Services, Training Services NSW, [http://www.training.nsw.gov.au/programs\\_services/funded\\_other/acp/index.html](http://www.training.nsw.gov.au/programs_services/funded_other/acp/index.html).

<sup>166</sup> Smart and Skilled, Training Services NSW, <http://www.training.nsw.gov.au/smartandskilled/>.

<sup>167</sup> Submission 28, NSW Government, p 20.

<sup>168</sup> Evidence, Mr Barnes, 26 February 2016, p 15. Mr Barnes explained that there were probably more than 10,000 actual commencements because under Smart and Skilled an expression of interest turns into a commencement and that turns into completion.

<sup>169</sup> Submission 28, NSW Government, p 20.

- 4.46 There are thirteen New Careers for Aboriginal People projects operating in New South Wales.<sup>170</sup> One of these projects is available through the Murdi Paaki Regional Enterprise Corporation. Murdi Paaki is discussed in more detail in chapter 5.

***Elsa Dixon Employment Development Program***

- 4.47 The Elsa Dixon Employment Development Program provides funding to organisations to support Aboriginal education, employment and training. The program promotes diversity, innovation and service responsiveness in the workforce by reducing barriers to employment and improving promotional opportunities for Aboriginal people.<sup>171</sup>

***The Way Ahead for Aboriginal People***

- 4.48 The Way Ahead for Aboriginal People is a mentoring service for Aboriginal apprentices and trainees. Mentors are selected on the basis of their experience and acceptance within Aboriginal communities.<sup>172</sup>
- 4.49 The committee received a great deal of evidence that encouraged the use of mentoring as a way to support Aboriginal people in both education and training, and business. The use of mentors in business environments is discussed in chapter 5.

***Indigenous Land Corporation programs***

- 4.50 The committee also received evidence about vocational education and training programs operated by subsidiaries of the Indigenous Land Corporation – Voyages Indigenous Tourism Australia and the Merriman Shearing School.
- 4.51 Voyages was established in 2011 to own and manage the Ayres Rock Resort in the Northern Territory, in addition to some of the Indigenous Land Corporation's other tourism assets in the area.<sup>173</sup> Voyages provides a best practice model in Indigenous employment and training and includes:
- a residential employment-based training program
  - accredited training and on-the-job experience
  - trainees are employed while training and a guaranteed job on completion
  - support by an Indigenous Engagement team encouraging continual skills development and greater retention
  - rolling trainee intake to build numbers and experience
  - cultural education for all staff

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<sup>170</sup> Training Services NSW, New Careers for Aboriginal People, [http://www.training.nsw.gov.au/programs\\_services/funded\\_other/acp/ncap.html](http://www.training.nsw.gov.au/programs_services/funded_other/acp/ncap.html).

<sup>171</sup> Submission 28, NSW Government, p 20.

<sup>172</sup> Submission 28, NSW Government, p 20.

<sup>173</sup> Submission 31, Indigenous Land Corporation, p 8.

- access to health and wellbeing programs.<sup>174</sup>

**4.52** The Merriman Shearing School also offers a residential employment-based training program and has achieved great results. The committee visited the school in April 2016 to discuss the program with staff.

#### **Case study: Merriman Shearing School<sup>175</sup>**

Merriman Shearing School coordinates a 16-week training program to prepare and familiarise young Indigenous people for employment in the wool industry. Individual life skills, mentoring and coaching are key components of the course and critical to the completion and job take up rates of Merriman participants.

The committee visited this unique vocational training school, which is situated at Merriman Station, an Indigenous Land Corporation operated sheep property near Brewarrina in north-western New South Wales, on Wednesday 6 April 2016. The committee spoke to staff and students who praised the program.

During 2014-2015, 40 participants commenced the pre-vocational training at the school, 30 went on to undertake vocational training, with 25 graduating with a Certificate II in Rural Operations (Shearing and Wool Handling). At the end of their training, 68 per cent of graduates received job offers. Mr Ian 'Boof' Bateman, Head Trainer of the Merriman Shearing School, told the committee about the potential earnings of Merriman graduates: "A sheep is \$2.87, so its \$287 a hundred, so double that [is what you can earn in a day]... if you're any sort of a shearer ... some guys ... they shear 300 quite regular, they're earning big money. A wool handler is over \$1000 a week. So it's great money. And it's a great life. And there's forty odd countries in the world you can go to. And it's the only job that you can go without a certificate to get a job. Turn up and go to work."

Strong industry partnerships, including with Bateman Shearing, a local Indigenous shearing contractor, are critical to the school's success. Other key features of the program include emphasis on personal engagement with participants, highly trained staff, strong support from local community and government, and the creation of an enjoyable living, working and learning environment.

In 2014–2015 the Indigenous Land Corporation provided approximately \$750,000 for equipment, property and school running costs in addition to funding from the Australian Government through the Indigenous Employment Programme and the Indigenous Advancement Strategy.

<sup>174</sup> Correspondence from Ms Loretta Price, Advisor – Indigenous Employment and Training, Voyages, to Senior Council Officer, 23 June 2014, p 1.

<sup>175</sup> Submission 31, Indigenous Land Corporation and Submission 31a, Indigenous Land Corporation; Site visit report: Dubbo/Brewarrina, pp 3-4.



*Members of the Standing Committee on State Development visited the Merriman Shearing School in April 2016.*

### **TAFE NSW**

**4.53** TAFE NSW has a history of assisting Aboriginal students pursue their vocational aspirations.<sup>176</sup> In addition to its traditional role of helping individual students, TAFE NSW advised that it actively seeks partnerships with emerging Aboriginal owned enterprises, industries and communities to ensure that students graduate with the practical skills they need for work or further education and training.<sup>177</sup> Ms McGregor from TAFE NSW, suggested pursuing these types of partnerships means that TAFE NSW had more scope to target Aboriginal people and that this provided ‘cultural safety’ for students:

I guess the industry partnerships or collaborative arrangements we can have with other partners mean that we have more scope to have things that feel targeted for

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<sup>176</sup> Evidence, Ms McGregor, Director, 26 February 2016, p 12.

<sup>177</sup> Evidence, Ms McGregor, 26 February 2016, p 18 and Answers to questions on notice, TAFE NSW, 1 April, p 1.



Aboriginal people. As an Aboriginal person if you see a program that is couched as an Aboriginal program you assume that there will be some cultural safety and that there will be other Aboriginal people to learn with. That is not the top priority for every Aboriginal person but we find that it makes a very big difference, given the experience that most Aboriginal people have had with large institutions in the past.<sup>178</sup>

- 4.54** Ms McGregor noted that TAFE NSW has partnered with a number of organisations to develop training programs for Aboriginal health workers and out-of-home care service providers.<sup>179</sup>
- 4.55** As a further example, Ms McGregor said that TAFE NSW had recently worked with Aboriginal Affairs and local organisations on the North Coast and could possibly develop programs that address the skills and capability support, such as project management, tender and submission writing, or procurement, for organisations.<sup>180</sup>
- 4.56** Stakeholders informed the committee about other strategies pursued by TAFE NSW to encourage Aboriginal people to participate in vocational education and training, including:
- the Aboriginal Learning Circle, a collaboration of five TAFE NSW institutes – Hunter, Illawarra, New England, North Coast and South Western Sydney – which has been established to develop culturally appropriate solutions for Aboriginal people communities, organisations and employers;
  - the engagement of Aboriginal Student Support Officers to advise, guide and support Aboriginal students throughout their studies.<sup>181</sup>
- 4.57** There was concern among certain participants that recent funding cuts to TAFE would unduly impact Aboriginal students.<sup>182</sup>

### **Commonwealth Government initiatives**

- 4.58** The Commonwealth Government provides a range of programs and services to encourage Indigenous people to participate in the workforce.
- 4.59** The Department of Prime Minister and Cabinet advised that it is implementing its commitment to support approximately 5,000 Aboriginal and Torres Strait Island people to receive practical training for a guaranteed job through Vocational and Employment Centres. Vocational and Employment Centres offer Indigenous specific services, and provide ‘wrap-around’ support to job seekers that complement other federal employment programs

<sup>178</sup> Evidence, Ms McGregor, 26 February 2016, p 17.

<sup>179</sup> Evidence, Ms McGregor, 26 February 2016, p 18.

<sup>180</sup> Evidence, Ms McGregor, 26 February 2016, pp 18-19.

<sup>181</sup> Aboriginal Learning Circle, 2015, <http://aboriginallearningcircle.com/>; and Submission 2, Tamworth Regional Council, p 12 and p 22.

<sup>182</sup> See for example, Submission 3, Dr Janet Hunt, Associate Professor, Centre for Aboriginal Economic Research, Australian National University, p 14; Submission 15, Wollondilly Shire Council, p 3.

such as jobactive and the Community Development Programme. There are seven centres in New South Wales.<sup>183</sup>

- 4.60** Other programs and services available include funding under the Indigenous Advancement Strategy's Jobs, Land and Economy Programme which '... aims to improve workplace and entrepreneurial skills of Aboriginal and Torres Strait Islander people to improve employment outcomes.'<sup>184</sup> Also, as part of the Community Development Programme, job seekers in remote locations are required to participate in community development activities for up to 25 hours per week in return for their income support. The Department of Prime Minister and Cabinet explained that '[t]his helps people to gain the skills and experience necessary to find paid work, where it exists, and enables them to build self-esteem and contribute to their community in the absence of paid work.'<sup>185</sup>
- 4.61** The committee invites submissions on the question of how the NSW Government could support the development of stronger pathways between vocational education and training and meaningful employment opportunities could be developed for Aboriginal people.
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### Question 8

What actions should the NSW Government take to develop stronger pathways between vocational education and training and meaningful employment opportunities for Aboriginal people?

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### Private sector

- 4.62** The committee received evidence of the significant role the private sector can play in enhancing economic development in Aboriginal communities. The Reconciliation Action Plan (RAP) program is the key way for the private sector to engage with Aboriginal people. Reconciliation Australia explained what the RAP program is and how it works:

The Reconciliation Action Plan (RAP) program is a framework for organisations to realise their vision for reconciliation.

Through the program, organisations develop a RAP—a business plan that documents what an organisation commits to do to contribute to reconciliation in Australia.

A RAP will enable your organisation to commit to implementing and measuring practical actions that build respectful relationships and create opportunities for Aboriginal and Torres Strait Islander peoples.<sup>186</sup>

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<sup>183</sup> Submission 32, Department of Prime Minister and Cabinet, p 5. There are currently seven Vocational and Employment Centres operating across New South Wales, including in Sydney and the surrounding region, Western NSW (office in Dubbo), the North Coast (office in Kempsey), South Coast (office in Nowra), New England and Riverina (office in Orange).

<sup>184</sup> Submission 32, Department of Prime Minister and Cabinet, p 5.

<sup>185</sup> Submission 32, Department of Prime Minister and Cabinet, p 5.

<sup>186</sup> Reconciliation Australia, *About, What is the RAP program?*, <http://www.reconciliation.org.au/raphub/about/>.

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- 4.63** On a practical note, Dr Janet Hunt, an Associate Professor at the Centre for Aboriginal Economic Research at the Australian National University, stated that RAPs encourage employment of Indigenous people and procurement from Indigenous businesses.<sup>187</sup> Dr Hunt suggested that RAPs could be used more effectively ‘... to encourage partnering with Indigenous organisations in joint ventures, or mentoring and capacity development activities for Indigenous organisations pursuing or wanting to pursue economic development activities.’<sup>188</sup>
- 4.64** Similarly, the Local Decision Making Regional Chairpersons Group felt ‘... that RAPs could be made more effective by expanding their focus to identify opportunities to mentor and partner with developing Aboriginal businesses.’<sup>189</sup> The Local Decision Making Regional Chairpersons Group further suggested that RAPs should be expanded to incorporated existing regional and community development plans:
- Many corporates acknowledge that they have a social responsibility to work with Aboriginal Community, to build capacity and develop opportunities for economic participation. RAPs could provide mechanisms to do this more effectively if they are linked to existing regional and community development plans including, Aboriginal Community Action Plans, LALC Community Land & Business Plans etc.<sup>190</sup>
- 4.65** Darkinjung Local Aboriginal Land Council likewise proposed that private sector organisations partner with local Aboriginal land councils when developing their RAPs.<sup>191</sup> Darkinjung suggested that this would encourage the organisation to consider how it could use some of its resources – both financial and non-financial – to support the local Aboriginal land council’s Community Land and Business Plan, and the wider community’s aspirations for economic development.<sup>192</sup>
- 4.66** The Law Society of New South Wales encouraged the use of RAPs and procurement policies as ways for the private sector to support Aboriginal businesses.<sup>193</sup>

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<sup>187</sup> Submission 3, Dr Janet Hunt, Associate Professor, Centre for Aboriginal Economic Research, Australian National University, pp 13-14.

<sup>188</sup> Submission 3, Dr Janet Hunt, Associate Professor, Centre for Aboriginal Economic Research, Australian National University, p 14.

<sup>189</sup> Submission 17, Local Decision Making Regional Chairpersons, p 10.

<sup>190</sup> Submission 17, Local Decision Making Regional Chairpersons, p 10.

<sup>191</sup> Submission 11, Darkinjung Local Aboriginal Land Council, p 13.

<sup>192</sup> Submission 11, Darkinjung Local Aboriginal Land Council, p 13.

<sup>193</sup> Submission 13, The Law Society of New South Wales, pp 14-15.

**Case study: Whitehaven Coal – Maules Creek Mine<sup>194</sup>**

Whitehaven Coal is on the path to becoming Australia's largest independent coal producer, producing 23 million tonnes of coal per annum, with 20 million this year. The committee visited Whitehaven's operation at the Maules Creek coal mine, which is located in the Gunnedah basin on Thursday 28 April 2016.

