



NEW SOUTH WALES ABORIGINAL LAND COUNCIL

ABN 82 726 507 500

The Secretariat
Standing Committee on State Development
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

To whom it may concern,

Please see the attached additional comments in relation to the evidence provided by the Chair of the NSW Aboriginal Land Council, Roy Ah See, on Friday 26 of February 2016. The comments below relate to the questions which the Committee asked on the day and additional Supplementary Questions asked.

Regards,

Lesley Turner
Chief Executive Officer
NSW Aboriginal Land Council

23/3/16

Head Office

Level 5, 33 Argyle Street
Parramatta NSW 2150
PO Box 1125
Parramatta NSW 2124
Tel: 02 9689 4444
Fax: 02 9687 1234

Western Zone

2/36 Darling Street
Riverview Business Park
Dubbo NSW 2830
PO Box 1196
Dubbo NSW 2830
Tel: 02 6885 7000
Fax: 02 6881 6268

Northern Zone

Suite 2-26, Park Avenue
Coffs Harbour NSW 2450
PO Box 1912
Coffs Harbour NSW 2450
Tel: 02 6659 1200
Fax: 02 6650 0420

Eastern Zone

50/24-26 Watt Street
Gosford NSW 2250
PO Box 670
Gosford NSW 2250
Tel: 02 4337 4700
Fax: 02 4337 4710

Southern Zone

Unit 22, 2 Yallourn Street
Fyshwick ACT 2609
PO Box 619
Queanbeyan NSW 2620
Tel: 02 6124 3555
Fax: 02 6280 5650

Far West Zone

Level 3, NSW State
Government Building,
32 Sulphide Street
Broken Hill NSW 2880
Tel: 08 8087 9587
Fax: 08 8087 3851

Questions on Notice

The Hon. MICK VEITCH: Just to follow up, Mr Ah-See, in one your earlier responses you spoke about the \$16 million you took out of your fund and set aside for programs for business development. Have you put a case to the Government to match that \$16 million?

Mr AH-SEE: No, we have not.

The Hon. MICK VEITCH: Is there a plan to do so?

Mr AH-SEE: I will take it on notice. From memory, I do not think we have, but that is an option for the NSW Aboriginal Land Council.

The Hon. MICK VEITCH: Are they going to be able to see if they can match it dollar for dollar? It seems like it is having a really good result. If you can match it dollar for dollar it would give leverage to be a lot more positive.

Mr AH-SEE: We just made a decision to award a land council some resources that it would not get—it would not stand up at a bank or whatever the case may be—at a very low interest rate. That is right out in western New South Wales, and they are absolutely stoked because they have got an opportunity to be able to showcase country, because it is about tourism and it is about people going out to see their country. We all know that many in this country or who come to this country want an Aboriginal experience; they want to go out on country and they want to have a look. We will take that on notice.

Response

NSWALC is committed to economic development in Aboriginal communities across NSW. NSWALC's Strategic Priorities include:

- *Developing regional industry strategies for the land rights network*
- *Supporting the development & maintenance of sustainable Community Benefits Scheme, and*
- *Developing the economic development and business management capabilities of LALCs.*

In 2014, NSWALC has allocated \$16 million over a five year period to identify economic opportunities for LALCs. This involves assisting LALCs to develop business models and concepts which promote employment for Aboriginal people.

NSW Government should support Aboriginal economic development in NSW. Genuine partnerships between government and the Aboriginal Land Rights network is needed to seek mutually beneficial economic and social outcomes.

The Hon. RICK COLLESS: On page 11 of your submission, down the bottom, you make a recommendation that the Committee considers options for improving the building and planning system. You may need to take this on notice if you want to give it some more thought, but we would like to get some idea of what sorts of changes you would like to see to the planning system in order to enable your programs to progress without the constraints that are obviously on them now. You mentioned the issue of down-zoning, and

I understand that concept, but what other sorts of changes need to be made within the planning system to allow more programs to progress?

Mr AH-SEE: I will take it on notice but I will just add a little bit, if I can, from my experience in relation to how the planning laws are impacting on local Aboriginal land councils. We have a land council in the Sydney Basin and, it is as clear as the nose on your face, 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?