Whitehaven has implemented a Reconciliation Action Plan which focuses on a range of means to support local Aboriginal communities. Mr Peter Wilkinson, General Manager of Operations at Maules Creek Mine, told the committee that the RAP focuses on employment, education, training, health, cultural awareness, economic development and partnerships. The RAP is driven by the corporate team, management team and the site team, however all staff are responsible under it.

Maules Creek Mine employs about 360 full-time equivalent staff, plus additional contractors, and will provide employment for at least 30 years.

Whitehaven set the Maules Creek project a target of 10 per cent Aboriginal employment. Mr Wilkinson said this goal had been achieved from 'about day one'. Approximately 12-15 per cent of the current Maules Creek Mine workforce is Aboriginal.

Whitehaven has delivered a strategic Aboriginal employment policy that includes a combination of some very experienced staff, and other employees who were new to the industry – backed by a very strong training team. The company also offers a supported apprenticeship program for four individuals per year in a range of trades. One of those apprenticeships is a committed Indigenous position.

The mine has a dedicated Aboriginal Community Relations Officer who has assisted in bridging the communication gap with the local community and getting people interested in the mine. This has assisted in Whitehaven developing a diverse workforce that includes members of the local Aboriginal communities.

Mr Wilkinson explained the importance of Whitehaven's approach to Indigenous employment: 'That's what's great about Whitehaven. It's not about just showing a few Aboriginal faces on the staff - it's a really genuine program where opportunities are created for the Indigenous community but you still have to be qualified and have to earn the job'.

Whitehaven recognises that there are some significant challenges that new employees need to work through, including time away from family, pressure from family when they go home (including expectations for money) and managing income. Mr Darren Trindall, Plant Operator at the Maules Creek Mine, explained Whitehaven addresses these issues by ensuring that people are treated the same, but with tailored and flexible supports: 'We talk to them [new staff] about what we expect from them and what the company expects from them. We're making this commitment to you to give you a full time job to provide a better life for yourself and your family'.

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<sup>194</sup> Site visit report: Guyra/Tamworth, pp 3-4.

## Chapter 5 Building the capacity of Aboriginal organisations

Inquiry participants agreed that enhancing the capacity of Aboriginal organisations, including local Aboriginal land councils, through education and training, business development, effective governance and leadership could significantly assist the economic development of Aboriginal communities.

This chapter examines developing the capacity and capabilities of Aboriginal organisations including corporations, businesses and land councils. It considers stakeholders' concerns about barriers to capacity building including government funding and policy delivery models, compliance requirements, governance, staff and training. The chapter also details the importance of developing supportive environments and gives consideration to the significance of mentoring. Finally, it discusses Aboriginal entrepreneurship.

### Business ownership statistics

- 5.1** Stakeholders noted that the economic development of Aboriginal communities is unduly affected by the limited participation of Aboriginal people in business ownership. Key statistics in these areas are discussed below.
- 5.2** Evidence presented to the committee noted that historically there have been low rates of business ownership in Aboriginal communities.<sup>195</sup> The NSW Government advised that in 2011, 8 per cent of employed Aboriginal people were owner/managers or contributing family workers compared to 17 per cent of their non-Aboriginal counterparts. However, this 8 per cent represents an increase of 33 per cent in the number of Aboriginal employers from 2006.<sup>196</sup>
- 5.3** Also, Aboriginal enterprise in Australia has tripled over the last two decades. In 2011 there were 12,500 Aboriginal-owned businesses nationwide, compared to 4,600 in 1991.<sup>197</sup>

### Capacity building for Aboriginal organisations

- 5.4** Inquiry participants agreed that enhancing the capacity of Aboriginal organisations through education and training, business development, effective governance and leadership could significantly assist the economic development of Aboriginal communities.<sup>198</sup> However, stakeholders acknowledged that capacity building in Aboriginal organisations, particularly local

<sup>195</sup> Evidence, Mr Raghu Venkat, Senior Manager, Policy, Indigenous Business Australia, 26 February 2016, p 13.

<sup>196</sup> Submission 28, NSW Government, p 4.

<sup>197</sup> Submission 19, NSW Ombudsman, p 24.

<sup>198</sup> See for example, Submission 28, NSW Government, pp 17-18; Evidence, Mr Venkat, 26 February 2016, p 19; Submission 4, Nambucca Shire Council, p 1. Submission 15, Wollondilly Shire Council, p 2; Submission 18, The Centre for Independent Studies, p 3; Submission 19, NSW Ombudsman, pp 7-8; Submission 21, Just Reinvest NSW, p 5; Submission 30, The Greens, pp 7-8; Submission 31, Indigenous Land Corporation, p 1.

Aboriginal land councils can be ‘complex’<sup>199</sup> and suggested a number of reasons why this is so, including government funding and policy delivery models, compliance requirements, governance concerns, lack of adequately trained staff, and lack of support for Aboriginal entrepreneurs.

- 5.5** This chapter discusses capacity building across a range of Aboriginal organisations including those in the Aboriginal land council network which plays a key role in facilitating and supporting economic opportunities for Aboriginal people.

### **The local Aboriginal land council network**

- 5.6** The New South Wales Aboriginal Land Council is an independent statutory corporation constituted under the *Aboriginal Land Rights Act 1983*, and a local Aboriginal land council is a body corporate under the Act.<sup>200</sup>

- 5.7** Local Aboriginal land councils have a number of income streams including approximately \$130,000 per year from the NSW Aboriginal Land Council, government grants, donations, bequeathed estates and commercial land dealings.<sup>201</sup> Land councils may also operate businesses and have found success in various fields including:

- cultural heritage management and natural resource/environmental management
- ecotourism, art and craft, culture or bush tucker ventures
- training, employment, and social services.<sup>202</sup>

- 5.8** The land council network was seen by certain stakeholders as vital to enhancing social, cultural and economic outcomes for Aboriginal communities.<sup>203</sup> For example, the Office of the Registrar Aboriginal Land Rights Act 1983 (NSW) viewed the local Aboriginal land council network as a ‘ready-made gateway’ for the delivery of government services.<sup>204</sup>

- 5.9** However, inquiry participants observed that local Aboriginal land councils have, in the past, made poor business decisions,<sup>205</sup> with many being the subject of maladministration and fraud.<sup>206</sup> As with other Aboriginal organisations, the challenges faced by these organisations

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<sup>199</sup> Evidence, Dr Janet Hunt, Associate Professor, Centre for Aboriginal Economic Research, Australian National University, 26 February 2016, p 38.

<sup>200</sup> Other aspects of the *Aboriginal Land Rights Act 1983* are discussed in chapter 5.

<sup>201</sup> Aboriginal Affairs, *Aboriginal Land Councils*, <http://www.aboriginalaffairs.nsw.gov.au/alra/nsw-and-local-aboriginal-land-councils/>.

<sup>202</sup> Submission 3, Dr Janet Hunt, p 8 and pp 11-12.

<sup>203</sup> See for example, Submission 3, Dr Janet Hunt, p 7.

<sup>204</sup> Submission 36, Office of the Registrar Aboriginal Land Rights Act 1983 (NSW), p 12.

<sup>205</sup> See for example, Submission 11, Darkinjung Local Aboriginal Land Council, p 5.

<sup>206</sup> See for example, Independent Commission Against Corruption, Report on *investigation into the conduct of officers of the Wagonga Local Aboriginal Land Council and others (Operation Petrie)*, 2012 and Independent Commission Against Corruption, Report on *investigation into certain transactions of Koombatoo Local Aboriginal Land Council (Operation Unicorn)*, 2005; Independent Commission Against Corruption, *Aboriginal land councils – second report – conflicts of interest, theft, misuse of resources and recruitment issues*, 1999.

was argued to have been caused by a confluence of factors including models of government service delivery, lack of strong leadership, poor decision-making and financial management, historical community dynamics and siloed interests.<sup>207</sup>

- 5.10** The committee heard evidence of the impact of these experiences on communities, but also received evidence that local Aboriginal land councils were considered important within Aboriginal communities and were a key stakeholder in driving change. The committee heard that many local Aboriginal land councils had been striving to develop their capacity and skills to make better business decisions, and to address governance issues that had created an environment where fraud and misconduct were able to occur.
- 5.11** To support local Aboriginal land councils to focus on economic development the NSW Aboriginal Land Council (hereafter ‘NSWALC’) released its *Economic Development Policy* in March 2014. The policy outlines the broad strategies and initiatives that the organisation will pursue over five years to drive economic development for Aboriginal people across the state.<sup>208</sup> As part of this policy, the NSWALC has committed \$16 million to drive economic development towards wealth creation and wellbeing for Aboriginal people in New South Wales.<sup>209</sup> Mr Roy Ah-See, Chair of the NSWALC, explained these funds give local Aboriginal land councils an opportunity to seek low-interest loans to create businesses in the community.<sup>210</sup> The NSWALC told the committee that while it had not requested that the government ‘match’ the \$16 million it had set aside for business development programs, it considered that the:

NSW Government should support Aboriginal economic development in New South Wales. Genuine partnerships between government and the Aboriginal Land Rights network is needed to seek mutually beneficial economic and social outcomes.<sup>211</sup>

- 5.12** The *Economic Development Policy* also commits to expanding governance and financial literacy training for board members and staff, and to develop programs targeting business and entrepreneurship skills-gaps for board members, members and staff.<sup>212</sup>

### **Government funding and policy delivery models**

- 5.13** Certain stakeholders highlighted that the nature and funding arrangements of previous government policies did not build capacity within Aboriginal organisations.<sup>213</sup> For example, the Office of the Registrar Aboriginal Land Rights Act 1983 (NSW) noted that the short term,

<sup>207</sup> See for example, Submission 6, Greater Taree City Council, p 3; Submission 3, Dr Janet Hunt, p 11.

<sup>208</sup> NSWALC, *Economic Development Policy*, 2014, p 4.

<sup>209</sup> Submission 20, NSWALC, p 6.

<sup>210</sup> Evidence, Mr Roy Ah-See, Chair, NSWALC, Evidence, 26 February 2016, p 20.

<sup>211</sup> Answers to questions on notice, Mr Lesley Turner, Chief Executive Officer, NSWALC, 29 March 2016, p 2.

<sup>212</sup> NSWALC, *Economic Development Policy*, 2014, p 6.

<sup>213</sup> See for example, Submission 30, The Greens, p 6; Submission 4, Nambucca Shire Council, p 1.

small value funding nature of third party service delivery – of the kind provided to many Aboriginal organisations – did not support organisational capacity building.<sup>214</sup>

- 5.14** The Registrar added that ‘... the most successful capacity development approaches are systematic with a long-term outlook, flexible and suited to the circumstances or context, and address capacity at multiple levels.’<sup>215</sup>
- 5.15** The challenges associated with government funding and policy delivery models was exemplified by the evidence presented by Ms Renee Wykes, Acting Chief Executive Officer of the Murdi Paaki Regional Enterprise Corporation, who noted the difficulty of maintaining momentum for programs that are contingent on a 12-month funding cycle:
- ... with the 12-month program, by the time you get momentum you are at the end of the program and you are not sure what funding is available to move forward. But the other thing is you lose your resources. So you may spend six or 12 months building someone’s skill level and then because the contract is going they will be employed elsewhere. So you lose all of your skills and your knowledge at the same time.<sup>216</sup>
- 5.16** The Office of the Registrar Aboriginal Land Rights Act 1983 (NSW) also suggested the government be more proactive in encouraging the success of Aboriginal organisations, proposing it adopt a strategy supporting success in Aboriginal organisations who have demonstrated good governance, strong service delivery, value for money and better outcomes in their community.<sup>217</sup> Further, the Registrar advocated that the NSW Government adopt a strategy to expressly build capacity in areas of highest service need based on existing Aboriginal organisations including local Aboriginal land councils.<sup>218</sup>
- 5.17** Similarly, Mr Raghu Venkat, Senior Manager, Policy at Indigenous Business Australia, suggested that there should be ‘targeted, centralised investment’ in capacity development but was unsure whether the NSWALC or a Commonwealth agency should take on this responsibility.<sup>219</sup>
- 5.18** The committee is seeking submissions on how the NSW Government’s existing funding strategy could be reformed to stabilise and enhance capacity building, and whether there be targeted, centralised investment in capacity development for Aboriginal organisations.

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<sup>214</sup> Submission 36, Office of the Registrar Aboriginal Land Rights Act 1983 (NSW), p 11 quoting Auditor-General Audit Report No. 26 2011–12 *Performance Audit of Capacity Development in Indigenous Service Delivery*.

<sup>215</sup> Submission 36, Office of the Registrar Aboriginal Land Rights Act 1983 (NSW), p 11 quoting Auditor-General Audit Report No. 26 2011–12 *Performance Audit of Capacity Development in Indigenous Service Delivery*.

<sup>216</sup> Evidence, Ms Renee Wykes, Acting Chief Executive Officer, Murdi Paaki Regional Enterprise Corporation, 5 April 2016, p 16.

<sup>217</sup> Submission 36, Office of the Registrar Aboriginal Land Rights Act 1983 (NSW), p 13.

<sup>218</sup> Submission 36, Office of the Registrar Aboriginal Land Rights Act 1983 (NSW), p 13.

<sup>219</sup> Evidence, Mr Venkat, 26 February 2016, p 19.



### Question 9

Should there be targeted, centralised investment to stabilise and enhance capacity building and development for Aboriginal organisations? If so, what would this entail?

#### Compliance requirements

- 5.19** Other inquiry participants noted that there are significantly more compliance and reporting requirements imposed on Aboriginal organisations than non-Indigenous organisations.<sup>220</sup>
- 5.20** The Office of the Registrar Aboriginal Land Rights Act 1983 (NSW) called these requirements ‘onerous’, ‘administratively burdensome’, and said that they ‘create capacity issues’.<sup>221</sup> Likewise, Wonnarua Nation Aboriginal Corporation asserted that ‘unnecessary bureaucratic processes’ ‘demoralise and destroy community aspirations and hope.’<sup>222</sup>
- 5.21** The committee received evidence that the compliance requirements imposed on local Aboriginal land councils under *Aboriginal Land Rights Act 1983* are unduly burdensome. Mr Andrew Smith, Chief Executive Officer of the Worimi Local Aboriginal Land Council, told the committee that there are significantly more compliance requirements imposed on local Aboriginal land councils when compared to the financial compliance mechanisms under the *Corporations Act 2001*:
- ... under the *Corporations Act*, if we were strictly mainstream, there’s approximately seven or so key instruments of financial accountability and compliance that corporations have to meet. Under the *Aboriginal Land Rights Act* there’s something like 35 which unfortunately shows there’s still a little bit of that ‘mission management mentality’ and a distrust that says ‘you, don’t really know what you’re doing’ that still lingers...<sup>223</sup>
- 5.22** Likewise, the Darkinjung Local Aboriginal Land Council also expressed frustration at the compliance requirements imposed on Aboriginal organisations. Darkinjung noted that the Aboriginal Land Rights Regulation 2002 places a ‘significant burden’ on how local Aboriginal land councils invest their money.<sup>224</sup> Darkinjung called these requirements ‘discriminatory’ as other statutory bodies are not burdened with these types of conditions on investments.<sup>225</sup>
- 5.23** The committee is seeking submissions on whether the compliance requirements in *Aboriginal Land Rights Act 1983* are unduly burdensome on local Aboriginal land councils, and if so, would the compliance requirements applicable to corporations under the *Corporations Act 2001* be more appropriate.

<sup>220</sup> Site visit report: Singleton, Williamtown and Watanobbi, p 4; Submission 11, Darkinjung Local Aboriginal Land Council, p 5.

<sup>221</sup> Submission 36, Office of the Registrar Aboriginal Land Rights Act 1983 (NSW), p 10.

<sup>222</sup> Submission 14a, Wonnarua Nation Aboriginal Corporation, p 1.

<sup>223</sup> Site visit report: Singleton, Williamtown and Watanobbi, p 3.

<sup>224</sup> Submission 11, Darkinjung Local Aboriginal Land Council, p 5.

<sup>225</sup> Submission 11, Darkinjung Local Aboriginal Land Council, p 6.

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**Question 10**

What is your view on whether the compliance requirements in *Aboriginal Land Rights Act 1983* are unduly burdensome on local Aboriginal land councils?

Would the compliance requirements applicable to corporations under the *Corporations Act 2001* be more appropriate for local Aboriginal land councils?

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**Governance**

- 5.24** The committee received evidence that certain Aboriginal organisations were undermined by poor governance and oversight.<sup>226</sup> Dr Hunt highlighted findings of the Indigenous Community Governance Project which concluded that there are a number of significant impediments to good governance for Indigenous organisations including:
- lack of autonomy
  - insufficient and inconsistent resources and funding conditions
  - imposition of culturally illegitimate processes.<sup>227</sup>
- 5.25** Dr Hunt contended ‘the organisations which are succeeding are doing so despite these constraints through their own determination, persistence and often by use of their culturally legitimate networked arrangements to support themselves.’<sup>228</sup> Dr Hunt believed that more Aboriginal organisations could be successful if the government and other bodies provided support.<sup>229</sup>
- 5.26** Due to the significant role the Aboriginal land council network plays, inquiry participants, such as the Indigenous Land Corporation, believed that building the capacity of these organisations, particularly their governance structures and business skills, is crucial.<sup>230</sup> However, Darkinjung Local Aboriginal Land Council acknowledged that this process would be a ‘significant challenge’.<sup>231</sup>
- 5.27** Ms Debbie Barwick, Chairperson of the NSW Indigenous Chamber of Commerce, First Australians Chamber of Commerce and Industry, was similarly concerned noting ‘... what you find with a lot of the land councils is that not necessarily skills-based boards are being elected.

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<sup>226</sup> See for example, Submission 6, Greater Taree City Council, p 3; Submission 9, Mr Owen Trembath, p 8.

<sup>227</sup> Submission 3, Dr Janet Hunt, Associate Professor, Centre for Aboriginal Economic Research, Australian National University, p 5.

<sup>228</sup> Submission 3, Dr Janet Hunt, Associate Professor, Centre for Aboriginal Economic Research, Australian National University, p 5.

<sup>229</sup> Submission 3, Dr Janet Hunt, Associate Professor, Centre for Aboriginal Economic Research, Australian National University, pp 5-6.

<sup>230</sup> Submission 31, Indigenous Land Corporation, p 1.

<sup>231</sup> Submission 11, Darkinjung Local Aboriginal Land Council, p 8.

They are community people trying their best to create commerce and economic opportunity but they have not actually had the business experience.<sup>232</sup>

**5.28** The provision of housing is a fundamental task of most, if not all local Aboriginal land councils.<sup>233</sup> For example, the Dubbo Local Aboriginal Land Council told the committee that it is collects rent and has social housing on its land.<sup>234</sup> The committee received some evidence on conflict of interest issues concerning local Aboriginal land council board members being both the manager and the tenant of housing on council property.

**5.29** The governance of the Aboriginal land council network was considered as part of the Aboriginal Land Rights Act Review 2012. Following extensive consultation, a number of key amendments were made to the Act in regards to governance structures of these organisations, including:

- allowing the chief executive officer of a local Aboriginal land council to declare a member ‘inactive’ if they have not attended six consecutive meetings. Inactive members are not counted for the purposes of determining quorum for a Local Aboriginal land council meeting
- increasing the term of office of local Aboriginal land council boards from two years to four years
- providing a Code of Conduct for local Aboriginal land council members
- requiring local Aboriginal land council’s to provide their members with quarterly updates on activities.<sup>235</sup>

**5.30** The committee was advised that the Independent Commission Against Corruption is currently undertaking a project examining matters that affect the integrity of local Aboriginal land council governance:

The Independent Commission Against Corruption (ICAC) Corruption Prevention Division is currently researching matters that affect the integrity of LALC governance. The goal is to produce a resource that may assist the Land Council Network to continue to work effectively for communities into the future.<sup>236</sup>

**5.31** The committee is seeking submissions on what training or other services could be provided to enhance the governance capacity of Aboriginal organisations, and who should provide these services. The committee is also seeking feedback on potential conflict of interest concerns regarding local Aboriginal land council board members being both the manager and the tenant of housing on council property.

<sup>232</sup> Evidence, Ms Debbie Barwick, Chairperson of the NSW Indigenous Chamber of Commerce, First Australians Chamber of Commerce and Industry, 26 February 2016, p 44.

<sup>233</sup> Submission 9, Mr Owen Trembath, p 3.

<sup>234</sup> Evidence, Mr Darren Toomey, Chief Executive Officer, Dubbo Local Aboriginal Land Council, 5 April 2015, p 3.

<sup>235</sup> NSWALC, *Aboriginal Land Rights Amendment Act 2014*, Factsheet, (2015), p 2, <http://www.alc.org.au/media/95091/150123%20Aboriginal%20Land%20Rights%20Amendments%20Fact%20Sheet%20final.pdf>.

<sup>236</sup> Correspondence from Mr Dominic Wong, Independent Commission Against Corruption, to Senior Council Officer, 6 June 2016.

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**Question 11**

What training or other services could be provided to enhance the governance capacity of Aboriginal organisations? Who should provide the training and other services?

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**Question 12**

What can be done about the potential conflicts of interest when local Aboriginal land council board members are both the managers and the tenants of housing on land council property?

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**Staff and training**

- 5.32** As discussed in chapter 4, Aboriginal people do not participate in school and vocational education and training at the same rate as non-Aboriginal people. Dr Hunt explained how a lack of adequately trained staff can be a significant constraint for Aboriginal organisations particularly outside of urban and coastal areas:

One of the constraints many LALCs and other Aboriginal organisations face is their lack of working capital ... Nor do they often have more than one or two staff, so people with the time and capacities necessary to develop major community social enterprises are often not present. Those LALCs and other Aboriginal organisations in the urban and coastal areas are more likely to be able to attract capable CEOs with the right skills and access external expertise to assist them than smaller LALCs in the more remote parts of the state. CEOs with sufficient capacity are critical to success.<sup>237</sup>

- 5.33** The committee heard that certain local Aboriginal land councils have been working to increase the capacity of their members, boards and staff by providing training and development opportunities.<sup>238</sup> For example, Mr Les Kosez, Acting Chief Executive Officer of the Eden Local Aboriginal Land Council, said that the land council has developed strong training programs. However, the organisation has been unable to retain employees because of the inability/insecurity of the jobs available:

[Training] is something that the land council does well. So, our biggest problem is that we can't offer sustainable employment so what happens generally is that we invest a lot of time into Aboriginal community members and give them a wide range of experience and skills ... and we lose them to mainstream because they can provide sustainable employment... that's been one of our problems for a number of years now.<sup>239</sup>

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<sup>237</sup> Submission 3, Dr Janet Hunt, pp 12-13.

<sup>238</sup> See for example, Submission 9, Mr Owen Trembath, p 8; Evidence, Mr Toomey, 5 April 2015, p 3; Submission 3, Dr Janet Hunt, p 7.

<sup>239</sup> Site visit report: Eden/Narooma, p 3.

**Case study: Eden Local Aboriginal Land Council – Bundian Way project<sup>240</sup>**

The Bundian Way is an ancient 360km pathway that was used by Aboriginal people to travel between the coast at Twofold Bay in Eden, and the Snowy Mountains. Local Aboriginal people later showed the path to European settlers, and parts of it later became first roads between the coast and the mountains. It is listed on the NSW State Heritage Register for its significant in Aboriginal and European history.

The Eden Local Aboriginal Land Council is overseeing the Bundian Way project and ‘aims to oversee the heritage protected route and its use for educational/tourism purposes including better recognition of its cultural values. An overall aim is to create Aboriginal jobs.’ The committee walked part of the Bundian Way with representatives of the Eden LALC and Twofold Aboriginal Corporation on 25 May 2016.

The Bundian Way project represents a significant opportunity for Aboriginal communities in the southern parts of New South Wales, however Eden LALC indicated that without financial support, the project would stall. Mr Les Kosez, Acting CEO of the land council said:

‘I think if we can establish this enterprise, it’s not only just cultural tourism that’ll provide employment opportunities; it will actually provide opportunities across a number of different sectors and also contribute to growth in other sectors by increasing visitation rates we’re actually contributing to the hotels and motels in town ... contributing to increased activity in different retailers in town ... we really ... believe that we are not only develop something that’ll be great for us as a community but also contribute to the regional community.’

‘There is a market there, and a growth market there. And if we were to begin promoting ourselves I believe we could have an even greater market. Problem is ... that capital investment. It’s the investment required in establishing that business, those capabilities and skills required to expedite the development of an enterprise.’

A key issue raised by the land council was the inflexibility of funding provided by government to the council, which restricted the manner in which it could be utilised. Mr Kosez said:

‘... even with this latest commitment [of \$700,000] ... it’s only for infrastructure and capital items, we’re not allowed use any of it for wages. So the unfortunate reality of it is if we do it as requested we’ll have a pile of fantastic materials and really flash toys, but nobody to do it.’

Eden LALC Board member, Mr Ben Cruse, told the committee ‘It’s like you can buy a lift, but you can’t buy a contractor to put it in.’

Mr Kosez told the committee that some initial financial assistance and support could offer the boost needed to enable the land council to ultimately become sustainable on its own: ‘It’s not like we’re expecting government to hold our hand forever. We believe that if we can get that assistance in those start up years – we want to get away from the grant merry-go-round, we want to be sustainable as an organisation – we want to be self-sustainable as a community...’

<sup>240</sup> Site visit report: Eden/Narooma, pp 1-4; Eden Local Aboriginal Land Council, *The Bundian Way Home*, 6 March 2015, <http://www.bundianway.com.au/index.htm>.

- 5.34** Inquiry participants advocated more could be done to build capacity in these organisations. For example, Mr Darren Toomey, Chief Executive Officer of the Dubbo Local Aboriginal Land Council, suggested that local Aboriginal land council board members should undertake a Certificate IV in business to improve their understanding business practices including governance procedures. Mr Toomey remarked that requiring board members to have this qualification was about ‘changing the culture of the land council’ and ‘lifting the bar a bit’.<sup>241</sup>
- 5.35** Likewise, Mr Owen Trembath, Chief Executive Officer of the Jubullum Local Aboriginal Land Council, suggested that experiential training should be available for chairs and board members about their roles, and that local chief executive officers, employees and members needed assistance to develop policies and procedures, project management and reporting processes.<sup>242</sup>
- 5.36** The committee received evidence about the successful staffing arrangements at Murdi Paaki Regional Enterprise Corporation. Ms Wykes explained that the organisation has an average of 128 employees on its payroll each fortnight, of which 74 per cent of the workforce identifies as being Aboriginal.<sup>243</sup> Murdi Paaki noted that 94 per cent of its employees are engaged in accredited training such as employment services, community development, case management, governance programs.<sup>244</sup>
- 5.37** Ms Wykes acknowledged that Murdi Paaki initially ‘grew too fast’ and ‘did not have the capacity’ to deliver certain services.<sup>245</sup> However, following consultation with its community about which services to prioritise, Murdi Paaki is now a successful organisation.<sup>246</sup> Further, Ms Wykes detailed the resourcing capacity at Murdi Paaki including access to consultants:

We have administrative support. We have one administration officer and we have three finance officers. We struggle around HR and to find that resource we engage organisations like KPMG to work with us to build our capacity but also to provide advice where we need to make some big decisions, and we also work with Ashurst who do some pro bono stuff with us around governance and those things.<sup>247</sup>

### **Supportive environment**

- 5.38** Inquiry participants agreed that a relationship-based approach to capacity building is essential for Aboriginal organisations. The NSW Ombudsman advised that this approach uses established relationships, such as mentoring, coaching, secondments or institutional partnerships, to build capacity rather than one-off training courses, short term interventions or stand-alone written materials.<sup>248</sup> The NSW Ombudsman explained that relationship-based models allow for more tailored, practical advice:

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<sup>241</sup> Evidence, Mr Toomey, 5 April 2015, p 10.