Response

Planning mechanisms and policies

There are a number of issues that affect the economic development in Aboriginal communities. For example Aboriginal Land Councils in NSW are often large land owners within an area, and often Aboriginal Land Council boundaries cross several Local Government boundaries. NSWALC reiterates that Aboriginal people's interests in land are broader than environmental issues alone, and include goals to attain, manage and develop lands for cultural, economic and social purposes as determined by local Aboriginal communities.

The Overcoming Indigenous Disadvantage Report 2011 specifically highlights that Aboriginal peoples obtain a range of economic, social and cultural benefits from land,¹ stating that:

"Land ownership may lead to greater autonomy and economic independence, increased commercial leverage and political influence. It can also deliver commercial benefits like increased income, employment and profits."

Aboriginal Land Councils are a key stakeholder for both local and state government authorities when planning for future land uses.

NSWALC is of the view that any planning policy and instruments must not undermine the compensatory mechanisms of the ALRA. The ALRA is the only form of compensation given to Aboriginal peoples in NSW as a result of dispossession. LALCs must be engaged in strategic planning initiatives.

NSWALC contends that planning laws, policies and instruments should include objectives and mechanisms to provide opportunities for Aboriginal Land Councils to unlock the economic development potential of their lands through a coordinated approach between local government authorities and in partnership with LALCs. The NSW Government must promote local governments and regional planning authorities to partner with Aboriginal Land Councils and Aboriginal communities when planning for future land uses.

Community participation in planning processes

The capacity of planning systems to engage effectively with Aboriginal peoples in planning and decision-making processes is crucial to achieving improved outcomes for Aboriginal communities. Furthermore, there is a clear need for planning authorities to recognise that planning inherently

¹ Steering Committee for the Review of Government Service Delivery, 'Overcoming Indigenous Disadvantage Key Indicators 2011 Report', Chapter 8.2 'Indigenous Owned or Controlled land and business', available at: http://www.pc.gov.au/data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf

involves social and political elements, and for these elements to be openly addressed through genuine community processes.

Under the current planning system, there are limited opportunities for Aboriginal peoples and Aboriginal Land Councils, to genuinely engage with planning processes.

Aboriginal peoples must be provided with early and meaningful opportunities to influence planning decisions. This engagement must occur well before decisions are made. Access to information about the implications of planning decisions which may affect Aboriginal people's interests must be mandated to promote free and informed responses.

There is a clear need to reinstate genuine public participation in the NSW Planning System with specific recognition of Aboriginal peoples, communities and Aboriginal Land Councils as key stakeholders with particular needs in respect to consultation.

Protecting Aboriginal culture and heritage

Consideration should be given to how Aboriginal culture and heritage laws will interact with planning processes. The planning system, as a framework for regulating development and land use activities on all land in NSW, is ideally positioned to ensure the long-term protection and management of Aboriginal culture and heritage, and to facilitate positive outcomes for Aboriginal communities.

The Hon. PAUL GREEN: We started a business through the New Enterprise Incentive Scheme [NEIS]. It had a good mentoring scheme where you could take your concept and develop it. Does the land council have any unique Indigenous focused enterprise scheme where you are basically incubators for people like your son so that he has an opportunity? There is no doubt there are resources out there but are there any incubators for economic development involving young people?

Mr AH-SEE: I will take that on notice and get back to you with some information about that. I guess we have our Economic Development Unit and no doubt they will be charged with looking at whether we establish incubators or research units or whatever the case may be in respect to economic development. I am happy to take it on notice.

Response

NSWALC has identified youth engagement as a key action within our Strategic Plan 2013 – 2017. As a part of NSWALC's youth engagement work, NSWALC is considering options relating to mentoring and leadership programs.

Supplementary Questions

Rezoning – 1.

In evidence, the Chairperson of the NSWALC, Roy Ah-See mentioned issues that Local Aboriginal Land Councils (LALCs) have had with their properties being 'down-graded' or 'rezoned' as environmental land. For the further purposes of providing evidence to this Inquiry, what were the specific issues that these Land Councils have in relation to economic development and are their possible remedies to address this?

NSWALC is aware anecdotally of situations where upon the granting of land claims to Aboriginal Land Councils, Local Government has then rezoned the land for environmental/ conservation purposes, thereby greatly reducing the range of permitted uses and the Land Council's ability to develop the land or pursue economic development on the land.