<sup>242</sup> Submission 9, Mr Owen Trembath, p 8.

<sup>243</sup> Evidence, Ms Wykes, 5 April 2016, p 11.

<sup>244</sup> Submission 35, Murdi Paaki Regional Enterprise Corporation, p 4.

<sup>245</sup> Evidence, Ms Wykes, 5 April 2016, p 11.

<sup>246</sup> Evidence, Ms Wykes, 5 April 2016, pp 11-12.

<sup>247</sup> Evidence, Ms Wykes, 5 April 2016, p 15.

<sup>248</sup> Submission 19, NSW Ombudsman, p 25.

Relationship-based models are generally longer term, involve two-way learning between the parties, are tailored to the individual needs of each participant, and enable capacity building to take place via practical, real-world application. They are not limited to improving the skills of individuals but can also incorporate group and institutional capacity building.<sup>249</sup>

- 5.39** Further, the Ombudsman noted that to ensure effective capacity building, both parties should be competent in cross-cultural communication and knowledge sharing.<sup>250</sup>
- 5.40** A number of stakeholders highlighted the importance of facilitating cooperative environments to ensure the success of capacity building programs.<sup>251</sup> Dr Hunt explained that it is essential to ensure the ‘enabling environment’ – the policy, legislation and procedure establishing an organisation – is supportive of building capacity.<sup>252</sup>
- 5.41** Other inquiry participants, including Indigenous Business Australia and Paradigm Resources, discussed the need to find the right mix between the government, private sector and Aboriginal community members to facilitate capacity development.<sup>253</sup>
- 5.42** Proposals to specifically improve the capacity of local Aboriginal land councils include:
- access to professional financial and legal advisers<sup>254</sup>
  - access to professional expertise in areas such as business management marketing and promotions<sup>255</sup>
  - access to business expertise and experience within other local Aboriginal land councils.<sup>256</sup>

### *Mentoring*

- 5.43** Various stakeholders discussed the importance of mentoring.<sup>257</sup> State Training Services defines mentoring as ‘... a key strategy for guiding and developing staff to succeed and excel in their role through the sharing of skills, knowledge and experience.’<sup>258</sup>
- 5.44** Inquiry participants felt that mentoring was critical throughout every stage of an Aboriginal person’s life and could enhance business acumen and success. For example Shoalhaven City

<sup>249</sup> Submission 19, NSW Ombudsman, p 25.

<sup>250</sup> Submission 19, NSW Ombudsman, p 25. Also see, Submission 30, The Greens, p 13.

<sup>251</sup> See for example, Submission 2, Tamworth Regional Council, p 22.

<sup>252</sup> Submission 3, Dr Janet Hunt, p 16.

<sup>253</sup> Evidence, Mr Venkat, 26 February 2016, p 19; Submission 27, Paradigm Resources, p 2.

<sup>254</sup> Evidence, Dr Hunt, 26 February 2016, p 38.

<sup>255</sup> Submission 15, Wollondilly Shire Council, p 2.

<sup>256</sup> Submission 15, Wollondilly Shire Council, p 2.

<sup>257</sup> See for example, Submission 16, Shoalhaven City Council, p 4; Submission 2, Tamworth Regional Council, p 22; Evidence, Ms Barwick, 26 February 2016, p 42.

<sup>258</sup> Education and Communities, State Training Services, *The Way Ahead for Aboriginal People – Mentoring*, p 1.

Council observed '[m]entoring at all stages of the education/work/life experience will build confidence and a capacity to take on and manage entrepreneurial risk.'<sup>259</sup>

- 5.45** As the focus of this inquiry is economic development, a great deal of evidence centred on mentoring to build enterprise capacity and success. Mr Shane Phillips, Chief Executive Officer of Tribal Warrior, argued that Aboriginal entrepreneurs could be successful if they had access to business networks and mentors:

There are a lot of great aspiring entrepreneurs in the community. It is now just a matter of connecting them up, teaching them a business and mentoring them in business. It is almost a niche product in that you have someone establishing something that helps people really get to the nitty-gritty stuff—everything from learning about how your taxes are run, human resources [HR] and your systems. There are a lot of great start-up community organisations who start businesses, but these businesses rely on individuals and not these systems.<sup>260</sup>

- 5.46** Similarly, Ms Barwick, described mentoring as 'what means success or failure with the businesses that we work with.'<sup>261</sup> Ms Barwick explained how the NSW Indigenous Chamber of Commerce mentors business owners:

We have things that come into our office every day. We might have a business that has been quite successful for six years but then all of a sudden there has been a suicide in the immediate family or there has been an incarceration. Because of the Indigenous business professionals that are within the chamber environment and because of our contacts with community and the Aboriginal medical services and all of the different programs we are able to wrap them in the support that they need to work through that whilst we keep the business moving forward, because the last thing that we need to see happen is those businesses fall over and people lose jobs.<sup>262</sup>

- 5.47** Banbai Enterprises told the committee that it is using a succession planning model to expand its workforce. This model includes mentoring to teach younger staff members the skills to undertake the manager and head ranger positions, to expand its workforce. Also, Banbai is working with an external consultant on a development plan to support the organisation's growth and to maximise opportunities.<sup>263</sup>

- 5.48** Stakeholders encouraged the development of formal mentoring programs that link Aboriginal entrepreneurs and organisations to industry experts.<sup>264</sup> Darkinjung Local Aboriginal Land Council noted the operation of the Jawun program which provides opportunities for partnerships between the private sector, government and Aboriginal organisations:

In addition to the financial capital needed there is also a significant challenge for Aboriginal land owners to attract human capital to assist in increasing capability and

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<sup>259</sup> Submission 16, Shoalhaven City Council, p 4.

<sup>260</sup> Evidence, Shane Phillips, Chief Executive Officer, Tribal Warrior, Evidence, 26 February 2016, p 28.

<sup>261</sup> Evidence, Ms Barwick, 26 February 2016, p 42.

<sup>262</sup> Evidence, Ms Barwick, 26 February 2016, p 42.

<sup>263</sup> Site visit report: Guyra/Tamworth, p 2.

<sup>264</sup> Submission 20, NSWALC, p 10; Submission 2, Tamworth Regional Council, p 22; Submission 34, Banbai Enterprise Development Aboriginal Corporation, p 1.



organisational capacity. A successful program that has been operating for more than fifteen years is the Jawun program, which is a tripartite partnership between corporates, governments and Aboriginal organisations ...<sup>265</sup>

- 5.49** Darkinjung has worked with Jawun for four years and praised the contribution this partnership has provided to the development and growth of staff, the organisation and the community:

Darkinjung has engaged with Jawun for the past four years and to date the partnership has contributed significant investment into the region in capability and capacity ...

This relationship and experience has been invaluable to the development and growth of our people, organisations and community. The partnership engages all parties in a mutual exchange of ideas, and introduces corporate secondees to the Aboriginal communities.

The Jawun program has literally fast tracked our community's aspiration and plans by up to three years, and as further created networks with the corporate sector.

The exposure of Aboriginal people and communities to the corporate sector has been beneficial in increasing organisational and individual capability and capacity.<sup>266</sup>

- 5.50** Alternatively, Mr Craig North, Executive Director of the Indigenous Land Corporation, suggested expanding the capacity of the National Centre of Indigenous Excellence to include mentoring services.<sup>267</sup>

- 5.51** In addition to mentoring, inquiry participants discussed the significance of role models in Aboriginal communities. Ms Barwick noted the important role parents play in instilling a work ethic in their children:

One of the most amazing outcomes from the work that we are involved in is the role modelling that comes from seeing mum or dad run a successful business and the pride that is instilled within the children to see mum and dad not only going out to work every day but really taking on business and being successful.<sup>268</sup>

- 5.52** Other inquiry participants, including the NSW Ombudsman and Shoalhaven City Council, noted that Aboriginal entrepreneurs, business leaders and enterprises are important role models for Aboriginal people and communities, and are well placed to advise government on the impediments to Aboriginal people starting and maintaining businesses.<sup>269</sup>

- 5.53** The committee is seeking submissions on what action the NSW Government can take to improve the capacity of local Aboriginal land councils and other Aboriginal corporations. In the committee's view building business capacity incorporates a number of stages, including business planning, delivery, operation and evaluation.

<sup>265</sup> Submission 11, Darkinjung Local Aboriginal Land Council, p 8.

<sup>266</sup> Submission 11, Darkinjung Local Aboriginal Land Council, p 13.

<sup>267</sup> Evidence, Mr Craig North, Executive Director, Indigenous Land Corporation, 26 February 2016, p 25.

<sup>268</sup> Evidence, Ms Barwick, 26 February 2016, p 43.

<sup>269</sup> Submission 19, NSW Ombudsman, p 24; Submission 16, Shoalhaven City Council, p 4.

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**Question 13**

What action can the NSW Government take to improve the business and financial capacity of local Aboriginal land councils and other Aboriginal corporations?

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**Entrepreneurship**

- 5.54** The committee received evidence that Aboriginal entrepreneurs often found it difficult to start and maintain successful businesses with the NSWALC describing this group as ‘forgotten, and often rendered invisible.’<sup>270</sup> Stakeholders suggested that it was not a lack of business ideas that stymied entrepreneurs but rather a lack of government support, business capacity and funding.
- 5.55** As with any business, a range of factors determine the fate of an Aboriginal enterprise. Dr Hunt attributed the success of certain Aboriginal businesses to a host of factors including:
- good Aboriginal leadership, governance and organisational development
  - building on assets/ strengths of the community and individuals
  - strong emphasis on human development, training, and instilling confidence
  - diversification of funding sources and ability to tap more long term and flexible funding
  - partnering with private sector or drawing on private sector support
  - building on land assets
  - good support for appropriate and flexibly-delivered training from TAFE NSW
  - sheer grit and determination.<sup>271</sup>
- 5.56** Following on, Greater Taree City Council suggested certain actions should be considered when establishing sustainable Aboriginal enterprises:
- consulting with traditional custodians/elders when exploring business opportunities
  - engaging local Aboriginal people in the early stages of planning and developing projects
  - addressing barriers to employment such as criminal records linked to juvenile incarceration
  - enhancing legal protection for traditional cultural knowledge holders to guard against exploitation
  - providing long term funding to create project continuity.<sup>272</sup>

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<sup>270</sup> Submission 20, NSWALC, p 10.

<sup>271</sup> Submission 3, Dr Janet Hunt, p 12. Also see Submission 36, Office of the Registrar Aboriginal Land Rights Act 1983 (NSW), p 12 quoting Urbis, *Enabling Prosperity: Success factors for Indigenous Economic Development*, 2014.

<sup>272</sup> Submission 6, Greater Taree City Council, p 3.

- 5.57** In respect to enterprise development for land owners, the Indigenous Land Corporation suggested that this group would benefit greatly from access to initial commercial feasibility assessments, such as ‘business support to test the commercial viability of business ideas; business planning; business coaching and mentoring; and support with working capital, all critical in the start-up phase.’<sup>273</sup>
- 5.58** The Law Society of New South Wales advised that pursuant to its Reconciliation Action Plan it is partnering with the NSW Indigenous Chamber of Commerce to develop an Indigenous Enterprise Legal Assistance Scheme.<sup>274</sup> The Law Society explained this is a ‘pragmatic initiative’ to assist in the establishment and sustainability of Aboriginal-owned enterprises in the establishment phase.<sup>275</sup>
- 5.59** The Law Society of New South Wales proposed the establishment of an enterprise assistance centre for Aboriginal-owned businesses which would have a range of features catering to their target audience including:
- (a) an accessible entry point for all support and assistance available to Aboriginal-owned enterprises from government, the private sector and organisations such as Indigenous Business Australia;
  - (b) an assigned officer to assist the enterprise to identify and obtain the assistance it requires and to assist with regulatory compliance during the establishment phase of the enterprise;
  - (c) the centre should work with existing service providers to leverage support already available;
  - (d) all services should be provided through the centre (utilising technology where necessary) so clients of the centre do not have to attend multiple locations to receive the assistance they need at the same time they are trying to establish their enterprise;
  - (e) development of the centre in consultation with Aboriginal people who are establishing or have recently established their own businesses;
  - (f) culturally appropriate services both at the centre and by the service providers a person is connected with through the centre;
  - (g) local presence in communities;
  - (h) opening hours compatible with a person starting a business; that is, the centre should be open in the evenings and on Saturdays.
  - (i) research capacity to identify gaps in the availability of assistance for Aboriginal-owned enterprises and to identify what supports and hinders the development of sustainable Aboriginal-owned enterprises.<sup>276</sup>

<sup>273</sup> Submission 31, Indigenous Land Council, p 11.

<sup>274</sup> Submission 13, The Law Society of New South Wales, p 14.

<sup>275</sup> Submission 13, The Law Society of New South Wales, p 14.

<sup>276</sup> Submission 13, The Law Society of New South Wales, pp 15-16.

**5.60** The committee visited two Aboriginal enterprises – the Wonnarua Nation Aboriginal Corporation and Banbai Enterprises Development Aboriginal Corporation.

**Case study: Wonnarua Nation Aboriginal Corporation<sup>277</sup>**

Wonnarua Nation Aboriginal Corporation works to nurture the history and culture of the Wonnarua people, improve the health and education of its members, and manages investments to sustain its work.

The committee met with members of the Wonnarua Nation Aboriginal Corporation during a site visit on Monday 14 March 2016.

Wonnarua Nation Aboriginal Corporation operates six hubs, provided for by the OCHRE framework. The hubs seek to use traditionally held land to enhance cultural identity and commercial outcomes. The corporation has fostered relationships with key stakeholders to establish and operate the hubs. For example, Mr Laurie Perry, Chief Executive Officer of Wonnarua Nation Aboriginal Corporation, told the committee about how he had utilised different processes and worked with various stakeholders within the land rights system to secure the Redournberry Hill hub

Wonnarua Nation Aboriginal Corporation use offsets, negotiated with private companies or government for loss or destruction of cultural land and heritage, to access capital.



*Members of the Standing Committee on State Development with representatives of the Wonnarua Nation Aboriginal Corporation in March 2016.*

<sup>277</sup> Submission 14, Wonnarua Nation Aboriginal Corporation, Submission 14a, Wonnarua Nation Aboriginal Corporation; Site visit report: Singleton, Williamtown and Watanobbi, pp 1-2.

**Case study: Banbai Enterprises Development Aboriginal Corporation<sup>278</sup>**

Banbai Enterprises Development Aboriginal Corporation supports the economic and social development of Banbai people on their own land.

The committee visited the Wattleridge Indigenous Protected Area on 27 April 2016 and met with staff.

In 1998, the Indigenous Land Corporation purchased 6000 ha of property with the intention of having Banbai Land Enterprises manage it. The area was designated an Indigenous Protected Area in 2001 and is known as the Wattleridge Indigenous Protected Area. The aim is to make the Wattleridge Indigenous Protected Area self-sufficient and able to provide economic opportunities for the Traditional Owners.

The Wattleridge site, which borders a national park, is used for various economic and social development purposes. It hosts a learning centre and provides development opportunities for Aboriginal people through various programs including as rangers and other staff to support land management, eco-tourism and agistment. Mr Tremane Patterson, Head Supervisor, told the committee that the best thing about being out on Wattleridge was 'being connected to the country.' Mr Patterson went on to say they bring children of all ages, from preschoolers to high schoolers to the site: 'I reckon a lot of younger fellas have lost their connection and it's good to get schools out here, they're starting to ... learn a bit more about it and just to see them wanting more to come out and ... that's really good for me to see. Not only Aboriginal people but non-indigenous people too, you know what kid don't like the bush!'

The committee heard that Banbai has the potential to support other Aboriginal enterprises managing Indigenous Protected Area. Ms Tanya Elones, Manager of Banbai Enterprise Development Aboriginal Corporation, said 'There's 5 IPAs [Indigenous Protected Areas] in this area... because we've been going since 2001, and their only sort of recent – 5 years, they don't know a lot about fencing, and they don't have enough people to get TAFE to come in to teach... so that's another opportunity, [for us] to go into other Aboriginal organisations who run similar programs to get a fee for service as well [in areas like feral animal management and fencing]... so there's opportunities there it's just tapping into them at the right time'.

<sup>278</sup> Site visit report: Guyra/Tamworth, 27-28 April 2016, pp 1-2.



*Members of the Standing Committee on State Development with representatives of the Banbai Enterprises Development Aboriginal Corporation in April 2016.*

- 5.61** The committee was advised that the NSW Government delivers programs and services to support Aboriginal entrepreneurship including the Aboriginal Enterprise Development Officer Program, a free program for Aboriginal people considering starting up their own business or expanding their current business.<sup>279</sup> The program funds non-profit, community based sponsor organisations to recruit Aboriginal Business Advisors to provide advice, support and referral services to entrepreneurs.<sup>280</sup> Aboriginal Business Advisors are also expected to work with schools and Opportunity Hubs to develop small business enterprise development pathways for Aboriginal students.<sup>281</sup>
- 5.62** Mr Gary Barnes, Deputy Secretary of the NSW Department of Industry, explained that last financial year approximately 1,100 Aboriginal people accessed the Aboriginal Enterprise Development Officer Program which helps ‘scaffold’ the development of their businesses:

If a young Aboriginal person wants to start a business then they have access to Aboriginal enterprise development officers who will help to scaffold the experience that they need, because getting through the hoops—and there are always hoops—is a chore. In the last financial year about 1,100 people accessed that service ... That translates into people doing further training in how to set up their own business. It then translates into them establishing their own business. There is scaffolded support all the way through.<sup>282</sup>

<sup>279</sup> Submission 28, NSW Government, p 20.

<sup>280</sup> NSW Department of Industry, *Aboriginal Enterprise Development Officer (AEDO) Program*, 8 April 2016, [http://www.training.nsw.gov.au/programs\\_services/funded\\_other/acp/aedop.html](http://www.training.nsw.gov.au/programs_services/funded_other/acp/aedop.html).

<sup>281</sup> Submission 19, NSW Ombudsman, p 25.

<sup>282</sup> Evidence, Mr Gary Barnes, Deputy Secretary, NSW Department of Industry, 26 February 2016, p 15.

- 5.63** Murdi Paaki Regional Enterprise Corporation participates in the Aboriginal Enterprise Development Officer Program. The corporation noted a lack of ‘wrap around services’ to support the establishment of Indigenous enterprises such as initial feasibility assessments, business planning, mentoring and access to capital, marketing, training and infrastructure.<sup>283</sup>

**Case study: Murdi Paaki Regional Enterprise Corporation Ltd<sup>284</sup>**

Murdi Paaki Regional Enterprise Corporation Ltd is a not-for-profit organisation governed by an Aboriginal board of directors that delivers enterprise, training and community services to Indigenous communities across western New South Wales.

The committee received evidence from Ms Rene Wykes, Acting Chief Executive Officer at Murdi Paaki Regional Enterprise Corporation, during a public hearing in Dubbo on 5 April 2016.

Murdi Paaki provides support services – either funded by the commonwealth or state government – to Indigenous clients. One of Murdi Paaki’s organisational objectives is to nurture and mentor Aboriginal youth through training, leadership and career pathways.

Currently, Murdi Paaki is developing business plans and providing mentoring support for potential social enterprises including a laundry/dry cleaning service, café, motel and pre-packaged soft furnishing kits. If successful, these enterprises will develop into sustainable commercial businesses, increase employment opportunities, and build capacity within the community.

To ensure the success of these enterprises Murdi Paaki is partnering with the community to encourage engagement, participation and cultural appropriateness.

- 5.64** Stakeholders advocated that the NSW Government should provide more support for Aboriginal entrepreneurs. For example, the Office of the Registrar Aboriginal Land Rights Act 1983 (NSW) and the NSWALC proposed the government develop a strategy to facilitate the success of Aboriginal entrepreneurs.<sup>285</sup> Darkinjung Local Aboriginal Land Council suggested the government undertake a range of actions to support Aboriginal enterprises such as:

- waiving payroll tax on Aboriginal employers and employees from remote and rural areas for first three years after coming off welfare
- developing tax incentives for Aboriginal businesses
- offering tax concessions for Aboriginal start-up businesses
- offering targeted government procurement in remote and rural regions to Aboriginal businesses.

<sup>283</sup> Submission 35, Murdi Paaki Regional Enterprise Corporation Ltd, p 5.

<sup>284</sup> Submission 35, Murdi Paaki Regional Enterprise Corporation Ltd; Evidence, Ms Wykes, 5 April 2016, p 11, p 13.

<sup>285</sup> Submission 36, Office of the Registrar Aboriginal Land Rights Act 1983 (NSW), p 13 and Submission 20, NSWALC, p 10.

- operating family financial literacy and planning programs/workshops for land council members.<sup>286</sup>

### *Support for entrepreneurs*

- 5.65** Aboriginal businesses can receive support from the NSW Government, the NSW Indigenous Chamber of Commerce, Indigenous Business Australia, the Indigenous Land Corporation and the Commonwealth Government.
- 5.66** NSW Government initiatives to support Aboriginal entrepreneurship include signing a Memorandum of Understanding with the New South Wales Indigenous Chamber of Commerce in July 2014 which commits the organisations to work together to develop Aboriginal businesses.<sup>287</sup> Additionally, certain programs, such as Small Biz Connect offered through the Office of the NSW Small Business Commissioner, are available to help all people move into small businesses.<sup>288</sup>
- 5.67** The NSW Indigenous Chamber of Commerce is the peak body representing Indigenous businesses across the state. The chamber fosters the development of businesses and provides a network of support and contacts for Indigenous entrepreneurs. Various stakeholders praised the chamber's work.<sup>289</sup>

#### **Case study: NSW Indigenous Chamber of Commerce<sup>290</sup>**

The NSW Indigenous Chamber of Commerce is the peak body representing Indigenous businesses in New South Wales, and provides a forum for members to connect with other Indigenous business owners.

The committee received evidence from the Chair of the NSW Indigenous Chamber of Commerce, Ms Debbie Barwick, at a public hearing on 26 February 2016.

The chamber does not receive any government funding and is a not-for-profit organisation. In 2014 the chamber signed a Memorandum of Understanding with the NSW Government which recognised that the chamber's work is critical to supporting economic development in Indigenous communities across New South Wales.

The chamber has approximately 248 members across New South Wales. Ms Barwick explained that the '... business range from your mum and dad businesses, micro businesses, all the way through to businesses that are starting to trade nationally and globally. The ones on the bigger end of the scale are in the minority. Most of the businesses are still very small businesses.'

<sup>286</sup> Also see Submission 11, Darkinjung Local Aboriginal Land Council, p 14.

<sup>287</sup> Submission 28, NSW Government, p 10.

<sup>288</sup> Evidence, Mr Barnes, 26 February 2016, p 16.

<sup>289</sup> See for example, Submission 29, NSW Minerals Council, p 3; Submission 22, Professor Dennis Foley, p 9.

<sup>290</sup> Evidence, Ms Barwick, 26 February 2016, pp 42-43 and p 45 and NSW Indigenous Chamber of Commerce, *About the NSW Indigenous Chamber of Commerce*, 2015, <https://nswicc.com.au/about-us>.



The chamber works closely with Indigenous entrepreneurs to scaffold the development of their businesses and unlock their leadership potential. Following initial discussions, and depending on what the business owner is hoping to achieve, the chamber will determine what programs the entrepreneur needs and may facilitate access to vocational education and training. The chamber exposes the entrepreneur to a network of other businesses and provides mentoring support throughout their experience.

The chamber also provides an incubation space for new businesses within its own offices. This ensures entrepreneurs are not working in isolation; can talk to people; have access to the internet; and have somewhere to meet with potential clients.

- 5.68** Indigenous Business Australia is a Commonwealth statutory authority that assists the economic engagement of Aboriginal and Torres Strait Islander people. Indigenous Business Australia's Business Development and Assistance Program supports Aboriginal people to access the skills, knowledge and resources, including finance, required to start and grow a business.<sup>291</sup> The Department of Prime Minister and Cabinet advised that '[i]n 2014-2015 the Indigenous Business Australia approved 49 new business loans worth a total of \$18.3 million and provided business support or advice to 365 Indigenous businesses.'<sup>292</sup>
- 5.69** It was suggested during the inquiry that Indigenous Business Australia's business practices could be improved to better assist Aboriginal entrepreneurs. For example, the Office of the Registrar Aboriginal Land Rights Act 1983 (NSW) observed that Indigenous Business Australia has an 'overly conservative approach' to lending which restricts the funds available to Aboriginal entrepreneurs.<sup>293</sup>
- 5.70** Dr Hunt proposed that the NSW Government discuss with Indigenous Business Australia how its programs may provide the necessary support – in terms of capital and business skills development – for Aboriginal organisations across the state.<sup>294</sup>
- 5.71** The Indigenous Land Corporation is a corporate Commonwealth entity that assists Indigenous people to acquire and manage land to achieve economic, environmental, social and cultural benefits.<sup>295</sup> The Indigenous Land Corporation's *Our Land Our Future* program can help land owners, usually corporations or community organisations rather than individuals, to establish certain enterprises.<sup>296</sup>
- 5.72** Aboriginal business owners may also receive support through the Commonwealth Government's Indigenous Procurement Strategy and Indigenous Advancement Strategy. The Indigenous Procurement Strategy aims to leverage the commonwealth government's

<sup>291</sup> Indigenous Business Australia, Business Ownership, 28 June 2016, <http://www.iba.gov.au/business-ownership/>.

<sup>292</sup> Submission 32, Department of Prime Minister and Cabinet, p 4.

<sup>293</sup> Submission 36, Office of the Registrar Aboriginal Land Rights Act 1983 (NSW), p 12.

<sup>294</sup> Submission 3, Dr Janet Hunt, p 13.

<sup>295</sup> Indigenous Land Corporation, *About us*, <http://www.ilc.gov.au/Home/About-Us>.