Achievements in the Economic Development – 2.

For the further purposes of providing evidence to this Inquiry, is NSWALC able to provide examples of some of its achievements in economic development in Aboriginal communities? What are some of the specific programs or initiatives that NSWALC undertake to promote economic development?

The Economic Development Policy was approved by the Minister for Aboriginal Affairs in August 2014. This Policy outlines the broad strategies and initiatives that NSWALC will pursue over the next five years to drive economic development towards wealth creation and wellbeing for Aboriginal people in NSW. NSWALC has committed up to \$16 million over this timeframe to support these initiatives in the form of Business Development Grants, Early Stage Investment Loans and Equity Investment. Three strategic priorities have been identified for achieving the goal of wealth creation and wellbeing for Aboriginal people in NSW:

- a. Facilitation of Local Aboriginal Land Council business enterprise: including the provision of support, skills and resources necessary to drive local and regional knowledge and initiatives into successful and sustainable businesses*
- b. Facilitation of Aboriginal employment in NSW: focused on coordinating and facilitating existing programs and service providers, to link members to services and employment opportunities*
- c. NSW Aboriginal Land Council business enterprise: continue to prudently manage and grow the statutory NSWALC Account including opportunities in the minerals and energy sector.*

Mentoring Program – 3.

Is NSWALC able to further elaborate on its Mentoring Program within its Economic Development Strategy? And are there any incentives to promote start-up initiatives or programs for younger Aboriginal people interested in starting a business?

NSWALC's Capacity Development Framework involves three main streams – training, mentoring and connecting/sharing. Within mentoring, there were three main types identified: pre-start up mentoring, post-start up mentoring and ad-hoc mentoring depending on business needs.

As identified in NSWALC's submission to the Inquiry, NSWALC recommends that the State Government should also harness industry expertise to develop formal mentoring programs to mentor Aboriginal entrepreneurs and businesses.

Land Claims Process/Native Title – 4.

As mentioned briefly in evidence provided by the Chairperson of the NSWALC, Roy Ah-See, NSWALC does have some concerns with the Land Claims process and the backlog of some 28,000 land claims. Do believe that the Government is adequately resourcing the department to help resolve the outstanding land claims?

As noted there are over 28,000 outstanding land claims in NSW, many of which have remained undetermined for many years, and in some instances decades. The NSW Government has a responsibility to determine these claims in a timely manner. The Courts have made it clear that no Aboriginal Land Council should have to wait 20 years to have their land claims determined and that

such delay does not accord with any idea of “reasonableness”. Irrespective of the number of land claims made, so far less than 0.2% of NSW has been granted back to Aboriginal Land Councils.

NSWALC encourages the NSW Government to allocate for funding towards the speedy determination of land claims.

Native Title – 5.

Practically, how does NSWALC see Native Title and the Lands Claims process intersecting on the ground?

The interaction between Land Rights and Native Title is legally complex. While both systems are both about formally recognising and providing for Aboriginal people rights, the two systems operate under different laws and differ in the rights they can provide. Native title is about recognition of rights and interests in land whereas land rights is about granting interests in land.

*When the Federal Court of Australia makes a native title determination, Australia’s legal system recognises rights and interests that are, and always have been, held by Aboriginal people in accordance with traditional law and custom. In contrast, when the Minister for Crown Lands grants land under the Aboriginal Land Rights Act 1983 (**ALRA**), the Government is granting land to Aboriginal Land Councils as compensation to Aboriginal people for past dispossession of land.*

NSWALC has developed a comprehensive guide on how the two regimes can work together. This is available at:

<http://alc.org.au/media/90660/land%20rights%20and%20native%20title%20in%20nsw%20-%20a%20community%20guide%20final%20web%2002.pdf>.

NSWALC has a MoU with NTSCORP, the representative body and service provider for Native Title claimants in NSW. The MoU demonstrates both our organisations commitment to work together to achieve the best possible outcomes for Aboriginal peoples. Improved socio-economic outcomes for all Aboriginal peoples in NSW is an aim of both organisations and ownership of and access to land and water is vital to achieving this. We look forward to working with NTSCORP and strengthening the complimentary aspects of the two systems.