<sup>296</sup> Indigenous Land Corporation, *Our Land Our Future*, <http://www.ilc.gov.au/Home/Our-Land-Program>; Evidence, Mr North, 26 February 2016, p 24.

significant purchasing capacity to benefit Indigenous businesses. The Department of Prime Minister and Cabinet advised that:

The policy puts Aboriginal and Torres Strait Islander businesses at the front and centre of the way the Government does business – whether through direct contracts or through joining the supply chains of some of Australia’s largest companies.<sup>297</sup>

**5.73** The Department of Prime Minister and Cabinet advised that the strategy is proving to be successful:

In the first six months of the IPP [Indigenous Procurement Policy] (to 8 January 2016), indicative data shows the Government has awarded 116 contracts to Indigenous businesses valued in total at around \$36 million. This is nearly 6 times more than the Government’s procurement commitment for the full 2012-13 financial year.<sup>298</sup>

**5.74** The Department of Prime Minister and Cabinet noted that ‘[u]nderpinning these results has been a rapid expansion in Indigenous business capability, including through a range of innovative and mutually beneficial joint venture and partnership arrangements with non-Indigenous businesses.’<sup>299</sup>

**5.75** The Indigenous Advancement Strategy includes funding to increase the number of Indigenous-owned enterprises and increase jobs. The Department of Prime Minister and Cabinet explained details of the strategy such as \$25 million for business in remote Australia and how it will increase community capacity:

Funding is available under the Indigenous Advancement Strategy to boost the number of Indigenous-owned enterprises and create jobs. This includes \$25 million to start and grow sustainable businesses or social enterprises in remote Australia. These enterprises will provide real work experience and create real jobs, while providing more goods and services to remote communities. This extra support will build more local capacity to secure and fulfil contracts like housing and construction, rather than using out-of-town contractors.<sup>300</sup>

**5.76** The NSW Government advised that it also has guidelines in place to promote procurement from Indigenous businesses. Mr Jason Ardler, Head of Aboriginal Affairs, explained that there are separate arrangements for construction procurement and general goods and services procurement:

We do have now a procurement direction that allows for preferential procurement from Aboriginal businesses up to \$150,000 based on a single quote. We have got the strengthened Aboriginal Participation in Construction Guidelines that now require a proportion of spend for government-funded infrastructure works to be spent on Aboriginal economic participation, so there is Aboriginal participation in those.<sup>301</sup>

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<sup>297</sup> Submission 32, Department of Prime Minister and Cabinet, p 3.

<sup>298</sup> Submission 32, Department of Prime Minister and Cabinet, p 3.

<sup>299</sup> Submission 32, Department of Prime Minister and Cabinet, pp 3-4.

<sup>300</sup> Submission 32, Department of Prime Minister and Cabinet, p 4.

<sup>301</sup> Evidence, Mr Jason Ardler, Head, Aboriginal Affairs, 26 February 2016, p 4.

- 5.77 Mr Ardler noted that the Office of Finance and Services has indicated that ‘... there are tens of millions of dollars now being spent by the State Government on procuring goods and services from Aboriginal businesses, which is encouraging’.<sup>302</sup>
- 5.78 The committee is seeking submissions on a range of proposals to support Aboriginal entrepreneurs including actions the NSW Government can take to incorporate more ‘wrap around services’ to support the establishment of Indigenous enterprises, whether enterprise assistance centres for Aboriginal-owned businesses should be established, how can Indigenous Business Australia and the Indigenous Land Corporation better facilitate capacity development for Aboriginal organisations, and how can the NSW Government better support the NSW Indigenous Chamber of Commerce.

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**Question 14**

What action can the NSW Government take to incorporate more ‘wrap around services’ to support the establishment of Aboriginal enterprises such as initial feasibility assessments, business planning, mentoring and access to capital, marketing, training and infrastructure?

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**Question 15**

Should enterprise assistance centres for Aboriginal-owned businesses be established?

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**Question 16**

How can the NSW Government encourage Indigenous Business Australia, the NSW Indigenous Chamber of Commerce and the Indigenous Land Corporation to facilitate capacity development for Aboriginal organisations and better support Aboriginal economic enterprise?

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<sup>302</sup> Evidence, Mr Ardler, 26 February 2016, p 4.



## Chapter 6 Land and water

As noted in chapter 1, land ownership offers significant opportunities for economic development. This chapter discusses the issues relating to land claims, ownership and use, the economic potential of these assets, and how various issues impact on the economic development of Aboriginal communities. It also considers some of the issues raised in relation to water resources and related cultural activities and economic opportunities.

### Recognising the value of land as an economic opportunity

6.1 Issues relating to land title, land claims and ownership of land granted under the *Aboriginal Land Rights Act 1983* have been key themes arising throughout this inquiry.

#### Land claims under the *Aboriginal Land Rights Act 1983*

6.2 Land rights involve the grant of interests in land under various state legislation. In NSW, this is the *Aboriginal Land Rights Act 1983* (hereafter ‘ALRA’). ALRA provides that the New South Wales Aboriginal Land Council (NSWALC) and local Aboriginal land councils (LALCs) may make claim(s) to claimable Crown land(s).

6.3 A compensatory scheme, the ALRA is described by Aboriginal Affairs as ‘representing a major step by the NSW Parliament to provide land rights to the Aboriginal people of NSW for the loss and dispossession of their land.’<sup>303</sup>

6.4 Section 3 of ALRA sets out the purposes of the Act:

- to provide land rights for Aboriginal persons in New South Wales
- provide for representative Aboriginal Land Councils in New South Wales,
- vest land in those Councils,
- 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,
- provide for the provision of community benefit schemes by or on behalf of those Councils.<sup>304</sup>

6.5 Land claims under the ALRA must be in respect of Crown land. There are various other requirements as to what is ‘claimable Crown land.’ Land claims are lodged with the Registrar of the *Aboriginal Land Rights Act 1983* and referred to the Minister for Crown Lands for investigation and determination.<sup>305</sup>

6.6 Once the Minister administering the *Crown Lands Act 1983* is satisfied that either whole or part of the land is claimable or not, the land is either granted or refused. Granted land is then

<sup>303</sup> Aboriginal Affairs, *Aboriginal Land Rights Act*, <http://www.aboriginalaffairs.nsw.gov.au/alra/>.

<sup>304</sup> *Aboriginal Land Rights Act 1983*, section 3.

<sup>305</sup> Aboriginal Affairs, *Land Claims*, <http://www.aboriginalaffairs.nsw.gov.au/alra/land-claims/>. See also, Office of the Registrar, *Aboriginal Land Rights Act 1983 (NSW) Aboriginal Land Claims*, 29 May 2012, <http://www.oralra.nsw.gov.au/landclaimsprocess.html>.

transferred to the land council in freehold title and it ceases to be the property of the Crown.<sup>306</sup>

- 6.7 Unlike claims for land under Commonwealth native title laws, local Aboriginal land councils are not required to establish a cultural association with lands when making land claims.

### Native title

- 6.8 Native title is different to statutory land rights under ALRA. Native title is the recognition of pre-existing rights and interests of Aboriginal people and Torres Strait Islanders in relation to land and waters, and finds its source in a body of law and custom acknowledged and observed by the claimant's ancestors at European colonisation.<sup>307</sup> There is a requirement that native title is acknowledged and observed in a '*substantially uninterrupted*' way from that time until the present.<sup>308</sup>

- 6.9 Unlike statutory land rights under ALRA, native title is not granted by the government. It is recognised through a determination made by a court. The court decides what sort of native title rights and interests exist in an area.

- 6.10 Native title exists alongside and is subject to the rights of other people in the same area, for example people holding leases, licences or a right of public access will continue to have those rights and native title must give way to people exercising those rights:

Land rights usually comprise of a grant of freehold or perpetual lease title to Indigenous Australians. By contrast, native title arises as a result of the recognition, under Australian common law, of pre-existing Indigenous rights and interests according to traditional laws and customs.<sup>309</sup>

- 6.11 The interaction between native title and land rights is complex.<sup>310</sup> Particular issues were raised in regard to successful land claims which are transferred to land councils, subject to native title claims on the land. This creates issues for councils that then wish to 'deal' with the land, as they are required to follow complex and time consuming processes to extinguish any native title claims that might apply. The Law Society of New South Wales suggest that the NSW Government liaise with the Commonwealth and the Federal Court to develop a procedure that would simplify and accelerate the process.<sup>311</sup>

<sup>306</sup> Department of Primary Industries – Lands, *Aboriginal Land Rights*, 2010, [http://www.crownland.nsw.gov.au/crown\\_land/comprehensive\\_review\\_of\\_nsw\\_crown\\_land\\_management/q\\_and\\_a/section\\_7\\_faqs](http://www.crownland.nsw.gov.au/crown_land/comprehensive_review_of_nsw_crown_land_management/q_and_a/section_7_faqs).

<sup>307</sup> National Native Title Tribunal, *Native Title Facts – What's the difference between native title and land rights?*, 2007, p 2.

<sup>308</sup> *Members of the Yorta Yorta Aboriginal Community v Victoria*. See also *Mabo v Queensland [No 2]* at 60 per Brennan J; and John Basten QC, 'Beyond Yorta Yorta'.

<sup>309</sup> Attorney General's Department, *Native Title*, <https://www.ag.gov.au/LegalSystem/NativeTitle/Pages/default.aspx>.

<sup>310</sup> Submission 13, The Law Society of NSW, p 11.

<sup>311</sup> Submission 13, The Law Society of NSW, p 13.

- 6.12 The committee acknowledges the complexity arising in respect of conflicting and complex areas of native title law and the existing statutory land rights framework in New South Wales. In this inquiry, however, the majority of evidence received by the committee has related to land claims under ALRA, and will be the focus of this part of the discussion paper.

### Concerns about land claims under ALRA

- 6.13 Three key issues were raised in regard to land claims under ALRA. First, it was noted that there is a significant backlog and delay in the determination of claims. Second, concerns were raised that economic development opportunities arising from land transfers were being impacted by the transfer of land with limited title. Third, some stakeholders noted concerns that land was being transferred with particular zonings, which limited the type of use it could be used for. These are discussed below.

### *Concerns raised about delay and backlog in assessing land claims under ALRA*

- 6.14 A number of stakeholders noted that there is a severe backlog in the determination of claims within the system. The NSWALC, the peak body representing Aboriginal people in New South Wales and the largest Aboriginal member based organisation in the country, commented:

Currently there are more than 28,000 outstanding Aboriginal land claims awaiting Ministerial determination and the vast tracts of Crown land envisaged by the Parliament have amounted to the transferral of less than 0.4 per cent of the Crown estate.<sup>312</sup>

- 6.15 Associate Professor Janet Hunt, an academic working at the Centre for Aboriginal Economic Research at the Australian National University, said that it would take over a century to clear the backlog at the current rate and that this stymieing of claims had a detrimental impact on Aboriginal communities economic potential:

There is a huge backlog of land claims – even approved claims worth some \$719 million have not been transferred to the relevant Local Aboriginal land councils according to the NSW Auditor-General’s 2014 report. Furthermore, there are over 25,000 additional land claims yet to be determined, some 500 of them have been waiting over a decade for determination. At the current rate of progress, the Auditor-General has estimated it will take 122 years to clear the backlog of claims. **Since land is a key asset for development, this backlog is a significant barrier to Aboriginal peoples’ ability to undertake economic development. It is within the control of the NSW Government to expedite these claims** [emphasis in original].<sup>313</sup>

- 6.16 Mr Jason Brouff, Manager, Aboriginal Lands Unit within Crown Lands, told the committee that the statutory criteria under ALRA to determine land claims require a lot of ‘complex investigation’:

<sup>312</sup> Submission 20, NWSALC, p 5.

<sup>313</sup> Submission 3, Dr Janet Hunt, p 6. See also, Audit Office of NSW, NSW Auditor-General’s Report to Parliament, Volume Fourteen 2014, *Focusing on Trade and Investment*, 2014, p 34.

The criteria require a lot of complex investigation, unfortunately. When land claims are lodged they can be lodged over a single parcel of land or they can be lodged over multiple parcels of land. You could have four or five different parcels of land with a single land claim over them and they could be subject to different tenures over them, different reservation purposes, different activities happening over them.<sup>314</sup>

- 6.17** The NSW Government also told the committee that LALCs can and have requested that Crown Lands prioritise the processing of particular land claims that offer particular opportunity in terms of community benefit:

Requests to prioritise the assessment of specific Aboriginal Land Claims are received from LALCs ... [however] ... the timeframe for assessment and determination can take between 6-8 months. DPI [Department of Primary Industry] – Lands works closely with NSWALC Land Rights Unit and has provided advice regarding the ability for LALC's to seek priority assessment for land under claim. It is understood that these requests typically relate to land identified by LALC's as part of a strategic review of land under claim that may provide more immediate benefit to the community if found to be claimable.<sup>315</sup>

- 6.18** Recognising that the delay in determining and clearing the backlog of land claims 'discourages investment and economic growth,' in 2014 the government passed amendments to the ALRA that were designed to:

... give government and land councils flexibility to step outside the existing land claim determination process and negotiate the settlement of multiple land claims simultaneously. This has the potential to significantly reduce the amount of undetermined land claims.<sup>316</sup>

- 6.19** However, one inquiry participant argued that despite these efforts more needs to be done if independence and Aboriginal self-determination is to be progressed, and recommended that the government act to:

Prioritise the resolution of land claims under the ALRA, including clarification of the processes and protocols for the negotiated settlement of claims as defined in the 2014 amendments to create voluntary Aboriginal Land Agreements.

Provide additional resources to the Land Claims division of Crown Lands to address the backlog of claims and the surveying of land.

Introduce an appeal option for claimants to apply to an arbitrator for review of unresolved claims.<sup>317</sup>

- 6.20** The committee also received evidence that there was also a backlog with the transfer of approved land claims, that is, claims where a determination had already been made but where the deed had not been transferred. As noted earlier, Dr Hunt stated that there is a huge

<sup>314</sup> Evidence, Mr Jason Brouff, Manager, Aboriginal Land Claims, Aboriginal Lands Unit, Crown Lands, Department of Primary Industry – Lands, 26 February 2016, p 9.

<sup>315</sup> Answers to question on notice, NSW Government, 13 April, 2016, p 16.

<sup>316</sup> *Hansard*, NSW Legislative Assembly, 21 October 2014, p 1492, (Victor Dominello).

<sup>317</sup> Submission 30, The Greens, p 4.



backlog of land claims including approved claims worth some \$719 million which have not been transferred to the relevant local Aboriginal land councils.<sup>318</sup>

- 6.21** The Law Society of New South Wales also pointed out that ‘many LALCs have experienced excessive delays in the transfer of land’,<sup>319</sup> with some waiting over 15 years for land to be transferred. It described the ‘failure to transfer land efficiently is a deprivation of an economic asset. For this reason the Government should ensure that all ‘claimable Crown land’ be transferred promptly.’<sup>320</sup>

***Concerns about issuing of land with ‘limited title’***

- 6.22** As noted above the intention of ALRA was to grant land to Aboriginal land councils with ordinary freehold title, subject to any native title rights and interests, which affords the land council access to land that can be ‘used, developed, leased or sold to bring economic, social and cultural benefits to Aboriginal communities.’<sup>321</sup>
- 6.23** However, the NSWALC submitted that in addition to delays in the assessment of claims, since 2009, there have been increasing numbers of claims were being granted with limited, as opposed to freehold, title:

... the economic impact of the slow determination of land claims has been further hampered by the practice of transferring limited title to claimed lands. Prior to November 2009, land claims delivered LALCs with an ordinary, surveyed freehold title. However, more recently many claims have resulted in the offer of only limited title as a result of the cost of land surveys.<sup>322</sup>

- 6.24** The NSWALC argues that these factors impact negatively on the capacity of local Aboriginal land councils to utilise the land for economic opportunity and development:

There is significant cost shifting to LALCs as a result of issuing limited title. LALCs are responsible for undertaking surveying work, which in some instances costs hundreds of thousands of dollars depending on the size of the land parcel in question ... Many [LALCs] have limited financial capacity and more immediate community priorities. This in turn limits their ability to deal with the land or negotiate with developers or joint venture partners from an equal position.<sup>323</sup>

- 6.25** Mr Brouff confirmed that where land was granted with ‘limited title’ it would require additional surveying work to be performed before the land could be developed, sold or otherwise dealt with.<sup>324</sup>
- 6.26** However, the committee acknowledges that there are some instances where the issuing of land with limited title will not be a significant issue. An example of this arises in cases where the

<sup>318</sup> Submission 3, Dr Janet Hunt, p 6.

<sup>319</sup> Submission 13, The Law Society of NSW, p 8.

<sup>320</sup> Submission 13, The Law Society of NSW, p 8.

<sup>321</sup> Submission 28, NSW Government, p 13.

<sup>322</sup> Submission 20, NSWALC, p 5.

<sup>323</sup> Submission 20, NSWALC, p 5.

<sup>324</sup> Evidence, Mr Brouff, 26 February 2016, pp 5-6.

subject land is of cultural or historical significance in circumstances where the exact delineation of the boundaries are not critical to that aspect, and where the issuing of limited title does not detract from local Aboriginal communities retaining their connection to country.

- 6.27** The committee also received some evidence that LALCs could still realise economic development opportunities by accepting land granted with limited title. In a discussion paper commissioned by Darkinjung Local Aboriginal Land Council, it is suggested that the issuing and acceptance of limited title could offer benefits to both LALCs and Crown Lands.<sup>325</sup> In referring to the cost-shifting (and delay) issues raised by the NSWALC, it states:

An alternative to waiting for a Crown Survey is to grant title with a limitation ... Should the land be used for cultural and/or environmental purposes a delimitation survey may not be required.

In the situation where a claim is proposed to be further developed, the survey costs associated with the delimitation survey may be absorbed as part of the development costs. As well as saving the Crown lands office significant survey fees, this also allows DLALC [Darkinjung Local Aboriginal Land Council] the opportunity to proceed with a development application sooner since title is issued in their name.<sup>326</sup>

- 6.28** The paper also suggested development partnering as a strategy to enable development of land issued with limited title to offset the costs of surveying the land:

In some cases, particularly where land claimed is located within growth corridors, there may be opportunities to partner with surrounding developers to achieve a more economical outcome. [In one case] DLALC entered into a deed of agreement to permit easements over a successful land claim in exchange for funding the survey costs for title creation. This resulted in title being issued to DLALC sooner, the Crown Lands office saving on survey costs and the adjoining developer being able to satisfy development conditions.<sup>327</sup>

- 6.29** The paper argues that, by holding title (even limited title) a LALC is in a stronger position to be able to commence negotiations with potential investors or interested parties, than holding no title at all, and therefore explore economic opportunities:

The granting of title to DLALC allows applications for development to proceed. Without title, entry to the land is not permitted without the permission of the Crown Lands office and the ability to negotiate with authorities is based on assumptions as to the extent of the grant and other unknown impediments on title. Further, development applications or third party agreements cannot proceed without secure tenure.<sup>328</sup>

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<sup>325</sup> Tabled document, Darkinjung Local Aboriginal Land Council, *Discussion Paper – The New South Wales Aboriginal Land Claim Process*, March 2012, pp 1-2.

<sup>326</sup> Tabled document, *Discussion Paper – The New South Wales Aboriginal Land Claim Process*, pp 19-20.

<sup>327</sup> Tabled document, *Discussion Paper – The New South Wales Aboriginal Land Claim Process*, p 20.

<sup>328</sup> Tabled document, *Discussion Paper – The New South Wales Aboriginal Land Claim Process*, p 16.

**6.30** The paper then goes on to describe two other case study examples of land owned by Darkinjung, where development opportunities progressed notwithstanding the issuing of title with limitation.<sup>329</sup>

**Case study: Darkinjung Local Aboriginal Land Council<sup>330</sup>**

The committee met with members of the Darkinjung Local Aboriginal Land Council on 14 March 2016 at its offices on the New South Wales Central Coast.

The Darkinjung Local Aboriginal Land Council was established in 1984 and is, in its words, one of the ‘largest and fastest growing local Aboriginal land councils in the State.’ It is the largest non-government land owner on the NSW Central Coast with a property portfolio of over 3,500 hectares.

However, like many LALCs, it has in the past struggled to realise its potential, at one point losing over \$12 million and going into administration, due to ‘limitations of the capability, capacity and knowledge of its members and the community to achieve their aspirations’ and ‘[being] heavily dependent on external parties to deliver outcomes.’

Darkinjung has said that it has ‘learnt from its past and focussed heavily on ensuring that the organisation never backslides by adopting a shared vision, implementing strong governance, accountability, transparency and leadership.’

Darkinjung has invested in a number of capacity building initiatives to assist it to better understand and manage its land portfolio and to identify opportunities to grow its assets including developing a Community Land and Business Plan, engaging specialist consultants to examine environmental and other issues which may impact on future land uses, and developing an asset management system and a mapping database using Google Earth.

Darkinjung has various business and development enterprises that are either current or planned, including residential developments, commercial leases, and businesses and service provision including in the areas of education, aged care and retail. The projects have the potential to deliver \$900 million to the economy.

Darkinjung has engaged Jawun – a program that increases the capacity of Indigenous leaders, organisations and communities to achieve their own development goals by seconding private sector employees into Indigenous organisations – for four years. The relationship and experience has been invaluable to the development and growth of Darkinjung’s staff, the organisation and the community.

<sup>329</sup> The two sites referred to are: Kirkness Avenue, North Gosford and Fairymede Road, Mangrove Mountain: Tabled document, *Discussion Paper – The New South Wales Aboriginal Land Claim Process*, pp 16-18.

<sup>330</sup> Submission 11, Darkinjung Local Aboriginal Land Council and Site visit report: Singleton, Williamtown and Watanobbi, p 4.

- 6.31** The committee received strong evidence that the backlog of land claims, both those yet to be investigated and assessed and those already determined and granted but not yet transferred, is having a negative impact on local Aboriginal land councils by depriving them of the economic opportunities that land ownership presents. The committee invites comments on what actions the NSW Government could take to address both these issues.
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**Question 17**

What actions should the NSW Government take to address the backlog of land claims yet to be assessed?

**Question 18**

What actions should the NSW Government take to address the backlog of land claims that have been assessed but where the land has not yet transferred to land councils?

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**Question 19**

What actions could the NSW Government (or others) take to provide the necessary support to local Aboriginal land councils holding 'limited title' land to realise its economic potential?

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***Concerns about zoning of land granted under ALRA***

- 6.32** Some stakeholders identified limits on economic development arising as a result of the zoning of land granted to LALCs under the ALRA. An example cited throughout the course of the inquiry relates to the zoning of land for conservation use or environmental protection which was said to significantly impact a land council's capacity to utilise the land for economic development.<sup>331</sup> The COAG Senior Officers Working Group summarised the issue as follows:

... where local governments' apply 'greenfield' standards to Indigenous communities, which is premised on the land having never been used, Indigenous land owners and native title holders cannot reasonably meet zoning requirements. This prevents creation of bankable interests (like leases) that are in line with the planning scheme. State and territory governments should ensure these standards are applied in a way which recognises the prior lack of proper planning in Indigenous communities.<sup>332</sup>

- 6.33** The working group notes that the NSW Government 'is considering' a range of actions, outlined below, which it says 'would be beneficial in addressing the issue:'
- Educate State planning authorities, local councils and the community that Land Council lands may have an economic potential, and have not been claimed solely for cultural/nature conservation reasons.
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<sup>331</sup> See, for example, Submission 13, The Law Society of NSW, pp 9-10; Submission 15, Wollondilly Shire Council, p 2; Submission 17, Local Decision Making Regional Chairpersons Group p 5; Submission 20, NSWALC, p 7; Evidence, Mr Roy Ah-See, Chairperson, NSWALC, 26 February 2016, pp 26-27.

<sup>332</sup> Senior Officers Working Group, *Investigation into Indigenous Land Administration and Use – Report to the Council of Australian Governments*, 2015, p 54.

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- State planning authorities and local councils to improve consultation with Indigenous communities to better understand community aspirations for land holdings, and improve community understanding of planning and heritage processes.
- State planning authorities and local councils to consider the economic potential of lands as part of their strategic planning processes.
- State planning authorities and local government to remove barriers in their statutory planning controls for the realisation of the economic potential for lands.<sup>333</sup>

**6.34** The NSWALC submitted that the original intention of granting land to Aboriginal communities as a means to improve their economic prosperity was being hampered by zoning and planning rules, which were operating to ‘down-zone’ Aboriginal land:

... some local government authorities having a tendency to view land owned by the Aboriginal community as public environmental assets (effectively privately owned parklands). This process of ‘down-zoning’ for environmental conservation purposes eliminates the development potential of those lands and undermines the social and economic mechanisms of the ALRA.<sup>334</sup>

**6.35** Mr Roy Ah-See, Chairperson of the NSWALC, gave the following example to describe how current ‘restrictive environmental zoning’<sup>335</sup> on land councils:

We have a land council in the Sydney Basin and ... when you put up a map you will see what is the land council’s claimed land and you will see what the other lands are—be they private owners or whatever the case may be—and you have got this green corridor that has been zoned environmental. Guess who owns the land ...

It is the land council’s land. You have got little parcels that have been zoned for building or whatever the case may be and it is so frustrating ...

[The land council] are saying how are we supposed to become part of this industry and unlock the challenges that are faced by our communities if we do not get the same opportunity to be able to develop our land?<sup>336</sup>

**6.36** Mr Darren Toomey, Chief Executive Officer of the Dubbo Local Aboriginal Land Council, said that the zoning of land granted to his land council had become a cost burden rather than an opportunity because of need to upkeep the property and the restrictions on utilising it for other purposes:

... When we eventually get a land claim it is great, but you can do nothing with it. So they give you something and they stop you doing anything with it. At the moment, the land we got costs us money at the end of the day because we have got to keep the grass low and keep it maintained, and we have not got income to do that unless we

<sup>333</sup> Senior Officers Working Group, *Investigation into Indigenous Land Administration and Use*, 2015, p 55.

<sup>334</sup> Submission 20, NSWALC, p 7.

<sup>335</sup> Submission 20, NSWALC, p 7.

<sup>336</sup> Evidence, Mr Ah-See, 26 February 2016, pp 26-27.

lease it out. Obviously that needs to be negotiated. If we do get a land claim we should be automatically able to do something with it.<sup>337</sup>

**6.37** The Head of Aboriginal Affairs, Mr Jason Ardler, agreed with the concern noted by the NSWALC about the impact of restrictive zoning on land,<sup>338</sup> and told the committee that his department was working with key stakeholders, including the Department of Planning, the Office of Local Government and the NSWALC to address the issue.<sup>339</sup>

**6.38** The Law Society of New South Wales submitted that the following factors can impact decision making around the classification of Aboriginal land:

- Land owned by an Aboriginal land council may be treated as though it was essentially public in character, and is therefore a safer and more attractive target for restrictive zonings rather than other privately owned land.
- In some cases it may appear to planners that land of the Aboriginal land council is in fact publicly owned. This is a result of the long delays in determining claims and then transferring claimable land, which means that the land council has no registered title for many years, and during that time the land will appear from title searching to be State owned land.
- A further effect of the lengthy delays in the determination of claims and the transfer of lands is that the land may have remained relatively undeveloped for many years, while neighbouring lands have been progressively subdivided and built upon. A result of this has been that in the relatively recent round of Local Environment Plan amendments, Aboriginal land council lands have sometimes been amongst the last remained tracts of undeveloped land with conservation value.
- While planners are likely to be influenced by the views of agencies such as the Office of Environment and Heritage when preparing environmental planning instruments, they are less likely to be aware of, or appreciate the importance of, the important public policy behind the transfer of claimable Crown lands to Aboriginal land councils.
- Inappropriate and outmoded assumptions may be made by planners and relevant agencies about the values of Aboriginal land council land to the people whose benefit it is held for. These assumptions may lead to incorrect assumptions about the likely uses that the land council will make of the land. This may also contribute to planning decisions which can have an adverse effect on Aboriginal economic development.<sup>340</sup>

**6.39** Dr Hunt acknowledged the concerns with environmentally zoned Aboriginal land, but cautioned ‘knee jerk’ responses, stating:

I have heard ... that there are constraints on some land councils due to the fact that the land that they hold is ... some of the only remaining environmentally zoned land in the region, particularly in urban areas. But I think we have to be careful that we do not have a knee-jerk response and say, “No, no, we’ll have to end that zoning.”

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<sup>337</sup> Evidence, Mr Darren Toomey, Chief Executive Officer, Dubbo Local Aboriginal Land Council, 5 April 2016, p 5.

<sup>338</sup> Evidence, Mr Jason Ardler, Head, Aboriginal Affairs, 26 February 2016, p 7.

<sup>339</sup> Evidence, Mr Ardler, 26 February 2016, p 7. See also Submission 28, NSW Government, p 14.

<sup>340</sup> Submission 13, The Law Society of NSW, p 10.

There are reasons for the zoning, as well. We need to enter into some negotiations, not just respond...<sup>341</sup>

- 6.40** The Law Society submitted that the committee ought to consider whether a specific State Environmental Planning Policy (SEPP) should be developed that would apply to Aboriginal land council land, arguing that it could operate to:

... ensure that the important social and economic policy embedded in the ALRA is given an appropriate place in the environmental planning and assessment regime. The SEPP's provisions could override restrictions on land use in Local Environmental Plans where this is necessary and appropriate in order to allow development projects on Aboriginal land council land that will contribute to Aboriginal economic development.<sup>342</sup>

- 6.41** Darkinjung Local Aboriginal Land Council made a similar submission, noting that planning instruments should note the intention of ALRA to ensure it was able to meet its objectives. It recommended that the committee consider:

Provision of appropriate environment planning instruments and policies, which recognise the Preamble and purpose of NSW ALRA, and the unique nature of LALC's, along with the opportunities as well as the limitations within Aboriginal communities and organisations i.e. Aboriginal Land SEPP.<sup>343</sup>

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### Question 20

Do the issues raised with respect to zoning of land transferred to Aboriginal land councils warrant a change to current planning processes?

If so, what options are available to address the issue(s) identified?

Should the NSW Government consider the introduction of a SEPP that would apply to land owned by Aboriginal land councils, and if so, what considerations and provisions should it include?

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### Economic opportunities in land and water

- 6.42** Darkinjung and Worimi local Aboriginal land councils are two examples where economic opportunities have been able to be leveraged from the ownership of land. Both examples demonstrate that a critical component of being able to realise the economic potential is having the 'right people' engaged in the process. As discussed in chapter 5, many local Aboriginal land councils are lacking people who are able to identify and harness these opportunities.
- 6.43** Mr Greg Pullen, an economist with the Shoalhaven City Council, suggested that there may be a way to utilise expertise within local government in regards to the development of land.

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<sup>341</sup> Evidence, , Dr Janet Hunt, 26 February 2016, p 35.

<sup>342</sup> Submission 13, The Law Society of NSW, p 10.

<sup>343</sup> Submission 11, Darkinjung Local Aboriginal Land Council, p 8.

Mr Pullen said that, in his view, there was a philosophical barrier that many local Aboriginal land councils experienced which impeded them capitalising on these opportunities:

Where I see a way in which the Government and councils can help the Aboriginal communities is that they are major landowners; Crown land that used to be is transitioning across to Aboriginal land councils. They do not know how to develop it, how to capitalise out of it; they have got this philosophical problem they have to prove an association with a piece of land to get the land allocated to them, then when they want to develop and on-sell it that is the other side of the coin, and they struggle with that philosophically.<sup>344</sup>

**6.44** Mr Pullen went on to suggest that partnership arrangements between local government and local Aboriginal land councils could bridge the gap and offer economic benefits to local communities:

[I]f you have a joint venture agreement worked up, local government can get into bed in a joint venture agreement with a land council. We can then develop a project, develop their community housing projects and land for sale to the general community; everybody makes a profit out of it and they end up with their needs and their 10 houses and so on, they end up with some capital for the next project to roll on and off they go. I believe that that is a way in which you can enable the land councils and the local communities. Whether that money has to be interest-free or low interest that is up to government, but I do believe that there is a practical solution that can work. I have been involved in those sorts of projects but they die at the end because the Aboriginal land councils really do not have the wherewithal to move it forward.<sup>345</sup>

**6.45** Mr Sean Gordon, Chief Executive Officer of Darkinjung, told the committee that the experience of their local Aboriginal land council was that ‘there hasn’t been a lot of general support through local government around our developments and there hasn’t been a lot of support from our local communities.’<sup>346</sup>

**6.46** However, the Darkinjung experience was not universal. The Worimi Local Aboriginal Land Council told the committee that it had been able to realise economic opportunities through partnerships with local government:

... the relationship we’ve been able to develop with our local government has put us in a good position to be able to negotiate and move forward on property development and other commercial developments.<sup>347</sup>

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<sup>344</sup> Evidence, Mr Greg Pullen, Economic Development Manager, Shoalhaven City Council, 26 May 2016, pp 23-24.

<sup>345</sup> Evidence, Mr Pullen, 26 May 2016, p 24.

<sup>346</sup> Site visit report: Singleton, Williamtown and Watanobbi, p 4.

<sup>347</sup> Site visit report: Singleton, Williamtown and Watanobbi, p 3.



**Case study: Worimi Local Aboriginal Land Council<sup>348</sup>**

The committee visited the Worimi Local Aboriginal Land Council on 14 March 2016 at the LALCs headquarters, the Murook Culture Centre at Williamtown on the Central Coast.

The Worimi Local Aboriginal Land Council was established in November 1984, however entered administration in 2004 after selling and buying land, a move that ‘didn’t sit too well with the members at the time,’ along with several failed business attempts.

In early 2006, Mr Andrew Smith was appointed Chief Executive Officer, bringing with him experience and knowledge about leading organisations and business. Mr Smith and his executive team introduced good governance, efficient and transparent financial management, clear policies and procedures and have become fully conversant with all of the affairs being handled by the Administrator, with the Administration period ending October 2006.

Worimi now successfully operates various enterprises that take advantage of its environment, key examples being Sand Dune Adventures, which operates quad bike tours on the Stockton sand dunes, and a sand mining business. The success of the businesses was attributed to the Chief Executive Officer and the land council’s adoption of sound business practices.



*Members of the Standing Committee on State Development with representatives of the Worimi Local Aboriginal Land Council in March 2016.*

- 6.47** The committee received some evidence that the zoning of marine parks and coastal waters also affected Aboriginal people’s ability to generate economic benefits, as well as damaging their cultural connection to country.

<sup>348</sup> Worimi Local Aboriginal Land Council, *About*, 2014, <http://worimi.org.au/about/>; Site visit report: Singleton, Williamtown and Watanobbi, p 3.

- 6.48** Mr Robert Chewying of the NSW Aboriginal Fishing Rights Group told the committee that Aboriginal people did not distinguish between land and sea, but rather experienced a broad connection with the natural world which underpinned their culture and that damage to it caused significant disconnection and harm:

With any Indigenous person you find that they associate the land and the sea as one. There is a very deep connection, and it is a connection which is very hard to explain.

... just going out and getting in the water and enjoying the feeling of being in the water and understanding what is going on under the water. It is through all of the connections which, I suppose, God gives us. Whether it is the birds, the sea or the wind, there are indicators that we pick up on that get us to a point where we catch a fish. It is one of those things that we cannot define. It is very hard to explain that to everybody. That is one of the plights that we are trying, desperately, to show everybody. It is not about money; it is about being disconnected, and it hurts—it really hurts.<sup>349</sup>

- 6.49** Dr Hunt told the committee that marine park zoning arrangements had significantly damaged Aboriginal communities for whom traditional fishing was vitally important to both sustainability and culture:

When you think about this historically you can see that it is a huge injustice. They maintained a sustainable way of fishing until colonisation. It has only been in much more recent years that the fishery and the marine environment have been depleted and the arguments for having marine parks and sanctuary zones have come about. That has not come about because of Aboriginal fishers but they have now been penalised quite severely. Opportunities to maintain and transmit their cultures to future generations, as well as economic opportunities, have been lost.

They are very concerned about their young people and about the future generation. It is very difficult for young people down the South Coast to get jobs. There are not many jobs for Aboriginal people. This is an area where they have skills. They have a comparative advantage in that area.<sup>350</sup>

- 6.50** Mr Wally Stewart, also of the NSW Aboriginal Fishing Rights Group, told the committee that fishing offered a viable economic opportunity for the Yuin people of the South Coast, but the prosecution of Aboriginal fishers and the creation of marine sanctuaries around the coast impeded their capacity to obtain gainful employment in a field they know:

... we can see a business there with our community and we can also see our young guys who are being prosecuted all the time and don't know nothing else but fishing. If they were ever given that opportunity you could see their whole life changing and their whole community changing ...

[W]e don't know nothing else, we are Yuin people, we live on the South Coast and we rely on the ocean. If you live in Dubbo you rely on your kangaroo. Down on the South Coast we have got a high unemployment rate. Marine Parks came along and then they took more waters away from us and our community thought that they were doing the right thing. When they done the consultation process they told them where

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<sup>349</sup> Evidence, Mr Robert Chewying, NSW Aboriginal Fishing Rights Group, 26 May 2016, p 8.

<sup>350</sup> Evidence, Dr Hunt, 26 February 2016, pp 36-37.

their favourite spots was and they were all locked up into sanctuary zones, so it severed our people again.<sup>351</sup>

- 6.51** In 2009, the government introduced a range of provisions designed to recognise the cultural and traditional fishing needs of Aboriginal people. However, one of the provisions in the amending Act is yet to be proclaimed (section 21AA) and inquiry participants indicated that this was having detrimental impacts on Aboriginal people.<sup>352</sup>

***Opportunities to unlock economic potential in land and water***

- 6.52** As discussed in chapter 5, many inquiry participants stressed the need to build capacity within local Aboriginal land councils to assist them to make good decisions about capitalising on land they own. The suggestion by Mr Pullen to connect them with the expertise residing in local government however is one that, in the committee's view, offers a potential strategy to address the LALC capacity issue while also having the benefit of application across the state. The committee considers that it would be critical for the parties to want to work together, and for local Aboriginal communities to be appropriately consulted and engaged in any potential joint venture.
- 6.53** The committee invites comment on the suggestion that LALCs and local councils consider partnering to realise economic benefits through land owned by LALCs, and also invites comment on the potential for this to be expanded to partnerships with private enterprise. It also invites submissions on the issues raised in relation to water and fisheries resources and their role in the economic development in Aboriginal communities.

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**Question 21**

What are the potential benefits and disadvantages of the proposal that local Aboriginal land councils partner with local government to identify and realise economic growth from land owned by land councils?

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**Question 22**

What should the NSW Government do to support partnerships between local Aboriginal land councils and other organisations, whether they are local government or private enterprises, to realise economic growth from land owned by land councils?

How can Aboriginal communities leverage economic opportunities from their cultural connection to water? What actions can the NSW Government take to facilitate this?

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<sup>351</sup> Evidence, Mr Wally Stewart, NSW Aboriginal Fishing Rights Group, 26 May 2016, p 6.

<sup>352</sup> Submission 30, The Greens, p 7; Evidence, Dr Hunt, 26 February 2016, pp 32-33.



## Appendix 1 Terms of reference



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON STATE DEVELOPMENT

### Inquiry into economic development in Aboriginal communities

#### TERMS OF REFERENCE

1. That the Standing Committee on State Development inquire into and report on strategies to support economic development in Aboriginal communities in New South Wales, including but not limited to:
  - (a) options for sustainability and capacity building of NSW Aboriginal communities into the future, utilising existing community networks and structures
  - (b) leveraging economic development support, including provided by the Commonwealth Government and the private sector
  - (c) establishment and sustainability of Aboriginal owned enterprises.
2. That the committee report by 30 September 2016.

#### Committee membership

The Hon Greg Pearce MLC	Liberal Party	<i>Chair</i>
The Hon Mick Veitch MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Rick Colless MLC	The Nationals	
The Hon Paul Green MLC	Christian Democratic Party	
The Hon Natasha Maclaren-Jones MLC	Liberal Party	
The Hon Ernest Wong MLC*	Australian Labor Party	

\*The Hon Ernest Wong MLC replaced the Hon Sophie Cotsis MLC as a committee member on 7 March 2016.

These terms of reference were referred to the Committee by the Hon Leslie Williams MP, Minister for Aboriginal Affairs. The committee passed a resolution on 13 August 2015 to adopt these terms of reference and the Chair informed the House on 25 August 2015, *Minutes*, NSW Legislative Council, Item 19, p 315.

